

1 THE UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 8
4

5 CASE NO. 08-CA-090083 (VOLUME 1 of 4)

6 08-CA-090193

7 08-CA-093035

8 08-CA-095833

9

10 In the Matter of:

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12 DHSC, LLC D/B/A AFFINITY MEDICAL CENTER,

13 Employer,

14 and

15 NATIONAL NURSES ORGANIZING COMMITTEE,

16 Petitioner.

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21 The above entitled matter came on for hearing
22 pursuant to notice before ARTHUR AMCHAN, Administrative
23 Law Judge, at Anthony J. Celebrezze Federal Building, 1240
24 East 9th Street, Room 1695, Cleveland, Ohio, on Monday,
25 April 29, 2013, at 1:00 p.m.

1 A P P E A R A N C E S

2 On Behalf of the General Counsel:

3 Sharlee Cendrosky, Esq.

4 NATIONAL LABOR RELATIONS BOARD

5 REGION 8

6 Anthony J. Celebrezze Federal Building

7 Cleveland, Ohio 44199

8

9 On Behalf of the Charging Party:

10 Ms. Jan Lawhon

11 NATIONAL NURSE ORGANIZING COMMITTEE

12 2000 Franklin Street

13 Oakland, California 94612

14

15 On Behalf of the Respondent:

16 Bryan Carmody, Esq.

17 134 Evergreen Lane

18 Glastonbury, Connecticut 06033

19

20 Don Carmody, Esq.

21 P.O. Box 3310

22 Brentwood, Tennessee 37024

23 Kaitlin Brundage, Esq.

24 62 Ledgewood Road

25 West Hartford, Connecticut 06107

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I N D E X

VOIR

WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE

STEPHEN MATTHEWS 18 28

WILLIAM OSTERMAN 40 80

JASON McDONALD 92 120

130 132

SUSAN KRESS 134 155

1 EXHIBITS

2 GENERAL COUNSEL'S

3 EXHIBIT NO: IDENTIFIED IN EVIDENCE

4	1	8	9
5	2	9	9
6	3A-3B	22	23
7	4	23	25
8	5	25	27
9	6	47	60
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11	8	105	12
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15 Charging Party's:

16 Exhibit No.

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1 P R O C E E D I N G S

2 April 29, 2013 1:00 p.m.

3 JUDGE AMCHAN: Okay. Let's go on the record.

4 Good afternoon. I'm Arthur Amchan. I'm an Administrative
5 Law Judge with the National Labor Relations Board based
6 out of Washington, D.C.

7 And I'm here today to conduct an evidentiary
8 hearing in the case of DHSC, comma, LLC, doing business as
9 Affinity Medical Center, and National Nurses Organizing
10 Committee. The lead docket number is 8-CA-090083.

11 And we'll start by having the parties enter
12 formal appearances, from the General Counsel Respondent,
13 and then the Charging Party.

14 MS. CENDROSKY: Sharlee Cendrosky, counsel
15 for the General Counsel.

16 MR. BRYAN CARMODY: Good afternoon, Your
17 Honor, Bryan Carmody, counsel for the Respondent.

18 MR. DON CARMODY: And Don Carmody, counsel
19 for the Respondent.

20 MS. BRUNDAGE: And Kaitlin Brundage, counsel
21 for the Respondent.

22 JUDGE AMCHAN: If we could also maybe have an
23 address for the -- the General Counsel's address I know,
24 because we're in their building, but for the Respondent
25 and the Charging Party, if you'd put that on the record.

1 MR. BRYAN CARMODY: Speaking for Bryan
2 Carmody, 134 Evergreen Lane, Glastonbury, Connecticut
3 06033.

4 MR. DON CARMODY: Don T. Carmody, Post Office
5 Box 3310, Brentwood, Tennessee, 37024.

6 MS. BRUNDAGE: And for Kaitlin Brundage, 62
7 Ledgewood Road, West Hartford, Connecticut, 06107.

8 MS. LAWHON: For the Charging Party, National
9 Nurse Organizing Committee, Jane Lawhon, (L-A-W-H-O-N).
10 Address 2000 Franklin Street, Oakland, California, 94612.

11 JUDGE AMCHAN: Okay. Thank you. Are there
12 any preliminary matters that I need to deal with?

13 MS. CENDROSKY: Your Honor, if it's
14 appropriate, I would like to make a motion to sequester
15 the witnesses.

16 JUDGE AMCHAN: It's granted.

17 MS. CENDROSKY: Okay.

18 JUDGE AMCHAN: I think I'm required to do
19 that. I suspect all the witnesses aren't in the room, so
20 you'll have to educate them when they show up.

21 But for those that are, the basic idea, we
22 actually have a model sequestration order in our Bench
23 Book, but I don't use it. I have my own little spiel.

24 The basic idea of a sequestration order is that
25 when you're up here testifying, I only hear what you know

1 and what you remember unaided by the recollections and
2 testimony of other witnesses.

3 So there are exceptions to the sequestration
4 rule. One of them is every party is entitled to a
5 representative. There are other exceptions, which I
6 always hope I don't have to deal with, but I sometimes do.

7 It's also important that if you're going to be a
8 witness, that -- or if you're -- actually, if you're in
9 the room, if you're not a witness, you're not excluded,
10 but that you don't tell other witnesses what the witness
11 on the stand has said because you've heard them.

12 It's also important that after you testify, you
13 don't go out and tell another witness what you just
14 testified to, or if you're going to be a witness, tell
15 another witness what you're going to testify to.

16 So, I like to characterize it as when you're on
17 the stand, you're flying solo. Everybody understand?
18 Anything else?

19 MS. CENDROSKY: No.

20 MR. BRYAN CARMODY: Not for the Respondent,
21 Your Honor.

22 JUDGE AMCHAN: Am I ready to start hearing
23 witnesses?

24 MS. CENDROSKY: You are.

25 JUDGE AMCHAN: Are you -- I guess you

1 probably want to move for the formal papers.

2 MS. CENDROSKY: Yes.

3 (Whereupon, General Counsel's Exhibit Number
4 1 was marked for identification.)

5 JUDGE AMCHAN: All right.

6 MR. DON CARMODY: Your Honor, I'm not so sure
7 that everybody understood your sequestration explanation.
8 I believe there's probably witnesses in the room who are
9 remaining in the room.

10 JUDGE AMCHAN: Yes, there are some.

11 MR. DON CARMODY: Yes.

12 JUDGE AMCHAN: You haven't actually told me
13 who they are. I mean, as I said, I mean, you're -- every
14 party's entitled to a representative, and there may be
15 other exceptions.

16 MR. BRYAN CARMODY: Okay. Can we -- we will
17 define our representative as Ann, Angie Boyle.

18 JUDGE AMCHAN: Uh-huh.

19 MR. BRYAN CARMODY: Okay. I don't know about
20 the other parties here. But everybody else should leave
21 on our side. You see what I'm saying.

22 MS. LAWHON: The NNOC representative is
23 Michelle Mahon.

24 MS. CENDROSKY: And the General Counsel's
25 representative is Ms. Handley.

1 JUDGE AMCHAN: Off the record.

2 (Off the record.)

3 JUDGE AMCHAN: Back on the record.

4 (Whereupon, General Counsel's Exhibit Number
5 2 was marked for identification.)

6 MS. CENDROSKY: At this time, the General
7 Counsel would like to offer into exhibit (sic) Exhibit
8 Number 2, which is the Certification of Representation in
9 R Case 08-RC-087639.

10 JUDGE AMCHAN: Is there any objection?

11 MS. LAWHON: None from NNOC.

12 MR. DON CARMODY: No, Your Honor.

13 JUDGE AMCHAN: It's received.

14 (Whereupon, General Counsel's Exhibit Number
15 2 was received into evidence.)

16 JUDGE AMCHAN: Did I receive the formal
17 papers? I don't think I did.

18 MS. LAWHON: I think not. We started to and
19 then sequestration.

20 JUDGE AMCHAN: Yes. Okay. Any objection to
21 my receiving the formal papers?

22 MR. DON CARMODY: No, Your Honor.

23 MS. LAWHON: No.

24 JUDGE AMCHAN: I receive GC1 and GC2.

25 (Whereupon, General Counsel's Exhibit Number

1 1 was received into evidence.)

2 MS. LAWHON: Sharlee, do we get a copy of the
3 formal papers at some point, or no? Do you guys usually
4 don't do that?

5 MS. CENDROSKY: I can get you one, that's
6 fine.

7 MS. LAWHON: Okay. Okay. Thanks.

8 MS. CENDROSKY: Your Honor, I'd like to give
9 an opening statement.

10 JUDGE AMCHAN: Okay.

11 MS. CENDROSKY: This case is simply about a
12 union organizing campaign which eventually led the
13 discharge of a well-known union sympathizer. In fact, the
14 Region has asked Washington to consider the
15 appropriateness of Section 10(J) relief in this case.

16 After the election was had, the Respondent
17 refused to recognize and bargain with the Union. The day
18 before the Union election, August 28th, 2012, Respondent
19 ceased upon an opportunity to lay down their hammer on a
20 very well-known and respected union organizer and
21 sympathizer Ann Wayt.

22 See, Ann had campaigned openly and showed her
23 support for the Union by talking with many nurses in her
24 department and other departments throughout the hospital.
25 After all, Ann had worked for the hospital for almost 25

1 years and was a well-known and respected nurse.

2 Ann attended union meetings and luncheons, some
3 of which took place at the hospital. In fact, Ann also
4 allowed the Union to use her photograph and a quote of her
5 on the front and in the center of a union pamphlet that
6 was circulated around the hospital about a week before the
7 Union election.

8 In her quote, Ann stated that she was voting yes
9 for the Union to work towards a contract that improves the
10 standards of patients' care.

11 Ann also allowed her picture to be placed on
12 several very large poster boards which were displayed in
13 Respondent's cafeteria at the hospital. Ann did not hide
14 her support for the Union.

15 During her 25 years at the hospital Ann has
16 always received good work evaluations. She received
17 numerous awards for her exemplary patient care, including
18 the prestigious cameos of caring award in 2008, as well as
19 a nurse excellence award.

20 Indeed, when the Orthopedic Unit opened in 2011,
21 less than a year before the Union campaign started, Ann
22 was recruited to work in the unit because of her
23 reputation as an outstanding nurse.

24 However, less than a year later, the very
25 individuals who recruited her to work her in this unit are

1 accusing her of providing inadequate patient care and
2 falsifying patient records on the day before the Union
3 election.

4 On the day in question, Ann's unit received an
5 elderly patient that required a sitter, which is an
6 individual that would sit with the patient all day to
7 ensure that the patient would not get out of bed or injure
8 themselves.

9 Because Ann's unit was filled to capacity with
10 the addition of this new patient, the sitter, who was also
11 a registered nurse, was brought over from a different unit
12 in the hospital, a unit in the hospital that was known for
13 being against the Union.

14 You will hear this sitter testify that Ann was
15 only in the room on a few occasions that day, and that she
16 never saw Ann perform a head to toe assessment on the
17 patient.

18 Now, Ann will admit that on the day in question
19 she forgot to perform a part of the head to toe assessment
20 called the skin assessment. Ann does not deny this. In
21 fact, because Ann did not perform the skin assessment, she
22 did not complete that part of the patient's chart.

23 You will also hear that Ann failed to note
24 certain conditions on the patient's chart that were
25 observed by a manager that was filling in that day, and

1 this manager also came from the unit which was known to be
2 against unionization.

3 The General Counsel intends to show that there
4 are numerous contradictions in Respondent's versions of
5 the events. And at most, and should have been issued
6 either a verbal or written warning for failing to perform
7 the skin assessment.

8 The General Counsel intends to introduce
9 documents showing that when other registered nurses were
10 discharged, they were discharged for very egregious acts.
11 It is the GC's position that Ann's discharge was
12 pretextual, and was used to send a message to anyone who
13 supported the Union.

14 In fact, the hospital took it one step further,
15 and decided to file a Complaint with the Ohio State Board
16 of Nursing against Ms. Wait.

17 This was meant to send a message to all the
18 nurses at the hospital that supported the Union, that if
19 you continue to support this union that the hospital will
20 not recognize, you will risk the one thing that allows you
21 to practice as a nurse, your license.

22 Although this alleged inadequate patient care
23 occurred on August 28th, 2012, Ann continued to work and
24 care for this patient and other patients until September
25 12th, 2012, when she was eventually taken off the

1 schedule.

2 When Michelle Mahon, a union organizer, wrote a
3 letter in defense of Ann and submitted this letter to the
4 hospital, the hospital decided to permanently exclude
5 Ms. Mahon from all areas of the hospital, including the
6 public cafeteria, and including the hospital's parking lot
7 under the guise that Ms. Mahon's letter violated HIPAA.

8 Several months after the Union election, the
9 hospital continued to question an employee as to whether
10 or not she voted for the Union.

11 In fact, when several nurses used forms given to
12 them by the Union to fill out to raise any issues that
13 they had in the workplace with their supervisor, a
14 supervisor threatened to smash this form in the nurse's
15 head, and then removed a nurse from that unit, making the
16 other nurses work shorthanded that day.

17 Later that day, the supervisor started
18 scrutinizing patient charts, and made a comment that she
19 found a discrepancy in one of the patient's charts, and
20 she was going to have fun writing that one up, because
21 this nurse was a well-known union supporter.

22 Your Honor, this is not a complicated case, and
23 the charges should be remedied to prevent employee
24 disaffection that can destroy the possibility of the Union
25 ever getting a foothold in representing the employees who

1 selected them. That is it. Thank you.

2 JUDGE AMCHAN: Do you want to make a
3 statement at the outset?

4 MR. BRYAN CARMODY: May we consult for a
5 moment, sir?

6 JUDGE AMCHAN: Sure. And you can do it at
7 the beginning of your case, if you prefer.

8 MR. BRYAN CARMODY: I understand, sir. This
9 will just take a moment.

10 JUDGE AMCHAN: Off the record.

11 (Off the record.)

12 JUDGE AMCHAN: Okay. Back on the record.

13 MR. BRYAN CARMODY: Thank you, Your Honor.
14 We don't intend to give an opening statement, at this
15 point in time.

16 JUDGE AMCHAN: Okay. Ms. Lawhon.

17 MS. LAWHON: All right. Thank you.

18 Your Honor, the nurses at Affinity Medical Center
19 voted eight months ago for representation by NNOC. They
20 are still waiting for that vote to mean something in their
21 daily work lives.

22 The evidence will show that this Employer has
23 systematically sought to deny its nurses any benefits from
24 having voted for the Union. First, this Employer has
25 refused to recognize and bargain with the Union.

1 Unlike some employers who refuse to recognize the
2 Union so they can raise in court the arguments that the
3 NLRB rejected in the representation context, this Employer
4 raised no arguments in the representation context, yet it
5 still refuses to bargain.

6 But this Employer's flouting of the law goes much
7 further. As counsel for the General Counsel has set
8 forth, about a month before the election, before the
9 certification had issued, the hospital fired one of the
10 leading supporters of NNOC, for reasons that can only be
11 understood as pretextual.

12 And had worked for this hospital or its
13 predecessor for over 20 years. She had a spotless record.
14 In fact, she had been nominated by the hospital for the
15 cameos of caring award and won that award.

16 Yet, the evidence will show that the hospital
17 claimed that this highly respected and honored nurse never
18 went into one of her patients rooms for a whole shift.
19 The hospital's own records show that Ann administered
20 medication to that patient twice during the shift.

21 The hospital further claimed that a simple
22 mistake on a time entry on the patient's chart constituted
23 fraud. This Employer went further than just firing Ann,
24 and reported her to the Ohio Board of Nursing, determined
25 to teach her and the nurses at Affinity a lesson.

1 The retaliation against nurses continued even
2 after Ann Wayt was fired in early December, as counsel for
3 the General Counsel pointed out.

4 A manager responded to receiving an Assignment
5 Despite Objection Form by threatening physical harm to
6 nurses if they should continue to fill out those forms.
7 She also punished them then and there by forcing the unit
8 to work short-staffed because they filed an ADO.

9 In fact, when Ann invoked her Weingarten rights,
10 again, this is two weeks after the Union election, the
11 director of her unit threatened to fire her unless she
12 showed up in an appointed meeting without a union
13 representative. The next day they thought better of it,
14 but that was the threat made at the time.

15 When NNOC Michelle Mahon interviewed on Ann --
16 intervened on Ann Wait's behalf in late September, she was
17 barred from the premises, even the areas open to all
18 members of the public.

19 The evidence will show that this is an Employer
20 determined to defeat the nurses' rights to a union by any
21 means necessary.

22 We ask that you protect those rights, order this
23 Employer to bargain with NNOC, reinstate Ann Wayt and make
24 her whole, and order the Employer to cease its unlawful
25 campaign against the Union.

1 JUDGE AMCHAN: Okay. Ready for a witness?

2 MS. CENDROSKY: Yes. At this time, the
3 counsel for the General Counsel calls Steve Matthews to
4 the stand.

5 JUDGE AMCHAN: Mr. Matthews, if you'd raise
6 your right hand.

7 WHEREUPON,

8 STEPHEN MATTHEWS,
9 A witness herein, having been first duly cautioned and
10 sworn, was examined and testified as follows:

11 JUDGE AMCHAN: Okay. And be sure and keep
12 your voice up, because our microphones do not amplify,
13 they only record.

14 DIRECT EXAMINATION

15 BY MS. CENDROSKY:

16 Q. Good afternoon. Can you please state your full
17 name, for the record?

18 A. My name is Stephen Matthews. Stephen,
19 (S-T-E-P-H-E-N), last name Matthews, (M-A-T-T-H-E-W-S).

20 Q. What I'd like for you to do is if you cannot
21 hear my question, or if you don't understand it, just let
22 me know.

23 A. Yes.

24 Q. By whom are you employed?

25 A. I'm employed by CNA-NNOC, the California Nurses

1 Association, National Nurses Organizing Committee.

2 Q. And if I refer to them as either the NNOC or
3 the Union, will you know who I'm referring to?

4 A. Yes, I will.

5 Q. What is your position with the NNOC?

6 A. I'm a labor representative and negotiator.

7 Q. Can you describe for us, generally, what your
8 duties are as a labor representative negotiator?

9 A. My focus is on working to have nurse bargaining
10 teams elected, to train the bargaining team, to develop
11 contract proposals, to present the contract proposals in
12 bargaining, to communicate with the nurse members, and to
13 build consensus on what the Collective Bargaining
14 Agreement should look like.

15 Q. Now, in this role, are you assigned to
16 negotiate certain contracts for the Union?

17 A. Yes, I am.

18 Q. Do you recall which contracts you were assigned
19 to negotiate in the fall of 2012?

20 A. I was assigned to negotiate the Affinity
21 contract in -- out of Massillon, Ohio, and two West
22 Virginia contracts, which would be Greenbriar, a hospital
23 in Ronceverte, West Virginia, and Blue Field Regional
24 Medical Center in Bluefield, West Virginia.

25 Q. And if I refer to Affinity Medical Center as

1 either Affinity or the hospital, will you know which

2 hospital I'm referring to?

3 A. Yes, I will.

4 Q. Okay. Perfect. When did you learn that you

5 would be assigned to negotiate the contract with Affinity

6 Medical Center?

7 A. I was told in late September of 2012 that I

8 would have that assignment. That it was anticipated that

9 we were going to be certified shortly thereafter.

10 Q. What, if anything, did you do to start the

11 negotiating process?

12 A. I went and met with the facility bargaining

13 committee, which the nurse leaders in Affinity and got to

14 meet them and hear their issues of concern in late

15 September of 2012.

16 Q. What, if anything, did you do to start the

17 negotiating process with Affinity Medical Center?

18 A. Basically, I -- I reached out in a -- in an

19 e-mail to Don Carmody, who had been the chief negotiator

20 for the Employer in Barstow, California and Fallbrook,

21 California where I was involved in negotiating for the

22 Union with Mr. Carmody on behalf of the CHS affiliates

23 there.

24 I sent him a notice of doing a, what we call an

25 introductory meeting, which is what we did at both of

1 those hospitals, we did like a preliminary meeting where
2 the bargaining teams got to meet each other.

3 Q. Do you recall the date of that e-mail?

4 A. I believe it was -- it was October 16 of 2012.

5 JUDGE AMCHAN: When you say CHS --

6 THE WITNESS: That's Community Health
7 Systems. It's a parent company of -- of these hospitals.

8 JUDGE AMCHAN: Of all of -- all three that
9 you mentioned?

10 THE WITNESS: Those three, and the two that
11 I'm -- was in negotiating -- negotiations with before in
12 Barstow and -- and Fallbrook, California.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. CENDROSKY:

15 Q. After you sent this e-mail on October 16th,
16 2012, what, if anything, did you do next?

17 A. The very next day we had bargaining with the
18 Employer at Barstow, California. At the end of
19 bargaining, I gave Mr. Carmody across the table a written
20 demand to -- to bargain at the three hospitals that we
21 mentioned, which was the Affinity Hospital in West
22 Virginia, and the two hospitals -- excuse me, the Affinity
23 in Ohio, and the two hospitals in West Virginia.

24 And I also gave an information request to start
25 bargaining in each of these three hospitals to him across

1 the table, as well.

2 (Whereupon, General Counsel's Exhibit Numbers
3 3A and 3B were marked for identification.)

4 Q. I'm going to show you what's been marked as
5 General Counsel's Exhibit 3A and 3B. Take a few seconds
6 and look over that. Do you recognize --

7 A. Yes.

8 Q. -- those documents?

9 A. Yes, I do. This is the demand to bargain that
10 I -- I passed across the table to Mr. Carmody, and to
11 Ms. Jan Ellis, who is their labor representative director
12 who was also there with Mr. Carmody.

13 Q. Are those letters dated?

14 A. Yes. They're dated 10/17/12. And, of course,
15 the first one was the demand to bargain. And the second
16 with the same date also passed across the table to
17 Mr. Carmody is the information request --

18 Q. And if you look at the bottom --

19 A. -- for Affinity.

20 Q. I'm sorry. If you look at the bottom of both
21 of those letters, does your signature appear on the --

22 A. Yes, it -- it does on both of the letters.

23 MS. CENDROSKY: At this time, I'd like to
24 move General Counsel's Exhibit 3A and 3B into the record.

25 MR. BRYAN CARMODY: No objection.

1 MS. LAWHON: No objection.

2 JUDGE AMCHAN: It's received.

3 (Whereupon, General Counsel's Exhibit Numbers
4 3A and 3B were received into evidence.)

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. CENDROSKY:

7 Q. What, if anything, did Don Carmody say in
8 response when you handed him those letters?

9 A. He got up from his seat, got very red in the
10 face, got very angry and said I will never ever bargain
11 with the -- the Union in these three hospitals.

12 Q. What, if anything, did you do next?

13 A. I said we've been certified in these hospitals,
14 you need to bargain. He says you heard what I said, I
15 will never bargain in these hospitals.

16 And I says, well, you won't bargain, or CHS
17 won't bargain? And he said CHS will never bargain with --
18 with -- with your union in these hospitals.

19 Q. After that meeting what, if anything, did you
20 say to Mr. Carmody?

21 A. I sent him an e-mail and talking about the
22 certification and memorializing his comments that day in
23 that meeting.

24 (Whereupon, General Counsel's Exhibit Number
25 4 was marked for identification.)

1 Q. I'm going to show you what's been marked as
2 General Counsel's Exhibit Number 4. Take a few seconds to
3 leaf through all the pages there.

4 Do you recognize these documents?

5 A. Yes, I do.

6 Q. And what are they?

7 A. It's this -- the sort of communication between
8 myself and Mr. Carmody. On the bottom of the second page
9 is the memorializing of the conversation that was had on
10 -- at the end of bargaining in Barstow on 10/17.

11 And there's two other pieces there, it's Don
12 Carmody's response on 10/26, and then my response to him
13 also on -- on 10/26/2012.

14 Q. And right above your response, looking at the
15 first page, there appears to be a header on the top that
16 says "From Stephen Matthews, to Jane Lawhon, Friday,
17 October 26th."

18 A. Correct.

19 Q. Do you know what that header represents?

20 A. It represents me taking these -- this
21 communication and informing attorney Lawhon of what the
22 problem, the refusal to bargain on the part of the
23 Employer.

24 Q. So you simply forwarded these e-mails along to
25 your counsel.

1 A. Yes, I did.

2 MS. CENDROSKY: At this time, Your Honor, I'd
3 like to move to admit General Counsel's Exhibit Number 4
4 into evidence.

5 MR. DON CARMODY: No objection, Your Honor.

6 JUDGE AMCHAN: It's received.

7 (Whereupon, General Counsel's Exhibit Number
8 4 was received into evidence.)

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. CENDROSKY:

11 Q. I'd like to direct your attention to the top of
12 the first page where it says -- I'm sorry, it would be the
13 middle of the first page. And this is your reply to
14 Mr. Carmody; correct?

15 A. Yes.

16 Q. Okay.

17 A. Yes, it is.

18 Q. After this reply what, if anything, did the
19 Union or yourself do to further request bargaining with
20 the Union?

21 A. Jane Lawhon sent a letter, I believe, the 2nd
22 -- 2nd of November of 2012.

23 Q. And, just for the record, who's Jane Lawhon?

24 A. She's the counsel for our union, for NNOC.

25 (Whereupon, General Counsel's Exhibit Number

1 5 was marked for identification.)

2 Q. Okay. I'm going to show you what's been marked
3 as General Counsel's Exhibit Number 5. Take a minute and
4 look at the exhibit. Do you recognize this letter?

5 A. Yes, I do.

6 Q. And what is it?

7 A. This is a letter that our attorney, Jane
8 Lawhon, sent to Mr. Carmody in regards to their refusal to
9 bargain.

10 Q. And if we look at the bottom of that page there
11 appears to be the characters "cc."

12 A. Yes.

13 Q. Do you see that?

14 A. Yes, I do.

15 Q. And the name next to it is your name?

16 A. That's my name, yes, I was cc'd on this.

17 Q. And you received this e-mail (sic).

18 A. Yes, I did.

19 Q. And you recall reading it.

20 A. Yes, I do.

21 Q. I mean, not e-mail, I'm sorry, letter.

22 A. Yes, I did, rather.

23 Q. Thank you.

24 JUDGE AMCHAN: Well, be sure to let her
25 finish her question before you talk, because if -- this is

1 all being recorded, and if you're talking at the same
2 times, you're going to drive the reporters bats.

3 THE WITNESS: Yes, sir.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. CENDROSKY:

6 Q. We'll go ahead and restate that. So you
7 received this communication?

8 A. Yes, I did.

9 Q. And you read it?

10 A. Yes, I did.

11 MS. CENDROSKY: Okay. At this time, I'd like
12 to move to admit General Counsel's Exhibit Number 5 into
13 evidence.

14 MR. DON CARMODY: No objection.

15 JUDGE AMCHAN: It's received.

16 (Whereupon, General Counsel's Exhibit Number
17 5 was received into evidence.)

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. CENDROSKY:

20 Q. Have you had any further communications with
21 Don Carmody, or anyone else from Affinity about bargaining
22 at the Affinity Hospital in Ohio?

23 A. No, I have not.

24 MS. CENDROSKY: That's it, Your Honor.

25 JUDGE AMCHAN: Do you have any questions of

1 him?

2 MS. LAWHON: No, I do not. Or should I say
3 not at this time.

4 JUDGE AMCHAN: Okay.

5 MR. DON CARMODY: I just have a few
6 questions, Your Honor.

7 JUDGE AMCHAN: Okay.

8 MR. DON CARMODY: And I would like to obtain
9 from the General Counsel any Jencks statements, at this
10 point.

11 JUDGE AMCHAN: We'll go off the record while
12 you look at the affidavit.

13 (Off the record.)

14 JUDGE AMCHAN: Back on the record.

15 CROSS-EXAMINATION

16 BY MR. DON CARMODY:

17 Q. Mr. Matthews, in describing your Employer you
18 had mentioned the CNA-NNOC; is that correct?

19 A. Yes, I did.

20 Q. Is the CNA-NOCA (sic) a party to this
21 proceeding?

22 A. It's my understanding, yes.

23 Q. So it's your understanding that the California
24 Nurses Association is a party to this proceeding, but --

25 MS. LAWHON: Objection. Mischaracterizes the

1 witness' testimony.

2 JUDGE AMCHAN: I'll allow the question. You
3 can answer yes or no.

4 THE WITNESS: My understanding is NNOC is a
5 party to this -- this hearing.

6 CROSS-EXAMINATION (CONT'D)

7 BY MR. DON CARMODY:

8 Q. And what is your understanding as concerns
9 whether the California Nurses Association is a party to
10 this proceeding?

11 MS. LAWHON: Objection. Relevance.

12 JUDGE AMCHAN: Sustained.

13 Q. In describing your responsibilities, you failed
14 -- do you have any responsibility or duties in the area of
15 the forms that are known as Assignment Despite Objection
16 Forms?

17 You don't have to look at your counsel, you can,
18 you know, look right at me when answering questions.

19 MS. LAWHON: Your Honor, I would ask that
20 counsel refrain from this kind of disparagement so early
21 into this hearing.

22 MR. DON CARMODY: Well, Your Honor, I would
23 ask that he not be looking at the counsel every time I ask
24 him a question to take a cue.

25 JUDGE AMCHAN: Well, I don't know. Let's

1 just proceed. I think just try to answer his questions,
2 unless --

3 MR. DON CARMODY: Do you remember the
4 question?

5 JUDGE AMCHAN: -- unless there's an
6 objection.

7 THE WITNESS: I didn't think you were
8 finished asking your question. So you want to ask the
9 question again?

10 CROSS-EXAMINATION (CONT'D)

11 BY MR. DON CARMODY:

12 Q. No, I was finished. Do you have any
13 responsibility in the area of forms that are known as
14 Assignment Despite Objection Forms?

15 A. Yes, I do.

16 Q. And what are those responsibilities?

17 A. To make sure that the -- the nurses are able to
18 fulfill their -- their obligations to defend patients and
19 to defend their license, and that the form is used to be
20 able to document where there is an unsafe assignment, or
21 there's something that could undermine the nurse's
22 license.

23 Q. Do you have in your possession a copy an
24 Assignment Despite Objection Form?

25 A. I do not.

1 Q. I would ask that one be produced, sir.

2 MS. LAWHON: Your Honor, this was part of my
3 Petition to Revoke, which has been ruled upon.

4 JUDGE AMCHAN: If you want -- what's the
5 relevance? I know that there's some allegations in the
6 Complaint.

7 MR. DON CARMODY: That's right, Your Honor.
8 The concern, the Assignment Objection Form, as
9 Mr. Matthews just testified that he has responsibilities
10 in the area of the administration of those forms. And I
11 want to question him about the form and his familiarity
12 with the form.

13 MS. CENDROSKY: Your Honor, I would have to
14 object, because I really believe that this is outside the
15 scope of my direct examination.

16 JUDGE AMCHAN: Yes. I'm not a real stickler
17 on that principle, if a witness has something. But I
18 don't -- I'm missing what this has to do with the
19 relevance of his knowledge of the form.

20 MR. DON CARMODY: Well, sir, he's just
21 testified that he has certain responsibilities in the area
22 of ensuring that the nurses have an ability to protect
23 their license and object to assignments through the use of
24 this form.

25 And I want to question him about his -- those

1 responsibilities --

2 JUDGE AMCHAN: But --

3 MR. DON CARMODY: -- he just testified to.

4 JUDGE AMCHAN: Yes. But is that relevant to
5 this proceeding?

6 MR. DON CARMODY: Because there is an
7 allegation that there -- that implicates the Assignment
8 Despite Objection Form.

9 JUDGE AMCHAN: Yes. But I don't think it has
10 to do with --

11 MR. DON CARMODY: Okay.

12 JUDGE AMCHAN: -- his training about it. I
13 mean, I guess you're going to have witnesses testify that
14 I guess Ms. Kress said something to them about the form.
15 Anyway, I'll sustain the objection.

16 CROSS-EXAMINATION (CONT'D)

17 BY MR. DON CARMODY:

18 Q. Mr. Matthews, did you have a communication to
19 me on October 16th? Do you recall an e-mail about
20 commencing bargaining at Affinity?

21 A. Yes, I did.

22 Q. And what do you recall of that communication?

23 A. That we -- that I asked to schedule the
24 introductory meeting for Affinity and for the two West
25 Virginia Hospitals.

1 Q. And do you recall whether I responded or not?

2 A. I recall that -- that you responded to

3 discussion on the 17th. That you would never bargain,

4 ever, with the Union.

5 Q. Do you recall whether or not I sent you an

6 e-mail response to your October 16 e-mail?

7 A. I recall that you -- you said that you did not

8 intend to go forward with introductory meetings. I recall

9 there was some communication on your part to that effect.

10 Q. Okay. Do you recall my reference --

11 JUDGE AMCHAN: In an e-mail?

12 THE WITNESS: I believe so, yes.

13 Q. Do you recall my referencing an ad hoc

14 agreement between the parties?

15 MS. CENDROSKY: Objection, Your Honor.

16 MS. LAWHON: Objection.

17 MS. CENDROSKY: This was ruled by you in

18 respect to the Charging Party's Motion in Limine that

19 nothing would be brought up with respect to an ad hoc

20 agreement.

21 JUDGE AMCHAN: Yes. I'm not going to let you

22 get into that. And I think I stated it in my ruling.

23 Well, it's in -- I did send everybody my ruling on the

24 Motion in Limine, and I don't think I need to repeat it.

25 MR. DON CARMODY: Okay. I have no further

1 questions, Your Honor.

2 JUDGE AMCHAN: Anything else?

3 MS. CENDROSKY: No redirect.

4 MS. LAWHON: Nothing from the Charging Party.

5 JUDGE AMCHAN: You can step down.

6 THE WITNESS: Thank you, sir.

7 (WITNESS EXCUSED.)

8 MS. CENDROSKY: The next witness I intend to
9 call, I believe, is sequestered in the other room so I
10 think I will --

11 JUDGE AMCHAN: Okay. Go off the record while
12 you get him or her.

13 MS. CENDROSKY: Thank you.

14 (Off the record.)

15 JUDGE AMCHAN: Back on the record.

16 MS. CENDROSKY: At this time --

17 MR. DON CARMODY: Your Honor, I just want to,
18 before General Counsel proceeds, I just want to make a
19 note that I was going to ask that Mr. Matthews be
20 sequestered as a result of our conference just now. And I
21 noticed he scurried out the door and down the hallway.
22 I want the General Counsel and the CNA to -- the
23 CNA to be aware of the fact that we're going to subpoena
24 Mr. Matthews.

25 So if he's leaving town, or something, it's up to

1 them as to whether they want him to stick around or not.

2 I'm going to produce him in our defense.

3 JUDGE AMCHAN: For what reason?

4 MR. DON CARMODY: On the 8(A)(5) testimony
5 that he gave, and on the ADO's.

6 MS. LAWHON: Your Honor, it --

7 MR. DON CARMODY: There was an affirmative
8 defense here that the ADO's are not protected concerted
9 activity, and I'm entitled to prove up that affirmative
10 defense, and I'm going to do so through Mr. Matthew.

11 JUDGE AMCHAN: Well, you're going to have the
12 -- why do you need him?

13 MR. DON CARMODY: Your Honor, he is the
14 individual who was on site and who was responsible for the
15 administration of the ADO's at Affinity.

16 JUDGE AMCHAN: My understanding is that, from
17 the Complaint --

18 MS. LAWHON: That's not even correct, Your
19 Honor.

20 JUDGE AMCHAN: Well, I just -- I don't -- I
21 just don't see what he knows has anything to do with
22 whether it's protected concerted activity or not.

23 MR. DON CARMODY: Well, with all due respect,
24 Your Honor, I wasn't allowed an opportunity to demonstrate
25 what he does know. I wasn't --

1 JUDGE AMCHAN: Yes, because I --

2 MR. DON CARMODY: -- allowed to ask him any
3 questions.

4 JUDGE AMCHAN: -- because I don't think it's
5 relevant.

6 MR. DON CARMODY: Well, that's another
7 question.

8 JUDGE AMCHAN: I mean, the other thing -- I
9 mean, before he goes back to California and you subpoena
10 -- I don't know whether -- I assume that they're going to
11 petition to revoke. So I'd like to add this out right now
12 --

13 MS. LAWHON: Yes. I will.

14 JUDGE AMCHAN: -- before he gets back on the
15 plane.

16 MS. LAWHON: I will petition to revoke, Your
17 Honor. It's untimely. Respondent is well aware of
18 Mr. Matthews. They subpoenaed a large number of other
19 individuals from NNOC, elected not to subpoena
20 Mr. Matthews.

21 And he has work obligations that he has
22 structured around having to be here today so he could get
23 back. He can't be here.

24 JUDGE AMCHAN: Well, are we on the record?

25 THE COURT REPORTER: Uh-huh.

1 JUDGE AMCHAN: Okay. You know, if I thought
2 it was relevant, I would have let you examine him on
3 cross, because I'm not a big stickler on cross being
4 limited to direct, if it's relevant, and particularly as
5 opposed to getting one witness over and done with, as
6 opposed to calling him back.

7 But I would suggest is you make a proffer of what
8 you would intend to prove, and then I'll see whether --
9 I'll give you a heads-up as to whether I would provoke a
10 Petition --

11 MR. DON CARMODY: Okay.

12 JUDGE AMCHAN: -- a subpoena.

13 MR. DON CARMODY: Well, my proffer would be,
14 very simply, that Mr. Matthews, if I was allowed to ask
15 him the questions in the area of his -- develop his
16 testimony that he offered --

17 JUDGE AMCHAN: Yes.

18 MR. DON CARMODY: -- that he has
19 responsibilities and duties as concerns the ADO's, would
20 be to establish that the scope of the undertaking on his
21 part to inform the registered nurses at Affinity as to
22 what the ADO Form is, what it's designed to accomplish,
23 how it is to be completed, how it is to be processed, and
24 to demonstrate that that is something which is not
25 protected concerted activity.

1 JUDGE AMCHAN: And how would you do that? I
2 mean, he's the one that tells them here's what I want you
3 to do. Here's the forms. When you have a problem with
4 your assignment, fill these out, here's how you fill them
5 out.

6 MR. DON CARMODY: Yes. And until --

7 JUDGE AMCHAN: And --

8 MR. DON CARMODY: -- and until I hear his
9 testimony as to the objective for distributing the ADO's
10 and completing the ADO's --

11 JUDGE AMCHAN: I don't think his objective
12 makes any difference at all to whether a bunch of nurses,
13 in concert, filled it out.

14 MR. DON CARMODY: But what -- but for what
15 purpose?

16 JUDGE AMCHAN: I don't think it matters. I
17 mean, I assume it's subject to their assignment.

18 MR. DON CARMODY: That's a large assumption,
19 Your Honor.

20 JUDGE AMCHAN: Well, you're going to have
21 some nurses -- you're going to present witness --

22 MS. CENDROSKY: Yes, I am, Your Honor.

23 JUDGE AMCHAN: -- nurses who filled that out.

24 MS. CENDROSKY: Yes.

25 JUDGE AMCHAN: You can ask them what they

1 thought the purpose was, or what -- and they -- you can
2 ask them what Mr. Matthews told them.

3 MR. DON CARMODY: And I'm not entitled to ask
4 Mr. Matthews what he told them?

5 JUDGE AMCHAN: Right. Because I'll suspect
6 it's not relevant.

7 MS. LAWHON: He --

8 MR. DON CARMODY: But you're saying that the
9 question what were they told by Mr. Matthews would be
10 relevant?

11 JUDGE AMCHAN: Well, I think I'll let you ask
12 that.

13 MR. DON CARMODY: Okay. I will proceed on
14 that basis for the time being, sir.

15 JUDGE AMCHAN: All right. Are we ready for
16 our next witness?

17 MS. CENDROSKY: Yes. At this time, counsel
18 for the General Counsel would like to call Mr. William
19 Osterman to the stand.

20 JUDGE AMCHAN: And, sir, will you raise your
21 right hand?

22 WHEREUPON,

23 WILLIAM OSTERMAN,

24 A witness herein, having been first duly cautioned and
25 sworn, wax examined and testified as follows:

1 JUDGE AMCHAN: Have a seat, and keep your
2 voice up.

3 THE WITNESS: Okay.

4 JUDGE AMCHAN: As I've told every witness,
5 it's just a recording device, it doesn't amplify.

6 THE WITNESS: Okay.

7 DIRECT EXAMINATION

8 BY MS. CENDROSKY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. My name is Sharlee Cendrosky, and I am counsel
12 for the Acting General Counsel here at the National Labor
13 Relations Board. Can you please state and spell your
14 name, for the record?

15 A. Yes. It's William J. Osterman, (W-I-L-L-I-A-M)
16 (O-S-T-E-R-M-A-N).

17 Q. What I'd like for you to do, Mr. Osterman, is
18 if you cannot hear my question, or if you do not
19 understand my question, just let me know.

20 A. Okay.

21 Q. Where do you live?

22 A. North Canton.

23 Q. And is North Canton located in Ohio?

24 A. Oh, yes. North Canton, Ohio, yes.

25 Q. By whom are you employed?

1 A. Affinity Medical Center.

2 Q. And if I refer to Affinity Medical Center as
3 either Affinity or the hospital, will you know who I'm
4 referring to?

5 A. Yes.

6 Q. And what is your position at Affinity?

7 A. I'm a chief nursing officer.

8 Q. And how long have you held your current
9 position?

10 A. Two and a half years.

11 Q. And do you recall which year you transferred
12 into the position as chief nursing officer?

13 A. August 2010.

14 Q. Thank you.

15 JUDGE AMCHAN: Where'd you come from?

16 THE WITNESS: Fort Wayne, Indiana.

17 Q. Mr. Osterman, you're testifying pursuant to a
18 subpoena I issued you; correct?

19 A. Correct.

20 Q. What are your responsibilities as chief nursing
21 officer?

22 A. My -- my primary responsibility is to make sure
23 we have safe, quality care of the patients. And, also, to
24 develop and enforce policies to ensure that quality of
25 care.

1 Q. Anything else?

2 A. That's the primary.

3 Q. Do you supervise employees?

4 A. I supervise the directors, managers of the
5 departments.

6 Q. In your capacity as chief nursing officer, are
7 you involved in decisions to terminate or report nurses to
8 the Ohio State Board of Nursing?

9 A. Yes.

10 MS. CENDROSKY: Your Honor, I respectfully
11 request that I be allowed to examine this witness pursuant
12 to Section 6(11)(c) of the Rules of Evidence.

13 JUDGE AMCHAN: It's granted. All that means
14 is she's allowed to ask you leading questions. Those are
15 questions that suggest an answer; whereas, counsel for the
16 hospital is not.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. CENDROSKY:

19 Q. Where is your office located?

20 A. The first floor of the hospital in the
21 Administrative Suite.

22 Q. Which entrance to the hospital do you use to
23 get to your office?

24 A. I take a couple entrances, depending on where I
25 park at. I either come through the 8th Street, or I come

1 through the south entrance where the employees come in.

2 Q. Do you have occasion to visit the various units

3 or other departments of the hospital?

4 A. Yes.

5 Q. And how frequently?

6 A. At least once to twice a day. As much as

7 possible.

8 Q. Does the hospital have a cafeteria?

9 A. Yes.

10 Q. Do you ever visit the cafeteria?

11 A. Seldom.

12 Q. Do you recall the last time you visited the

13 cafeteria at the hospital?

14 A. Recently. Probably about two weeks ago.

15 Q. Are you familiar with the former employee named

16 Ann Wayt?

17 A. Yes.

18 Q. And how long have you known Ann?

19 A. It was, well, since I was -- I started in

20 August 2010.

21 Q. Are you aware that she is the subject of

22 litigation here today?

23 A. Yes.

24 Q. Isn't it true that you prepared a sworn

25 affidavit related to the termination of Ann Wayt and

1 reporting of Ann Wayt to the State Board of Nursing?

2 A. Yes.

3 Q. Isn't it also true that the reasons listed for

4 the hospital for the discharge of Ann Wayt are, one,

5 falsifying records; and, two, failing to provide proper or

6 substandard patient care on August 28th, 2012?

7 A. Yes.

8 Q. Which patient records or records did Ann Wayt

9 falsify?

10 A. It was a patient --

11 MR. DON CARMODY: Your Honor, we wanted to be

12 very careful here about that the witness would understand

13 not to mention the name of a patient.

14 MS. CENDROSKY: Okay.

15 MR. DON CARMODY: But given the way the

16 question was asked, that might call for the mention of a

17 name.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. CENDROSKY:

20 Q. Which records did Ann Wayt falsify? I'm not

21 asking you the name of the patient --

22 A. The -- the 24-Hour Assessment that the nurses

23 use to document on.

24 Q. And was there a specific part of the 24-Hour

25 Assessment that she falsified?

1 A. We determined all of it.

2 Q. All of it.

3 A. For her, her day.

4 MS. LAWHON: I'm sorry, I didn't hear. For
5 her day?

6 THE WITNESS: For her shift.

7 Q. Any other documents or records that Ms. Wayt
8 falsified, other than the 24-Hour Assessment?

9 A. There was parts of the, excuse me, the Health
10 History.

11 Q. Do you recall which parts of the Health History
12 that she falsified?

13 A. There was a skin assessment. It said no skin
14 assessment.

15 Q. Do you recall --

16 MS. LAWHON: I'm sorry.

17 THE WITNESS: There was a -- the skin
18 assessment area.

19 MS. LAWHON: And then you said "it said."

20 THE WITNESS: It was checked off that there
21 was no abnormalities.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. Any other parts of the Health History?

25 A. I'm sorry, I'm trying to remember.

1 Q. Sure. Take your time.

2 A. I -- I don't remember, off the top of my head.

3 Q. Did you review the patient record or records
4 prior to your decision to terminate Ms. Wayt?

5 A. Yes.

6 Q. Isn't it true that since the year 2010 Affinity
7 has discharged only five other nurses?

8 A. I don't know the exact number.

9 Q. At any point in time do you recall if you were
10 asked to provide documents showing which nurses have been
11 discharged, registered nurses have been discharged since
12 2010?

13 MR. BRYAN CARMODY: Your Honor, I'm going to
14 object, to the extent that requires disclosure of
15 attorney/client communication.

16 And I believe that counsel for the General
17 Counsel's referring to the subpoena that was served upon
18 the hospital.

19 JUDGE AMCHAN: Well, the question was, I
20 thought -- what was your question?

21 MS. CENDROSKY: That since 2010 Affinity has
22 only discharged five other nurses, registered nurses.

23 MR. BRYAN CARMODY: That was your previous
24 question.

25 JUDGE AMCHAN: Yes. And he said he didn't

1 remember. That's --

2 MS. CENDROSKY: And I -- then I followed up
3 and asked him if he recalled providing any documents
4 showing that Affinity discharged five other nurses, in
5 part, to this investigation.

6 MR. BRYAN CARMODY: Your Honor, he hasn't
7 been called as the custodian of records in response to the
8 subpoena served by the Region on Affinity's custodian of
9 records.

10 JUDGE AMCHAN: Well, that question is -- her
11 -- whether he's custodian of records or not, she asked him
12 whether he provided records regarding discharges. So I'll
13 overrule it. Either he did or he didn't.

14 THE WITNESS: I did not.

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. CENDROSKY:

17 Q. You did not. Now, in your capacity as chief
18 nursing officer, are you aware of the registered nurses
19 that would have been discharged since your tenure?

20 MR. BRYAN CARMODY: Objection, Your Honor, on
21 the grounds of relevance. That question --

22 JUDGE AMCHAN: Overruled.

23 (Whereupon, General Counsel's Exhibit Number
24 6 was marked for identification.)

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. CENDROSKY:

2 Q. I'm going to show you what's been marked as
3 General Counsel's Exhibit Number 6. If you look at the
4 first page you will see that I hand-drew in the Number 1
5 at the bottom.

6 I tried to number these so that they would be as
7 easiest as possible for us to go through. Do you
8 recognize the employee named Rick Shapiro?

9 A. Yes.

10 Q. And do you -- if you're looking next to his
11 name, the date of his discharge?

12 A. Yes.

13 Q. Were you the director of nursing at that time?

14 A. Yes.

15 Q. And if we look to the discussion section there
16 lists a reason for the discharge in that section. Do you
17 see that?

18 A. Yes.

19 Q. And do you recognize what the reason was for
20 discharging Mr. Shapiro?

21 A. It says, "Failure to do an EKG on a cardiac
22 patient as ordered by a physician on arrival for entire
23 12-hour shift, resulting in potential risk for patient's
24 health."

25 Q. Okay. And let's turn to the second page. If

1 you'd turn to the second page --

2 JUDGE AMCHAN: Can I -- is that your
3 signature at the bottom?

4 THE WITNESS: Yes, sir.

5 Q. The name on that employee counseling is also
6 Mr. Shapiro; correct? Rick Shapiro.

7 A. Correct.

8 Q. And the date is June 27th, 2012?

9 A. Correct.

10 Q. And you were the director of nursing at that
11 time; correct?

12 A. Yes.

13 Q. And if we look at the discussion section, what
14 does it state, as far as the discipline, or the reasons
15 for the discipline?

16 A. Well, there was a physician complaint on 27
17 June, 2012, stating he, "Ordered an EKG upon arrival to
18 the floor of his patient. Order was noted by unit
19 secretary on 6/26/12 at 1915.

20 EKG was not completed by Shapiro, RN, who was
21 primary care nurse for the patient on 6/26/12 from 1900 to
22 0700, thus putting the patient's health at risk."

23 Q. Thank you. Now, the corrective action, what
24 does that stand for? Can you explain to us what that
25 means on this form?

1 A. It says, "Discussed with Rick the importance of
2 signing off orders in a timely manner."

3 Q. Was Mr. Shapiro discharged at this time, on --
4 and I'm referring to June 27th, 2012?

5 A. No.

6 Q. Okay. Now, did Affinity report Rick Shapiro to
7 the Ohio State Board of Nursing?

8 A. No.

9 Q. I'd like to direct your attention now to Page
10 12 of General Counsel's Exhibit Number 6. Are you there?

11 A. Yes.

12 Q. Okay. Great. And if we look, there is a name
13 of an employee and it says Samuel Shapiro?

14 A. Correct.

15 Q. Is Samuel Shapiro the same person as Rick
16 Shapiro?

17 A. Yes.

18 Q. It is the same employee.

19 A. Yes.

20 Q. Okay. Any reason for the two different names?

21 A. Samuel's his formal name.

22 Q. It's a formal name, okay. Let's look at the
23 date next to this employee counseling disciplinary action.
24 What's the date?

25 A. 5/14/12.

1 Q. Okay. And were you the director of nursing at
2 that time?

3 A. Yes.

4 Q. Okay. Now, let's look at the discussion
5 section, and what does it say?

6 A. "Due to inadequate documentation on patient
7 chart."

8 Q. And prior to that hand notation, do you see --

9 A. "See attached documentation."

10 Q. Let's turn to Page 13. And is this the
11 discussion related to this disciplinary action, which is
12 Page 12? Take a look at it, if you need to.

13 A. It looks like it is.

14 JUDGE AMCHAN: I forgot the question. I
15 heard your answer, but --

16 THE WITNESS: He (sic) asked if that was the
17 "See attached documentation."

18 MS. CENDROSKY: That was referred to on Page
19 12 and the discussion it says, "See attached
20 documentation."

21 JUDGE AMCHAN: Okay. All right.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. I'd like to direct your attention to Page 12
25 where it says, "Corrective action recommended." And there

1 is some handwritten notation. Do you see that?

2 A. Yes.

3 Q. And do you -- can you tell us what that reads?

4 A. It says, required -- "Required to complete ALC
5 module and documentation. Will return to work 5/15/12."

6 Q. Now, on -- so he was to return to work 5/15.

7 So I assume that means he wasn't terminated; correct?

8 A. Correct.

9 Q. Okay. And did you report Samuel Shapiro, under
10 the formal name Samuel Shapiro, to the State Board of
11 Nursing?

12 A. No.

13 Q. I'd like to direct your attention to Page 14 of
14 Exhibit Number 6. And if you can read the employee name
15 there. Do you see that?

16 A. Yes.

17 Q. Okay. And the date next to Rebecca Bowser's
18 name is?

19 A. 4/19 --

20 Q. Of what year?

21 A. -- '12. '12.

22 Q. And were you the director of nursing at that
23 time?

24 A. Yes.

25 Q. Okay. And let's look at the discussion

1 section. What does the -- what does that section say?

2 A. "Excessive number of patient care issues that
3 compromised care."

4 Q. Okay. Let's turn to Page 15. And on the top
5 of that page we know a name Rebecca Bowser, and it's also
6 -- it's dated; correct?

7 A. Correct.

8 Q. And on this page there are one, two, three,
9 four, five, six, seven different bullet points. And do
10 you know what these bullet points represent, generally?

11 A. No.

12 MR. BRYAN CARMODY: Objection, Your Honor.
13 This document's going to speak for itself. I don't see
14 the purpose in having this witness recitate verbally
15 through --

16 MS. CENDROSKY: I don't want him to --

17 MR. BRYAN CARMODY: I'm not done --

18 MS. CENDROSKY: -- read everything.

19 MR. BRYAN CARMODY: -- I'm not done with my
20 objection, ma'am. -- what we can all read with our own
21 eyes.

22 JUDGE AMCHAN: Well, she wants him to
23 characterize it, not to read it.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. CENDROSKY:

1 Q. Is it fair to say that these bullet points are
2 referred to on Page 14 as the excessive number of patient
3 care issues that compromised care?

4 A. It appears that way.

5 Q. Yes or no.

6 MR. BRYAN CARMODY: Well, objection, Your
7 Honor. There's no foundation that this witness prepared
8 this document.

9 JUDGE AMCHAN: Well --

10 MR. BRYAN CARMODY: For him to speak of the
11 issue of whether or not it relates to what's on Page 14
12 isn't appropriate.

13 JUDGE AMCHAN: Overruled. I mean, I think
14 what she's asking -- would this have come to your
15 attention? Did anybody bring Ms. Bowser's situation to
16 your attention when she was fired?

17 THE WITNESS: I -- I don't remember this one,
18 Ms. Bowser. I didn't read this.

19 JUDGE AMCHAN: Can somebody be fired -- can a
20 nurse be fired without your approval?

21 THE WITNESS: They go through me, the
22 majority of the time. If I'm not there, or if there --
23 they already worked with our HR representative, then they
24 can be fired.

25 JUDGE AMCHAN: So you don't recall whether or

1 not --

2 THE WITNESS: I don't remember reading this
3 particular form.

4 JUDGE AMCHAN: Well, I mean, I think you can
5 argue for what it says on its face. I can't remember
6 whether we admitted this document, but --

7 MS. CENDROSKY: Not yet. I was going to go
8 through all of that first --

9 JUDGE AMCHAN: -- I mean, even if he didn't,
10 it's certainly a business record.

11 MS. CENDROSKY: Exactly.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. CENDROSKY:

14 Q. Okay. Let's direct your -- well, let me back
15 up one second. Do you recall if Rebecca Bowser was
16 referred to the State Board of Nursing?

17 A. No.

18 JUDGE AMCHAN: You don't recall, or she was
19 not?

20 THE WITNESS: I did not.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. CENDROSKY:

23 Q. You did not refer her to --

24 A. I did not.

25 Q. Okay. Would anybody else in Affinity have the

1 authority to refer Ms. Bowser to the State Board of
2 Nursing?

3 A. Any nurse has the authority to report a nurse
4 to a --

5 Q. Okay.

6 A. -- Board of Nursing.

7 Q. On behalf of the hospital, or on behalf of
8 themselves, personally?

9 A. On behalf of themselves, personally.

10 Q. Has anyone on behalf of the hospital, to your
11 knowledge, have the authority to report nurses to the
12 State Board of Nursing on behalf of Affinity?

13 A. On behalf of Affinity would go through me.

14 Q. Thank you. I'd like to direct your attention
15 to Page 16.

16 JUDGE AMCHAN: And just to complete, so far
17 as you know, Ms. Bowser was never referred to the Ohio
18 Nursing Board on behalf of the hospital.

19 THE WITNESS: Correct.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. CENDRISKY:

22 Q. Are you at Page 16?

23 A. Yes.

24 Q. Thank you. Do you see the employee name
25 listed?

1 A. Yes.

2 Q. Do you recognize that name?

3 A. Yes.

4 Q. And what about the date listed, were you the
5 director of nursing at that time?

6 A. Yes.

7 Q. Okay. I'd like to direct your attention to the
8 discussion section. And can you tell us what the
9 discussion says, summarize it for us?

10 A. It was a HIPAA violation.

11 Q. And what was the nature of the HIPAA violation?

12 A. The nurse took a photograph.

13 Q. Of what?

14 A. Eyes being procured. Removal of eyeballs.

15 Q. Was Justine Sackman referred to the State Board
16 of Nursing?

17 A. No.

18 Q. I'd like to direct your attention to Page 22.

19 A. Wait. I might have been wrong on that. I
20 can't remember if I -- I know I reported a couple of
21 people. I would have to look at my records on Justine.

22 Q. Do you have those records with you today?

23 A. No.

24 Q. I'd like to direct your attention to Page 22.

25 JUDGE AMCHAN: But if she was referred to the

1 Ohio Nursing Board by the hospital, you would have a
2 record of it.

3 THE WITNESS: I -- I keep a record, correct.

4 JUDGE AMCHAN: All right. So there would --
5 you would have a record, if you did so.

6 THE WITNESS: Yes.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. CENDROSKY:

9 Q. If we look at Page 22, the name listed is Lori
10 Woods. Do you recall Lori Woods?

11 A. Yes.

12 Q. Okay. And if you could look for us in the
13 discussion section. Do you see what the reason listed was
14 for her termination?

15 A. Let's see. "Lori Woods walked out of a meeting
16 with her director Julie Copeland two hours before the end
17 of her shift. She told her if she walked out, she would
18 consider it her resignation. And Lori walked out leaving
19 her patients unattended."

20 Q. And the corrective action recommended was?

21 A. Termination.

22 Q. Now, did Affinity report Lori Woods to the
23 State Board of Nursing?

24 A. No.

25 MS. CENDROSKY: At this time, Your Honor, I

1 would like to move to admit General Counsel's Exhibit

2 Number 6 into evidence.

3 MR. BRYAN CARMODY: Your Honor --

4 JUDGE AMCHAN: Yes. I was waiting for --

5 MR. BRYAN CARMODY: -- I was waiting on you.

6 I'm sorry, Judge.

7 JUDGE AMCHAN: No.

8 MR. BRYAN CARMODY: I have no objection, but

9 I would note that the exhibit that I have does have some
10 what I believe is patient information in it.

11 So I would ask that this document either be
12 redacted before it's received into evidence, or received
13 into evidence subject to Your Honor's Protective Order.

14 JUDGE AMCHAN: Well, why don't we -- I'm
15 going to receive the exhibit. Why don't we see whether
16 you can agree on redactions. Maybe you would propose
17 redactions, they'd agree to it being substituted and the
18 redacted version.

19 MR. BRYAN CARMODY: Would you like to do that
20 -- go through that now, Judge, or later?

21 JUDGE AMCHAN: I'd prefer to keep moving --

22 MR. BRYAN CARMODY: I'm happy to do it later.

23 JUDGE AMCHAN: -- and do it at some other
24 time. I'm going to receive the exhibit, conditioned on
25 its being substituted by a copy with appropriate

1 redactions agreed upon by counsel. And if it's a
2 disagreement, we can take that up.

3 MR. BRYAN CARMODY: Thank you, Judge.

4 (Whereupon, General Counsel's Exhibit Number
5 6 was received into evidence.)

6 (Whereupon, General Counsel's Exhibit Number
7 7 was marked for identification.)

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. CENDROSKY:

10 Q. I'm going to show you what's been marked now as
11 General Counsel's Exhibit Number 7.

12 JUDGE AMCHAN: And why don't you collect 6
13 from me and sort out what's actually going into the
14 record. But I am going to receive some version of GC6.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. And can you tell us what it is?

18 A. It's the actual submission of a Complaint Form
19 to the Board of Nursing.

20 Q. Did you prepare this documentation?

21 A. Yes.

22 Q. And did you review it?

23 A. Yes.

24 MS. CENDROSKY: And at this time, Your Honor,
25 I'd like to move to admit General Counsel's Exhibit Number

1 7 into evidence.

2 MR. BRYAN CARMODY: May I have a moment, Your
3 Honor?

4 JUDGE AMCHAN: Sure.

5 MR. BRYAN CARMODY: Thank you.

6 JUDGE AMCHAN: Off the record.

7 (Off the record.)

8 JUDGE AMCHAN: Back on the record.

9 MR. BRYAN CARMODY: No objection.

10 JUDGE AMCHAN: It's received.

11 (Whereupon, General Counsel's Exhibit Number
12 7 was received into evidence.)

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. DENDROSKY:

15 Q. Looking at the first and second page, third
16 page, fourth page, fifth page, sixth page, what do Pages 1
17 through 6 represent?

18 A. That's the form of questions that Ohio Board of
19 Nursing.

20 Q. And you completed this form; correct?

21 A. Right.

22 Q. Let's look at Page 8. And do you recognize
23 this document?

24 A. Yes.

25 Q. And what is it?

1 A. It appears to be the termination document.

2 Q. You've seen this form prior to today; correct?

3 A. Yes.

4 Q. And if we look at the explanation of offense,
5 what is listed there?

6 A. "Substandard patient care and falsification of
7 patient documentation."

8 Q. Are these the only two reasons listed for the
9 discharge of Ann Wayt?

10 A. Yes, on this.

11 Q. Let's turn to Page 10. And there's a date on
12 top that says September 6th, 2012.

13 A. Correct.

14 Q. Do you know who prepared Page 10?

15 A. I put it together.

16 Q. You drafted this. Okay. If we look at Number
17 3 under the section documented timeline, there is a
18 sentence that starts with R. Smith. And can you tell me
19 what that reads?

20 A. Number 3?

21 Q. It's -- we have like two Number 3's. We have
22 verified timeline, and then we have a documented timeline.

23 A. Okay.

24 Q. So it's the second paragraph.

25 A. Okay.

1 Q. So it's Number 3, community cares hourly
2 routing.

3 A. So you're talking about under the documented
4 timeline --

5 Q. Yes.

6 A. -- section, Number 3.

7 Q. Okay. And you see the sentence that starts R.
8 Smith?

9 A. "R. Smith, RNC, reports that Ann Wayt, RN never
10 came in the room from 0910 until 1630 except for the
11 twelve noon pain medication pass. R. Smith, RN said went
12 off duty at 1630."

13 Q. Is it your -- by writing this out, is -- are
14 you stating that that's what Mrs. Smith told you?

15 A. I'm writing down based on what came from the --
16 everybody researching documentation and talking to
17 Ms. Smith.

18 Q. And you've --

19 JUDGE AMCHAN: I didn't hear the last couple
20 words.

21 THE WITNESS: Oh. Based on what everybody,
22 through the investigation and what came back from that. I
23 went by that, not exactly what R. Smith told me.

24 JUDGE AMCHAN: Okay. So this was based on
25 more than just talking to Nurse Smith.

1 THE WITNESS: Correct.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. CENDROSKY:

4 Q. I'd like to direct your attention to Page 14 of
5 this exhibit, Number 7. And you've testified that you've
6 reviewed all the documents in this packet; correct?

7 A. Correct.

8 Q. And do you know what this document is?

9 A. It looks like Ms. Smith's statement.

10 Q. Did you prepare this statement for Ms. Smith?

11 A. No.

12 Q. Did you type it?

13 A. No.

14 Q. Did she hand this to you?

15 A. No.

16 Q. Who did you get this from?

17 A. Part of the investigation.

18 Q. But you've read it.

19 A. Correct.

20 Q. What I'd like to do is direct your attention to
21 the first full paragraph. It says, "We were also
22 accompanied by the patient's son. We arrived to the room,
23 3420, at approximately nine fifteen." What does that
24 reference?

25 A. The time they entered the room.

1 Q. Okay. Then the next sentence. "At
2 approximately ten a.m. Ann Wayt, RN, the ortho RN assigned
3 to the patient, came into the room"; correct?

4 A. Correct.

5 MR. BRYAN CARMODY: Your Honor, I'm going to
6 object. He's -- she's asking this witness questions about
7 the statement that he received, but it is not his
8 statement.

9 MS. CENDROSKY: Your Honor --

10 MR. BRYAN CARMODY: If counsel has questions
11 about this statement, they ought to be directed to the
12 signatory, not the --

13 MS. CENDROSKY: I will.

14 MR. BRYAN CARMODY: Well --

15 MS. CENDROSKY: And I also have questions for
16 him.

17 JUDGE AMCHAN: Yes. Because he --

18 MS. CENDROSKY: Based on a letter he wrote.

19 JUDGE AMCHAN: Well, he reviewed it, and at
20 least part of the actions he took, I'm correct, are based
21 on Ms. Smith's statement, at least in part. Isn't that
22 correct?

23 THE WITNESS: Yes.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. CENDROSKY:

1 Q. So if we continue, we have, "Ann Wayt left the
2 room and did not return to interview the son. Around
3 eleven a.m., the son wanted to go home and asked me if he
4 could call back to check on his mother.

5 I asked him if there was a code word that he
6 could use to identify himself as the caller, and he said
7 yes. I relayed this information to Ann Wayt."

8 Now, isn't it true that Rhonda Smith only left
9 the patient's room when she was relieved by Jona Lee?

10 A. Correct.

11 Q. So if she relayed something to Ann Wayt, it had
12 to be because Ann Wayt was in the room.

13 MR. BRYAN CARMODY: Objection.

14 THE WITNESS: Not necessarily.

15 MR. BRYAN CARMODY: Calls for speculation.

16 JUDGE AMCHAN: Well --

17 THE WITNESS: She could have came to the
18 door.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. CENDROSKY:

21 Q. Who could have came to the door?

22 A. Ms. Wayt.

23 Q. Okay. So she could have saw Mrs. Wayt --

24 MR. BRYAN CARMODY: Your Honor, I have an
25 objection that's pending.

1 JUDGE AMCHAN: Well, your objection is what?

2 MR. BRYAN CARMODY: Her question is calling
3 for speculation.

4 JUDGE AMCHAN: Well, no, he -- my
5 recollection is she asked if it meant that Ms. Wayt had to
6 come in the room, and he said no.

7 MS. CENDROSKY: He answered it.

8 JUDGE AMCHAN: Right.

9 THE WITNESS: You can also talk over the
10 intercom. And they're on the bedside.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. CENTROSKY:

13 Q. Okay. And then if we continue the second
14 paragraph there it seems to pick up with a timeline at ten
15 thirty -- I mean, eleven thirty. Sorry.

16 A. Eleven thirty.

17 Q. And then the next paragraph both before and
18 after "my lunch break," if we look down one, two, three
19 lines it says, "around 1400," which is two p.m., "and Wayt
20 came into the room." Correct?

21 A. Correct.

22 Q. Okay. So we know of at least one time prior to
23 two p.m. that Ann Wayt came into the room. And that's
24 based on Ms. Smith's statement that, "Approximately
25 ten a.m. Ann Wayt, RN, assigned to the patient, came into

1 the room"; correct?

2 A. Correct.

3 Q. Okay. And then there's a possibility that she
4 interacted with Mrs. Smith later on by communicating about
5 the code word; correct?

6 A. Correct.

7 Q. Okay. Now, I want to direct your attention
8 back to Page 10 of this exhibit. And we're going to look
9 at the documented timeline, Number 3, again. And this is
10 where you wrote, "R. Smith, RNC, reports that Ann Wayt
11 never came into the room from nine ten until sixteen forty
12 -- sixteen thirty, except for the twelve noon pain pass."

13 A. Correct.

14 Q. Why did you write that, if that's not accurate?

15 A. Miswrote.

16 Q. Okay. Are there any other misrepresentations
17 that you gave to the State Board of Nursing on behalf of
18 Ms. Ann Wayt?

19 JUDGE AMCHAN: I don't know about
20 misrepresentations or made any mistakes.

21 Q. Miswrote, mistakes.

22 A. Not that I'm aware of.

23 Q. We'll go through them. I'd like to direct your
24 attention to Page 16 in the exhibit. Do you know what
25 that page is?

1 A. Health History.

2 Q. Health History. And Page 17?

3 A. Second page of the Health History.

4 Q. Okay. And is this part of the patient's chart,

5 Page 16 and 17?

6 A. Yes.

7 Q. Okay. And what about Page 18?

8 A. Twenty-four-hour assessment.

9 Q. Okay. And 19?

10 A. Part of the 24-Hour Assessment.

11 Q. And Page 20?

12 A. Part of the 24-Hour Assessment.

13 Q. And then 21?

14 A. Part of the 24-Hour Assessment.

15 Q. Page 22?

16 A. Part of the 24-Hour Assessment.

17 Q. Page 23?

18 A. Part of the 24-Hour Assessment.

19 Q. And Page 24?

20 A. Part of the 24-Hour Assessment.

21 Q. Page 25?

22 A. Part of the 24-Hour Assessment.

23 Q. On that page, 25, we have two signatures at the
24 bottom. Do you know what these signatures represent?

25 A. The two nurses that took care of the patient.

1 Q. And the first nurse listed would be?

2 A. Ann Wayt.

3 Q. And the second nurse listed would be?

4 A. Priscilla Harris.

5 Q. And who was Priscilla Harris?

6 A. The relieving nurse, 7 p. to 7 a.

7 Q. And the leaving nurse -- okay. So she worked

8 from what again, sorry?

9 A. 7 p. to 7 a.

10 Q. Thank you. Okay. So let's turn back to Page

11 -- well, actually, why don't you show me, or point to me

12 where in this document it states that Ann failed to

13 provide the -- or that, I think you said, she checked off

14 that she performed the skin assessment?

15 MR. BRYAN CARMODY: That mischaracterize --

16 objection. That mischaracterizes his testimony. The

17 witness had referred to not this document, the 24-Hour

18 Assessment but, instead, the document preceding it, Pages

19 16 and 17 of the exhibit entitled "Health History

20 Outpatient."

21 THE WITNESS: Page 17?

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. Yes.

25 A. It says, "Skin impairment assessment. She

1 checked off no skin impairment noted."

2 Q. No skin impairment noted.

3 JUDGE AMCHAN: Where it says?

4 THE WITNESS: Right here, sir. Page 17.

5 JUDGE AMCHAN: Okay. In the bottom section.

6 THE WITNESS: Yes, sir.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. CENDROSKY:

9 Q. Now, after you've investigated this case, what
10 do you recall should have been noted on this chart that
11 was not noted?

12 A. On this form?

13 Q. On the skin assessment, yes.

14 A. On the skin assessment there was bruising and,
15 I believe, an abrasion.

16 Q. Do you recall where the abrasion were -- was?

17 A. Not without looking at the documentation.

18 Q. You can look at the documentation.

19 JUDGE AMCHAN: Well, what was the patient's
20 -- the -- I guess there's a step or two I'm missing. This
21 patient was admitted, what, with a fractured hip, or a --

22 THE WITNESS: Yes, sir.

23 JUDGE AMCHAN: And the 24-Hour Assessment is
24 24 hours from the time of admission to -- is that what the
25 24 hours is?

1 THE WITNESS: Correct.

2 JUDGE AMCHAN: Starting with the --

3 THE WITNESS: On -- on admission.

4 JUDGE AMCHAN: To 24 hours later.

5 THE WITNESS: Correct.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. CENDROSKY:

8 Q. I'd like to direct your attention to Page 21.

9 There are two boxes, one says 7 a. to 7 p. And the other
10 one says 7 p. to 7 a.

11 A. Correct.

12 Q. Is the box titled 7 a. to 7 p. checked?

13 A. No.

14 Q. Would Ann Wayt have checked that box?

15 A. Yes. Correct.

16 Q. Okay. Isn't it true that Ann Wayt admitted
17 that she forgot to do the skin assessment that day?

18 A. Correct.

19 Q. Now, let's look at the box 7 p. to 7 a. That
20 box is checked, isn't it?

21 A. Correct.

22 Q. Is there any notation anywhere that this
23 patient had any sort of bruising, abrasions, tears,
24 blisters, anything that you recall this patient had?

25 A. Not on this form.

1 Q. Now, who would have checked this box 7 p. to 7

2 a.?

3 A. Priscilla.

4 Q. Was Priscilla Harris disciplined at all for

5 failing to note the lack of bruising -- or not noting that

6 there was bruising, abrasions, or blisters?

7 A. Not that I'm aware of.

8 MS. CENDROSKY: At this time, Your Honor, I'd

9 like -- oh, we've already admitted this; correct?

10 JUDGE AMCHAN: I can't remember.

11 MS. CENDROSKY: At this time, I'd like to

12 move to admit General Counsel's Exhibit Number 7.

13 MR. BRYAN CARMODY: No objection.

14 JUDGE AMCHAN: It's received.

15 (The document was previously admitted.)

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. CENDROSKY:

18 Q. Now, I'm going to -- I apologize, but we're

19 going to go out of order with the exhibit number, because

20 I got this today. It's going to be General Counsel's

21 Exhibit Number 19.

22 (Whereupon, General Counsel's Exhibit Number

23 19 was marked for identification.)

24 Q. I'd like to specifically direct your attention

25 to, it would be Page 3 of this document. This appears to

1 be an e-mail thread.

2 And Page 3 of this document, do you see your
3 name, "From William Osterman"?

4 A. Yes.

5 Q. And to Angela Boyle?

6 A. Yes.

7 Q. Did you send this e-mail to Ms. Boyle?

8 A. I forwarded it on, yes.

9 Q. You forwarded it on. Okay. Let's look
10 directly before that. It appears to be what you
11 forwarded; correct?

12 A. Correct.

13 Q. Okay. And if we look -- did you read the
14 e-mail that you forwarded?

15 A. Yes.

16 Q. Okay. And at the bottom of Page 3 it reads,
17 "Time discrepancy aside, the patient was never seen by
18 ortho nurse Ann Wayt until noon when she gave pain
19 medication."

20 Okay. And it says, "There are two other
21 witnesses that the RN and the RN director present in the
22 room in admission who verified Ann did not come into the
23 room from the point of admission until noon."

24 Do you see that? It's the first one, two, three,
25 four, five.

1 A. Yes.

2 Q. Okay. Do you know who these two witnesses are?

3 A. That -- that were present, correct.

4 Q. Do you know who they are? Can you tell them --
5 tell me who they were?

6 A. Susan Kress.

7 Q. And the other witness?

8 A. Sam Burgett and Rhonda Smith.

9 Q. Sam, pardon me?

10 A. Burgett.

11 Q. Burgett. And Rhonda Smith?

12 A. Correct.

13 Q. And then if we look at Page 7 -- well,
14 actually, let's -- let's look at Page 6 first. At the
15 top, again, it says, "To William Osterman from Angela
16 Boyle." If we scroll down it looks to be a series of
17 forwards.

18 And if we continue with the e-mail onto Page 7.
19 If we scroll down there is a sentence, and I want to
20 direct it to your attention, do you see it where it says,
21 "Seems a weak case for termination without more
22 information."

23 A. Yes.

24 Q. Okay. Who is Roni Benson?

25 A. A regional quality

1 Q. Is that her statement?

2 A. Yes.

3 JUDGE AMCHAN: Regional quality director, is
4 her title?

5 THE WITNESS: Correct.

6 JUDGE AMCHAN: Is she based in Massillon, or
7 someplace else?

8 THE WITNESS: Somewhere -- someplace else.
9 She works for our corporate headquarters.

10 MS. CENDROSKY: At this --

11 JUDGE AMCHAN: Which is where?

12 THE WITNESS: Franklin, Tennessee.

13 JUDGE AMCHAN: She's in -- she's from
14 Franklin?

15 THE WITNESS: Correct.

16 MS. CENDROSKY: At this time I'd like to move
17 to admit General Counsel's Exhibit Number 19 into
18 evidence.

19 MR. BRYAN CARMODY: No objection.

20 JUDGE AMCHAN: It's received.

21 (Whereupon, General Counsel's Exhibit Number
22 19 was received into evidence.)

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. CENDROSKY:

25 Q. Did you obtain a statement from Sam Burgett,

1 one of the witnesses that you identified in General

2 Counsel's Exhibit Number 19 at Page 4?

3 A. I did not. One of the directors talked to him.

4 Q. Are you familiar with what that statement said?

5 MR. BRYAN CARMODY: Objection.

6 MS. CENDROSKY: I'm just asking if he's

7 familiar with it.

8 MR. BRYAN CARMODY: Your question is -- her

9 question's ambiguous. I don't -- it's a verbal or witness
10 statement; she says statement.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. CENDROSKY:

13 Q. Did Mr. Burgett provide a, to your knowledge,
14 did Mr. Burgett provide a verbal or a written statement?

15 A. A verbal.

16 Q. A verbal statement. Do you have any knowledge
17 as to the contents of that verbal statement?

18 A. The part was told me that Ann -- Ann wasn't
19 there on -- on admission.

20 Q. Did Sam say anything else?

21 A. Just said he was busy.

22 Q. Okay.

23 A. The rest of that time.

24 JUDGE AMCHAN: Ann wasn't there on?

25 THE WITNESS: On admission when the patient

1 came to the floor.

2 JUDGE AMCHAN: Oh.

3 DIRECT EXAMINATION (CONT'D)

4 BY MS. CENDROSKY:

5 Q. Do you know where Ann was when the patient was
6 admitted, when the patient came up to the room, the Ortho
7 Unit?

8 A. I do not.

9 Q. Isn't it true that in your tenure at the
10 hospital that you've only reported one other registered
11 nurse to the State Board of Nursing, and that was,
12 according to my records, Justine Sackman.

13 A. That's incorrect.

14 Q. What other nurse did the hospital report? And
15 I'm asking only registered nurse. I do have record --

16 A. Registered --

17 Q. I --

18 A. -- you have an LPN.

19 Q. That's not a registered nurse.

20 A. Right. I -- before Ann, that could be true. I
21 just reported one a couple weeks ago.

22 Q. Okay. So prior to Ann's termination you only
23 reported one other nurse, registered nurse to the State
24 Board of Nursing.

25 A. Correct.

1 Q. Okay. Are you aware that Ann supported the
2 Union?

3 A. I'd seen her photo on the flyer.

4 Q. And where did you see this flyer at?

5 A. It was floating around the hospital.

6 Q. Do you recall when you see this flyer -- when
7 you saw the flyer?

8 A. It was during the week of the election.

9 Q. Prior to the election?

10 A. I can't remember if it was prior, the day of,
11 or the day after.

12 Q. Was it prior to Ms. Wayt's discharge? She was
13 discharged when?

14 A. She was discharged in September so, yes.

15 MS. CENDROSKY: That is all I have.

16 JUDGE AMCHAN: Ms. Lawhon, do you have any
17 questions?

18 MS. LAWHON: Could I be see -- could I see
19 any statements?

20 MS. CENDROSKY: Absolutely.

21 MS. LAWHON: Could we go off the record for a
22 second while I review this? Thank you.

23 JUDGE AMCHAN: Sure. Go off the record.

24 (Off the record.)

25 JUDGE AMCHAN: Back on the record.

1 CROSS-EXAMINATION

2 BY MS. LAWHON:

3 Q. Good afternoon, Mr. Osterman.

4 A. Good afternoon.

5 Q. When were you on vacation in 2012?

6 A. I think in June. I wouldn't know without

7 looking at my calendar. I don't --

8 Q. To the best of your recollection, the vacation

9 you took in 2012 was in June of 2012?

10 A. I believe so.

11 Q. Okay. If Ms. Bowser, who is -- who's employee

12 counseling disciplinary action notice is included in

13 General Counsel's Exhibit 6, was terminated on May 19th,

14 2012, the referral to the State Board of Nursing would

15 have been shortly thereafter; isn't that correct?

16 A. The reporting, what's going to happen, correct.

17 Q. No, no, no. I said the report to the State

18 Board of Nursing, if one were made by the hospital would

19 have happened shortly thereafter; isn't that correct?

20 A. Correct.

21 Q. So you would not -- to the best of your

22 recollection, you were not on vacation at the time that

23 Rebecca Bowser would have been reported to the State Board

24 of Nursing, if she had been; is that right?

25 A. The best of my memory, correct.

1 Q. Could you direct -- I'd like to direct your
2 attention to General Counsel's Exhibit 7, to the hand-
3 numbering at the bottom of Page 11.

4 Do you see that? Page 11 and Page 12 appear to
5 be one document; right?

6 A. Correct.

7 Q. Okay. And you reviewed this before it was
8 submitted to the State Board of Nursing; correct?

9 A. Correct.

10 Q. Okay. Who wrote this document, Pages 11 and
11 12?

12 A. I believe it came from Jason McDonald.

13 Q. Okay. You said it came from. Are you saying
14 Jason McDonald wrote it?

15 A. I believe so.

16 Q. Okay. On Page 17 of --

17 JUDGE AMCHAN: I don't know that he's been
18 identified on the record.

19 MS. LAWHON: Oh, and thank you.

20 JUDGE AMCHAN: Possibly in the Complaint,
21 he's in the mentioned in the Complaint. But his --
22 Mr. McDonald is what, his title?

23 THE WITNESS: He's a -- the orthopedic
24 program director.

25 JUDGE AMCHAN: So he's the boss of the nurses

1 and just everybody --

2 THE WITNESS: He's in -- he's in charge of
3 the whole Orthopedic Department.

4 JUDGE AMCHAN: Not just the nurses.

5 THE WITNESS: Right.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. And did Ms. Wayt's immediate supervisor, Paula
9 Zinsmeister report to Jason McDonald?

10 A. She reported to Jason, but she also reports to
11 me as a nurse. Jason McDonald's not a nurse --

12 Q. I understand.

13 A. -- so the nurses still need to report to me.

14 Q. I understand. Directing your attention now to
15 Page 17 of General Counsel's Exhibit 7. This is part of
16 the Health History; right?

17 A. Yes.

18 Q. Okay. And it's -- one source from which a
19 nurse can fill out a history is to get information from
20 family members; isn't that correct?

21 A. Correct.

22 Q. And you have no reason to believe that Ann Wayt
23 did not get the information marked by no skin impairment
24 noted from a family member; isn't that correct?

25 A. It says assessment.

1 Q. This is the Health History form, though, not
2 the place where skin assessment is recorded; isn't that
3 correct, Mr. Osterman?

4 A. That's an assessment part.

5 Q. There's a separate skin assessment place on the
6 actual 24-Hour Assessment form; is there not,
7 Mr. Osterman?

8 A. Yes, there is.

9 Q. Okay.

10 JUDGE AMCHAN: Are you talking about a
11 different --

12 MS. LAWHON: Yes.

13 JUDGE AMCHAN: -- something different in this
14 exhibit?

15 MS. LAWHON: I'll direct him to it. Yes,
16 Your Honor. Sorry.

17 CROSS-EXAMINATION (CONT'D)

18 BY MS. LAWHON:

19 Q. Looking at Page 21, Mr. Osterman, where it
20 says, "7 a. to 7 p." and there's a box and it says, "Skin
21 intact." Is that -- that's the place where the skin
22 assessment by the nurse is recorded; isn't that correct?

23 A. That's one area.

24 Q. That's the only area on the 24-Hour Assessment
25 form where the skin assessment is recorded; isn't that

1 correct?

2 A. On the 24-Hour Assessment; correct.

3 Q. Thank you.

4 A. On the Health History --

5 Q. Excuse me, Mr. Osterman, please. You really
6 are supposed to respond to questions.

7 A. Sorry.

8 Q. Mr. Osterman, do you recall providing a sworn
9 affidavit concerning the facts in this case to the
10 National Labor Relations Board?

11 A. Yes, ma'am.

12 Q. Okay. You stated in that sworn affidavit that
13 -- and you're referring to a sequence of events. At some
14 time during the afternoon on Wednesday, September 5th you
15 met with Orthopedic Unit director Jason McDonald and
16 Orthopedic Unit manager Paula Zinsmeister.

17 Slightly further down in that same paragraph you
18 say, "The discrepancies in Ann Wayt's documentation, as
19 compared to the documentation in the patient chart by the
20 nurses who cared for the patient before and after Ann Wayt
21 are inexplicable."

22 What document by a nurse who cared for the
23 patient before Ann Wayt did you review?

24 A. The ED nurse.

25 Q. Okay. You didn't have any documentation from

1 the Ortho Unit for a nurse who was assigned to that
2 patient prior to Ann Wayt; isn't that correct?

3 A. Correct.

4 JUDGE AMCHAN: The -- you used the term the
5 something --

6 THE WITNESS: The Emergency Department.

7 JUDGE AMCHAN: Okay.

8 MS. LAWHON: Could we go off the record for a
9 second?

10 JUDGE AMCHAN: Sure.

11 (Off the record.)

12 JUDGE AMCHAN: Back on the record.

13 (Whereupon, Charging Party's Exhibit Number
14 1 was marked for identification.)

15 CROSS-EXAMINATION (CONT'D)

16 BY MS. LAWHON:

17 Q. Mr. Osterman, you have in front of you a
18 document marked for identification as Charging Party
19 Exhibit 1.

20 It has the date 8-28 at the top, and consists of
21 eight pages. Do you recognize this document?

22 A. Yes.

23 Q. This is the charting from the ER; right?

24 A. No.

25 Q. Oh, I'm sorry.

1 MS. LAWHON: I think we copied the wrong one.

2 Excuse me. Could we go off the record for a second, Your
3 Honor?

4 JUDGE AMCHAN: Sure.

5 (Off the record.)

6 JUDGE AMCHAN: Back on the record.

7 CROSS-EXAMINATION (CONT'D)

8 BY MS. LAWHON:

9 Q. Mr. Osterman, we were discussing a moment ago
10 the word "assessment." When a nurse does an assessment,
11 it includes more than actually looking at the patient;
12 isn't that correct?

13 A. Correct.

14 Q. Assessment includes data collection; isn't that
15 correct?

16 A. Correct.

17 Q. It includes review of past records on the part
18 -- past medical records of that patient; right?

19 A. Correct.

20 Q. It includes conferring with the family; isn't
21 that correct?

22 A. Correct.

23 Q. And information from other healthcare
24 providers; isn't that correct?

25 A. Correct.

1 Q. You referred to the lack -- in your sworn
2 affidavit, to the lack of documentation by Ann of clearly
3 visible injuries.

4 You're referring to the fact that the nurse in
5 the ER said the patient presents with a minor avulsion?

6 MR. BRYAN CARMODY: Your Honor, can we have
7 counsel refer to a particular part of the statement?

8 MS. LAWHON: Oh, sure. I'm sorry. Page 5.
9 Yes, I'm still on Paragraph 11, exactly where I was
10 before.

11 MR. BRYAN CARMODY: Now I know that. Thank
12 you.

13 CROSS-EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. Do you remember the question, Mr. Osterman?

16 A. Well, can you repeat it, please?

17 Q. Sure. You said, "A serious issue was the lack
18 of documentation by Ann of clearly visible injuries that
19 had been sustained by the patient."

20 A. Right. The bruising and the -- the bruising
21 and the abrasions.

22 Q. The nurse in the ER who assessed the patient
23 wrote in the skin assessment that the patient presents
24 with a minor avulsion; right?

25 A. Right.

1 Q. That means a minor abrasion; right?

2 A. If that's what it says in there, correct.

3 Q. Do you have any recollection of what the nurse
4 in the ER had -- how that skin assessment had been done
5 that was so sharply contrary to how Ann had done it?

6 MR. BRYAN CARMODY: Your Honor, does the
7 witness have a copy of any document that counsel's
8 referring to?

9 MS. LAWHON: He does not.

10 MR. BRYAN CARMODY: I'm -- he --

11 JUDGE AMCHAN: Just ask him if he remembers.
12 And if he doesn't remember show him the document.

13 THE WITNESS: I would have to read it.

14 CROSS-EXAMINATION (CONT'D)

15 BY MS. LAWHON:

16 Q. Okay. So as you're sitting there now, you
17 don't remember what the contrast was with the charting in
18 the ER and the charting by Ann with respect to the
19 patient's supposed --

20 A. I just know there was an assessment by the ER
21 nurse that showed a bruise, and all that. And it wasn't
22 on the other documentation. That was back in August.

23 Q. Mr. Osterman, you just referred to bruising,
24 and all that. I'm directing your attention to the last
25 line of a document that I'll have marked for

1 identification as Charging Party 1.

2 A. Right.

3 Q. The reference says a minor avulsion.

4 A. Correct.

5 Q. That is all there is with respect to the
6 bruising, and all that, in the documentation by the ER
7 nurse; isn't that correct?

8 A. On this page, correct.

9 Q. Well, how about on the next page?

10 A. Can I look through all of them?

11 Q. Sure.

12 JUDGE AMCHAN: Can I just -- the word you
13 used, which is not one that's in my vocabulary. If we
14 could spell it.

15 Q. The word avulsion means abrasion, right --

16 A. Correct.

17 Q. -- Mr. Osterman?

18 JUDGE AMCHAN: Yes. He said yes. It's --
19 spell it.

20 MS. LAWHON: (A-V-U-L-S-I-O-N).

21 JUDGE AMCHAN: (A-B) --

22 MS. LAWHON: (A-V). V as in Victor.

23 JUDGE AMCHAN: (I-L-S) --

24 MS. LAWHON: No. (A-V-U-L-S-I-O-N).

25 THE WITNESS: There's bruising mark right

1 here noted in the pelvis region. Dr. Ashpot notified.

2 This is on the third page.

3 CROSS-EXAMINATION (CONT'D)

4 BY MS. LAWHON:

5 Q. Okay. So one reference to bruising, and one
6 reference to a minor avulsion.

7 A. Correct. I'm just tired.

8 Q. That's understood.

9 JUDGE AMCHAN: Is that the ER doctor?

10 THE WITNESS: It was recognized by the nurse
11 and given to the ER doctor. And it was in the pelvis
12 region around the fractured area. That's it.

13 CROSS-EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. And the night nurse in the Ortho Unit did not
16 note any avulsion or abrasion; isn't that correct?

17 A. Correct.

18 Q. And the night nurse in the Ortho Unit did not
19 note any bruising; isn't that correct?

20 MR. BRYAN CARMODY: Objection. What -- are
21 you referring to a particular document, Counsel?

22 MS. LAWHON: I'm referring to the night nurse
23 who did the assessment on the shift after Ann Wayt on
24 October 28th. I'm not referring to a document, I'm
25 referring -- if he needs to -- he has the document in

1 front of him.

2 THE WITNESS: Right. That's correct.

3 MS. LAWHON: No further questions.

4 MR. BRYAN CARMODY: I have no questions, Your
5 Honor.

6 JUDGE AMCHAN: Okay. You can step down.

7 THE WITNESS: Okay. Do I leave stuff here?

8 JUDGE AMCHAN: Yes. You're not responsible
9 for policing the documents.

10 THE WITNESS: All right. Thank you.

11 (WITNESS EXCUSED.)

12 MS. CENDROSKY: Actually, Your Honor, I'm
13 going to go ahead and get the next witness, and I'll take
14 him back; is that okay?

15 JUDGE AMCHAN: Fine.

16 MR. BRYAN CARMODY: Your Honor, can we go off
17 the record?

18 JUDGE AMCHAN: Sure.

19 (Off the record.)

20 JUDGE AMCHAN: Back on the record. So the
21 Union would like to admit the Emergency Room, what do you
22 call it?

23 MS. LAWHON: Charting.

24 JUDGE AMCHAN: -- charting as Charging Party
25 Exhibit 1. And my understanding is that Respondents

1 wanted to stipulate to its admission.

2 MR. BRYAN CARMODY: Yes, sir.

3 JUDGE AMCHAN: Okay. Thank you.

4 MS. CENDROSKY: I'll go get Mr. McDonald.

5 JUDGE AMCHAN: Off the record.

6 (Off the record.)

7 JUDGE AMCHAN: Back on the record.

8 MS. CENDROSKY: At this time, General Counsel
9 calls Mr. Jason McDonald to the stand.

10 JUDGE AMCHAN: If you'd raise your right
11 hand.

12 WHEREUPON,

13 JASON McDONALD,

14 A witness herein, having been first duly cautioned and
15 sworn, was examined and testified as follows:

16 JUDGE AMCHAN: Have a seat, and be sure and
17 keep your voice up.

18 THE WITNESS: Yes, sir.

19 DIRECT EXAMINATION

20 BY MS. CENDROSKY:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. My name is Sharlee Cendrosky. I am counsel for
24 the Acting General Counsel here with the National Labor
25 Relations Board. Can you please state and spell your

1 name, for the record?

2 A. Yeah. Jason, (J-A-S-O-N), McDonald,
3 (M-C-D-O-N-A-L-D).

4 Q. What I'd like for you to do is if you cannot
5 hear my question, or if you don't understand my question,
6 just let me know. Where do you live?

7 A. I live in Louisville, Ohio.

8 Q. By whom are you employed?

9 A. Affinity Medical Center.

10 Q. And if I refer to Affinity Medical Center as
11 either Affinity or the hospital, will you know who I'm
12 referring to?

13 A. Yes.

14 Q. What's your position or job title with
15 Affinity?

16 A. I'm the orthopedic and therapy services program
17 director.

18 Q. And how long have you held your current
19 position?

20 A. Current position I've held since roughly
21 October 2011.

22 Q. And prior to that, what position did you hold
23 with the hospital?

24 A. Director of therapy services.

25 Q. And how long had you hold (sic) the position of

1 directory -- director of therapy services?

2 A. May of 2009.

3 Q. When did you start your employment with

4 Affinity?

5 A. May of 2009.

6 Q. Okay. Thank you. Mr. McDonald, you're

7 testifying here pursuant to a subpoena I issued you;

8 correct?

9 A. Yes.

10 Q. What are your responsibilities as the

11 orthopedic and therapy services program director?

12 A. My responsibilities is primarily general --

13 general oversight of the Orthopedic Service line,

14 including physician satisfaction, patient satisfaction.

15 Working with marketing to work on some ideas.

16 Working a little bit with staff to figure out how

17 to make things a little bit smoother in the department.

18 Interacting with my clinical nurse manager to make sure

19 everything's going well in the department. And looking at

20 statistics, primarily.

21 Q. Do you supervise any employees?

22 A. Yes, I do.

23 Q. Which ones?

24 A. In the department, or in other departments?

25 I'm sorry.

1 Q. Which employees do you supervisor? You can
2 start with department, however you want to do it.

3 A. Say directly supervise, I have my physical
4 therapist, occupational therapist, speech therapist and
5 their assistants, are who I directly supervise. And --

6 JUDGE AMCHAN: The last one, nurse
7 assistants?

8 THE WITNESS: No. Physical therapy and
9 occupational therapy assistants. I'm sorry.

10 JUDGE AMCHAN: Okay.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. CENDROSKY:

13 Q. Now, do you have occasion to supervise
14 employees in other departments?

15 A. I do. Currently, I am the director for our
16 inpatient rehab, as well as the Orthopedic Service line.
17 And I do somewhat supervise the nurses. They're more or
18 less indirectly through Paula Zinsmeister.

19 Q. Nurses where?

20 A. Nurses on Orthopedic Service.

21 Q. Thank you. Is that -- is Orthopedic Services
22 the same as the Orthopedic Unit?

23 A. Orthopedic and Spine Center.

24 Q. Okay. Thank you.

25 A. Yes. I'm sorry.

1 Q. No, that's all right.

2 MS. CENDROSKY: Your Honor, I respectfully
3 request that I be allowed to examine this witness pursuant
4 to Section 6(11)(c) of the Federal Rules of Evidence.

5 JUDGE AMCHAN: All that means is she can ask
6 you leading questions.

7 THE WITNESS: Okay.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. CENDROSKY:

10 Q. On a daily basis, which units do you visit in
11 the hospital?

12 A. On a daily basis I would visit therapy
13 services, which is primarily outpatient. Then I'll head
14 up to our Inpatient Rehabilitation Unit and the Orthopedic
15 and Spine Center.

16 Q. Where's your office located?

17 A. It is located in the Therapy Services
18 Department.

19 Q. And what floor is that?

20 A. That's on the first floor.

21 Q. Do you know if the hospital has a cafeteria?

22 A. Yes, they do.

23 Q. Have you ever visited this cafeteria?

24 A. Yes, I have.

25 Q. And how often do you visit the cafeteria?

1 A. I'd say two, three times a week, sometimes
2 more. It just depends on if I forget to bring my lunch.

3 Q. I see. When did the Orthopedic Unit open?

4 A. That opened in September of 2011.

5 Q. Isn't it true that you recruited Ann Wayt to
6 the Orthopedic Unit because she was a well-known and
7 respected nurse?

8 A. Yes. We had thought she was a well-known and
9 respected nurse.

10 Q. Do you recall when you recruited her?

11 A. I don't remember the date that we interviewed
12 her. It was prior to the opening, though. Prior to
13 September of 2011.

14 Q. So you're familiar with former employee Ann
15 Wayt; correct?

16 A. Yes.

17 Q. And how long have you known Ann?

18 A. Knew Ann as well as I did in the Orthopedic
19 Service, Orthopedic and Spine Center was primarily after
20 she was recruited there.

21 I had known her up on the floor on occasion. I
22 would do some staff work on the floor on occasion as a
23 physical therapist, but I didn't run into her very often.

24 Q. Are you aware that Ann is the subject of
25 litigation here today?

1 A. Yes.

2 Q. Isn't it true that you prepared two sworn
3 affidavits related to the termination of Ann Wayt in part
4 of the National Labor Relations Board's investigation?

5 A. Prepared them, no.

6 Q. Did you help create two affidavits?

7 A. Yes.

8 Q. Isn't it true that you visited the Orthopedic
9 Unit on August 28th, 2012?

10 A. Yes.

11 Q. When did you learn about a patient care
12 incident involving Ann Wayt?

13 A. The following day, August 29th.

14 Q. Isn't it also true that on August 30th, 2012
15 you learned of an incident reported by John Perone
16 involving Ann Wayt on August 30th, 2012?

17 A. Yes, I believe that's correct.

18 Q. When was Ann Wayt taken off the schedule?

19 A. She was taken off the schedule, I believe her
20 last day worked was September the 8th.

21 Q. So from August 28th when you first learned
22 about the incident regarding Ann Wayt, to September 8th,
23 she continued to work as a nurse?

24 A. Yes.

25 Q. Do you know when the patient at issue was

1 discharged from the hospital?

2 A. I do not.

3 Q. Now, on September 12th, 2012 you participated

4 in a phone call with Ann Wayt; correct?

5 A. Yes.

6 Q. Isn't it also true that during this phone call

7 Ann insisted that she was permitted to have a union

8 representative with her?

9 A. Yes, it was.

10 Q. Isn't it also true that in this phone call you

11 told Ann that the meeting was disciplinary in nature and

12 not investigatory?

13 A. Yes, that is true.

14 Q. Isn't it also true that you read a portion of a

15 document to Ann during this phone call?

16 A. Yes.

17 Q. And is it also true that the part of the

18 document you read to Ann says, "If an employee refuses to

19 attend a meeting requested by management, that employee is

20 considered insubordinate"?

21 A. Without having the document right in front of

22 me, I couldn't tell you, to be honest.

23 Q. You know what, I will show you your affidavit.

24 A. Okay.

25 Q. What I'm showing Mr. McDonald is his affidavit

1 that he prepared. And if he turns his attention to the
2 second page.

3 A. Uh-huh.

4 Q. Do you see some bold?

5 A. Yes, I do, ma'am.

6 Q. And what does the bold state for us?

7 A. It states, "Weingarten does not apply in
8 situations where the decision to impose discipline and the
9 type of discipline is decided.

10 If an employee who is to be disciplined under
11 these circumstances refuses to attend a meeting requested
12 by management, the employee should be considered
13 insubordinate."

14 Q. Now, did you read that statement to Ms. Wayt?

15 A. Yes, I did.

16 Q. Isn't it true that you prepared a memo
17 documenting your September 13th, 2012 meeting with Ann
18 Wayt?

19 A. A memo, no.

20 Q. Well, I'm going to direct your attention to
21 General Counsel's Exhibit Number 7, which should be up
22 there. If you have a problem locating it, I will help
23 you.

24 A. Okay.

25 Q. Do you have it in front of you?

1 A. Yes, I do.

2 Q. Okay. I'd like to turn your attention to Page
3 11 and Page 12.

4 A. Okay.

5 Q. And if you look at these two pages, did you
6 prepare this memo?

7 A. No, I did not prepare this memo.

8 Q. Do you have any idea who repaired it --
9 prepared it?

10 A. I believe this was Paul Zinsmeister. She was,
11 I believe, taking notes and prepared this memo.

12 Q. At any time, have you reviewed this memorandum?

13 A. I don't remember if I did or not.

14 Q. Were you in the meeting then when this
15 memorandum was being -- the notes were being taken?

16 A. Yes.

17 Q. Let's turn to Page 12. On the top it says
18 Mr. -- "J. McDonald informed Ann that there are four other
19 witnesses that report that Ann was not in the room from
20 the time the patient was admitted until sometime around
21 noon when she came in to give the patient pain medication.

22 A. Yes.

23 Q. Is that a correct and accurate statement that
24 you made in this meeting in which Paula Zinsmeister made a
25 notation of?

1 A. It was at that time, yes, I believe it was
2 correct.

3 Q. Has anything changed since that time?

4 A. Not that I can remember, no.

5 Q. Who were the four witnesses that reported that
6 Ann was not in the room from the time the patient was
7 admitted until noon?

8 A. Based on the information that I had obtained
9 from Susan Kress, it was Rhonda Smith, Susan Kress, Sam
10 Burgett, and I cannot remember the ER nurse's name. But
11 there was an Emergency Room nurse that transferred the
12 patient from the ER to the floor.

13 Q. Do you know how long the ER nurse stayed with
14 the patient?

15 A. It was my understanding five or ten minutes,
16 but I honestly don't know.

17 Q. Do you have any knowledge as to why the ER
18 nurse would be able to testify that Ann was not in the
19 room from the time the patient was admitted until noon?

20 A. I believe it was just her portion of the time
21 she was up there not until noon.

22 Q. Did you speak with these four witnesses?

23 A. I personally spoke with Susan Kress, as well as
24 Rhonda Smith.

25 Q. Now, did you -- do you know if Rhonda Smith

1 provided a statement about the events of August 28th,
2 2012?

3 A. Yes, she did.

4 Q. Okay. I'd like to direct your attention to
5 General Counsel's Exhibit Number 7, the same exhibit.

6 A. Okay.

7 Q. And this time I would like to turn to Page 14.

8 A. Yes.

9 Q. Okay. I'm going to direct your attention to
10 the first full paragraph. And there's a sentence that
11 starts, "We arrived to Room 3420 at roughly nine fifteen."
12 Do you see where I'm at? It's about the fourth sentence
13 down.

14 A. Yes.

15 Q. Okay. And then it continues and says, "At
16 approximately ten a.m. Ann Wayt, RN, the ortho RN assigned
17 to the patient, came into the patient's room and asked the
18 patient's son if he could provide information about his
19 mother."

20 A. Yes.

21 Q. And then it says, "The son said he would not --
22 he did not have Power of Attorney, but he could provide
23 the information."

24 A. Yes.

25 Q. "Ann Wayt left the room and did not return to

1 interview the son."

2 A. Yes.

3 Q. "Around eleven o'clock the son wanted to go
4 home and asked if he could call back to check on his
5 mother. I asked him if there was a code word he could use
6 to identify himself as the caller, and he said yes, and
7 provided a code word.

8 I relayed this information to Ann Wayt. At that
9 time, Wayt told me that she obtained all the database
10 information from the records at Laurels Nursing Home."

11 And then we continue with a timeline that starts
12 at roughly eleven thirty.

13 A. Uh-huh.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. Okay. So my question for you is, you prepared
17 a statement that says that Ann Wayt was not in the
18 patient's room under after noon.

19 A. Correct. In the questioning, that's what we
20 had said, yes. However --

21 Q. Pardon me?

22 A. I said in the questioning where this was
23 prepared, yes, that is what we had said.

24 Q. Okay. So why did you write that if you've
25 reviewed Rhonda Smith's statements and Rhonda Smith says

1 -- recalls at least two occasions that Ann Wayt was --

2 A. Well, what we actually did, based on talking to

3 Rhonda Smith, that was -- what was Number 14? Yeah, that

4 was dated September 24th.

5 That was in more of the investigation that we did

6 and further questioning. This was prior to that statement

7 being taken.

8 Q. Do you have any reason why your statement on

9 Page 11 and Page 12 would be included in a packet to the

10 State Board of Nursing?

11 MR. BRYAN CARMODY: Objection. That

12 mischaracterizes his testimony. Pages --

13 MS. CENDROSKY: Do you have any --

14 MR. BRYAN CARMODY: Pages 11 and 12 weren't

15 his statement.

16 MS. CENDROSKY: I'm sorry. You're right. I

17 withdraw the question, Your Honor. That was

18 Ms. Zinsmeister's notes.

19 JUDGE AMCHAN: Okay.

20 (Whereupon, General Counsel's Exhibit Number

21 8 was marked for identification.)

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. I'm going to show you what's been marked as

25 General Counsel's Exhibit Number 8.

1 A. Do I have that up here?

2 Q. I'm going to hand it to you.

3 A. Oh, sorry.

4 Q. Thank you. Take a moment to look at that
5 document. Do you recognize it?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is the termination meeting that we had
9 with Ms. Wayt.

10 Q. Is your signature on the bottom of that
11 document?

12 A. Yes, it is.

13 Q. Isn't it true that the reasons listed by the
14 hospital for Ann Wayt's discharge are substandard patient
15 care and falsification of patient documentation?

16 MR. BRYAN CARMODY: Objection, Your Honor.
17 These -- the documents speak for themselves.

18 JUDGE AMCHAN: Well, what he -- I guess he's
19 (sic) asking if there are any -- she's asking are there
20 any other reasons other than the reasons on the document.

21 MR. BRYAN CARMODY: That's a different
22 question.

23 JUDGE AMCHAN: Is that what you're asking?

24 MS. CENDROSKY: I'm -- that's my second
25 question, yes.

1 JUDGE AMCHAN: Well, are you --

2 MS. CENDROSKY: Other than the --

3 JUDGE AMCHAN: -- are you asking whether the

4 reasons for her termination are the ones listed on GC8?

5 Is that your question?

6 MS. CENDROSKY: Yes.

7 JUDGE AMCHAN: Yes, can you answer that?

8 THE WITNESS: Oh, I'm sorry. I'm sorry.

9 JUDGE AMCHAN: I'm sorry.

10 THE WITNESS: I'm sorry. Those were the

11 reasons that we terminated her, yes.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. CENDROSKY:

14 Q. Are there any other reasons why Ms. Wayt was
15 terminated?

16 A. No. Just the ones listed here.

17 MS. LAWHON: And could the record reflect
18 when the witness says "here," he's referring to General --

19 THE WITNESS: I'm sorry.

20 MS. LAWHON: It's okay. -- he's referring to
21 General Counsel 8?

22 JUDGE AMCHAN: Right.

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. CENDROSKY:

25 Q. Now, with respect to falsification of patient

1 documentation. What, exactly, does the hospital believe
2 Ann Wayt falsified?

3 A. We believe that she falsified the head-to-toe
4 assessment that was -- that was documented as being
5 performed on the patient, as well as in the 24-Hour
6 Assessment.

7 She had documented that part of the community
8 cares and hourly rounding was done at seven, eight, and
9 nine o'clock when the patient did not get on the floor
10 until after, I believe, nine ten or nine fifteen.

11 Q. Anything else?

12 A. Let me look through.

13 Q. Take your time.

14 A. Further safety checks on the patient listed out
15 on Page 7 of the 24-Hour Assessment.

16 MS. LAWHON: What -- I'm sorry. What
17 document?

18 JUDGE AMCHAN: Well, okay, see, I think he
19 may have --

20 MS. CENDROSKY: Oh, you know what --

21 JUDGE AMCHAN: -- the spare. So if you would
22 have him work from GC7.

23 MS. CENDROSKY: That is actually not in
24 evidence. We should have redacted that.

25 THE WITNESS: Oh, okay.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. CENDROSKY:

3 Q. But this can be found in General Counsel's

4 Exhibit Number 7.

5 A. Okay.

6 Q. And if you want, you can come over here.

7 JUDGE AMCHAN: Towards the back.

8 MR. BRYAN CARMODY: What exhibit is in front
9 of the witness, Counsel?

10 JUDGE AMCHAN: 7.

11 MS. CENDROSKY: General Counsel's 7.

12 MR. BRYAN CARMODY: Thank you.

13 THE WITNESS: Okay. Yeah, community cares
14 rounding. The 24 --

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. CENDROSKY:

17 Q. What page is community cares rounding on?

18 A. That is on Page 6 of 8 of the 24-Hour
19 Assessment.

20 Q. What page on the --

21 JUDGE AMCHAN: Well, there's a number at the
22 bottom.

23 Q. Yes. Thank you.

24 A. Number 23.

25 Q. Okay.

1 A. I apologize.

2 Q. Okay. Let's stay on that page for one second.

3 A. Okay.

4 Q. And show me here on this page what was

5 falsified.

6 A. On the very bottom.

7 Q. Okay.

8 A. It has community cares rounding on the kind of

9 side of it --

10 Q. I see.

11 A. -- that's horizontal. And it has position.

12 Q. Okay.

13 A. There's dashes at seven o'clock, eight o'clock,
14 and nine o'clock and the patient was not yet on the floor.

15 Q. Did Ann -- is it your belief that Ann created
16 these checkmarks?

17 A. I believe, because when I had her reviewing
18 them, she did not indicate they were not hers.

19 Q. Okay. Now, let's look at the role below
20 position. It says possessions within reach.

21 A. Uh-huh.

22 Q. When were those marks checked?

23 A. Those started at ten o'clock.

24 Q. And then call light within reach?

25 A. Ten o'clock.

1 Q. And need of bathroom and reach?

2 A. Ten o'clock.

3 Q. I'm sorry. Need of bathroom. Isn't it true

4 that Ms. Wayt told you that in the seven, eight, and nine

5 o'clock, at the end of the day when she did her charting,

6 that she forgot that the nurse -- I mean, the patient came

7 in from the Emergency Room Department.

8 So she started checking, realized, oh, this

9 patient didn't come until after nine, and so that's why

10 she subsequently did not check the boxes in the other

11 rows?

12 A. To the best of my recollection, I do not

13 remember that. However, this -- I would believe that they

14 would be erred out with a line through an initials if she

15 realized they were mistaken.

16 Q. So she should have, in your opinion, to correct

17 the document to cross it out, the seven, eight, and nine

18 in the position row?

19 A. With an initial and a date.

20 Q. With initial and date. To your knowledge, has

21 any other nurse received any sort of discipline for

22 failing to mark or correct out and initial and date in the

23 community cares rounding assessment for position --

24 A. To my --

25 Q. -- or any of the rows?

1 A. To my knowledge, no. However, it is not my
2 standard practice --

3 Q. Just answer the question, please. Just the one
4 question.

5 A. To my knowledge, no.

6 Q. Thank you. Let's find the head-to-toe
7 assessment in this document, if you could point us to
8 which page that would be on.

9 A. I believe the head-to-toe assessment starts on
10 Page 18.

11 Q. Okay. And you indicated that Ms. Wayt
12 falsified portions of the head-to-toe assessment, as well
13 as the 24-Hour Assessment. Show me which portions, or
14 point to us which portions of the head-to-toe assessment
15 were falsified.

16 A. Based on our investigation, as far as we could
17 figure, the entire head-to-toe assessment.

18 Q. What -- okay. Show me what the head-to-toe
19 assessment is. Is it all of Page 18?

20 A. It starts on Page 18, continues through Page
21 19, into Page 20. And I believe stops there; however,
22 this is not a form that I consistently fill out --

23 Q. Had you --

24 A. -- so that's the best of my recollection.

25 Q. -- reviewed this form prior to your

1 determination that it was falsified?

2 A. Prior to my determination? No. After I

3 reviewed the form it was determined that way.

4 Q. Okay. So you have reviewed this form.

5 A. Yes. I believe I said I reviewed this form.

6 Q. And you determined that Page 18, 19, and 20

7 were all falsified?

8 A. Those were the results of our investigation, to

9 best that we --

10 Q. Based on what?

11 A. Based on our investigation of --

12 Q. Which included what?

13 A. Susan Kress. She did the initial

14 investigation.

15 Q. What did Susan Kress report to you that was

16 falsified on these pages?

17 JUDGE AMCHAN: Well, be sure and let him

18 answer before you ask the next question.

19 MS. CENDROSKY: Sorry, Your Honor.

20 JUDGE AMCHAN: You're kind of cutting him

21 off.

22 THE WITNESS: Susan Kress initiated the

23 investigation into Ms. Wayt. Again, I'm not a nurse. I

24 did not feel it was appropriate for me to initiate that

25 investigation. So she went ahead and started the

1 investigation with talking to the witnesses, specifically
2 Rhonda Smith.

3 And then she had, I believe, pulled this to start
4 reviewing that in conjunction with her investigation.

5 MS. LAWHON: Let the record reflect again,
6 the witness, when he says "she had pulled this," I believe
7 he's referring to Pages 18, 19, and 20 of General
8 Counsel's 7.

9 THE WITNESS: Yes.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. CENDROSKY:

12 Q. Do you know -- can you point to us which part
13 of this exhibit is the 24-Hour Assessment?

14 A. The entire form is the 24-Hour Assessment.

15 Q. The entire form. Did Susan Kress ever relay to
16 you that Ms. Wayt failed to document a skin tear, or
17 abrasion, or avulsion on this chart?

18 A. I don't know if she relayed that to us,
19 specifically. It was something that we had noticed in
20 reviewing the document.

21 Q. Where did you find that information at in this
22 document?

23 A. It is on Page 21, the section that says
24 "Surgical and wound."

25 Q. Okay. So I'd like to direct your attention to

1 "Surgical and Wounds 7 a. to 7 p." Now, would that be the
2 area that Ms. Wayt should have made notations in?

3 A. Yes.

4 Q. Okay. And you see there's a box that says skin
5 intact.

6 A. Yes.

7 Q. Is that box checked?

8 A. Yes, it is.

9 Q. It is checked.

10 A. Yes.

11 Q. Okay. Let me ask you that question again.

12 A. Uh-huh.

13 Q. 7 a. to 7 p., right next to that.

14 A. Yes.

15 Q. Is the box checked?

16 A. 7 a. to 7 p., no.

17 Q. Okay. Thank you.

18 A. I'm sorry. I thought you said 7 p. to 7 a.

19 Q. Well, below 7 p. to 7 a., is that box checked?

20 A. Yes, it is.

21 Q. Okay. Let's look at Page 25 of this exhibit.

22 There are two signatures on the bottom of the page. Do
23 you recognize the signature to the left?

24 A. That is Ann's signature.

25 Q. And then next to that there's another

1 signature. Do you recognize that signature?

2 A. I do not recognize that signature.

3 Q. Is it possible that this signature represents

4 another nurse, the night shift nurse?

5 A. It's possible.

6 Q. Okay.

7 A. Again, I couldn't say specifically, because I

8 do not recognize the signature.

9 Q. Well, let's go back to Page 21. And we're now
10 looking at the night shift nurse box, 7 p. to 7 a.

11 A. Yes.

12 Q. And in that box it says, "Skin intact."

13 A. Yes.

14 Q. Do you know if someone has an abrasions or an
15 avulsion, is their skin intact?

16 A. No, it is not.

17 Q. Okay. So do you know if anything happened to
18 this night shift nurse for marking that the skin was
19 intact, and failing to note that the patient had bruising,
20 an avulsion, or an abrasion?

21 A. I do know that Paula Zinsmeister had spoken
22 with her. I do not know what came of that, though.

23 Q. Okay. Isn't it true that you were aware of
24 Ann's support of the Union prior to her termination?

25 A. Yes.

1 Q. Isn't it true that you were aware that Ann's
2 photograph and quote were used on a union flyer at the
3 hospital?

4 A. Photograph, yes. Quote, no.

5 Q. You are not aware that a quote was on the --
6 next to her photograph?

7 A. No.

8 Q. Had you ever seen this pamphlet at the
9 hospital?

10 A. Yes, I had.

11 Q. Had anyone ever talked to you about this
12 pamphlet at the hospital?

13 A. We had discussed it when we saw the pamphlet in
14 a meeting.

15 Q. What meeting?

16 A. They were meetings that were held periodically
17 -- well, it was every day. I only went periodically.
18 Jerry, who was our rapid responder at the hospital, held
19 the meetings.

20 Q. And do you recall when this meeting was held?

21 A. I do not. It was sometime previously to when
22 this happened, but I do not remember when it happened.

23 Q. Who attended the --

24 JUDGE AMCHAN: Was it prior to the election?

25 THE WITNESS: Yes, it was prior to the

1 election.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. CENDROSKY:

4 Q. Who attended this meeting?

5 A. There was Jerry, who was our rapid responder.

6 I cannot remember his last name to tell you, though. And

7 it was various managers from throughout the hospital.

8 Q. And it's your testimony today that this union

9 pamphlet was circulated in that meeting?

10 A. That was the first and only time I saw it, yes.

11 MS. CENDROSKY: That is it for me. Thank

12 you.

13 JUDGE AMCHAN: You don't have any. Are you

14 done?

15 MS. CENDROSKY: I'm going to end with that.

16 MS. LAWHON: I have a few questions.

17 JUDGE AMCHAN: Okay.

18 MS. LAWHON: Oh, are there any statements?

19 MS. CENDROSKY: There are. Sorry. Let me

20 make sure this is the only one. Oh, you know what, I gave

21 him the other one.

22 THE WITNESS: Which one do you need, ma'am?

23 MS. CENDROSKY: I believe I gave you an

24 affidavit, didn't I?

25 THE WITNESS: This one?

1 MS. CENDROSKY: Yes, this one.

2 MR. BRYAN CARMODY: Your Honor, I'm curious
3 as to what the authority is for the request for statements
4 when the examination is not cross-examination?

5 MS. LAWHON: I'm entitled to Jencks
6 statements after the witness has testified on direct.

7 MR. BRYAN CARMODY: So it's a Jencks
8 declaration?

9 MS. CENDROSKY: Yes.

10 JUDGE AMCHAN: It's an affidavit.

11 MR. BRYAN CARMODY: A Jencks? A Jencks
12 declaration?

13 JUDGE AMCHAN: I think.

14 MS. CENDROSKY: Yes.

15 MS. LAWHON: I do, too, yes.

16 MS. CENDROSKY: I have the Bench Book, if you
17 need it.

18 JUDGE AMCHAN: My understanding is that she's
19 entitled to see it. Do you want to go off the record
20 while you read it?

21 MS. LAWHON: Oh, sure. Yes, I do.

22 JUDGE AMCHAN: Off the record.

23 (Off the record.)

24 JUDGE AMCHAN: Back on the record.

25 MR. DON CARMODY: Your Honor, I'm not sure if

1 we were on the record when I had made that clarification.
2 I just wanted the record to show that the authority on the
3 bases of which the request was made for the witness'
4 statement and the General Counsel's determination is that
5 it's a Jencks statement.

6 JUDGE AMCHAN: Okay.

7 MS. CENDROSKY: And, Your Honor, before we
8 start with Ms. Lawhon, I just want to move to admit GC's
9 Exhibit Number 8, which was the discharge paper of
10 Ms. Wayt.

11 JUDGE AMCHAN: Any objection?

12 MR. BRYAN CARMODY: No, sir.

13 JUDGE AMCHAN: Okay. It's admitted.

14 (Whereupon, General Counsel's Exhibit Number
15 8 was received into evidence.)

16 MS. CENDROSKY: Thank you.

17 CROSS-EXAMINATION

18 BY MS. LAWHON:

19 Q. Good afternoon, Mr. McDonald, I'm Jane Lawhon,
20 attorney for NNOC. I'd like to start with the meeting you
21 testified that Jerry O'Brien convened. Approximately how
22 long before the election was that meeting held?

23 A. Again, I can't remember exactly how long before
24 the election it was held. I would say within a few weeks.

25 JUDGE AMCHAN: Well, do you remember that his

1 last name is O'Brien?

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. LAWHON:

4 Q. I'm sorry. Is that --

5 A. I remember Jerry, but --

6 Q. If I tell you Jerry O'Brien, does that refresh
7 your recollection?

8 A. Yes.

9 Q. Okay.

10 MS. LAWHON: Sorry, Your Honor, I forgot that
11 he didn't remember.

12 Q. Okay. Which managers were present at the
13 meeting you attended?

14 A. I do not remember exactly which managers were
15 present.

16 Q. Okay. Well, I understand you don't remember
17 exactly. As you sit here today --

18 A. Uh-huh.

19 Q. -- can you remember a single manager who was
20 present besides yourself and Jerry at the meeting?

21 A. I know, again, I was. Paula Zinsmeister was
22 there. And Rick Kepner.

23 Q. Okay. And what is Rick's last name?

24 A. Kepner.

25 Q. How do you spell --

1 A. (K-E-P-N-E-R).

2 Q. What unit is he a manager for?

3 A. He's actually a manager for Health Information

4 Management.

5 Q. Health Information Management?

6 A. Medical Records.

7 Q. Okay. Any other managers from nursing units?

8 A. I would be guessing if I tried to give you
9 names that were there.

10 Q. Okay.

11 A. Those are the two that I remember specifically
12 being there.

13 Q. Okay. And Rick is not a manager of a nursing
14 unit --

15 A. No.

16 Q. -- right?

17 A. No, he's not.

18 JUDGE AMCHAN: Do you recall how many people
19 were at the meeting?

20 THE WITNESS: I would say maybe between ten
21 and twenty.

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. How long did the meeting last, as best you can
25 recall?

1 A. I honestly don't recall. It would be a pure
2 guess as for how long the meeting lasted.

3 Q. Okay. Where was the meeting held?

4 A. The meeting was held in Conference Room 1 in
5 the hospital.

6 Q. Was this the only meeting you attended with
7 Jerry O'Brien?

8 A. No.

9 Q. You had attended other meetings with him, as
10 well, in the course of --

11 A. Yes.

12 Q. -- the period before the election?

13 A. Yes.

14 Q. Okay. Was there a normal frequency of
15 meetings?

16 MR. BRYAN CARMODY: Objection, Your Honor.
17 Relevance.

18 JUDGE AMCHAN: What's the relevance?

19 MS. LAWHON: Well, I think -- I mean,
20 basically, we're going to Employer knowledge here, but I
21 can -- I'm not sure that I -- I can move on.

22 JUDGE AMCHAN: Well, I mean, he already
23 conceded that he knew that --

24 MS. LAWHON: Right.

25 JUDGE AMCHAN: -- she was active in the

1 Union, active enough to have her picture on the Union

2 flyer --

3 MS. LAWHON: Right.

4 JUDGE AMCHAN: -- which he saw.

5 MS. LAWHON: Right.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. Just one more question about the meeting he
9 does remember. Mr. McDonald, there were no employees
10 present at that meeting; isn't that correct?

11 A. I do not believe so.

12 Q. Okay. I think --

13 A. Again, it's -- it's -- it's tough because I
14 don't remember.

15 Q. I understand. To the best of your
16 recollection, it was managers.

17 A. To the best of my recollection, it was managers
18 only.

19 Q. Okay. Who attended the meeting that you
20 previously talked about; right?

21 A. In addition to administrators, yes.

22 Q. Okay. Now, I'd like to go back to Pages 18 to
23 20 of General Counsel's Exhibit 7.

24 So looking first, I believe you testified on --
25 when counsel for the General Counsel was asking you that

1 you believed Pages 18 to 20 were all falsified; is that
2 right?

3 A. From the best we could gather from our
4 investigation, yes.

5 Q. Okay.

6 JUDGE AMCHAN: Meaning that nothing on it is
7 true?

8 THE WITNESS: Let me read over it just to be
9 certain. I believe that is correct.

10 CROSS-EXAMINATION (CONT'D)

11 BY MS. LAWHON:

12 Q. Now, in the normal course of events, a nurse
13 often does charting at the end of the shift; isn't that
14 correct, Mr. McDonald?

15 MR. BRYAN CARMODY: Objection, Your Honor.
16 The witness has already testified that his knowledge of
17 nurses is very limited.

18 JUDGE AMCHAN: Well, does he know -- what he
19 can -- do you know whether that's true or not?

20 THE WITNESS: My knowledge of standard
21 nursing practice is very limited. I do not know.

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. I'm not asking you about standard nursing
25 practice, Mr. McDonald. Do you know when nurses do their

1 charting?

2 A. No, I do not.

3 Q. Do you know that nurses are required to chart?

4 A. Yes, I do.

5 Q. And -- okay. So I think, if I understood you

6 correctly, you believe that everything written by Ann Wayt

7 on Page 18, which is everything under the column that says

8 at nine; right? That's Page 28; right?

9 A. Yes.

10 Q. Okay. And Page 19, everything written on the

11 column on the left; right?

12 A. Left, yes.

13 Q. Okay. And Page 20, everything written on the

14 column of the left --

15 A. Left.

16 Q. -- it's your testimony that every single one of

17 those entries has no relation to Ann's interaction with

18 the patient; is that correct?

19 A. That is correct.

20 Q. And the basis for that is two other nurses who

21 said they didn't see her do the assessment; is that right?

22 A. Yes.

23 Q. Nothing else; right?

24 A. No, it was the statement from those two nurses

25 that stated that she was not performing this assessment.

1 Q. You don't know how long it takes to do a
2 nursing assessment, do you, Mr. McDonald?

3 A. No, I don't. That's why I relied on my
4 clinical manager Paula Zinsmeister to perform the
5 investigation, also.

6 Q. Well, Ms. Zinsmeister doesn't know whether this
7 assessment was done or not; isn't that correct? She was
8 on vacation; right?

9 A. She was on vacation when this was done, again,
10 just --

11 Q. Right.

12 A. -- based on our investigation.

13 JUDGE AMCHAN: She was on vacation on August
14 28th.

15 THE WITNESS: Yes.

16 CROSS-EXAMINATION (CONT'D)

17 BY MS. LAWHON:

18 Q. So, again, it's the word of two nurses who
19 testified they didn't see Ann do an assessment that leads
20 you to the conclusion that every single one of these
21 entries on these three pages is falsified?

22 A. At first we honestly didn't know what to
23 believe, that's --

24 Q. Excuse me.

25 A. -- why we started the investigation.

1 Q. Mr. McDonald, answer the question.

2 MR. BRYAN CARMODY: Your Honor, that's

3 inappropriate for counsel to interrupt when the witness is

4 not even into his answer.

5 JUDGE AMCHAN: Well --

6 MS. LAWHON: I'm not asking at first.

7 JUDGE AMCHAN: No, I think she wants him to

8 answer the question that she asked, which I don't think he

9 was doing.

10 THE WITNESS: Well, I'm sorry. What was the

11 question again?

12 MS. LAWHON: Okay. Is it possible to get it

13 read back, or --

14 JUDGE AMCHAN: Probably not.

15 CROSS-EXAMINATION (CONT'D)

16 BY MS. LAWHON:

17 Q. No. Okay. So Mr. McDonald, it's your

18 testimony that your reason for believing that

19 documentation was falsified on these three pages was

20 solely based on the word of two nurses who said they

21 didn't see Ann do it. Isn't that right?

22 A. Part of the reason, yes.

23 Q. What other reason do you have to believe this

24 documentation is falsified, other than the word of those

25 two nurses that they didn't see her do it?

1 A. Those two nurses' stories stayed very
2 consistent. And what happened with Ann was that her
3 initial story, her initial claim in the investigation was
4 that this was performed at o-nine hundred, nine o'clock in
5 the morning.

6 And then after receiving further documented proof
7 submitted by Ann that it was then changed to it was
8 possibly done at eleven thirty or noon, so another time.

9 Q. Okay. There was never any story change with
10 respect to Ms. Wayt's statement that she perform the
11 assessment; isn't that correct?

12 A. No, there was never any story change that she
13 performed the assessment.

14 Q. Right. She maintained from minute one that she
15 had done the assessment; isn't that correct?

16 A. Yes.

17 Q. The only issue is whether it was properly
18 written as at nine, or should have been written at eleven
19 or twelve; is that correct?

20 A. That's part of the issue, yes.

21 Q. Just so I understand you correctly,
22 Mr. McDonald, you're saying not that the time is wrong,
23 but that she never did -- she never checked the patient in
24 all of the respects that are indicated on Pages 18, 19,
25 and 20; isn't --

1 A. Those were the --

2 Q. -- that correct?

3 A. Those were the results of our investigation,

4 yes.

5 MS. LAWHON: Nothing further.

6 EXAMINATION

7 BY JUDGE AMCHAN:

8 Q. I have a question. The time in and out at the

9 very top of Page 18, is that correct, that -- I mean, she

10 -- her initials are there, it looks to me, at nine

11 o'clock. And then until twenty-one forty.

12 A. I am not an expert on this form. The way that

13 I believe it is done, is that the time they've marked

14 there is the time that that row, or that column was

15 completed.

16 I do not believe that's time in and out; however,

17 that would be something that I would have to defer to Bill

18 Osterman or Paula Zinsmeister.

19 Q. There was some other -- on Page 26, kind of

20 halfway down there's -- where it says nine a.m., there's

21 o-nine-three-five, and there's a check admit, and there's

22 some initials at the end. Do you know what that means?

23 A. I am not familiar with this form. I know it's

24 the community cares rounding log from reading it, but it's

25 not something that I would use on a day-to-day basis.

1 Q. But you don't know what the significance of
2 that entry is?

3 A. No.

4 Q. You've -- if nine o'clock is the time,
5 nine a.m. is the time that Ms. Wayt became responsible for
6 the patient, does that mean that the patient would have
7 been in the ER before? I mean, if you know one way or the
8 other.

9 A. I know the patient was in the ER previous to
10 coming to the Orthopedic Spine Center, yes.

11 Q. So while she -- while the patient was in the
12 ER, would there be any reason, or any way that a nurse
13 from the Ortho Unit would do a round check to check on
14 her?

15 A. Not that I can think while they're still in the
16 Emergency Room, no.

17 Q. So what I'm asking you, really, on Page 23, if
18 she didn't start until nine or ten, isn't it apparently
19 obvious that that's a mistake where the position checks
20 are?

21 A. Again, it could be a mistake. But when I
22 brought this document to Ms. Wayt's attention --

23 Q. Uh-huh.

24 A. -- and she initialed over there to the left of
25 it --

1 Q. Yes.

2 A. -- there was never any indication that that was
3 a mistake. I -- from being -- from being a physical
4 therapist and clinician and documenting, I mean, that
5 would -- I would see that very quickly.

6 Q. But my question really is, isn't it obvious
7 it's a mistake, rather than her trying to actively mislead
8 you that, or mislead whoever looks at this record that she
9 actually checked on the patient's position between seven
10 and nine.

11 If the patient was in the ER, there'd be
12 absolutely no reason for her to do that.

13 A. No, there wouldn't be.

14 Q. Am I correct?

15 A. Not between seven and nine, no.

16 JUDGE AMCHAN: Okay.

17 MS. LAWHON: I have another question that's
18 raised by Your Honor's question.

19 RECROSS-EXAMINATION

20 BY MS. LAWHON:

21 Q. Mr. McDonald, when you questioned Ann about the
22 nine o'clock time, you did not inform her that the patient
23 did not arrive on the unit until after nine; isn't that
24 correct?

25 A. No. We informed her that we were auditing this

1 chart.

2 Q. Please answer my question, Mr. McDonald. When
3 you told Ann that you were auditing the chart and asked
4 about the nine o'clock, you did not inform her, at that
5 time, that the patient was not yet on the Ortho Unit;
6 isn't that correct?

7 A. That is correct.

8 JUDGE AMCHAN: Do you have anything else?

9 MS. LAWHON: No.

10 MR. BRYAN CARMODY: No, sir.

11 JUDGE AMCHAN: You don't have any questions
12 for him?

13 MR. BRYAN CARMODY: No, I do not.

14 JUDGE AMCHAN: You can step down. Thank you.

15 THE WITNESS: Thank you.

16 (WITNESS EXCUSED.)

17 JUDGE AMCHAN: Let's go off the record.

18 (Off the record.)

19 JUDGE AMCHAN: Back on the record.

20 MS. CENDROSKY: At this time, General Counsel
21 calls Susan Kress to the witness stand.

22 JUDGE AMCHAN: If you'd raise your right
23 hand.

24 WHEREUPON,

25 SUSAN KRESS,

1 A witness herein, having been first duly cautioned and
2 sworn, was examined and testified as follows:

3 JUDGE AMCHAN: Have a seat. Be sure and keep
4 your voice up, because our -- I was going to say that
5 microphone is just a recording device, so you have to keep
6 your voice up.

7 THE WITNESS: Okay.

8 DIRECT EXAMINATION

9 BY MS. CENDROSKY:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. My name is Sharlee Cendrosky. I am counsel for
13 the Acting General Counsel of the United States National
14 Labor Relations Board. Can you please state and spell
15 your name, for the record?

16 A. Susan Kress, (S-U-S-A-N) (K-R-E-S-S).

17 Q. What I'd like for you to do is if you cannot
18 hear my question or if you don't understand it, just let
19 me know.

20 A. Sure.

21 Q. Where do you live?

22 A. I live in Alliance, Ohio.

23 Q. And by whom are you employed?

24 A. Affinity Medical Center.

25 Q. And if I refer to Affinity Medical Center as

1 either Affinity or the hospital, will you know who I'm

2 referring to?

3 A. I will.

4 Q. What's your position at Affinity?

5 A. I am director of Critical Care Services.

6 Q. Do you have -- is that your job title?

7 A. It is.

8 Q. Does Critical Care Services have a common

9 acronym?

10 A. We have -- not really. We have an ICU, a
11 CVS-ICU. And when the 2400 Unit is open, I oversee that
12 unit, also.

13 Q. So it's true that you are also considered the
14 manager of the CVS-ICU?

15 A. Yes.

16 Q. Okay. How long have you held your current
17 position?

18 A. I've had all three departments since October of
19 2012.

20 Q. And prior to October of 2012, what position did
21 you hold, or which departments did you oversee?

22 A. I was manager of staff education, and director
23 of nursing operations before that. And, also, the
24 critical educator for the ICU whom were ed doctors.

25 Q. Ms. Kress, are you testifying here pursuant to

1 the subpoena I issued you; correct?

2 A. I am.

3 Q. Now, what are your responsibilities as the

4 manager of the CVS-ICU?

5 A. Day-to-day operations, ordering supplies, staff

6 competencies, taking care of setting up orientation for

7 all new staff members, budget control.

8 Q. Do you --

9 A. Probably many more that I forget, but a lot.

10 Q. Do you supervise employees?

11 A. I do.

12 Q. Which ones?

13 A. The Intensive Care Unit employees, the CVS-ICU.

14 Q. Do you ever have occasion to supervise

15 employees in other departments or units?

16 A. I do.

17 Q. And --

18 A. When I cover for --

19 Q. Go ahead.

20 A. Oh. When I cover for other directors who are

21 going on vacation.

22 MS. CENDROSKY: Your Honor, I respectfully

23 request that I be allowed to examine this witness pursuant

24 to 6(11)(c) of the Federal Rules of Evidence.

25 JUDGE AMCHAN: Okay. All that means is she

1 can ask you leading questions. CVS-ICU is?

2 THE WITNESS: Is the Open Heart Intensive
3 Care Unit, sir.

4 JUDGE AMCHAN: Okay. So there's a separate
5 ICU for --

6 THE WITNESS: Medical and --

7 JUDGE AMCHAN: -- open heart surgery, as
8 opposed to other things?

9 THE WITNESS: Uh-huh.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. CENDROSKY:

12 Q. Can you tell us what CVS-ICU stands for?

13 A. Cardiovascular Surgical Intensive Care Unit.

14 Q. Describe for me the location of the CVS-ICU in
15 the hospital.

16 A. It is on the first floor next to Senior Mental
17 Health.

18 Q. And where is that in reference to the
19 Orthopedic Unit?

20 A. The Orthopedic is on the third floor directly
21 above us.

22 Q. Directly above, okay. Does the hospital have a
23 cafeteria?

24 A. They do.

25 Q. Do you ever visit the cafeteria?

1 A. Very rarely. I don't eat lunch much there.

2 Q. Do you get coffee or other beverages from the
3 cafeteria?

4 A. Sometimes, uh-huh.

5 Q. Do you recall when the last time you visited
6 the cafeteria?

7 A. Actually, it was this morning.

8 Q. Are you familiar with a former employee named
9 Ann Wayt?

10 A. I am.

11 Q. And how long have you known Ann?

12 A. For the duration that I've worked at Affinity,
13 which is about six years.

14 Q. Are you aware that she's the subject of
15 litigation here today?

16 A. I am.

17 Q. Isn't it true that you prepared a sworn
18 affidavit related to the termination of Ann Wayt for our
19 agency?

20 A. I gave a sworn affidavit of my testimony of the
21 accounts that happened.

22 JUDGE AMCHAN: Can I just back up for a
23 second. In the organizational hierarchy, how do you fit
24 in with Mr. Osterman and Mr. McDonald? Do either of them
25 report to you, you report to them, or --

1 THE WITNESS: I report to Bill Osterman.

2 Jason and I are on the same level.

3 JUDGE AMCHAN: Okay.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. CENDROSKY:

6 Q. Isn't it also true that you prepared a signed
7 letter that was then submitted to the State Board of
8 Nursing regarding Ann Wayt's patient care on August 28th,
9 2012?

10 A. Did I sign a letter? No, ma'am.

11 Q. Let me show you --

12 A. Unless the letter that I gave of my accounts of
13 all the things was turned in. I don't know what was
14 turned in.

15 Q. Okay. So let me show you what I am referring
16 to. Actually, if you look at General Counsel's Exhibit
17 Number 7, which is -- should be in front of you.

18 JUDGE AMCHAN: I think it's the one to your
19 right, with your right hand.

20 Q. It's a packet.

21 A. Oh, okay.

22 Q. And if on the --

23 A. I never saw this.

24 Q. Okay.

25 A. Okay.

1 Q. But if you flip to Page 13.

2 A. Uh-huh. Those are my accounts of the
3 happenings.

4 Q. So --

5 A. Yes.

6 Q. So you signed this letter?

7 A. I did.

8 Q. Did you write the letter?

9 A. I did.

10 Q. Okay.

11 A. Uh-huh.

12 Q. Did you type the letter?

13 A. I did.

14 Q. Okay. Great.

15 A. But I didn't know it was turned in, so sorry.

16 Q. That's fine.

17 A. Okay.

18 Q. Isn't it true that the reasons listed by the
19 hospital for Ann's discharge are falsifying patient
20 records and failing to provide proper patient care on
21 August 28th, 2012?

22 A. As far as I am aware, yes.

23 Q. Which patient record or records did Ann Wayt
24 falsify?

25 A. LP's.

1 Q. I'm sorry.

2 MS. LAWHON: Move to strike.

3 MR. DON CARMODY: Oh, strike. Strike.

4 MS. CENDROSKY: I'm going to move to strike
5 that answer.

6 JUDGE AMCHAN: I guess they have -- your
7 Employer has some concern about the HIPAA thing, so can we
8 delete that from the -- the name of the -- the name of the
9 patient should be deleted from the transcript.

10 MR. DON CARMODY: Your Honor, it might be
11 advisable if the witness understood from you that she is
12 free not to use the patient's name.

13 JUDGE AMCHAN: Right. We -- we'll just --

14 MR. DON CARMODY: And given a question like
15 that, it was --

16 THE WITNESS: Sorry.

17 JUDGE AMCHAN: -- we'll refer to "the
18 patient."

19 THE WITNESS: Okay.

20 JUDGE AMCHAN: All right.

21 MR. DON CARMODY: Thank you.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. And I'm going to actually -- I'm going to
25 rephrase the question so, hopefully, you can understand a

1 little better. Which records is Ann Wayt accused of

2 falsifying?

3 A. The 24-Hour Assessment, and an hourly rounding

4 form.

5 Q. I'm going to direct your attention to August

6 28th, 2012. Were you the acting manager of the Orthopedic

7 Unit that day?

8 A. I was.

9 Q. Isn't it true that the Orthopedic Unit was very

10 busy that day?

11 A. It is.

12 Q. How many times did you visit the Orthopedic

13 Unit that day?

14 A. Twice.

15 Q. And if you look at General Counsel's Exhibit 7,

16 Page 13, isn't it also true that you signed the letter and

17 you reported that, "Rhonda Smith, a CVOR nurse, said there

18 was a lot of laughter at the nurse's station all day."

19 MR. BRYAN CARMODY: Counsel, can you direct

20 us to a particular part of this page?

21 MS. CENDROSKY: Yes. It's the very last

22 paragraph.

23 THE WITNESS: That's what she reported to me.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. CENDROSKY:

1 Q. Isn't it also true in your account that you
2 failed to mention that the unit was very busy that day?

3 A. I didn't fail to report, I just didn't report
4 it.

5 Q. You didn't put that in your letter.

6 A. No, I didn't.

7 Q. Okay. Isn't it true that you testified in your
8 affidavit that the patient had a skin tear on the
9 patient's elbow, a large blister on the patient's foot,
10 and a persistent cough?

11 A. Yes, it is. Really, it wasn't on the elbow, it
12 was like right -- right here, not here.

13 Q. Okay.

14 A. This right here.

15 Q. Isn't it also true --

16 JUDGE AMCHAN: Well, just -- the witness
17 gestured --

18 THE WITNESS: Oh, I'm sorry.

19 JUDGE AMCHAN: -- sort of the front --

20 THE WITNESS: Left --

21 JUDGE AMCHAN: -- the front part of forearm.

22 THE WITNESS: Yeah.

23 JUDGE AMCHAN: The left forearm.

24 THE WITNESS: Yeah.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. CENDROSKY:

2 Q. Isn't it also true that you testified in your
3 affidavit that Ann did not note these conditions on the
4 patient's chart?

5 A. I did not see them when I audited the chart,
6 yes.

7 Q. And these conditions are required to be noted
8 by the hospital policy; correct?

9 A. Yes.

10 Q. Okay. And isn't it also true that on August
11 29th, according to your affidavit, you carefully reviewed
12 the patient's chart and noticed that these conditions were
13 not documented by Ann Wayt?

14 A. Uh-huh. Yes.

15 Q. And isn't it also true that the lack of these
16 notations, the skin tear, the blister, and the persistent
17 cough on the patient's chart, that you concluded that Ann
18 failed to provide adequate patient care?

19 A. No. I failed to conclude that she had charted
20 the things that I noticed in ten minutes on the patient.

21 Q. So it's your testimony today that she failed to
22 chart these notations.

23 A. She failed to chart that accordingly. I also
24 -- I also noted that she charted it -- an inappropriate
25 time from when the patient got to the unit than what was

1 on the document.

2 Q. Isn't it true that Ann told you that she forgot

3 to perform the skin assessment that day, and that is --

4 A. I --

5 Q. -- why the skin assessment was not noted on the

6 patient's chart?

7 A. No, she never told me that.

8 Q. Okay. I'm showing you -- well, it's actually

9 in front of you, General Counsel's exhibit Number 7. I'd

10 like to direct your attention to Page 19 through 26 of

11 that document.

12 Actually, is 18 through 26. If you could take a

13 minute to look through Pages 18 through 26. Can you turn

14 to the page within this chart that would have charting for

15 a skin assessment?

16 A. Okay.

17 Q. Now, is this the patient's chart that you

18 reviewed? I should probably ask you that first.

19 A. I --

20 Q. Looking at this --

21 A. -- it is.

22 Q. Okay. And what page are you on that has the

23 skin assessment?

24 A. Page 21.

25 Q. Okay. I'd like to direct your attention to the

1 section that says, "Surgical wound on the left." And at
2 the top it says, "7 a. to 7 p."

3 A. Correct.

4 Q. What does that time frame represent?

5 A. The day shift on the Orthopedic Unit.

6 Q. And do you know who the day shift nurse --

7 JUDGE AMCHAN: You have to keep your voice
8 up. She's not picking you up.

9 THE WITNESS: Okay. Sorry. Day shift on the
10 Orthopedic Unit from 7 a. to 7 p.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. CENTROSKY:

13 Q. Would that have been Ann Wayt?

14 A. Yes, it would have.

15 Q. And if we look next to the time, there's a box
16 that says, "Skin intact."

17 A. Correct.

18 Q. Do you see that? Is that marked?

19 A. No.

20 Q. Now, let's go to the bottom of the same
21 section, 7 p. to 7 a. Do you see that?

22 A. I do.

23 Q. Okay. And then you see a checkmark in the box
24 that says, "Skin intact"?

25 A. I do.

1 Q. And who would have made that checkmark?

2 A. The night nurse.

3 Q. Okay. So let me ask you this. Is a skin tear

4 blister or abrasion considered skin intact?

5 A. No, it is not.

6 Q. Okay. So, and those conditions are not noted

7 in this section; correct?

8 A. That's correct.

9 Q. Okay. Let's turn to Page 25 of this -- I'm

10 sorry, make sure I have the right page, yes, Page 25 of GC

11 Exhibit Number 7.

12 A. Uh-huh. Yes.

13 Q. We have a signature page. The left-hand

14 column, do you recognize that signature?

15 A. On the left-hand?

16 Q. Yes.

17 A. Ann Wayt.

18 Q. And on the right-hand?

19 A. I do not recognize that signature.

20 Q. Okay. Is it fair to say that the signature on

21 the right-and would be the night nurse?

22 A. It would be fair to assume, yes.

23 Q. Okay. Now, do you recall having any discussion

24 with the night nurse about her failure to document the

25 skin tear blister, or other issues with the patient's skin

1 that day?

2 A. I did not have a discussion with that nurse.

3 Q. Do you know why? Why you didn't have a

4 discussion with her?

5 A. Because that is a minor -- minor thing that

6 could be addressed when the director got back.

7 Q. But it is hospital policy to make sure that

8 those conditions are noted on the chart; right?

9 A. That is correct.

10 Q. Okay. Can you turn to the page in GC's Exhibit

11 Number 7 where you would find the notation that a patient

12 had a cough?

13 A. I do.

14 Q. Okay. Isn't it true that you testified in your

15 affidavit that the patient -- that you observed that the

16 patient had a cough that day?

17 A. I do. When I observed that -- when I observed

18 the patient having the cough, the patient was flat. We

19 were transferring the patient from the cart --

20 Q. Okay.

21 A. -- to the bed.

22 Q. Where on Page 18 -- are you looking at Page 18?

23 A. I'm looking at Page 19.

24 Q. Page 19. Okay. Where on Page 19 would you

25 make a chart or notation of a cough?

1 A. It would be under cough.

2 Q. Okay. And if we look at that row, there

3 appears to be the first character. Do you recognize that?

4 A. "A" for absent.

5 Q. Okay. And then the character that would be --

6 A. "D" for dry --

7 Q. "D" for dry.

8 A. -- for the next shift.

9 Q. Okay. So there are one, two, three, four,

10 five, six, seven different columns in the row for cough;

11 correct? You can count them if --

12 A. That's correct.

13 Q. Okay. Why are there so many different columns?

14 A. I don't know. I don't chart on this form.

15 Q. Okay. Is it fair to say that a patient could

16 have a cough at one time of the day, and then later on not

17 have a cough?

18 A. Absolutely.

19 Q. Okay.

20 JUDGE AMCHAN: So you saw the patient

21 yourself, personally.

22 THE WITNESS: Yes, sir. I was in the room

23 when the patient got to the unit.

24 JUDGE AMCHAN: And do you know what time that

25 was?

1 THE WITNESS: Approximately nine fifteen.

2 JUDGE AMCHAN: And is that when -- at what
3 time did Ms. Wayt take -- did she become responsible for
4 the patient?

5 THE WITNESS: She should have taken
6 responsibility as soon as the patient got there.

7 JUDGE AMCHAN: At nine fifteen.

8 THE WITNESS: Yes, sir.

9 JUDGE AMCHAN: And she had come from the
10 Emergency Room, the patient?

11 THE WITNESS: Yes, sir.

12 JUDGE AMCHAN: Is there any way that she
13 would have done a round to look at the patient while she
14 was in the Emergency Room?

15 THE WITNESS: No, sir.

16 JUDGE AMCHAN: Okay. So you were there when
17 the patient was transferred at nine fifteen. How long
18 were you physically with the patient?

19 THE WITNESS: I was there about ten minutes.

20 JUDGE AMCHAN: What -- did you see the
21 patient again during the -- during that day?

22 THE WITNESS: No, I didn't.

23 JUDGE AMCHAN: Yes, go ahead. If I'm -- I'm
24 not talking --

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. CENDROSKY:

2 Q. Isn't it also true in your affidavit that you
3 testified you spoke with Sam Burgett and asked him if he
4 remembered anything about the patient in question, or
5 Ann's care of that patient?

6 A. I did.

7 Q. And isn't it also true that Sam told you that
8 he had been very busy that day and did not remember
9 anything?

10 A. That is correct.

11 Q. Isn't it true that you were aware that Ann
12 supported the Union?

13 A. That is correct.

14 Q. And isn't it also true that you were aware that
15 Ann's photograph and quote were used on a union flyer that
16 was circulated around the hospital?

17 A. That is correct.

18 Q. And do you recall when you had this knowledge?

19 A. Particular day, no.

20 Q. Okay. How about was it before the Union
21 election?

22 A. Yes.

23 Q. A week before, two weeks before?

24 A. I don't know. I mean, I really don't. I mean,
25 I knew --

1 Q. Okay.

2 A. -- but I don't know a particular day. I'm
3 sorry.

4 Q. That's fine. Are you familiar with a former
5 employee named Kelly Sawyer?

6 A. I am.

7 Q. How long have you known Kelly Sawyer?

8 A. I think she was a nurse in the Intensive Care
9 Unit just for a couple of weeks, and that's all I ever
10 knew of her.

11 Q. Are you aware that she is also the subject of
12 litigation here today?

13 A. Of litigation?

14 Q. Uh-huh.

15 A. No.

16 Q. Isn't it true that you supervised Kelly Sawyer
17 on occasion?

18 A. It is.

19 Q. Are you familiar with a form called or known as
20 the Assignment Despite Objection Form?

21 A. I am.

22 Q. Isn't it true on several occasions nurses
23 filled out these Assignment Despite Objection Forms and
24 then gave them to you?

25 A. I was never personally given one.

1 Q. Did they place them in your mailbox or under
2 your door?

3 A. They did.

4 Q. Isn't it true that sometime in late December or
5 early January you asked Kelly Sawyer about a medical error
6 that you found on a chart that was done by Pam Gardner?
7 Do you recall --

8 A. Not --

9 Q. -- do you recall asking Kelly Sawyer -- I'm
10 sorry. Do you recall asking Kelly Sawyer about a chart,
11 and there was an error on this chart?

12 A. No. I recall having a discussion with Kelly
13 Sawyer about an error that she did on a chart.

14 Q. Do you know who Pam Gardner is?

15 A. I do.

16 Q. Do you know if Pam Gardner's a supporter of the
17 Union?

18 A. I do.

19 Q. And what is -- do you know --

20 A. She is.

21 Q. She is.

22 MS. CENDROSKY: Can I have a few minutes,
23 Your Honor?

24 JUDGE AMCHAN: Sure. Go off the record.

25 (Off the record.)

1 JUDGE AMCHAN: Back on the record.

2 MS. CENDROSKY: I am finished with the
3 witness.

4 JUDGE AMCHAN: Okay. Do you have any
5 questions, Ms. Lawhon?

6 MS. LAWHON: Yes. First, are there any
7 statements?

8 MS. CENDROSKY: Yes.

9 MS. LAWHON: Thank you.

10 JUDGE AMCHAN: Go off the record.

11 (Off the record.)

12 JUDGE AMCHAN: Back on the record.

13 MR. DON CARMODY: Your Honor, if I may, I
14 just want to -- I'm not going to continue to make the
15 observation.

16 I'll just assume for the sake of going forward in
17 the trial, that anytime that the Charging Party counsel
18 asks for a copy of a statement provided by the Board, the
19 General Counsel's made the determination it's a Jencks
20 declaration.

21 And that's the basis for turning the statement
22 over to the Charging Party.

23 MS. LAWHON: If counsel is so troubled by it,
24 I can say are there any Jencks statements? I mean, in my
25 experience in many years of Board litigation, when an

1 attorney says are there any statements, that's what that
2 means.

3 JUDGE AMCHAN: We'll go --

4 MR. DON CARMODY: I'm focusing on the General
5 Counsel's determination to turn it over, sir.

6 JUDGE AMCHAN: Well, I guess either you have
7 or you haven't, and whether it matters is another
8 question.

9 So you've made a determination it's a Jencks
10 statement, or it's just a statement, or what have you
11 determined?

12 I mean, I already gave it to her, and I'm
13 probably going to let her have others, so --

14 MS. CENDROSKY: I believe it falls under
15 Jencks as a statement.

16 MR. DON CARMODY: Thank you, sir.

17 JUDGE AMCHAN: Okay.

18 CROSS-EXAMINATION

19 BY MS. LAWHON:

20 Q. Good afternoon, Ms. Kress.

21 A. Hi.

22 Q. I'm Jane Lawhon. I'm the attorney for NNOC.
23 Now, you testified that Ann should have taken the patient
24 at nine fifteen. Do you remember that?

25 A. She should -- she should have assumed care of

1 the patient.

2 Q. Well, you said should have taken the patient.

3 But you meant should have assumed care of the patient.

4 Now, in fact, you had told Ann before the patient
5 even arrived on the unit that you would find a sitter for
6 the patient, even if it meant you, yourself, had to sit as
7 the sitter.

8 A. A sitter and assuming care of a patient are two
9 different things, ma'am.

10 Q. I understand. Isn't it correct, Ms. Kress,
11 that you had told Ann that you would find the sitter for
12 the patient even if it meant that you, yourself, would
13 need to serve as the sitter.

14 A. I did.

15 Q. Okay. And, in fact, you came up to the Ortho
16 Unit after you spoke to Ann, and Ann thanked you for your
17 help in admitting this patient; isn't that correct?

18 A. I didn't admit the patient. I transferred the
19 patient from a gurney to a bed.

20 Q. Okay. Ann had taken report on the patient from
21 the ER by telephone; isn't that correct, Ms. Kress?

22 A. I don't know. They usually fax a report.

23 Q. Okay.

24 A. And it's called an SBAR.

25 Q. Okay. You have no reason to believe that Ann

1 did not take a report on the patient; isn't that correct?

2 A. That's correct.

3 Q. So what you were doing was not caring for the
4 patient, you were serving as the sitter; isn't that
5 correct?

6 A. No, I wasn't. At the time I got to the room, a
7 sitter had arrived. I said that I would sit with the
8 patient if none was provided. But a sitter was provided
9 for her.

10 Q. Isn't it true that it was a few minutes after
11 you brought the patient to the room that the sitter first
12 appeared?

13 A. A minimum of two minutes, probably.

14 Q. And that sitter was Rhonda Smith.

15 A. Yes, ma'am.

16 JUDGE AMCHAN: So Ms. Smith is an RN;
17 correct?

18 THE WITNESS: She is.

19 JUDGE AMCHAN: But as a sitter she's not
20 supposed to touch the patient?

21 THE WITNESS: Unless the arrangements are
22 made of that, and there were no arrangements made for
23 that, sir.

24 CROSS-EXAMINATION (CONT'D)

25 BY MS. LAWHON:

1 Q. You have no reason to believe that Ann did not
2 assume care of the patient at the time the patient arrived
3 on the unit; isn't that --

4 A. She --

5 Q. -- correct, Ms. Kress?

6 A. She was not in the room when I was.

7 Q. That's correct. But that is not the same as
8 assuming care for the patient; isn't that correct?

9 A. Like I said, she was not in the room when I was
10 there.

11 Q. And you have no reason to believe that although
12 she was not in the room, she had not assumed care of the
13 patient; right?

14 A. From the investigation that I did, I was told
15 that she did not go in the room to assume care of the
16 patient.

17 Q. Right. But --

18 JUDGE AMCHAN: I think, just so we -- I think
19 what she's asking you, you wouldn't assume -- you wouldn't
20 conclude that she didn't assume care of the patient just
21 from the fact that --

22 THE WITNESS: No. You're right.

23 JUDGE AMCHAN: -- she wasn't there at nine --
24 between nine fifteen and nine twenty-five.

25 THE WITNESS: Correct.

1 MS. LAWHON: Thank you, Your Honor. Exactly.

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. LAWHON:

4 Q. Now, with -- could you look at Page 23,

5 Ms. Kress, of General Counsel's Exhibit 7? It's a part of

6 the 24-Hour Assessment. Are you there?

7 A. I am.

8 Q. Okay. So you see there's eight lines for --

9 eight lines with various things to be indicated, starting

10 with pain level goal, and -- actually, I think it's six

11 lines and then "other." Do you see that there on the left

12 column?

13 A. Yes.

14 Q. Next to community care's rounding; right?

15 A. Yes.

16 Q. Okay. And with respect to five of the six

17 columns, there's no entry before ten o'clock; isn't that

18 correct?

19 A. That's correct.

20 Q. And if you turn to the next page, on 24, and

21 there's a number of indications under the heading

22 "Safety," it looks like there are eight different

23 observations that can be made. Do you see that?

24 A. I do.

25 Q. And not a single one of them is filled in

1 before ten o'clock; isn't that correct?

2 A. Yes.

3 Q. And at ten o'clock the patient was on the Ortho

4 Unit and assigned to Ann Wayt; isn't that correct?

5 A. That's correct.

6 Q. I'd like you to compare on Page -- starting on

7 Page 18 of the 24-Hour Assessment. With respect to the

8 difference with respect to a cough, whereas it was

9 assessed by Ann as absent, and assessed by the night nurse

10 as a dry cough, these assessments of the patient are

11 roughly consistent; isn't that correct, Ms. Kress? Please

12 look at them as an experienced nurse.

13 A. Absent and dry?

14 Q. No. I'm not asking you that.

15 A. Okay.

16 Q. I said with the exception of the entry with

17 respect to cough, there are many items here, speech,

18 affect --

19 A. There are.

20 Q. -- compliance, all different categories. And

21 I'm saying with the exception of cough --

22 A. And --

23 Q. -- these assessments are roughly --

24 A. And pulses, because no pulses were ever charted

25 during the shift of Ann's.

1 Q. However, they both charted the heart sounds as
2 regular; isn't that correct?

3 A. They did.

4 Q. Okay. And pulses are related to the heart
5 sounds; isn't that correct?

6 A. No.

7 Q. Okay. They just happen to be under
8 cardiovascular for an arbitrary reason?

9 A. Well, pulses in the -- there's pulses in the
10 upper extremities, and pulses in the lower extremities.

11 Q. I understand. I understand. But there's --
12 I'm not asking you if everything is filled in. I'm saying
13 from what is filled in here --

14 A. There are a lot of similarities.

15 Q. Yes. In fact, there's nothing really different
16 with the exception of the cough; isn't that correct?

17 A. And the pulses that weren't charted, yes.

18 Q. Right. But that's not a difference; isn't that
19 correct, Ms. Kress?

20 A. No. It's just no charting.

21 Q. Correct. So the night nurse -- you stated in a
22 sworn affidavit that the notations Anne made on her hourly
23 rounding sheet indicated a patient in much better
24 condition than the patient --

25 A. Not on the hourly rounding sheet. The hourly

1 rounding sheet doesn't say anything about the condition of
2 the patient. The 24-Hour Assessment does.

3 Q. Ms. Kress, I'm reading from your sworn
4 affidavit. I will show it to you.

5 A. Okay.

6 Q. Directing your attention, Ms. Kress, to Page 6,
7 the fourth line -- the fifth line from also the notations.

8 Would you read that aloud?

9 A. "Also the notations that Ann made on her hourly
10 rounding sheet indicated a patient in much better
11 condition than the patient in question."

12 Q. Okay. So now that you read this, you believe
13 it's less precise than you would like and you wish it said
14 the notations on the 24-Hour Assessment; is that your
15 testimony?

16 MR. BRYAN CARMODY: Objection, Your Honor.
17 That's argumentative.

18 JUDGE AMCHAN: Well, rephrase the question.

19 MS. LAWHON: Sure.

20 CROSS-EXAMINATION (CONT'D)

21 BY MS. LAWHON:

22 Q. It refers in your sworn affidavit to the
23 notations Ann made on her hourly rounding sheet. Would
24 you like to correct that now?

25 And you were referring to what notations, not the

1 hourly rounding sheet, but what?

2 A. I referred to both of them. The hourly

3 rounding sheet that I had seen that I don't see here,

4 there were checkmarks made starting at 7 a.m. all the way

5 down.

6 And on the 24-Hour Assessment, yes. What I saw

7 when I audited the chart, what I saw on the patient wasn't

8 what was documented by Ann, that is correct.

9 Q. Okay. Nor was it what was documented by the

10 night shift nurse following Ann; isn't that correct?

11 A. From what I've seen here, yes.

12 Q. So your disagreement with the charting was both

13 with Ann's charting and the night shift nurse's charting,

14 right, as compared to the condition you observed; is that

15 correct?

16 A. I didn't --

17 Q. Yes or no? If you can.

18 MR. BRYAN CARMODY: Your Honor, it's not for

19 counsel to dictate --

20 MS. LAWHON: If you can.

21 MR. DON CARMODY: There's an objection,

22 Counsel. It's not for counsel to dictate yes or no

23 answers, Judge.

24 JUDGE AMCHAN: Well, yes, it is. She's an

25 adverse witness. I mean, she can ask her a question that

1 calls for a yes or no answer. I mean, she can't --

2 THE WITNESS: I didn't -- I didn't look at
3 the night nurse's, sir. It wasn't of my concern. When I
4 audited the chart, I --

5 CROSS-EXAMINATION (CONT'D)

6 BY MS. LAWHON:

7 Q. Excuse me, Ms. Kress, really, there's no
8 question pending.

9 A. Okay.

10 Q. Would you direct -- I'd like to direct your
11 attention to Page 13 of General Counsel's Exhibit 7.

12 A. Okay.

13 Q. When did you create this document?

14 A. A lot of it I typed right after it happened so
15 I didn't forget. And then I did make a couple of changes
16 to it, because my grammar was horrible and I retyped it.

17 Q. Okay.

18 A. I don't know the specific date.

19 Q. Did you type the -- any of it on August 28th?

20 A. I did.

21 Q. Okay. Which portion?

22 A. "I was informed in the flash meeting at o-nine
23 hundred that the charge nurse Ann Wayt, or the Orthopedic
24 Unit refused a patient."

25 Q. I'm sorry, Ms. Kress --

1 A. The first --

2 Q. -- but you don't need to read it aloud.

3 A. Oh, okay.

4 Q. You can just describe it.

5 A. Okay. I really can't answer that. I mean, I
6 think I typed most of it that day.

7 Q. Well, you didn't type the stuff about August
8 29th on the 28th, I'm assuming?

9 A. No.

10 Q. Okay.

11 A. No.

12 Q. Okay.

13 A. The -- the events of the 28th.

14 Q. I see.

15 JUDGE AMCHAN: Well, I guess you had said
16 before that at some point you retyped some things because
17 of the grammar.

18 Did you retype the -- the thing that we're
19 looking at on Page 13, the events of 8/28/12, is that what
20 you typed on the 28th, or when you cleaned up your
21 grammar?

22 THE WITNESS: As far as I can remember, it is
23 what I typed.

24 JUDGE AMCHAN: On the 28th.

25 THE WITNESS: On the 28th.

1 CROSS-EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. Ms. Kress, you had no knowledge that there was
4 any problem with any incident in the Ortho Unit on the
5 28th until the 29th; isn't that correct?

6 A. That's when it was reported to me, yes, ma'am.

7 Q. Okay. So you would have had no reason to be
8 typing the events of August 28th on August 28th when you
9 didn't even know there was any problem; isn't that
10 correct?

11 A. That is correct.

12 Q. So --

13 A. Yes.

14 Q. So just to make sure I understand, even though
15 -- well, let me back up a little. You are aware that Ann
16 was highly regarded as a nurse at that hospital; is that
17 correct?

18 A. That's correct.

19 Q. And even though a nurse who had worked for the
20 hospital for over 20 years, even though there was
21 consideration of firing that nurse related to her
22 charting, you didn't think it was necessary to see how the
23 nurse after her charted; is that right?

24 A. That's not what I was investigating.

25 Q. Okay. Thank you.

1 MS. LAWHON: No further questions.

2 JUDGE AMCHAN: Anything?

3 MR. BRYAN CARMODY: No, Your Honor.

4 JUDGE AMCHAN: You can step down.

5 THE WITNESS: Thank you.

6 (WITNESS EXCUSED.)

7 JUDGE AMCHAN: So we're going to break for
8 the evening and start at nine thirty. Is that the plan?

9 MR. BRYAN CARMODY: Yes, sir.

10 MS. LAWHON: Yes.

11 JUDGE AMCHAN: Okay. See you tomorrow
12 morning.

13 (Whereupon, the hearing adjourned at
14 6:07 p.m., on April 29, 2013, to be
15 reconvened on April 30, 2013 at 9:30 a.m.)

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1 C E R T I F I C A T E

2 This is to certify that the attached proceedings
3 before the National Labor Relations Board were held
4 according to the record and that this is the original,
5 complete, true and accurate transcript which has been
6 compared to the reporting and recording accomplished at
7 the hearing, that the exhibit files have been checked for
8 completeness and no exhibits received in evidence or in
9 the rejected exhibit files are missing.

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13 RHONDA LAMVERMEYER - OFFICIAL REPORTER

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THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

CASE NO: 08-CA-090083 08-CA-090193 (VOLUME 2)
08-CA-093035 08-CA-095833.

In the Matter of:

DHSC, LLC D/B/A AFFINITY MEDICAL CENTER,

Employer,

and

NATIONAL NURSES ORGANIZING COMMITTEE,

Petitioner.

The above entitled matter came on for hearing pursuant to notice before ARTHUR AMCHAN, Administrative Law Judge, at Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Room 1695, Cleveland, Ohio, on Tuesday, April 30, 2013, at 9:40 a.m.

A P P E A R A N C E S

On Behalf of the General Counsel:

Sharlee Cendrosky, Esq.

NATIONAL LABOR RELATIONS BOARD

REGION 8

Anthony J. Celebrezze Federal Building

Cleveland, Ohio 44199

On Behalf of the Charging Party:

Ms. Jan Lawhon

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I N D E X

VOIR

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
PAULA ZINSMEISTER	177	193			
ANN WAYT	207	269		399	292
		271			322
					333
					336
					395
KELLY SAWYER	404	412	419		
MICHELLE MAHON	421	445	486		465
		447			
JOHN PERONE	493	508			

	E X H I B I T S		
	GENERAL COUNSEL'S	IDENTIFIED	IN EVIDENCE
1			
2			
3	7-1A	175	175
4	10	212	215
5	11	221	222
6	12	223	265
7	13	265	269
8	16	441	442
9	17	422	445
10	18	493	507
11	Respondent's:		
12	1	273	
13	2	280	
14	3	289	294
15	4	297	
16	5	302	327
17	6	327	337
18	7	337	398
19	8	370	371
20	9	375	380
21	10	464	466
22	11	466	467
23	14	424	426
24	Charging Party's:		
25	2	509	518

P R O C E E D I N G S

April 30, 2013 9:40 p.m.

JUDGE AMCHAN: Back on the record.

MS. CENDROSKY: Your Honor, at this time I want to ask Respondent's counsel if they were able to get the needed documents together that we discussed yesterday pursuant to the subpoena?

MR. BRYAN CARMODY: No. Not at this time.

MS. CENDROSKY: Do you know when you'll have those documents ready? A guess, best guess.

MR. BRYAN CARMODY: My best guess is we talked about getting a table of contents with the Employer's policy.

MS. CENDROSKY: Yes.

MR. BRYAN CARMODY: We're working on that as we speak. I wouldn't be surprised if we could generate that by the end of today.

We have a search that is starting this morning for the documents that concern prior discipline. We have only one person in the HR Department today, so that process will necessarily be slower than it would otherwise be.

I -- I'm thinking of what other documents are we --

MS. CENDROSKY: Well, I believe that the

1 person searching for the documents, the HR person, that
2 would go to Requests Number 8, 9, 10, and 11 in the
3 subpoena.

4 The only other outstanding issue would be
5 Requests 16, 17, 18, and 19. You had indicated there's a
6 possibility that we would enter into a stipulation with
7 respect to that -- those requests.

8 MR. BRYAN CARMODY: That's accurate.

9 MS. CENDROSKY: Okay. Have you started
10 preparing a stipulation for me to review?

11 MR. BRYAN CARMODY: No.

12 MS. CENDROSKY: Okay.

13 MR. BRYAN CARMODY: And I envision doing
14 something on the record. I don't know if we needed to
15 enter into a written stipulation.

16 MS. CENDROSKY: Okay.

17 MR. BRYAN CARMODY: I would --

18 MS. CENDROSKY: That's something that we
19 could do probably off the record, discuss the nature of
20 it, and then put it on the record.

21 MR. BRYAN CARMODY: Yes. I agree.

22 MS. CENDROSKY: Okay. Great.

23 MR. BRYAN CARMODY: I'm assuming it would be
24 received by Your Honor.

25 JUDGE AMCHAN: Uh-huh.

1 MS. CENDROSKY: Perfect. Thank you.

2 MR. BRYAN CARMODY: You're welcome.

3 (Whereupon, General Counsel's Exhibit Number
4 7-1A was marked for identification.)

5 MS. CENDROSKY: Your Honor, I would like to
6 bring to the Court's attention that after reviewing the
7 documents yesterday, specifically GC Exhibit 7, I noticed
8 that the second page of the Complaint form was not
9 included.

10 MR. BRYAN CARMODY: Oh, I see.

11 MS. CENDROSKY: Yes, you see that?

12 MR. BRYAN CARMODY: I do.

13 MS. CENDROSKY: So what I have, is I prepared
14 GC Exhibit 7-1A. That it would be inserted into GC's
15 Exhibit Number 7.

16 If there are no objections, I would like to move
17 to admit GC's Exhibit 7-1A into the record.

18 MR. BRYAN CARMODY: No objection, Your Honor.

19 JUDGE AMCHAN: It's received.

20 (Whereupon, General Counsel's Exhibit Number
21 7-1A was received into evidence.)

22 MS. CENDROSKY: At this time, Your Honor, I
23 would like to renew the Motion to Sequester Witnesses.

24 JUDGE AMCHAN: Okay.

25 MS. CENDROSKY: So if Respondent has any

1 witnesses that needs to be sequestered, if they can
2 identify them to me and I will show them the witness room.

3 MR. BRYAN CARMODY: We have no witnesses.
4 It's just who you've subpoena, Ms. Zinsmeister. Ms. Boyle
5 is our representative.

6 MS. CENDROSKY: Okay. At this time, it's
7 Ms. -- there's a great chance Mrs. Zinsmeister will be
8 called to testify.

9 So until I do that, I would request that she be
10 sequestered in the witness room.

11 MR. BRYAN CARMODY: No objection.

12 JUDGE AMCHAN: Okay.

13 MS. CENDROSKY: I'll show you where the --
14 it's actually right there.

15 JUDGE AMCHAN: Hope you brought a book.

16 MR. BRYAN CARMODY: Your Honor, can I have
17 one moment outside --

18 JUDGE AMCHAN: Sure.

19 MR. BRYAN CARMODY: -- with Ms. Zinsmeister,
20 please?

21 JUDGE AMCHAN: Sure. Off the record.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 MS. CENDROSKY: Sorry. I will call
25 Ms. Zinsmeister as the first witness today, then.

1 JUDGE AMCHAN: Okay. Are we on the record?

2 THE COURT REPORTER: Yes.

3 JUDGE AMCHAN: If you'd raise your right
4 hand.

5 WHEREUPON,

6 PAULA ZINSMEISTER,

7 A witness herein, having been first duly cautioned and
8 sworn, was examined and testified as follows:

9 JUDGE AMCHAN: Okay. Have a seat. Be sure
10 and keep your voice up, because the microphone is just a
11 recording device. It doesn't amplify.

12 THE WITNESS: Okay.

13 DIRECT EXAMINATION

14 BY MS. CENDROSKY:

15 Q. Good morning, Ms. Zinsmeister.

16 A. Good morning.

17 Q. My name is Sharlee Cendrosky, and I am counsel
18 for the National Labor Relations Board.

19 A. Uh-huh.

20 Q. And I appreciate you being here today. What
21 I'd like for you to do is if you could please state by
22 spelling and -- your first and last name, for the record.

23 A. Paula, (P-A-U-L-A), Zinsmeister,
24 (Z-I-N-S-M-E-I-S-T-E-R).

25 Q. What I'd like for you to do, if you cannot hear

1 my question or if you don't understand it, just let me
2 know. Okay?

3 A. Okay.

4 Q. By whom are you employed?

5 A. Affinity Medical Center.

6 Q. And if I refer to Affinity Medical Center as
7 either Affinity or the hospital, will you know who I'm
8 referring to?

9 A. Yes.

10 Q. And what is your position at Affinity?

11 A. Clinical manager of the Orthopedic and Rehab
12 Departments.

13 Q. And how long have you held your current
14 position?

15 A. The Orthopedic Department since September 15th
16 of 2011. And the Rehab Department just June of 2012.

17 Q. Prior to September of 2011, did you hold a
18 position with Affinity?

19 A. Yes.

20 Q. And what position was that?

21 A. I was, at first, a staff member for 25 years in
22 the Obstetrics Department. And then for the last three
23 years that the department was open, I was the clinical
24 manager.

25 Q. And who do you report to?

1 A. Bill Osterman, the CNO.

2 Q. And you're testifying here pursuant to the
3 subpoena I issued you; correct?

4 A. Correct.

5 Q. Okay. What are your responsibilities as the
6 manager for the Orthopedic and Rehab Department?

7 A. I oversee the clinical nursing aspects of the
8 department.

9 Q. Anything else?

10 A. All of the -- anything that has to do with
11 nursing.

12 Q. Okay. Do you supervise employees?

13 A. Yes.

14 Q. And which ones do you supervise?

15 A. All of my nursing staff.

16 Q. In your capacity as a supervisor, do you have
17 -- are you involved in decisions to discipline or
18 terminate nurses that you -- that report to you?

19 A. Yes.

20 MS. CENDROSKY: Okay. Your Honor, I
21 respectfully request that I be allowed to examine this
22 witness pursuant to 6(11)(c) of the Federal Rules of
23 Evidence.

24 JUDGE AMCHAN: All that means is that she can
25 ask you leading questions.

1 THE WITNESS: Okay.

2 JUDGE AMCHAN: That is, questions which
3 suggest an answer.

4 THE WITNESS: Okay.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. CENDROSKY:

7 Q. It's a little formality.

8 A. More -- okay.

9 Q. Are you familiar with a former employee named
10 Ann Wayt?

11 A. Yes.

12 Q. And how long have you known Ann?

13 A. I've known of her since I was employed at
14 Affinity. She became my employee in September of 2011.

15 Q. And by becoming your employee in September of
16 2011, what exactly -- is that when she joined the unit?

17 A. Yes.

18 Q. Do you recall if you helped in the decision to
19 recruit Ms. Wayt to the unit?

20 A. I did.

21 Q. Okay. Are you aware that she's the subject of
22 litigation here today?

23 A. Yes.

24 Q. Okay. Isn't it true that the reasons listed by
25 the hospital for Ms. Wayt's discharge are falsifying

1 patient records, and failing to provide substandard or
2 proper patient care --

3 A. Yes.

4 Q. -- on August 28th, 2012?

5 A. Yes.

6 Q. Were you at the hospital on August 28th, 2012?

7 A. No.

8 Q. Where were you?

9 A. I was on vacation.

10 Q. And do you recall what the time frame of your
11 vacation was?

12 A. It was the week of the 28th. And I came back
13 the day after Memorial Day.

14 JUDGE AMCHAN: Labor Day.

15 THE WITNESS: Labor Day, yes. I'm sorry,
16 Labor Day.

17 Q. Otherwise, that's a long vacation.

18 A. I know. That would be nice, yeah.

19 Q. Which patient records -- or which patient
20 records or record did Ann Wayt falsify? And I don't want
21 you to name the patient, I just want you to refer to which
22 record.

23 A. On -- on here?

24 Q. Actually, if it would help, I'd like to direct
25 your attention to General Counsel's Exhibit Number 7. And

1 I'll direct your attention to Page 16. What do Pages 16
2 and 17 represent?

3 A. 16 and 17 are the Health History.

4 Q. And I'd like to direct your attention to Page
5 18, going through 19, 20, 21, 22, 23, all the way to Page
6 25. And what -- do you recognize those pages?

7 A. Yes.

8 Q. And what is this?

9 A. It's the Patient 24-Hour Assessment Form.

10 Q. Now, back to the initial question, which parts
11 of these pages that we just talked about did Ms. Wayt
12 falsify?

13 A. The patient assessment form.

14 Q. And what page, specifically?

15 A. The entire form.

16 Q. The entire form. How did you know that these
17 documents were falsified?

18 A. Through interviewing Ann and all the involved
19 individuals with this patient.

20 Q. Who were the involved individuals?

21 A. That would be Susan Kress, an emergency room
22 nurse, Rhonda Smith, Jonalee Lesjak.

23 Q. Anyone else?

24 A. No.

25 Q. So you spoke with Susan Kress, Rhonda Smith,

1 and Jonalee Lesjak.

2 A. And there was an emergency room nurse, too.

3 Q. And an emergency room nurse. Do you recall her
4 name?

5 A. No, I don't.

6 Q. Okay. What, if anything, did the emergency
7 room nurse tell you that would have led you to believe
8 that Ms. Wayt falsified this document that you have in
9 front of you?

10 A. There was no SBAR handoff. There was no
11 handoff from that nurse directly to Ann.

12 Q. What's an SBAR handoff?

13 A. An SBAR is, it's a form of communication. It
14 gives the patient's situational background and current
15 history.

16 Q. And when you mean by handoff, what are you
17 referring to?

18 A. In other words, one nurse reports to another
19 nurse on the floor.

20 Q. On the floor.

21 A. The nurse --

22 Q. Physically.

23 A. The nurse coming up reports to the nurse on the
24 floor.

25 Q. Is it possible that the emergency room nurse

1 could have given this report to Ms. Wayt over the phone?

2 A. There may have been an exchange over the phone,
3 but there should also be a handoff verbally.

4 Q. Do you know if Ms. Kress, who was -- who
5 testified in her affidavit to us that she received this
6 patient on the floor, do you know if the emergency room
7 nurse gave that SBAR to Ms. Kress?

8 A. I do not.

9 Q. Did you ask Ms. Kress if she received the SBAR
10 records from the emergency room --

11 A. I did not.

12 Q. Okay.

13 A. Susan wasn't the nurse on the floor.

14 Q. Is there anything else that you learned from
15 the emergency room nurse that would have led you to
16 believe that these documents were falsified by Ms. Wayt?

17 A. No more information from that nurse.

18 Q. Did -- what information did you receive from
19 Susan Kress that led you to believe that Ms. Wayt
20 falsified the documents?

21 A. For the time period that Susan arrived on the
22 floor, she was up there maybe 15 minutes and no nurse had
23 come into the room.

24 Q. So in just that 15 minute time period you
25 determined that all of these records were falsified?

1 A. I also interviewed other people.

2 Q. Okay. Which people did you interview? Because
3 I believe I just asked you which witnesses --

4 A. Rhonda Smith and Jonalee Lesjak.

5 Q. All right. So let's talk about -- so let's
6 stick with Ms. Kress for a minute. Is that the only thing
7 you learned from Ms. Kress at that time, was that she was
8 there for 15 minutes?

9 A. Yes.

10 MR. BRYAN CARMODY: Objection. That
11 mischaracterizes her testimony. She testified 15 minutes
12 on the floor and no nurse came into the room.

13 MS. CENDROSKY: Okay.

14 Q. Did Ms. Kress tell you that she went into the
15 room later on that day?

16 A. I don't recall.

17 Q. Did Ms. Kress tell you that she observed
18 anything else about Ann Wayt during August 28th that would
19 have led you to believe that she falsified the document?

20 A. I don't recall her saying.

21 Q. What, if anything, did you learn from Rhonda
22 Smith that led you to believe that the documents had been
23 falsified?

24 A. Rhonda said that Ann had not come into the room
25 to do the head-to-toe assessment. She'd never witnessed

1 it being done.

2 Q. Anything else that Ms. Smith told you?

3 A. At that point in time?

4 Q. Any point in time.

5 A. She did say she was relieved for lunch break
6 and --

7 Q. Do you recall who she was relieved from lunch
8 break by?

9 A. Jonalee Lesjak.

10 Q. Any other information you got from Ms. Smith
11 that would have led you to believe that the documents that
12 we are discussing here today have been falsified, other
13 than she did not see Ms. Wayt come into the room to do the
14 head-to-toe assessment?

15 A. That would be enough. That testimony is saying
16 that --

17 Q. No, I'm just -- just answer the question.
18 Anything else?

19 A. No.

20 Q. Okay. Now, do you recall preparing a statement
21 that was submitted to the State Board of Nursing? Did you
22 prepare a statement that was submitted to the State Board
23 of Nursing?

24 A. Bill Osterman, CNO, prepared that.

25 Q. Do you have knowledge of that statement?

1 A. Yes, I do.

2 Q. I'd like to direct your attention to GC's
3 Exhibit 7, the same exhibit. And this time I would like
4 to direct your attention to Page 11 and 12. Do you see
5 them?

6 A. Yes, I do.

7 Q. Did you prepare this record?

8 A. I took notes from a meeting, yes.

9 Q. Are these your notes?

10 A. Yes.

11 Q. Did you type them?

12 A. I believe I did.

13 Q. If you'd turn to Page 12, the very first
14 sentence it says, John McDonald informed -- I'm sorry.
15 "J. McDonald informed Ann that there are four other
16 witnesses that report that Ann was not in the room from
17 the time the patient was admitted until sometime around
18 noon when she came in to give the patient medication."

19 Do you recall Mr. McDonald making that statement?

20 A. Yes.

21 Q. Is that why you wrote it down?

22 A. Yes.

23 Q. Okay. I'd like to direct your attention back
24 to Pages 18 through 25. Isn't it true that you learned
25 that this patient had a blister and a tear in the elbow

1 area, and possibly some bruising, that based -- this --
2 these skin impalements were not marked on the exhibit?

3 A. Correct.

4 Q. Okay. Where should these -- where should the
5 blister, the skin tear, anything to do with skin
6 conditions, where should have Ms. Wayt put those on this
7 page?

8 A. On this paper, it would be on Page 4.

9 Q. Page 4. If we look at the numbers that I have
10 circled, which number are you referring to?

11 A. Oh, I'm sorry, 21.

12 Q. Okay. That's fine.

13 A. Uh-huh.

14 Q. So if we -- if I direct your attention to the
15 surgical wound area, is that where these impalements
16 should have been marked?

17 A. Yes.

18 Q. And if we look at the 7 a. to 7 p. where it
19 says skin intact, isn't it true that that box was not
20 checked?

21 A. Correct.

22 Q. And if we look there, there is no indication of
23 any sort of tear or bruising, or any other skin problem;
24 correct?

25 A. Correct.

1 Q. Okay. Now, if we look below, we see a section
2 that says 7 p. to 7 a.

3 A. Yes.

4 Q. Who would have filled that out?

5 A. The night shift nurse.

6 Q. Okay. Let's direct your attention to Page 25.
7 We have two signatures. The first signature on the left,
8 do you recognize that signature?

9 A. Yes.

10 Q. And the signature to the right?

11 A. Yes.

12 Q. And who does that signature represent?

13 A. Priscilla Harrison.

14 Q. Was Priscilla Harrison the night shift nurse?

15 A. Yes.

16 Q. Okay. Let me direct your attention back to
17 Page 21. Did Priscilla Harrison document on this form
18 that there was a blister, a skin tear, or any other sort
19 of skin impairment?

20 A. Not on this form.

21 Q. Okay. But, in fact, if you see Ms. Harrison
22 checked that the skin was intact.

23 A. Yes.

24 Q. If someone has a blister, or a skin tear, an
25 avulsion, is their skin intact?

1 A. No.

2 Q. Okay. What, if anything, was done to
3 Ms. Harrison because of her failure to document these
4 conditions and the fact that she wrote that the skin was
5 intact?

6 A. I called her into my office to talk to her
7 about the situation.

8 Q. Did you issue her a verbal or written warning?

9 A. A verbal. I -- I had to --

10 Q. Was it documented?

11 A. -- find out from her where the documentation
12 was, if any. And she was able to tell me that she did do
13 wound documentation on our separate wound documentation
14 form, including pictures. And I was able to verify that
15 when I went down to Medical Records and pulled the chart.
16 She told me that she just accidentally wrote skin
17 intact. But in the meantime, she did do the wound care
18 documentation --

19 Q. Now, if someone makes a mistake --

20 A. -- on our other form.

21 MR. BRYAN CARMODY: Excuse me. You can't
22 interrupt the witness. Your Honor --

23 MS. CENDROSKY: I think she's begone (sic) --

24 MR. BRYAN CARMODY: She's done what?

25 MS. CENDROSKY: -- went beyond the question

1 that I asked.

2 JUDGE AMCHAN: Okay. Again, the civility
3 rule. But I don't think she was finished.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. CENDROSKY:

6 Q. You may continue.

7 A. I forget what I said. She just hadn't -- she
8 just hadn't -- she forgot to put it on here, but she did
9 do it on our other legal wound documentation forms.

10 Q. If someone makes a notation on the chart that
11 they later realize is an error, are they supposed to
12 correct that on the chart?

13 A. Yes. But she didn't realize it until the
14 patient had already been discharged.

15 Q. Do you recall when the patient was discharged?

16 A. No, I don't.

17 Q. And so it's your testimony today that
18 Ms. Harrison was not issued any sort of discipline?

19 A. Just a verbal counseling.

20 Q. Okay.

21 JUDGE AMCHAN: A verbal -- was that
22 memorialized in any way?

23 THE WITNESS: No. I just wanted her to
24 understand that even though she did the right thing by
25 doing the wound documentation, that she needed to be sure

1 it would be correct here, also.

2 JUDGE AMCHAN: Right.

3 THE WITNESS: It was human error.

4 JUDGE AMCHAN: You -- now, my point is that
5 you talked to her. I mean, some companies have a verbal
6 warning --

7 THE WITNESS: Uh-huh.

8 JUDGE AMCHAN: -- which is memorialized and
9 then goes into the --

10 THE WITNESS: Uh-huh.

11 JUDGE AMCHAN: -- employee's file.

12 THE WITNESS: Uh-huh.

13 JUDGE AMCHAN: You didn't do that.

14 THE WITNESS: I have, I -- I believe, and --
15 and I believe I have an anecdotal on that.

16 JUDGE AMCHAN: Which means?

17 THE WITNESS: Like just a typewritten thing
18 that I did talk to Priscilla, she came to my office. We
19 talked about this. And then I went down to Medical
20 Records and verified her information.

21 JUDGE AMCHAN: Is there anything in her
22 personnel file that reflects your conversation with her?

23 THE WITNESS: I don't think this was anything
24 I sent down to HR.

25 JUDGE AMCHAN: Okay.

DIRECT EXAMINATION (CONT'D)

BY MS. CENDROSKY:

Q. Ms. Zinsmeister, isn't it true that on September 12th when you contacted Ms. Wayt, you told her that she was to come into the hospital for a disciplinary meeting about a safety issue?

A. Correct.

Q. What was that safety issue?

A. Patient -- patient safety.

Q. Patient safety. Okay.

MS. CENDROSKY: That is all I have.

THE WITNESS: Thank you.

MS. CENDROSKY: Uh-huh.

JUDGE AMCHAN: Do you have anything?

MS. LAWHON: Yes, I do.

CROSS-EXAMINATION

BY MS. LAWHON:

Q. Good morning, Ms. Zinsmeister. I'm Jane Lawhon, attorney for National Nurses Organizing Committee.

Ms. Zinsmeister, I'd like to direct you to General Counsel's Exhibit 19. Do you have that in front of you?

A. Here it is.

Q. Okay. And directing your attention now to Page 3. You sent an e-mail to William Osterman with a cc to

1 Jason McDonald, is that correct --

2 A. Correct.

3 Q. -- reflected here? Is that correct?

4 A. Correct. Correct.

5 Q. Okay. So if -- you and I have to try to not
6 talk over each other.

7 A. Okay.

8 Q. It gets messed up with the court reporter.

9 Okay. And I believe -- now, you wrote here that,
10 "There are two other witnesses, an RN sitter, and an RN
11 director of CVS-ICU" --

12 MR. BRYAN CARMODY: I'm sorry. Counsel, what
13 page are you referring to?

14 MS. LAWHON: I'm on Page 4.

15 MR. BRYAN CARMODY: Thank you.

16 CROSS-EXAMINATION (CONT'D)

17 BY MS. LAWHON:

18 Q. The sixth line of the e-mail. Or, actually,
19 the fourth line. Do you see where I am, Ms. Zinsmeister?

20 A. Yes, I do.

21 Q. Okay. "There are two other witnesses, an RN
22 sitter, and an RN director of CVS-ICU present in the room
23 on admission who verified that Ann Wayt did not come into
24 the room from the point of admission until noon."

25 Okay. Now, Sue Kress is the RN director of

1 CVS-ICU to whom you were referring; right?

2 A. Correct.

3 Q. And Sue Kress told you that she had left the
4 patient's room about ten minutes after she arrived; isn't
5 that correct?

6 A. Ten or fifteen, yes.

7 Q. Okay. So, and you also, to the best of your
8 knowledge, Sue Kress was not in the patient's room from
9 when she left ten or fifteen minutes after she arrived to
10 when she left the hospital that day; isn't that correct?

11 A. To -- to the best of my knowledge.

12 Q. So Kress could not verify that Ann did not come
13 into the room during the period from the point of
14 admission until noon; isn't that correct?

15 A. Correct.

16 Q. In fact, she could only account for 15 minutes
17 of that time period; right?

18 A. Correct.

19 Q. So when you told Osterman that you had two
20 witnesses who could verify Ann did not come into the room,
21 you really had one witness for 15 minutes, and another
22 witness -- you had two witnesses, let's say, for 15
23 minutes, and then one witness for the other two hours --

24 A. Well --

25 Q. -- and a half; isn't that right?

1 A. In my e-mail it says there are two other
2 witnesses present in the room at admission. That was what
3 I was writing to Bill.

4 Q. Ms. Zinsmeister, you then stated, "who verified
5 that Ann Wayt did not come into the room from the point of
6 admission until noon." That's what you wrote; right?

7 A. I did.

8 Q. And you understood the significance of
9 providing these facts at this time, did you not?

10 A. Yes.

11 Q. They were requested by the district quality
12 manager with respect to the appropriate action by the
13 hospital in relation to the events; isn't that correct?

14 A. I don't know about that.

15 Q. Okay. Well, when you received this e-mail, did
16 you not -- well, let me -- let me back up. Look at the
17 e-mail immediately preceding yours from William Osterman
18 to you saying, "See below and e-mail me back with more
19 details"; right? Is that correct, Ms. Osterman (sic),
20 that's --

21 A. That --

22 Q. -- I mean, excuse me, Ms. Zinsmeister?

23 A. Yeah, I do see that, yes.

24 Q. That's the e-mail to which you were then
25 providing the facts; isn't that right?

1 A. Yes.

2 Q. Okay. And if he says, "See below," the CNO,
3 and when you see below, the first thing you see is Angie
4 Boyle forwarding to Mr. Osterman an e-mail; right?

5 A. Correct.

6 Q. And that e-mail is from Bud Wood. Do you know
7 who Mr. Wood is?

8 A. No.

9 Q. Okay. When you were referred by Mr. Osterman
10 to see below, did you, in fact, read the e-mail chain?

11 A. I don't recall, but I imagine I probably did.

12 Q. Okay. There were questions that were posed by
13 an individual to which you were supposed to respond, as
14 directed by Ms. Osterman; isn't that correct?

15 A. Correct.

16 Q. And that individual was Roni Benson, identified
17 as the regional director, Division 5, quality and clinical
18 transformations; right?

19 A. Correct.

20 Q. Are you familiar with who that individual was
21 at the time?

22 A. No.

23 Q. Okay. You understood the significance of
24 somebody who was the regional director of quality in
25 Division 5 having inquiries, did you not?

1 A. I understood that Angie needed to have the
2 information to provide to them.

3 Q. Okay. And you were the sole source of
4 providing information to the regional director of quality
5 with respect to the events of Ms. Ann Wayt's termination,
6 as reflected in this e-mail chain; isn't that correct?

7 A. That's correct.

8 Q. At the time you wrote this e-mail on Tuesday,
9 September 11th, did you have a sworn statement from Rhonda
10 Smith with respect to the events that occurred on August
11 28th?

12 A. I -- I don't believe so. I don't recall, but I
13 don't believe so, not at that point.

14 Q. Okay. Did you later take a sworn statement
15 from Rhonda Smith?

16 A. We did.

17 Q. Was that after the termination?

18 A. No.

19 Q. When was it?

20 A. I don't recall.

21 Q. The termination was September 26th.
22 Approximately how long before the termination did you take
23 a sworn statement from Rhonda Smith?

24 A. We investigated it soon after we had put her on
25 a suspension.

1 Q. Okay. Ms. Zinsmeister --

2 A. We -- we delved more deeply into it.

3 Q. I'm sorry, what?

4 A. We delved more deeply into it to get a sworn
5 statement.

6 Q. My question wasn't when you investigated, my
7 question was when did you take the sworn statement? You
8 said after the investigatory meeting that Ann Wayt
9 attended, which was September 12th; right?

10 A. Right. I believe it was on the 13th.

11 Q. One second. Ms. Zinsmeister, I'd like to
12 direct you to GC7, Page 14. Is this the statement to
13 which you were referring as a sworn statement?

14 A. It looks like that's what it is.

15 Q. Could you direct me to the part where it looks
16 like a sworn statement? I see a signature.

17 MR. BRYAN CARMODY: Your Honor, I would
18 object. This almost calls for a legal conclusion.

19 THE WITNESS: I don't really know what --

20 JUDGE AMCHAN: Well, no. I mean, usually --
21 I mean, to me, she's asking whether -- I'm going by a
22 sworn -- I don't know. Sworn statement usually is
23 something where I swear under penalty of perjury that the
24 facts are --

25 THE WITNESS: Oh, okay.

1 JUDGE AMCHAN: -- correct. I mean, is --
2 that's what I think she's talking about. I --

3 THE WITNESS: Okay.

4 JUDGE AMCHAN: -- and --

5 THE WITNESS: I -- I wasn't sure.

6 JUDGE AMCHAN: Okay. So we've clarified
7 that. So I guess the thing is, did you ever get anything
8 from Rhonda Smith to which she swore was -- just like I
9 swore you in, that she --

10 THE WITNESS: Yeah. No, I did not.

11 JUDGE AMCHAN: Right. Do you know if one
12 exists?

13 THE WITNESS: No, I don't.

14 JUDGE AMCHAN: Okay. So the only document
15 you know is this --

16 THE WITNESS: This one.

17 JUDGE AMCHAN: -- in Page 14 of GC7.

18 THE WITNESS: Correct.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. And is it your testimony, Ms. Zinsmeister, that
22 you were aware of the facts that are set forth in this
23 statement dated September 24th and signed by Rhonda Smith,
24 that you were aware of these facts at the time that you
25 responded to Mr. Osterman's e-mail to provide more detail?

1 MR. BRYAN CARMODY: That's not -- objection.
2 That's not her testimony.

3 JUDGE AMCHAN: Well, she's asking --

4 MS. LAWHON: I'm asking her.

5 JUDGE AMCHAN: -- she's asking if that's true
6 or not.

7 MR. BRYAN CARMODY: I misunderstood.

8 CROSS-EXAMINATION (CONT'D)

9 BY MS. LAWHON:

10 Q. Do you need the question repeated?

11 A. I'm sorry. Could you -- could you repeat it
12 for me?

13 Q. No problem. Sure. I'm asking you, directing
14 your attention now to the facts that are set forth on the
15 letter, or the statement dated September 24th, apparently
16 signed by Rhonda Smith, Page 14, of GC Ex. 7, were you
17 aware of those facts at the time you sent the e-mail in
18 response to Mr. Osterman's directive to you to provide
19 more details in response to the Region 5 higher-up's
20 inquiries?

21 JUDGE AMCHAN: Just so we're clear. You're
22 asking her if she was aware of all the facts --

23 MS. LAWHON: Yes.

24 JUDGE AMCHAN: -- set forth in the --

25 MS. LAWHON: Yes.

1 JUDGE AMCHAN: -- Ms. Smith's statement of
2 September 24th --

3 MS. LAWHON: Right.

4 JUDGE AMCHAN: -- when she sent the e-mail on
5 --

6 MS. LAWHON: Right. October -- September
7 11th.

8 MR. BRYAN CARMODY: It's September 11th, Your
9 Honor.

10 JUDGE AMCHAN: Right.

11 MS. LAWHON: September 11th, Your Honor.
12 Yes, I am.

13 THE WITNESS: No, I was not aware of all the
14 facts. That's why --

15 CROSS-EXAMINATION (CONT'D)

16 BY MS. LAWHON:

17 Q. Excuse me. That's fine. You answered.

18 A. Okay.

19 Q. Thank you.

20 A. Uh-huh.

21 Q. You learned that your statement that Ann Wayt
22 had never come into the room from the point of admission
23 until noon was not correct; isn't that true?

24 A. Yes.

25 Q. Okay. Did you send an e-mail to Mr. Osterman

1 clarifying that your September 11th e-mail had incorrect
2 facts?

3 A. I don't recall if I sent an e-mail.

4 Q. Did you do anything to bring to Mr. Osterman's
5 attention the fact that the assertion you had made that
6 Ann Wayt did not come in the room from the point of
7 admission until noon was, in fact, incorrect?

8 A. Bill Osterman and I were in contact daily.

9 Q. That's not my question, Ms. Zinsmeister. You
10 need me to repeat it again? I'd like you --

11 MR. BRYAN CARMODY: Your Honor, I would
12 object. I think that was responsive to counsel's
13 question.

14 JUDGE AMCHAN: Well, not really. I mean, she
15 --

16 THE WITNESS: We were in contact verbally
17 every day.

18 MS. LAWHON: That's not my question.

19 JUDGE AMCHAN: Well, no, no.

20 THE WITNESS: No?

21 JUDGE AMCHAN: She asked you whether you told
22 him about these facts that you had learned since.

23 THE WITNESS: Yes.

24 JUDGE AMCHAN: You told him that the initial
25 thing was incorrect, that you now knew that Ms. Wayt had

1 been in the room between admission and noon.

2 THE WITNESS: Yes.

3 CROSS-EXAMINATION (CONT'D)

4 BY MS. LAWHON:

5 Q. And did you embody that in writing?

6 A. I don't recall.

7 MS. LAWHON: Your Honor, I failed --
8 unfortunately, I neglected to ask for the statement at the
9 start of cross. I would like to review any statements, if
10 there are any, of Ms. Zinsmeister.

11 JUDGE AMCHAN: Okay.

12 MS. LAWHON: Thank you. And maybe we could
13 go off the record for a second while I read it.

14 JUDGE AMCHAN: Yes. Go off the record.

15 (Off the record.)

16 JUDGE AMCHAN: Back on the record.

17 CROSS-EXAMINATION (CONT'D)

18 BY MS. LAWHON:

19 Q. Ms. Zinsmeister, at the time that you sent this
20 e-mail to the chief nursing officer providing the facts
21 that are set forth on Pages 3 to 4, you had never met with
22 Rhonda Smith; isn't that correct?

23 A. I -- I don't recall right off the bat.

24 Q. Isn't it true that you did not meet with Rhonda
25 Smith until after you met with Ann Wayt on September 12th?

1 A. I -- I believe I did. I don't know. I can't
2 recall --

3 Q. Okay.

4 A. -- exactly when I met with her.

5 Q. Do you recall giving an affidavit to the --
6 that was prepared for your signature and sworn before a
7 notary public and signed on November 8th?

8 A. I do recall doing the affidavit.

9 Q. Okay. I will --

10 MS. LAWHON: May I approach the witness, Your
11 Honor?

12 JUDGE AMCHAN: Sure.

13 Q. Ms. Zinsmeister, I'm directing your attention
14 to Paragraph 24 on Page 11. Do you want to just read that
15 first sentence out loud?

16 A. This one?

17 Q. Uh-huh.

18 A. "After meeting with Ann Wayt on September 13,
19 2012, Jason McDonald and I met with Rhonda Smith, the
20 nurse who had served as a sitter for the patient involved
21 in the August 28th, 2012 incident in order to verify
22 firsthand the accounts that we'd received from Susan Kress
23 and Jeremy Montemone."

24 Q. Okay. Does reading this affidavit refresh your
25 recollection that you had not, in fact, met with Rhonda

1 Smith prior to sending the e-mail to Mr. Osterman on
2 September the 11th?

3 A. Yes, it does.

4 Q. Okay. And had you met with Ms. Smith before
5 you sent the September 11th e-mail?

6 A. No, I must not have.

7 Q. Okay. Had you spoken to Ms. Smith on the phone
8 before you sent the September 11th e-mail?

9 A. I don't recall that.

10 Q. Oh, Ms. Zinsmeister, you testified that you
11 asked Ann to come into the hospital with respect to a
12 patient safety issue. Do you recall that testimony?

13 A. Yes.

14 Q. There was no harm to this patient; isn't that
15 correct?

16 A. At the time, there -- no, there wasn't.

17 Q. At any time there was no harm to this patient
18 based on the events of August 28th; isn't that correct?

19 A. Well, that's correct.

20 MS. LAWHON: Thank you. No further
21 questions.

22 MR. BRYAN CARMODY: I have nothing, Your
23 Honor.

24 JUDGE AMCHAN: Okay. You can step down.
25 Thank you.

1 THE WITNESS: Okay.

2 (WITNESS EXCUSED.)

3 MR. BRYAN CARMODY: Your Honor?

4 JUDGE AMCHAN: Yes.

5 MR. BRYAN CARMODY: You said I wouldn't need
6 to ask you to take a break, so can I take --

7 JUDGE AMCHAN: Yes. Let's take five.

8 MR. BRYAN CARMODY: -- just to talk to the --

9 JUDGE AMCHAN: Between now. Off the record.

10 (Off the record.)

11 JUDGE AMCHAN: Back on the record.

12 MS. CENDROSKY: At this time, counsel for the
13 General Counsel would like to call Ms. Ann Wayt to the
14 stand.

15 JUDGE AMCHAN: Okay. Please raise your right
16 hand.

17 WHEREUPON,

18 ANN WAYT,

19 A witness herein, having been first duly cautioned and
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CENDROSKY:

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you please state and spell your full name,

1 for the record?

2 A. My name is Ann, (A-N-N), Wayt, (W-A-Y-T).

3 Q. And what I'd like for you to do, Ms. Wayt, is
4 if you can't hear my question, or if you don't understand
5 it, just let me know.

6 A. I will.

7 Q. By whom were you employed?

8 A. I was employed by Affinity Medical Center.

9 Q. And if I refer to Affinity Medical Center as
10 either Affinity or the hospital, will you know who I'm
11 referring to?

12 A. Yes, I will.

13 Q. Are you currently employed by Affinity?

14 A. No, I'm not.

15 Q. Were you terminated?

16 A. Yes, I was.

17 Q. When did you begin your employment with
18 Affinity?

19 A. Back in April of 1987.

20 Q. In 1987, was the hospital called Affinity?

21 A. No, it wasn't. It was called Doctors Hospital
22 back then.

23 Q. What was your position with the hospital?

24 A. I was a staff RN.

25 Q. And were you employed full time?

1 A. I was.

2 Q. Now, from 1987 until 2012, were you employed at
3 the hospital?

4 A. I was.

5 Q. Was there any other period where you were laid
6 off, or separated from employment?

7 A. Yes, there was. About a year and a half period
8 of time.

9 Q. Do you recall when that period was?

10 A. I believe it was '98 to 2000.

11 Q. And do you recall the nature of the -- were you
12 laid off?

13 A. There was a layoff, yes.

14 Q. What type of facility is Affinity?

15 A. It's a hospital.

16 Q. Okay. Does Affinity have various departments
17 or units?

18 A. It does.

19 Q. Can you briefly tell us what those units or
20 departments are?

21 A. I think so. Medical Surgical Unit, Telemetry
22 Unit, ICU, Cardiovascular ICU, Cardiovascular OR,
23 Preadmission Testing, PACU or Recovery Room, an Outpatient
24 Surgery, a Rehab, Geropsychiatric Unit, Orthopedic Unit,
25 Wound Center. I may or may -- I believe that's -- oh, and

1 then the ER.

2 JUDGE AMCHAN: What's telemetry?

3 THE WITNESS: I'm sorry.

4 JUDGE AMCHAN: What is tel --

5 THE WITNESS: A Telemetry Unit is like for
6 chest pain, heart patients.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. CENDROSKY:

9 Q. Now, prior to your termination, which unit did
10 you work in?

11 A. I worked on the Orthopedic Unit.

12 Q. Was this unit fairly new?

13 A. It was new around September 15th of 2011.

14 Q. Is that when it opened?

15 A. That is when it opened.

16 Q. And what shift did you work?

17 A. I worked 7 a. to 7:30 p.

18 Q. What were your hours?

19 A. Seven a.m. to seventy thirty p.m.

20 Q. And how many days a week did you work?

21 A. Three days a week. That was full time.

22 Q. At the time of your discharge, how many
23 registered nurses worked in your unit, the Orthopedic
24 Unit?

25 A. I believe there were ten or twelve.

1 Q. And how many nurses would have been assigned
2 per shift?

3 A. Two RN's per shift.

4 Q. And how many patients did the Orthopedic Unit
5 hold?

6 A. Ten.

7 Q. Can you explain briefly for us what a typical
8 day for you would be as a nurse?

9 A. Yes. When we arrive in the morning, we obtain
10 report from the night shift nurse. That involves a
11 bedside reporting, which means we go with the night nurse
12 into each patient's room.

13 The night nurse will proceed to tell us the
14 diagnosis and the condition of the patient, and anything
15 pertinent to that patient that happened throughout the
16 night.

17 We also then make our own hourly rounds doing the
18 head-to-toe assessment on all of our patients. We do --
19 are responsible for all their a.m. care, all their
20 medications, vital signs, all the paperwork, because
21 there's no secretary on that floor.

22 We also receive patients from the recovery room
23 who've had surgery that day, orthopedic patients.

24 Q. Do you administer medications?

25 A. Yes, we do.

1 Q. Other than the head-to-toe assessment, are
2 there any other assessments that you would perform as a
3 nurse?

4 A. A skin assessment.

5 Q. Who's your immediate supervisor?

6 A. That would be Paula Zinsmeister.

7 Q. And do you know what her job title is?

8 A. She's the orthopedic manager.

9 Q. And do you know who Ms. Zinsmeister reported
10 to?

11 A. I believe she reports to Jason McDonald and --
12 who's the director of the department, and Bill Osterman,
13 who's the chief nursing officer.

14 Q. Okay. Now, prior to the union campaign, do you
15 recall if you were ever issued any discipline?

16 A. No, I was not.

17 Q. And how long had you worked at the hospital?

18 A. Since 1987.

19 Q. What about performance awards, did you ever
20 receive any awards from Affinity for your performance as a
21 nurse?

22 A. I did.

23 Q. Okay. What I'd like to do, at this point, is
24 show you General Counsel's Exhibit Number 10.

25 (Whereupon, General Counsel's Exhibit Number

1 10 was marked for identification.)

2 MS. LAWHON: Is there a General Counsel's 9
3 that somehow --

4 MS. CENDROSKY: No. It's actually included
5 in GC7.

6 MS. LAWHON: Okay.

7 MS. CENDROSKY: That was a clerical error.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. CENDROSKY:

10 Q. Take a minute and you can look through these
11 documents. Do you recognize this document?

12 A. I do.

13 Q. And if we look at the first page, what does the
14 first page represent?

15 A. That's a memo that was actually posted when I
16 was selected for the Cameos of Caring Award.

17 Q. What is the Cameos of Caring Award?

18 A. That's a really prestigious award that's given
19 out by Akron University College of Nursing. It's really
20 an honor to receive that award.

21 Q. Now, do you recall if the first page of General
22 Counsel's Exhibit Number 10 was posted at the hospital?

23 A. Yes, it was.

24 Q. Let's flip to Page 2. And what does this page
25 represent?

1 A. That looks like the front of the brochure from
2 the Cameos of Caring Award banquet.

3 Q. Now, prior to today, have you seen this page?

4 A. This page?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. Let's flip to the third page in General
8 Counsel's Exhibit Number 10. And do you recognize that
9 document?

10 A. Yes. That's actually from inside the brochure
11 that's passed out at the Cameos of Caring dinner and award
12 banquet.

13 Q. And just for completeness, I assume that's your
14 photo and your name?

15 A. Yes, it is.

16 Q. Okay. And now I want to direct your attention
17 to the last page of General Counsel's Exhibit Number 10.
18 And what does that represent?

19 A. That ad at the bottom, Affinity Medical Center
20 awarded me a Nurse Excellence Award for the year 2008.
21 And that was an ad that was run in the local newspapers,
22 both -- both the Massillon Independent, and the Canton
23 Repository.

24 MS. CENDROSKY: Okay. At this time, Your
25 Honor, I'd like to move for General Counsel's Exhibit

1 Number 10 into evidence.

2 MR. BRYAN CARMODY: No objection.

3 JUDGE AMCHAN: Received.

4 (Whereupon, General Counsel's Exhibit Number
5 10 was received into evidence.)

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. CENDROSKY:

8 Q. Are you familiar with the National Nurses
9 Organizing Committee?

10 A. I am.

11 Q. And if I refer to them as the NNOC or the
12 Union, will you know who I'm talking about?

13 A. Yes.

14 Q. Do you recall when you first learned about the
15 NNOC?

16 A. I believe it was May, when the manager --

17 Q. May of what year?

18 A. May of, I'm sorry, 2012.

19 Q. Thank you.

20 A. Our manager posted a memo on the unit that said
21 the Union would be coming into the hospital.

22 Q. Do you know which employees the Union was
23 trying to organize?

24 A. That would be the RN's.

25 Q. When, if ever, did you participate in the Union

1 organizing campaign?

2 A. Not until June of 2012.

3 Q. Now, did you ever speak to your co-workers
4 about the interest in becoming unionized?

5 A. Oh, yes.

6 Q. And which co-workers did you speak with?

7 A. All the RN's in our department that we would --
8 I would meet up with when I went to work. I mean, we
9 talked about it a lot.

10 Q. And when you say department, are you referring
11 to the Orthopedic Unit?

12 A. The Orthopedic Unit, both the day shift and the
13 night shift nurses.

14 Q. Did you happen to speak with nurses in any
15 other units or departments?

16 A. I actually did.

17 Q. And do you recall which nurses you spoke with?

18 A. Yes.

19 Q. And can you tell us who they were?

20 A. Yes. I spoke with Jenny on the Med-Surg Unit.

21 MR. BRYAN CARMODY: You said Jenny, ma'am?

22 THE WITNESS: Jenny. Uh-huh. And I spoke
23 with Melanie, also. That was a telephone conversation.

24 Q. And which did she work in?

25 A. She was also on the Med-Surg Unit. And I spoke

1 with Peggy and Sandy on the Wound -- in the Wound Center.

2 Q. Did you ever speak with these employees at the
3 hospital?

4 A. It was at the hospital.

5 Q. And do you recall where these conversations
6 took place?

7 A. Yes. In our break room on the Orthopedic Unit.

8 Q. Now, did you ever attend any union meetings?

9 A. I did.

10 Q. And do you recall when you attended these
11 meetings?

12 A. I attended some luncheons. And I also attended
13 a few in the evening.

14 Q. Did the luncheons take place at the hospital?

15 A. Yes, they did.

16 Q. Do you recall how many luncheons you may have
17 attended?

18 A. Oh, I don't know, four or five.

19 Q. Do you recall if other nurses attended these
20 luncheons?

21 A. Yes.

22 Q. What was the level of support for the Union on
23 your unit?

24 A. On Orthopedics, it was almost, I would say, 99
25 percent for the Union.

1 Q. Okay. Do you have any knowledge about the
2 support for the Union on the other units at the hospital?

3 A. I do.

4 Q. And how do you have that knowledge?

5 A. At several of the meetings I went to.

6 Q. And what meetings are you referring to?

7 A. Several of the Union luncheons or meetings that
8 I went to. The Union often kept a tally that was visible
9 to everyone, as far as what the consensus was in different
10 units throughout the hospital.

11 Q. And did the tally reflect which unit supported
12 the Union?

13 A. It did.

14 Q. Okay. Do you recall what units, if any, were
15 not necessarily in support of the Union?

16 A. Yes.

17 MR. BRYAN CARMODY: Objection. Is counsel's
18 question directed towards this tally? I'm driving at a
19 best evidence rule here objection, Your Honor. If there's
20 a --

21 JUDGE AMCHAN: Okay. Well, I think it's
22 admissible for what she heard, not whether, in fact, the
23 support at the time. But that's an accurate reflection of
24 the --

25 MR. BRYAN CARMODY: Then it would be hearsay,

1 Judge.

2 JUDGE AMCHAN: Yes. But I'll let her testify
3 to what her understanding was. It doesn't establish that
4 if she's saying that the support on -- actually, it was 99
5 percent and she hasn't had personal knowledge -- if the,
6 you know, if the Union representatives told her, you know,
7 the support is 99 percent in the Ortho Unit and 40 percent
8 in the -- at another unit, that is not probative of
9 whether that's true or not.

10 MR. BRYAN CARMODY: So why would it be
11 relevant?

12 JUDGE AMCHAN: I don't know. But, I'll let
13 it in. You know, that's one great thing about bench
14 trial, if things aren't relevant, I can always ignore
15 them.

16 And a lot of -- I've had hearings where 93
17 percent of what I heard wasn't relevant. It's very
18 different than a jury trial where the impressionable minds
19 of jurors can be polluted. So, you can ask her. I mean
20 --

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. CENDROSKY:

23 Q. Okay. Let's ask that question again. Do you
24 have any knowledge of which units in the hospital were not
25 in favor of the Union?

1 A. Yes. Particularly the Cardiovascular Unit was
2 not. The Cardiovascular OR area and the regular OR area
3 was not.

4 Q. And how do you know this?

5 A. From the tally that we would see that the Union
6 had kept.

7 Q. So you saw this --

8 MR. BRYAN CARMODY: Your Honor, would you
9 recognize -- objection. Would you recognize a standing
10 objection on my part to these line of questions?

11 JUDGE AMCHAN: Yes.

12 MR. BRYAN CARMODY: Thank you, sir.

13 JUDGE AMCHAN: So that's what the Union tell
14 you that's where their support was lacking.

15 THE WITNESS: Correct.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. CENDROSKY:

18 Q. Now, did you have any firsthand knowledge from
19 speaking with other nurses in the -- at the hospital of
20 nurses that were not in favor of the Union?

21 A. Only from nurses I spoke to in the Orthopedic
22 Unit who had heard from other people.

23 Q. Okay. That's fine. Now, did you consider
24 yourself a supporter of the Union?

25 A. I did.

1 Q. Did you ever hide the fact that you were
2 pro-union from anyone at Affinity?

3 A. No.

4 (Whereupon, General Counsel's Exhibit Number
5 11 was marked for identification.)

6 Q. I'm going to show you what's been marked as
7 General Counsel's Exhibit Number 11. Now, do you
8 recognize that document?

9 A. Yes, I do.

10 Q. And what is it?

11 A. This is a, like a get out to vote pamphlet that
12 was passed out prior to the vote.

13 Q. Now, if we look at the first page of this
14 document in the center there, is that your photograph?

15 A. Yes, it is.

16 Q. And your name appears underneath your
17 photograph?

18 A. Yes, it does.

19 Q. Okay. Now, right beside your photograph there
20 appears to be a quote, and underneath it your name?

21 A. Yes.

22 Q. Okay. Did you give this quote to the Union?

23 A. Yes, I did.

24 Q. And did you give the Union permission to use
25 your photograph and quote in this flyer?

1 A. Yes, I did.

2 MS. CENDROSKY: At this time, Your Honor, I'd
3 like to move to admit GC's Exhibit Number 11 into
4 evidence.

5 MR. BRYAN CARMODY: No objection.

6 JUDGE AMCHAN: It's received.

7 (Whereupon, General Counsel's Exhibit Number
8 11 was received into evidence.)

9 JUDGE AMCHAN: Do you know when this was
10 circulated?

11 THE WITNESS: I saw it towards the end of the
12 week prior to the election.

13 JUDGE AMCHAN: What -- I mean, I could look
14 on a calendar. What day of the week was the 29th? Does
15 anybody know?

16 THE WITNESS: The 29th, the vote was on a
17 Wednesday.

18 JUDGE AMCHAN: Okay. I've received GC11.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. CENDROSKY:

21 Q. So you would have saw this pamphlet the week
22 prior to?

23 A. Yes.

24 Q. And do you know if these pamphlets were brought
25 to the hospital?

1 A. That's where I saw it.

2 Q. Okay. And do you recall the date of the Union
3 election?

4 A. It was August the 29th.

5 Q. Of what year?

6 A. Of 2012.

7 Q. Now, I'd like to direct your attention to the
8 events of August 28th, 2012, so the day before the Union
9 election, okay?

10 A. Yes.

11 Q. Do you recall if you worked that day?

12 A. I did work that day.

13 Q. And what, if anything, do you recall about that
14 day?

15 A. What stands out in my mind about that day is
16 how extremely busy it was. And it stands out because that
17 unit is not that busy at the beginning of the week.

18 Q. And when you say "that unit," which unit are
19 you referring to?

20 A. The Orthopedic Unit.

21 Q. That's the unit you worked in?

22 A. Yes.

23 Q. Do you recall how many patients you had that
24 day?

25 A. There were a total of nine patients that day.

1 Q. And what's the capacity for your unit?

2 A. Ten.

3 Q. Do you recall if you received another patient
4 that day?

5 A. We did.

6 Q. And what, if anything, do you recall about
7 receiving that patient?

8 A. What I recall is that I had received a phone
9 call from the OR in the morning. And a nurse by the name
10 of Lora spoke to me on the phone and said you're getting
11 an admission, and I would suggest to you that you get a
12 sitter, because the patient is confused and combative.

13 Q. The phone call that you received, was that from
14 the emergency room nurse?

15 A. Yes, it was. Her name was Lora.

16 Q. Okay.

17 A. I don't have a last name.

18 Q. Okay. And --

19 JUDGE AMCHAN: So this was a tenth patient.
20 You don't --

21 THE WITNESS: This would be the tenth
22 patient.

23 JUDGE AMCHAN: Okay.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. CENDROSKY:

1 Q. And you mentioned that there was a sitter
2 needed for this patient?

3 A. Yes.

4 Q. What is a sitter?

5 A. A sitter is an individual who is obtained to
6 actually sit with the patient, pretty much to protect the
7 patient from hurting -- hurting herself or himself.

8 Q. When you were told that the patient was going
9 to need a sitter what, if anything, did you say to the
10 emergency room nurse?

11 A. I said to the emergency room nurse first I have
12 to obtain an order from the physician to get the sitter.
13 That's a policy.

14 And then I told her I have to physically have the
15 sitter here prior to receiving the patient, because we
16 were so busy, I didn't have a person to take out of
17 staffing to sit with the patient.

18 Q. And what was her response at that time?

19 A. She said okay, and hung up.

20 Q. Okay. Now, after you got off the phone what,
21 if anything, happened next?

22 A. The next thing that happened, there's a --
23 there's a bed nurse, her name is Beth. And we are to
24 notify her whenever we're going to get an admission.

25 Either myself or my co-worker Duana called her,

1 told her we were getting an admission, however, we needed
2 a sitter before we could get the patient from the ER.

3 Q. So, at this point, were you able to arrange for
4 a sitter?

5 A. Well, we hung up then. And Beth called back
6 and Duana took the call. And Beth said you'll have to
7 call your own people and find your own sitter because we
8 don't have -- I don't have anyone available for you.

9 Q. Okay. So what, if anything, did you do, at
10 that point?

11 A. Well, the next thing I did, since Paula
12 Zinsmeister was on vacation, I knew Susan Kress from the
13 Cardiovascular area, the manager over that department was
14 covering for Paula.

15 Q. Okay.

16 A. I paged her, thinking that she would be able to
17 help us.

18 Q. And did Susan Kress return your page?

19 A. She did. My co-worker, Duana, answered the
20 phone, and she passed the phone over to me. When I said
21 hi, Susan, the first thing Susan said to me was you better
22 not be refusing a patient, Ann Wayt.

23 Q. And what, if anything, did you respond to --

24 A. Well, I was pretty shocked. I didn't know
25 where that came from. I repeated to Susan the

1 conversation that I'd had with Lora in the ER, and also
2 indicated that my co-worker, Duana, had been standing
3 right beside me as I had that conversation with the ER
4 nurse, and no one mentioned refusing a patient.

5 Q. Okay. What, if anything, happened next?

6 A. The next thing I know, Susan did arrive on the
7 unit. And Susan said I'm here, I've got this. I'll be in
8 the room waiting on the patient until the sitter I've
9 procured from the Cardiovascular area who doesn't have any
10 surgeries today can be here.

11 Q. Okay. When the patient arrived, what were you
12 doing at that time?

13 A. When Susan said that to me, I felt very
14 comfortable in thinking that she would be in that room to
15 accept the patient when the patient arrived from the ER.
16 I told Susan I'm busy in two different rooms.

17 Q. So do you know who settled the new patient into
18 the room?

19 A. I only assumed since Susan said I'm here I've
20 got this, that she would do it.

21 Q. Okay. So what, if anything, happened after
22 that conversation you had with --

23 A. I went about what I was in the middle of in the
24 two rooms. Shortly after ten I went into the patient's
25 room to see my patient for the first time, and Rhonda

1 Smith was standing at the bedside, the RN from the
2 Cardiovascular area.

3 Q. Do you recall if any of the family members were
4 in the room at this time?

5 A. Not at that time.

6 Q. Okay. Did you check on the new patient at this
7 time?

8 A. I did.

9 Q. And what, if anything, did you do?

10 A. I looked at her, made sure that she was
11 comfortable, and she was.

12 Q. Did you speak with Rhonda?

13 A. I did. We had a brief conversation about her
14 and a co-worker were going to interchange being sitters
15 that day. And Jonalee, her co-worker, actually walked in
16 the room at the time. And that was the first I'd met
17 Jonalee, and Rhonda Smith actually introduced me to her.

18 Q. Now, at that point, had you started the
19 admitting paperwork for the new patient?

20 A. No. But I went out to the nurses' station at
21 that time and started putting the chart, admission chart
22 together.

23 Q. And what's involved in putting an admission
24 chart together?

25 A. There's actually a packet of admission papers,

1 a small stack that has to be placed in the chart, along
2 with all the records from the ER, any records from a
3 nursing home, say, that needed to be placed on the chart
4 at that time.

5 I also had to page the attending physician, the
6 admitting physician for orders for the patient.

7 Q. And when was the next time you recall rounding
8 or visiting the patient?

9 A. Yes. I went back into the room -- I started
10 the admission papers around ten thirty. I went back into
11 the room for my hourly round shortly after eleven, just
12 after eleven. And I went in there, the family was
13 present. I took the I.V. bag that she had from the ER and
14 I put it into an I.V. pump so that it would control the
15 drops so she wouldn't get too much fluid.

16 I spoke -- spoke briefly with the family. The
17 son was there, and a woman was with him, and then a
18 younger lady was also there. A little bit about her
19 medical history.

20 Q. Do you recall if Rhonda was in the room at that
21 time?

22 A. Rhonda was in -- Rhonda was not in the room at
23 that time.

24 Q. Do you recall who was the --

25 A. Jonalee was there.

1 Q. Do you know where Rhonda Smith was at?

2 A. Considering it was shortly after eleven, I just
3 assumed she went to lunch.

4 Q. Okay. Now, did you have any conversation with
5 Jonalee while you were in the room?

6 A. Not at that time. Just a hi.

7 Q. Now, when was the next time you rounded on this
8 patient?

9 A. After I spoke with the family and hung the I.V.
10 bag, I went out to the nurses' station to purposely obtain
11 my stethoscope, which I do not wear around my neck all day
12 because it's irritating. It could also be dangerous if a
13 confused patient pulled on it. I needed my stethoscope to
14 do the head-to-toe assessment.

15 I went back into the room to do the head-to-toe
16 assessment.

17 Q. Were the --

18 A. Jona -- I'm sorry.

19 Q. Were the family members in the room at this
20 time?

21 A. No, they -- they were gone. And I knew they --
22 I'm sorry. Go ahead.

23 Q. So who was in the room at this time?

24 A. Jonalee was in the room at the time.

25 Q. And what, if anything, did you say to Jonalee

1 at that time?

2 A. She actually said to me if you have a minute,
3 I'd like to use the restroom. And I said, of course. But
4 because she didn't know our unit, I gave her directions to
5 the restroom.

6 Q. Now, how come Jonalee just didn't use the
7 restroom that was in the patient's room?

8 A. Those are for patient's use only. We don't
9 normally do that.

10 Q. So while Jonalee left the room what, if
11 anything, did you do while you were in the patient's room?

12 A. I did the head-to-toe assessment at that time.

13 Q. Is the skin assessment part of the head-to-toe
14 assessment?

15 A. The skin assessment is an assessment all its
16 own, but it's included in the charting. It has its own
17 section.

18 Q. Now, did you perform this skin assessment at
19 this time?

20 A. I remember saying -- recalling to my -- I
21 recall that I was thinking to myself the skin assessment
22 takes longer. I'll come back later and do that part of
23 it.

24 Q. So you didn't do it at this time.

25 A. Not the skin assessment.

1 Q. Now, did you have the patient's chart while you
2 were with -- while you were in the room?

3 A. No. I don't bring the patient's chart into the
4 room.

5 Q. How do you record your assessments throughout
6 the day?

7 A. The report sheet that I start in the morning
8 when the night nurse gives me a report, I jot things down,
9 I fold that in half or fours, and I keep that in my pocket
10 all day --

11 Q. Is it --

12 A. -- that way I can add and detract from it.

13 Q. Is this a common practice for you?

14 A. I do it all the time.

15 Q. What about other nurses, have you seen other
16 nurses carry the patient's chart into the room?

17 A. I don't know that they carry the -- I don't
18 believe any nurse really carries the chart into the room.
19 I know a lot of nurses carry a clipboard instead of
20 keeping their report sheet in their pocket.

21 Q. They would keep the report sheet on the
22 clipboard?

23 A. On the clipboard.

24 Q. Okay. So what, if anything, happened next?

25 A. That was -- after the head-to-toe assessment, I

1 recall Jonalee coming right back into the room. And I
2 left to continue my chart.

3 Q. When Jonalee entered the room what, if
4 anything, were you doing with the patient?

5 A. I was just getting done with the head-to-toe
6 assessment.

7 Q. Okay. About how long do you recall Jonalee
8 being in the room with the patient at that time?

9 A. From the time I first saw her?

10 Q. Yes.

11 A. Well, it was from -- from eleven when I --
12 shortly after eleven when I first walked in, until after
13 eleven thirty, except for the small amount of time that
14 she went to the bathroom.

15 Q. Okay. What, if any, medications did you have
16 to administer this patient?

17 A. Well, I went back in the room on rounds at
18 twelve noon, shortly after twelve noon. The patient was a
19 little bit restless then. I felt that she could use some
20 pain medicine.

21 I went out to the nurses' station, prepared the
22 pain medicine, brought it back in the room and
23 administered the morphine through her I.V. site.

24 Q. Now, after you left the patient's room, did you
25 see Rhonda Smith, the first sitter again?

1 A. No, Jonalee was still there when I administered
2 the medication.

3 Q. And when was the next time you rounded on the
4 patient?

5 A. I rounded again shortly after one. The family
6 was there at that time. We talked a little bit about what
7 kind of diet she would be on, what she required, those
8 sorts of things.

9 Q. And after that visit, when was the next time
10 you rounded on the patient?

11 A. That would be shortly after two o'clock.
12 That's when Rhonda Smith was actually back in the room,
13 the first I saw her since before eleven.

14 Q. Okay. Do you recall if you had any
15 conversations with Rhonda Smith?

16 A. Yeah. I asked her if the nurse's aide, Sam
17 Burgett, had assisted her in changing the patient, because
18 the patient had been incontinent of urine.

19 Q. Had you sent Sam Burgett into the patient's
20 room?

21 A. I did.

22 Q. And do you recall what time that was?

23 A. Oh, it was before two, because I hadn't made my
24 two o'clock rounds yet.

25 Q. Now, had you seen Susan Kress again on the

1 floor?

2 A. I saw her in passing in the hallway shortly
3 after -- I would say before three thirty.

4 Q. Okay. Now, when was the next time you rounded
5 on the patient? You went in there at two.

6 A. After three, for my three o'clock rounds.

7 Q. And what, if anything, do you recall about that
8 visit?

9 A. It was about three fifteen, and Rhonda Smith
10 was standing at the bedside, and she appeared angry to me.
11 I could tell by the way she was standing, and she kept
12 glancing at the clock. And she said to me my shift is
13 over. I need someone to replace me.

14 And I had already called Peter Gyer, he was the
15 coordinator that day, and asked him for a replacement for
16 her, because I knew her shift was over at three thirty.

17 Q. And by --

18 A. And I told her that.

19 Q. And by replacement, do you remain replacement
20 sitter?

21 A. Replacement sitter.

22 Q. And did you obtain a sitter for Rhonda Smith?

23 A. Yes, we did.

24 Q. And do you know who that sitter was?

25 A. When I made rounds shortly after four o'clock,

1 Vickie, the PCT, which is a nurse's aide, was there. And
2 we had a conversation, and she said she would be the
3 sitter until eleven p.m.

4 Q. So at this point we have Susan Kress, Rhonda
5 Smith, Jonalee, and Vickie have all served as the sitters
6 for this patient?

7 A. Correct.

8 Q. Okay. Now, do you recall if you administered
9 any other pain medication to this patient, other than the
10 morphine that you administered --

11 A. I did. When I was talking to Vickie after
12 four, the patient again was getting restless, and that
13 indicated to me that she was in pain.

14 So I again went out to the nurses' station,
15 obtained the morphine, brought it back in around sixteen
16 thirty -- excuse me, four thirty, and I administered the
17 morphine I.V. push.

18 Q. Just for those of us here --

19 A. Uh-huh.

20 Q. -- that don't work in the medical field --

21 A. I'm sorry.

22 Q. -- what's an I.V. push?

23 A. I'm sorry.

24 Q. It's okay.

25 A. You literally -- you have the medication in a

1 syringe diluted in some saline, and you slowly inject it
2 through the I.V. site.

3 Q. Now, at any point, was Vickie relieved from
4 being the sitter?

5 A. She was. I actually asked Sam, who was my PCT
6 all day, if he would act as a sitter so that Vickie could
7 go to dinner. That was shortly after five when I went in
8 the room on my hourly rounds, and Sam came in with me.

9 Q. So at five did you go into -- or for your
10 hourly rounds around five --

11 A. Yes.

12 Q. -- did you go into the patient's room?

13 A. Yes, I did.

14 Q. And what, if anything, do you recall at that
15 time?

16 A. The patient -- the pain medication worked on
17 the patient. She was relax --

18 Q. Did Sam go with you into the room at that time?

19 A. He did, uh-huh.

20 Q. Did Vickie leave the room?

21 A. Vickie did. She went to dinner.

22 Q. So after that rounding, when was the next time
23 you went into the patient's room?

24 A. That would have been shortly after six again
25 for rounds.

1 Q. Do you recall who was the sitter at that time?

2 A. Sam was still there. Vickie hadn't returned
3 yet.

4 Q. Okay. And what, if anything, do you recall
5 about that visit with the patient?

6 A. The patient was fine. I don't know why it
7 sticks out in my mind, but I know Sam -- I recall Sam was
8 there, because for some strange reason he sat near the
9 window, and all the other sitters that day had sat on the
10 other side of the bed. I don't know why, that just sticks
11 out to me.

12 Q. Okay. And what time did your shift end that
13 day?

14 A. My shift ends at seven thirty.

15 Q. Now, prior to the end of your shift, did you
16 give bedside report to the next nurse for this patient?

17 A. Yes. Close to seven o'clock, or shortly after
18 seven, we start bedside rounding with the night shift
19 nurse on all the patients that we had that day.

20 Q. Do you recall who the night shift nurse was
21 that day?

22 A. That would have been Priscilla.

23 Q. And do you know Priscilla's last name?

24 A. Harrison.

25 Q. Okay. What time did you leave the hospital

1 that day?

2 A. Not until seven forty-five, thereabouts.

3 Q. And what time do you normally leave the
4 hospital?

5 A. Seven thirty.

6 Q. What were you doing at seven thirty?

7 A. At seven thirty, I finally was able to sit down
8 and put the trifold information on the trifold, which is
9 the head-to-assessment. I was just charting it at seven
10 thirty.

11 Q. I'd like to direct your attention to General
12 Counsel's Exhibit Number 7 that you have in front of you.
13 Take a few minutes, if you need to find it. And I believe
14 we're starting on Page 16 and 17. Do you see GC7?

15 A. Well, I fell kind of apart here.

16 Q. Okay.

17 MS. CENDROSKY: Your Honor, may I approach?

18 JUDGE AMCHAN: Sure. Well, I think it's on
19 -- look at your right hand. Move your right hand to the
20 right.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. CENDROSKY:

23 Q. It would be a larger packet.

24 A. Oh, this one.

25 Q. Yes.

1 A. I'm sorry.

2 Q. It's okay.

3 A. I've got it.

4 Q. If you'd look to Page 16 and Page 17. I kind
5 of marked the numbers at the bottom.

6 A. In the circle?

7 Q. Yes.

8 A. Gotcha.

9 Q. Okay. What -- do you recognize Page 16?

10 A. Yes. That's the admission database.

11 Q. And Page 17?

12 A. That's the second half of the admission
13 database.

14 Q. Is the admission database a document separate
15 than Page 18 through 25?

16 A. Yes, it is.

17 Q. Okay. And if I turn your attention --

18 JUDGE AMCHAN: Oh, wait. Wait. So who
19 filled that out?

20 THE WITNESS: I did.

21 JUDGE AMCHAN: And when?

22 THE WITNESS: Around ten thirty in the
23 morning I started that. It was sort of ongoing throughout
24 the day.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. CENDROSKY:

2 Q. And if you'd look at Page 17, that's your
3 signature that appears at the bottom?

4 A. Yes.

5 Q. Okay. Let's look at the rest of these pages
6 briefly. On Page 18 at the top, do you recognize that
7 signature?

8 A. Yes, that's my signature at the top.

9 Q. And then below your signature?

10 A. That's Priscilla's signature.

11 Q. Okay. And the marks in the left column on Page
12 18, did you make those marks?

13 A. I did.

14 Q. And the ones on the -- just next to that to the
15 right, are those your marks?

16 A. On the right, under 2140?

17 Q. Yes.

18 A. Those are Priscilla's marks.

19 Q. Okay.

20 A. That's the night shift nurse.

21 JUDGE AMCHAN: Well, I don't know what you're
22 --

23 THE WITNESS: Page 18.

24 JUDGE AMCHAN: I'm looking at Page 18.

25 THE WITNESS: Oh, his --

1 JUDGE AMCHAN: So --

2 THE WITNESS: -- his -- oh, yeah.

3 JUDGE AMCHAN: And I think I'm looking at the
4 same thing. So --

5 THE WITNESS: Under --

6 JUDGE AMCHAN: -- okay. There's one column
7 -- oh, I see what you're saying.

8 THE WITNESS: Yes.

9 JUDGE AMCHAN: The column on the left is
10 yours.

11 THE WITNESS: Correct.

12 JUDGE AMCHAN: The column on the right under
13 --

14 THE WITNESS: That's right.

15 JUDGE AMCHAN: -- 2140 --

16 THE WITNESS: Is the night nurse.

17 JUDGE AMCHAN: Right. Which is --

18 THE WITNESS: Uh-huh.

19 JUDGE AMCHAN: -- seven forty (sic).

20 THE WITNESS: Yes.

21 JUDGE AMCHAN: P.m.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. Now, do you know what Pages --

25 MS. LAWHON: Excuse me, Your Honor. It's

1 2140; right, which is nine forty.

2 THE WITNESS: Nine forty.

3 JUDGE AMCHAN: I can -- you can -- I --

4 MS. LAWHON: Sorry. Military time.

5 JUDGE AMCHAN: Yes. I should know this from
6 my sojourn there. But I always have to subtract 12. No
7 wonder I didn't rise too hard in the -- too high in the
8 ranks.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. CENDROSKY:

11 Q. Now, Pages 18 through 25, does these -- do
12 these pages have a name, or are -- is this a certain
13 document?

14 A. This is all part of the head-to-toe assessment.

15 Q. Okay. I'd like to direct your attention to
16 Page Number 19. And there is a section titled "Cough."
17 Do you see that?

18 A. Yes, I do.

19 Q. And there appears to be a symbol on the nearest
20 to the left. What is that symbol?

21 A. That's an "A," which stands for absent.

22 Q. Now, did you make that?

23 A. I did.

24 Q. Okay. And why did you --

25 A. She had no cough when I was doing the head-to-

1 toe assessment.

2 Q. Is it possible for a patient to have a cough at
3 one point in time, and then later the cough would
4 disappear?

5 A. Oh, absolutely. That's why we do assessments,
6 so that we can judge the patient's condition throughout
7 the day and compare it.

8 Q. Now, next to the A that you noted, there's
9 another symbol. What does -- do you recognize that
10 symbol?

11 A. Well --

12 MR. BRYAN CARMODY: Objection. Foundation.
13 There's no evidence that this witness is familiar with
14 this other nurse's handwriting.

15 JUDGE AMCHAN: Well, she may know what the
16 symbol means, apart from -- I mean, is it standard
17 practice to put a "D"? I mean, do you put a "D" any time?

18 THE WITNESS: If the patient -- if it has --
19 if she has a dry cough, you would put a "D."

20 JUDGE AMCHAN: Okay.

21 THE WITNESS: It looks like Priscilla put a
22 "D" there.

23 JUDGE AMCHAN: You would do that if --

24 THE WITNESS: If the patient had a dry cough,
25 I would have put a "D."

1 JUDGE AMCHAN: All right.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. CENDROSKY:

4 Q. I'd like to now direct your attention to, let's
5 see, Page 21. There appears to be a section on the -- it
6 says "Surgical wound."

7 A. Yes.

8 Q. And there's a box that says "7 a. to 7 p."

9 A. Yes.

10 Q. Is that box the box that you would be
11 responsible for filling out?

12 A. Yes.

13 Q. Okay. And next to that box there is a notation
14 that says skin intact.

15 A. Correct.

16 Q. Is that box checked?

17 A. No, it is not.

18 Q. And why is it not checked?

19 A. Because, unfortunately, I completely forgot to
20 go back to her and do the skin assessment that day. So I
21 did not mark the box, because I hadn't done it.

22 Q. Okay. Now, if we look below the 7 p. to 7 a.
23 box, is that for the night shift nurse?

24 A. That is.

25 Q. Okay. Now, I'd like to direct your attention

1 to Page 23. And I want to direct your attention to the
2 section that says "Community cares rounding." Let's look
3 at, there's several rows and it starts with "Pain level
4 goal." Then it says "Pain level." Then it says
5 "Position."

6 A. Yes.

7 Q. Do you see that? Okay.

8 A. Yes.

9 Q. Now, on top of that there appears to be some
10 numbers. Do you know what those numbers represent?

11 A. Those are the hours of the day.

12 Q. Okay. Do you know who made the dashes in these
13 several rows?

14 A. I did.

15 Q. Okay. So if we look at the one that says
16 "Position" --

17 A. Uh-huh.

18 Q. -- that row --

19 A. Uh-huh.

20 Q. -- there appears to be a mark in the time frame
21 for seven, eight, and nine.

22 A. Yes.

23 Q. Did you make those marks?

24 A. I did.

25 Q. Okay. And then if we look right below that,

1 "Possessions within reach," there are no marks in the
2 seven, eight, and nine box; correct?

3 A. Correct.

4 Q. And then if we look at "Call light within
5 reach," the same thing, no marks --

6 A. Correct.

7 Q. -- for those times?

8 A. Uh-huh.

9 Q. And then "Needs bathroom," same.

10 A. Right.

11 Q. Okay. Now, can you explain for us why there
12 were marks in the position role box for those time
13 periods, but not in the other rows?

14 A. Yes. Because, unfortunately, in my haste, I
15 made a mistake and just started making "X's," making
16 marks. And I caught myself, and the rest of them --
17 that's why they start at ten.

18 Q. And how did you know that there was a mistake?

19 A. Because the patient was not on the unit at
20 seven a.m.

21 Q. Okay.

22 A. Or eight a.m.

23 Q. Okay. Let's look to Page 24. And there's a
24 section that's titled "Safety." Do you see that?

25 A. Yes, I do.

1 Q. And then I also see a time and several other
2 rows. Did you make any of these dashes or marks in this
3 -- these boxes?

4 A. I did.

5 Q. Which --

6 A. From ten a.m. through nineteen hundred.

7 Q. Okay. I'd like to direct your attention to
8 anywhere in this, and hopefully maybe you can direct my
9 attention --

10 A. Uh-huh.

11 Q. -- to where you would have charted that you
12 gave pain medication to this patient.

13 A. Yes. On Page -- on Page 23 where it says,
14 "Pain assessment" --

15 Q. Okay.

16 A. -- there are -- there's a spot that looks like
17 a ten thirty. Right next to it there's a spot that says
18 twelve noon.

19 Q. Is the twelve noon your handwriting?

20 A. It is.

21 Q. Okay. Now, underneath the twelve noon there
22 also appears some handwriting. Do you recognize that
23 handwriting?

24 A. Yes. That's all my handwriting.

25 Q. Okay. Then next to the twelve noon.

1 A. Is the 1630.

2 Q. Is that your handwriting?

3 A. That's also my handwriting.

4 Q. And then below that there appears to be some
5 other information. Is that your handwriting?

6 A. That's all my handwriting.

7 Q. Okay. Now, look at Page 25, please. Can you
8 explain for me what interdisciplinary notes are?

9 A. Interdisciplinary notes are just extra things
10 we chart, exceptions. Exceptions to the assessment that
11 happened throughout the day.

12 Q. And can you explain what an exception would be?

13 A. Let's see. If she had fallen, I would have
14 written it in there.

15 Q. Okay. Now, is any of your handwriting here in
16 this interdisciplinary notes box?

17 A. Yes. We always make a note on when the patient
18 is admitted.

19 Q. Okay. And how much of that writing is yours?

20 A. The ten thirty spot, "Admitted from ER
21 disoriented and agitated." And then 1630 spot, "Very
22 agitated. Sitter still present."

23 Q. Okay. Great. So this was August 28th, 2012.

24 A. Correct.

25 Q. Okay. Do you recall if you worked on August

1 29th, 2012?

2 A. I did.

3 Q. What, if anything, do you recall about that
4 day?

5 A. I recall the same exact hectic busy day as the
6 day that I worked previous to that.

7 Q. Do you recall if you saw John Perone at that
8 time?

9 A. I saw him on the unit that day -- that morning,
10 yes.

11 Q. Did you say anything to John?

12 A. Well, I didn't, at first. I noticed he was in
13 our medication room. And then I noticed shortly
14 thereafter he was in the doorway of the medication room
15 just sort of watching me bounce back and forth out of
16 patients' room answering call lights and answering the
17 telephone.

18 He stood there a few minutes. So I finally asked
19 him, do you need something?

20 Q. And could you tell us who John Perone is?

21 A. John Perone is the director of pharmacy.

22 Q. Okay. And when you asked John if he needed
23 anything, what was his reply?

24 A. His reply was, there's a discrepancy on this
25 PYXIS and we have to fix it now.

1 Q. What's a PYXIS?

2 A. A PYXIS is a medication machine -- yeah, a
3 machine that we get our medications out of. You have to
4 put in a code word and you count the number of meds in the
5 drawer, the number you take out, that sort of thing.

6 Q. Do you know what was wrong with the PYXIS
7 machine?

8 A. It -- the count was off because I had entered a
9 count. Then I entered that I took two medications out of
10 the drawer, but the phone rang, so I left the drawer
11 hanging open.

12 If I recall it correctly, I went and answered the
13 phone, but you -- the time lapses on it. So when I -- by
14 the time I came back, I had to reenter into the machine,
15 which would have made the count off in the drawer.

16 Q. So when you left, does the machine lock itself
17 again?

18 A. You know, I -- it's been so long since I
19 worked, I can't remember if the drawer closes back, or if
20 it just starts beeping. I can't remember.

21 Q. Okay.

22 A. But I do know that you have to start all over.

23 Q. Okay. And what, if anything, did you say to
24 John?

25 A. Well, he -- he said that we had to fix this

1 now. And I knew in my mind that the policy said that we
2 -- it was appropriate to fix it either when the mistake is
3 found, or at the end of the shift, which is with another
4 RN, which is usually what we do.

5 And I was completely frustrated at that point,
6 and I said, John, I do not have time to do this right now.
7 And he said, Ann, we will do this now, in a very
8 authoritative tone of voice. So I stopped what I was
9 doing and did what he commanded.

10 Q. Now, do you know if John Perone was able to fix
11 the PYXIS machine by himself?

12 A. He -- by -- he would've had to have -- I don't
13 know.

14 Q. That's fine.

15 A. I honestly don't know if he could fix it by
16 himself or not.

17 Q. Did you see John Perone later that day?

18 A. He came back, actually. I don't recall what
19 time. I don't recall how much time had passed. I only
20 know that I saw him in the med room. I felt that he might
21 have thought I was being disrespectful earlier.

22 And I don't -- I never have problems with
23 managers. And I didn't think I was disrespectful, but I
24 thought I should apologize to him, so I did.

25 Q. Okay. Now, I'd like to direct your attention

1 to September 5th, 2012.

2 A. Uh-huh.

3 Q. What, if anything, do you recall about that
4 day?

5 A. I recall Paula Zinsmeister coming to the
6 nurses' station, and she said to me -- she's my manager --
7 and she said Jason would like to speak with you in my
8 office.

9 Q. And do you know Jason's last name?

10 A. Jason McDonald, the director.

11 Q. Did you go to Mr. McDonald?

12 A. I did.

13 Q. Now, had you ever received any sort of
14 discipline in the past?

15 A. Never.

16 Q. Now, when you went into this meeting room what,
17 if anything, did Mr. McDonald say to you?

18 A. He said that he had a complaint from John
19 Perone regarding my behavior on such-and-such a day, the
20 29th of August. And he had a paper in front of him and
21 said he was issuing me a written warning regarding that.

22 Q. Okay. Did you get a copy of the written
23 warning?

24 A. Actually, I didn't even know I could have a
25 copy. I never had a written warning before. I didn't

1 know a thing about them, so I didn't ask for one and
2 wasn't offered one.

3 Q. Did you write anything on the written warning?

4 A. Paula did tell me that I could write on it.
5 And so on the warning I wrote that I had apologized to
6 John Perone.

7 Q. Okay. Now, I'd like to direct your attention
8 to September 12th, 2012.

9 A. Uh-huh.

10 Q. What, if anything, do you recall about that
11 day?

12 A. I was home that day, I wasn't working. I
13 received a phone call around ten forty-five in the
14 morning, and it was from my manager Paula Zinsmeister.

15 Q. And what, if anything, did Paula say to you?

16 A. Paula said, after saying, hi -- hi, what are
17 you doing, she said I need you to come in today for a
18 meeting regarding a patient safety issue.

19 Q. And what, if anything, did you respond?

20 A. I was pretty surprised. I didn't know what she
21 was talking about. And she said this has nothing to do
22 with the Union, which really kind of surprised me, because
23 I hadn't even mentioned the Union.

24 Q. Was anyone else on the phone besides Paula?

25 A. Well, at that point is when I realized I was on

1 speaker phone, because I heard Jason McDonald speak up in
2 the background. And he said you have to be here at one
3 o'clock today.

4 And I said to him, I believe I can have union
5 representation with me. And Jason said you cannot, this
6 is the disciplinary phase, this is not investigatory. And
7 I can remember saying to him how in the heck did it get
8 that far, when I am just finding out about it?

9 I don't recall what he said next. But I do know
10 that I said there's no way I can be there today. I work
11 tomorrow, the 13th. I can meet with you then.

12 That's when Paula said I've already taken you
13 off the schedule, another shock. I didn't know what to
14 say. I believe I mentioned -- we agreed on one o'clock on
15 Thursday.

16 And I mentioned again that I knew I could have
17 union representation with me. And Jason McDonald said to
18 me you will be here tomorrow at one p.m. with no
19 representation or I will fire you over the phone.

20 Q. Was that the end of your conversation?

21 A. That was it.

22 Q. Did you bring a union representative with you
23 to the meeting?

24 A. I did.

25 Q. And how did you -- did you just do it on your

1 own, or did you learn that you could?

2 A. The next morning I received a call from Angie
3 Boyle. And when --

4 Q. Who's Angie Boyle?

5 A. Angie Boyle's head of Human Resources.

6 Q. Okay.

7 A. And she said to me on the phone, there's been
8 some mistake. You are allowed to have union
9 representation, so pick someone.

10 However, I knew that our union reps were on the
11 West Coast at that time, but I did find out that Bob
12 McKinney, an RN on the Telemetry Union (sic) was delegated
13 as a union rep in their absence, so he came along.

14 Q. Now, did you attend the meeting on September
15 13th, 2012?

16 A. Yes. Bob was there with me.

17 Q. And which office did you report to?

18 A. We went to the Human Resource Department.

19 Q. Do you recall who was in the office at that
20 time?

21 A. Yes. In Angie Boyle's office was Angie Boyle,
22 Paula Zinsmeister, Jason McDonald, myself, and Bob
23 McKinney.

24 Q. And how did the meeting start?

25 A. It started by Jason saying I have four

1 witnesses who said you were not in a patient's room all
2 day.

3 Q. And what, if anything, did you say in response?

4 A. I didn't have anything to say. I was
5 completely taken aback; I didn't even have a response.

6 Q. And what happened next?

7 A. I can remember Jason asking me -- he had the
8 trifold in front of him that I had charted on. I can
9 remember him saying to me how do you do a head-to-toe
10 assessment?

11 So I proceeded to explain to him the procedure
12 for doing a head-to-toe assessment. Then Paula said to
13 me, how do you -- how do you listen to the lung sounds,
14 which I found extremely insulting.

15 And I said to her, you put your stethoscope on
16 the patient's chest and you listen to them breathe in and
17 out.

18 Q. Do you recall anything else about the meeting?

19 A. I remember that Jason said to me the charges
20 against you are falsification of documents, and violation
21 of hospital policy.

22 Q. Did Jason tell you which documents you
23 falsified?

24 A. They did not elaborate on any -- anything.

25 Q. Do you recall if in this meeting the skin

1 assessment was brought up?

2 A. It was brought up.

3 Q. And how was it brought up?

4 A. Jason brought it up. And he said why didn't
5 you do the skin assessment? And I told him I completely
6 forgot that day to go back and do the skin assessment.
7 But I also said to him, but I didn't chart it, either. I
8 did not falsify that document, because I did not chart it.

9 Q. How long did this meeting last?

10 A. Maybe 15 minutes. It did not last long.

11 Q. So that was September 13th --

12 A. Correct.

13 Q. -- 2012. Now I'd like to direct your attention
14 to September 17th. Do you recall anything happening that
15 day?

16 A. I recall getting a phone call late in the
17 afternoon, and it was a voicemail message from Angie
18 Boyle, probably four thirty, around there, in the
19 afternoon.

20 And the message said that I had to come for a
21 meeting at the hospital at ten a.m. on the 18th. Oh, and
22 by the way, we did not receive any sort of rebuttal, or
23 defense of any kind regarding your investigatory
24 suspension.

25 Q. Did you know what she meant by defense?

1 A. I didn't have a clue what she meant. And to
2 verify my memory, I immediately called Bob McKinney to see
3 if he recalled whether she had brought that up. He said
4 no, he didn't recall that she even mentioned it.

5 Q. Okay. Now, did you arrive at the hospital for
6 the meeting on September 18th?

7 A. I did.

8 Q. Did the meeting take place?

9 A. No, it didn't. James Moy, a union
10 representative, had been in contact with Angie Boyle, and
11 we were allowed to have maybe 24 hours, or something like
12 that, to put a rebuttal or defense letter together and get
13 it turned in.

14 Q. And who did you learn this from?

15 A. James Moy told me.

16 Q. Now, at that point, did you speak with anyone
17 else from the Union besides James Moy?

18 A. Yes. I spoke with Michelle Mahon.

19 Q. And who is Michelle Mahon?

20 A. She's also a union representative.

21 Q. Do you recall when you spoke with her?

22 A. Later that day.

23 Q. What, if anything, did you say to Michelle
24 Mahon?

25 A. I told her the events of the day. She was

1 going to help me put this rebuttal letter together.

2 Q. Okay.

3 A. So I told her the events of the day.

4 Q. I'd like to direct your attention to September
5 24th, 2012. What, if anything, do you remember about that
6 day?

7 A. September 24th, I believe I -- I -- I received
8 a voicemail message around eight thirty in the morning
9 from Angie Boyle.

10 And it said that I needed to be there at three in
11 the afternoon for more questioning regarding my
12 investigatory suspension.

13 Q. Did you go to that meeting?

14 A. I did.

15 Q. And do you recall who went with you?

16 A. Michelle Mahon went with me.

17 Q. Where was the meeting at?

18 A. It was in the Human Resources, in Angie Boyle's
19 office.

20 Q. Was anyone else in the room with Angie Boyle?

21 A. Pat Kline, the compliance -- a compliance nurse
22 was there, as well.

23 Q. How did the meeting start?

24 A. I believe it started by Pat Kline holding up
25 this rebuttal letter that Michelle had put together. And

1 she said who gave out this information? And I said, I
2 did. And she said who did you give it to? And I told her
3 Michelle.

4 And she said this is a HIPAA violation and I've
5 already contacted corporate regarding that. And I said
6 where in that letter are the HIPAA violations?

7 And she had several things highlighted, namely,
8 the date of the admission, the room number, the admitting
9 physician. I don't recall what else.

10 Q. Was the patient's name on the letter?

11 A. No, it was never mentioned in the letter.

12 Q. Was the patient's Social Security number on the
13 letter?

14 A. No, ma'am, it was not.

15 Q. What, if anything, was your response to
16 Ms. Kline?

17 A. I actually didn't have -- Michelle took over
18 the conversation. I really didn't have any further
19 response to that.

20 Q. Okay. I'd like to direct your attention to
21 September 25th, 2012. What, if anything, do you recall
22 about that day?

23 A. I recall that voicemail message in the evening,
24 late afternoon, that said I was to report to the hospital
25 on the 26th for the disciplinary phase of my suspension.

1 Q. And that was --

2 A. And that -- that was from Angie Boyle, as well.

3 Q. Thank you. Besides that phone call, had you
4 received any other communication from the hospital that
5 day?

6 A. Well, not until after that phone call. I went
7 -- I live out in the country and I had to walk down to my
8 mailbox, and I received a card in the mail that said I had
9 a registered letter.

10 And it said it was from Affinity. And the time
11 was stamped on it when it was mailed, the time and the
12 date, which was September 24th at six forty-eight in the
13 evening.

14 By that time of the day, though, our post office
15 was closed and I couldn't go and actually retrieve the
16 actual letter.

17 Q. Now, did you attend the meeting on September
18 26th, 2012?

19 A. I did.

20 Q. And what, if anything, do you recall about that
21 meeting?

22 A. I recall I had a ton of supporters from the
23 nursing staff there. We all walked into the Human
24 Resource Department. And Angie Boyle came out and said
25 I'd like to speak to Ann by herself first, please.

1 And she took me behind this glass partition and
2 she got very close in my face, and I could hear her voice
3 shaking. And she said to me you realize you cannot have
4 union representation here because this is the disciplinary
5 phase? And I said, yes, I do. And Jason McDonald was
6 standing in the background.

7 At that point, she sent everyone else out to the
8 waiting area, and her and I and Jason went into her
9 office.

10 Q. And what, if anything, happened in this
11 meeting?

12 A. Paula Zinsmeister was also there. Jason had
13 paperwork in front of him. And he said to me that the
14 charges against me were egregious enough to determine that
15 you should be terminated.

16 The minute he said terminated, I got up and
17 walked out of that room as fast as I could.

18 (Whereupon, General Counsel's Exhibit Number
19 12 was marked for identification.)

20 Q. Okay. Now, at this time I'm going to show you
21 General Counsel's Exhibit Number 12. Take a minute and
22 look at this document. Do you recognize this document?

23 A. I do.

24 Q. And what is it?

25 A. I received this in the mail from the Ohio Board

1 of Nursing. It's a Potential Violation Report.

2 Q. Is your name on the document?

3 A. It is. It's at the very top.

4 Q. And is this dated?

5 A. It is. It's dated 10/31/12.

6 MS. LAWHON: Your Honor, could we just
7 provide --

8 THE WITNESS: Thank you.

9 MS. LAWHON: -- Ms. Wayt seems to have
10 allergies as I do. I thought we could --

11 THE WITNESS: It's just a cold. I'm so
12 sorry.

13 MS. LAWHON: -- offer her a tissue.

14 THE WITNESS: Thank you. That's fine. Thank
15 you, Michelle. I appreciate that. Yes.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. CENDROSKY:

18 Q. Did you respond to this letter?

19 A. I did, as he indicated. I responded the
20 information, investigative materials, they called it, yes.

21 Q. Do you know the current status of the Ohio
22 Board of Nursing's investigation with respect to your
23 case?

24 A. I checked last week, and my licenses are still
25 active.

1 Q. Okay. Do you know how long the investigation
2 will take?

3 A. No one told me that at all.

4 MS. CENDROSKY: At this time, Your Honor, I'd
5 like to move to admit General Counsel's Exhibit Number 12
6 into evidence.

7 MR. BRYAN CARMODY: No objection.

8 JUDGE AMCHAN: Received.

9 (Whereupon, General Counsel's Exhibit Number
10 12 was received into evidence.)

11 MS. CENDROSKY: Now I have another exhibit.
12 This is going to be General Counsel's Exhibit Number 13.

13 THE WITNESS: Thank you.

14 (Whereupon, General Counsel's Exhibit Number
15 13 was marked for identification.)

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. CENDROSKY:

18 Q. I'd like you to take a minute and look through
19 that. There are several pages there. Now, how long have
20 you worked at Affinity?

21 A. About 24 years.

22 Q. If we look at the first page of this document,
23 do you see any date on this document?

24 A. It says September 23rd, 2011.

25 Q. Now, prior to this -- prior to today, had you

1 seen this document at the hospital?

2 A. Oh, yes.

3 Q. And can you tell us -- summarize for us what
4 this document --

5 A. This is a memo regarding a Civic Fund Craft
6 Show that happens every year. Every year they have it for
7 a long time.

8 Q. Now, is this craft show open to the public?

9 A. It is.

10 Q. Do you know if vendors from the outside are
11 permitted to participate?

12 A. Yes, they are.

13 Q. And do you recall having this craft show more
14 than once a year?

15 A. I recall only once a year in the fall.

16 Q. Once a year in the fall.

17 A. Uh-huh.

18 Q. Okay. Let's look at the second page of the
19 exhibit. And there appears to be a date on there of
20 October 29th, 2012. Do you see that?

21 A. Yes, I do.

22 Q. Okay. Now, in the past, had -- do you -- did
23 you -- was this posted at the hospital prior to your
24 termination?

25 A. I've seen memos regarding this particular

1 pancake breakfast.

2 Q. Is this something that happens on a yearly
3 basis?

4 A. That, I couldn't say for sure. I don't know if
5 it's yearly or not.

6 Q. Do you recall if there was a pancake breakfast
7 held while you were employed at Affinity?

8 MR. BRYAN CARMODY: Objection, Your Honor. I
9 fail to see the relevance of this line of questioning.

10 JUDGE AMCHAN: Well, I'm looking --

11 MR. BRYAN CARMODY: Pancake breakfasts?

12 JUDGE AMCHAN: -- I'm looking to the
13 Complaint. I mean, I --

14 MS. CENDROSKY: It's --

15 JUDGE AMCHAN: -- I suspect it has to do with
16 --

17 MS. CENDROSKY: With access, Your Honor.

18 JUDGE AMCHAN: Yes. Which paragraph of the
19 Complaint am I supposed to look at?

20 MS. CENDROSKY: Paragraph 10 of the
21 Complaint, Your Honor.

22 MR. BRYAN CARMODY: Your Honor, in light of
23 counsel's proffer, I'll withdraw my objection.

24 MS. CENDROSKY: Thank you.

25 JUDGE AMCHAN: I see it. Okay.

DIRECT EXAMINATION (CONT'D)

BY MS. CENDROSKY:

Q. Let's turn the attention to the last page of the document. Are you familiar with this document?

A. Or ones like it, yes.

Q. Have you seen anything like this prior to today?

A. There's often Relay for Life things that go on to earn money sort of thing.

Q. And do you know where these things go on?

A. In different areas of the hospital.

Q. Okay. Now, if we look at this it says "Conference Room 1." Is --

A. Yes.

Q. -- do you -- are you familiar with that location in the hospital?

A. Yes, I am.

Q. Okay. Do you know if the Relay for Life, if it's open to the public?

A. Yes, it is.

MS. CENDROSKY: Okay. At this time, Your Honor, I'd like to move for General Counsel's Exhibit Number 13 into evidence.

MR. BRYAN CARMODY: No objection.

JUDGE AMCHAN: Received.

1 (Whereupon, General Counsel's Exhibit Number
2 13 was received into evidence.)

3 MS. CENDROSKY: That is all, Your Honor.

4 JUDGE AMCHAN: Do you have any questions?

5 MS. LAWHON: I think a few.

6 JUDGE AMCHAN: Do you want to go off the
7 record for a minute?

8 MS. LAWHON: Yes, Your Honor.

9 JUDGE AMCHAN: Off the record.

10 (Off the record.)

11 JUDGE AMCHAN: Back on the record.

12 CROSS-EXAMINATION

13 BY MS. LAWHON:

14 Q. Good morning, Ms. Wayt.

15 A. Hi, Jane.

16 Q. If you could look at General Counsel Exhibit 7,
17 Page 23.

18 A. Okay. Yes.

19 Q. Okay. Now, as soon as I find mine. Here. I
20 think the three times you identified, ten thirty, twelve
21 thirty, and sixteen thirty.

22 A. Yes.

23 Q. And then I notice across pharmacological
24 interventions. Can you read what's written --

25 A. Yes. I wrote one milligram of morphine.

1 That's -- you write in there what you administer.

2 Q. I see. Okay. And then that's under the twelve
3 column; right?

4 A. Right. It's also under the sixteen thirty
5 column.

6 Q. Okay. And then I notice, it seems to be, next
7 to it, it says, "Time, slash, initials."

8 A. Yes.

9 Q. What's that?

10 A. That's the reassessment of the pain level. I
11 had to go back into the room and reassess the patient's
12 level.

13 Q. And is it written there one p.?

14 A. One p.m. and --

15 Q. Yes.

16 A. -- seventeen thirty.

17 Q. Oh, seventeen thirty.

18 A. Uh-huh.

19 Q. Okay. And then below that where it says one
20 hour reassessment, what's written there?

21 A. It says "Calm" meaning the patient was calm at
22 that time.

23 Q. I see. And I think you mentioned at one point
24 that you had -- when the family members were there you had
25 gone in and you had hung a bag that had come from the ER

1 --

2 A. Yes.

3 Q. -- attached it to the I.V. pump.

4 A. Correct.

5 Q. Okay. Is that something that you would have
6 noted in the assessment charting --

7 A. No.

8 Q. -- having done that?

9 A. No, not -- not when you actually put it onto
10 the pump.

11 MS. LAWHON: Okay. Nothing further.

12 MR. BRYAN CARMODY: Your Honor, I'd like the
13 Jencks statement, please.

14 MS. CENDROSKY: Would you like a break?

15 MR. BRYAN CARMODY: Yes, please.

16 JUDGE AMCHAN: Yes. Go off the record.

17 (Off the record.)

18 JUDGE AMCHAN: Back on the record.

19 CROSS-EXAMINATION

20 BY MR. BRYAN CARMODY:

21 Q. Ms. Wayt, good afternoon. My name is -- or
22 good morning, rather, just by a minute, I think. My name
23 is Bryan Carmody. I represent the hospital in this case.
24 I do have some questions for you.

25 You had testified on direct examination, meaning

1 in response to Ms. Cendrosky's questions, that you've
2 never been disciplined by the hospital; is that correct?

3 A. Not in the past, no. That is correct.

4 Q. Well, certainly, you were disciplined by virtue
5 of your termination; correct?

6 A. If that's what you want to call that.

7 Q. Okay. And prior to that you received the
8 written warning on the account of the --

9 A. Yes, a week --

10 Q. -- exchange that you had with --

11 A. -- a week before my termination.

12 Q. Please let me finish, ma'am. Okay?

13 A. Uh-huh.

14 Q. Thank you. You received a written warning on
15 account of the exchange that you had with Mr. Perone --

16 A. Correct.

17 Q. -- is that correct?

18 A. Uh-huh.

19 Q. And aside from those two actions that I've just
20 mentioned, the written warning and the termination --

21 A. Right.

22 Q. -- it is your testimony you have never before
23 received discipline imposed by Affinity Medical Center; is
24 that correct?

25 MS. CENDROSKY: Objection, Your Honor. My

1 question was if she recalled receiving any discipline, not
2 that she did not receive any discipline. I asked her if
3 she recalled.

4 Q. Well, I'm asking you now, Ms. Wayt, have you
5 ever received any discipline aside from the two items I
6 just mentioned before?

7 A. And that answer is I do not recall any.

8 (Whereupon, Respondent's Exhibit Number
9 1 was marked for identification.)

10 Q. Okay, Ms. Wayt --

11 A. Uh-huh.

12 Q. -- I'm showing you a document that's been
13 marked for identification purposes as Respondent's Exhibit
14 1. I'd ask for you to take a look at it and let me know
15 if you recognize the document.

16 A. Yeah. It looks like all the others I've seen
17 before.

18 Q. You say all the others you've seen before, what
19 are you referring to?

20 A. This right here that I got terminated with, it
21 looks like that one.

22 Q. Okay. So is this a document that you've seen
23 before, Respondent's Exhibit 1?

24 A. I've never -- I don't recall ever seeing this
25 particular document before.

1 Q. Okay. Do you recall being disciplined in the
2 form of a verbal warning on or about the 22nd of February,
3 calendar year 2010 by your manager at the time,
4 Ms. Kassango?

5 A. No, I do not.

6 MS. LAWHON: Objection. Mischar -- well, the
7 signatures on the document are significantly different
8 from February 22nd. That's all I'll note.

9 MR. BRYAN CARMODY: I'm not sure if I --

10 JUDGE AMCHAN: Okay.

11 MS. LAWHON: It appears that it was issued on
12 the 12th of March, not the 22nd of February. You
13 represented it's the 22nd of February.

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. BRYAN CARMODY:

16 Q. Do you see the date at the top right-hand
17 corner of this document, Ms. Wayt, this February 22nd of
18 2010?

19 A. Date February 22nd, 2010.

20 Q. Thank you, ma'am.

21 A. Uh-huh.

22 Q. And do you have any recollection of receiving
23 discipline on or about this time of the year from a Jan
24 Kassango?

25 A. I do not recall this document, or any verbal

1 warning of any kind.

2 Q. Thank you, ma'am.

3 A. You're welcome.

4 Q. Okay, Ms. Wayt, I would like to direct your
5 attention back to August 28th of last year. I do have
6 some questions for you concerning that day.

7 Okay. I want to direct your attention, in
8 particular, the conversation that you had with the ER
9 nurse.

10 A. Okay.

11 Q. I think you said her name was Lora?

12 A. Correct.

13 Q. Okay. And when you had that conversation with
14 Lora, about what time of day did it take place?

15 A. Sometime in the morning before the patient came
16 up.

17 Q. Okay. Nine o'clock in the morning. Does that
18 sound like a fair estimation?

19 A. No.

20 MS. CENDROSKY: Objection.

21 THE WITNESS: No, I would say earlier.

22 Q. Okay. What would you say, Ms. Wayt?

23 A. I don't recall. I would say earlier than
24 nine a.m.

25 Q. Okay. Well, you didn't get to work before,

1 what, seven a.m.?

2 A. Correct.

3 Q. Okay. So sometime between seven and nine?

4 A. That sounds fair.

5 Q. Okay. And as part of this conversation that
6 you had with Lora --

7 A. Uh-huh.

8 Q. -- would this be known as the report process
9 that takes place between and amongst nurses at the
10 facility?

11 A. She actually did give me a report at that time.

12 Q. Okay. And as part of Lora giving you a report
13 about the patient --

14 A. Uh-huh.

15 Q. -- you learned about the patient's essential
16 conditions; correct?

17 A. Correct.

18 Q. Did Lora inform you that this patient suffered
19 from a hip fracture?

20 A. Yes. That was the patient's diagnosis.

21 Q. Okay. Incidentally, do you remember -- or
22 without telling me the last name of the patient --

23 A. Uh-huh.

24 Q. -- do you remember her last name?

25 A. I do.

1 Q. Did it begin with the letter "P"?

2 A. Yes, it did.

3 Q. Okay. So if I refer to this patient as Ms. P,
4 you'll know that I'm referring to this patient?

5 A. That's correct, yes.

6 Q. Okay.

7 A. Uh-huh.

8 Q. So Lora told you that Ms. P had suffered from a
9 hip fracture; correct?

10 A. Correct.

11 Q. Lora told you that Ms. P suffered from
12 dementia; isn't that true?

13 A. I don't recall if she told me that, or if it
14 was on the SBAR that got faxed up from the --

15 Q. Okay.

16 A. -- ER.

17 Q. What else do you recall Lora --

18 MS. LAWHON: Okay. Excuse me. Wait.
19 Counsel, please let the witness finish. You --

20 MR. BRYAN CARMODY: What else do you recall
21 Ms. --

22 MS. LAWHON: Counsel, please.

23 MS. CENDROSKY: You're getting out of
24 control.

25 JUDGE AMCHAN: Well, I think she had finished

1 answering. But why don't we sort of slow down the pace so
2 you're sure that she's done answering, before you ask your
3 next question.

4 MR. BRYAN CARMODY: Sure.

5 CROSS-EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Ms. Wayt, what do you recall Lora telling you
8 in terms of Ms. P's condition?

9 A. She told me that she was combative and
10 confused, and I should probably get a sitter order. She
11 also told me the patient did not have a catheter because
12 they couldn't get one in, and the doctor agreed to let
13 them leave it out.

14 Q. Okay. The catheter that you mentioned --

15 A. Uh-huh.

16 Q. -- is that also known as a Foley catheter?

17 A. That is correct.

18 Q. Thank you, ma'am. Did Lora also inform you
19 that this -- Ms. P was elderly?

20 A. She probably gave me her age. We usually do.

21 Q. And Ms. P was quite advanced in age; is that
22 fair to say?

23 A. Yes. Uh-huh.

24 JUDGE AMCHAN: You have to answer audibly.

25 THE WITNESS: I'm sorry?

1 JUDGE AMCHAN: I think you -- you have to say
2 yes or no --

3 THE WITNESS: Oh, yes, she was.

4 JUDGE AMCHAN: -- I mean, as opposed to a --

5 CROSS-EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. And, Ms. Wayt, would it also be fair to say
8 that based upon all of these conditions of the patient, as
9 you've just testified to them, this was a patient of a
10 relatively high level of acuity?

11 MS. CENDROSKY: Objection, Your Honor. Calls
12 for speculation.

13 MR. BRYAN CARMODY: No. It calls --

14 JUDGE AMCHAN: Well, the -- well, okay.

15 MR. BRYAN CARMODY: I'm sorry, Judge.

16 JUDGE AMCHAN: Do you know what that term
17 means when he uses that phrase?

18 THE WITNESS: I do.

19 JUDGE AMCHAN: And would you agree that that
20 -- would you agree with him?

21 THE WITNESS: The simple fact that, yes,
22 because she had a sitter.

23 CROSS-EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. Thank you, ma'am.

1 A. Uh-huh. You're welcome.

2 Q. The nurses' station has a fax machine, does it
3 not?

4 A. Correct.

5 Q. And I should be a little bit more clear, the
6 nurses' station in the Orthopedic Department --

7 A. Uh-huh.

8 Q. -- had a fax machine; correct?

9 A. Yes.

10 Q. And around the fax machine is one of the
11 devices used at your department to receive these so-called
12 SBAR reports; is that not true?

13 A. Yes.

14 Q. Okay. And what is the SBAR report, as you
15 would describe it, ma'am?

16 A. I can't tell you what the letters stand for.
17 It's how report is given to us from the ER besides a
18 little bit of verbal report from the nurse.

19 (Whereupon, Respondent's Exhibit Number
20 2 was marked for identification.)

21 JUDGE AMCHAN: This is R2?

22 MR. BRYAN CARMODY: Yes, sir.

23 Q. Ms. Wayt, I'm showing you a --

24 A. Uh-huh.

25 Q. -- a document that's been marked for

1 identification purposes as R2, Respondent's 2.

2 MS. CENDROSKY: Your Honor, may I voir dire?

3 JUDGE AMCHAN: Well, he hasn't moved for its
4 admission yet. Wait for -- he's going to ask her to
5 identify it --

6 MS. CENDROSKY: Okay.

7 JUDGE AMCHAN: -- and ask her some questions.
8 Going to move for admission, and then you'll ask for voir
9 dire.

10 MR. BRYAN CARMODY: And, Your Honor, I
11 neglected to ask -- or offer into evidence Respondent's
12 Number 1.

13 MS. CENDROSKY: Objection, Your Honor. I
14 believe there's a lack of foundation.

15 JUDGE AMCHAN: There is, at this point.

16 MS. CENDROSKY: Thank you.

17 JUDGE AMCHAN: I'm not saying you can't get
18 it in. You can't get it in through her.

19 MR. BRYAN CARMODY: I understand, sir.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. Ms. Wayt, have you had the chance to review
23 Respondent's Number 2?

24 A. Yes, I looked at it.

25 Q. Okay. Is this a document that you recognize?

1 A. I'm not going to say it's the exact document I
2 received that day. But this is a document from the ER. I
3 don't recall what it looked like from that day.

4 Q. Did you, ma'am, receive from the ER that day in
5 connection with Ms. P an SBAR report?

6 A. Most likely I did, because we always do.

7 Q. And as you looked at this document, did you
8 notice in the right-hand corner a date of August 28th,
9 2012?

10 A. Right-hand corner.

11 Q. Lower right-hand corner, ma'am.

12 JUDGE AMCHAN: Printed at the very, very
13 bottom in small letters.

14 THE WITNESS: Oh. 8/28/12, yes.

15 Q. Yes, ma'am. And underneath that date there's
16 an "F." That stands for female, does it not?

17 A. Yes.

18 Q. If you look at the upper right-hand corner of
19 the document, do you see the numbers 3420?

20 A. Uh-huh.

21 Q. If you look at the med section of this
22 document, do you see morphine being listed here, ma'am?

23 A. Yes.

24 Q. If you look at the background section, do you
25 see mention of anxiety?

1 A. Background section. Yes.

2 Q. It's the third section.

3 A. Yes.

4 Q. Okay. And if you look down maybe two more
5 lines, you see history of the fall from Legends Nursing
6 Home?

7 A. Yes.

8 Q. And at the very top you see the word "sitter"?

9 A. Yes.

10 Q. Does that put you in a position, ma'am, to
11 testify that this is, indeed, the SBAR report for this
12 Mrs. P?

13 A. I'm still not going to say it's the exact one.

14 Q. Okay. Why are you unable to say that, ma'am?

15 A. Because I don't feel comfortable enough in
16 people being truthful in giving the correct documents.

17 Q. I understand. All right, Ms. Wayt. I want to
18 direct your attention back to the testimony you offered in
19 connection with Ms. Kress' arrival on the unit.

20 A. Uh-huh.

21 Q. And if I understood your testimony, when
22 Ms. Kress arrived on the unit she had explained to you
23 that the sitter would be on the way with Mrs. P --

24 A. Yes.

25 Q. -- is that correct? And is it not true that

1 when Ms. Kress said this you thanked her and you gave her
2 a hug?

3 A. That is absolutely incorrect. I've never
4 hugged Ms. Kress in my life.

5 Q. Ms. Wayt, would it be fair to say that once you
6 saw Ms. Kress on the unit and she made reference of the
7 fact a sitter would be on her way, you had an expectation
8 that Ms. P would be arriving on the floor relatively soon?

9 A. I would say yes.

10 Q. Did you actually see Mrs. P arrive on the --

11 A. No --

12 Q. -- Ortho Unit?

13 A. -- I did not.

14 JUDGE AMCHAN: Make sure that he's finished
15 his question before you answer.

16 THE WITNESS: Okay. Thank you, sir.

17 Q. Shortly after you saw Ms. Kress and she
18 informed you that the --

19 A. Uh-huh.

20 Q. -- sitter would be on her way within the next
21 ten to fifteen minutes, did you see Ms. Kress leave your
22 department?

23 A. Yes, I did.

24 Q. Okay. And is it not a fact that Ms. Kress told
25 you, at that point in time, that the patient was now in

1 her room?

2 A. No, I did not speak to Mrs. -- Ms. Kress at
3 that time.

4 JUDGE AMCHAN: Again, let -- make sure he's
5 finished.

6 THE WITNESS: I'm sorry.

7 Q. So it's your testimony you simply saw Ms. Kress
8 leaving the unit?

9 A. Yes.

10 Q. Ms. Wayt, just for the sake of clarity here
11 with the record, between -- you got to work that morning
12 about seven o'clock in the morning; is that correct?

13 A. No. I arrive around twenty minutes until seven
14 in the morning.

15 Q. Okay. And, what time -- for whatever period of
16 time that you worked that day, and for whatever period of
17 time Ms. P was on the floor that day --

18 A. Uh-huh.

19 Q. -- you were responsible for Ms. P's care as her
20 nurse; correct?

21 A. Yes.

22 Q. And it's your position, I would assume, that
23 throughout your shift, in terms of Ms. P's care, you took
24 very good care of Ms. P; correct?

25 A. Yes.

1 Q. At any point in time during your care of Ms. P,
2 did you delegate any portion of your nursing care to
3 Ms. Kress?

4 A. Ms. Kress told me she would be in the room
5 while I went about doing activities in two other rooms.
6 She indicated to me she would be in the room that was
7 before the patient arrived. So I just assumed she would
8 be there when the patient arrived.

9 Q. Okay. My question is --

10 A. Uh-huh.

11 Q. -- did you delegate any of your care from Ms. P
12 to Ms. Kress?

13 A. I didn't feel it was necessary. I'm sorry, I
14 spoke over him again. I did not feel it was necessary for
15 me to delegate that duty to Ms. Kress seeing that's the
16 reason she was there.

17 Q. So is the answer no?

18 A. Absolutely.

19 Q. You said that Ms. Rhonda Smith was one of
20 Ms. P's patients (sic) that day; correct?

21 MS. CENDROSKY: Objection. Misstates --

22 Q. I'm sorry, I misspoke. You testified that
23 Ms. Smith was one of Mrs. P's sitters that day.

24 A. Yes.

25 Q. Okay. And at any point in time during the day

1 did you delegate any of your nursing care to Ms. Smith, so
2 far as Ms. P was concerned?

3 A. No.

4 Q. Jonalee Lesjak was also one of the patient's
5 sitters that day --

6 A. Uh-huh.

7 Q. -- isn't that correct?

8 A. Yes.

9 Q. At any point in time during the day did you
10 delegate any of your nursing care to Ms. Lesjak?

11 A. No.

12 Q. Ma'am, you had testified in response to
13 Ms. Cendrosky's questions that your first trip into the
14 patient's room was about what, about ten a.m.?

15 A. Shortly after ten, uh-huh.

16 Q. And at that point in time, who was actually in
17 the patient's room?

18 A. Rhonda Smith.

19 Q. Anyone else?

20 A. Not that I can recall.

21 Q. And what was the purpose for which you had
22 entered the patient's room at that particular time?

23 A. To see my patient for the first time.

24 Q. Any other purpose?

25 A. To make my rounds on the patient.

1 Q. Okay. Any other purpose?

2 A. To make sure the sitter was there.

3 Q. Any other purpose?

4 A. No, sir.

5 Q. Did you -- roughly how long were you in the
6 patient's room during this first entry into the patient's
7 room?

8 A. I don't know, eight minutes, seven minutes.

9 Q. Would it be fair to say, Ms. Wayt, that during
10 that seven, eight minutes, whatever precisely --

11 A. Uh-huh.

12 Q. -- it was, that you didn't conduct any
13 assessment on the patient?

14 A. I checked the -- I looked at the patient, I
15 stood beside her and made sure that she was calm and quiet
16 and comfortable. I did not do a head-to-toe assessment at
17 that time.

18 Q. I understand.

19 A. Uh-huh.

20 Q. Was the patient awake at that particular period
21 of time?

22 A. I don't recall whether she was awake or asleep.

23 Q. Did you check the patient's skin, at that point
24 in time?

25 A. No, I did not.

1 Q. And I believe you testified that shortly after,
2 or immediately after --

3 A. Uh-huh.

4 Q. -- your first visit to Mrs. P's room, you went
5 back to start the admission paperwork; correct?

6 A. Correct. Uh-huh.

7 (Whereupon, Respondent's Exhibit Number
8 3 was marked for identification.)

9 Q. Ms. Wayt --

10 A. Uh-huh.

11 Q. -- I'm showing you a document that's been
12 marked for identification purposes as Respondent's Exhibit
13 3.

14 A. Uh-huh.

15 Q. Do you recognize this document?

16 A. I do.

17 Q. And what is this document?

18 A. This is the admission database that's done on
19 every patient.

20 Q. And, ma'am, I'd like to direct your attention
21 to the bottom portion of the first page, pain history. Do
22 you see that, ma'am?

23 A. Yes.

24 Q. And there is a symbol next to scale, the number
25 symbol --

1 A. Uh-huh.

2 Q. -- number sign. Is that your handwriting?

3 A. It is.

4 Q. Okay. What -- is that a zero or a six?

5 A. That looks like a zero to me.

6 Q. Zero. And if you'd turn to the second part of
7 the form.

8 A. Uh-huh.

9 Q. Skin impairment assessment. Do you see that,
10 ma'am?

11 A. Yes.

12 Q. And do you see no skin impairment noted?

13 A. Yes.

14 Q. And do you see a slash through the box?

15 A. Yes.

16 Q. Is that your slash?

17 A. It is.

18 Q. Okay. Is that your signature at the bottom of
19 the document?

20 A. Yes, it is.

21 Q. Okay. Would it be fair to say that this would
22 suggest that you did conduct a skin assessment on this
23 patient?

24 A. That's not what that section's for, so that
25 answer would be no.

1 Q. Okay. What is this section for?

2 A. That's to collect data. This form's to collect
3 data. I ask all the patients that I admit or their
4 family, if they cannot answer for themselves, I ask them,
5 do you have any open areas on your skin? If they tell me
6 yes or no, I compare it to what my skin assessment in the
7 trifold tells me.

8 Q. And, ma'am, so when you filled out this
9 document, and in particular, this no skin impairment noted
10 section --

11 A. Correct.

12 Q. -- you said this occurred as soon as you got
13 back from the -- your first visit in the patient's room;
14 correct?

15 A. Oh, this was ongoing. This -- her -- her son
16 was in and out throughout the day. This wasn't done at
17 any one time of the day. This was done over several hours
18 throughout the day.

19 Q. Okay.

20 A. Not at one time.

21 Q. All right. My focus is on the skin impairment
22 assessment.

23 A. Yeah. Uh-huh.

24 Q. And a no skin impairment noted box checked off
25 by you.

1 A. Okay.

2 Q. And do you have a recollection of at what point
3 in time you checked off this box?

4 A. Whenever I got the information from her family.

5 Q. Okay. And when do you recall that being?

6 A. I have no idea.

7 JUDGE AMCHAN: You didn't move for its
8 admission, but it's -- R3's admission. But it seems to me
9 it's the exact same thing as Pages 16 and 17 of GC's 7.

10 MR. BRYAN CARMODY: It is, Your Honor. And I
11 was about to move for its admission. I do that simply
12 because I'd like to have it as a freestanding document for
13 the sake of the record. So I would offer it into
14 evidence.

15 MS. CENDROSKY: At this time, Your Honor, I'd
16 like to voir dire.

17 VOIR DIRE EXAMINATION

18 BY MS. CENDROSKY:

19 Q. If you look at Page 17 of GC's Exhibit Number
20 7.

21 MS. LAWHON: Would you give me a minute to
22 find it?

23 JUDGE AMCHAN: I'm looking.

24 THE WITNESS: What page again?

25 VOIR DIRE EXAMINATION (CONT'D)

1 BY MS. CENDROSKY:

2 Q. I'm waiting for the witness.

3 A. I'm sorry. What page?

4 Q. Page 17.

5 A. Okay. Yes.

6 Q. Next to -- if you look at the top there's a
7 fall risk score 14 and it's circled.

8 A. Uh-huh.

9 Q. And next to that on GC's Exhibit Number 7, Page
10 17, there appears to be some black marks, maybe cross-
11 outs, scribbles, do you --

12 A. Yeah.

13 Q. -- do you recognize that?

14 A. I don't know what that is?

15 Q. Is it possible that you wrote that?

16 A. I honestly don't know, because I don't know
17 what it is.

18 MR. BRYAN CARMODY: Your Honor, I object.
19 Counsel's conducting voir dire on a document that is
20 already admitted into evidence.

21 MS. CENDROSKY: I'm just trying to ascertain
22 as to why your document is different than the one that I
23 put into evidence.

24 JUDGE AMCHAN: And that's legit.

25 MS. CENDROSKY: I have no further voir dire.

1 And I do not object to its admission.

2 JUDGE AMCHAN: Okay. R3's received.

3 (Whereupon, Respondent's Exhibit Number
4 3 was received into evidence.)

5 MS. CENDROSKY: Is this R2 or R3?

6 JUDGE AMCHAN: 3. I haven't received R2.

7 MS. CENDROSKY: Okay. Thank you.

8 MR. BRYAN CARMODY: May I proceed, Your
9 Honor?

10 JUDGE AMCHAN: Yes. As I said, if I'm not
11 talking, the floor's yours.

12 MR. BRYAN CARMODY: Hard habit to break,
13 Judge.

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. BRYAN CARMODY:

16 Q. Ms. Wayt, I want to --

17 A. Uh-huh.

18 Q. -- direct your attention to head-to-toe
19 assessment.

20 A. Yes.

21 Q. Okay?

22 A. Uh-huh.

23 Q. Can you please walk me through what exactly a
24 head-to-toe assessment requires -- or, strike that.

25 Can you please walk me through how exactly you

1 would perform head-to-toe assessments while employed as a
2 nurse on the Orthopedic Unit at Affinity Medical Center?

3 A. Yes. And, actually, there's no set way to do
4 that. Every nurse has their own way of doing a head-to-
5 toe assessment.

6 So you assess their mental status. You listen to
7 the lung sounds. You listen to the heart sounds. You
8 listen to the stomach sounds. You check for edema, you
9 check for pulses.

10 Q. I'm sorry, ademia (sic)?

11 A. Edema, swelling of the extremities, pulses in
12 the extremities.

13 JUDGE AMCHAN: Is this all with a
14 stethoscope?

15 THE WITNESS: No. You just listen to the
16 lungs with the stethoscope, and the abdomen with the
17 stethoscope. And the heart sounds, of course.

18 CROSS-EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. And in -- thank you.

21 A. Uh-huh.

22 Q. And in terms of the assessment you testified
23 you performed on Ms. P, what did that --

24 A. Yes.

25 Q. -- consist of?

1 A. The same thing I just repeated to you.

2 Q. Do you recall roughly what time this head-to-
3 toe assessment was performed by you on Ms. P?

4 A. Somewhere between, I would say, eleven fifteen
5 and twelve -- eleven forty-five.

6 Q. And do you recall how long it took you to
7 perform Mrs. P's head-to-toe assessment?

8 A. Yes. It doesn't take long, maybe seven minutes
9 or so.

10 Q. And just to be clear --

11 A. Uh-huh.

12 Q. -- that's how long it took you to perform
13 Mrs. P's head-to-toe assessment.

14 A. I didn't time myself.

15 Q. Okay. I'm asking you for your recollection,
16 ma'am.

17 A. That's what I just told you.

18 JUDGE AMCHAN: Well, I mean, do you recall
19 whether it was any different than any other -- I mean, was
20 it unusual?

21 THE WITNESS: Oh, no, it wasn't unusual at
22 all.

23 CROSS-EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. What did you learn as -- about Mrs. P as a

1 result of performing her head-to-toe assessment?

2 A. I learned she was very thin. Her -- she was so
3 thin, in fact, her ribcage was poking up practically
4 through her chest. I'd have to look at my assessment,
5 because I don't recall exactly what her assessment told
6 me.

7 Q. But you are able to recall that she was very
8 thin.

9 A. Oh, absolutely.

10 MR. BRYAN CARMODY: Just one moment, Your
11 Honor.

12 JUDGE AMCHAN: Yes.

13 (Whereupon, Respondent's Exhibit Number
14 4 was marked for identification.)

15 CROSS-EXAMINATION (CONT'D)

16 BY MR. BRYAN CARMODY:

17 Q. Ms. Wayt --

18 A. Uh-huh.

19 Q. -- I'm showing you a document that's been
20 marked for identification purposes, it was Respondent's
21 Exhibit 4.

22 And before you look at the document, I'd just
23 like to ask you if you recall whether or not you submitted
24 a claim for Unemployment Compensation as part of the
25 termination of your employment from Affinity?

1 A. Yes, I did.

2 Q. And is it not a fact that you participated in a
3 hearing, a telephonic hearing over the phone on January
4 7th of 2013?

5 A. That's correct.

6 Q. And do you recall the fact that I had
7 participated in that proceeding, was asking you some
8 questions?

9 A. Yes.

10 Q. Is this a -- have you reviewed your
11 Unemployment testimony in preparation for your testimony
12 here today?

13 A. Yes, I sure have.

14 Q. Okay. I would like to direct your attention,
15 ma'am, to Page 39 of this document. It's actually -- it's
16 a little bit confusing. It's Page 10 of this document,
17 but it's Page 39 of the transcript.

18 A. It's what? I'm sorry.

19 Q. It's -- it's Page -- do you see in the bottom
20 right-hand corner --

21 A. Yes.

22 Q. -- it says, if you turn to the second Page 2 of
23 21 sheets? And if you go flip to 10 of 21 sheets.

24 A. Uh-huh.

25 Q. And if you get to that page you'll see four

1 pages. And if you look at Page 39. Are you with me?

2 MS. LAWHON: Your Honor, could we --

3 MR. BRYAN CARMODY: We could certainly -- may
4 I approach?

5 MS. LAWHON: Wait, I'm sorry, Counsel. I
6 have a different thing I'm trying to raise here, if I
7 could have a moment, please, without interruption.

8 MR. BRYAN CARMODY: Well, if you're going to
9 raise an objection, then please do that.

10 MS. LAWHON: I have a question more. I am --
11 I have never seen this document before. It was my
12 understanding there was no transcript created. I have a
13 question about what is the source of this purported
14 transcript.

15 I don't know if counsel's office procured it, or
16 made it themselves, or what it is.

17 MR. BRYAN CARMODY: Can we go off the record,
18 Judge?

19 JUDGE AMCHAN: Sure. Off the record.

20 (Off the record.)

21 JUDGE AMCHAN: Back on the record.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. Ms. Wayt, you have in front of you, just to be
25 clear, Respondent's Number 4; is that right, ma'am?

1 A. Yes.

2 Q. Thank you. And have you turned to Page 10 of
3 21 sheets?

4 A. I don't have a Page 10 of 21 sheets.

5 MR. BRYAN CARMODY: Okay.

6 THE WITNESS: I don't --

7 MR. BRYAN CARMODY: Your Honor, may I
8 approach?

9 THE WITNESS: -- I don't know where you're
10 at.

11 MS. LAWHON: It's in the lower right corner,
12 Ann.

13 CROSS-EXAMINATION (CONT'D)

14 BY MR. BRYAN CARMODY:

15 Q. Let me try to help you, ma'am.

16 A. Sure. I've got it.

17 Q. There you are.

18 A. Uh-huh.

19 Q. I'm going to ask you some questions about this.

20 A. Okay.

21 Q. I want to direct your attention to Page 39, as
22 I just showed you.

23 A. Uh-huh.

24 Q. And you see a question on Line 3, "What do you
25 remember of this head-to-toe assessment that you did on

1 the patient?

2 What did you write down on your report sheet?"

3 And you answer, "I have no idea"; correct?

4 A. That's what it says.

5 Q. Okay. Does that seem consistent or -- with
6 your recollection in terms of what your testimony was that
7 day?

8 A. Oh, I wouldn't have any idea what I said that
9 day.

10 Q. So you have no recollection at all what your
11 Unemployment testimony was on January 7th of this year?

12 A. I only told what I was -- I only answered the
13 questions. I don't know what you're -- you know, I
14 couldn't say verbatim what I said, if that's what you're
15 asking me.

16 Q. Okay. Well, Ms. Wayt, I thought that you had
17 testified that you had listened to or viewed your
18 Unemployment testimony in preparation for your testimony
19 today; correct?

20 A. No. Absolutely not. Why would I do that?
21 That -- that testimony had nothing to do with this
22 testimony.

23 Q. Okay. So just so I'm clear, ma'am, you're --

24 A. Uh-huh.

25 Q. -- you're unable to tell me if the testimony I

1 had just quoted was, in fact, your testimony from January
2 7th of this year?

3 A. I have no idea of my exact words that day, if
4 that's what you're asking me.

5 Q. Are you familiar with a Foley catheter? You
6 told me you were before. Would you agree with me that as
7 part of a head-to-toe assessment you would be able to
8 determine whether or not a patient of yours had the Foley
9 catheter?

10 A. Absolutely.

11 (Whereupon, Respondent's Exhibit Number
12 5 was marked for identification.)

13 Q. Ms. Wayt, I'm showing you a document now
14 labeled as Respondent's Exhibit 5. I want to ask you to
15 review that document, please. Are you finished, ma'am?

16 A. Yes.

17 Q. Okay. Do you recognize this document?

18 A. Yes, I do.

19 Q. Is this not the 24-Hour Assessment that you
20 completed, at least in part, for Ms. P on August 28th?

21 A. That's correct.

22 Q. Thank you. And, Ms. Wayt, I'm just going to
23 ask you, this may be somewhat laborious, but walk me
24 through the document and identify, for the sake of the
25 records, those parts which reflect your handwriting.

1 Or if it's easier, ma'am, to -- for you to
2 identify those parts of the document which don't reflect
3 your handwriting.

4 A. The parts that do not reflect my handwriting
5 are under 2140 column, that's the night nurse.

6 Q. And you're on Page 1 of the exhibit, ma'am?

7 A. That's correct.

8 Q. So 2140 in the column which is beneath that, it
9 begins, it looks like, with a "U" and ends with a "V"?
10 That is all not your handwriting? Is that about right,
11 ma'am.

12 A. Right. Under the 2140 column.

13 Q. Thank you.

14 A. Uh-huh.

15 Q. Everything else on this document is your
16 handwriting, this page, rather?

17 A. Yes.

18 Q. Thank you.

19 JUDGE AMCHAN: I --

20 MS. CENDROSKY: Can we reflect, for the
21 record, what page we're on?

22 MR. BRYAN CARMODY: I just said Page 1.

23 JUDGE AMCHAN: It's 1.

24 MS. CENDROSKY: Okay. Now we have 1.

25 JUDGE AMCHAN: But I just -- so Exhibit R5

1 is, am I correct, exactly the same as GC7 --

2 MR. BRYAN CARMODY: No.

3 JUDGE AMCHAN: -- 18 through --

4 MR. BRYAN CARMODY: No, no, no, Your Honor.
5 This document is actually a little bit different, because
6 it does not have -- but I think that the differences will
7 become apparent during the course of the witness'
8 testimony. They're very -- they're virtually identical,
9 but not quite.

10 JUDGE AMCHAN: All right. I would just like
11 it to be clear on the record, at some point, what the
12 differences are so --

13 MR. BRYAN CARMODY: I'm confident we'll get
14 there, Judge.

15 JUDGE AMCHAN: All right.

16 MS. LAWHON: Counsel, when you're -- are you
17 asking her whether the signatures are both hers?

18 MR. BRYAN CARMODY: I -- let's just go
19 through it one more time, maybe, so that we're all on the
20 same page.

21 CROSS-EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. Ms. Wayt, I'm looking at Respondent's Exhibit
24 5, the first page of that exhibit. And there's
25 handwriting on this first page; correct?

1 A. Yes.

2 Q. Okay. And I'm asking you whether to -- to
3 explain for me, please, the handwriting which is your
4 handwriting. There's an eight twenty-eight at the top
5 left-hand corner of the document. Do you see that?

6 A. Yes.

7 Q. That's your handwriting?

8 A. Yes, it is.

9 Q. There's a signature to the right, it looks like
10 A. Wayt, RN?

11 A. That's mine. Uh-huh.

12 Q. Thank you, ma'am. There's a, under "Time and
13 initials," it looks like nine o'clock AW?

14 A. Correct.

15 Q. And then if we go to that column all the way
16 down to the B, that's all your handwriting; correct?

17 A. That is all my handwriting.

18 Q. Thank you, ma'am.

19 A. Uh-huh.

20 Q. If we go to the second page of the document, or
21 Page 2 of Respondent's Exhibit 5, can you just, again,
22 describe for me or identify for me the handwriting which
23 is yours?

24 A. The date is mine. The column on the right is
25 all my handwriting.

1 JUDGE AMCHAN: The column on the right.

2 THE WITNESS: I'm sorry. The column on the
3 left, I apologize, is all my handwriting.

4 Q. So, ma'am, just to -- I might be able to help
5 you. There's two columns of letters; correct?

6 A. Uh-huh.

7 Q. There's symbols?

8 A. Right.

9 Q. And it's your testimony, please correct me if
10 I'm wrong, that the column on the left, beginning with "N"
11 --

12 A. Right.

13 Q. -- going all the way down to "Y" is yours;
14 correct?

15 A. That's correct. That's mine.

16 Q. Okay. And the column to the right which begins
17 with the "N" and goes down to a "Y," sort of with a slash
18 over it --

19 A. Uh-huh.

20 Q. -- is not your handwriting; correct?

21 A. That's correct.

22 Q. Thank you, ma'am.

23 A. Uh-huh.

24 Q. There is a, if you go back to the top of the
25 document there is a slash by the word "goal."

1 A. Right.

2 Q. Do you see that, ma'am?

3 A. Uh-huh.

4 Q. Is that yours?

5 A. I don't know if that's mine.

6 Q. Thank you. If you go down maybe a third you
7 see, "End of shift evaluation 7 p. no change" --

8 A. Uh-huh.

9 Q. -- is checked?

10 A. Uh-huh.

11 Q. Who did that, if you know?

12 A. I couldn't tell you. I have no idea.

13 Q. Okay. You didn't do that, ma'am.

14 A. I don't recall doing it.

15 Q. If you go to the third page of the document,
16 please. There's a date 8/28, upper left-hand corner. Is
17 that your handwriting?

18 A. Yes, it is.

19 Q. There is a, I believe it's an "NA" in the left
20 column.

21 A. It's an "ND."

22 Q. "ND." I'm sorry.

23 A. Uh-huh.

24 Q. And if you go down to the bottom of this left-
25 hand column there's a "DR"; correct?

1 A. Yes.

2 Q. And all of the symbols in this left-hand column
3 are yours; correct?

4 A. That's correct.

5 Q. And none of the symbols in the right-hand
6 column are yours; correct?

7 A. I can't attest to that, because I don't recall
8 if they're mine or not mine. They -- they could be, or
9 they could not be. Honestly, I couldn't tell.

10 Q. Okay. There is a slash mark by the word "goal"
11 and the intercommunitary (sic), I'm confident I didn't
12 pronounce that correctly, goal. Do you see that slash
13 mark, ma'am?

14 A. Yes.

15 Q. Is that yours?

16 A. I don't know if that's mine.

17 Q. And if you go down --

18 MS. LAWHON: I'm sorry, Counsel.

19 MS. CENDROSKY: I don't know what page we're
20 on anymore.

21 MS. LAWHON: Are you on Page --

22 MR. BRYAN CARMODY: I think the witness is
23 following just -- it's Page 3 of Page --

24 MS. LAWHON: Yes. But, Counsel, you know, it
25 requires you to be courteous enough so that we can follow,

1 as well.

2 MR. BRYAN CARMODY: Okay, Counsel, I'm
3 telling you. It's Page 3 of 8. It's Respondent's Exhibit
4 5. Let me know when you're there.

5 MS. LAWHON: What -- did you ask her about
6 the right column?

7 MR. BRYAN CARMODY: I asked her about both
8 columns.

9 MS. LAWHON: Well, I don't -- I see three
10 columns, so that's what's initially confusing. What is
11 the right column?

12 MR. BRYAN CARMODY: The right column of
13 symbols.

14 MS. LAWHON: Of letters and symbols? Okay.

15 MR. BRYAN CARMODY: Letters and symbols.

16 MS. LAWHON: All right. Not the right side
17 of the page, the left side of the page; right?

18 JUDGE AMCHAN: No. He did just ask her about
19 the slash right above the word "goal." And --

20 MS. LAWHON: Okay.

21 MR. BRYAN CARMODY: Jane, this.

22 MS. LAWHON: You're now asking -- okay.

23 MR. BRYAN CARMODY: I already did ask her
24 about that.

25 MS. LAWHON: All right. But I think --

1 MR. BRYAN CARMODY: And I'm about to ask her
2 about this.

3 MS. LAWHON: Okay. It might be helpful if
4 you don't call something the right column, which is the
5 middle column, but we can go ahead.

6 JUDGE AMCHAN: All right.

7 MR. BRYAN CARMODY: I appreciate your
8 permission to do so.

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Ms. Wayt, I'm looking at, still at Respondent's
12 Exhibit 5.

13 A. Uh-huh.

14 Q. And the third page. And there is the word
15 "goal" about two-thirds of the way down --

16 A. Right.

17 Q. -- and there's a slash mark.

18 A. Uh-huh.

19 Q. Do you know, ma'am, if that's yours?

20 A. I don't know if that's mine.

21 Q. Okay. If we go down to the right-hand corner
22 of this document, end of shift evaluation, no change, do
23 you see an "X" mark there, ma'am?

24 A. Yes.

25 Q. Is that yours?

1 A. I would say not, because it says 7 p.m. on it.

2 Q. If we go to the fourth page of the document,
3 the 8/28 upper left-hand corner.

4 A. Yes.

5 Q. Is that your handwriting, ma'am?

6 A. 8/28 is.

7 Q. Thank you. If you go to the right-hand side of
8 what's labeled here Braden scale?

9 A. Uh-huh.

10 Q. You see the column 7 a./7 p.?

11 A. Yes.

12 Q. And beneath that there are a series of numbers.

13 A. Yes.

14 Q. And at the end of that there's a tally of
15 numbers.

16 A. Yes.

17 Q. Is that yours?

18 A. That's mine.

19 Q. Okay. How about the one to the -- all the way
20 to the right, 7 p. to 7 a., is that yours?

21 A. That's not mine.

22 Q. If we go to the fifth page, 8/28/12. Is that
23 your handwriting, ma'am?

24 A. It looks like it, although that doesn't look
25 like my 12. But 8/28 looks like mine.

1 Q. And dressing procedure, Number 1, it looks like
2 there's a zero with a slash through it.

3 A. Yes.

4 Q. You see that, ma'am?

5 A. Yes.

6 Q. Is that your handwriting?

7 A. Yes, it is.

8 Q. The sixth page, please. 8/28, is that your
9 handwriting?

10 A. Yes.

11 Q. Okay. All of the markings in the intravenous
12 access box, are they yours?

13 A. Not the ones that are beside 2140, those are
14 not mine.

15 Q. Okay. So if we go to the 2140 row and read
16 left to right, those markings are not yours.

17 A. Right.

18 Q. On the other hand, everything above that in
19 this intravenous access box are your markings; correct?

20 A. I wrote "P left forearm LTFA," and I wrote,
21 "covered with gauze," and I put my initials.

22 Q. Thank you. And what about the 0900?

23 A. Yes, that's my handwriting.

24 Q. Thank you. And the same question, ma'am, with
25 respect to the pain assessment portion --

1 A. Uh-huh.

2 Q. -- of this page.

3 A. Yes.

4 Q. Can you just explain for me what is your
5 handwriting and what's not?

6 A. Where it says ten thirty, where it says twelve
7 noon, where it says sixteen thirty.

8 Q. Okay.

9 A. And then underneath that it says, "Does not
10 understand pain scale," that's mine. Below that it says,
11 "Left hip. Patient restless, agitated. Ice. One
12 milligram MMS04, one p.m., and calm."

13 And the next column beside that, "One milligram
14 MMS04, seventeen thirty, calm," that's my handwriting.

15 Q. Thank you. And the handwriting to the right,
16 the column that begins with, it looks like 0010?

17 A. Uh-huh.

18 Q. That is not your handwriting, I take it?

19 A. No, it isn't.

20 Q. And, likewise, with the column just to the
21 right of that 0400?

22 A. Yes, that's correct.

23 Q. Okay. Ma'am, looking at the community cares
24 rounding --

25 A. Uh-huh.

1 Q. -- log, is it fair to say that all of the dash
2 marks are yours, and none of the checkmarks are yours?

3 A. That's correct.

4 Q. And at the bottom of this document there are a
5 series of initials. I would -- there's -- the AW's are
6 yours, I take it?

7 A. Yes.

8 Q. Thank you, ma'am. And to Page 7 of 8. The
9 8/28/12 is your handwriting, ma'am?

10 A. Yes.

11 Q. There's some notations around reposition. Do
12 you see that, ma'am?

13 A. Yes.

14 Q. Is that handwriting yours?

15 A. Yes, it is.

16 Q. What does it say?

17 A. It says, "Moves arms and legs all around."

18 Q. And in the bed rest row, the dash marks are
19 yours?

20 A. Yes, they are.

21 Q. The checkmarks are not?

22 A. Correct.

23 Q. Okay. The safety section.

24 A. Uh-huh.

25 Q. All of the check -- I'm sorry. All the dash

1 marks are yours; correct?

2 A. Yes. It looks like they're mine, yes.

3 Q. And there are -- none of the checkmarks are
4 yours; correct?

5 A. Right.

6 Q. And if you go to awake, A equals awake, S
7 equals sleeping.

8 A. Uh-huh.

9 Q. It looks like there are one, two, three, four,
10 five, six, seven, eight A's in your handwriting; is that
11 correct?

12 A. Okay.

13 Q. Is that correct, ma'am?

14 A. Yes. Uh-huh.

15 Q. Okay. Then all -- the A's all mean awake;
16 correct?

17 A. Yes.

18 Q. Thank you. You'll see here as we move to the
19 left-hand corner of the safety box, ma'am, prevent fall,
20 prevent harm to self or others, prevent interference with
21 medical --

22 A. Uh-huh.

23 Q. -- interventions. And all three of these boxes
24 are checked. Are those your checkmarks, ma'am?

25 A. Those are my lines through the boxes, yes.

1 Q. And looking over to the middle portion of this
2 there's a line through the box of fall precautions,
3 interventions; is that yours?

4 A. That -- yes, it is.

5 Q. There's also a "other" box which is crossed off
6 with the word "sitter"?

7 A. Yes.

8 Q. Those are your markings, ma'am?

9 A. That's my handwriting, yes.

10 Q. And if you look, finally, at the right-hand
11 corner of this end of shift evaluation, 7 p. no change --

12 A. Uh-huh.

13 Q. -- is checked off. Is that your marking?

14 A. I don't think so, because I don't have a habit
15 of doing that, so I would say no.

16 Q. You don't have a habit of doing what?

17 A. That -- marking that no -- no change there.
18 Plus it says 7 p.m. So I would say that's not my marking.

19 Q. I understand. Page 8 of the document,
20 thankfully at the last page. 8/28 at the top, is that
21 your handwriting?

22 A. Yes.

23 Q. And there is on the TED hose on/off section of
24 the other, it looks like OR. Is that your handwriting,
25 Ann, in that row?

1 A. That says "On."

2 Q. On, okay.

3 A. "On unaffected leg."

4 Q. And that's your handwriting?

5 A. Yes, it is.

6 Q. And the dash marks are yours?

7 A. Yes.

8 Q. The checkmarks are not; is that correct?

9 A. That's correct.

10 Q. The SCD word is circled. Is that your circle?

11 A. Yes, it is.

12 Q. The, is it the "or"?

13 A. It says "On."

14 Q. On, I'm sorry. On again. Is that your
15 handwriting?

16 A. Yes.

17 Q. The dash marks --

18 A. Yes.

19 Q. -- are yours?

20 A. Yes.

21 Q. "Discharge, home with HHC." That box has a
22 slash mark through it. Is that your handwriting?

23 A. No, it's not that box. It's the above one,
24 "Return to prior living."

25 Q. Oh, I see.

1 A. And that's my writing, yes.

2 Q. Thank you. And going down to interdisciplinary
3 notes, I believe you testified to this already, but just
4 to be sure.

5 A. Uh-huh.

6 Q. There's an entry at 8/28, and that's your
7 handwriting?

8 A. Yeah, that's the date 8/28.

9 Q. Okay. That's your --

10 A. And that's my handwriting.

11 Q. And the language sentence which exists right to
12 the right is yours?

13 A. Yes.

14 Q. And the same thing with the ten thirty entry?

15 A. Yes.

16 Q. And the same thing with the sixteen thirty
17 entry?

18 MS. LAWHON: Objection. Assumes a fact not
19 in evidence that there is a separate entry for ten thirty
20 and --

21 THE WITNESS: Right.

22 MS. LAWHON: -- and eight twenty-eight.

23 MR. BRYAN CARMODY: I --

24 MS. LAWHON: That's contrary to her
25 testimony.

1 MR. BRYAN CARMODY: Your Honor, I'm just
2 trying to figure out if what's written --

3 THE WITNESS: Excuse me.

4 MR. BRYAN CARMODY: -- on this form is --

5 THE WITNESS: The ten thirty is for the
6 admitted from ER line. That's what that's for. Where it
7 says ten thirty?

8 CROSS-EXAMINATION (CONT'D)

9 BY MR. BRYAN CARMODY:

10 Q. Yes.

11 A. That's for that -- those two lines. The
12 sixteen thirty is for what's underneath.

13 Q. I see. Okay. So the words "eight twenty-
14 eight" were written by your hand; correct?

15 A. Right, the date.

16 Q. Right. "Ten thirty" is something you wrote
17 down in this form; correct?

18 A. I did.

19 Q. "Sixteen thirty" was something you wrote down
20 in this form; correct?

21 A. Yes.

22 Q. "Admitted from ER." You wrote that in this
23 form; correct?

24 A. Yes.

25 Q. "Disoriented, agitated." You wrote this on

1 this form; correct?

2 A. Uh-huh.

3 JUDGE AMCHAN: You have to answer audibly.

4 THE WITNESS: I'm sorry. Yes.

5 Q. "Order for sitter obtained." You wrote that;
6 correct?

7 A. Yes.

8 Q. "Sitter present." You wrote that.

9 A. Yes.

10 Q. "Very agitated." You wrote that.

11 A. Yes.

12 Q. "Sitter still present." You wrote that.

13 A. Yes.

14 Q. And then there's your signature; correct?

15 A. Yes.

16 Q. Any of the other printing on this form, does
17 that come from you?

18 A. Just my signature at the bottom on the left.

19 Q. Okay. Thank you, ma'am.

20 A. You're welcome.

21 JUDGE AMCHAN: Well, are you going to move
22 for its admission?

23 MR. BRYAN CARMODY: I was just about to, Your
24 Honor.

25 JUDGE AMCHAN: How is it different from Pages

1 18 through 25 of GC7?

2 MR. BRYAN CARMODY: This document does not
3 have her initials in certain locations, where they are
4 noted in GC7.

5 For example, if you look at Page 1 of
6 Respondent's 5, at the very top you'll see the entry "nine
7 o'clock." To the left on GC7 you'll see her initials.
8 You won't see them on Respondent's 5.

9 MS. LAWHON: Well, there's one set of
10 initials, but there's not two, is what you're saying.

11 MR. BRYAN CARMODY: That's right.

12 THE WITNESS: Why aren't they there?

13 MS. LAWHON: Shh.

14 THE WITNESS: I'm sorry. I have a question.
15 I'm sorry.

16 MS. LAWHON: No, you can't --

17 THE WITNESS: Oh, I -- I apologize.

18 MS. LAWHON: I'm sorry. You have to -- Your
19 Honor, I could voir dire with this document and possibly
20 solve the problem here.

21 JUDGE AMCHAN: All right.

22 MS. LAWHON: May I?

23 JUDGE AMCHAN: Sure.

24 MS. LAWHON: Okay.

25 VOIR DIRE EXAMINATION

1 BY MS. LAWHON:

2 Q. Okay. Ms. Wayt --

3 A. Uh-huh.

4 Q. -- were you called into a meeting on September
5 5th and shown the 24-Hour Assessment for this patient?

6 A. Yes.

7 Q. Okay. At that time, were you requested to
8 initial certain portions of this 24-Hour Assessment beyond
9 what you had done on the 28th of August?

10 A. I was asked by Jason McDonald to, because of a
11 chart audit, he wanted me to initial the areas that I
12 thought pertained to the community cares.

13 Q. Okay. So at that time did you add an extra set
14 of initials on the first --

15 A. Well, off to the side there I initialed --

16 Q. Okay. Let me --

17 A. Uh-huh.

18 Q. -- let me finish my question --

19 A. Okay.

20 Q. -- just to be clear. On the first page next to
21 nine -- at nine o'clock, is that an "at" sign?

22 A. Now, I don't have that.

23 Q. Okay.

24 A. I have to find that one. I'm sorry.

25 Q. The first page of R Ex. 5 --

1 A. Which one are you looking at?

2 Q. The first page of the 24-Hour Assessment that
3 counsel for the Employer just provided to you --

4 A. Oh, that he just --

5 Q. -- that he's been going over.

6 A. -- provided?

7 Q. Yes.

8 A. Okay.

9 Q. Okay. So directing your attention now to the
10 initials that appear -- first, is that at nine o'clock?
11 Is that --

12 A. Where are you?

13 Q. I'm sorry. The top --

14 A. I'm sorry. The first page?

15 Q. Yes. The first page.

16 A. That says 0900.

17 Q. Okay. And is it an "at" sign next to it?

18 A. No, it's a zero.

19 Q. Oh, 0900?

20 A. Uh-huh.

21 Q. Oh, I see. Okay. And then what's right below
22 that?

23 A. My initials.

24 Q. Okay. And then if you look on General
25 Counsel's 7, Page 18, if you find that. Okay. Have you

1 got that in front of you --

2 A. Uh-huh.

3 Q. -- Ms. Wayt?

4 A. Uh-huh.

5 Q. Okay. Directing your attention to the same
6 area we were just looking at, now to the left of 0900 --

7 A. Uh-huh.

8 Q. -- there appears another set of your initials.
9 When --

10 A. Correct.

11 Q. -- when did those get made?

12 A. On the same day Jason asked me to initial the
13 community care sections. He asked me to initial the time
14 that he thought the patient arrived on the floor.

15 Q. The time that who thought the patient arrived?

16 A. That I thought the patient --

17 Q. Okay.

18 A. -- arrived on the floor.

19 Q. Okay. So if I could direct your attention to
20 Page 23 of General Counsel's 7, and which is Page 6 of 8
21 of the document counsel just showed you --

22 A. Uh-huh.

23 Q. -- do you see next to community cares on the
24 General Counsel's 7 copy initials on the left?

25 A. Yes.

1 Q. And when were those initials put on this chart,
2 on this patient care assessment, 24-Hour Assessment?

3 A. On September 5th in the meeting with Jason when
4 he asked me to.

5 MS. LAWHON: Okay. And, Your Honor, I
6 believe those two initials are the sum total of -- well,
7 let me ask the witness.

8 Q. Ms. Wayt, do you recall if you were asked to
9 initial any other place on the chart during the meeting
10 with Mr. McDonald when he claimed he was doing a chart
11 audit?

12 A. Well, there's actually, on the next page, I
13 felt that that was also part of the community cares.

14 Q. Okay.

15 A. The section that says, "Side rails up, bed in
16 low position."

17 Q. What page are you on now?

18 A. On Page of 8.

19 Q. Okay.

20 A. I also initialed that off to the side, because
21 that's also part of our community cares rounding, I
22 thought. I initialed off to the left.

23 Q. On Page 7 of 8?

24 A. Yes.

25 Q. Okay. And --

1 JUDGE AMCHAN: And is it -- it's on Page 24
2 of GC7.

3 THE WITNESS: Yes.

4 MS. LAWHON: I see it. Yes.

5 JUDGE AMCHAN: It's not on --

6 MS. LAWHON: Yes.

7 JUDGE AMCHAN: -- it's not on R5.

8 MS. LAWHON: Yes. Thank you.

9 THE WITNESS: Right.

10 VOIR DIRE EXAMINATION (CONT'D)

11 BY MS. LAWHON:

12 Q. Okay.

13 A. And also the next page. I thought all of these
14 checkmark areas were part of the community cares rounding
15 that he asked me to initial because they were having a
16 chart audit.

17 Q. Okay. So next to the column that list --
18 excuse me, next to the section with the horizontal word
19 "other" --

20 A. Yes.

21 Q. -- you were -- you also initialed that.

22 A. Right. That's the other one.

23 MS. LAWHON: Okay.

24 JUDGE AMCHAN: Wait.

25 MR. BRYAN CARMODY: That's where I was headed

1 with my --

2 JUDGE AMCHAN: Okay. You're -- just, you're
3 not aware of any other differences between the two
4 exhibits; am I correct?

5 MR. BRYAN CARMODY: That's true, Your Honor.

6 JUDGE AMCHAN: All right.

7 MR. BRYAN CARMODY: So I would offer
8 Respondent's Number 5 into evidence.

9 MS. CENDROSKY: No objection.

10 MS. LAWHON: No objection.

11 JUDGE AMCHAN: Received.

12 (Whereupon, Respondent's Exhibit Number
13 5 was received into evidence.)

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. BRYAN CARMODY:

16 Q. Okay, Ms. Wayt, as part of Ms. P's care --

17 A. Uh-huh.

18 Q. -- that day, a doctor, some doctor --

19 A. Uh-huh.

20 Q. -- was issuing doctor's orders in which he
21 instructed you, amongst others, in terms of how to care
22 for that patient; correct?

23 A. Yes.

24 (Whereupon, Respondent's Exhibit Number
25 6 was marked for identification.)

1 Q. Okay, Ms. Wayt --

2 A. Uh-huh.

3 Q. -- I'm showing you a document that's been
4 marked for identification purposes as Respondent's 6. And
5 I would ask you to review the document and let me know
6 when you're done.

7 A. I'm done.

8 Q. Okay. Do you recognize this document to
9 include doctor's orders that were issued for Ms. P's care?

10 A. Yes.

11 Q. Okay. Now, I would direct your attention to
12 the first page of this document, and it's the second entry
13 on August 28th at twelve o'clock noon. Do you see that,
14 ma'am?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. Yes, it is.

18 Q. Okay. And can you just, is the handwriting
19 just to the right that begins with the word "morphine"
20 your handwriting?

21 A. Yes.

22 Q. And can you just read that for us, please?

23 A. "Morphine one milligram I.V. every three hours
24 as needed for severe pain."

25 Q. Thank you. And your signature is just beneath

1 that?

2 A. Yes.

3 Q. Okay. And is this a doctor's order that you
4 took over the phone for Ms. P's care?

5 A. Yes, it is.

6 Q. And was it you that sought out this morphine on
7 Ms. P's behalf?

8 A. I don't recall if I sought it out, or if he
9 called in with the order.

10 Q. I understand. PRN means as needed; correct?

11 A. Correct.

12 Q. And you, as Ms. P's nurse, make the judgment,
13 do you not, as to when this medication is needed for the
14 patient?

15 A. Yes.

16 Q. Thank you.

17 JUDGE AMCHAN: So the doctor signed, as well;
18 am I correct?

19 THE WITNESS: Yes. He signed off on it.

20 MR. BRYAN CARMODY: That was my next
21 question.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. And, Ms. Wayt, if you'd look down to the next
25 entry also on August 28th --

1 A. Uh-huh.

2 Q. -- last year at one thirty. Do you see the
3 number, it looks like number four. Do you know what that
4 says, ma'am?

5 A. It says, "Vitamin K five milligrams by mouth
6 once times one tonight."

7 Q. Okay. So does that mean that according to this
8 doctor's order, Ms. P was to receive this Vitamin K dosage
9 sometime that evening?

10 A. It says "tonight."

11 Q. Okay. And that would be August 28th?

12 A. Yes. Uh-huh.

13 Q. Thank you. If you turn to the second page,
14 ma'am, you'll see at the very top an entry at seventeen
15 forty-five.

16 A. Uh-huh.

17 Q. Which I believe is five forty-five p.m.; is
18 that correct?

19 A. Correct.

20 Q. And is this your handwriting up at the very
21 top, well, beginning with the date and the time?

22 A. Yes.

23 Q. And is that your handwriting in the three lines
24 just to the right of the date and time?

25 A. Yes, it is.

1 Q. Can you please read that to us?

2 A. "Change Vitamin K to subcutaneous five
3 milligrams times one now."

4 Q. Okay. Subcu, what does that mean, ma'am?

5 A. Subcutaneous.

6 Q. Okay.

7 JUDGE AMCHAN: Under the skin.

8 THE WITNESS: Correct. Good job.

9 MR. BRYAN CARMODY: I didn't know that, Your
10 Honor.

11 CROSS-EXAMINATION (CONT'D)

12 BY MR. BRYAN CARMODY:

13 Q. So this, Ms. Wayt, if I'm reading this
14 correctly, represents a change in terms of when the
15 Vitamin K was to be administered to Ms. P; correct?

16 A. Correct.

17 Q. In the prior order issued at one thirty it was
18 supposed to be that evening; correct?

19 A. Uh-huh. That's right.

20 Q. And in the order that we just reviewed, it was
21 supposed to be administered now, meaning at roughly five
22 forty-five p.m.; correct?

23 A. That's right.

24 Q. Thank you, ma'am.

25 A. Uh-huh.

1 Q. And, finally, Ms. Wayt, there's a -- if you'd
2 read just the next sentence for me, it looks like it
3 begins, "Change Ativan"?

4 A. Uh-huh. Change" --

5 Q. Can you please read --

6 A. -- "Ativan to 0.5 milligrams IM. May repeat in
7 30 minutes, if needed."

8 Q. Okay. What's --

9 A. "Every eight hours, as needed, for agitation."

10 Q. Okay. What's IM stand for?

11 A. Intramuscular.

12 Q. Thank you.

13 JUDGE AMCHAN: I think that's giving them an
14 injection; right?

15 THE WITNESS: Uh-huh.

16 MS. LAWHON: You have to say yes or no, not
17 uh-huh. Just --

18 THE WITNESS: Yes.

19 MR. BRYAN CARMODY: Your Honor, I would offer
20 Respondent's 6 into evidence.

21 JUDGE AMCHAN: Can I -- does the -- is that
22 also the doctor's signature? I mean --

23 THE WITNESS: That is.

24 JUDGE AMCHAN: Right. So he --

25 THE WITNESS: It looks like it, to me.

1 JUDGE AMCHAN: Yes. Okay.

2 MS. LAWHON: Can I voir dire, Your Honor, on
3 this?

4 JUDGE AMCHAN: Sure.

5 VOIR DIRE EXAMINATION

6 BY MS. LAWHON:

7 Q. Ms. Wayt, it says, I believe next to your
8 signature, 8/28/12, eighteen forty. What's the --

9 MR. BRYAN CARMODY: Counsel, where are you
10 referring to?

11 MS. LAWHON: I'm looking on Page 2.

12 MR. BRYAN CARMODY: Page 2, okay.

13 MS. LAWHON: Right where you were.

14 MR. BRYAN CARMODY: Thank you.

15 VOIR DIRE EXAMINATION (CONT'D)

16 BY MS. LAWHON:

17 Q. Seventeen forty-five says, "Change Vitamin K,"
18 and then is that --

19 A. Right. That's when I wrote the order. And
20 that is when I actually -- we took the order off, means --

21 Q. What does that mean, took it off?

22 A. Actually, how can I explain that?

23 MR. BRYAN CARMODY: At eighteen forty, ma'am?

24 THE WITNESS: Uh-huh.

25 MR. BRYAN CARMODY: Thank you.

1 THE WITNESS: I wrote the order at seventeen
2 forty-five, but that doesn't mean you really do it at that
3 time.

4 VOIR DIRE EXAMINATION (CONT'D)

5 BY MS. LAWHON:

6 Q. Uh-huh.

7 A. I transcribe it, write it on the medication
8 sheet. There's a whole -- when you chart -- how can I
9 describe that?

10 Oh, my gosh, I don't know how to describe it. We
11 call it taking the orders off, which means we verify that
12 the orders are correct.

13 Q. I see. So first you just -- it's like an
14 administerial thing, you write it down --

15 A. We write it --

16 Q. -- whatever you hear?

17 A. Whenever I get the order, I write it down with
18 that date and time.

19 Q. I see. And then --

20 A. The orders have to be verified by an RN --

21 Q. Okay.

22 A. -- sometime throughout the day. That's what
23 that is.

24 Q. The eighteen forty reflects when --

25 A. Correct.

1 Q. -- you had verified it.

2 A. Correct.

3 Q. Okay.

4 A. Rechecked it, I guess, is maybe a better term.

5 I don't verify it with anyone else.

6 Q. Uh-huh.

7 A. I recheck it.

8 JUDGE AMCHAN: I'm confused now.

9 THE WITNESS: Yeah. I don't know how to
10 explain it.

11 JUDGE AMCHAN: At -- right. At some point
12 you have to acknowledge that the doctor gave you an order,
13 correct --

14 THE WITNESS: Right.

15 JUDGE AMCHAN: -- to do something.

16 THE WITNESS: Right.

17 JUDGE AMCHAN: So what happened at seventeen
18 forty-five and what happened at --

19 THE WITNESS: At seventeen forty-five it
20 looks like when I actually talked to Dr. Rauh on the phone
21 and received the order.

22 JUDGE AMCHAN: And then at eighteen forty?

23 THE WITNESS: At eighteen forty is when I
24 went through and made sure that the order was signed off
25 by a registered nurse, which would have been me.

1 JUDGE AMCHAN: Okay.

2 THE WITNESS: The orders have to be signed
3 off by a registered nurse. I guess that's the best way I
4 can describe it.

5 MS. CENDROSKY: Your Honor, can I ask a
6 question?

7 VOIR DIRE EXAMINATION

8 BY MS. CENDROSKY:

9 Q. Why didn't you sign off right then?

10 A. I don't remember. I have no idea why I didn't
11 sign off --

12 Q. Do you have to wait for any documentation to
13 come in before you sign off?

14 A. No. I don't know. Maybe I -- I don't know.

15 Q. Okay.

16 A. Sometimes there is more than one chart to sign
17 off. I don't know why I didn't -- I don't normally sign
18 off right then --

19 Q. Okay.

20 A. -- when I write it, I do it later. I don't
21 know why.

22 Q. Okay.

23 A. It's just a habit.

24 JUDGE AMCHAN: So where are we? You moved --

25 MR. BRYAN CARMODY: This is -- I --

1 JUDGE AMCHAN: -- you moved for admission?

2 MR. BRYAN CARMODY: Yes, sir.

3 MS. LAWHON: And I'm finished voir dire. No
4 objection.

5 JUDGE AMCHAN: I receive it. This is R6.

6 (Whereupon, Respondent's Exhibit Number
7 6 was received into evidence.)

8 CROSS-EXAMINATION (CONT'D)

9 BY MR. BRYAN CARMODY:

10 Q. And, Ms. Wayt --

11 A. Uh-huh.

12 Q. -- isn't it true that as part of a nurse's
13 administration of a medication, or even an attempted
14 administration of a medication --

15 A. Uh-huh.

16 Q. -- there's a form known as a Medical
17 Administration Record --

18 A. Yes.

19 Q. -- that is maintained by the hospital?

20 A. Yes, there is.

21 (Whereupon, Respondent's Exhibit Number 7
22 was marked for identification.)

23 JUDGE AMCHAN: This is 7?

24 MR. BRYAN CARMODY: Yes, sir.

25 Q. Ms. Wayt, I'm showing you a document that's

1 been marked for identification purposes as Respondent's
2 Exhibit 7.

3 And I'd ask for you to look it over and let me
4 know when you're through, please.

5 A. I'm through.

6 Q. And do you recognize this as being a Medication
7 Administration Record for Ms. P on this date of August
8 28th of last year?

9 A. Yes. Because the orders are the same.

10 Q. Thank you, ma'am.

11 A. Uh-huh.

12 Q. And if we move down about two-thirds down, we
13 will see, I believe, your handwriting that begins with the
14 date 8/28; correct?

15 A. Yes.

16 Q. And that is a duplication of the doctor's order
17 that we reviewed as part of Respondent's Exhibit 6;
18 correct?

19 A. Correct.

20 Q. And if we move to the column under days eight
21 to fifteen fifty-nine, there's a twelve, it looks like
22 noon, and your initials?

23 A. Right.

24 Q. Okay. And there's a mark that's through the
25 one and two; correct?

1 A. Uh-huh. That's correct.

2 Q. And does that not indicate that it was at that
3 time, twelve o'clock noon that day that you administered
4 the morphine to Ms. P?

5 A. That's what that means.

6 Q. And the reason, would it be fair to say,
7 Ms. Wayt, that you administered the morphine to Ms. P at
8 that point in time was because you believed that she was
9 in pain?

10 A. That's correct.

11 Q. If you move to the right, you'll see sixteen
12 thirty.

13 A. Uh-huh.

14 Q. With your initials. And here, also, the line
15 drawn through it. Do you see that, ma'am?

16 A. I do.

17 Q. Okay. And that is your handwriting?

18 A. That's correct.

19 Q. And this means, does it not, that at four
20 thirty you administered the morphine to Ms. P; correct?

21 A. That is correct.

22 Q. And here, as well, you did this, is it fair to
23 say, because she was in pain?

24 A. Right.

25 Q. Thank you.

1 A. Yes.

2 Q. Ms. Wayt --

3 A. Uh-huh.

4 Q. -- would it be fair to say that your -- that in
5 your experience, the administration of morphine can make a
6 patient sleepy?

7 A. I would say it can.

8 Q. In the case of Ms. P, did the administration of
9 the morphine make her sleepy?

10 A. I wouldn't know, at this point in time, if it
11 made her sleepy or didn't make her sleepy.

12 Q. Ms. Wayt, if you go down --

13 A. Uh-huh.

14 Q. -- to the next entry, I believe what we'll
15 encounter here is the doctor's Vitamin K order; correct?

16 A. Yes. Uh-huh.

17 Q. And this is the Vitamin K order which was
18 issued, if you go back to Respondent's Exhibit 6, please,
19 would be on the second page at the very top, what the
20 order you took at five forty-five p.m.; correct?

21 A. Correct.

22 Q. And if we look down to your -- the column days
23 eight hundred to fifteen fifty-nine.

24 A. Uh-huh.

25 Q. And if we intersect that with the Vitamin K

1 order, there's nothing that's written there; correct?

2 A. That is correct.

3 Q. And that means that you did not administer that
4 Vitamin K to Ms. P; correct?

5 A. Not during those hours; correct?

6 Q. And your shift ended at what time that evening,
7 ma'am?

8 A. At seven thirty.

9 Q. Thank you.

10 A. Uh-huh.

11 Q. And if you go the final entry here, ma'am, the
12 Ativan, do you see that?

13 A. Yes.

14 Q. Okay. And this also is consistent with the
15 doctor's orders as reflected in Respondent's Exhibit 6 on
16 Page 2?

17 A. Yes.

18 Q. Is that correct?

19 A. Uh-huh. Yes, it is.

20 Q. And there's no indication here that you gave
21 this Ativan dosage at any point during your care of Mrs. P
22 that day; correct?

23 A. Right. I chose not to.

24 JUDGE AMCHAN: Well, what -- on the Vitamin
25 K, the 2100 --

1 THE WITNESS: Uh-huh.

2 JUDGE AMCHAN: -- is that you or somebody
3 else?

4 THE WITNESS: That's the night nurse. She
5 gave the drug.

6 JUDGE AMCHAN: Okay. So she gave the Vitamin
7 K and she gave the Ativan at 2200.

8 THE WITNESS: Right.

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. And, Ms. Wayt, you say that you chose not to
12 give the Ativan to Ms. P; correct?

13 A. I did not give her Ativan.

14 Q. Okay. And did I get it right that you made a
15 decision, a conscious decision not to give it to her?

16 A. Correct.

17 Q. Okay. And what was the basis for you deciding
18 not to give it to her?

19 A. I.V. Ativan can really knock an elderly patient
20 out. And since she had morphine at four thirty, that was
21 my judgment call that she did not need the Ativan at that
22 -- any time while I had her that day.

23 Q. Okay, Ms. Wayt, I want to ask you now, please,
24 about rounding.

25 A. Uh-huh.

1 Q. And that's a term --

2 JUDGE AMCHAN: I want to go back to the
3 Ativan and to R6, just --

4 THE WITNESS: Uh-huh.

5 JUDGE AMCHAN: -- and I'm looking on Page 2,
6 the order -- is the order for Ativan as needed, or was it
7 --

8 THE WITNESS: "Every eight hours PRN
9 agitation," at the top. If you read, "Change Ativan to
10 0.5 milligrams IM. May repeat in 30 minutes, if needed,
11 every eight hours PRN agitation."

12 MS. CENDROSKY: PRN again means what?

13 THE WITNESS: As needed.

14 MR. BRYAN CARMODY: I'm sorry, Your Honor.
15 It's not appropriate --

16 THE WITNESS: I'm sorry.

17 MR. BRYAN CARMODY: -- for Ms. Cendrosky to
18 interject with questioning. It's my examination.

19 JUDGE AMCHAN: Right.

20 MR. BRYAN CARMODY: Can I proceed?

21 JUDGE AMCHAN: Go ahead.

22 MR. BRYAN CARMODY: Thank you, sir.

23 CROSS-EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. So, Ms. Wayt, rounding, we're getting ready to

1 talk about rounding.

2 A. Sure.

3 Q. That's a term that you certainly -- has meaning
4 to you as a former employee of Affinity; correct?

5 A. Yes. Uh-huh.

6 Q. And rounding is supposed to occur hourly;
7 correct?

8 A. It does occur hourly.

9 Q. And, certainly, in the case of Ms. P, it's your
10 testimony that you did round on her hourly; correct?

11 A. I did.

12 Q. Can you please walk us through what constitutes
13 rounding? What steps must you perform, or did you perform
14 while employed by the hospital to effectuate rounding?

15 A. Actually --

16 MS. CENDROSKY: Hold on. I believe there's
17 -- objection. There's two questions there, either what
18 constitutes rounding, and what did you do to perfect the
19 rounding?

20 So if you want -- I would ask her to ask -- you
21 to ask those questions separate, if you want to ask both
22 of them.

23 CROSS-EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. Ms. Wayt --

1 A. Uh-huh.

2 Q. -- when you were working for Affinity, you
3 rounded on patients; correct?

4 A. Uh-huh.

5 Q. Can you please tell me what you did when you
6 rounded on patients?

7 A. When you round on patients, when I round on
8 patients I, if they're awake, ask them are you in pain, if
9 they're coherent enough to answer the questions. If
10 they're not, I don't ask them questions. If they're a
11 coherent patient, I talk to them.

12 I make sure they're comfortable, their pain's
13 under control, they have everything that they need to
14 reach, if they need some help.

15 Q. Okay. Have you ever heard rounding described
16 while you were employed by Affinity as the four P's?

17 A. Yes.

18 Q. Okay. And the four P's included potty;
19 correct?

20 A. That's one of them.

21 Q. And that would mean you would ask the patient
22 whether they had to go to the bathroom; correct?

23 A. Uh-huh.

24 Q. Another P was possessions; correct?

25 A. Correct.

1 Q. And that would mean that you would ask the
2 patient whether their possessions were in reach; correct?

3 A. Correct.

4 Q. And those possessions would include the call
5 light?

6 A. Uh-huh.

7 Q. Is that correct?

8 A. Uh-huh. Yes.

9 Q. Okay. What is the call light?

10 A. It's a --

11 MR. BRYAN CARMODY: Unless you know already,
12 Judge.

13 THE WITNESS: It's a button that the patient
14 pushes.

15 JUDGE AMCHAN: When they need help.

16 THE WITNESS: When they need help.

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Okay. One of the other P's is positions;
20 correct?

21 A. Correct.

22 Q. And what does that require of the nurse when
23 doing the rounding?

24 A. It doesn't really require anything. If the
25 patient needs help moving, is uncomfortable in the

1 position they are, then if they need assistance, you can
2 -- I can help them.

3 Q. And why is it important to move a patient's
4 position?

5 A. Well, that's important to move so they don't
6 get any kind of pressure points or bed sores.

7 Q. And pain, that's the final P; is it not?

8 A. Uh-huh. Uh-huh.

9 Q. And that involves --

10 A. That's correct.

11 Q. -- that involves asking the patient if they're
12 in pain; correct?

13 A. Or visibly noticing whether they're in pain or
14 not, if the patient cannot speak for themselves.

15 Q. I see. So would you agree with me, Ms. Wayt,
16 that even if -- there's a pain scale that is used --

17 A. There is.

18 Q. -- by the hospital to assess the pain level for
19 the patient; is that correct?

20 A. Yes. Uh-huh.

21 Q. And there are certainly some patients who don't
22 understand the patient -- the pain scale because of some
23 mental problem --

24 A. Uh-huh.

25 Q. -- they suffer from?

1 A. That's correct.

2 Q. And would it be fair to say that even with
3 those patients, notwithstanding the fact they don't
4 understand the pain scale, they certainly would manifest
5 pain that they may be experiencing; correct?

6 A. That is correct.

7 Q. They might moan; correct?

8 A. Any number of things.

9 Q. Thank you.

10 JUDGE AMCHAN: Just so the positioning, I
11 mean --

12 THE WITNESS: Uh-huh.

13 JUDGE AMCHAN: -- you go on a round every
14 hour. Do you move the patient every hour?

15 THE WITNESS: That depends, really, on the
16 patient, themselves. If they're moving about --

17 JUDGE AMCHAN: Uh-huh.

18 THE WITNESS: -- in the bed, they're able to
19 move, no, I would say. If it's a patient who's unable to
20 move, especially an elderly patient, you would want to
21 definitely move them.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. Was Ms. P able to move around in her bed?

25 A. She was moving her arm and leg, not the

1 affected leg, the unaffected leg. She was moving them
2 freely.

3 Q. Okay. And when did you observe that?

4 A. More than once on my rounds.

5 Q. And that, in your judgment, meant it was
6 unnecessary to move her positioning otherwise; is that
7 your testimony?

8 A. Exactly.

9 Q. Ms. Wayt, when you rounded, the patient was in
10 a room, was she not?

11 A. Yes, she was in a room.

12 Q. And when you did the rounding, did you actually
13 go into the patient's room?

14 A. Each time.

15 Q. Each time.

16 A. Yes.

17 Q. So you crossed the door frame into the room --

18 JUDGE AMCHAN: Threshold.

19 MR. BRYAN CARMODY: Threshold. Thank you,
20 sir.

21 Q. Threshold. You crossed the threshold of the
22 room and actually walked into the patient's room?

23 A. I -- I'm sure I did.

24 Q. Okay.

25 A. I'm sure I did.

1 Q. You're sure you did.

2 A. Uh-huh.

3 Q. And did -- were you at the patient's bedside
4 when you did the rounding?

5 A. Not always. Sometimes at the foot of the bed.

6 Q. At the foot of the bed.

7 A. Uh-huh.

8 Q. Okay. When you did your rounding --

9 A. Uh-huh.

10 Q. -- were you able to see the entirety of
11 Mrs. P's person?

12 A. Yes.

13 Q. Every time you rounded.

14 A. Yes.

15 Q. Were you able to see the sitter every time you
16 rounded?

17 A. Not necessarily.

18 Q. Okay. What do you mean by not necessarily?

19 A. I guess I should rephrase that. I saw the
20 sitter every time I rounded.

21 Q. Okay. And where was Rhonda when you rounded?

22 A. When she was in the room --

23 Q. Yes, ma'am.

24 A. -- Rhonda was, most of the time, in the chair
25 that sat at the head of the bed.

1 Q. At the head of the bed.

2 A. On the side where the, yeah, the side of the
3 head of the bed.

4 Q. Okay. So if we were to look at the patient in
5 --

6 A. Uh-huh. She would be on the left side of the
7 head.

8 Q. Thank you, ma'am.

9 A. Most of the time.

10 Q. And was Rhonda sitting or standing?

11 A. Sometimes standing; sometimes sitting.

12 Q. And was there any other occasion that you saw
13 Rhonda when you were doing your rounding where she was
14 located somewhere other than to the left of the patient?

15 A. Yes.

16 Q. Okay. Where was she located on those
17 occasions?

18 A. On the side of the bed.

19 Q. The side of the bed?

20 A. More at the side of the bed.

21 Q. Can you be a little bit more specific? Was it
22 the other side of the patient's bed?

23 A. No, no. The same side of the bed as she was at
24 the head. She was farther down at the side of the bed.

25 Q. She had moved down a little bit.

1 A. Correct.

2 Q. Closer to the patient's feet.

3 A. I would say that.

4 Q. Okay. And with respect to Jonalee --

5 A. Uh-huh.

6 Q. -- the same questions here again, how many
7 times did you see Jonalee on your rounding?

8 A. I saw her between eleven -- I saw her after
9 eleven, after twelve, and around one. Three times.

10 Q. So you saw her three times?

11 A. Yes.

12 Q. And you were rounding on an hourly basis;
13 correct?

14 A. I was.

15 Q. And where was Ms. Lesjak, Jonalee, located when
16 you were doing your rounding?

17 A. Just about in the same positions that Rhonda
18 Smith was.

19 Q. As part of any of your rounding on Ms. P that
20 day --

21 A. Uh-huh.

22 Q. -- Ms. Wayt, did you actually put, for whatever
23 the purpose, your hands on the patient's person?

24 A. Yes, during the head-to-toe assessment.

25 Q. Okay. Well, that's not rounding, is it?

1 A. Yes, it is.

2 Q. Oh, I see.

3 A. Of course it is.

4 Q. How about any other time when you did your
5 rounding, putting aside --

6 A. Sure. When I gave her medication.

7 Q. Did you do that as part of your rounding?

8 A. Well, I gave it -- I did it when I gave her
9 medication.

10 Q. So just so I'm clear, Ms. Wayt --

11 A. Uh-huh.

12 Q. -- is it your testimony that when you gave the
13 medication to Ms. P, let's talk about the morphine
14 injection --

15 A. Uh-huh.

16 Q. -- at twelve o'clock noon, at the same time as
17 you were doing your rounding?

18 A. No. That was an extra trip into the room.

19 Q. I understand.

20 A. Uh-huh.

21 Q. When you injected the morphine at four thirty,
22 was that a part of your rounding, or was that an extra
23 trip into the room?

24 A. That's also. I was in the room, went out and
25 got the medication, and came back again to inject it.

1 Q. So aside from what you've just testified to --

2 A. Uh-huh.

3 Q. -- the injection of the medicines -- and does
4 the injection of the morphine actually require you to put
5 your hands on the patient?

6 A. I always do.

7 Q. Okay. But isn't it injected through some type
8 of machinery?

9 A. No. It's injected through the port in the I.V.
10 tubing.

11 Q. I understand. Aside from the two occasions on
12 which you administered the morphine --

13 A. Uh-huh.

14 Q. -- in the manner that you just described --

15 A. Yes.

16 Q. -- any other occasions with respect to your
17 rounding when you physically put your hands on Mrs. P's
18 person?

19 A. I don't recall that it was necessary.

20 Q. During your rounding, did -- any one of your
21 roundings, Ms. Wayt, did Ms. P try to talk to you?

22 A. I don't recall, honestly.

23 Q. As part of your rounding was Mrs. P sleeping,
24 or was she awake?

25 A. I can't answer that question.

1 Q. Ms. Wayt, I'm going to direct you back to
2 Respondent's Exhibit 4, please. And I'm going to ask
3 please let me know when you have the exhibit, ma'am.

4 A. Okay.

5 Q. I'm going to direct your attention to 9 of 21
6 sheets. And if you need some help locating this, just let
7 me know, I'm happy to show you. You need some help,
8 ma'am?

9 A. Well, I can't find it. I see 9 -- I don't
10 know.

11 MS. LAWHON: It's on the left corner. Pages
12 30 -- Page 33 to 36.

13 Q. Excuse me. I'm going to ask you some questions
14 right here.

15 A. Okay.

16 Q. So, Ms. Wayt, are you looking at Respondent's
17 Exhibit 4?

18 A. Yes.

19 Q. And do you see -- you're on 9 of 21 sheets,
20 ma'am? If you look at the bottom left-hand corner.

21 A. It says 8 of 21 sheets.

22 Q. Okay.

23 MS. LAWHON: Turn the page.

24 THE WITNESS: 9 of 21 sheets.

25 Q. Thank you, ma'am. And if you go to the upper

1 right-hand box, Page 34. Do you see that?

2 A. Yes.

3 Q. Okay. At Line 19 you'll see:

4 "Question: Now for rounding. Let me just go
5 back to that just for a quick moment. What does the
6 rounding -- you have to go actually into the patient's
7 room to do the rounding; is that right?

8 "Answer: That depends. If the patient's sleep,
9 I'll often just look in the door. And I look in the door
10 if the patient's asleep. I don't wake them up for that.

11 If I can look in the door and see if they are
12 comfortable, if they have everything around their bed that
13 they need, that I don't go in and wake them up.

14 "Question: Okay. On the day in question, do you
15 have any recollection as to whether or not the patient was
16 sleeping?

17 "I do.

18 "Answer (sic): Okay. Was she sleeping or was
19 she not sleeping?

20 "Answer: It depends. Sometimes she was awake;
21 sometimes she was asleep." Do you see that, ma'am?

22 A. I haven't found it yet, but I'm listening to
23 you.

24 Q. Okay. Well, I want to be sure you find it, so
25 I'm going to come up and show you.

1 JUDGE AMCHAN: He started in the upper right-
2 hand box and then moved to the --

3 THE WITNESS: Okay.

4 JUDGE AMCHAN: -- laterally.

5 THE WITNESS: Okay, I see it now. I see it
6 now.

7 CROSS-EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. And it goes down to here, ma'am.

10 A. Oh, it goes over -- across?

11 Q. Yes.

12 A. Okay.

13 Q. It reads like this.

14 A. Okay.

15 MS. LAWHON: And the line numbers are on the
16 left of the little box.

17 THE WITNESS: Okay.

18 MS. LAWHON: When he says Line 19, that's
19 what he means.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. Do you see what I've just quoted now, ma'am?

23 A. Yes, I do.

24 Q. And is it not a fact that you testified as part
25 of your Unemployment testimony that day, January 7, when I

1 asked you the question was she sleeping, was she not
2 sleeping, you testified it depends. Sometimes she was
3 awake; sometimes she was asleep?

4 A. That's what this says I said.

5 Q. Okay. Do you have any reason to believe this
6 isn't truthful, or accurate, rather?

7 A. I --

8 MS. LAWHON: That calls for speculation.

9 JUDGE AMCHAN: Well, no. I mean, well, does
10 she --

11 THE WITNESS: I don't know.

12 JUDGE AMCHAN: -- do you remember saying
13 that?

14 THE WITNESS: It sounds like I might have. I
15 don't know if I -- I don't recall what I said at that
16 hearing, sir. I'm sorry.

17 I mean, if it's on tape and if it's here, then I
18 must have said it. I mean, I'm not going to say that I
19 did, because I don't recall it.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. And, Ms. Wayt, I'm going to direct your
23 attention now back to GC Exhibit 7. And if you look at
24 Page 24 of GC7.

25 A. Uh-huh.

1 Q. And if you go to the safety box, and if you
2 look at the row, which is awake and sleeping, do you see
3 that?

4 A. Yes.

5 Q. And do you see, ma'am, the row of A's that you
6 put down in that row?

7 A. Yes.

8 Q. And that all means awake, does it not?

9 A. Yes, it does.

10 Q. Is it your testimony now that that's not
11 accurate?

12 A. No. I would say the testimony at the hearing
13 probably wasn't accurate, only because this would have
14 been correct, the charting would have been correct. I'm
15 not sure I could have even remembered that.

16 In fact, I think I told you that at the hearing,
17 that I couldn't remember if the patient was asleep or
18 awake.

19 MS. LAWHON: And please let the record
20 reflect when the patient said "this would have been" --

21 MR. BRYAN CARMODY: Excuse me, Your Honor.

22 MS. LAWHON: I'm sorry. Let the record --

23 MR. BRYAN CARMODY: Counsel should not be --

24 MS. LAWHON: Counsel, would you please have
25 the courtesy --

1 MR. BRYAN CARMODY: It's not for you to say
2 --

3 JUDGE AMCHAN: Okay. Well, okay.

4 MR. BRYAN CARMODY: -- what the record should
5 reflect or not.

6 JUDGE AMCHAN: Whoa, whoa, whoa.

7 MS. LAWHON: I think when she holds up a
8 document, it's important --

9 JUDGE AMCHAN: Yes.

10 MS. LAWHON: -- for the record to reflect
11 she's holding up the patient's chart.

12 MR. BRYAN CARMODY: Your Honor, I would
13 respectfully submit that is your role, sir, to --

14 JUDGE AMCHAN: Well, no, I --

15 MR. BRYAN CARMODY: -- to speak to the
16 contents of the record.

17 JUDGE AMCHAN: Well, I -- no, I think it's
18 appropriate, unless you -- if you disagree with that.

19 MR. BRYAN CARMODY: I can move on.

20 JUDGE AMCHAN: Just so it's clear.

21 MS. LAWHON: That's all I want.

22 JUDGE AMCHAN: I mean, do we agree that she
23 was holding up the patient's chart?

24 MS. LAWHON: Yes, when she said "this."

25 JUDGE AMCHAN: Or you clarify. I mean, it is

1 important that the record be clear, whether I catch it or
2 not.

3 MR. BRYAN CARMODY: I don't disagree with
4 that, Your Honor. My issue is who should be doing it.

5 JUDGE AMCHAN: But what if I'm sound asleep?

6 MR. BRYAN CARMODY: I thought you would be
7 awake for this.

8 JUDGE AMCHAN: I am awake.

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Okay. So, Ms. Wayt, were you just referring to
12 -- what were you just referring to, ma'am?

13 A. The --

14 Q. Was it GC --

15 A. -- assessment. Yeah.

16 Q. Okay. So is that General Counsel's Exhibit 7?

17 A. That's the one I have in my hand.

18 Q. Okay.

19 JUDGE AMCHAN: Which is 7, GC7.

20 THE WITNESS: GC7, uh-huh.

21 Q. And you're referring to Page 24; is that
22 correct?

23 A. Yes.

24 Q. Thank you, ma'am. Now, Ms. Wayt, you did know
25 that Ms. P suffered from dementia; correct?

1 A. Yes.

2 Q. Would it be fair -- and you knew that Ms. Smith
3 was a nurse; correct?

4 A. Who?

5 Q. Rhonda Smith.

6 A. Oh, yes. Uh-huh.

7 Q. And you knew that Ms. Rhonda Smith was an
8 experienced nurse; correct?

9 A. In OB.

10 Q. Okay. Would it be fair to say that in these
11 circumstances it would have been -- that Ms. Smith would
12 have been a good source of this patient's information for
13 you concerning this patient's condition?

14 A. Because she was in the room.

15 Q. Because was the patient sitter; correct?

16 A. Uh-huh. Correct.

17 Q. Okay. And did you, at any point in time, ask
18 Ms. Smith any questions concerning what she had observed
19 of Ms. P during the time Ms. Smith was serving as Ms. P's
20 sitter?

21 A. I didn't feel there was any reason to.

22 Q. Okay. Did you -- you knew Ms. Lesjak, Jonalee
23 Lesjak was a nurse; correct?

24 A. I did know she was a nurse, yes.

25 Q. Okay. And you knew that she was sitting with

1 this patient; correct?

2 A. Correct.

3 Q. Did you ever ask Jonalee if she had anything
4 that she could inform you of concerning the patient's
5 condition?

6 A. I didn't feel it was necessary.

7 Q. Okay, Ms. Wayt, I'd like to --

8 A. Uh-huh.

9 Q. -- direct your attention now to a later point
10 in time, September 5th --

11 A. Okay.

12 Q. -- of last year. It was on that date, I
13 believe that you met with Paula and Jason; correct?

14 A. Yes. Uh-huh.

15 Q. And it was during that meeting that you
16 received from Paula and Jason the written warning that
17 concerned the exchange that you had with Mr. Perone;
18 correct?

19 A. Yes.

20 Q. And is it not a fact that during that meeting
21 with those two individuals that you admitted that you had
22 acted unprofessionally?

23 A. No, that is not correct.

24 Q. Is it fair to say at least that you made them
25 aware, Jason and Paula, of the fact that you had

1 apologized to --

2 A. Yes.

3 Q. -- Mr. Perone?

4 A. Yes.

5 Q. And, in fact, you did apologize to Mr. Perone.

6 A. Yes, I did.

7 Q. Was that a sincere apology that you offered to
8 Mr. Perone?

9 A. I apologized to him, yes. I thought it was
10 sincere only because I didn't want him to think I was
11 being disrespectful.

12 Q. Now, at the time that you received the written
13 warning --

14 A. Uh-huh.

15 Q. -- from Paula and Jason, you understood, did
16 you not, that you were not obliged, actually, to sign that
17 document; correct?

18 A. I thought I had to sign it.

19 Q. Okay. You didn't understand that you had the
20 right to refuse to sign the document?

21 A. No one told me that.

22 Q. Okay. And that's not something that you had
23 elected, the right to refuse signature of a discipline
24 document back in 2010 when you were disciplined in the
25 form of a verbal warning?

1 MS. LAWHON: Well, objection.

2 MS. CENDROSKY: Objection.

3 MS. LAWHON: Assumes facts not in evidence.

4 MS. CENDROSKY: Correct.

5 MS. LAWHON: This witness testified to have
6 no recollection of any verbal counseling. Sorry.

7 MS. CENDROSKY: That's okay. We were on the
8 same page.

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Ms. Wayt, I'd like to direct your attention to
12 your investigatory suspension. That's something you
13 certainly do recall; correct?

14 A. Yes, I do.

15 MS. LAWHON: Objection. Your --

16 MR. BRYAN CARMODY: And as part of --

17 MS. LAWHON: -- Your Honor, I'm sorry, but --

18 MS. CENDROSKY: There's an objection.

19 MS. LAWHON: -- "that's certainly something
20 you should recall," I believe, is disrespectful and
21 lacking in civility.

22 JUDGE AMCHAN: Let's just continue.

23 CROSS-EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. Ms. Wayt, you recall your investigatory

1 suspension?

2 A. Yes, I do.

3 Q. You do, ma'am? And did you not receive a
4 document that was issued to you by the hospital which
5 reflected your investigatory suspension?

6 A. No.

7 Q. Ms. Wayt, I'd like to now direct your attention
8 to September 12th of last year. And it was on that date,
9 was it not, that you received this phone call from Jason
10 and Paula?

11 A. From Paula, yes.

12 Q. From Paula.

13 A. Uh-huh.

14 Q. And did Jason not participate in this call, as
15 well?

16 A. He did.

17 Q. Okay. And it was your understanding, isn't it
18 true, that they were informing you that a decision had
19 been made on disciplinary action concerning your
20 employment; correct?

21 MS. LAWHON: Objection. Vague and ambiguous.
22 He's asking --

23 MR. BRYAN CARMODY: I can rephrase, Your
24 Honor.

25 MS. LAWHON: Yes.

1 MR. BRYAN CARMODY: I can rephrase.

2 CROSS-EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. During that phone call that you had with Paula
5 and Jason, did either Paula or Jason say to you that this
6 meeting they were looking to schedule was for the purpose
7 of imposing discipline?

8 A. Jason said to me this is a disciplinary
9 meeting, not an investigatory meeting.

10 Q. And so was it your expectation, therefore, or
11 your understanding -- was it your understanding that you
12 were about to be disciplined by the hospital on account of
13 the conversation you had with Jason and Paula?

14 A. I didn't really -- I was just too surprised by
15 the whole thing to even think about it. So I didn't think
16 -- I didn't know what to think.

17 Q. Okay. You were, at the end of that call,
18 though, with Jason and Paula, scheduled to come to meet
19 with them the following day; correct?

20 A. I did, yes.

21 Q. And was it your expectation that at that
22 meeting you were going to receive some form of discipline?
23 Would that be fair?

24 A. No, that really wasn't my expectation.

25 Q. What was your expectation --

1 A. I was --

2 Q. -- in terms of what was supposed to occur at
3 that meeting?

4 A. I actually expected them to explain to me what
5 was going on. That's what my expectation was.

6 Q. And that was -- that expectation was based upon
7 what, in terms of what Jason or Paula said to you on the
8 12th of September.

9 A. Just out of courtesy to tell me what was going
10 on, because that was the first I'd heard of it.

11 Q. Okay. You also testified that sometime after,
12 I think you said it was the next day, September 13th, that
13 you got a call from Ms. Boyle; is that correct?

14 A. That's correct.

15 Q. Okay. And Ms. Boyle had explained to you that
16 the purpose of this meeting would be investigatory after
17 all; is that correct?

18 A. That is correct.

19 Q. At any point during -- or strike that.

20 Isn't it true, Ms. Wayt, that at no point during
21 this conversation that you had with Ms. Boyle did you say
22 to Ms. Boyle that Jason McDonald had threatened to fire
23 you the other day?

24 A. I had no reason, no.

25 Q. My question -- ma'am?

1 A. I said no.

2 Q. Ma'am, I'd now like to direct your attention to
3 the investigatory interview --

4 A. Uh-huh.

5 Q. -- that took place on the 13th of September.
6 At that meeting you were shown a copy of Ms. P's chart;
7 correct?

8 A. Yes.

9 Q. And you, at that meeting, confirmed the
10 accuracy of your entries on Ms. P's chart; isn't that
11 true?

12 A. Meaning?

13 Q. The 24-Hour Assessment.

14 A. Yes.

15 Q. Is that a portion of the chart that was shown
16 to you --

17 A. Yes.

18 Q. -- during that meeting?

19 A. Yes.

20 Q. You held it in your hands?

21 A. No, I left it on the table.

22 Q. You saw it with your eyes.

23 A. Yes, I did.

24 Q. Okay. And you reviewed the document?

25 A. I did.

1 Q. From start to finish?

2 A. Yes.

3 Q. And once your review was over, did you express
4 verbally to anyone in attendance whether or not your
5 entries in that document were accurate or not?

6 A. I believe I did.

7 Q. Okay. What do you recall saying, ma'am?

8 A. I remember saying if it's charted, I did it.
9 That's what I recall.

10 Q. And, Ms. Wayt, you deny that Ms. Boyle -- I'm
11 sorry, that Ms. Boyle said to you before that meeting
12 concluded that you would have an opportunity to come
13 forward with additional information concerning any defense
14 that you wished to offer concerning these allegations.

15 A. I did not hear her say that.

16 Q. Ms. Wayt, on the 17th -- I'm sorry, on the 19th
17 of September -- you know Ms. Michelle Mahon, do you not?

18 A. Yes, I do.

19 Q. And isn't it true that on the 19th of September
20 Ms. Mahon submitted a letter to Affinity Medical Center on
21 your behalf?

22 A. Yes. I don't know the date that it was
23 submitted. I know when I spoke with her.

24 (Whereupon, Respondent's Exhibit Number
25 8 was marked for identification.)

1 Q. Ms. Wayt, I've handed to you a document that's
2 been marked for identification purposes as Respondent's
3 Exhibit 8.

4 And I'd ask for you to review the document and
5 let me know when you're through.

6 A. Okay.

7 Q. Do you recognize this document?

8 A. I do.

9 Q. And is this not the document that -- the letter
10 that Ms. Mahon had submitted to the hospital on your
11 behalf?

12 A. Yes, it is.

13 MR. BRYAN CARMODY: And, Your Honor, I would
14 offer this into evidence.

15 MS. CENDROSKY: One second, Your Honor. We
16 have no objections. Thank you.

17 JUDGE AMCHAN: It's received.

18 (Whereupon, Respondent's Exhibit Number
19 8 was received into evidence.)

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. It -- Ms. Wayt, is it fair to say that
23 Ms. Mahon -- you knew that Ms. Mahon was submitting this
24 letter to Ms. Boyle; correct?

25 A. Yes, I did.

1 Q. And is it fair to say that you worked with
2 Ms. Mahon, in terms of developing the content of this
3 letter?

4 A. Yes, I did.

5 Q. Okay. And is it also fair to say that the
6 events that are depicted in this letter are accurate, to
7 the best of your knowledge and belief?

8 A. To the best of my knowledge at the time, yes.

9 Q. Well, has anything happened since this was
10 submitted that gives you basis to question the accuracy?

11 A. I would say there might be plenty of wording
12 that's different, that's all. The situation is the same.

13 Q. Okay. I'm not sure I understand what you mean,
14 that the wording might be different.

15 A. I wouldn't have said the exact thing in my
16 sworn affidavit, probably, that's what's in this letter
17 because of recall.

18 Q. I see. Ms. Wayt, would it be fair to say that
19 the affidavit that you gave the Labor Board was submitted
20 sometime after the submission of this letter?

21 A. It was.

22 Q. Okay.

23 A. Uh-huh.

24 Q. So would it also be fair to say that this
25 letter, Respondent's Exhibit 8 would likely reflect a

1 better recollection of the events that are depicted by the
2 letter?

3 MS. LAWHON: Objection. This isn't even her
4 letter.

5 MS. CENDROSKY: It's not her letter.

6 THE WITNESS: No, it's not.

7 MS. LAWHON: It's a --

8 JUDGE AMCHAN: Well, but she said she worked
9 with Ms. Mahon in preparing it. I mean, so, it's a fair
10 question.

11 THE WITNESS: So repeat the question.

12 CROSS-EXAMINATION (CONT'D)

13 BY MR. BRYAN CARMODY:

14 Q. Sure. I might be speaking a little bit too
15 loosely. Is it fair to say that Ms. Mahon's letter is a
16 more accurate depiction of the events that are reflected
17 in this letter, as compared to your affidavit you gave the
18 Labor Board?

19 A. No.

20 Q. So even though your Labor Board affidavit is --
21 comes later in time --

22 A. Uh-huh.

23 Q. -- that's a more accurate depiction of the
24 events?

25 A. Yes, sir.

1 Q. Okay. Why is that so, ma'am?

2 JUDGE AMCHAN: What's the date of the Labor
3 Board affidavit?

4 MS. BRUNDAGE: It's October 4th, 2012. I'm
5 referring to the Jencks statement.

6 JUDGE AMCHAN: I'm sorry, what?

7 MS. BRUNDAGE: October 4th, 2012.

8 CROSS-EXAMINATION (CONT'D)

9 BY MR. BRYAN CARMODY:

10 Q. So being -- why would you say that your
11 affidavit coming later in time is the superior source of
12 information --

13 A. Because my --

14 Q. -- as compared to Respondent's Exhibit 8?

15 A. Because my memory serves me better when I think
16 about things, not when I'm blindsided by an issue that I
17 know nothing about.

18 MR. BRYAN CARMODY: Your Honor, can I have
19 just one moment, please?

20 JUDGE AMCHAN: Sure. Off the record.

21 (Off the record.)

22 JUDGE AMCHAN: Back on the record.

23 MR. BRYAN CARMODY: Your Honor, I do have
24 some more questions, however, I've only -- and they're
25 going to be based upon exhibits. I only have one copy.

1 So is it Your Honor's preference that we break
2 and make copies, or should I just use the one that I have
3 here?

4 JUDGE AMCHAN: I think if you just show it to
5 counsel and see if that works, and then make copies
6 afterwards.

7 MR. BRYAN CARMODY: This was produced in
8 response to the subpoena that we served upon this week.

9 JUDGE AMCHAN: Okay. So this is going to be
10 Exhibit R9, and then you'll make copies afterwards?

11 (Whereupon, Respondent's Exhibit Number
12 9 was marked for identification.)

13 CROSS-EXAMINATION (CONT'D)

14 BY MR. BRYAN CARMODY:

15 Q. Ms. Wayt, I'm showing you a document that will
16 be marked Respondent's Exhibit 9. And I'd ask you if you
17 recognize the document?

18 A. Yes, I do.

19 Q. Okay. It's the only copy that we have, so if
20 you don't mind, I'll just stand back here.

21 A. Uh-huh.

22 Q. All right. Is this a document that you
23 produced -- strike that.

24 Did you receive a subpoena that the hospital
25 served upon you in connection with this hearing?

1 A. That you -- a subpoena from Affinity?

2 Q. Yes.

3 A. Yes.

4 Q. Okay. And is this one of the documents that
5 you had produced in response to the subpoena?

6 A. I don't know if you asked for that.

7 Q. Okay. Well, that's not quite my question. My
8 question is whether you produced this document in response
9 to the subpoena?

10 A. I didn't produce any documents, my attorneys
11 did.

12 MS. LAWHON: Counsel, you got that from me.
13 And I will stipulate that I --

14 THE WITNESS: Yeah.

15 MS. LAWHON: -- gave you that document and
16 it's responsive.

17 MR. BRYAN CARMODY: All right. That's fine.
18 And we're talking about Respondent's Exhibit 9.

19 MS. LAWHON: Absolutely.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. Okay. And, Ms. Wayt, what's this document?
23 Can you describe it for me?

24 A. Yes. I just -- it's no document. It's a place
25 where I documented an incident that happened.

1 Q. And what was the incident that happened which
2 is documented by Respondent's Exhibit 9?

3 A. Yes. It's when the ER nurse, or someone,
4 insinuated that I had refused a patient.

5 Q. And that was of sufficient concern to you to
6 write this note?

7 A. It sure was.

8 Q. So that was an unusual happening?

9 A. Yes, it was.

10 Q. And that's why you wanted -- was the unusual
11 nature of what occurred that day that made you want to
12 document that day?

13 A. I thought it was, yes.

14 Q. Thank you. Now, this document is entitled
15 "Event Report"; is that correct?

16 A. That's correct.

17 Q. Okay. And would it be fair to say that the
18 purpose of forms of this kind is to make management aware
19 of something bad that's happened to you?

20 A. If I intend it for management. This was for my
21 purpose, for my notes. I wasn't intending to turn this in
22 to management.

23 Q. Well, ma'am, you could have just grabbed a
24 sheet of paper; correct?

25 A. It looks better on this, because that's what

1 it's intended for, Event Report.

2 Q. Okay. And it's not your understanding that
3 another intent of this form is to make management aware of
4 circumstances that might be of concern to employees?

5 MS. LAWHON: Objection. Relevance.

6 JUDGE AMCHAN: Well, just --

7 MS. LAWHON: Someone else's intent is
8 irrelevant. She said --

9 JUDGE AMCHAN: Well, if --

10 MR. BRYAN CARMODY: I'm asking for her
11 understanding.

12 JUDGE AMCHAN: Well, wait a second. Is this,
13 the form -- is the form a hospital form?

14 MR. BRYAN CARMODY: Yes.

15 JUDGE AMCHAN: It is a hospital form.

16 THE WITNESS: Uh-huh. Yes.

17 JUDGE AMCHAN: So the hospital has these
18 forms and you filled one out on August 28th. That was --
19 you filled that out on August 28th.

20 THE WITNESS: Right.

21 JUDGE AMCHAN: Okay. Okay.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. And, Ms. Wayt, I'm just trying to --

25 A. Uh-huh.

1 Q. -- understand what your understanding was --

2 A. Okay.

3 Q. -- on this day, in terms of the purpose of this
4 form.

5 A. I didn't purposely use the form for any
6 particular reason, except that it is an Event Report. I
7 had no intention of giving this to any management person.

8 Q. Okay. And did you have understanding in terms
9 of what their -- the purpose -- one of the purposes of
10 this form was to make management aware of circumstances
11 that might make an employee uncomfortable?

12 A. I would say so.

13 Q. Okay.

14 MS. LAWHON: Excuse me, Your Honor. Could
15 counsel please question from his normal position, rather
16 than three feet from the witness? There's no --

17 JUDGE AMCHAN: I think it's okay, as long as
18 he's -- he's pretty civil.

19 MR. BRYAN CARMODY: Your Honor, the only -- I
20 would note that Ms. Lawhon has done this routinely. In
21 fact, she's been up like this during the questioning.

22 JUDGE AMCHAN: Well, I --

23 MR. BRYAN CARMODY: I'm up here just because
24 it's the only copy I have.

25 JUDGE AMCHAN: Yes. I mean, there's only one

1 copy of the document, and I don't think it's a problem.

2 MR. BRYAN CARMODY: And you know what, Judge,
3 I'm all done, actually. Okay. I would offer that into
4 evidence, Your Honor, Respondent's Exhibit 9.

5 JUDGE AMCHAN: R9, okay. And you'll make
6 copies, sufficient copies --

7 MR. BRYAN CARMODY: Of course.

8 JUDGE AMCHAN: -- for everybody.

9 MR. BRYAN CARMODY: Yes, sir.

10 MS. CENDROSKY: No objection.

11 JUDGE AMCHAN: I guess I should have asked
12 first, right?

13 MS. CENDROSKY: Right. I mean, I figured I'd
14 give it to you.

15 JUDGE AMCHAN: Right. Okay. I'm receiving
16 R9.

17 (Whereupon, Respondent's Exhibit Number
18 9 was received into evidence.)

19 JUDGE AMCHAN: Yes, I'm not talking.

20 MR. BRYAN CARMODY: Okay. I'm just not going
21 to, I guess, learn that.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. Ms. Wayt --

25 A. Uh-huh.

1 Q. -- I'd like to ask you to look through the pile
2 of exhibits there and see if you can't recover GC Exhibit
3 11.

4 A. I have it.

5 Q. You see that, ma'am?

6 A. Yes.

7 Q. Okay. And is this a document that --

8 MR. BRYAN CARMODY: Jane, maybe this is
9 something that you and I can work out. Will you stipulate
10 that this was produced in response to Ms. Wayt's subpoena,
11 GC's --

12 MS. LAWHON: Yes.

13 MR. BRYAN CARMODY: -- Exhibit 11?

14 MS. LAWHON: Yes.

15 MR. BRYAN CARMODY: And --

16 MS. LAWHON: Actually, I believe it was
17 produced in response to the subpoena to Michelle.

18 MR. BRYAN CARMODY: Okay.

19 MS. LAWHON: It was not Ms. Wayt's subpoena,
20 it was Michelle.

21 CROSS-EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. Ms. Wayt, do you --

24 A. Uh-huh.

25 Q. -- possess any documents yourself, personally,

1 that would reflect your support for the Union?

2 A. That flyer.

3 Q. So you do have a copy of this, ma'am?

4 A. Somewhere at home, yeah.

5 Q. At home? Okay.

6 A. I saved.

7 Q. But you did not produce this flyer in response
8 to the subpoena? Is that your --

9 MS. LAWHON: Objection. Relevance.

10 MR. BRYAN CARMODY: Compliance with a
11 subpoena is a pretty relevant thing in a proceeding before
12 the National Labor Relations Board, Judge.

13 MS. LAWHON: I would ask that you -- Counsel,
14 as a matter of professional courtesy, raise any issue you
15 have with the production of documents with me first.

16 JUDGE AMCHAN: Well, I mean, I don't know --

17 MR. BRYAN CARMODY: She received the
18 subpoena, Judge. The witness was subpoenaed.

19 MS. LAWHON: I gave it to you for both of
20 them, for that matter.

21 MR. BRYAN CARMODY: You didn't give this to
22 me on her behalf.

23 MS. LAWHON: I didn't worry about it.

24 MR. BRYAN CARMODY: That's what you just got
25 done telling me.

1 JUDGE AMCHAN: So I guess I don't know what
2 difference it makes. You have it.

3 MS. LAWHON: What difference?

4 MR. BRYAN CARMODY: Judge, certainly,
5 Ms. Wayt's support for the Union is a material issue in
6 this proceeding.

7 JUDGE AMCHAN: Right.

8 MR. BRYAN CARMODY: Whether or not she has
9 documents which reflect that support is something that I'm
10 entitled to have in this proceeding. And the --

11 MS. CENDROSKY: You have it.

12 JUDGE AMCHAN: And she said --

13 MS. LAWHON: You have it.

14 JUDGE AMCHAN: -- and she said didn't have
15 any others.

16 MR. BRYAN CARMODY: She said that she had
17 this and she didn't give it to me.

18 JUDGE AMCHAN: Okay.

19 MS. LAWHON: Counsel, I gave it to you. And
20 maybe I didn't have two copies to give you because --

21 JUDGE AMCHAN: Well, I --

22 MR. BRYAN CARMODY: Judge, this is a
23 diversion. There is a --

24 JUDGE AMCHAN: Well, anyway, let's just
25 continue. So you have one in your possession and you

1 didn't produce -- you, personally, didn't produce it to
2 the Respondent; is that correct?

3 THE WITNESS: I didn't think I was supposed
4 to, Your Honor. I thought the attorneys were supposed to
5 turn that -- those documents in, and they did.

6 CROSS-EXAMINATION (CONT'D)

7 BY MR. BRYAN CARMODY:

8 Q. Ms. Wayt, was it also your understanding that
9 in response to the subpoena, responsive documents you were
10 supposed to give to some lawyer so that I could have them
11 for purposes of this hearing?

12 A. They -- my attorneys had them.

13 Q. Okay. But you didn't give this to your
14 attorneys, did you?

15 A. I didn't --

16 MS. LAWHON: Objection.

17 MR. BRYAN CARMODY: General --

18 MS. LAWHON: Relevance.

19 MR. BRYAN CARMODY: -- well, General
20 Counsel's Exhibit 11?

21 THE WITNESS: I -- I -- excuse me.

22 JUDGE AMCHAN: Overruled.

23 THE WITNESS: During my subpoena, I did pass
24 that document off --

25 JUDGE AMCHAN: To?

1 THE WITNESS: -- to my attorney.

2 CROSS-EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. Okay. The attorney who --

5 A. Yes.

6 Q. What other --

7 JUDGE AMCHAN: When you say your attorney,
8 you're talking about Ms. Lawhon?

9 THE WITNESS: Sharlee.

10 JUDGE AMCHAN: To Sharlee.

11 THE WITNESS: Yes.

12 JUDGE AMCHAN: All right.

13 CROSS-EXAMINATION (CONT'D)

14 BY MR. BRYAN CARMODY:

15 Q. Ms. Wayt, what other documents do you possess,
16 personally, would show your support of the Union, aside
17 from this --

18 A. I have none.

19 Q. -- General Counsel's Exhibit 11?

20 A. I have none.

21 Q. Nothing else?

22 A. I have none.

23 Q. Thank you, ma'am. And with respect to --
24 ma'am, with respect to Respondent's Exhibit 8, can you
25 please retrieve that from the exhibit pile?

1 A. Exhibit 8. Okay.

2 Q. Ma'am, you never sent any additional -- you
3 never sent any letters of your own that you personally
4 authored to the hospital after this one from Ms. Mahon on
5 the 19th?

6 A. No, I did not.

7 Q. Okay. And prior to this final form of the
8 letter being generated, were there any drafts of this
9 letter that were circulated between yourself and
10 Ms. Mahon?

11 A. I had none.

12 Q. Did somebody else have some?

13 A. I don't know of any.

14 MS. CENDROSKY: Objection. She wouldn't be
15 qualified to testify to that.

16 JUDGE AMCHAN: Well, she doesn't -- she said
17 she's unaware.

18 CROSS-EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Ms. Wayt, do you have a copy of your affidavit
21 up there?

22 A. I doubt it. I don't think there's a copy up
23 here.

24 MR. BRYAN CARMODY: Do you have a copy for
25 her?

1 MS. CENDROSKY: A copy of the affidavit?

2 MR. BRYAN CARMODY: Yes. Just so she can
3 see.

4 MS. CENDROSKY: Oh, yes.

5 MS. LAWHON: Absolutely, Counsel, you don't
6 need to walk up there for that.

7 MS. CENDROSKY: Give me one second.

8 MS. LAWHON: We've got it covered. I have an
9 extra.

10 MR. BRYAN CARMODY: I'm going to give it to
11 her, if that's okay.

12 MS. CENDROSKY: Yes. There you go.

13 MR. BRYAN CARMODY: Okay. Thank you.

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. BRYAN CARMODY:

16 Q. Ms. Wayt, I've handed you a document.

17 A. Uh-huh.

18 Q. And I'd ask for you to review it, please, and
19 let me know when you're through.

20 A. You can ask me your question.

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 Q. Is this not the affidavit you gave the National
24 Labor Relations Board on October 4th of last year?

25 A. Yes.

1 Q. And you understood that this document was an
2 affidavit, meaning you were declaring the truth of its
3 content under pains of perjury?

4 A. Yes.

5 Q. Okay. And I would direct your attention to
6 Page 13.

7 A. Yes.

8 Q. And the last paragraph. And you see there's
9 reference here to a pamphlet, a vote glossy pamphlet?

10 A. Yes.

11 Q. And that's --

12 MS. LAWHON: I'm sorry, Counsel, where are
13 you? Page 13?

14 MR. BRYAN CARMODY: Page 13, last paragraph.

15 MS. LAWHON: I'm looking at it. Oh, the
16 first sentence. I see. Got it.

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Yes. And what you're referring to there is
20 General Counsel's Exhibit 11; is that correct?

21 A. Yes.

22 Q. And if you read down a little bit, ma'am,
23 you'll see a sentence that says, "The Union e-mailed me
24 and asked me if it were okay for them to put this in those
25 words on the flyer." You see that, ma'am?

1 A. That's right.

2 Q. And did you receive an e-mail from the Union
3 concerning this flyer?

4 A. I suppose I did, or I wouldn't have said that.

5 Q. Okay. And is that -- did you -- do you have an
6 e-mail account, ma'am?

7 A. An e-mail account.

8 Q. Do you?

9 A. My husband and I share an e-mail account --

10 Q. Okay.

11 A. -- if that's what you mean.

12 Q. And -- that is what I mean.

13 A. Uh-huh.

14 Q. And did you search, as part of searching for
15 documents the subpoena that the hospital sent you, did you
16 search your --

17 A. No.

18 Q. Let me just finish, please, ma'am. Did you
19 search your e-mails for any responsive documents?

20 A. No.

21 Q. Okay. In responding to any part of the
22 subpoena that the hospital sent to you, did you look
23 through your e-mail database?

24 A. No.

25 MR. BRYAN CARMODY: Your Honor, I have no

1 further questions, at this point in time. But, I do think
2 that there is an issue with the compliance with the
3 subpoena.

4 And so I would ask that Your Honor direct
5 Ms. Wayt to search her e-mail system and her other effects
6 to produce documents that are responsive to the subpoena.

7 And I would ask for an opportunity to continue my
8 cross-examination, at least an opportunity to do so,
9 Judge, once I receive the documents to which I'm entitled.

10 JUDGE AMCHAN: Well, why don't you look and
11 see if you have any e-mails that are responsive to the
12 subpoena. What exactly did you ask for?

13 MR. BRYAN CARMODY: Can I just show you a
14 copy of the subpoena? Would that faster, Judge?

15 JUDGE AMCHAN: Well, just read it so she
16 knows what she's looking for.

17 MR. BRYAN CARMODY: I'm happy to just give
18 her another copy, Judge, if -- or, I can read it.

19 JUDGE AMCHAN: Well, I guess, yes, so I
20 understand --

21 MR. BRYAN CARMODY: It's a little long. I'm
22 happy to give her another copy.

23 JUDGE AMCHAN: You can't -- would it be
24 possible to summarize? You want her to look in her
25 e-mails for anything, I assume, communications?

1 MR. BRYAN CARMODY: Responsive documents,
2 Judge. This Petition -- this subpoena, rather, was not
3 subject to a -- not even a subject of a Petition to
4 Revoke.

5 JUDGE AMCHAN: All right.

6 MR. BRYAN CARMODY: I'm -- the witness has
7 testified she hasn't looked through her e-mails. They're
8 expressly defined as --

9 JUDGE AMCHAN: Okay.

10 MR. BRYAN CARMODY: -- one of many different
11 types of documents.

12 JUDGE AMCHAN: Look through your e-mails to
13 see whether there's anything that's called for in the
14 subpoena.

15 MR. BRYAN CARMODY: And, Your Honor, can I
16 put the subpoena in evidence? I'd like to put it into the
17 record.

18 MS. LAWHON: Objection. There's no basis for
19 even -- there's no indication that there are any
20 responsive documents at all. There's no basis for the
21 subpoena being in the record, at this point.

22 MR. BRYAN CARMODY: That's just a fallacy,
23 Judge. You heard what the witness said.

24 MS. LAWHON: There's no basis that she has
25 any e-mails.

1 MS. CENDROSKY: Your Honor, if I may.

2 MR. BRYAN CARMODY: She just got done
3 testifying --

4 JUDGE AMCHAN: Okay. Hold --

5 MR. BRYAN CARMODY: -- she's got an e-mail
6 account.

7 MS. CENDROSKY: Excuse me one second,
8 Mr. Carmody, please. I would think that since I also
9 issued a subpoena on the hospital and they have yet to
10 produce some of those records, yet, I was lenient enough
11 to allow them extra time to dig through their records and
12 get them together. And I never once offered the subpoena.

13 MR. BRYAN CARMODY: Judge, I'm not asking
14 Ms. Wayt to --

15 JUDGE AMCHAN: Okay. Wait, wait, wait.

16 MS. CENDROSKY: Extend --

17 JUDGE AMCHAN: Wait. Let --

18 MS. CENDROSKY: -- a professional courtesy
19 and allow --

20 MR. BRYAN CARMODY: Please don't point your
21 finger at me, ma'am.

22 MS. CENDROSKY: Okay.

23 JUDGE AMCHAN: All right. Let's turn down
24 the --

25 MS. CENDROSKY: Your Honor, if you could just

1 make a ruling.

2 THE COURT REPORTER: Do you want to go off
3 the record?

4 JUDGE AMCHAN: No, stay on. So you look for
5 e-mails that are responsive to his subpoenas, and we'll go
6 from there.

7 I don't think it's necessary to put in the
8 subpoena as of yet. And if there -- it becomes an issue,
9 I'll revisit that.

10 MR. BRYAN CARMODY: That's fine by us, Judge.
11 Thank you. I have no further questions. Thank you,
12 ma'am.

13 JUDGE AMCHAN: Do you have any redirect? I
14 guess, I don't know, I assume some people would like a
15 lunch break. I mean, do you want to take a half hour now
16 and --

17 MR. BRYAN CARMODY: My preference, Judge,
18 would be to get this witness done and we'll move on to
19 another.

20 JUDGE AMCHAN: I would prefer that, too,
21 unless we're going to be -- you know, I don't want the
22 reporter to pass out, or -- how much do you think you
23 have?

24 MS. CENDROSKY: I would like a -- and I'm
25 okay with reviewing everything over lunch to see if I have

1 any redirect, if that's fine, as to, you know, make this
2 proceeding go a little quicker.

3 JUDGE AMCHAN: Yes. And I'll let you have
4 recross if they bring up anything that -- again, we're
5 going to break for lunch for a half hour.

6 MS. CENDROSKY: Okay.

7 JUDGE AMCHAN: It's almost two.

8 MS. CENDROSKY: Oh, geez.

9 JUDGE AMCHAN: But just remember, it's not
10 who says it last, you know. I would want redirect limited
11 to anything raised on cross, something new. I don't have
12 to hear the same thing over and over again.

13 MR. BRYAN CARMODY: Well, under those
14 parameters, does counsel even have any questions?

15 JUDGE AMCHAN: Well, they want to look
16 through their records.

17 MS. LAWHON: It was a long period of cross.

18 JUDGE AMCHAN: It was a long cross. Let's
19 shoot for two twenty-five.

20 MR. BRYAN CARMODY: Yes, sir.

21 JUDGE AMCHAN: All right? Off the record.

22 (Whereupon, the noon recess was taken from
23 1:55 p.m. to 2:25 p.m.)

24 JUDGE AMCHAN: On the record. Did you want
25 to move for admission of R7?

1 MR. BRYAN CARMODY: Yes, sir.

2 JUDGE AMCHAN: Do you have any objection?

3 That's the medication --

4 MR. BRYAN CARMODY: Administration.

5 JUDGE AMCHAN: -- administration. I was
6 having a -- drawing a blank.

7 MS. CENDROSKY: I actually would like to voir
8 dire on this, just because it's been a little while since
9 we've talked about it, and I'd like to refresh my
10 recollection.

11 JUDGE AMCHAN: Sure.

12 VOIR DIRE EXAMINATION

13 BY MS. CENDROSKY:

14 Q. Ann, do you have R7 in front of you,
15 Respondent's Exhibit Number 7?

16 A. Are you looking at this?

17 Q. I am.

18 A. Okay.

19 Q. And on the very first page it looks like there
20 is a signature, well, two signatures. The first one, Ann,
21 is that yours?

22 A. At the bottom of the page, yes. Yes.

23 Q. And then the second signature, do you recognize
24 that signature?

25 A. Yes.

1 Q. And whose signature is it?

2 A. That's -- that's Priscilla Harrison.

3 Q. Are you able to tell what writing on this
4 report sheet would have been Ms. Harrison's and not yours?

5 A. Only -- yeah.

6 Q. Okay. What writing on this Page 1 is
7 Ms. Harrison's?

8 A. Let's see. Actually 2100 and 2200, it looks
9 like.

10 Q. So we're referring to the column all the way to
11 the right --

12 A. All the right --

13 Q. -- under "Evenings"?

14 A. All the way to the right, uh-huh.

15 Q. Okay. Let's flip to the second page.

16 JUDGE AMCHAN: Well, there are two 2100
17 entries. You're saying all the 2100 entries are hers.

18 THE WITNESS: Just where she wrote 2100. And
19 under it is written 2200.

20 JUDGE AMCHAN: What about the circling the
21 2100 on the top with a "D"?

22 THE WITNESS: I don't know if she circled it.
23 I didn't. I wouldn't have any reason to circle it.

24 JUDGE AMCHAN: And what about the "D" under
25 the --

1 THE WITNESS: I don't know what that "D"
2 means.

3 JUDGE AMCHAN: Yes.

4 THE WITNESS: I really don't.

5 VOIR DIRE EXAMINATION (CONT'D)

6 BY MS. CENDROSKY:

7 Q. Okay. Let's look at the second page in the
8 second row, hydrocodone. There appears to be some sort of
9 symbols. Did you write those?

10 A. No. It doesn't look like my handwriting.

11 Q. And then if we go down where it says oxycodone
12 and handwritten, do you see that?

13 A. Yes, I see those.

14 Q. Did you write that?

15 A. That's not my handwriting.

16 Q. And then the column underneath that?

17 A. That's not mine.

18 Q. The one underneath that?

19 A. That's not mine, either.

20 Q. And then tramadol?

21 A. That's not my handwriting.

22 Q. Okay. And then if we look at the bottom of
23 this page with the signatures, the first signature, do you
24 recognize that signature?

25 A. That looks like Priscilla Harrison.

1 Q. Okay. And then the second signature underneath
2 Priscilla's?

3 A. I don't have any idea what that is or who that
4 is.

5 MS. CENDROSKY: Okay, Your Honor. At this
6 time, I would like to move that -- or I would be agreeable
7 that the first page of Respondent's Number 7 can be
8 properly authenticated by Ms. Wayt, but not the second
9 page.

10 So I would like to have only the first -- I would
11 be amenable to having the first page offered as an
12 exhibit, since Ms. Wayt was able to identify what writing
13 on it was her.

14 JUDGE AMCHAN: Do you care?

15 MR. BRYAN CARMODY: No.

16 JUDGE AMCHAN: Okay. Well --

17 MS. CENDROSKY: Okay. Fair enough.

18 JUDGE AMCHAN: Okay. So I'm receiving
19 Exhibit 7, just the first page. It's a one-page exhibit.

20 (Whereupon, Respondent's Exhibit Number
21 7 was received into evidence.)

22 JUDGE AMCHAN: Okay. I think the ball's in
23 your court for redirect.

24 MS. CENDROSKY: General Counsel has no
25 redirect at this time.

1 JUDGE AMCHAN: Ms. Lawhon?

2 MS. LAWHON: Yes. Thank you.

3 RECROSS-EXAMINATION

4 BY MS. LAWHON:

5 Q. Ann, do you have Respondent's 9 in front of
6 you, which is the -- or your note to yourself which I --

7 A. A note to myself.

8 Q. That you wrote an Event Form? Let's see here.

9 JUDGE AMCHAN: By the way, do we have copies?

10 MR. BRYAN CARMODY: No, Your Honor.

11 MS. LAWHON: Oh, no wonder I can't find my
12 copies.

13 MS. CENDROSKY: Here's a copy.

14 MR. BRYAN CARMODY: Well, I thought you said
15 you had a copy.

16 MS. LAWHON: I gave it to General Counsel.

17 MR. BRYAN CARMODY: Oh.

18 MS. CENDROSKY: Yes.

19 MS. LAWHON: I'll borrow hers.

20 MS. CENDROSKY: I didn't have a copy.

21 JUDGE AMCHAN: Okay.

22 RECROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. Okay. Do you need to see it, Ms. Wayt, or do
25 you remember this document that's --

1 A. Is it the one that's dated 8/28?

2 Q. Yes, it is.

3 A. About the ER nurse?

4 Q. Yes.

5 A. Yes.

6 Q. Yes.

7 A. I -- I don't need to see it.

8 Q. Okay. Did -- I understand the date appears
9 8/28 here. The incident described, what day did that
10 occur?

11 A. That happened on 8/28.

12 Q. Okay. And do you remember whether you wrote up
13 this note on that same day, or on a different day?

14 A. I don't -- I did not take the time to write it
15 that day.

16 Q. Okay.

17 A. The date is the day that it happened.

18 Q. I see. And you were asked some questions about
19 initials that appeared on the 24-Hour Assessment in
20 certain places --

21 A. Uh-huh.

22 Q. -- that did not appear on the original 24-Hour
23 Assessment thing. And what -- and, obviously, I think
24 you've already testified you put your extra set of
25 initials there.

1 A. Correct.

2 Q. What were you told when presented with these
3 24-Hour Assessment documents from this patient on August
4 28th at the September 5th meeting?

5 A. Jason's exact words were, "We are auditing
6 charts, and I need you to initial the areas on this
7 trifold that you think pertain to community cares."

8 Q. Okay. Are you familiar with the hospital's
9 practice of auditing charts, in general?

10 A. Not particularly.

11 Q. Okay. Did you understand we are auditing
12 charts to convey any investigation of any --

13 MR. BRYAN CARMODY: Objection. Leading.

14 MS. LAWHON: To what extent, if any?

15 JUDGE AMCHAN: Overruled -- okay.

16 MS. LAWHON: Oh, okay.

17 RECROSS-EXAMINATION (CONT'D)

18 BY MS. LAWHON:

19 Q. To what extent, if any, did you understand when
20 Jason said we are auditing charts that the hospital
21 perceived a problem with your charting?

22 A. I did not perceive that at all.

23 Q. At any point in that meeting on September 5th
24 when you were actually asked to make additional sets of
25 initials on the 24-Hour Assessment, did any hospital

1 representative indicate any problem with your charting?

2 A. No, ma'am.

3 Q. Are you familiar with an organization by the
4 name of JCAHO?

5 A. Yes.

6 Q. Okay. And that's the Joint Commission on
7 Accreditation of Healthcare Organizations?

8 A. Something like that, yes.

9 Q. Okay. And are you -- have you, in the years
10 that you've worked at Affinity, have you sometimes been
11 aware there's a JCAHO inspection coming up?

12 A. Yes, I have. Uh-huh.

13 Q. Okay. And among other things that the hospital
14 does in preparation for a -- it's a -- is there an annual
15 review, or a process of review over a certain period of
16 time for JCAHO, in your understanding?

17 A. It is my understanding of that.

18 Q. Okay. And to what extent, if any, are -- does
19 the hospital conduct chart audits in relation to an
20 upcoming JCAHO inspection, if you know?

21 A. I have never been involved. I have never been
22 asked to participate in anything like that, so I -- I
23 couldn't answer that correctly.

24 MS. LAWHON: Okay. Nothing further.

25 JUDGE AMCHAN: Do you have anything?

1 MR. BRYAN CARMODY: No, sir.

2 JUDGE AMCHAN: Okay. You can step down.

3 THE WITNESS: Thank you.

4 JUDGE AMCHAN: Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 (WITNESS EXCUSED.)

7 MS. CENDROSKY: At this time, counsel for the
8 General Counsel would request that any and all copies of
9 Ms. Wayt's affidavit be returned. It's my understanding
10 that the affidavit left the room.

11 So if any copies were made by you, or anyone with
12 you, I would ask for all of them to be returned.

13 JUDGE AMCHAN: Off the record.

14 (Off the record.)

15 JUDGE AMCHAN: Go back on the record.

16 MS. CENDROSKY: Would you like to swear the
17 witness in?

18 JUDGE AMCHAN: I don't know who it is yet.

19 MS. CENDROSKY: Okay. Counsel for General
20 Counsel would like to call Ms. Kelly Sawyer to the witness
21 stand. Thank you.

22 JUDGE AMCHAN: Okay. Raise your right hand.

23 WHEREUPON,

24 KELLY SAWYER,

25 A witness herein, having been first duly cautioned and

1 sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CENDROSKY:

4 Q. Good afternoon, Kelly.

5 A. Good afternoon.

6 Q. Can you please state your full name, for the
7 record?

8 A. My name is Kelly Sawyer.

9 Q. And, for the record, can you spell your first
10 and last name?

11 A. Yeah. It's (K-E-L-L-Y) (S-A-W-Y-E-R).

12 Q. Ms. Sawyer, what I'd like for you to do is if
13 you can't hear my question, or if you don't understand it,
14 just let me know.

15 A. Okay.

16 Q. And just so you know, these microphones do not
17 amplify your voice, so you may have to speak into it a
18 little closer.

19 A. Okay.

20 JUDGE AMCHAN: Yes. I would get a little
21 closer --

22 THE WITNESS: And everybody says I'm --

23 JUDGE AMCHAN: -- and then try to keep your
24 voice up more.

25 THE WITNESS: Okay.

DIRECT EXAMINATION (CONT'D)

BY MS. CENDROSKY:

Q. Were you employed by Affinity Medical Center?

A. Yes.

Q. And if I refer to Affinity Medical Center as either Affinity or the hospital, will you know who I'm referring to?

A. Yes.

Q. Are you currently employed by Affinity?

A. No.

Q. Did you quit, or were you terminated?

A. I quit.

Q. Do you recall when you left Affinity?

A. The exact date, no, but I believe it was in January.

Q. Of what year?

A. Of this year, 2013.

Q. Do you recall when you began your employment with Affinity?

A. Around October of 2012.

Q. And what was your position?

A. I'm a registered nurse in the ICU.

Q. And what does ICU stand for?

A. Intensive Care Unit.

Q. Were you full time?

1 A. Yes.

2 Q. And what shift did you work?

3 A. Seven a.m. to seven thirty p.m.

4 Q. Who was your immediate supervisor?

5 A. Susan Kress.

6 Q. And do you recall what Ms. Kress' title was?

7 A. She's an RN manager. I know she was the
8 manager of the -- the SC-ICU, or something like that. She
9 had another --

10 Q. Title?

11 A. -- title, too.

12 Q. Okay. Are you familiar with the NNOC?

13 A. Yes.

14 Q. And if I refer to them as either the National
15 Nurses Organizing Committee or the Union, will you know
16 who I'm referring to?

17 A. Yes.

18 Q. Were you able to vote in the union election at
19 Affinity?

20 A. No.

21 Q. Why not?

22 A. I wasn't employed yet.

23 Q. While you were employed at Affinity, were you
24 ever asked if you voted in the election?

25 A. Oh, I was.

1 Q. And who asked you that?

2 A. Susan Kress.

3 Q. And what was your response?

4 A. That I wasn't employed at the time of the vote.

5 Q. When Ms. Kress asked you that question, do you
6 recall where you were at?

7 A. I was standing in front of a patient room.

8 Q. Was anyone else around?

9 A. Not that I recall.

10 Q. Did you attend any union meetings while you
11 were employed at Affinity?

12 A. I did.

13 Q. And do you recall when you attended the
14 meetings?

15 A. I know it was cold out. I'm thinking around
16 the end of October, maybe. We had -- I remember seeing
17 somebody's Halloween decorations in their car. But it was
18 a meeting that was at a Chinese restaurant.

19 Q. Were other nurses present at this meeting?

20 A. There were.

21 Q. Are you familiar with a form called the
22 Assignment Despite Objection Form?

23 A. Yes.

24 Q. Is this form commonly referred to as an ADO?

25 A. Yes.

1 Q. Okay. And what is this form?

2 A. It's a form that nurses can fill out if we're
3 working short-staffed or -- and we feel that the
4 assignment is dangerous to our patients.

5 And it -- it kind of keeps record that we did
6 object to the fact that we're working either short-staffed
7 or under dangerous circumstances.

8 Q. Now, do you know if Affinity supplies these
9 forms?

10 A. I don't know who supplied them. And I've never
11 filled one out there.

12 Q. Okay. Do you recall any incident involving an
13 Assignment Despite Objection Form?

14 A. Yes.

15 Q. And what do you recall?

16 A. I had come in one morning. We were short-
17 staffed. And Susan had brought a nurse from her other
18 department that she is the manager of to cover. And we
19 got assignment. I was flipping through charts. It was
20 still very early in the morning.

21 And I heard Susan coming down the hallway in
22 between -- I was at the nurses' station, so it was in
23 between the nurses' station and the patient rooms.

24 And she had this form in her hand. And she was
25 yelling about we wrote her up. And this -- you know,

1 after everything she's done for us, how could we write her
2 up like this.

3 And she came down to where I was sitting. And
4 two seats down from me was the other nurse. They had
5 brought him from the other ICU.

6 And she pointed at him and she said, you, go back
7 to your floor. Then she said that this is what's going to
8 happen when we write her up. Now we can work short.

9 So she, you know, had the form. She had said a
10 few other things, I'm not sure, you know, what they were.
11 But she turned around and kind of looked in my general
12 direction and said that, you know, I'm going to end up, or
13 someone's going to end up with an extra patient. Because
14 we usually have two, and now we'll have three.

15 And she said if you fill out one of these forms,
16 I'm going to smash it through your forehead.

17 Q. Did you respond to Ms. Kress?

18 A. No.

19 Q. Okay. After that incident what, if anything,
20 happened later on that day?

21 A. Susan started going up and down the halls kind
22 of looking at all of our charts and our charting. And she
23 -- and I knew she was doing it, because she had a pen and
24 she was tapping it really loud on the charts.

25 And she kind of like flipped the charts open, you

1 could hear it, and you could hear the pages rustling and
2 the pen tapping, and it was just very unnerving.

3 But, she was going through looking for mistakes
4 and -- or to see if we had charted, or what time our
5 charting was.

6 Q. Did Ms. Kress say anything to you about a
7 particular chart?

8 A. She did. She brought a chart to me and she
9 wanted to know the nurse's signature on the chart.

10 Q. Were you able to identify the signature for
11 her?

12 A. I did. It was Pam Gardner, an RN that had the
13 patient before I did.

14 Q. And do you know Pam Gardner?

15 A. I do.

16 Q. And what, if anything, did Ms. Kress say to
17 you?

18 A. She asked me, she said, can -- can you tell me
19 who this signature is? And I looked at it and I said, oh,
20 it's -- it's Pam Gardner. And she's like, oh, really?
21 She goes, I'm going to have a lot of fun writing this one
22 up. And --

23 Q. And do you know what she meant by that?

24 MR. BRYAN CARMODY: Objection. That calls
25 for speculation.

1 JUDGE AMCHAN: Sustained.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. CENDROSKY:

4 Q. Do you know who Pam Gardner is?

5 A. I do.

6 Q. Was it widely known that Pam Gardner supported
7 the Union?

8 A. Yes.

9 MR. BRYAN CARMODY: Objection. That calls
10 for speculation.

11 JUDGE AMCHAN: Well --

12 Q. Did you know if Pam Gardner supported the
13 Union?

14 A. Yes. Yeah.

15 JUDGE AMCHAN: How did you know that?

16 THE WITNESS: She actually offered me a badge
17 and invited me to the first meeting.

18 MS. CENDROSKY: Just one second, Kelly.
19 Thank you.

20 THE WITNESS: Uh-huh.

21 MS. CENDROSKY: That's it for me, Your Honor.

22 JUDGE AMCHAN: Do you have anything?

23 MS. LAWHON: Not at this time.

24 MR. BRYAN CARMODY: May I have the Jencks
25 statement, please?

1 MS. CENDROSKY: Yes.

2 JUDGE AMCHAN: And we'll go off the record
3 while you take a look at that.

4 (Off the record.)

5 JUDGE AMCHAN: Back on the record.

6 CROSS-EXAMINATION

7 BY MR. BRYAN CARMODY:

8 Q. Ms. Sawyer, good afternoon. My name is Bryan
9 Carmody. I am the attorney representing the hospital in
10 this proceeding, and I do have some questions for you.

11 You said that you had a conversation with
12 Ms. Kress during -- which she asked you whether you voted
13 in the election; correct?

14 A. Yes.

15 Q. Where did that conversation take place?

16 A. I'm sorry?

17 Q. Speak up, ma'am.

18 A. It took place in front of a patient room.

19 Q. So in the -- one of the hallways of the ICU --

20 A. Yes, sir.

21 Q. -- is that correct? And the answer that you
22 gave Ms. Kress that you didn't vote in the election was a
23 truthful answer; is that correct?

24 A. Yes.

25 Q. And, to your knowledge, nobody else was

1 standing around when you and Ms. Kress had that
2 conversation; would that be fair to say?

3 A. Yes.

4 Q. You said that you started your employment
5 sometime in October of last year?

6 A. I believe it was.

7 Q. Does October 19th of last year sound like about
8 the correct date?

9 A. Yes.

10 Q. And when you started your employment, Ms. Kress
11 was your supervisor at that point in time; correct?

12 A. No. No, sir. It was Diane --

13 Q. Okay.

14 A. -- Capretta.

15 Q. At what point in time did Ms. Kress become your
16 supervisor?

17 A. One week after I started.

18 Q. And during any conversations you had with
19 Ms. Kress, did you inform her that you were a recent hire
20 for the hospital?

21 A. I didn't have to inform her. She actually told
22 me that she was -- that I was a, what she had referred to
23 as a Diane hire.

24 Q. So you understood Ms. Kress to understand that
25 you were a recent hire; is that what you're saying?

1 A. Yes, sir.

2 Q. Thank you. You testified that after the
3 incident between -- with Ms. Kress these ADO's that she
4 was flipping through charts; is that correct?

5 A. Yes, sir.

6 Q. Okay. This happened during working hours; is
7 that correct?

8 A. And almost immediately after the incident.

9 Q. Okay. And were you taking care of patients at
10 that point in time?

11 A. I was still going through my charts. I had
12 done my -- we go door-to-door and meet the patients as we
13 get report.

14 And then I sit down with my charts and make sure
15 everything is signed off, and make sure all orders are
16 taken off and all meds are correct.

17 Q. Uh-huh.

18 A. And I was still flipping through, because I had
19 just picked up a third patient.

20 Q. Okay. Where are the patients' charts located
21 on the ICU?

22 A. They're --

23 Q. Is it by the nurses' station?

24 A. They are actually in front on the doors of the
25 patient rooms. I picked up my charts, my third extra

1 chart and took it and sat down at the nurses' station and
2 was going through it.

3 Q. So, just to be clear, the patient -- how many
4 rooms made up the -- patient rooms made up the ICU at that
5 point in time?

6 A. Gosh. You know what, I can't remember exactly.

7 Q. Ten, fifteen, twenty? Any approximation,
8 ma'am?

9 A. I would say probably fourteen.

10 Q. Fourteen. An approximation. I understand.
11 And is it your testimony that for each patient room the
12 charts would, for each patient, their chart would be
13 located outside of their room?

14 A. Yes, sir.

15 MR. BRYAN CARMODY: May I approach, Your
16 Honor?

17 JUDGE AMCHAN: Yes.

18 Q. Ms. Sawyer, I am showing you a document. And
19 I'd like for you to review it, please. And let me know
20 when you're through.

21 A. I'm familiar with this. This is my statement.

22 Q. That you submitted to the Labor -- the National
23 Labor Relations Board, ma'am?

24 A. Yes, sir.

25 Q. Okay. And then you testify here that after the

1 conversation between you and Ms. Kress --

2 MS. CENDROSKY: What page are you on?

3 MR. BRYAN CARMODY: Oh, I'm sorry. Page 2,
4 the first incomplete paragraph about a dozen lines down.

5 Q. You testified here, ma'am, in your affidavit,
6 and again, I'm looking at Page 2.

7 A. Okay.

8 Q. In this neighborhood here. That after the
9 conversation that you had with Ms. Kress about whether you
10 voted in the election, that she kind of shrugged her
11 shoulders and walked away.

12 A. Yes.

13 Q. Is that an accurate depiction of what occurred?

14 A. Yes.

15 Q. Thank you, ma'am.

16 MS. LAWHON: Your Honor, I object. I'm not
17 sure. My understanding is that the use of the affidavit
18 is appropriate for impeachment or possibly refreshing
19 recollection, but I'm not sure what that use was.

20 MR. BRYAN CARMODY: The latter.

21 MS. LAWHON: Refreshing recollection?

22 MR. BRYAN CARMODY: Yes.

23 MS. LAWHON: There was no exhaustion of
24 recollection. There was no question asked to which the
25 witness said I don't recall.

1 MS. CENDROSKY: Exactly.

2 MS. LAWHON: It's totally improper just to
3 read the affidavit.

4 MS. CENDROSKY: And I would actually move to
5 strike that answer.

6 MS. LAWHON: Move to strike, yes.

7 JUDGE AMCHAN: Well, no, I'll leave it in.

8 CROSS-EXAMINATION (CONT'D)

9 BY MR. BRYAN CARMODY:

10 Q. Okay. Ms. Sawyer, did you have occasion to
11 look at a Facebook account --

12 MS. CENDROSKY: Objection.

13 MR. BRYAN CARMODY: -- for the Union?

14 MS. CENDROSKY: Outside the scope of direct
15 examination.

16 JUDGE AMCHAN: Overruled.

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Let me ask it again.

20 A. I'm sorry.

21 Q. Did you have occasion to look at the Facebook
22 page, I guess the term is, for the NNOC at any point in
23 time around late last year?

24 MS. CENDROSKY: Objection. I do not believe
25 her affidavit states that there was a Facebook page for

1 the NNOC. I believe it was a personal Facebook page.

2 MR. BRYAN CARMODY: Yes, I -- I'm not
3 referring to her affidavit in my question. I'm asking if
4 you have ever visited a --

5 MS. CENDROSKY: So now you're just asking
6 whatever question you want to ask.

7 JUDGE AMCHAN: Yes.

8 MR. BRYAN CARMODY: Well, that's what cross-
9 examination is about, Counsel.

10 MS. LAWHON: Well, I would -- I have a
11 different objection, then. If you're not referring to the
12 affidavit, assumes facts not in evidence, Your Honor.

13 MR. BRYAN CARMODY: I'm asking her whether
14 she ever saw a Facebook page that is posted by the NNOC.

15 MS. LAWHON: I object. Same objection.
16 Assumes facts not in evidence.

17 JUDGE AMCHAN: Overruled.

18 THE WITNESS: I've never seen an NNOC on
19 Facebook, no.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. Have you ever recalled seeing any Facebook
23 postings concerning Ann Wayt?

24 A. I have, yes.

25 Q. Okay. And whose Facebook pages did they belong

1 to?

2 A. My friend who worked at Affinity at the time.

3 MR. BRYAN CARMODY: Nothing further, Your
4 Honor. Thank you.

5 MS. CENDROSKY: Redirect, Your Honor.

6 JUDGE AMCHAN: Okay.

7 REDIRECT EXAMINATION

8 BY MS. CENDROSKY:

9 Q. With respect to the Facebook postings that you
10 read, do you ever recall reading a post in which you
11 gained knowledge that Pam Gardner was referred to as a
12 union supporter?

13 A. No. I never heard her name.

14 Q. Okay. I'd like to -- for you to take a look at
15 your exhibit (sic), it's in front of you. Your affidavit,
16 I'm sorry.

17 A. Uh-huh.

18 Q. And if you'd turn to Page 4. I know it's been
19 a while since you've prepared this. So, if you'd look at
20 Page 4. And it is in that first paragraph. It starts
21 with "Lisa was not in favor of the Union." Do you recall
22 that?

23 A. Yes.

24 Q. Okay. And look at the next sentence. "I
25 recall reading Facebook posts about Ann Wayt and Pam

1 Gardner and that they were union supporters."

2 A. It's been a long time. I remember the name Ann
3 Wayt --

4 Q. Uh-huh.

5 A. -- but not quite sure about Pam Gardner.

6 Q. Okay. Does this document refresh your
7 recollection at all?

8 A. Yes.

9 Q. Okay. It does.

10 JUDGE AMCHAN: I do notice that Ms. Gardner,
11 if we're talking about the same person's picture appears
12 on the front page of GC11.

13 MS. CENDROSKY: Yes.

14 MS. LAWHON: Correct. She was also present
15 the morning of -- yesterday and left at sequestration.

16 MS. CENDROSKY: That's all I have, Your
17 Honor.

18 MR. BRYAN CARMODY: Nothing further.

19 JUDGE AMCHAN: Okay.

20 MS. LAWHON: Nothing from the Charging Party.

21 JUDGE AMCHAN: You can step down. Thank you.

22 THE WITNESS: Thank you.

23 (WITNESS EXCUSED.)

24 JUDGE AMCHAN: Off the record.

25 (Off the record.)

1 JUDGE AMCHAN: Back on the record.

2 MS. CENDROSKY: At this time, counsel for the
3 General Counsel calls Michelle Mahon to the witness stand.

4 JUDGE AMCHAN: If you'd raise your right
5 hand.

6 WHEREUPON,

7 MICHELLE MAHON,
8 A witness herein, having been first duly cautioned and
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CENDROSKY:

12 Q. Good afternoon, Michelle.

13 A. Good afternoon.

14 Q. Can you please state your full name, for the
15 record?

16 A. Michelle Mahon.

17 Q. And, for the record, could you please spell
18 your first and last name?

19 A. Sure. (M-I-C-H-E-L-L-E)(M-A-H-O-N).

20 Q. What I'd like for you to do, Michelle, is if
21 you can't hear my question or if you don't understand it,
22 just let me know.

23 A. Okay.

24 Q. By whom are you employed?

25 A. The National Nurses Organizing Committee.

1 Q. And if I refer to the National Nurses
2 Organizing Committee as either the NNOC or the Union, will
3 you know whom I'm referring to?

4 A. Yes.

5 Q. And if I refer to Affinity Medical Center as
6 either Affinity or the hospital, will you know who I'm
7 referring to?

8 A. Yes.

9 Q. Are you currently employed with the NNOC?

10 A. I am.

11 Q. And what is your position with the NNOC?

12 A. I'm an organizer.

13 Q. Are you full time?

14 A. Yes.

15 Q. Can you describe for us, generally, what your
16 duties are as an organizer?

17 A. Well, I have a lot of different
18 responsibilities working with the RN's, particularly
19 helping them organize activities that will help them work
20 together to gain their first contract.

21 Q. Did you participate in the Union's organization
22 efforts at Affinity?

23 A. I did.

24 Q. When did you get involved with that organizing
25 campaign?

1 A. Early July.

2 Q. Of what year?

3 A. I'm sorry. 2012.

4 Q. Thank you. Did you the Union have any other
5 organizers assigned to the Affinity organizing campaign
6 besides yourself?

7 A. Yes.

8 Q. And do you recall who they were?

9 A. Sure. There was myself. There was Eliza
10 Carboni, James Moy, Joe Barrios, Theo Fugasin. Don't ask
11 me how to spell his last name.

12 There was Donna Kennedy, Katie Phelan. Jennifer
13 Dean. I know I'm forgetting somebody, I know. That's --
14 maybe one or two other people.

15 Q. Thank you. Now, during the organizing
16 campaign, did the Union have access to certain areas of
17 the hospital?

18 A. Yes.

19 Q. What areas did the Union have access to?

20 A. Various areas. The -- the cafeteria, the
21 certain employee break rooms, the conference rooms in the
22 hospitals where we could have meetings or lunch.

23 Q. When did the Union start using these areas of
24 the hospital?

25 A. That would be about mid-July.

1 Q. Of what year?

2 A. 2012.

3 (Whereupon, General Counsel's Exhibit Number
4 14 was marked for identification.)

5 Q. Okay. I'm going to show you what's been marked
6 as General Counsel's Exhibit Number 14. And the marking
7 is on the back. I just want to let everyone know that.
8 Because it's a photograph, the marking is on the back.

9 A. Thank you.

10 Q. So what I'd also like, at this time, is to show
11 the exhibit as it existed. And that the exhibit that
12 everyone has in front of them is a photocopy, if anyone
13 needs to examine it closer.

14 Do you recognize the poster board in front of
15 you?

16 A. I do.

17 Q. And can you tell us what it is?

18 A. It's a trifold that was prepared to be placed
19 in the cafeteria during -- this particular one, there were
20 several, was placed approximately a week before the
21 election, and placed in the cafeteria for nurses to
22 review.

23 Q. Did you bring this board into the hospital?

24 A. I did.

25 Q. And did the board remain in the hospital, or

1 did you take it home every day?

2 A. I took it home.

3 Q. And if you could, could you describe for the
4 court reporter what the dimensions are on the board? And
5 if you want, I can flip it over, because there are
6 actually dimensions on it.

7 A. I would prefer to look at those dimensions that
8 are on it.

9 MS. CENDROSKY: Okay. Well, then let's go
10 ahead and stipulate that dimensions on the board are 35.5
11 inches by 44 inches.

12 MR. BRYAN CARMODY: So stipulated.

13 MS. CENDROSKY: A simple amount.

14 JUDGE AMCHAN: Now you have it upside down.

15 MS. LAWHON: And if someone wasn't looking at
16 it, write it down, could we get those numbers? I actually
17 wasn't joking. Did you --

18 MS. CENDROSKY: It's 35.5.

19 MS. LAWHON: Uh-huh.

20 MS. CENDROSKY: By 44 inches.

21 MS. LAWHON: Thank you.

22 MS. CENDROSKY: At this time, Your Honor, I'd
23 like to move to admit General Counsel's Exhibit Number 14
24 into evidence.

25 JUDGE AMCHAN: All right. Just a shrinked

1 version.

2 MS. CENDROSKY: Correct.

3 MR. BRYAN CARMODY: No objection.

4 JUDGE AMCHAN: It's received.

5 (Whereupon, General Counsel's Exhibit Number
6 14 was received into evidence.)

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. CENDROSKY:

9 Q. You indicated that this board was displayed --

10 A. Yes.

11 Q. -- in the hospital? Was it only displayed in
12 the cafeteria?

13 A. It may have also been displayed in the
14 conference room. But, primarily, its purpose was to be
15 displayed in the cafeteria.

16 Q. And how many boards were there displayed at one
17 time?

18 A. Two -- at what -- there -- well, there were two
19 boards. One board was created by us, the Union. And the
20 other was created by the nurses who are campaigning
21 against the Union at that time.

22 Q. Oh, just so the record's clear, the other board
23 you're referring to was a board not created by the Union;
24 correct?

25 A. Right. Are you -- I'm sorry, Sharlee. I'm

1 unclear what you're asking me.

2 Q. My question is, did the Union -- did you have
3 more than one of these boards at the hospital at the -- at
4 a time?

5 A. Only one at a time.

6 Q. One at a time. Thank you.

7 A. Uh-huh.

8 Q. Now, as an organizer, did you keep track of
9 which groups of employees from, say, a certain department
10 were in favor of the Union?

11 A. Yes.

12 Q. And how did you do this?

13 A. We had the list that was provided to us by the
14 Employer, and that we would notate if they were for or
15 against the Union.

16 Q. What type of list was it?

17 A. The eligibility list.

18 Q. And how did you keep track of which employees
19 were in favor of the Union? With a notation, is it just a
20 handwritten notation, did you use a color?

21 A. Well, we did -- we -- we did it several ways.
22 One way we did is we would create a graph with all the
23 different departments in the hospital. And then we would
24 have like sticky notes that were color coded.

25 So green was very -- very strongly for the Union,

1 yellow was kind of maybe not -- you know, in the middle,
2 and red was against the Union.

3 Q. Now, do you know if the registered nurses at
4 Affinity, did they -- if they -- let me back up.

5 Were these graphs ever displayed anywhere at the
6 hospital?

7 A. We may have brought it to conference room.
8 But, in general, they were not displayed at the hospital.

9 Q. Did you have any meetings with the registered
10 nurses at Affinity where these graphs were displayed?

11 A. Yes.

12 Q. And do you recall which units were green or
13 strong in favor of the Union?

14 A. Uh-huh. I do.

15 Q. And which units were those?

16 A. There were, let's see, the Same Day Surgery,
17 Recovery, Senior Mental Health, Medical Telemetry,
18 Orthopedic.

19 There were also -- there were other units, as
20 well. The OR was at some -- at one point green.

21 Q. Do you recall which units at the hospital were,
22 as you described, red or not in favor of the Union?

23 A. I do.

24 Q. And which units were those?

25 A. The Cardiovascular OR, the Cardiovascular ICU,

1 and the Cath Lab.

2 JUDGE AMCHAN: And the what?

3 THE WITNESS: The Catheterization Lab.

4 Q. Do you know who Ann Wayt is?

5 A. I do.

6 Q. And when did you first meet Ann?

7 A. I first met Ann towards the end of July.

8 Q. And do you recall where you met her?

9 A. I do.

10 Q. And where was that?

11 A. At a -- at a meeting of nurses who were helping
12 to organize the -- the hospital.

13 Q. Was this a union meeting?

14 A. Yes.

15 Q. Okay. What, if anything, do you recall about
16 the time you met Ann for the first time?

17 A. Well, we were having a meeting where there were
18 nurses from around different areas of the hospital,
19 different lengths of time they had worked there.

20 And what I remember is everybody knew Ann and
21 everybody was -- there were lots of hugs going around when
22 people got together and they saw that she was there. And
23 some people had noted that Ann had precepted them when
24 they were new nurses.

25 Q. What's precept?

1 A. Mentored or educated them and, you know, during
2 a period of -- of training. Particularly when you're a
3 new nurse, you -- you need this so that you can -- can
4 learn how to function competently in clinical practice.

5 Q. Do you recall when the union election took
6 place?

7 A. I do.

8 MS. LAWHON: Your Honor, can we take a short
9 recess?

10 JUDGE AMCHAN: Yes.

11 MS. LAWHON: Thank you.

12 JUDGE AMCHAN: Off the record.

13 (Off the record.)

14 JUDGE AMCHAN: Back on the record.

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. CENDROSKY:

17 Q. Do you recall when the union election took
18 place?

19 A. I do.

20 Q. And when was that?

21 A. It was August 29th of 2012.

22 Q. Besides serving as a union organizer, did you
23 ever serve as a union representative for any of the
24 Affinity employees with respect to any discipline?

25 A. Yes.

1 Q. And do you recall which employee that was?

2 A. Ann Wayt.

3 Q. And when did you first learn about any incident
4 involving Ann?

5 A. It would have been mid -- early --
6 mid-September, around the send week of September.

7 Q. And how did you learn about an incident
8 involving Ann?

9 A. Ann called me.

10 Q. And what did -- what, if anything, did Ann say
11 to you?

12 A. She told me that she was placed on suspension.

13 Q. Do you recall anything else about the
14 conversation?

15 A. I asked her why, and she -- she did not know.
16 That she was just told that she was taken off the schedule
17 and that she needed to come in for a meeting.

18 Q. Did you have any conversation with anyone from
19 Affinity about this meeting that Ann was to attend?

20 A. I did.

21 Q. And who was that?

22 A. Angie Boyle.

23 Q. And when was -- when did you have this
24 conversation?

25 A. Shortly after I spoke to Ann.

1 Q. Do you recall where you were at that time?

2 A. I do.

3 Q. And where were you?

4 A. I was in California.

5 Q. And what, if anything, did you learn from your
6 conversation with Ms. Boyle?

7 A. I learned that it was the hospital's position
8 that Ann was not permitted to have a Weingarten rep.

9 Q. Do you recall if you spoke with Ann after you
10 had the conversation with Ms. Boyle?

11 A. I do.

12 Q. And what, if anything, did you learn in that
13 conversation?

14 A. I -- I learned that -- that Ann was asserting
15 her right to that. And that, ultimately, she was
16 permitted to have a representative with her. At which
17 point, I corresponded again with Ms. Boyle, who told me
18 that that representative could only be me.

19 And that the meeting was the next day at
20 ten a.m., I believe. I think ten o'clock was the time.
21 And that the -- so that Ann would be able to have a
22 representative, so long as it was only me. And --

23 Q. And were you able to serve as Ann's
24 representative?

25 A. No.

1 Q. Why not?

2 A. I was in California.

3 Q. Did you let Mrs. Boyle know that you were in
4 California?

5 A. She did know that.

6 Q. And what, if anything, was her reply to that?

7 A. She said that it didn't matter, then Ann would
8 not be able to have a representative. I asked her if the
9 meeting could be delayed until my return, which was
10 Monday. I was coming home Sunday, it would -- would have
11 been Monday morning, and she said no.

12 I did also ask her then if there was a reason,
13 was there any immediate harm that would result by delaying
14 the meeting, as Ann was off the schedule, until Monday
15 morning. And she said, maybe. That she wasn't sure.
16 That she would have to call the hospital attorney.

17 Q. Okay. Did you speak with Ms. Boyle again?

18 A. I did not speak with her again after that.
19 Just a moment, let me recall. Yes, I did. She called me
20 back after she spoke to the hospital attorney.

21 Q. Do you recall, was it that same day, the day
22 after?

23 A. It was that same day.

24 Q. And what, if anything, did you learn in that
25 conversation?

1 A. She said that we could have -- that Ann would
2 be able to have a representative, that it did not have to
3 be me. That it could be one person, and at which time I
4 -- I suggested an RN who worked at Affinity to be the
5 representative, Bob McKinney.

6 And, so long as we submitted it in writing, that
7 Bob McKinney was going to be the Union's representative in
8 Weingarten -- for Ann's Weingarten representative for this
9 meeting.

10 Q. Okay. Did you attend the meeting with -- I
11 mean, I'm sorry, do you know if Mr. McKinney attended the
12 meeting with Ann?

13 A. He did.

14 Q. Now, I'm going to show you what's been already
15 marked by Respondent, and it is actually Respondent's
16 Exhibit Number 8. So it may be noted up there R8.

17 A. Got it.

18 Q. Okay. Do you recognize that document that you
19 have in front of you?

20 A. I do.

21 Q. And what is it?

22 A. It's a letter that I wrote to Angie Boyle on
23 behalf of Ann.

24 Q. Had you spoke with Ann before you wrote this
25 letter?

1 A. I did.

2 Q. Okay. Now, I do see that there's some
3 quotations in here, and then there's other parts where
4 there's no quotations. Is any of this verbatim or word-
5 for-word, Ann's account to you?

6 A. There are some -- there's very few word-for-
7 word. I tried my best to -- to -- to collect the facts
8 from Ann and then explain it in a narrative letter the
9 best of my ability, based on what I had heard.

10 There are some things that were written down that
11 -- that she -- she had made note of or remembered very
12 vividly, such as the things that she was being accused of,
13 falsifying patient records, violating hospital policies.

14 So -- so, but for the most part, there are no
15 direct quotes specifically from Ann.

16 Q. Okay. Let me direct your attention to -- bear
17 with me one moment, since we're using their exhibits. It
18 is the last page of the document.

19 And it's Page 4, the first paragraph. There is a
20 sentence at the bottom that starts with, "The way the room
21 is configured, it is possible that Ann could have stuck
22 her head in the doorway to check on the patient and check
23 that the sitter was there without the sitter even noticing
24 her, especially if the sitter was reading."

25 Did Ann tell you that she did this?

1 A. No. Huh-uh.

2 Q. Okay. Well, why did you write that?

3 A. Well, I'm a nurse, and I have had many
4 occasions where I've taken care of patients and -- and,
5 you know, maybe was trying to envision, you know, the
6 scenario, a reasonable scenario where somebody would say
7 that they hadn't seen Ann, like how could that have
8 happened.

9 So this -- this small portion there was really a
10 supposition that I made based upon my own personal
11 experience to try to come up with a reasonable explanation
12 why somebody would, in good faith, say they never saw Ann.

13 Q. Okay. Now, after you sent that letter to
14 Affinity, did you meet with Ann again?

15 A. I did.

16 Q. Okay. Do you recall when you met with Ann?
17 You could put the letter down, we're done with that
18 exhibit.

19 A. Yeah. Okay. Okay, yeah, I don't want to look
20 at that anymore.

21 I -- I -- I talked -- I believe we -- we spoke.
22 And then I did meet with Ann again prior to another --
23 another meeting.

24 Q. Did you attend the next meeting with Ann?

25 A. I did.

1 Q. Do you remember when that meeting was?

2 A. I -- I think it was September 25th.

3 Q. Okay.

4 A. No, wait, 24th.

5 Q. 24th.

6 A. But I have to look at a calendar. I don't know
7 if that's exactly correct.

8 Q. Okay.

9 A. But I think it's the 24th.

10 Q. Do you recall who was in the meeting?

11 A. I do.

12 Q. And who was in the meeting?

13 A. It was myself and Ann, and Angie Boyle, as well
14 as Pat Kline.

15 JUDGE AMCHAN: Pat?

16 THE WITNESS: Pat Kline.

17 Q. Do you know who Pat Kline is?

18 A. I do.

19 Q. Okay. And who is she?

20 A. She is a risk manager and a quality assurance
21 registered nurse.

22 Q. Does she work for Affinity?

23 A. She does.

24 Q. Okay. What, if anything, did you learn in that
25 meeting?

1 A. I learned that there was a new allegation
2 against Ann, which was violating HIPAA.

3 Q. And what, if anything, did Pat say to you
4 regarding this violation?

5 A. Pat presented the letter that we just looked
6 at, the -- the -- here, highlighted with a list of things
7 that she perceived to be violations of the protected
8 health information.

9 Q. Do you recall if she pointed to any specific
10 examples in Respondent's Exhibit Number 8 as violations of
11 HIPAA?

12 A. She did. She said that because that we had --
13 because that I had stated that the patient was confused,
14 that the patient was agitated, that they -- the patient
15 was in the Orthopedic Unit. That the patient was admitted
16 on this particular date.

17 And, also, that the doctor's, I'm trying to
18 recall if the doctor's name was in here. It -- it may --
19 it may be. That those things were protected health
20 information and, therefore, that this content violated
21 HIPAA.

22 Q. Okay. Now, this is the letter that you sent to
23 Ms. Boyle; correct?

24 A. The -- this letter from September?

25 Q. Yes.

1 A. Yes. Yes, this is.

2 Q. Does the patient's name appear at all in this
3 letter?

4 A. No, it does not.

5 Q. Okay. When Ms. Boyle pointed -- or Ms., I'm
6 sorry, did you say it was Ms. Boyle that pointed these
7 things out? Or was --

8 A. It was Ms. Kline.

9 Q. Ms. Kline. Thank you.

10 A. Uh-huh.

11 Q. When she pointed these things out what, if
12 anything, did you say in response to those allegations?

13 A. Well, I asked Ms. Kline if it would be possible
14 for Ann to have an opportunity to respond to this new
15 allegation.

16 I asked her, also, if -- if there was any
17 additional item that she could point to that was an actual
18 violation of HIPAA, an actual personal health information
19 that was in the letter.

20 And -- and she just -- she reasserted these other
21 facts as being personal health information, protected
22 health information that were, therefore, violations of
23 HIPAA.

24 Q. Did she give any indication to you, and by
25 "she," I meant Ms. Kline, on how the Union should have

1 prepared their letter in response to Ann's defense?

2 A. She said that it was -- well, actually, she
3 said that it was up to Ann to figure out for herself how
4 she could talk about the incident without violating what
5 the hospital perceives to be the HIPAA law.

6 Q. Now, was this the first time you learned that
7 Ann was now being charged with violating HIPAA law?

8 A. Yeah, it was.

9 Q. And just for the record, can you tell us what
10 HIPAA -- it's an acronym; correct?

11 A. Yeah. It's, oh, gosh. How am I --

12 JUDGE AMCHAN: Well, I've got it.

13 THE WITNESS: Health Information Personal
14 Privacy --

15 JUDGE AMCHAN: It's the Health Insurance
16 Portability and Accountability Act of 1996.

17 THE WITNESS: Yes. Thank you.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. CENDROSKY:

20 Q. Were you able to respond to the new allegation?

21 A. We were provided a short time to -- to -- in
22 which to respond.

23 Q. So when was the next time you spoke with Ann?

24 A. After this meeting, we -- we spoke with --
25 together again on -- on the telephone about the new

1 allegation.

2 And we reviewed what we had written -- what I had
3 written and what we had discussed in the previous
4 conversation reexamining whether or not there was, you
5 know, any way that what Ann had told me and what I had put
6 in the letter could potentially be a violation of HIPAA,
7 we -- we were astounded.

8 There's no personal health information
9 whatsoever, protected information, to be sure. So we --
10 we collaborated, and then I began to write the next
11 letter.

12 Q. Okay. Now, after Ann's termination, did you
13 have access to Affinity's premises?

14 A. No.

15 Q. Why not?

16 A. I received a letter, an e-mail.

17 (Whereupon, General Counsel's Exhibit Number
18 16 was marked for identification.)

19 Q. I'm going to show you what's been marked as
20 General Counsel's Exhibit Number 16.

21 A. Thank you.

22 Q. Take a second and look at this document. Do
23 you recognize it?

24 A. Yes.

25 Q. And what is it?

1 A. It's the e-mail that I received from
2 Mr. Carmody.

3 Q. Okay. If we look at the top of it, we see in
4 the "From" and it appears to read Mr. Carmody, Bryan
5 Carmody?

6 A. Uh-huh. That's correct, Bryan Carmody.

7 Q. And the date that it was sent was Wednesday,
8 September 26th, 2012?

9 A. Yes, that's correct.

10 Q. And to you, Michelle Mahon.

11 A. To me.

12 MS. CENDROSKY: Okay. At this time, Your
13 Honor, I'd move to admit General Counsel's Exhibit Number
14 16 into evidence.

15 MR. BRYAN CARMODY: No objection.

16 JUDGE AMCHAN: Received.

17 (Whereupon, General Counsel's Exhibit Number
18 16 was received into evidence.)

19 MS. CENDROSKY: I have one more exhibit,
20 Ms. Mahon.

21 (Whereupon, General Counsel's Exhibit Number
22 17 was marked for identification.)

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. CENDROSKY:

25 Q. Showing you what's been marked as General

1 Counsel's Exhibit Number 17. Do you recognize this
2 document?

3 A. I do.

4 Q. And what is this document?

5 A. This is an Assignment Despite Objection Form.

6 Q. And, we see at the top of the form it looks as
7 if it reads, "National Nurses Organizing Committee"; is
8 that correct?

9 A. That is correct.

10 Q. Is this the form used by your union?

11 A. It's similar. The actual form that we use is a
12 -- it has four pages to it, so that when you write on it,
13 it makes several copies. I -- I don't know if they still
14 call that a carbon copy. I'm not sure.

15 MS. LAWHON: They call it NCR.

16 THE WITNESS: NCR? Thanks, Jane.

17 Q. And if you flip to the back of the page, do you
18 recognize this, all of this writing?

19 A. I do. Uh-huh.

20 Q. Okay. Now, is this form something that the
21 Union gives to the nurses?

22 A. Yes.

23 Q. Okay. Do you recall if you gave this form, or
24 anyone from the NNOC? Do you have knowledge you gave this
25 form to the nurses at Affinity to use?

1 A. Yes.

2 Q. And what's the purpose of this form?

3 A. It has several purposes.

4 Q. And, for example?

5 A. Well, the first purpose is for the nurses to
6 work together to -- to document collectively. You can see
7 it says "I" or "we," the registered nurses listed below,
8 to report unsafe or unfavorable working conditions,
9 particularly, those that might be a risk to their patients
10 or to their license.

11 It also serves the function of protecting the
12 nurses, registered nurse's license. And it, thirdly,
13 helps to protect them in -- in cases of, perhaps, where
14 they may be overly scrutinized for -- or for potential
15 discipline.

16 So it -- it -- it is a way for them to enforce
17 their control over their practice and work together in
18 concert to -- to improve the patient care conditions at
19 their hospital.

20 Q. Now, at the top of this form I see it reads,
21 "Please use ballpoint pen and press firmly."

22 A. Yes.

23 Q. Okay. Now, what is -- is it fair to say that
24 what you have in front of you is a copy of the Assignment
25 Despite Objection Form?

1 A. Yes.

2 Q. And if this were the actual Assignment Despite
3 Objection Form, there would appear the carbon and then
4 several other pages where you could -- it would produce a
5 triplicate.

6 A. Correct.

7 Q. Okay.

8 A. Uh-huh.

9 MS. CENDROSKY: At this time, Your Honor, I'd
10 like to move to admit General Counsel's Exhibit Number 17
11 into evidence.

12 MR. BRYAN CARMODY: No objection.

13 JUDGE AMCHAN: Received.

14 (Whereupon, General Counsel's Exhibit Number
15 17 was received into evidence.)

16 MS. CENDROSKY: That is all I have for you,
17 Ms. Mahon.

18 THE WITNESS: Thanks.

19 MS. LAWHON: I just have --

20 CROSS-EXAMINATION

21 BY MS. LAWHON:

22 Q. Michelle, you mentioned at one point that you
23 were a registered nurse. I wondered if you could just
24 tell us, for the record, what your -- how long you've been
25 a registered nurse, what kind of registered nurse, et

1 cetera.

2 A. Uh-huh. Yes. I've been a registered nurse for
3 nearly 20 years. My personal -- my specialty, my personal
4 specialty is internal medicine.

5 However, I have also worked in Oncology,
6 Hematology, Transplant Medicine, as well as I worked with
7 children with disabilities, renal failure patients, and --
8 and pediatric developmentally delayed patients.

9 MS. LAWHON: Nothing further.

10 MR. BRYAN CARMODY: The Jencks statement,
11 please.

12 JUDGE AMCHAN: Off the record.

13 (Off the record.)

14 JUDGE AMCHAN: Back on the record.

15 MS. LAWHON: And so may I?

16 JUDGE AMCHAN: Yes. She has one more
17 question.

18 MS. LAWHON: It's a short area. I hope it's
19 just one question.

20 CROSS-EXAMINATION (CONT'D)

21 BY MS. LAWHON:

22 Q. But, Ms. Mahon, are you familiar with a
23 registered nurse employed by Affinity by the name of Pam
24 Gardner?

25 A. I am.

1 Q. Could you please tell us what role, if any, Pam
2 plays in the Union at Affinity since the election -- since
3 the certification?

4 A. Yes. Pam has been chosen by her colleagues to
5 be a member of the negotiating team. And --

6 Q. How -- well, go ahead. Excuse me.

7 A. Actually, it was by consensus, so it wouldn't
8 be by a vote. So it was overwhelmingly positive. There
9 are three members on the negotiating team, and the -- our
10 bargaining council came to a consensus, and one of those
11 people was Pam.

12 Q. And when you say three members, do you mean
13 three registered nurses in the bargaining unit?

14 MS. LAWHON: Nothing further. Thank you,
15 Your Honor.

16 JUDGE AMCHAN: Go ahead.

17 CROSS-EXAMINATION

18 BY MR. BRYAN CARMODY:

19 Q. Ms. Mahon, as you know, my name is Bryan
20 Carmody. I'm the attorney representing the hospital in
21 this proceeding. I do have some questions for you.

22 You had testified, I believe, that during the
23 course of this campaign at Affinity, the Union had
24 received a list of the nurses who were employed by
25 Affinity at that time; is that correct?

1 MS. LAWHON: Objection, relevance. The
2 Motion in Limine was granted with respect to any defenses
3 based on events during the campaign.

4 JUDGE AMCHAN: Well, I don't know if that's
5 where it's going to.

6 MR. BRYAN CARMODY: It's not, Judge.

7 JUDGE AMCHAN: Okay.

8 MR. BRYAN CARMODY: It's going for something
9 else entirely.

10 THE WITNESS: I didn't personally receive it,
11 but I was -- I had a copy of it.

12 CROSS-EXAMINATION (CONT'D)

13 BY MR. BRYAN CARMODY:

14 Q. And this was a tool, if I understood your
15 testimony before correctly, by which the Union would gauge
16 the level of union support amongst the employees who are
17 listed on this list; is that correct?

18 A. Yes.

19 Q. And that list would have included Ann Wayt's
20 name; correct?

21 A. Yes.

22 Q. And to your recollection, was there any
23 markings on these lists which reflected Ann Wayt's support
24 for the Union?

25 A. No. I was not responsible. That was not my

1 area of responsibility during the campaign.

2 Q. Well, I -- whether it was your responsibility
3 or not, do you have any knowledge as to whether or not
4 that list, you said it had Ann's name on it; correct?

5 A. The eligibility list did, yes. But I -- I --
6 once it came into my control, I only made markings that
7 were from my personal area of responsibility.

8 Q. Okay. And that didn't include ortho?

9 A. Correct.

10 Q. Okay. And you don't have any recollection as
11 to whether or not there was a mark by Ms. Wayt's name on
12 that list?

13 A. I didn't need the -- the list to know that Ann
14 was a supporter of the Union.

15 JUDGE AMCHAN: Well, but he asked you --

16 THE WITNESS: I'm sorry.

17 JUDGE AMCHAN: -- whether there was a mark on
18 the list.

19 THE WITNESS: No, there was no mark. No.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. So --

23 A. That I'm aware of, no.

24 Q. Okay. So it's -- it's your testimony that this
25 eligibility list, just to sum up your testimony, had Ann

1 Wayt's name on it; correct?

2 A. Yes.

3 Q. And it's your -- also your testimony that there
4 was no mark by her name to indicate her support of the
5 Union; correct?

6 MS. LAWHON: Object. Excuse me, Your Honor.
7 I just want to make sure that counsel's asking about the
8 list in Michelle's possession. The one --

9 JUDGE AMCHAN: Yes, that's --

10 MS. LAWHON: -- for her units.

11 JUDGE AMCHAN: That's what I understand.

12 MS. LAWHON: Okay. Okay. If he's asking
13 about that, I believe this is redundant, but go ahead.

14 THE WITNESS: No, there would be no type of
15 mark on that eligibility -- on my copy of the eligibility
16 list reflecting Ann to be for or against the Union.

17 JUDGE AMCHAN: Well, did other organizers
18 have other copies of the Excelsior List?

19 THE WITNESS: Correct.

20 CROSS-EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. Ma'am, so it sounds like separate organizers
23 had separate eligibility lists; is that how it worked?

24 A. We had the same list. We would document
25 individually on that list for the areas of the hospital

1 that we individually had responsible (sic) for.

2 Q. And would you with the other organizers
3 exchange those lists so that you could see what was on
4 somebody else's list, and vice versa?

5 A. Not in their totality, no.

6 Q. Are those lists that you still possess today?

7 A. No.

8 Q. Okay. To your knowledge, does the Union
9 possess those lists?

10 A. I'm unaware.

11 Q. What did you do with your list?

12 A. I don't -- I got rid of it. I have -- got rid
13 of all these documents from the campaign, many of them.

14 Q. Ms. Mahon, you've testified that as part of
15 your meetings leading up the election there was a polling
16 system, I take it, whereby departments that you believe
17 supported --

18 MS. CENDROSKY: I'm going to object to the
19 form of the question and the use of the word "poll." I
20 don't recall I characterized it as a poll, and I would ask
21 counsel --

22 MR. BRYAN CARMODY: I can -- I can withdraw
23 the question.

24 MS. CENDROSKY: -- to choose a different
25 word.

1 MR. BRYAN CARMODY: I can withdraw the
2 question.

3 MS. CENDROSKY: Thank you.

4 CROSS-EXAMINATION (CONT'D)

5 BY MR. BRYAN CARMODY:

6 Q. Ms. Mahon, as part of the union meetings that
7 were taking place leading up to the election, your
8 organization was trying to keep track of the different
9 departments that supported or opposed your organizing
10 effort; correct?

11 A. Correct. Uh-huh.

12 Q. And if I understood your testimony correctly,
13 green would indicate support for your organization;
14 correct?

15 A. Yeah.

16 Q. And red would support opposition; correct?

17 A. Correct.

18 Q. And how is it that these conclusions were being
19 reached as to whether one department was green versus
20 another department being red?

21 A. Based on each organizer identifying the areas
22 that they had responsibility for and putting a sticky note
23 on there.

24 Q. And what -- what unit were you responsible for?
25 Give me one example, please.

1 A. The Cath Lab.

2 Q. The Cath Lab. And how is it, speaking for
3 yourself, that you went about making the determination
4 that the Cath Lab was in the red category?

5 A. Well, I witnessed them actively campaigning
6 against the Union.

7 Q. Okay. And how was it that, to your knowledge,
8 the CVOR was put in the red category?

9 A. I saw nurses wearing no union buttons, and I --
10 I did have the opportunity to speak to some of them when I
11 had access to their break room.

12 Q. And what nurses, in particular, from the CVOR?

13 A. I would say I had conversations with Vickie,
14 with Rhonda, with Greg, with Bill, with -- with all -- all
15 but, perhaps, three of them.

16 Q. And tell me about your conversations with
17 Rhonda, please. Rhonda Smith, I assume, that you're
18 referring to?

19 A. Yeah. They were brief, very brief. And they
20 were not one-on-one. Very brief and isolated.

21 Q. So who was -- you say they weren't one-on-one.

22 A. Yeah.

23 Q. So you were speaking to a group of the CVOR
24 nurses, I take it?

25 A. Yeah.

1 Q. Okay. And what do you recall being discussed
2 during those meetings?

3 A. Just in -- they -- they had some questions.
4 They came together to ask me some of the questions that
5 they had and some of their concerns about the potential
6 for a union being at the hospital.

7 I answered them to the best of my ability. And
8 that was -- that was pretty much it.

9 Q. Any other conversations that you can recall
10 with Rhonda, in particular?

11 A. No.

12 Q. Did you ever have any conversations with
13 Jonalee Lesjak about the Union?

14 A. Yes.

15 Q. Please tell me about those.

16 A. I -- they were -- she was present at some of
17 the other conversations where the -- the CVOR would --
18 came together to ask questions. One time they came to the
19 conference room. Another time it was while I was present
20 in their break room.

21 Jonalee was there and asking questions in -- in
22 the conference room, both just before and just after the
23 union election. And then I did invite her to be on the
24 Facility Bargaining Council when I saw her near the
25 elevator.

1 JUDGE AMCHAN: What unit did she work in?

2 THE WITNESS: The Cardiovascular OR.

3 JUDGE AMCHAN: And Ms. Smith worked?

4 THE WITNESS: She works there, as well.

5 CROSS-EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. And would it be fair to say that you invited
8 Ms. Lesjak on the facility bargaining committee because
9 you believed that she may be sympathetic to your cause in
10 organizing the nurses?

11 A. No.

12 Q. So for what purpose did you ask her, or what
13 reasons did you have for asking her to join the Facility
14 Bargaining Council, if it wasn't for that reason?

15 A. Well, developing a first contract requires
16 everybody's input, and everybody's opinions about what is
17 important to them in their workplace, whether they are for
18 or against the union during the time of the election.

19 Q. So is it true that you asked the same, or
20 extended the same invitation to all nurses that work for
21 Affinity?

22 A. We did. We asked -- as a matter of fact, there
23 was a flyer that was posted in each of the nurses' break
24 rooms for them to nominate candidates for themselves, and
25 from their own departments.

1 And in areas where we felt maybe there wasn't
2 enough representation based on those nominations, we did
3 go back and tried to recruit people to -- to have a more
4 representative body for the facility.

5 Q. Okay, Ms. Mahon, I'm going to direct your
6 attention to Respondent's Exhibit 8, please. Please let
7 me know when you have it.

8 A. I have it.

9 Q. Ms. Mahon, this is a letter that you showed to
10 Ms. Wayt, did you not, before you sent it to Ms. Boyle?

11 MS. LAWHON: Objection. Vague and --

12 THE WITNESS: No.

13 MS. LAWHON: -- ambiguous. I can't tell if
14 counsel's asking the final signed letter, or any previous
15 iteration.

16 JUDGE AMCHAN: Well, I would take from that
17 question this exhibit.

18 MS. LAWHON: Okay. The final signed letter.

19 JUDGE AMCHAN: Yes.

20 MS. LAWHON: Okay.

21 CROSS-EXAMINATION (CONT'D)

22 BY MR. CARMODY:

23 Q. This exhibit.

24 A. No.

25 Q. Did you -- would it be fair to say that you

1 worked with Ms. Wayt in terms of coming up with the
2 content of this letter?

3 A. Yes, we collaborated.

4 Q. Okay. How did you collaborate? Please tell me
5 about that process.

6 A. I spoke to her on the phone. I interviewed
7 her, I listened to her comments about that day. And I
8 wrote down what I believed to be an accurate account. I
9 called Ann back and I spoke to her again about the letter.

10 She made a couple -- she had, in the meantime,
11 after having time to reflect, had a couple thoughts about
12 a few things, and -- and then I -- then I sent the letter.

13 Q. What were the few things that she had some
14 thoughts about?

15 A. I don't remember specifically. Maybe one or
16 two small facts about the day. They were minor details.
17 And, in fact, I don't believe I even included some of the
18 -- the details, at that point, because they -- they --
19 they seemed to be, you know, very, very, very minor.

20 Q. And, ma'am, it's your testimony that you never
21 exchanged with Ms. Wayt any drafts of this letter; is that
22 correct?

23 A. No, I don't -- I -- I may -- I -- I -- you
24 know, Ann doesn't really use e-mail. I -- I don't -- I
25 don't recall if I e-mailed Ann or not a draft, I -- of

1 this letter, I -- at this time.

2 I remember that the -- the letter was being
3 crafted because of the short time frame, under a lot of
4 stress on the telephone back and forth with Ann, we did
5 not have much time, and very late at night.

6 And -- and so I don't really specifically recall
7 whether it was e-mailed to Ann, or whether we just
8 collaborated over the phone.

9 Q. Okay. Did you -- have you ever exchanged
10 e-mails with Ms. Wayt?

11 A. I have sent her -- the only any e-mails,
12 perhaps, that would -- she would have been included on in
13 the Bargaining Council Group.

14 Q. So Ms. Wayt would have been a recipient in a
15 blast e-mail?

16 A. Yeah.

17 Q. Okay. So you're unable to recall a single
18 e-mail that you have exchanged with Ms. Wayt, and just
19 Ms. Wayt?

20 A. Well, I e-mailed her the other day her hotel
21 reservation.

22 Q. Okay. How about prior to the time that she was
23 terminated on September 26th of last year, ma'am?

24 A. Oh, no.

25 Q. Okay. And you don't have a recollection, just

1 so I'm clear, ma'am, in terms of whether any draft of this
2 letter, Respondent's Exhibit 8, was exchanged with
3 Ms. Wayt?

4 A. No, I do not.

5 Q. Did you actually prepare this letter,
6 Ms. Mahon, meaning typed on your computer and produced
7 this document?

8 A. Yeah.

9 Q. And you say that you --

10 A. It wasn't on my personal computer.

11 Q. Okay. Well, whose computer did you use?

12 A. A hotel computer.

13 Q. Where were you when you prepared this letter?

14 A. I was in Massillon.

15 Q. And how did you deliver this letter to
16 Ms. Boyle? Was it hand-delivered, e-mail?

17 A. It says here, hand-delivery and e-mail.

18 Q. Okay. And that's consistent with what
19 occurred, hand-delivery and e-mail?

20 A. Yes.

21 Q. Okay. And you also, if you flip to the back
22 here, ma'am, will see a variety of folks who are copied,
23 including Ann Wayt; is that correct?

24 A. Correct. Yes.

25 Q. And did you, in fact, send a letter, a copy of

1 this signed letter by you to Ms. Wayt?

2 A. I handed it to her.

3 Q. You handed it to her.

4 A. Uh-huh.

5 Q. Okay. And when you handed the letter to
6 Ms. Wayt, did she read it?

7 A. I assume so.

8 Q. Okay. Well, I'm not asking for assumptions,
9 I'm asking you respectfully for recollection. You say
10 that you handed this signed letter to Ms. Wayt; correct?

11 A. I did.

12 Q. Okay. And I'm asking you, do you recall if
13 Ms. Wayt had read this letter when you handed it to her?

14 A. She did not read it at that time.

15 Q. Okay. Do you have some reason to believe that
16 she read it at some later time?

17 JUDGE AMCHAN: Well, reason to believe, or
18 does she have any knowledge?

19 Q. Yes. Do you have any knowledge -- to your
20 knowledge, Ms. Mahon, did Ms. Wayt ever read this letter,
21 which is Respondent's Exhibit 8?

22 A. I never asked Ann, nor did Ann ever
23 specifically tell me I read your letter, or did you read
24 my letter, if that is what you're asking me.

25 Q. So Ms. Wayt never made any comments to you

1 about this letter of September 19th?

2 A. We really didn't have time to have
3 conversations about this letter, because then we had to
4 get very quickly into writing the next one.

5 Q. Ms. Mahon, my question isn't if you had time.

6 A. Right.

7 Q. My question is, did it happen?

8 A. No, it did not.

9 Q. Has Ms. Wayt ever expressed to you concern? I
10 want to direct your attention to the fourth page of
11 Respondent's Exhibit 8. And this was a sentence that
12 counsel for the General Counsel had read to you before,
13 I'll read it again.

14 "The way the room is configured, it is possible
15 Ann could have stuck her head in the doorway to check on
16 the patient and check that a sitter was still there
17 without the sitters even noticing her, especially if the
18 sitter was reading." Do you see that, ma'am?

19 A. I do.

20 Q. And has Ms. Wayt ever expressed to you concern
21 over this particular sentence in your letter?

22 A. We did not have a discussion -- no. No.

23 Q. Ma'am, the letter was also sent to Ms. Lyon;
24 correct?

25 A. Correct.

1 Q. In California. Mr. Hong, who is he?

2 A. Ray Hong is an organizing director.

3 Q. Okay. For the NNOC?

4 A. Correct.

5 Q. And Mr. Moy, you mentioned him before.

6 Affinity Medical Center RN Facility Bargaining Council is
7 mentioned here. Do you see that, ma'am?

8 A. I do.

9 Q. And did this bargaining council receive this
10 letter, as well?

11 A. Absolutely.

12 Q. Okay. And who, at the time, sat, or comprised
13 this bargaining council?

14 A. The RN delegates, to be the nurse
15 representatives who were --

16 Q. Can you name some names, please?

17 A. Oh, yeah, absolutely. Well, Bob McKinney, Deb
18 McKinney. There were also Tamara Wiseman, Ryan Wells,
19 Beth Brown. There was Stephanie Still. There was Karen
20 Santangelo, Michelle Canphora. Also Vernon Boyer and
21 Brenda Delacasia. There was -- there was Pam. Also --

22 Q. Pam Gardner?

23 A. Pam Gardner, sorry, yes. Pam Gardner. A Barb
24 Thorpe. And from the operating room there was a Ruth
25 Delillo, Betsy Miller, Millie Zabo from preadmission

1 testing, and Amy Zabo -- I'm sorry, Amy Pulley, and then
2 Marty Adams.

3 Q. Anyone from the folks that you've listed, or
4 you may have neglected to mention work in the Ortho Unit?

5 A. Oh, yes. Roseanne Wilson and Londa Slack.

6 Q. So they were -- they were nurses employed by
7 Affinity working in the Ortho Unit at the time that you
8 sent this letter to them; correct?

9 A. Correct.

10 Q. Ms. Mahon, do you recall if at some point
11 during the time that you served as an organizer for this
12 campaign at Affinity you received from the hospital
13 materials which educated you concerning the requirements
14 of HIPAA?

15 A. Yes.

16 Q. Okay.

17 MS. LAWHON: Excuse me, Counsel. You took my
18 only copy. Can you please return that?

19 MR. BRYAN CARMODY: Sure.

20 MS. LAWHON: Thank you. I was hoping to get
21 it back yesterday, but --

22 MR. BRYAN CARMODY: Well, you're going to get
23 the original a copy, Jane, your lucky day.

24 MS. LAWHON: The original is what I'm looking
25 for.

1 (Whereupon, Respondent's Exhibit Number 10
2 was marked for identification.)

3 JUDGE AMCHAN: What exhibit number is this?

4 MR. BRYAN CARMODY: Number 10, Your Honor.

5 DIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Ms. Mahon, I'm showing you a document that's
8 been marked for identification purposes as Respondent's
9 Exhibit 10.

10 I would ask for you to review the document and
11 let me know when you're through, please.

12 A. I'm through.

13 Q. Okay. And do you recognize this document,
14 ma'am?

15 A. I do.

16 Q. And is this not the slide show that somebody at
17 the hospital provided you as part of your serving as an
18 organizer during this campaign?

19 A. We were provided a copy of a printed out
20 version of a Power Point Presentation. This appears to be
21 it.

22 MR. BRYAN CARMODY: Okay. Your Honor, I
23 would offer that into evidence.

24 MS. CENDROSKY: I'd like to voir dire just
25 for a few seconds.

1 JUDGE AMCHAN: Okay.

2 VOIR DIRE EXAMINATION

3 BY MS. CENDROSKY:

4 Q. Do you recall who gave this to you?

5 A. Well, it was my organizing director, Roy Hong,
6 gave it to each of us. I'm not -- I do not know who
7 provided it to him.

8 Q. Do you know who created the document?

9 A. No.

10 Q. Do you know when it was created?

11 A. No.

12 Q. Anywhere on here do you see any date or
13 reference to Affinity Medical Center?

14 A. No.

15 Q. When Mr. Hong gave this to you, did he tell you
16 that this was coming from the hospital?

17 A. Yes.

18 Q. Is this -- are there any other documents with
19 this? Were you asked to sign any form acknowledging that
20 you had received this?

21 A. I -- I was asked to sign a form saying that I
22 read it.

23 Q. And when were you asked to sign that form?

24 A. Towards the end of July.

25 Q. Was that form part of this packet that you got

1 from Roy Hong?

2 A. No. This was separate. And then there was an
3 individual paper for each of us to acknowledge that we had
4 read.

5 Q. Okay.

6 A. I only have this Power Point because of at the
7 end of the campaign, I'm -- I have retained various
8 documents.

9 MS. CENDROSKY: Okay. I have no objections.

10 JUDGE AMCHAN: It's received.

11 (Whereupon, Respondent's Exhibit Number 10
12 was received into evidence.)

13 (Whereupon, Respondent's Exhibit Number 11
14 Was marked for identification.)

15 MS. CENDROSKY: Is this R11?

16 MR. BRYAN CARMODY: Yes.

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. CENDROSKY:

19 Q. Okay, Ms. Mahon, I'm showing you a document
20 that's been marked for identification purposes as
21 Respondent's Exhibit 11.

22 Please take a moment to review it and let me know
23 if this is not the certification you had mentioned moments
24 ago during your testimony.

25 A. It is.

1 MR. BRYAN CARMODY: I would offer this, Your
2 Honor, into evidence.

3 MS. CENDROSKY: No objection.

4 JUDGE AMCHAN: Received.

5 (Whereupon, Respondent's Exhibit Number 11
6 was received into evidence.)

7 CROSS-EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Now, ma'am, it's -- September 26th was the date
10 on which you were no longer permitted access to Affinity's
11 facility; correct?

12 A. Yes.

13 Q. Isn't it true, ma'am, that after September 26th
14 other members of your organizing team were continued
15 permitted access to the facility?

16 A. Yes.

17 Q. And that would be true for Eliza?

18 MS. LAWHON: Objection. Assumes a fact not
19 in evidence that Ms. Carboni was at Affinity after
20 September 26th on or before September 26th.

21 JUDGE AMCHAN: Well, it --

22 MR. BRYAN CARMODY: Well, the witness had
23 mentioned her as one of the organizers at the facility.

24 MS. LAWHON: She mentioned her as --

25 JUDGE AMCHAN: Well, I --

1 MS. LAWHON: -- during the campaign. That's
2 very different. You're a month out.

3 JUDGE AMCHAN: Well, I don't --

4 MR. BRYAN CARMODY: Judge, I can --

5 JUDGE AMCHAN: -- I don't want to argue about
6 something I don't think -- it seems to be very tangential.
7 I mean, were any of these organizers allowed into the
8 facility after September 26th?

9 MS. LAWHON: There were -- none of these
10 people were there, Your Honor, with the exception of James
11 Moy, I believe. None of the rest --

12 MR. BRYAN CARMODY: Counsel ought not be
13 testifying.

14 MS. LAWHON: I -- this --

15 MR. BRYAN CARMODY: And if she is, it's --

16 MS. CENDROSKY: The Judge asked a question.

17 JUDGE AMCHAN: Well, I asked her.

18 MS. LAWHON: The Judge asked me, Counsel.

19 JUDGE AMCHAN: I asked her to see whether
20 there was a stipulation.

21 MR. BRYAN CARMODY: Okay.

22 MS. LAWHON: There's a --

23 JUDGE AMCHAN: I mean, I don't want to
24 prolong this. I mean, was Mr. -- do you know whether
25 Mr. Moy was allowed in the facility after September 26th?

1 MS. LAWHON: He -- I don't know how long he
2 was present after September 26th.

3 MS. CENDROSKY: Ask Michelle. She knows.

4 MS. LAWHON: Michelle knows.

5 JUDGE AMCHAN: Well, why don't you ask Ms. --
6 Mr. Moy.

7 MR. BRYAN CARMODY: That's I'm driving at,
8 Your Honor.

9 MS. LAWHON: But not with Eliza Carboni, who
10 was long gone.

11 MR. BRYAN CARMODY: Okay. Well, we --

12 JUDGE AMCHAN: Well, I mean, his point, I
13 think, is that Ms. Mahon was barred from the facility but
14 other organizers were not.

15 MS. LAWHON: But that -- that point he --

16 MR. BRYAN CARMODY: That's -- that's correct,
17 Your Honor.

18 MS. LAWHON: -- that point he --

19 MR. BRYAN CARMODY: Ms. Mahon, is it not the
20 fact --

21 MS. LAWHON: Excuse me, Counsel.

22 MR. BRYAN CARMODY: -- is it not the fact
23 that Mr. Moy was permitted access --

24 MS. CENDROSKY: We're still under an
25 objection.

1 JUDGE AMCHAN: Well, hold. Hold. Okay.

2 MS. LAWHON: I don't --

3 MR. BRYAN CARMODY: -- was permitted access
4 after September 26th, ma'am?

5 MS. LAWHON: What was the question?

6 JUDGE AMCHAN: Was Mr. Moy allowed access to
7 the facility after September 26th?

8 THE WITNESS: Yes.

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Okay. And at that point in time after
12 September 26th he was working in his capacity as an
13 organizer for your union; correct?

14 A. Correct.

15 Q. Thank you. Is it not the fact that other
16 organizers, you might not remember who it was exactly, but
17 other organizers were permitted access to Affinity's
18 facility after September 26th?

19 A. That is not a fact. At Affinity, there were no
20 other organizers at -- present besides myself after the
21 beginning of October and in this -- in this assignment.
22 And -- and CHS prohibited every organizer from accessing
23 Ohio and West Virginia hospitals.

24 MR. BRYAN CARMODY: Your Honor, I'm going to
25 move to strike that portion of her answer. It was not

1 responsive to my question.

2 MS. CENDROSKY: I believe it was.

3 JUDGE AMCHAN: Well, I thought it was. She
4 was --

5 MS. LAWHON: Yes.

6 JUDGE AMCHAN: -- well, I mean, she expanded,
7 but she --

8 MS. CENDROSKY: It's not the answer he
9 wanted.

10 JUDGE AMCHAN: -- well, for purposes of this
11 thing, she went beyond your question. She's saying that
12 all their organizers were barred from Affinity's facility
13 after --

14 MR. BRYAN CARMODY: But did she not also
15 refer to other facilities, too?

16 JUDGE AMCHAN: She did.

17 THE WITNESS: The CHS facilities, yes.

18 MR. BRYAN CARMODY: Okay.

19 JUDGE AMCHAN: Well, I'm not going to strike
20 it. But, I mean, in response to your -- I mean, the point
21 is whether NNOC organizers --

22 MR. BRYAN CARMODY: My question pertained to
23 Affinity Medical Center, sir, and her answer pertains to
24 other CHS facilities.

25 JUDGE AMCHAN: Right.

1 MR. BRYAN CARMODY: And that is going to open
2 up a can of worms if I need to go down that line of
3 questioning.

4 JUDGE AMCHAN: I don't -- well, it's not
5 relevant at this proceeding.

6 MR. BRYAN CARMODY: Then I would ask for her
7 answer, in that respect, to be struck.

8 JUDGE AMCHAN: Let's leave it in. I don't
9 think it's relevant.

10 MR. BRYAN CARMODY: I understand.

11 CROSS-EXAMINATION (CONT'D)

12 BY MR. BRYAN CARMODY:

13 Q. Okay, Ms. Mahon, you received a subpoena that
14 was issued by the hospital in this proceeding, did you
15 not?

16 A. I did.

17 Q. And isn't it true that the subpoena had asked
18 you to produce forms that -- I'm sorry, documents that
19 related to ADO's?

20 A. It is true.

21 MS. LAWHON: Objection. That bears on a
22 Petition to Revoke that I filed and was ruled upon. So,
23 therefore, consistent with the Petition to Revoke,
24 Ms. Mahon did not produce responsive documents to Number
25 13, as I indicated --

1 MR. BRYAN CARMODY: Your Honor, this --

2 MS. LAWHON: -- in my motion.

3 MR. BRYAN CARMODY: -- this relates to a
4 defense wholly separate from the affiliation defense,
5 wholly separate from the arbitration defenses. It relates
6 to a defense that these ADO's are not protected concerted
7 activity.

8 That's a defense that wasn't even covered by
9 Ms. Lawhon's Motion in Limine. It's a defense that still
10 exists in this proceeding, and it's a defense that we're
11 entitled to build through subpoenas, through admissible
12 evidence.

13 JUDGE AMCHAN: Well, there may have been some
14 ships passing in the night with regard to -- because I did
15 say something about granting a Petition to Revoke in a
16 phone conversation, and I think also at the end of the
17 order that I issued late Friday.

18 But can you do this through just questions? I
19 mean, she didn't turn over any other documents, so let's
20 see if you can just cover it through question and answers.

21 MS. CENDROSKY: Your Honor, just for the
22 record, for it to be clear, I would like to note that
23 Respondent amended their answer, including their 31st
24 affirmative defense, among other things with respect to
25 other --

1 MR. BRYAN CARMODY: I didn't include a 31st
2 affirmative defense.

3 MS. LAWHON: 11th paragraph.

4 MS. CENDROSKY: I'm sorry. I have the
5 paragraph wrong. The 11th affirmative defense that was on
6 April 28th, 2013 with anything with respect to the
7 (H-I-P-A-A-), HIPAA.

8 MR. BRYAN CARMODY: That's not the defense
9 that I'm referring to here, Your Honor. It's a defense
10 that relates to, I can --

11 JUDGE AMCHAN: Well, I see the --

12 MS. CENDROSKY: So my -- but my point is that
13 this was discussed, the affirmative defense of -- I mean,
14 I'm sorry, the ADO's was discussed in the conference call
15 prior to you making that Amended Answer.

16 JUDGE AMCHAN: Well, I'm --

17 MR. BRYAN CARMODY: That isn't true.

18 JUDGE AMCHAN: Well, the April 12th Answer is
19 Affinity avers that the completion of Assignment Despite
20 Objection Forms by employees as alleged in Paragraph 13 of
21 the Complaint does not constitute protected concerted
22 activity.

23 So, why don't see if we can do this by question
24 and answer without getting into whether she produced
25 anything by subpoena.

1 MR. BRYAN CARMODY: But, Your Honor, I would
2 -- I need to have documents which are relevant to this
3 line of questioning that would be in her possession, in
4 order to conduct a competent cross-examination.

5 JUDGE AMCHAN: Well, why don't we see how far
6 you get with that, and then I'll think about it.

7 MS. LAWHON: And I did address that, Your
8 Honor.

9 MR. BRYAN CARMODY: Ms. --

10 MS. LAWHON: Excuse me. Just so it's clear
11 on the record, it was fully argued in my Petition to
12 Revoke, which counsel was served with.

13 JUDGE AMCHAN: Yes. Well, you know, the only
14 thing is I may not have focused on it, so let's see what
15 we can do on this.

16 MS. LAWHON: Okay.

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Ms. Mahon, I'd like to direct your attention to
20 General Counsel's Exhibit 17. Do you have that, ma'am,
21 it's the ADO Form?

22 A. Yes, just one moment, please. It's gotten lost
23 in the shuffle.

24 Q. Take your time, ma'am.

25 A. Okay. I have it.

1 Q. Thank you. Ma'am, this is a documented which
2 is generated by the Union; correct?

3 A. This document is -- this particular ADO is --
4 is generated by the Union, yes.

5 Q. Okay. Are there other ADO's that aren't
6 generated by the Union?

7 A. Yeah.

8 Q. Okay. Like what?

9 A. The Joint Commission has an ADO.

10 Q. Okay. What's that document entitled, exactly?

11 A. Assignment Despite Objection Form.

12 Q. Any others?

13 A. Other organizations also have Assignments by
14 Objection Forms. State Boards of Nursings have
15 Assignments by Objection Forms.

16 Q. Okay. And why is it that you choose to create
17 your own document to provide to nurses that you do or seek
18 to represent as opposed to using one from the Joint
19 Commission?

20 A. We believe that ours is thorough. It
21 streamlines the process. That helps nurses to initiate
22 the chain of command.

23 Q. This document, ma'am, is supposed to help,
24 General Counsel's Exhibit 17, is designed to help initiate
25 the chain of command process?

1 A. Absolutely.

2 Q. And the chain of command process that you just
3 referenced is a chain of command, a supervisory hierarchy,
4 is it not, that exists generally in healthcare
5 institutions whereby if a nurse has a problem with
6 whatever the issue might be, something related to patient
7 safety, they report it to say their charge nurse, who in
8 turn reports it to a department director. Is that
9 essentially the chain of command?

10 A. Sort of. The chief nursing officer is legally
11 responsible for all nursing care in a -- in a hospital.
12 Then they delegate the nursing care to directors and
13 supervisors, who then delegate their nursing care
14 liabilities to individual staff nurses. So that would
15 actually be the chain of command.

16 So when the chief nursing officer, or a manager
17 has unsafely delegated care, they obviously, the -- the
18 direct care nurse obviously needs to let that supervisor
19 know that they're potentially in violation of the Nursing
20 Practice Act, and potentially harming the individual
21 nurse's license, too.

22 So, yes. So they would then give it to their
23 supervisor, who then could give it on to -- up -- up the
24 -- up the chain.

25 Q. And, ma'am, would you agree with me that for

1 those nurses who complete these ADO Forms but don't hand
2 them to their supervisors, they aren't acting in a manner
3 consistent with the instructions of this form?

4 A. It -- there -- the nurses, it's best for them
5 to work collaboratively and, you know, together as a group
6 recognizing that unsafe situation and approaching their
7 manager together, because one unsafe situation, or one
8 unsafe assignment for one nurse, creates an unsafe
9 assignment for the entire unit.

10 So it's better if they all sign it and all work
11 together. That is the goal of -- of the form, is that
12 they all recognize that when they speak up together, that
13 when one person's assignment is unsafe, that all of their
14 assignments are unsafe, or potentially unsafe.

15 Q. So, ma'am, when they fill out one of these
16 forms but don't give it to their supervisors, are they
17 acting consistent with the instructions of this form?

18 A. It's -- it's acceptable, but it's not -- it's
19 better if they turn it in, of course.

20 Q. Okay. Isn't it true, Ms. Mahon, that Affinity
21 has an internal event reporting system which exists for
22 exactly the purposes that you just expressed?

23 A. The registered nurses who work at Affinity have
24 reported to me that they have no venue which to report
25 unsafe -- unsafe assignments, or any type of -- any type

1 of assignment that could potentially put their patients at
2 harm, or their license in jeopardy.

3 Q. Is it the absence of the venue, to use your
4 word, ma'am, that justifies, in your opinion, the usage of
5 these ADO's?

6 MS. LAWHON: Objection. Assumes a fact not
7 in evidence that any justification is necessary. We
8 organize nurses. We help nurses with their working
9 conditions. This is a form we use. It needs no
10 justification, Counsel.

11 JUDGE AMCHAN: Well, I guess let's rephrase
12 it. Is the reason you distributed these forms because you
13 didn't think that Affinity had an adequate form for nurses
14 to report problems up the chain --

15 THE WITNESS: No, it has nothing -- the form
16 is -- it has nothing to do with what Affinity has or does
17 not have. The -- the form is a process that helps the
18 nurses work together to create better working conditions.

19 CROSS-EXAMINATION (CONT'D)

20 BY MR. BRYAN CARMODY:

21 Q. Even in circumstances where the hospital has an
22 effective internal event reporting system; is that your
23 testimony?

24 MS. LAWHON: Objection. Assumes a fact --
25 hypothetical.

1 JUDGE AMCHAN: Well, no, that's what he's
2 asking, that you -- it doesn't matter whether the hospital
3 has --

4 THE WITNESS: It doesn't matter what their --
5 what the hospital's internal protocols are.

6 CROSS-EXAMINATION (CONT'D)

7 BY MR. BRYAN CARMODY:

8 Q. Okay. It doesn't matter. These forms still
9 get -- you still encourage your members to sign these
10 forms; correct?

11 A. Absolutely.

12 Q. Are these forms supposed to be completed to
13 document missed lunches?

14 A. Yeah. Yeah.

15 Q. Have you not encouraged the nurses who work for
16 Affinity Hospital to complete and submit these forms by
17 the hundreds and by the thousands?

18 A. I -- I don't know that I've said specifically
19 by the thousands.

20 Q. Have you said by the hundreds?

21 A. I may have, yes.

22 Q. Ms. Mahon, the actual ADO Form as it exists in
23 its organic state is a carbon copy form, you've testified
24 to?

25 A. Yes.

1 Q. And what's supposed to happen with those
2 different duplicates, who are they supposed to go to?

3 A. Well, one goes to the -- the supervisor. One
4 -- the nurse gets to keep a copy for themselves. One goes
5 to the Union. And one goes to the Facility Bargaining
6 Council.

7 Q. Ma'am, what steps, if any, has the NNOC taken
8 to ensure that HIPAA is not violated by nurses' usage of
9 these forms?

10 MS. LAWHON: Objection. Relevance. I don't
11 believe that a potential HIPAA violation undermines
12 protected concerted activity, last I checked the law.

13 JUDGE AMCHAN: Well, he'll -- he'll --

14 MR. BRYAN CARMODY: Well, Employers' interest
15 --

16 JUDGE AMCHAN: -- he'll argue that it does.
17 I guess, maybe that's an issue in this case --

18 MS. LAWHON: With no precedent.

19 JUDGE AMCHAN: -- what trumps what.

20 MR. BRYAN CARMODY: Yes, sir.

21 THE WITNESS: Well, at this time, the --
22 first of all, it doesn't say anywhere on here asking for
23 any protective health information.

24 CROSS-EXAMINATION (CONT'D)

25 BY MR. BRYAN CARMODY:

1 Q. Well, ma'am, I'm not asking what the form says
2 so much as I'm asking --

3 A. Well, we're not requesting it, so that's one
4 thing. So, first of all, it's not being -- it's not part
5 of the data being collected. So information protected by
6 HIPAA is not even being collected, so that's the first --
7 that's the first way that we would ensure that HIPAA is
8 not being violated through the process of collecting these
9 forms.

10 Q. Has it been your experience, ma'am, that with
11 nurses actually completing these forms, that the inclusion
12 of patient names or other patient identifiers are sometime
13 a part of the form?

14 A. No, I have not had that experience.

15 Q. And you haven't had that experience here at
16 Affinity; is that what you're testifying to?

17 A. Correct. That is correct.

18 MR. BRYAN CARMODY: Your Honor, I don't have
19 any further questions at this time. But there is that
20 subpoena issue, I believe. And so I would ask for the
21 witness -- yes, the witness is the one who received the
22 subpoena, to produce documents which are responsive on the
23 ADO issue.

24 JUDGE AMCHAN: What is it exactly you asked
25 for?

1 MR. BRYAN CARMODY: I'm quoting now, Judge,
2 from Paragraph 13 of the attachment to the subpoena duces
3 tecum served upon Ms. Mahon. Paragraph 13:

4 "Any and all documents including, but not limited
5 to any e-mails that constitute, refer, or relate to any
6 communications between the Union and any other person,
7 including but not limited to any person employed by
8 Affinity that concern ADO's."

9 JUDGE AMCHAN: What you are seeking is -- my
10 question, what do you expect to get, or hope to get?

11 MR. BRYAN CARMODY: I hope to get documents
12 that are going to help me prove that the usage of these
13 ADO's doesn't constitute protected concerted activity,
14 maybe concerted, but no event protected.

15 MS. LAWHON: What in the possible document,
16 Your Honor, could subtract the protected character of it?
17 It's nurses organizing about their work assignments and
18 patient care, which is a fundamental underpinning of their
19 working conditions.

20 JUDGE AMCHAN: Well, I mean -- so, I mean,
21 you're looking for an e-mail that says, you know, be sure
22 and include the patient's name and circumstances of the
23 assignment? I mean --

24 MR. BRYAN CARMODY: Your Honor, I'm looking
25 for ADO's that include patient's name and patient

1 assignments.

2 I'm looking for documents that confirm what we
3 believe to be true, and that's these ADO's have nothing to
4 do with keeping patients safe, it has everything to do
5 with harassing employers.

6 JUDGE AMCHAN: Well --

7 MS. LAWHON: Your Honor, this is a central
8 defense this hospital -- this healthcare system is raising
9 in other forums. But as to this case and what's relevant
10 in this case, we have threats to nurses for filling out
11 ADO's. And in order for --

12 MR. BRYAN CARMODY: And that's denied, Your
13 Honor.

14 MS. LAWHON: Excuse me. And in order for
15 them to defend that they didn't threaten nurses, they need
16 to prove that it's not protected activity.

17 JUDGE AMCHAN: Well --

18 MS. LAWHON: It's recognized in -- I have an
19 NLRB Complaint, which I'm sure counsel's well aware of
20 involving Largo Hospital where the Board -- the Region,
21 itself, alleges that ADO's are protected concerted
22 activity.

23 MR. BRYAN CARMODY: And, Judge, I don't need
24 to tell you that a Complaint sets forth allegations, not
25 positions of the Board as far as where an undecided issue

1 of law. We intend to address this issue in this
2 proceeding respectfully and get this in front of the Board
3 for a decision.

4 JUDGE AMCHAN: Well, okay. So, I mean, let's
5 assume I find that there was a threat. If completing an
6 ADO isn't protected activity, it's not a violation of the
7 Act.

8 MR. BRYAN CARMODY: That's true, Judge. And
9 the same observation would pertain to the other
10 allegations set forth against Ms. Kress.

11 MS. LAWHON: Questioning a nurse about how
12 she voted?

13 JUDGE AMCHAN: Well, that's different.

14 MS. LAWHON: That's covered by ADO's?

15 JUDGE AMCHAN: That's clearly a violation, if
16 it occurred.

17 MS. CENDROSKY: And I do believe the
18 allegation in the Complaint said protected concerted
19 activity and/or union activity.

20 JUDGE AMCHAN: Well, that's true.

21 MS. CENDROSKY: Thank you.

22 MS. LAWHON: And it's clear from this
23 witness' testimony that the ADO's are a union strategy to
24 empower nurses.

25 MS. CENDROSKY: Therefore, I believe that his

1 request is irrelevant.

2 JUDGE AMCHAN: Yes. I'm going to deny it.

3 MS. CENDROSKY: Thank you.

4 THE WITNESS: So I don't do -- or what do I
5 have to do.

6 JUDGE AMCHAN: Well, you don't have to
7 produce --

8 THE WITNESS: Okay.

9 MS. LAWHON: Shh. I'll tell you.

10 THE WITNESS: Okay.

11 JUDGE AMCHAN: That's it.

12 MR. BRYAN CARMODY: Given that ruling, Judge,
13 I have no further questions.

14 MS. CENDROSKY: I actually have a little bit
15 of redirect. Thank you.

16 THE WITNESS: Okay.

17 REDIRECT EXAMINATION

18 BY MS. CENDROSKY:

19 Q. Okay?

20 A. Uh-huh.

21 Q. Now, at the time of your exclusion from the
22 hospital, do you recall how many reps were left besides
23 yourself?

24 A. Yes.

25 Q. And how many reps were left?

1 A. Besides myself, one.

2 Q. And who was that rep?

3 A. James Moy.

4 Q. And how long was James Moy permitted access at
5 the hospital, if you know that answer?

6 A. I don't know that answer.

7 Q. Do you know if he was ever excluded from the
8 hospital?

9 A. I -- I -- I don't know the answer to that.

10 Q. When did he -- when, if ever, did he end his
11 employment as far as working at the Affinity facility?

12 A. The very beginning of October.

13 Q. The beginning of October.

14 A. Uh-huh.

15 Q. So from -- at September 26th is when you were
16 excluded; correct?

17 A. Correct.

18 Q. And Mr. Moy left the Affinity premises to take
19 care of other obligations, I assume?

20 A. That's correct.

21 Q. In the beginning of October.

22 A. Uh-huh.

23 Q. Okay.

24 A. Yes.

25 Q. Now, you did testify at cross-examination that

1 you spoke with nurses from the Cardiovascular Unit about
2 their interest in the Union?

3 A. Which cardiovascular? You mean the
4 cardiovascular operating room, or --

5 Q. Either one.

6 A. Okay. Yes.

7 Q. Okay. During these conversations did you ever
8 learn anything about a Dr. Creasos?

9 A. I did.

10 Q. And what, if anything, did you learn about
11 Dr. Creasos from these nurses?

12 A. They --

13 MR. BRYAN CARMODY: Objection, Your Honor.

14 MS. CENDROSKY: Why?

15 MR. BRYAN CARMODY: Relevance.

16 MS. CENDROSKY: Really? You're the one that
17 asked the question.

18 MS. LAWHON: He opened it up.

19 MR. BRYAN CARMODY: About Dr. Creasos?

20 MS. CENDROSKY: You opened the door by
21 talking about the cardiovascular nurses and their
22 conversations with respect to their interest in the Union.
23 So I want to know if there's anything that maybe would
24 establish why they had this disinterest in the Union.
25 It's very relevant.

1 MR. BRYAN CARMODY: Judge, lack of relevance.
2 That's my objection.

3 MS. CENDROSKY: It's relevant.

4 JUDGE AMCHAN: So, I -- I'm a little
5 confused. Why does it matter? I mean, her testimony was
6 that in certain units, the Cardiovascular Unit she
7 perceived that they were generally anti-union.

8 MS. CENDROSKY: Uh-huh.

9 JUDGE AMCHAN: Well, why does it, in this
10 case, why does it matter why?

11 MS. CENDROSKY: It corroborates as to them
12 being anti-union and their reasons why they were.

13 JUDGE AMCHAN: Well, I don't know about the
14 reasons, but you did testify that you saw people from
15 these various unions campaigning against the Union.

16 THE WITNESS: Some, but not all. Only -- the
17 only people who were actively campaigning against the
18 Union were the nurses from the -- from the Cath Lab openly
19 and visibly.

20 The nurses from the cardio -- there's several --
21 several different departments in the cardiovascular area
22 of the hospital.

23 So there's a Cardiovascular OR, a Cath Lab, and a
24 Cardiovascular ICU, which are separate and distinct from
25 each other.

1 JUDGE AMCHAN: Why does it matter why they
2 were against the Union? I mean, I assume you're going to
3 -- somebody said something to them.

4 MS. CENDROSKY: Yes.

5 JUDGE AMCHAN: So what does -- I mean, what
6 if it was the National Right to Work people came and
7 talked to them about the Union, I don't see the relevance.

8 MS. CENDROSKY: This doctor is, in essence,
9 their supervisor and is also, in my opinion, would -- his
10 statements would show that these nurses were afraid for
11 their jobs if they voted for the Union. So that's why I
12 want to know if those nurses --

13 JUDGE AMCHAN: But you didn't allege this --

14 MS. CENDROSKY: -- ever relayed that comment
15 to her.

16 JUDGE AMCHAN: But there's no 8(a)(1)
17 allegation about threats or statements by this physician;
18 correct?

19 MS. CENDROSKY: Correct. This only goes to
20 --

21 JUDGE AMCHAN: I'm going to sustain the
22 objection.

23 MS. CENDROSKY: That's fair.

24 REDIRECT EXAMINATION (CONT'D)

25 BY MS. CENDROSKY:

1 Q. Now, do you recall ever -- the Union pamphlet
2 that I believe you have in front of you, and let me find
3 the exhibit number, it's GC's Exhibit 11.

4 A. Do you mean the -- that -- I don't have that up
5 here.

6 Q. The pamphlet. You don't have that up there?

7 JUDGE AMCHAN: This one?

8 THE WITNESS: Oh, I found it.

9 Q. Okay.

10 A. Found it. Sorry. There's a lot of papers up
11 here right now.

12 Q. Yes. Yes. Now, prior to you -- to the Union
13 creating this document, did you ever have the occasion to
14 speak with Ms. Wayt about the use of her photograph on the
15 front of the pamphlet?

16 A. I did not.

17 Q. You did not?

18 A. No.

19 Q. Do you know who did?

20 A. I would -- I believe it would have been Theo.

21 Q. Okay. Do you know if you sent a copy of this
22 document to Ann via e-mail?

23 A. No.

24 Q. For her to review?

25 A. No.

1 Q. Do you know anyone who would have?

2 A. No.

3 MS. CENDROSKY: Okay. That is it, Your
4 Honor.

5 JUDGE AMCHAN: Anything else?

6 MR. BRYAN CARMODY: No, sir.

7 JUDGE AMCHAN: Okay. You can step down.

8 MR. BRYAN CARMODY: Thank you, Ms. Mahon.

9 (WITNESS EXCUSED.)

10 MS. CENDROSKY: Do I have time to call my
11 next witness?

12 JUDGE AMCHAN: Well, how -- yes, let's go
13 give it a shot.

14 MS. CENDROSKY: Okay. I just want to let you
15 know that I do -- this -- the witness I plan on calling is
16 the last witness for the General Counsel.

17 JUDGE AMCHAN: Uh-huh.

18 MS. CENDROSKY: But we do have several
19 subpoena issues still outstanding, so I won't be closing
20 my case until those issues are resolved.

21 And at that time, obviously, I would want to
22 reserve any right to review the documents and call any
23 witnesses necessary based on their production.

24 JUDGE AMCHAN: Understood.

25 MS. CENDROSKY: Okay. So at this time --

1 JUDGE AMCHAN: Let's go for it.

2 MS. CENDROSKY: -- I will go ahead and call
3 Mr. Perone.

4 JUDGE AMCHAN: Off the record.

5 (Off the record.)

6 JUDGE AMCHAN: Back on the record. I have to
7 swear you in, as soon as she's ready.

8 MS. CENDROSKY: Okay. At this time, counsel
9 for the General Counsel calls John Perone to the stand.

10 JUDGE AMCHAN: Mr. Perone, if you'd raise
11 your right hand.

12 WHEREUPON,

13 JOHN PERONE,

14 A witness herein, having been first duly cautioned and
15 sworn, wax examined and testified as follows:

16 JUDGE AMCHAN: Okay. Have a seat.

17 DIRECT EXAMINATION

18 BY MS. CENDROSKY:

19 Q. Thank you, Mr. Perone, for being so patient in
20 there. Good afternoon, evening, whatever it may be at
21 this time. I just want to introduce myself to you. I'm
22 Sharlee Cendrosky. I'm counsel for the United States
23 National Labor Relations Board.

24 Can you please state your name and spell your
25 name, for the record?

1 A. Full name --

2 Q. Yes.

3 A. -- or just first and last? My name is John
4 Charles Perone, (P-E-R-O-N-E).

5 Q. And what I'd like for you to do is if you
6 cannot hear my question or if you don't understand it,
7 just let me know.

8 A. Okay.

9 Q. By whom are you employed?

10 A. Affinity Medical Center.

11 Q. And if I refer to Affinity Medical Center as
12 either Affinity or the hospital, will you know who I'm
13 referring to?

14 A. I believe so.

15 Q. Okay. Good. What's your -- what is your
16 position at Affinity?

17 A. I'm the director of pharmacy.

18 Q. And how long have you been employed at
19 Affinity?

20 A. Since 2005.

21 Q. And during your employment have you held any
22 other positions with Affinity?

23 A. No.

24 Q. Mr. Perone, you're testifying here pursuant to
25 the subpoena I issued you; correct?

1 A. Correct.

2 Q. What are your responsibilities as the director
3 of pharmacy?

4 A. I would manage pharmacy personnel, operations
5 of the pharmacy, and have general oversight of all
6 transactions that would involve medications in the
7 hospital.

8 Q. Do you supervise any employees?

9 A. Yes.

10 Q. And which ones do you supervise?

11 A. I supervise, I believe it's eight pharmacy
12 technicians, and seven pharmacists.

13 MS. CENDROSKY: Your Honor, I respectfully
14 request that I be allowed to examine this witness pursuant
15 to Section 6(11)(c) of the Federal Rules of Evidence.

16 JUDGE AMCHAN: I have to explain to all the
17 witnesses, that what this means, it sounds pretty
18 complicated; right?

19 All it means is she can ask you leading
20 questions. That is a question that suggests the answer.

21 THE WITNESS: Okay.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. As the director, do you participate in any
25 meetings that would involve other directors of the various

1 departments in the hospital?

2 A. Sometimes.

3 Q. And how often are these meetings held?

4 A. Manager meetings are held, I think, every two
5 weeks.

6 Q. And who are some of the managers that would
7 attend these meetings?

8 A. Most any of the directors, director of nursing.
9 Do you want names or positions?

10 Q. Sure, names and positions would be great.
11 Thank you.

12 A. Well, generally, Ron Bierman, the CEO's there.
13 The CNO, Bill Osterman's there. Let's see, Liz Pruitt's
14 the vice president of operations, she would be there. The
15 director of labs, Janelle Gill. The director of
16 radiology, Sue Bushway. Shall I continue, or --

17 Q. No, I think that's sufficient. Do you recall
18 if you -- any of these meetings were held in July or
19 August of 2012?

20 A. Sure.

21 Q. Sure you recall?

22 A. Sure there were meetings in July or August.

23 Q. Okay. Thank you. Where's your office located?

24 A. It's located in the basement inside the
25 pharmacy.

1 Q. To get to this office, which entrance to the
2 hospital do you normally use?

3 A. I use the employee entrance, which is the south
4 entrance.

5 Q. Does the hospital have a cafeteria, to your
6 knowledge?

7 A. Yes.

8 Q. Do you ever visit the cafeteria?

9 A. Sometimes.

10 Q. Okay. How often do you visit the cafeteria?

11 A. It depends on how I work, but maybe a couple
12 times a week.

13 Q. Okay. Are you aware that there was a union
14 campaign to organize the nurses at Affinity?

15 A. Yes.

16 Q. When did you become aware of this campaign?

17 A. I don't really know if I could even give you an
18 exact time. I mean, I guess the same time most of the
19 other managers found out.

20 Q. And how did the managers find out about this
21 meeting? I mean, the campaign.

22 A. I think we were told in a meeting.

23 Q. Do you recall which meeting it was, or when the
24 meeting was?

25 A. Not a specific date, no.

1 Q. I would --

2 JUDGE AMCHAN: Well, the election was August
3 the 29th. Do you have any feel for how far in advance of
4 the election you were told about the organizing campaign?

5 A. Maybe a couple months. I'm not -- honestly,
6 I'm not sure. It's whenever we were told the agreement
7 was taking place. I don't have any specifics.

8 Q. That's fair. In front of you is a pile of
9 papers. They are exhibits, and they should be numbered.
10 I'd like to direct your attention to GC Exhibit 11.

11 A. Okay.

12 Q. Do you see that?

13 A. Do I see that?

14 Q. Yes. Is it there for you?

15 A. Yes.

16 Q. Okay. Have you ever seen this document before?

17 A. No.

18 Q. No?

19 A. No.

20 Q. So during your time at the hospital in the
21 month of July and August, you -- your testimony is that
22 you've never seen this pamphlet at all?

23 A. Not that pamphlet, no.

24 Q. Okay. Isn't it true that on occasion you
25 assist the pharmacy staff in dispensing the medications to

1 the various units in the hospital?

2 A. Yes.

3 Q. And which units within the last -- well, let's
4 start it this way. Which units in the months of August
5 and September -- July, August, and September do you recall
6 assisting the pharmacy staff in dispensing medication to
7 those units?

8 A. Which units or which days?

9 Q. Units.

10 A. Oh, okay. Generally when we're short-staffed I
11 will help the -- help the pharmacy staff out. And I
12 believe I've been to most of the units.

13 Q. Okay. So you're not limited to just your
14 office in the basement of the hospital? You actually get
15 to walk around the hospital?

16 A. Occasionally, yes.

17 Q. Okay. Thank you. Are there any tasks that you
18 would perform on the various units of the hospital other
19 than dispensing medication?

20 A. Sometimes I'm on the units. I deliver PYXIS
21 cards to the nursing directors, delivering medications, or
22 maybe sometimes if there's a PYXIS issue like a drawer
23 failure, or something like that, I might be on --

24 JUDGE AMCHAN: PYXIS means what?

25 THE WITNESS: I'm sorry. PYXIS is an

1 automated dispensing machine that's used by the hospital.
2 That's where the medications are stored, and they are
3 dispensed that way to the nurses.

4 JUDGE AMCHAN: Uh-huh.

5 THE WITNESS: It's like --

6 JUDGE AMCHAN: Does this have something to do
7 with the controlled substances, keeping track of --

8 THE WITNESS: It does keep track of
9 controlled substances. Actually, though, we put most
10 medications inside the PYXIS.

11 I guess for general reference, when we enter an
12 order into the pharmacy system, a physician order, say,
13 for a medication, it appears on the PYXIS on that
14 particular floor under the person's profile. And then the
15 nurse, that way, takes the medication out off the PYXIS
16 profile.

17 It's a way -- and we use mostly a system called
18 cubies, which means only a specific cube opens up for the
19 medication. It's just a safety mechanism, too, to help
20 that the nurse gets the right medication.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. CENDROSKY:

23 Q. Great. Are you familiar with the former
24 employee named Ann Wayt?

25 A. Yes, I know Ann.

1 Q. How long have you known Ann?

2 A. I don't really know her personally. I would
3 say that I recognize that she worked at Affinity for some
4 time.

5 Q. Okay. Are you aware that she's the subject of
6 the litigation here today?

7 A. Yes.

8 Q. Okay. Isn't it true that you prepared a sworn
9 affidavit as it's related to an incident involving Ann
10 Wayt in August 30th, 2012?

11 A. Yes.

12 Q. Okay. Isn't it true that when you arrived at
13 the Orthopedic Unit on August 30th, 2012 you saw that Ann
14 Wayt was preoccupied and on the telephone at the nurses'
15 station?

16 A. I saw she was on the telephone. I'm not sure
17 that means she was preoccupied.

18 Q. That's fair. Isn't it also true that at that
19 time another nurse was there and saw that you looked as if
20 you needed assistance and this nurse offered to assist
21 you?

22 A. That's correct.

23 Q. Do you recall who that nurse was?

24 A. I do not know her name.

25 Q. But isn't it true you waited for Ann to get off

1 the phone?

2 A. Yes. Because there was a discrepancy in the
3 PYXIS. And by our policy the discrepancy should be taken
4 care of by the person that found it and the person that
5 was previously in that -- that cubie, which was Ann.

6 Q. Isn't it also true that on August 30th, 2012
7 that the pharmacy was short-staffed by a technician that
8 day, so you delivered the medication to the Orthopedic
9 Unit that day?

10 A. That's correct.

11 Q. And is that when you observed that there was a
12 discrepancy?

13 A. Yes.

14 Q. Now, as the director of pharmacy, do you have
15 the authority to resolve this discrepancy by yourself
16 without the help of Ann Wayt?

17 A. Technically, I do.

18 Q. I just want your answer yes or no. Can you
19 resolve this discrepancy by yourself as the pharmacy --

20 A. I can resolve a discrepancy by myself.

21 Q. Thank you. Did you feel as if Ann was being
22 rude to you that day?

23 A. Yes.

24 Q. You began your employment with Affinity when,
25 2005? So this is --

1 A. 2005, actually prior to the merger.

2 Q. So it's been about eight years; is that
3 correct?

4 A. Correct.

5 Q. Now, in that time period did you ever have
6 another employee be rude to you?

7 A. Yes.

8 Q. Okay. Did you make any reports of that
9 employee to their manager or director, whoever it may be?

10 A. Yes.

11 Q. You did. Do you recall if you sent an e-mail
12 to Paula Zinsmeister on August 30th, 2012 regarding Ann
13 Wayt?

14 A. Yes.

15 (Whereupon, General Counsel's Exhibit Number 18
16 was marked for identification.)

17 Q. Okay. I'm going to show you what's been marked
18 as General Counsel's Exhibit Number 18. Take a minute and
19 look at the two pages. Do you recognize these documents?

20 A. Yes.

21 Q. What are they?

22 A. These are -- this is the e-mail, the original
23 e-mail that I had sent to Paula Zinsmeister and Bill
24 Osterman.

25 Q. And what -- are you looking at the first page

1 of GC's Exhibit Number 18?

2 A. Yes.

3 Q. And what is the date on that e-mail?

4 A. Well, this is September 5th.

5 Q. Right. And isn't it true that you testified
6 that you sent an e-mail to Ms. -- her supervisors on
7 August 30th?

8 A. That is correct.

9 Q. Okay.

10 A. And that is also -- that's --

11 Q. Right. So let's direct your attention to the
12 second page. And we see that there appears to be a
13 Thursday, October -- I mean, Thursday, August 30th, 2012
14 e-mail from yourself to Paula Zinsmeister and William
15 Osterman; is that correct?

16 A. Yes.

17 Q. Okay. And in this e-mail is your account of
18 your incident that day with Ms. Wayt?

19 A. Yes.

20 Q. Okay. And if you look directly above that, it
21 shows that you again -- it appears that you forwarded, and
22 the reason I say forwarded, because in the subject line it
23 says, "Forwarded, Percocet discrepancy."

24 And it looks like you sent it to Ms. Boyle on
25 December 21st, 2012. Do you recall forwarding that

1 e-mail?

2 A. Yes.

3 Q. Okay. Let's direct your attention back to the
4 first page of GC's Exhibit Number 18. Again, we have
5 another e-mail to Ms. Boyle, this one's shorter, this one
6 using different words.

7 And it's -- this one's sent on September 5th,
8 2012. Do you know why you sent a separate e-mail that
9 would appear to possibly cover the same subject?

10 A. Yes.

11 Q. Why?

12 A. I believe Ms. Boyle contacted me at that time
13 and asked me -- I think she said she couldn't find my
14 original e-mail that I had forwarded to her, and asked me
15 to just re-tell or recant to her again the incident.

16 Q. Did Ms. Boyle instruct you as to what to
17 include in your e-mail?

18 A. No.

19 JUDGE AMCHAN: I'm not sure your answer was
20 audible. It was no.

21 THE WITNESS: No.

22 JUDGE AMCHAN: You said no. Right. Just to
23 -- these things are recorded, and I wasn't sure you said
24 it loud enough --

25 THE WITNESS: Sorry.

1 JUDGE AMCHAN: -- for it to be picked up.

2 THE WITNESS: Okay.

3 DIRECT EXAMINATION (CONT'D)

4 BY MS. CENDROSKY:

5 Q. Now, at this time I want to show you what's
6 been marked as General Counsel's Exhibit Number, I'm
7 losing track here, I believe it's 14.

8 Do you -- and what I have to do, is because
9 that's a photograph replication, I have to show you the
10 actual exhibit.

11 We have received testimony today that this poster
12 board, which you have a copy in front of you as General
13 Counsel's Exhibit Number 14, was displayed in the
14 cafeteria at the hospital.

15 And you testified that you visited the hospital's
16 cafeteria on several occasions, probably two or three
17 times a week; is that true?

18 A. True.

19 Q. Do you recall seeing that poster board in the
20 cafeteria?

21 A. There may have been a poster there but, I mean,
22 I -- honestly, I don't pay attention to the posters that
23 are in there.

24 Q. So it -- you don't think it's unusual to have a
25 poster that large --

1 A. There's other posters in there like that, also,
2 when they have like campaigns for where they're trying to
3 generate money for like a good cause or something. They
4 have other boards in there, also.

5 Q. Do those boards have photographs of nurses on
6 them?

7 A. I don't know. Honestly, I seriously don't
8 really pay attention to them.

9 MS. CENDROSKY: Okay. That's it, Your Honor.

10 JUDGE AMCHAN: Did you want to move for
11 admission of GC18? You didn't, I don't think.

12 MS. CENDROSKY: Oh, yes. I would like to
13 move for admission of General Counsel's Exhibit Number 18.

14 MR. BRYAN CARMODY: No objection.

15 JUDGE AMCHAN: It's received.

16 (Whereupon, General Counsel's Exhibit Number 18
17 was received into evidence.)

18 MS. LAWHON: Are there any statements?

19 MS. CENDROSKY: There are -- there is. Hold
20 on one second.

21 JUDGE AMCHAN: Go off the record for a
22 minute.

23 (Off the record.)

24 JUDGE AMCHAN: Back on the record.

25 MS. LAWHON: Thank you.

CROSS-EXAMINATION

BY MS. LAWHON:

Q. Good afternoon, Mr. Perone. My name is Jane Lawhon. I'm an attorney for National Nurses Organizing Committee.

A. Good afternoon.

Q. Mr. Perone, on the day when you were assisting and going up to the Ortho Unit to -- were you restocking the PYXIS?

A. That's correct.

Q. Okay. On the day you were doing that, Ann Wayt was the -- serving as the charge nurse for that unit; isn't that correct?

A. I don't know if she was the charge nurse or not. She was on the unit, though.

Q. Isn't it the obligation of the person who discovers a discrepancy in the PYXIS count and -- a discrepancy to report it to the nurse in charge?

A. I believe if you read previous to that part, it talks about how to take care of the discrepancy. And since I was, as the pharmacy director, or any other person found it, I immediately went to the person that was in there previously.

Q. Okay. But that really doesn't answer my question, Mr. Perone. Let me try it again.

1 A. Sure.

2 Q. Isn't it true that the policy says that the
3 discrepancy is to be reported to the nurse in charge?

4 A. I believe if -- it says if it can't be
5 resolved.

6 (Whereupon Charging Party's Exhibit Number 2
7 was marked for identification)

8 Q. Okay. This has been marked as Charging Party
9 2. Mr. Perone, I'd like to direct your attention to the
10 second page under the letter F, discrepancies. Do you see
11 where I am?

12 A. Yes.

13 Q. Okay. Let me back up for a minute. Is -- was
14 this the operative policy in effect as of the day the --
15 that you went up to check the PYXIS in the Ortho Unit?

16 A. Yes.

17 Q. Okay. Directing your attention to F,
18 discrepancies. What does Number 2 say?

19 A. "Any NR narcotic discrepancies discovered
20 should be reported immediately to the nurse in charge."

21 Q. So, in fact --

22 A. In fact, I did.

23 Q. No. Mr. Perone --

24 A. You said Ann was --

25 Q. -- a moment ago I asked you isn't it correct

1 that the policy requires you to report a discrepancy to
2 the nurse in charge, and you said only if it can't be
3 resolved.

4 In fact, the policy requires an immediate report
5 to the nurse in charge; isn't that correct?

6 A. Okay. That's correct.

7 Q. And Ann Wayt was the nurse in charge on the
8 Ortho Unit that day; isn't that correct?

9 A. Again, I wasn't aware of that.

10 Q. You made no effort to figure out who the nurse
11 in charge was; is that your testimony, Mr. Perone?

12 A. Correct. I went directly to the person
13 involved in the discrepancy.

14 Q. Okay. Were you aware of the requirements of
15 this policy at the time you were engaging in addressing
16 the discrepancy on August 30th?

17 A. I was --

18 MR. BRYAN CARMODY: Your Honor, I'm going to
19 object. This document, by its terms of "Affected
20 departments, Nursing Departments." It's not a proper
21 document to question this witness about as the pharmacy
22 director.

23 JUDGE AMCHAN: Well --

24 MS. LAWHON: I think it's appropriate. He's
25 complaining about his interaction with a nurse about a

1 PYXIS discrepancy.

2 The policy that applies to that nurse, if he is
3 unaware of it, it's really -- the problem is not the
4 nurse's, the problem is the hospital's.

5 CROSS-EXAMINATION (CONT'D)

6 BY MS. LAWHON:

7 Q. Were you aware that this policy existed?

8 JUDGE AMCHAN: Yes. The objection's
9 overruled. You can answer the question.

10 A. Yes.

11 Q. Go ahead. You were. Okay. Were you aware of
12 its provisions?

13 A. While I don't have it memorized, I'm familiar
14 with some of it, yes.

15 Q. Okay. Now, directing your attention to General
16 Counsel Exhibit 18, do you have that in front of you?

17 A. Yes.

18 Q. Okay. So on Thursday, August 30th at ten
19 fifty-one a.m. you sent this e-mail to Paula and
20 Mr. Osterman; right?

21 A. That e-mail looks like it only went to Angie,
22 Mrs. Boyle.

23 Q. Excuse me. I'm looking at the first page, the
24 second e-mail down. Oh, my --

25 A. There's only one e-mail.

1 Q. -- my apology, I'm sorry, Mr. Perone, I had it
2 folded. I'm sorry. The second page. Second page. So
3 you composed an e-mail and sent it on Thursday, August
4 30th at ten fifty-one a.m.; right?

5 A. Yes.

6 Q. Okay. So you testified that you sent the
7 e-mail on September 5th to Angie Boyle because she didn't
8 have a copy of your e-mail that you had sent
9 contemporaneously; is that right?

10 A. Yes.

11 Q. But you didn't forward to her the e-mail that
12 you had sent contemporaneously; isn't that correct?

13 A. That's correct.

14 Q. You created a new description of what happened
15 --

16 A. Correct.

17 Q. -- 15 days later; right?

18 A. I recanted my details of what happened, yes.

19 JUDGE AMCHAN: Did you say 15 days? I
20 thought --

21 MS. LAWHON: The 30th to the --

22 JUDGE AMCHAN: -- it looks like six.

23 MS. LAWHON: Oh, I'm sorry, you're right,
24 Your Honor.

25 JUDGE AMCHAN: It looks like six.

1 MS. LAWHON: Six. Bad math. Sorry.

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. LAWHON:

4 Q. And you still had that e-mail, obviously,
5 because --

6 JUDGE AMCHAN: Wait. I'm sorry. She's not
7 picking you up.

8 Q. Sorry. You could have forwarded your August
9 30th e-mail easily, Mr. Perone, because you still had it
10 on December 21st, isn't that correct?

11 A. Yes, I could have.

12 Q. Yes. Because you still had it right there.
13 You forwarded it December 21st.

14 A. Actually, I had to search in my deleted files,
15 but it was still on my computer.

16 Q. It was available to you. And it was available
17 to you on September 5th, as well; right?

18 A. Sure.

19 Q. Isn't it correct, Mr. Perone, that according to
20 PCS30, which applies to all Nursing Departments, a
21 narcotic discrepancy should be resolved either at the time
22 of discovery or at the change of shift; isn't that
23 correct?

24 A. Yes.

25 Q. So Ann's suggesting that it could be done at

1 the change of shift was correct according to the policy;
2 isn't that correct?

3 A. That's correct. But, also, the policy states
4 that it has to be -- should be corrected by the person
5 that found the discrepancy and the person there.

6 And I didn't know if I would be there at the end
7 of her shift. I really didn't know what her shift was,
8 and I always honestly practiced that we should take care
9 of it as soon as possible. It's fresh in our minds at
10 that point.

11 Q. Right. But the policy permits the discrepancy
12 be resolved at the end of the shift, isn't that correct?

13 A. I believe you already asked that, yes.

14 Q. Okay. And the discrepancy -- the user changing
15 the count could be a different technician who came up to
16 -- and noticed the discrepancy; isn't that correct,
17 Mr. Perone?

18 A. Anybody who accesses the PYXIS could find a
19 discrepancy, yes.

20 Q. Right. So the resolution could be between the
21 user changing the count and the user with previous access,
22 who was Ann; isn't that correct?

23 A. In that case it was Ann, and in the other case
24 it was me who was the person that found the discrepancy.

25 Q. Yes. But the discrepancy could have remained

1 and someone else would have encountered it later that day
2 before the change of shift; isn't that correct?

3 A. Well, I guess if I hadn't filled the Percocet,
4 that would be possible.

5 Q. Well, it's obviously contemplated by this
6 policy, since the policy specifically, with respect to
7 narcotics, permits the resolution at the change of shift.

8 MR. BRYAN CARMODY: Objection, Your Honor.
9 The question's as to what was contemplated as part of this
10 policy.

11 JUDGE AMCHAN: Well, the policy says what it
12 says. But I guess, are you --

13 THE WITNESS: We've already --

14 JUDGE AMCHAN: -- are you saying that if --
15 okay. So you filled the PYXIS machine?

16 THE WITNESS: Yes.

17 JUDGE AMCHAN: With Percocet.

18 THE WITNESS: Correct.

19 JUDGE AMCHAN: And are you saying that once
20 you did that, there was no longer an opportunity to
21 rectify the discrepancy?

22 THE WITNESS: All controlled substances
23 require a count, a blind count when you fill them or
24 remove from them. So when I went to fill the Percocet, it
25 asked me for a count.

1 And when I gave the count and it's wrong, it asks
2 you to recount. So I recounted, and then it told me that
3 that count was wrong and there was a discrepancy that
4 occurred.

5 Since I was the one that found the discrepancy, I
6 thought I should be the one to go to the nurse to try to
7 take care of the discrepancy.

8 JUDGE AMCHAN: Well, but what she was asking
9 you is if you had left, it would have continued to say the
10 count was wrong for the rest --

11 THE WITNESS: Yes, if I would --

12 JUDGE AMCHAN: -- of the shift.

13 THE WITNESS: -- if I would have left it, it
14 would have continued to say the count was wrong.

15 JUDGE AMCHAN: And she's saying that
16 according to the policy, the policy would have been
17 satisfied as long as by the end of the shift somebody had
18 corrected it.

19 THE WITNESS: But the policy also says that
20 it has -- it should be the two people, of which I may not
21 have been there for the end of that nursing shift.

22 JUDGE AMCHAN: Uh-huh.

23 THE WITNESS: That's why I tried to take care
24 of it while I was there.

25 JUDGE AMCHAN: Okay.

CROSS-EXAMINATION (CONT'D)

BY MS. LAWHON:

Q. Actually, Mr. Perone, the policy says between the user changing the count. In other words, towards the end of the shift the pharmacy tech who was on the Ortho Unit could --

A. The user changed --

Q. Excuse me, Mr. Perone. -- could have been the user changing the count.

A. The user changing the count was me, because I counted it there at that time, which created the discrepancy.

JUDGE AMCHAN: Well, I think we're going back and forth on the -- let me make sure that there's no issue with regard to fact. If you had filled it and left, the next person that came to put Percocet or anything in the PYXIS --

THE WITNESS: The count would have been correct for them, because I -- whenever I redid the inventory, whenever --

JUDGE AMCHAN: Yes.

THE WITNESS: -- whenever it asked me for the count and I put in the quantity and then it asked me to recount it and I put in the quantity, it changes the PYXIS count, but it also creates a discrepancy on the machine

1 that says when I did that count, it was off by two.

2 But for -- for future transactions, the count
3 would be what I had said it was.

4 JUDGE AMCHAN: So you're saying if somebody
5 else, some other pharmacy tech came along two hours later,
6 they would not necessarily see that there had been an
7 error earlier.

8 THE WITNESS: The only way you see that
9 there's a discrepancy after that fact is there's an icon
10 that shows up on the PYXIS on that -- on the screen that
11 says there is an existing discrepancy.

12 CROSS-EXAMINATION (CONT'D)

13 BY MS. LAWHON:

14 Q. Right. And the person who encountered an icon
15 on the screen could then address it per the policy, isn't
16 that correct, before the end of the shift in which it's
17 discovered?

18 A. Yeah, they could.

19 MS. LAWHON: Okay. I'd like to offer
20 Charging Party Exhibit 2.

21 MR. BRYAN CARMODY: No objection, Your Honor.

22 JUDGE AMCHAN: It's received.

23 (Whereupon, Charging Party's Exhibit Number 2
24 was received into evidence.)

25 MS. LAWHON: No further questions.

1 JUDGE AMCHAN: Do you have anything?

2 MR. BRYAN CARMODY: No questions.

3 JUDGE AMCHAN: Okay. I'm sorry.

4 MR. BRYAN CARMODY: Oh, I'm sorry.

5 JUDGE AMCHAN: Wait a minute. Did we go off
6 the record?

7 THE COURT REPORTER: No.

8 JUDGE AMCHAN: Oh, we didn't. The tape's
9 running.

10 MR. BRYAN CARMODY: I have no questions.

11 JUDGE AMCHAN: Okay. You can step down.
12 You're done. Thank you.

13 (WITNESS EXCUSED.)

14 JUDGE AMCHAN: So, the General Counsel rests
15 subject to getting documents, either putting them or
16 recalling witnesses.

17 MS. CENDROSKY: And one -- just so I'm clear,
18 Your Honor, the subpoena that I -- one of the issues that
19 haven't been resolved yet is he's looking for documents
20 that would reflect any action taken against a registered
21 nurse for failure to comply to a hospital policy and/or
22 for reasons for attitude.

23 So I believe he testified that he has reported
24 other nurses for their attitude. And so I'm hoping that
25 we can get some documents responsive.

1 That being said, I would just like to let
2 Respondent know that I may need to put him back on the
3 stand if any documents were to arrive that would require
4 me to.

5 So I don't -- I mean he understands. He's here
6 all week, just in case; right?

7 MR. BRYAN CARMODY: Yes. He's --

8 MS. CENDROSKY: Okay.

9 MR. BRYAN CARMODY: -- he's --

10 MS. CENDROSKY: Okay. Okay, good. Thank
11 you.

12 MR. BRYAN CARMODY: We'll figure it out.

13 MS. CENDROSKY: Thank you.

14 JUDGE AMCHAN: Okay. So should we close up
15 shop for the day?

16 MS. CENDROSKY: Sure.

17 MR. BRYAN CARMODY: That'd be my thought,
18 Your Honor.

19 JUDGE AMCHAN: We'll go off the record.

20 (Whereupon, the hearing adjourned at
21 5:45 p.m. on April 30, 2013, to be reconvened
22 on May 1, 2013 at 9:30 a.m.)

23 * * *

C E R T I F I C A T E

This is to certify that the attached proceedings before the National Labor Relations Board were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting and recording accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

RHONDA LAMVERMEYER - OFFICIAL REPORTER

1 THE UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 8
4

5 CASE NO. 8-CA-090083 (VOLUME 3 of 5)

6 8-CA-090193

7 8-CA-093035

8 8-CA-095833

9

10 In the Matter of:

11 DHSC, LLC, D/B/A AFFINITY MEDICAL CENTER

12 EMPLOYER

13 and

14 NATIONAL NURSES ORGANIZING COMMITTEE

15 PETITIONER

16

17

18

19

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21 The above entitled matter came on for hearing
22 pursuant to notice, before ARTHUR AMCHAN, Administrative
23 Law Judge, at the National Labor Relations Board, A. J.
24 Celebrezze Federal Building, 1240 East Ninth Street, Room
25 1695 Cleveland, Ohio, on May 1, 2013 at 9:30 a.m.

1 A P P E A R A N C E S

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5 REGION 8

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WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE

RHONDA SMITH 547 613 577

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JONALEE LESJAK 632 648

SUSAN KRESS 653 702

JEREMIE MONTABONE 725 735

1 EXHIBITS

2

3 RESPONDENT'S FOR

4 EXHIBIT NO. IDENTIFICATION IN EVIDENCE

5 12 554 561

6 13 561

7 14 576 580

8 15 588 595

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1 P R O C E E D I N G S

2 Wednesday, May 1, 2013 9:30 a.m.

3 JUDGE AMCHAN: Back on the record.

4 MS. CENDROSKY: At this time Your Honor I
5 would like to address Respondent's Exhibit Number 4, which
6 is the Unemployment Compensation Review Board Hearing, and
7 I have several objections that I wish to place on the
8 record for the General Counsel.

9 The first one is Rule 401. Counsel for the
10 General Counsel objects to Respondent's Exhibit Number 4
11 under 401 of the Federal Rules of Evidence on the ground
12 that it's not relevant as there is no indication that
13 Respondent is using this exhibit to make the evidence of
14 any fact that makes the consequence more probable or less
15 probable than it would be without the evidence.

16 Because if we look at Page 34 and 35, which was
17 discussed at the Hearing, 34, Line 19 through 35, Line 15
18 there is a section there, the question was asked if the
19 patient was sleeping or was she not sleeping. Ms. Wait
20 responded, it depends sometimes she was awake.

21 And if we turn to -- if this is the part of the
22 transcript in which the Respondent intends to offer, if we
23 look at Page 28 through 29, Ms. Wait was asked this
24 question previously in her testimony.

25 At that point she answered by saying, that was a

1 long time ago so I really couldn't tell you if she was
2 awake, if she was sleeping or what she was doing.

3 JUDGE AMCHAN: I'm sorry, where are you
4 looking?

5 MS. CENDROSKY: I'm sorry, it's Page 29; it
6 starts on 28 and continues to Page 29 --

7 JUDGE AMCHAN: All right.

8 MS. CENDROSKY: -- the first sentence of the
9 witness.

10 JUDGE AMCHAN: All right.

11 MS. CENDROSKY: -- that being said, I believe
12 there's absolutely no probative value of the latter given
13 the former. The transcript is not relevant as it's not
14 being used to impeach Ms. Wait.

15 She's not contradicted herself and to the extent
16 that Respondent is offering for the truth of the matter
17 asserted, I object to it on, under Rule 401 of the Federal
18 Rules of Evidence.

19 I also have an objection under, we object to this
20 exhibit under Rule 403 of the Federal Rules of Evidence on
21 the grounds that the evidence being excluded is
22 prejudicial and leads to confusion of the issues because
23 here this is an unemployment compensation hearing and they
24 are not the same as unfair labor practice hearing.

25 I also have an objection under Rule 613(b)

1 because on the grounds that the prior statement given by
2 this witness is considered extrinsic evidence and it's not
3 an inconsistent statement in which that rule requires.

4 MS. LAWHON: And Your Honor the Charging
5 Party joins in those objections and, and notes that this
6 is not a normal transcript prepared by this Agency for
7 review by the parties with the opportunity for Ms. Wait's
8 lawyer to correct the transcript.

9 This is simply a document prepared by the
10 Employer for use in this proceeding which also renders it
11 questionable.

12 JUDGE AMCHAN: Was Ms. Wayt sworn? I'm, I'm
13 looking.

14 MR. BRYAN CARMODY: Yes, she was Your Honor.

15 MS. LAWHON: It was by telephone.

16 MR. BRYAN CARMODY: She was sworn to answer
17 your questions Judge.

18 JUDGE AMCHAN: Yeah.

19 MS. LAWHON: It was also true that it's by
20 telephone, the entire hearing.

21 JUDGE AMCHAN: Right. I mean it's obvious.

22 MS. CENDROSKY: And I think it's also obvious
23 that Counsel for the General Counsel was not present.

24 JUDGE AMCHAN: Sure.

25 MR. BRYAN CARMODY: And it's also the case

1 Judge that Ms. Wayt's private attorney, Mr. Brian
2 Zimmerman, was present.

3 MS. CENDROSKY: Who does not represent the
4 United States Government.

5 JUDGE AMCHAN: Well --

6 MR. BRYAN CARMODY: But he represents Ms. Ann
7 Wayt.

8 MS. CENDROSKY: In the unemployment
9 compensation hearing.

10 JUDGE AMCHAN: Well let me -- let me weigh
11 in. Do you have any issues with the accuracy of the
12 transcript?

13 MS. CENDROSKY: I have not reviewed the
14 entire transcript and I think that if Mr. Carmody is,
15 looks to be that he wants to introduce part of the
16 testimony. He failed to mention earlier she was
17 questioned the same question and so to me I think that at
18 best it's, it's not accurate.

19 JUDGE AMCHAN: Well, well --

20 MS. CENDROSKY: Not only that I believe
21 Ms. Wayt testified yesterday that she doesn't recall
22 everything that she said at the hearing.

23 JUDGE AMCHAN: Okay, but --

24 MS. CENDROSKY: And we know she hasn't
25 reviewed it.

1 JUDGE AMCHAN: -- but there, there is a
2 recording on somebody's computer that you could listen to.
3 You don't have to listen to the whole thing. Can you find
4 the --

5 MR. BRYAN CARMODY: Yes, sir.

6 JUDGE AMCHAN: And I'm not just their part,
7 the part that they like, the part that you like. What I'd
8 like you to do -- I understand your objection to the
9 relevance and I may end up agreeing you with but --

10 MS. CENDROSKY: Uh-huh, I'm not objecting
11 under authenticity --

12 JUDGE AMCHAN: -- but --

13 MS. CENDROSKY: -- so I think listening to
14 the record would be of no consequence to the General
15 Counsel's objections.

16 JUDGE AMCHAN: Well I guess I would like to
17 know whether the transcript is accurate.

18 MS. CENDROSKY: Okay.

19 JUDGE AMCHAN: If it's accurate I'm inclined,
20 at least, to receive part of it. I may end up agreeing
21 with you but who knows whether those above me who might
22 review this case might disagree with me.

23 MS. CENDROSKY: Sure.

24 JUDGE AMCHAN: And with regard to relevance
25 and my favorite part of Rule 403 is the one about

1 cumulative evidence and waste of time.

2 The confusion part, prejudice confusion, that
3 kind of stuff as I indicated yesterday, I'm arrogant
4 enough to think that I'm smarter than the average juror.
5 So I'm -- that doesn't concern me.

6 So --

7 MR. BRYAN CARMODY: Your Honor -- I'm sorry.

8 JUDGE AMCHAN: So, what I would like you to
9 do is take a look -- if you don't -- the portions that you
10 think are relevant, they think are relevant, if there's no
11 question that that's accurate, I would really receive, you
12 know, only those portions.

13 I mean the whole document being in but the, as
14 far as I'm concerned, what's in the record will be the
15 couple pages you think are -- well you don't think any of
16 it is relevant.

17 MS. CENDROSKY: Correct. Thank you.

18 JUDGE AMCHAN: That's less irrelevant than
19 the other part and your part and I just assume have it in
20 if there's no question on accuracy.

21 MS. LAWHON: Your Honor, at, at --

22 MR. BRYAN CARMODY: Your Honor for us it --

23 MS. LAWHON: Excuse me counsel --

24 MR. BRYAN CARMODY: -- I mean --

25 MS. LAWHON: -- I was speaking -- counsel.

1 JUDGE AMCHAN: Well, I guess, why don't you
2 go first, you go second --

3 MS. LAWHON: Thank you.

4 JUDGE AMCHAN: -- but kind of --

5 MS. LAWHON: What, what I wanted to --

6 JUDGE AMCHAN: -- let's get along today.

7 MS. LAWHON: What I was going to say Your
8 Honor is that if any part of it goes in I would ask that
9 only the discreet portions, that not the entire transcript
10 goes in.

11 It really does not belong in this record for all
12 the reasons Counsel argued and even if your ruling is that
13 you want, if it's accurate to receive the portions, I
14 would ask that you receive those portions.

15 It's easy enough to make a copy of a page and,
16 you know, put in the, the seven lines or the 12 lines in
17 question.

18 JUDGE AMCHAN: Well that, I don't have any
19 problem with that. I guess I'd prefer it. It makes,
20 makes it easier for whoever's reviewing it to find what,
21 what is arguably relevant. Probably want to put the first
22 page, you know, so it's clear exactly what this is.

23 MR. BRYAN CARMODY: It's -- Your Honor I
24 don't have any problem with offering into evidence only
25 those portions of the transcript which the witness was

1 questioned about.

2 I'm more than happy to play, also for Your Honor,
3 those -- this, this is accurate and you'll hear with your
4 own ears, these words spoken by me, these words spoken by
5 Ms. Wayt.

6 MS. BRUNDAGE: Further we can produce
7 evidence to show that that recording was received from the
8 Unemployment Review Commission as part of a request for a
9 copy of the audio file. So there shouldn't be a problem
10 with authentication.

11 JUDGE AMCHAN: Well I guess I'm -- you know I
12 would just like them to determine whether they have a
13 problem with it, the accuracy of the relevant portions.
14 If not I, I would --

15 MS. CENDROSKY: General Counsel is not
16 objecting to its accuracy; only under the two relevancy
17 rules and the rule under prior statements.

18 JUDGE AMCHAN: Well you're willing to
19 stipulate that those portions are accurate?

20 MS. CENDROSKY: Correct Your Honor and if we
21 can stipulate to the fact that we will look at only the
22 portions of the transcript which were used yesterday with
23 Ms. Wayt.

24 MS. LAWHON: And the additional portion which
25 was omitted by counsel which reflects testimony --

1 MS. CENDROSKY: Correct.

2 MS. LAWHON: -- consistent with her testimony
3 here.

4 MS. CENDROSKY: Those two pages I will not
5 object to their authenticity.

6 JUDGE AMCHAN: Then I will receive them. I
7 just make clear -- I don't know if you want to make R-4 a
8 new exhibit with a lot less pages and why don't we do that
9 and then I'll receive it.

10 MR. BRYAN CARMODY: Could I have just one
11 moment Your Honor?

12 JUDGE AMCHAN: Sure.

13 MS. LAWHON: Your Honor are we off the record
14 or on?

15 JUDGE AMCHAN: We're on.

16 MS. CENDROSKY: No we're on the record.

17 MS. LAWHON: Okay. At some point maybe we
18 could clarify exactly what we're talking about here as the
19 excerpt.

20 MS. BRUNDAGE: Could -- what are the -- yes,
21 let's actually do that. I'd like to know which pages in
22 particular.

23 I know that they were the pages that my
24 co-counsel offered but what are the pages that you're
25 seeking to offer into evidence to illustrate the --

1 MS. CENDROSKY: Do you have it as co-counsel
2 offered 34 and 35?

3 MS. LAWHON: It's actually Line 19 on 34,
4 right?

5 MR. BRYAN CARMODY: Uh-huh.

6 MS. LAWHON: Through -- I have, I have Line
7 12 on 35.

8 MS. BRUNDAGE: Okay.

9 MR. BRYAN CARMODY: We agree.

10 MS. CENDROSKY: Okay.

11 JUDGE AMCHAN: That's Line 12, 19 to 12?

12 MS. LAWHON: Yeah.

13 MS. CENDROSKY: Uh-huh.

14 MS. LAWHON: Yes. 34 to 35.

15 MS. BRUNDAGE: Any other page?

16 MS. LAWHON: And I think that's it.

17 MS. BRUNDAGE: That's it?

18 MS. CENDROSKY: Well and then we have --

19 MS. LAWHON: From -- yeah, I have one from us
20 but that's all that was used in her examination.

21 MR. BRYAN CARMODY: But counsel you're asking
22 for this other portion to be --

23 MS. LAWHON: I am.

24 MR. BRYAN CARMODY: -- included --

25 MS. LAWHON: I'm about to get to that but I

1 want to confirm that that's all that was used for
2 examination.

3 MR. BRYAN CARMODY: No.

4 MS. LAWHON: 34, 19 to 35, 12, right?

5 MR. BRYAN CARMODY: No, that's not correct.

6 MS. LAWHON: Well let's go to what else you
7 think you used.

8 MR. BRYAN CARMODY: The other portion would
9 be on Page 39, I don't, I believe it was number Line 3 to
10 Line 11. This concerned her recollection of head to toe
11 assessment.

12 MS. CENDROSKY: Do you recall that being in
13 the record? Do you cause I don't have it?

14 MS. LAWHON: I, I think she was asked about
15 Line 3 --

16 MR. BRYAN CARMODY: She had testified --

17 MS. LAWHON: Wait, excuse me, counsel --

18 MR. BRYAN CARMODY: -- that the head to toe
19 assessment --

20 MS. LAWHON: Would you please try --

21 MR. BRYAN CARMODY: I'm trying to help you
22 counsel.

23 MS. LAWHON: -- to -- I don't need your help.

24 JUDGE AMCHAN: Okay. Just one at a time.
25 Try to get along a little better.

1 MS. LAWHON: Yeah I think he did.

2 MS. CENDROSKY: Okay --

3 MR. BRYAN CARMODY: Yeah, I know I did.

4 MS. CENDROSKY: Which lines --

5 JUDGE AMCHAN: He said 3 to 11 on Page 39.

6 MS. LAWHON: Is that it counsel?

7 MR. BRYAN CARMODY: Yes.

8 MS. LAWHON: Okay. And the portion I found
9 is -- I think you can really use Page 28, Line 25, cause
10 that's where the question really starts. There's a lot of
11 preparatory material by the coun-, by counsel.

12 JUDGE AMCHAN: Wait, that's in the middle of
13 --

14 MS. LAWHON: It's because he's making a long
15 statement about what he's doing, et cetera, but the
16 question begins, was she --

17 JUDGE AMCHAN: All right.

18 MS. LAWHON: -- on the last line and --

19 MR. BRYAN CARMODY: What line counsel on Page
20 28?

21 MS. LAWHON: Line 25. And it goes to Line 6,
22 Page 29, Line 6. That's the answer.

23 MR. BRYAN CARMODY: No objection.

24 JUDGE AMCHAN: All right.

25 MS. CENDROSKY: What page is it, 28?

1 MS. LAWHON: 28, Line 25; 29, Line 6.

2 MR. BRYAN CARMODY: Your Honor, I suppose
3 what I would do is withdraw the current document that's
4 marked as Respondent's Exhibit 4 and substitute for that a
5 revised version, which is consistent with the page numbers
6 we just discussed?

7 JUDGE AMCHAN: Yeah.

8 MR. BRYAN CARMODY: Okay.

9 JUDGE AMCHAN: I, I think -- the only thing I
10 think the front sheet should be on --

11 MR. BRYAN CARMODY: Yes, sir.

12 JUDGE AMCHAN: -- so it's clear what it is.

13 MS. LAWHON: Your Honor, I'd like to reserve
14 the right to -- I mean as you know we received this
15 yesterday.

16 I did not, not knowing what you're ruling would
17 be, I did not review it. I found the first discrepancy
18 just in the lunch break yesterday.

19 I would like the opportunity to review this more
20 thoroughly to see if there's any other testimony that is
21 inconsistent with the part counsel's relying on so I could
22 include that as well.

23 JUDGE AMCHAN: Okay.

24 MS. LAWHON: Thank you.

25 JUDGE AMCHAN: Anybody else have anything

1 before we -- I actually have a couple of things but, do

2 you have anything else before --

3 MR. BRYAN CARMODY: Your Honor, I would just

4 like to include whatever -- just one moment please.

5 I would also just like to include Your Honor in

6 Respondent's, the revised version of Respondent's Exhibit

7 4, Pages 6 and 7 but only to the extent that it's

8 necessary to show that Ms. Wayt's testimony was under

9 oath.

10 MS. LAWHON: We can stipulate that she was

11 sworn counsel.

12 MR. BRYAN CARMODY: Fine, we'll stipulate.

13 JUDGE AMCHAN: All right.

14 MS. LAWHON: On the phone.

15 MS. CENDROSKY: That's fine.

16 JUDGE AMCHAN: Okay. Do you have anything

17 else?

18 MS. CENDROSKY: No.

19 MR. BRYAN CARMODY: No, sir, nothing from the

20 Employer.

21 JUDGE AMCHAN: I have a couple things. When

22 I looked at the formal papers and I just want to make

23 sure, as far as I'm concerned the Region's report on

24 challenged ballots and objections is part of this record.

25 The motion and limine is part of this record; the

1 Union's motion in limine. The responses of Respondent
2 Employer and the General Counsel is part of this record
3 and my Order on the motion of limine is in the record.

4 And it's important to me, I mean if there's any
5 sort of issue about procedural due process, it seems to me
6 the Court has to see what I did and why.

7 MR. BRYAN CARMODY: I agree, Judge. I
8 actually had along those same lines some similar requests
9 that now seems like the right point in time to do it.

10 I'd also like, as Your Honor is aware under the
11 Board's Rules, subpoenas and petitions to revoke are not
12 what automatically a part of the record.

13 I would like to put into the record the subpoenas
14 that were served, all of the subpoenas that were
15 ultimately revoked by Your Honor, the related petitions to
16 revoke, the Orders that were issued by Your Honor.

17 The Counsel for the General Counsel, was there an
18 Order issued by the Regional Director transferring these
19 petitions to revoke to the Judge?

20 MS. LAWHON: I filed the petition with the
21 ALJ --

22 MS. CENDROSKY: I don't --

23 MS. LAWHON: -- counsel.

24 MS. CENDROSKY: I didn't tell him.

25 MR. BRYAN CARMODY: Okay. Well they're

1 supposed to get filed with the Regional Director under the
2 Board's Rules for the hearing.

3 MS. LAWHON: The Judge Your Honor -- the --
4 Your Honor told me to file it with him in the phone
5 conversation.

6 JUDGE AMCHAN: What ever, what ever --

7 MS. LAWHON: Which I then did.

8 JUDGE AMCHAN: -- whatever you want in with
9 regard to the subpoenas --

10 MR. BRYAN CARMODY: Thank you, sir.

11 MS. CENDROSKY: Your Honor, I do have one
12 clarification on his request and I would like that only
13 the subpoenas that he submitted that were subject to the
14 petition to revoke to be included, not all the subpoenas.

15 As I do recall yesterday, Your Honor, you ruled
16 that one of the subpoenas was not necessary to make as an
17 exhibit or include in the record.

18 So just the subpoenas that are responsive to the
19 petition to revoke, I would ask be in the record; not all
20 of the subpoenas.

21 MS. LAWHON: And Your Honor those subpoenas,
22 four of them, are attached to my petition to revoke. So
23 they're in, in the revoke if the petition to revoke is in
24 the record.

25 MS. CENDROSKY: Okay.

1 MS. LAWHON: Which I understand it is not at
2 this point.

3 MS. CENDROSKY: I would request, I would
4 request that the subpoenas that are related to Ms. Wayt,
5 Ms. Mahon are not included in that. They were not subject
6 to the petition to revoke --

7 MR. BRYAN CARMODY: Well Ms. Mahon's --

8 MS. CENDROSKY: -- per your ruling.

9 MR. BRYAN CARMODY: I'm sorry, counsel.
10 Ms. Mahon's subpoena was in part the subject to --

11 MS. LAWHON: And it's attached.

12 MR. BRYAN CARMODY: -- to --

13 MS. LAWHON: -- as I just say.

14 MR. BRYAN CARMODY: Okay. Okay. Well that's
15 fine Judge. I'm not one form over substance. If it's in
16 the record, it's in the record.

17 JUDGE AMCHAN: Okay. Okay. I have two other
18 quick things. One, just so I don't forget about it, when
19 you, when you prepare the post-trial briefs I'm going to
20 need some help on HIPPA, which is not something I normally
21 deal with.

22 I've had it come up in some information cases and
23 actually did some research. I'll help you in case you're
24 not aware of this, it's for, some information cases where
25 its been raised, I did find the Federal Register Notice

1 with the Preamble to the final rule, which you might want
2 to look at which is in the Federal Register of December
3 28, 2000. It's Volume 65, Number 250, starting at Page
4 82462. I don't --

5 MS. LAWHON: I'm sorry, Your Honor, could you
6 go after Volume 65 one more time?

7 JUDGE AMCHAN: Yes, okay. Volume 65, Number
8 250 --

9 MS. LAWHON: Okay.

10 JUDGE AMCHAN: -- it's Thursday, December 28,
11 2000. I mean it starts at Page 82462. For some reason
12 and this was some time ago, and there's some discussion of
13 the relation of HIPPA and the National Labor Relations Act
14 in the Preamble, which I do recall looking at.

15 Couldn't tell you whether it was six months ago
16 or a year ago and that's probably about the sum total that
17 I know about it but it does seem to me that, you know,
18 what is a HIPPA violation and the consequences are
19 particularly relevant to the exclusion of Ms. Mahon from
20 the premises whether that's a legitimate reason to do
21 that.

22 I have something else. I wanted to ask, I'm
23 assuming and I just want to make sure that there's no
24 dispute that the ballots were counted on the August 29th?

25 MS. LAWHON: No they were not Your Honor.

1 JUDGE AMCHAN: They --

2 MS. LAWHON: Challenges were determinative
3 and that's reflected in the report on Challenges and
4 Objections.

5 JUDGE AMCHAN: But was there an initial count
6 that was --

7 MS. LAWHON: Oh yes, yes, yes there was --

8 JUDGE AMCHAN: Right cause --

9 MS. LAWHON: -- it was 100 to 96 with seven
10 challenges.

11 JUDGE AMCHAN: Right. That's, that's what I
12 want to clarify cause --

13 MS. LAWHON: Yeah.

14 JUDGE AMCHAN: -- the Region, the Regional
15 Director wouldn't have known whether the challenges were
16 determinative --

17 MS. LAWHON: Oh right.

18 JUDGE AMCHAN: -- until he saw the, what the
19 initial count was.

20 MS. LAWHON: Do you, do you want the tally in
21 the record Your Honor? It's easy enough.

22 MS. CENDROSKY: I believe it's part of the --

23 JUDGE AMCHAN: It's part -- it's in the
24 report.

25 MS. CENDROSKY: -- report. Yes.

1 JUDGE AMCHAN: But it's not clear that -- I
2 mean I don't do election stuff but, but my understanding
3 is that generally the ballots are counted --

4 MS. LAWHON: Absolutely.

5 JUDGE AMCHAN: -- that day.

6 MS. LAWHON: Well unless there's --

7 MR. BRYAN CARMODY: It's my -- I wasn't
8 present for the election, Your Honor, but my understanding
9 is that the ballot box was opened and they were dumped out
10 and counted by the Board Agents --

11 JUDGE AMCHAN: Right.

12 MS. LAWHON: I, I wasn't present --

13 MR. BRYAN CARMODY: -- supervisor.

14 MS. LAWHON: -- but I know the ballots were
15 counted and ordinarily they will be counted except if
16 there's a review granted or still a request for review
17 pending or they're impounded for some other reason but --

18 JUDGE AMCHAN: Right, I had a case --

19 MS. LAWHON: -- usually they're counted.

20 JUDGE AMCHAN: -- I had a case where they
21 were, you know, it was a case where they were impounded
22 for three years.

23 MS. LAWHON: Yes.

24 JUDGE AMCHAN: So, but, but I just want to
25 make sure on the record that there's no dispute about

1 that.

2 MS. LAWHON: Your Honor that's why there's a
3 gap between the report on objections and the certification
4 because --

5 JUDGE AMCHAN: Right.

6 MS. LAWHON: -- because in the interim, based
7 on the ballots found, the challenges overruled those four
8 ballots were counted and a revised count was issued, which
9 led to the certification.

10 JUDGE AMCHAN: Okay. I guess we're ready --
11 are we ready for witnesses?

12 MR. BRYAN CARMODY: I believe so, sir.

13 JUDGE AMCHAN: Okay.

14 MS. CENDROSKY: Do you want to come with me
15 or do you care if I get her?

16 MS. BRUNDAGE: I can -- yeah --

17 MS. CENDROSKY: You'll come with me?

18 MS. BRUNDAGE: Yeah, I can come with you.

19 JUDGE AMCHAN: Okay.

20 MS. BRUNDAGE: Affinity Medical Center is
21 calling Rhonda Smith.

22 JUDGE AMCHAN: Ms. Smith, please raise your
23 right hand.

24 WHEREUPON,

25 RHONDA SMITH,

1 A witness herein, after first being duly cautioned and
2 sworn, was examined and testified as follows:

3 JUDGE AMCHAN: Okay. And the microphones are
4 only recording devices. You have to keep your voice up
5 and stay close to the microphone.

6 THE WITNESS: Okay.

7 DIRECT EXAMINATION

8 BY MS. BRUNDAGE:

9 Q. Good morning Ms. Smith.

10 A. Good morning.

11 Q. Could you please state and spell your name for
12 the record?

13 A. My name is Rhonda Smith, R-h-o-n-d-a,
14 S-m-i-t-h.

15 Q. Are you currently employed?

16 A. Yes I am. I work at Affinity Medical Center.

17 Q. And what position do you hold at Affinity
18 Medical Center?

19 A. I'm a Registered Nurse working in open heart
20 surgery.

21 Q. Okay. Is open heart surgery also referred to
22 as the Cardio Vascular Operating Room?

23 A. Yes it is.

24 Q. Okay. And if I refer to it as CVOR or Open
25 Heart, would you know what I was referring to?

1 A. Yes.

2 Q. When did you begin working as an RN in the
3 CVOR?

4 A. About two years ago.

5 Q. Did you work at Affinity Medical Center prior
6 to that?

7 A. Yes I did.

8 Q. Where did you work?

9 A. In the obstetrics department.

10 Q. Were you a registered nurse?

11 A. Yes.

12 Q. How many years did you serve as a registered
13 nurse in the obstetrics department?

14 A. Thirty-three years I believe.

15 Q. Going back to your current position, could you
16 briefly describe the duties of your position as a
17 registered nurse in the CVOR?

18 A. We circulate for surgical cases. We do the
19 paperwork as far as the operative record and we also scrub
20 in and hand instruments to the doctor.

21 Q. Okay. And who's your supervisor in the CVOR?

22 A. Jeremie Montabone.

23 Q. Okay. I want to turn your attention to a
24 particular date now. Do you recall whether you were
25 working on August 28th, 2012?

1 A. Yes I was.

2 Q. And what are your normal hours of work?

3 A. We usually work 6:30 to 3:00; sometimes it's

4 6:00 to 2:30.

5 Q. Okay. Do you recall what hours you worked on

6 August 28th?

7 A. 6:30 to 3:00.

8 Q. Okay. Did you stay any later than three

9 o'clock?

10 A. Yes I did.

11 Q. Okay. Why was that?

12 A. Because I was a sitter up on the orthopedic

13 floor.

14 Q. Okay. Did your department, the CVOR, have any

15 surgeries scheduled on August 28th?

16 A. No we did not.

17 Q. Okay. And what were your job duties on August

18 28th?

19 A. I was originally we were stocking the rooms and

20 everything and then Jeremie asked if I would go upstairs

21 to be the sitter.

22 Q. Okay. What is a sitter?

23 A. A sitter is somebody who sits or stands

24 besides, within arms length, of the patient's bed to make

25 sure they don't fall out of bed or try and hurt

1 themselves.

2 Q. Okay. Have you -- during your time working as
3 an RN at Affinity Medical Center, have you served as a
4 sitter before?

5 A. Yes I have.

6 Q. When was that?

7 A. When I was working with the obstetrics
8 department at different times.

9 Q. Okay. And per Jeremie's request did you serve
10 as a sitter on August 28th?

11 A. Yes I did.

12 Q. What time on August 28th did you go to the
13 orthopedic unit to serve as the patient's sitter?

14 A. About 9:15.

15 Q. Okay. Do you remember the gender of the
16 patient?

17 A. Was a female, I believe.

18 Q. And the approximate age as in was she young,
19 middle aged --

20 A. She was --

21 Q. -- elder?

22 A. -- older.

23 Q. I'm sorry, could you say that again?

24 A. She was elderly.

25 Q. Okay. Where was the patient when you reported

1 to the orthopedic unit to serve as the sitter?

2 A. She was on her way up to the floor at that
3 time.

4 Q. Okay. And --

5 A. From --

6 Q. -- and so where did you meet her?

7 MS. LAWHON: Objection, foundation. Move to
8 strike.

9 JUDGE AMCHAN: Well --

10 MS. LAWHON: How does she know? If she isn't
11 clear she's in the same elevator.

12 MR. BRYAN CARMODY: I'm sorry, I can rephrase
13 if you'd like.

14 JUDGE AMCHAN: Okay.

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. BRUNDAGE:

17 Q. Did you arrive on the orthopedic unit
18 Ms. Smith?

19 A. Yes I did.

20 Q. Okay. And when you arrived on the unit, where
21 was the patient?

22 MS. LAWHON: Objection, foundation, if she
23 knows from her own experience where the patient was.

24 JUDGE AMCHAN: Well, you got there and did
25 you go -- what did you do when you got there?

1 THE WITNESS: I walked to the floor, went to
2 the nurses' station and as I was at the nurses' station
3 the patient was going by on the cart and I followed her to
4 the room.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. BRUNDAGE:

7 Q. Okay. And when you were following the patient
8 to the room, who was present with the patient?

9 A. Susan Kress, the RN from the emergency room. I
10 followed her down and then the patient care tech from the
11 floor followed us.

12 Q. Okay. Was there any family with the patient?

13 A. The were following behind.

14 Q. Okay.

15 JUDGE AMCHAN: So, I'm sorry, so it was
16 Ms. Kress, the family and who else, the ER?

17 THE WITNESS: The ER Nurse and a patient care
18 tech.

19 JUDGE AMCHAN: Do you remember who those
20 people were, the ER Nurse and the patient care tech?

21 THE WITNESS: The patient care tech was Sam,
22 he works on the floor; the ER Nurse, I don't recall who
23 she was.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. Okay. As the patient sitter were you the
2 primary nurse assigned to care for the patient that day?

3 A. No I was not.

4 Q. Do you know who the nurse assigned to the
5 patient was that day?

6 A. I believe it was Ann Wayt.

7 Q. Did you know Ann Wayt prior to August 28?

8 A. Seeing her around the hospital, yes.

9 Q. Okay. Do you recall whether a union campaign
10 took place at the hospital in 2012?

11 A. Yes it did.

12 Q. And do you recall whether that campaign was
13 happening on August 28th?

14 A. Yes, the vote was the next day.

15 Q. Okay. Do you know whether or not Ann supported
16 the union in the campaign?

17 A. I had no idea at that time.

18 Q. Okay. Returning to the events of August 28th,
19 did you see Ann Wayt when you arrived on the orthopedic
20 unit to serve as the patient's sitter?

21 A. Yes, she was at the nurses' station.

22 Q. Did you speak with Ann at that point in time?

23 A. Yes, she told me to follow the patient to the
24 room.

25 Q. Okay. Who was in the patient's room when the

1 patient was wheeled into her room?

2 A. When we went into the room there was the
3 patient on the gurney, myself, Susan Kress, Sam the
4 patient care tech, and the emergency room nurse.

5 Q. Was there family present in the room?

6 A. They came in as we were moving the patient to
7 the bed.

8 Q. When you met the patient on the orthopedic unit
9 and proceeded to follow her into her room, did you observe
10 the patient's condition?

11 A. Yes.

12 Q. What things about the patient did you note at
13 that time?

14 A. At that time I could see she had an I.V. and
15 she seemed a little on the confused side.

16 Q. Okay.

17 (Whereupon Respondent's Exhibit Number 12 was marked
18 for identification)

19 Q. This is a two-page document and show you that
20 it's intended to be attached to each other in a manner
21 that this diagram over here is.

22 MS. LAWHON: Do you have any scotch tape?

23 MS. BRUNDAGE: I have a stapler. I'm going
24 to give you a copy of this. Actually I should probably
25 have it marked first. One second. Could I have this

1 marked as Respondent's 11 please.

2 MS. LAWHON: Could you -- do you think you
3 could go get some tape.

4 MS. CENDROSKY: I don't, I don't have any.

5 MS. LAWHON: I'm sorry, I didn't mean to take
6 your stapler.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. BRUNDAGE:

9 Q. Rhonda, I'm showing you what's been marked --

10 MS. LAWHON: I'm sorry counselor, could you
11 give me a minute?

12 MS. BRUNDAGE: Sure.

13 MS. LAWHON: I have to assemble my exhibit.

14 MS. BRUNDAGE: Sure, no problem. Just let me
15 know when you're ready to continue on.

16 MS. LAWHON: I certainly will. I'm ready.

17 MS. BRUNDAGE: Okay.

18 MS. LAWHON: And this is what number?

19 JUDGE AMCHAN: 11.

20 MS. BRUNDAGE: Respondent's 11.

21 MS. LAWHON: Thank you.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. BRUNDAGE:

24 Q. Okay Rhonda, I'm showing you what's been

25 marked, you've got a copy in front of you that's a smaller

1 version, as Respondent's Exhibit 11.

2 Do you recognize this diagram?

3 A. Yes.

4 MS. LAWHON: Wait, I'm sorry, I have an 11

5 already.

6 MS. BRUNDAGE: Oh I'm sorry.

7 MR. BRYAN CARMODY: It's 12.

8 MS. BRUNDAGE: Okay so I'll have it remarked.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Okay. Rhonda, I'm showing you what's been

12 marked as Respondent's Exhibit 12. Do you recognize this

13 diagram?

14 A. Yes I do.

15 Q. Okay. And what does this diagram depict?

16 A. It basically depicts the lay out of the

17 orthopedic unit.

18 Q. Are you familiar with the lay out of the

19 orthopedic unit?

20 A. Yes I am.

21 Q. And why is that?

22 A. Because that used to be the old obstetrics

23 unit.

24 Q. Where you worked --

25 A. Right.

1 Q. -- prior to --

2 A. Yes.

3 Q. Okay. And can you indicate for me where you
4 arrived on the floor on August 28, 2012?

5 A. I walked from the elevators down and then to
6 the nurses' station.

7 Q. Okay. And approximately where would you have
8 met the patient?

9 A. Right about the nurses' station area.

10 Q. Okay. And where did you see Ann Wayt?

11 A. Right in the nurses' station.

12 Q. Okay. And then what room was the patient
13 brought to?

14 A. Down to 3420.

15 Q. Okay. So you're indicating the room at the far
16 end of the exhibit?

17 A. Yes.

18 Q. Okay. Thank you. Did you remain in the
19 patient's room for the whole time that you served as a
20 sitter to the patient?

21 A. Other than when I went to lunch, yes I was.

22 Q. Okay.

23 MS. CENDROSKY: Your Honor --

24 JUDGE AMCHAN: Uh-huh.

25 MS. CENDROSKY: -- are you -- do you plan on

1 moving to admit this?

2 MS. BRUNDAGE: Yes but not under this

3 witness.

4 MS. CENDROSKY: Okay. Well, I actually --

5 MS. LAWHON: We, we --

6 MS. CENDROSKY: -- I'm going to object

7 because there's no foundation for authenticity with this.

8 I think that witness should be put on first before there's

9 any questions asked because quite frankly --

10 MS. BRUNDAGE: Okay, if you'd like me to move

11 for having the exhibit admitted then I move for admission

12 of Respondent's Exhibit 12.

13 MS. LAWHON: Object.

14 MS. CENDROSKY: And we -- I object as well.

15 I don't think it's been -- I assume you didn't prepare

16 this?

17 THE WITNESS: No I did not.

18 MS. CENDROSKY: Okay. Then I don't need to

19 go through all the other authentication issues with this.

20 MS. BRUNDAGE: Your Honor --

21 MS. LAWHON: There are -- excuse me, may I

22 speak?

23 MS. BRUNDAGE: Absolutely.

24 MS. CENDROSKY: And I think it's actually

25 lacking dimensions. I think we don't know anywhere where

1 the -- I don't know who created it. I don't know if it's
2 an accurate depiction because I've never visited the
3 hospital. So, yeah, I'm -- there's many reasons why I'm
4 going to object --

5 JUDGE AMCHAN: Well I --

6 MS. CENDROSKY: -- Jane, go ahead.

7 MS. LAWHON: It purports to have measurements
8 on it. I'm sure this witness could not authenticate those
9 measurements. She, she could say and did that the room,
10 3420, is in the right corner of the unit but that, you
11 don't need this document for.

12 The document itself purports to, has a lot of
13 information that can't be authenticated by this witness.
14 It should not go into evidence, absent authentication.

15 JUDGE AMCHAN: Well, I'm going to -- did you
16 move for its admission?

17 MS. BRUNDAGE: Only after request of the
18 General Counsel.

19 JUDGE AMCHAN: Well I'm going to receive it
20 for limited purposes showing the, the relative
21 relationship between the nurses' station and, and Room
22 3420.

23 MS. BRUNDAGE: Okay, thank you Your Honor.

24 JUDGE AMCHAN: I think it's relevant least, I
25 mean if there's some dispute about that, I'm not -- the

1 patient was in the furthest room -- if you walked to her
2 room you couldn't walk any further, correct?

3 THE WITNESS: That's correct.

4 JUDGE AMCHAN: Okay. I'll receive it for
5 that limited purpose, you know, the relationship where the
6 patient's room was and the nurses' station and where
7 Ms. Smith --

8 MS. CENDROSKY: Your Honor, my only concern
9 with that is because I don't know the dimensions of Room
10 3414, 3416, 3418, 3420; it looks like 3420 on this diagram
11 is a little bit smaller than 3418.

12 I don't know the dimensions of the nurses'
13 station. I don't know if the nurses' station is a
14 situation --

15 JUDGE AMCHAN: I'm not --

16 MS. CENDROSKY: -- where you could look down
17 and see --

18 JUDGE AMCHAN: I'm not receiving it for that.

19 MS. CENDROSKY: -- the room.

20 JUDGE AMCHAN: I'm receiving it as if it was
21 a hand-drawn sketch by the witness.

22 MS. BRUNDAGE: And I would anticipate there's
23 going to be similar debate about Respondent's 13.

24 JUDGE AMCHAN: All right.

25 MS. BRUNDAGE: I'm happy to move it so you

1 can place your objections on the record but it was never
2 my intent to introduce it under this witness because she
3 can't authenticate the flanks.

4 I was hoping perhaps we could stipulate to that
5 but I'm happy to present the preparer of this document --

6 JUDGE AMCHAN: Well --

7 MS. CENDROSKY: I don't even know what that
8 is yet.

9 MS. BRUNDAGE: Okay.

10 MS. LAWHON: Yeah, we haven't seen it yet,
11 counsel.

12 MS. BRUNDAGE: Okay. I will mark this as
13 Respondent's 13 please.

14 (Whereupon Respondent's Exhibit Number 12 was received
15 into the record)

16 (Whereupon Respondent's Exhibit Number 13 was marked
17 for identification)

18 MS. LAWHON: Excuse me counsel, you're
19 supposed to show it to me before the witness.

20 MS. BRUNDAGE: I'm sorry, my mistake.

21 MS. LAWHON: Thank you.

22 MR. BRYAN CARMODY: Your Honor, I don't
23 believe that's --

24 MS. CENDROSKY: It is, yes, it is.

25 MR. BRYAN CARMODY: -- technical for

1 procedures.

2 MS. CENDROSKY: Yes, it is.

3 MS. BRUNDAGE: Okay, well my apologies. I'll

4 make sure to give you yours first.

5 MS. CENDROSKY: Is this, is this a double one

6 again? Am I stapling --

7 MS. BRUNDAGE: No, I'm sorry, I must have

8 handed you two copies.

9 MS. CENDROSKY: This is, what number are we

10 at now?

11 JUDGE AMCHAN: 13.

12 MR. BRYAN CARMODY: 13.

13 MS. CENDROSKY: Okay. Thank you. I'll mark

14 it myself.

15 MS. BRUNDAGE: Would you like me to pre-mark

16 them for you as well? I'm happy to do it.

17 MS. CENDROSKY: If you want to, sure.

18 MS. BRUNDAGE: Oh, I just thought you had

19 made that comment because you wanted it marked. Okay.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Rhonda, I'm showing you what's been marked for

23 identification purposes as Respondent's Exhibit 13. Does

24 this diagram look familiar to you?

25 A. Yes it does.

1 Q. And what does the diagram depict?

2 A. The room 3420 where the patient was.

3 Q. Okay. And are you familiar with this room?

4 A. Yes I am.

5 Q. How so?

6 A. From working in there when it was an OB

7 department.

8 Q. Are you also familiar from it from August 28th?

9 A. Yes.

10 MS. LAWHON: Objection, leading.

11 JUDGE AMCHAN: Overruled.

12 Q. And --

13 JUDGE AMCHAN: Well she didn't answer.

14 Overruled means you can answer.

15 A. Oh, yes.

16 Q. Okay. And looking at the diagram that's been
17 marked as Respondent's Exhibit 13, can you indicate for me
18 where the patient was located in the room?

19 JUDGE AMCHAN: I guess one thing, I mean, in
20 terms of the orientation of the room, it almost seems to
21 me that it should be upside down.

22 MS. CENDROSKY: I'm lost.

23 MS. LAWHON: I, I know what you mean Your
24 Honor, to match 12.

25 JUDGE AMCHAN: Yeah.

1 MS. LAWHON: Yep.

2 MS. BRUNDAGE: Sure, it can be, it can be
3 turned.

4 JUDGE AMCHAN: Yeah, I mean I don't want to
5 confuse things. I mean it seems to --

6 MS. BRUNDAGE: If I were to --

7 JUDGE AMCHAN: -- me --

8 MS. BRUNDAGE: -- I don't want, I don't want
9 to put testimony in but if I were to put the documents
10 together, this would be a blow up in this direction of the
11 room indicated on here.

12 JUDGE AMCHAN: Well --

13 MS. BRUNDAGE: So the call light would be
14 there.

15 JUDGE AMCHAN: All right, I guess it's --
16 just as long as we all agree that in terms of orientation,
17 you would turn the, the window facing south would be at
18 the bottom of the document and --

19 MS. BRUNDAGE: Correct, Your Honor.

20 JUDGE AMCHAN: -- the door opening would be
21 at the top.

22 MS. BRUNDAGE: Okay. So I'll, I'll utilize
23 the diagram in that manner.

24 JUDGE AMCHAN: Okay.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Okay. So Ms. Smith, can you indicate where the
3 patient was located in the room?

4 A. Sure was on the bed.

5 Q. Okay. And where was her head?

6 A. Her head was up where the indication for the
7 pillow is.

8 Q. Okay. And --

9 JUDGE AMCHAN: Which is a rect-, a small
10 rectangle beside the bed?

11 THE WITNESS: Yes.

12 Q. And where were her feet?

13 A. Her feet were down at the area that's opened,
14 that's marked on the bed.

15 Q. Okay. And when you were serving as the sitter
16 on August 28th and you came into the room, you've
17 testified shortly after 9:15, where were you standing in
18 the room?

19 A. In the morning I was on, I guess it would have
20 been the right side by where the portable bedside table is
21 because family members were on the other side in the
22 chairs.

23 Q. Okay. Where were the family members located?

24 A. Her son was in the big chair and her
25 granddaughter was in the little chair.

1 Q. Okay. And --

2 JUDGE AMCHAN: Well there's three chairs.

3 Which one are you --

4 THE WITNESS: The one that's closest to the
5 window.

6 JUDGE AMCHAN: So the one in the middle?

7 THE WITNESS: Yes.

8 JUDGE AMCHAN: Okay.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Okay. And Ms. Smith when you served as a
12 sitter on the 28th were you sitting in the patient's room
13 or standing in the patient's room?

14 A. I was standing in the patient's room.

15 Q. Why?

16 A. Because she was very agitated and was always
17 trying to get out of bed and throwing her sheets and her
18 gown off.

19 Q. Okay, thank you.

20 JUDGE AMCHAN: Does the bed have side rails?

21 THE WITNESS: Yes it does.

22 JUDGE AMCHAN: Were they up?

23 THE WITNESS: The top ones were up; the
24 bottom ones you can't put them up unless for four up
25 unless you have the physician's order.

1 MS. LAWHON: Your Honor, could, just for the
2 sake of the record, the top ones is not going to be very
3 helpful I don't think unless you understand. I don't
4 understand what the top ones means.

5 JUDGE AMCHAN: Yeah, I guess --

6 MR. BRYAN CARMODY: Your Honor, it's not
7 coun- -- objection. It's not counsel's role --

8 MS. CENDROSKY: I mean I'm going to object --

9 MR. BRYAN CARMODY: Wait, I have an objection
10 here.

11 MS. CENDROSKY: Who's speaking at this time
12 I'd --

13 MR. BRYAN CARMODY: It is not counsel's role
14 to be clarifying testimony in the middle of this witness'
15 testimony. She's going to have an opportunity for --

16 MS. CENDROSKY: I'd like the record to
17 reflect that counsel is pointing --

18 MR. BRYAN CARMODY: -- cross-examination,
19 that's when she's going --

20 MS. CENDROSKY: -- his finger at me.

21 MR. BRYAN CARMODY: -- to have that
22 opportunity.

23 JUDGE AMCHAN: All right. I don't --

24 MS. CENDROSKY: Okay and Your Honor --

25 MR. BRYAN CARMODY: Cause you interrupted me.

1 MS. CENDROSKY: Your Honor, I would ask --

2 MR. BRYAN CARMODY: He asked for --

3 MS. CENDROSKY: -- I would ask --

4 MS. BRUNDAGE: -- that means you don't

5 interrupt counsel.

6 MS. CENDROSKY: -- that only one of their

7 counsel be permitted to raise objections and speak to the

8 witness at a time. There rules provide -- there's no tag

9 teaming here.

10 JUDGE AMCHAN: I --

11 MR. BRYAN CARMODY: Really. You have counsel

12 for the General Counsel. We have counsel to the Charging

13 Party.

14 MS. CENDROSKY: Two different people; you're

15 Respondents. We're two different people.

16 MR. BRYAN CARMODY: And you've got two

17 lawyers teaming up with one another --

18 MS. CENDROSKY: No, she has her case --

19 MR. BRYAN CARMODY: -- throughout these

20 proceedings.

21 JUDGE AMCHAN: Well --

22 MS. CENDROSKY: -- I have mine.

23 MS. LAWHON: We have two parties counsel at

24 this table.

25 MS. CENDROSKY: Exactly.

1 MR. BRYAN CARMODY: I realize you have two
2 parties working in concert with one another.

3 JUDGE AMCHAN: Well, yeah that's true but I
4 guess to the extent --

5 MS. BRUNDAGE: If you, if it would be clearer
6 for the record, I would be happy to raise my co-counsel's
7 objection for the purposes of --

8 MS. CENDROSKY: I would appreciate that.

9 MS. BRUNDAGE: -- maintaining consistency for
10 --

11 MS. CENDROSKY: I would appreciate that.

12 JUDGE AMCHAN: Okay. Let's try to turn down
13 the heat. But I did -- okay. Since it came up I mean
14 I've been to hospitals before and I know there are rails
15 you put up so the patient can't roll out of bed.

16 So, there's more than -- there's a rail on each
17 side of the bed, right, or are there two rails on the side
18 of each bed?

19 THE WITNESS: There's two small rails on each
20 side of the bed. The ones at the head were up.

21 JUDGE AMCHAN: Okay. So the ones -- so the
22 -- you say that there are larger rails that would
23 basically cover the chest to the feet on each side --

24 MS. BRUNDAGE: Would it help if you had the
25 picture of the bed near you?

1 THE WITNESS: The bed rails are from, they

2 basically go from head to about chest --

3 JUDGE AMCHAN: Uh-huh.

4 THE WITNESS: -- and then from hips to feet.

5 JUDGE AMCHAN: Is another set of rails?

6 THE WITNESS: Yes.

7 JUDGE AMCHAN: And the ones that they --

8 THE WITNESS: And the ones from the head to

9 about the chest were the ones that were up.

10 JUDGE AMCHAN: And the other ones were not

11 because --

12 THE WITNESS: The other ones were not.

13 JUDGE AMCHAN: -- you didn't have a doctor's

14 order?

15 THE WITNESS: Yes.

16 JUDGE AMCHAN: And there are two on each,

17 right, there's one on each side?

18 THE WITNESS: There's -- yes.

19 JUDGE AMCHAN: Okay. All right. Go ahead.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay, Rhonda, while a nurse is serving as a

23 sitter you've testified you have experience serving as a

24 sitter, while a nurse is serving as a sitter, are you

25 permitted to read?

1 A. No you are not.

2 Q. Are you permitted to watch TV?

3 A. No.

4 Q. On the day in question were you focused on the
5 patient?

6 A. Yes I was.

7 Q. Okay. Why?

8 A. Because like I had said earlier, she was
9 agitated and was throwing her linens off and her gown off
10 and she was trying to get out of bed and I was constantly
11 reminding her she had to stay in bed.

12 Q. Okay. When did you first see Ann Wayt enter
13 the patient's room?

14 A. That was I believe around 10 o'clock when she
15 brought papers in.

16 Q. Okay. And what did she do when she was in the
17 patient's room?

18 A. Handed me a stack of papers and then talked
19 with the family; asked the son if he was power of attorney
20 and he had said no he wasn't.

21 Q. Okay. Are you familiar with the term head to
22 toe assessment?

23 A. Yes I am.

24 Q. What is that?

25 A. That's where you look at the patient and

1 basically do an assessment to see how they are, you know,
2 skin intact, if they're alert and oriented, listen to
3 their lungs and the abdomen, and everything.

4 Q. Okay. Have you ever performed such an
5 assessment before?

6 A. Yes when I worked in OB.

7 Q. Okay. Did Ann complete a head to toe
8 assessment of the patient in question when she was in the
9 room at, around 10 o'clock?

10 A. No.

11 Q. Did she conduct any kind of localized
12 assessment of the patient when she was in the room at 10
13 o'clock?

14 A. No.

15 MS. LAWHON: Objection, foundation. There is
16 absolutely no way this witness could know Ms. Wayt's
17 mental processes. There's -- it's impossible --

18 JUDGE AMCHAN: What, what did you see --

19 MS. CENDROSKY: And I would like a definition
20 of localized assessment.

21 JUDGE AMCHAN: Well what did you see her do?
22 What did you observe her do?

23 THE WITNESS: Just talk with the family.

24 JUDGE AMCHAN: And you didn't see Ann do
25 anything else?

1 THE WITNESS: No.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. Rhonda, are you familiar with the term hourly
5 rounding?

6 A. Yes.

7 Q. What is hourly rounding?

8 A. That is where you go into the patient's room,
9 ask them if they are in pain and if they need positioned
10 or if they need water or have to get up and go to the
11 bathroom.

12 Q. Have you completed hourly rounding during your
13 tenure as a registered nurse?

14 A. Yes I have.

15 Q. Okay. Is it possible to complete hourly
16 rounding from the doorway of a patient's room?

17 A. No.

18 Q. Why not?

19 A. Because you need to go in and actually talk
20 with the patients.

21 Q. Okay. And referring again to what's been
22 marked as Respondent's Exhibit 13, you've testified you
23 were in the room on August 28th?

24 A. Yes.

25 Q. From the doorway of the patient's room, which

1 I'm indicating for the record is at approximately the
2 location of the threshold indicated here on the call
3 light, is it possible to see the patient?

4 A. From that room no.

5 Q. Okay. And why is that?

6 A. Because there was a hallway in through there
7 that you had to come in to before you could actually see
8 the patient.

9 Q. And referring again to Exhibit 13,
10 approximately where would you have a visual of the patient
11 from based on your recollection of the room?

12 A. It would be right about where this wall is.

13 Q. And on the, for the record that would be, that
14 would be the witness is indicating the wall that is in
15 line with the clock.

16 When Ann was in the patient's, in the patient's
17 room at 10 o'clock, did she round on the patient?

18 A. No.

19 MS. LAWHON: Objection.

20 JUDGE AMCHAN: Well --

21 MS. LAWHON: That, that is, again, beyond
22 this witness' competence to know what was in Ms. Wayt's
23 mind.

24 JUDGE AMCHAN: Well she, she testified what
25 she considers rounding and --

1 MS. LAWHON: She, she could ask if she, what
2 she observed but she can't --

3 MS. BRUNDAGE: If you'd like me to strike --

4 MS. LAWHON: -- say if there was --

5 MS. BRUNDAGE: -- If you'd like me to
6 withdraw and rephrase I'd be happy to.

7 JUDGE AMCHAN: Okay.

8 MS. BRUNDAGE: But I think you understand
9 what we're talking about.

10 JUDGE AMCHAN: Although I mean she already
11 testified to what she observed.

12 MS. BRUNDAGE: Correct.

13 MS. LAWHON: Right.

14 MS. CENDROSKY: Your Honor, I don't
15 understand why were -- it's very repetitive.

16 MS. BRUNDAGE: I'd be happy to -- I have a
17 right to --

18 MS. CENDROSKY: It's kind of an asked and
19 answered actually.

20 JUDGE AMCHAN: Well I'm big one on that
21 objection.

22 MS. BRUNDAGE: I don't believe I asked her,
23 Your Honor, to address what I am not sure the pending
24 objection, don't believe I've asked the witness about
25 hourly rounding.

1 I'm happy to strike the question and replace it
2 with, did you observe Ms. Wayt complete hourly rounding
3 when she was in the room at 10 o'clock?

4 THE WITNESS: No.

5 MS. BRUNDAGE: Can I please have this marked
6 as R-14. Thank you.

7 (Whereupon Respondent's Exhibit Number 14 was marked
8 for identification)

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Ms. Smith, I'm now showing you a document
12 that's been marked for identification purposes as
13 Respondent's Exhibit 14.

14 Do you recognize this document?

15 A. Yes I do.

16 Q. Okay. And how do you recognize this document?

17 A. This is the hourly rounding form that we use at
18 the hospital.

19 Q. Okay. And pointing your attention to the car-,
20 the column that's marked RN/LPN initials, do you see that
21 column?

22 A. Yes I do.

23 Q. Do you recognize any of these initials?

24 A. Yes, my initials.

25 Q. Okay. In what rows do your initials occur in?

1 A. From Row, would have been 12 until 3:00 p.m.

2 Q. Okay.

3 MS. BRUNDAGE: I'd like to --

4 JUDGE AMCHAN: Okay, I see, right. There's a
5 hole punch right at 12.

6 MS. BRUNDAGE: I'd like to move to enter this
7 exhibit into evidence.

8 MS. LAWHON: Voir Dire Your Honor.

9 JUDGE AMCHAN: Yes.

10 MS. LAWHON: Thank you.

11 VOIR DIRE EXAMINATION

12 BY MS. LAWHON:

13 Q. Ms. Smith, my name is Jane Lawhon. I'm an
14 attorney for the National Nurses Organizing Committee.
15 You initialed at 12:00 p.m. with respect to -- are these
16 your dash marks all the way across?

17 A. Yes they are.

18 Q. Okay. So you initialed that you checked all of
19 those things at 12:00 p.m.?

20 A. Yes.

21 Q. So in effect you initialed it because you did
22 the hourly rounding --

23 A. Yes.

24 Q. -- at that time? And that's true for the four
25 times your initials appear here, you as a registered

1 nurse, did the hourly rounding, is that right?

2 A. I did the rounding yes.

3 Q. Okay. You changed it from hourly rounding to

4 rounding, there's no difference --

5 A. Hourly rounding --

6 Q. -- in that --

7 A. -- yes, it's --

8 Q. Okay. And this piece of paper -- scratch that.

9 MS. CENDROSKY: Actually I have a little bit
10 of voir dire myself.

11 MS. LAWHON: That's all I need Your Honor at
12 this point.

13 MS. CENDROSKY: Okay.

14 VOIR DIRE EXAMINATION

15 BY MS. CENDROSKY:

16 Q. Did you have this patient, this form with you
17 in the room?

18 A. It was in the room yes.

19 Q. In, in the room -- okay we have a term here
20 that we're using. Did you have it with you when you stood
21 by the patient?

22 A. It was up on the communications board.

23 Q. Communications board, okay. And are these
24 forms normally posted on the communications board --

25 A. They --

1 Q. -- or are they normally on the outside of the
2 door?

3 A. They're supposed to be inside the rooms.

4 Q. Okay. Let me ask the question again. Is, is
5 this form normally on the outside of the patient's door?

6 MS. BRUNDAGE: I'm going to object and state
7 that I believe that's asked and answered.

8 MS. CENDROSKY: No she didn't.

9 JUDGE AMCHAN: Well --

10 MS. BRUNDAGE: Knowing your Affinity --

11 MS. CENDROSKY: She said this one was in the
12 room.

13 MS. BRUNDAGE: -- for it.

14 JUDGE AMCHAN: Well, I did -- I already said
15 that's not my favorite objection. Overruled.

16 VOIR DIRE EXAMINATION (CONT'D)

17 BY MS. CENDROSKY:

18 Q. Do you -- have you seen these on the patient's
19 door before?

20 A. Yes I have.

21 Q. Okay. Did you bring this form into the room
22 with you?

23 A. It was on the communications board.

24 Q. Did you place this on the communications board?

25 A. No I did not.

1 Q. Do you know who placed it on the communications
2 board?

3 A. No I do not.

4 MS. CENDROSKY: That's all I have Your Honor
5 and I have no objections.

6 JUDGE AMCHAN: I'll receive it.

7 (Whereupon Respondent's Exhibit Number 14 was received
8 into the record)

9 JUDGE AMCHAN: Do you know whose initials are
10 on the far -- STNA is what? The far right column, STNA?

11 THE WITNESS: The first ones would have been
12 the patient care tech, Sam.

13 JUDGE AMCHAN: All right.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. Rhonda, you've testified that there was a
17 patient care tech working on the orthopedic unit. You've
18 stated in your testimony previously his name was Sam.

19 Do you remember Sam being in the patient's room
20 at 9:30?

21 A. Yes, he helped to move the patient from the
22 cart onto the bed.

23 Q. Did you observe him rounding on the patient?

24 A. Yes.

25 Q. Okay. Do you remember Sam being in the room at

1 10 o'clock?

2 A. Yes. He brought the thermometer and that, and
3 did the vital signs on the patient at that time.

4 Q. Did you observe Sam round on the patient at
5 that time?

6 A. Yes.

7 Q. Okay. And do you remember Sam being in the
8 room around 11 o'clock?

9 A. Yes. He brought ice packs in.

10 Q. Okay. And what were the ice packs for?

11 A. Those were because she had fallen at the
12 nursing home where she was at and broke her hip and that
13 was to help relieve pain.

14 Q. Okay. Did you observe Sam complete hourly
15 rounding around 11 o'clock?

16 MS. LAWHON: Objection. Again, Your Honor,
17 it's not clear what the question of complete hourly
18 rounding means.

19 JUDGE AMCHAN: Well what did you see him do
20 at 10? Let's go back. What did you see him do at 10?

21 THE WITNESS: At 10 he did the vital signs on
22 the patient. He made sure she had water. He looked to
23 see if she was grimacing, whatever, for pain or and that's
24 --

25 JUDGE AMCHAN: That's what you remember?

1 THE WITNESS: Yes.

2 JUDGE AMCHAN: What about at 11?

3 THE WITNESS: Basically the same at 11 plus

4 we put the ice packs on her hips at that time.

5 JUDGE AMCHAN: Are you going to ask about 12?

6 MS. BRUNDAGE: I'm going to ask --

7 MS. LAWHON: I'm sorry I didn't hear -- I'm

8 sorry Your Honor, I just didn't hear -- she said ice packs

9 on and I didn't hear?

10 THE WITNESS: The hip.

11 MS. LAWHON: Okay.

12 MS. BRUNDAGE: I am Your Honor because and

13 I'll ask you, Ms. Smith, if you're -- referring to

14 Respondent's Exhibit 14, you've testified that on the row

15 marked 12 o'clock those are your initials, correct?

16 THE WITNESS: Yes.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. And Ms. Lawhon has asked you if, if you, if

20 those dash marks are also yours?

21 A. Yes.

22 Q. And they are?

23 A. Yes they are.

24 Q. Okay. And you filled those out because you

25 completed hourly rounding?

1 A. Yes I did.

2 Q. Why did you --

3 MS. LAWHON: Again, objection Your Honor. I

4 think the record is going to be objected to --

5 JUDGE AMCHAN: All right.

6 MS. LAWHON: -- you completed hourly

7 rounding.

8 JUDGE AMCHAN: Well what --

9 MS. LAWHON: What did she do?

10 JUDGE AMCHAN: What did you do at 12?

11 THE WITNESS: I gave the patient some water.

12 Made sure she was comfortable as far as positioning.

13 Checked her. She was grimacing with pain at that time and

14 checked her diaper to see if it was wet.

15 JUDGE AMCHAN: Okay.

16 MS. LAWHON: And I didn't hear, did she say I

17 checked if she was grimacing for pain.

18 THE WITNESS: No. She -- just I looked at

19 her face to see if she was grimacing for pain.

20 MS. LAWHON: Okay.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. BRUNDAGE:

23 Q. Why did you complete hourly rounding on the

24 patient?

25 MS. LAWHON: Objection to the form of the

1 question.

2 JUDGE AMCHAN: What --

3 MS. LAWHON: It's, again, it's a, it's a

4 conclusion, this complete hourly rounding.

5 JUDGE AMCHAN: Well, okay, why --

6 MS. BRUNDAGE: Your Honor --

7 JUDGE AMCHAN: -- why did you do what you

8 did?

9 THE WITNESS: I did it because I didn't see

10 anybody else coming into the room to do it.

11 MS. BRUNDAGE: And Your Honor if I may, I've

12 asked the foundational question of what Ms. Smith and her

13 experience as a nurse understands to be rounding. She's

14 responded that it's positioning, pain. That will be on

15 the record as well.

16 JUDGE AMCHAN: Yeah, it --

17 MS. BRUNDAGE: So I believe that that

18 foundation has been laid.

19 JUDGE AMCHAN: It is but I think, you know,

20 given the critical nature of her testimony I think that --

21 MS. BRUNDAGE: Sure.

22 JUDGE AMCHAN: -- as specific as we could be

23 would be best.

24 MS. BRUNDAGE: Okay, I'm happy to do that.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. So Ms. Smith, you've said that at 12 o'clock
3 did you check the patient for pain?

4 A. Yes.

5 Q. Did you check the patient to see for reposition
6 slash comfort?

7 A. Yes.

8 Q. What is --

9 MS. LAWHON: Objection, leading.

10 JUDGE AMCHAN: Well she already testified --

11 MS. BRUNDAGE: I'm only trying --

12 JUDGE AMCHAN: -- about what --

13 MS. BRUNDAGE: -- I'm sorry Ms. Lawhon, I'm
14 only trying to provide you with the information you're
15 requesting in the format that you're requesting in.

16 JUDGE AMCHAN: Well she testified, testified
17 as to what she did.

18 MS. LAWHON: It's --

19 MS. BRUNDAGE: Okay.

20 MS. CENDROSKY: And I think she's trying to
21 get more out of her Your Honor.

22 MS. LAWHON: This, this is leading and it's
23 an attempt to bolster the testimony.

24 JUDGE AMCHAN: Well, I --

25 MR. BRYAN CARMODY: Judge, are we going --

1 these kind of comments, editorial, about the testimony, is
2 this --

3 MS. CENDROSKY: We're talking about our
4 objection.

5 MR. BRYAN CARMODY: -- consistent with --

6 MS. LAWHON: We're talking about the reason
7 for the objection.

8 JUDGE AMCHAN: It is an objection.

9 MR. BRYAN CARMODY: You're talking about --

10 JUDGE AMCHAN: But I think we can move ahead.
11 Just ask her what she did.

12 MS. BRUNDAGE: Okay.

13 JUDGE AMCHAN: What she remembers without --

14 MS. BRUNDAGE: Here's --

15 JUDGE AMCHAN: It is a little leading but --

16 MS. BRUNDAGE: Honestly Your Honor I'm
17 struggling --

18 JUDGE AMCHAN: -- we're going to get -- we're
19 going --

20 MS. BRUNDAGE: -- to figure out where the
21 interim ground here is but I'm going to --

22 JUDGE AMCHAN: I know.

23 MS. BRUNDAGE: -- I'm going to do my best.

24 JUDGE AMCHAN: All right. We'll work on it.

25 MS. BRUNDAGE: Okay.

1 JUDGE AMCHAN: But we're going --

2 MS. BRUNDAGE: All right.

3 JUDGE AMCHAN: -- to get her testimony about
4 what she did, what she saw.

5 MS. BRUNDAGE: Okay.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. All right. Ms. Smith, for the hours that
9 you've indicated, which you have testified, are from 12
10 o'clock to 3 o'clock, you indicated you made those dash
11 marks?

12 A. Yes.

13 Q. And did you check the patient for the various
14 columns of information?

15 A. Yes I did.

16 Q. And you did that in the manner that you've
17 testified to previously?

18 A. Yes.

19 Q. Okay. You've testified that you saw Sam
20 complete some tasks that you testified to earlier as being
21 your understanding of hourly rounding?

22 A. Yes.

23 Q. And did you see Ann Wayt perform similar tasks
24 to those performed by Sam?

25 A. No.

1 MS. CENDROSKY: Objection as to the time that
2 she's referring to.

3 JUDGE AMCHAN: At any, at any time.

4 MS. CENDROSKY: Is it at any time?

5 MS. BRUNDAGE: At any time.

6 MS. CENDROSKY: Is that the question. Okay.

7 THE WITNESS: At any time, no.

8 MS. BRUNDAGE: May I have this marked as R-15
9 please.

10 (Whereupon Respondent's Exhibit Number 15 was marked
11 for identification)

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. Okay. Ms. Smith, I'm showing you what's been
15 marked as Respondent's Exhibit 15. Do you recognize this
16 document?

17 A. Yes I do.

18 Q. What is this document?

19 A. This is the document that you use as a sitter
20 to mark what's going on with the patients.

21 Q. Okay. Directing your attention to the date in
22 the upper left hand corner, is this document dated?

23 A. Yes it is.

24 Q. And what is the date on this document?

25 A. 8/28.

1 Q. And do you recognize the handwriting in the
2 date box?

3 A. Yes that is mine.

4 Q. Okay. And then directing your attention to the
5 full signature line, which is at the bottom of the page,
6 does your signature appear on this document?

7 A. Yes, it's the first one.

8 Q. Okay. Directing your attention to the lines in
9 the third column from the left, also known as the second
10 column from the right, under 'Specific Observation Code',
11 there seemed to be indications in this document that start
12 on the line that corresponds with 10 o'clock?

13 A. Yes.

14 Q. And those indi-, and those, those markings go
15 down to 3:45, is that correct?

16 A. Yes.

17 Q. Okay. And looking at these markings can you
18 tell which of these -- are any of these in your
19 handwriting?

20 A. Yes they are.

21 Q. Which ones?

22 A. The ones from 10 until 10:45 and the ones from
23 12:15 until 15:45.

24 Q. Okay. And in the last column on the, on the
25 right, or the first column on the right --

1 MS. LAWHON: I'm sorry, counsel, did the
2 witness say 1215 to 1545?

3 MS. BRUNDAGE: Yes.

4 MS. LAWHON: Okay. Thank you.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. BRUNDAGE:

7 Q. In the last column to the -- the furthest
8 column from the left or the first column on the right,
9 under the initials column, there appear to be another set
10 of handwritten markings.

11 Can you -- are any of these in your handwriting?

12 A. Yes, the ones for 1600 and 1615.

13 Q. Okay.

14 MS. BRUNDAGE: I'd like to move to enter this
15 exhibit into evidence please.

16 MS. LAWHON: Voir Dire?

17 JUDGE AMCHAN: Okay.

18 VOIR DIRE EXAMINATION

19 BY MS. LAWHON:

20 Q. We can start, Ms. Smith, with what, is there
21 some mark next to 10? Is it an arrow?

22 A. Yes it is.

23 Q. Okay. You put that arrow there?

24 A. Yes I did.

25 Q. Okay. And you're filling this out and you're

1 recording it as, is that eight next to it, the arrow?

2 A. Yes.

3 Q. 8(a) okay or 8. And then three with a like a

4 superscript 2, is that right?

5 A. Yeah, it would have been 32.

6 Q. Oh, that's 32.

7 A. Yes.

8 Q. Okay. And the next number is 20?

9 A. Yes.

10 Q. And then 19?

11 A. Yes.

12 Q. And then 11(a)?

13 A. Yes.

14 Q. What are these numbers?

15 A. The code is on the left hand side as far as to

16 what they represent.

17 Q. So at 10 o'clock you filled out that the

18 patient was with the nurse, right?

19 A. Yes, I was in the room.

20 Q. Okay. You're referring to yourself as the

21 registered nurse?

22 A. Yes.

23 Q. And what is -- oh, I see. And did you fill

24 this out contemporaneously? At the time, in other words

25 at 10 o'clock did you write down 8 3220 1911(a)?

1 A. Yes I did.

2 Q. Okay. And then 15 minutes later you filled
3 this same piece of paper out again?

4 A. Yes.

5 Q. Now at 12:15 you no longer indicating that the
6 patient is with the nurse. Were you there?

7 A. Yes I was. The 8's, it's 11(a) and then 8
8 beside it.

9 Q. Yeah, 8 says talking, right, incoherently?

10 A. Oh, okay. Yes, I was in the room.

11 Q. But you didn't indicate on this sheet that you
12 were in the room?

13 A. No I did not.

14 Q. So you changed how you were marking it in the
15 afternoon? You have to answer yes or no.

16 A. Yes.

17 Q. Now is that your 26 at 1400?

18 MS. BRUNDAGE: Your Honor, if I may, I think
19 we've moved beyond the scope of voir dire. I intend to
20 enter the exhibit and I believe Ms. Lawhon would have an
21 opportunity to cross-examine the witness about it on her
22 cross.

23 MS. CENDROSKY: We're not done with voir
24 dire.

25 MS. LAWHON: I'm not done with voir dire. I

1 want to know if that's her number or not. I can't tell.

2 MS. BRUNDAGE: But Your Honor --

3 JUDGE AMCHAN: Well I think she --

4 MS. BRUNDAGE: -- in response she's testified
5 that to what is her handwriting on the document.

6 JUDGE AMCHAN: I think she testified --
7 right. She said all the numbers had specific times were
8 hers.

9 VOIR DIRE EXAMINATION (CONT'D)

10 BY MS. LAWHON:

11 Q. Well okay, could we look to the left of 26
12 cause I can't even read what's here? It says 11 a 8 and
13 then something, which is crossed out and re-written or
14 something.

15 A. It's 24c.

16 Q. Okay. Thank you.

17 MS. CENDROSKY: Your Honor, I have voir dire
18 as well.

19 JUDGE AMCHAN: All right.

20 VOIR DIRE EXAMINATION

21 BY MS. CENDROSKY:

22 Q. There, the initials column on there, which
23 initials are yours?

24 A. My initials aren't on there.

25 Q. Whose initials are those?

1 A. The ones from 1630 on I have no idea, I wasn't
2 in the room.

3 Q. Okay. So this sheet is shared amongst sitters?

4 A. Yes it is.

5 Q. Okay. And I assume there was a sitter for 12
6 o'clock, is that correct?

7 A. Yes.

8 Q. There's no initials. Do you know why that's
9 not filled out?

10 A. No I don't.

11 Q. And were you -- are you supposed to put your
12 initials on here?

13 A. That's, was the first time I had seen this form
14 was this day and no one had showed me how to fill it out.
15 I was filling it out by reading.

16 Q. Okay.

17 MS. CENDROSKY: Your Honor, I actually am
18 going to move to object that this not be admitted because
19 the patient has no prior knowledge. She doesn't --

20 MS. LAWHON: The witness.

21 MS. CENDROSKY: -- she's never been taught
22 how to use this. So I think that any of her markings
23 really we can't rely on them as being sufficient.

24 JUDGE AMCHAN: No, I'm going to receive it.
25 She testified that -- whether she'd been trained on it or

1 not, she filled that out contemporaneous on the 8/28. I'm
2 going to receive it.

3 MS. CENDROSKY: Okay.

4 MS. BRUNDAGE: Okay.

5 (Whereupon Respondent's Exhibit Number 15 was received
6 into the record)

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. BRUNDAGE:

9 Q. Rhonda, I want to refer your attention to the
10 line that appears to be across from 10 o'clock. And
11 you've testified that you indicated the 19 here.

12 What does the code 19 mean?

13 A. It's 19 visiting with guests.

14 Q. Did you mark a 19 every time the patient was
15 talking with her guests?

16 A. Yes.

17 Q. And pointing your attention to the, it looks
18 like, you testified there are arrows. Can you explain why
19 you used arrows on this form?

20 A. Because the lines don't match up with the
21 times.

22 Q. Okay. Might that explain why there's an empty
23 at around 12 o'clock?

24 MS. LAWHON: Objection --

25 THE WITNESS: Yes.

1 MS. LAWHON: -- leading, Your Honor.

2 JUDGE AMCHAN: Well --

3 MS. LAWHON: It's direct exam.

4 JUDGE AMCHAN: Well, sustained.

5 MS. BRUNDAGE: Okay.

6 JUDGE AMCHAN: I mean she --

7 MS. BRUNDAGE: Do you --

8 JUDGE AMCHAN: -- she -- it's the might, she
9 doesn't know.

10 MS. BRUNDAGE: Okay.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. BRUNDAGE:

13 Q. All right. Looking at the entry for 10:45 is
14 that the one that has an 11 -- I'm sorry strike that.
15 That entry has an 11 b, what does that mean?

16 MS. LAWHON: Objection.

17 MS. CENDROSKY: I don't know what entry --

18 MS. LAWHON: I don't see any --

19 MS. CENDROSKY: -- has an 11b.

20 MS. LAWHON: I don't see any 11b on 10:45 on
21 my copy.

22 JUDGE AMCHAN: Yeah, there is. If you look
23 at the arrow --

24 MS. LAWHON: It is.

25 JUDGE AMCHAN: -- she has an arrow -- from

1 10:45 she's got an arrow pointing up.

2 MS. LAWHON: Yeah and it says 11a on my copy

3 -- oh and then it says b, 11b over on the side. Sorry.

4 JUDGE AMCHAN: Right.

5 MS. LAWHON: Got it.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. The 11b, Ms. Smith, what does that indicate?

9 A. She was resting at that time.

10 Q. Okay. Ms. Smith, did you leave the sitters
11 room at any point during the day on August 28th?

12 A. When I went to lunch.

13 Q. When did you take your lunch break?

14 A. Right from about 11 to 12.

15 Q. Okay. About how long was your lunch break?

16 A. About half, half an hour to 45 minutes.

17 Q. Okay. While you were not serving as the
18 sitter, did the patient have a different sitter?

19 A. Yes she did.

20 Q. Do you know who it was?

21 A. Yes.

22 Q. Who was that?

23 A. Jonalee Lesjak.

24 Q. Do you know who Jonalee Lesjak is?

25 A. Yes, I work with her in open heart.

1 Q. Okay. When you left for lunch, you testified
2 that that was around 11 o'clock.

3 MS. LAWHON: Uh, Objection. She never
4 testified to that.

5 JUDGE AMCHAN: Well she said between 11 and
6 12.

7 MS. LAWHON: Right, exactly.

8 MS. BRUNDAGE: Okay.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. When you left for lunch, was the patient's
12 family in the patient's room at the time?

13 A. Yes they were.

14 Q. Did you communicate with them before you left
15 for lunch?

16 A. Yes. They were anxious to find out when the
17 physician was coming because they were going to be leaving
18 and I asked them cause they had asked about calling in and
19 getting information on the patient and I told them the
20 only way they could get information was to give a code
21 word.

22 Q. Okay. Did they have any questions about their
23 mother's medical information?

24 MS. LAWHON: Objection, leading.

25 JUDGE AMCHAN: Overruled.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. BRUNDAGE:

3 Q. You can answer.

4 A. Okay. Yes. They were wondering what was going
5 on.

6 Q. Okay. Did you check with anyone about the code
7 word?

8 A. As I walked out for lunch I went up to the
9 nurses' station and told Ann that the family was concerned
10 about when the physician was going to come and if she was
11 going to come back in and talk with the family. And at
12 that time I gave her the code word.

13 Q. Okay.

14 JUDGE AMCHAN: Gave the code word to --

15 THE WITNESS: Ann.

16 JUDGE AMCHAN: Ms. Wayt?

17 THE WITNESS: Uh-huh.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. Okay. I'm going to refer you again to
21 Respondent's Exhibit 13. Rhonda, when, when you left for
22 lunch, had another sitter arrived?

23 A. Yes.

24 Q. And who was that?

25 A. That was Jonalee Lesjak.

1 Q. Okay. And where were, were you both in the
2 room at the same time?

3 A. Yes for a short period of time.

4 Q. Where were you standing when you were both in
5 the room?

6 A. Right by the bedside table towards the foot of
7 the bed.

8 Q. Okay. Can the bedside table be moved?

9 A. Yes it can.

10 Q. Okay. And when you returned from lunch was
11 Jonalee in the room?

12 A. Yes she was.

13 Q. And where -- did you observe where she was
14 located?

15 A. Where -- she was at, by the bedside table but
16 closer to the head of the bed.

17 Q. Okay. When you returned from lunch where did
18 you stand or sit in the room?

19 A. I was on the other side of the bed where, close
20 to where the big chairs were.

21 Q. Okay. Were you sitting or standing?

22 A. I was standing.

23 Q. When you returned from lunch and went into the
24 patient's room, who was in the patient's room?

25 A. At that time it was the patient and Jonalee.

1 Q. Okay. Did you and Jonalee speak when you
2 returned from lunch?

3 A. Yes, she basically had told me how the patient
4 was doing and that the family had just left.

5 Q. Okay. Did she mention the patient's pain
6 level?

7 A. She said she looked like she was in pain.

8 Q. Did the two of you attempt to administer
9 medication?

10 A. No, we didn't know what the patient was getting
11 or anything so she was going to stop at the nurses'
12 station and speak with Ann to let her know that the
13 patient needed something for pain.

14 Q. And who are you referring to when you say she
15 was going to stop at the nurses' station?

16 A. Jonalee.

17 Q. Okay. After you returned from lunch did you
18 feed the patient?

19 A. Not right away cause there was no lunch tray in
20 the room.

21 Q. Okay. Did you eventually feed the patient?

22 A. Yes. The lunch tray was brought in about
23 12:30.

24 Q. Okay. After you returned from lunch, when was
25 the next time you saw Ann Wayt?

1 A. She was in about noon and administered pain
2 medication.

3 Q. Okay. Did you observe Ann perform what you've
4 described your understanding of a head to toe assessment
5 to be; did you see her perform that at the time when she
6 was in the room to administer morphine?

7 A. No I did not.

8 Q. Did you observe Ann perform what you described
9 your understanding to be of hourly rounding at the time
10 she was in the room to administer morphine?

11 A. No.

12 Q. When was the next time that you saw Ann Wayt?

13 JUDGE AMCHAN: Well, let's go back. What
14 exactly did you see her do at noon?

15 THE WITNESS: She checked the armband and
16 then proceeded to give the patient her pain medication
17 through the I.V.

18 JUDGE AMCHAN: She injected morphine with a
19 syringe into the I.V.?

20 THE WITNESS: Yes.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. BRUNDAGE:

23 Q. Okay. When was the next time that you saw Ann?

24 A. After that was after I'd put the light on,
25 around 1:55 to 2 o'clock because I needed a diaper for the

1 patient.

2 Q. Okay. Why did you need a diaper for the
3 patient?

4 A. Because she was saturated and there was none in
5 the room.

6 Q. Okay. Did Ann respond to the call light?

7 A. Yes. She came to the door and --

8 Q. I'm going to -- hold on one moment. I'm going
9 to refer you to Respondent's Exhibit 13. Rhonda, when
10 you're referencing the door, what area are you
11 referencing?

12 A. Close to the call light sign there.

13 Q. Okay. And at that this time when you observed
14 Ann close to the call light sign, where were you located
15 in the room?

16 A. I was at the foot of the bed --

17 Q. Okay.

18 A. -- on the side closest to the window.

19 Q. And were you sitting or standing?

20 A. I was standing.

21 Q. Okay. Did Ann speak with you when she was
22 standing at the door?

23 A. Yes. I asked her for a diaper and linens
24 because the bed was also saturated at that time. Her
25 comment to me was, oh she doesn't have a folly.

1 Q. What did you think about Ann's comment?

2 MS. LAWHON: Objection, relevance.

3 JUDGE AMCHAN: Sustained.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. BRUNDAGE:

6 Q. Was that com- -- based on your practice as a
7 nurse, did that com-, was that comment unusual to you for
8 any reason?

9 MS. CENDROSKY: Objection, leading.

10 MS. LAWHON: Same, same problem Your Honor.

11 JUDGE AMCHAN: Well, I don't know about
12 leading. I mean I don't know that her subjective reaction
13 to the comment so this is around 1:55 or 2:00 p.m.,
14 correct?

15 THE WITNESS: Yes.

16 JUDGE AMCHAN: Did -- she's talking to you
17 from the doorway or did she come into the room?

18 THE WITNESS: From the doorway.

19 JUDGE AMCHAN: She did not enter the room?

20 THE WITNESS: No she did not.

21 JUDGE AMCHAN: And so you testified what
22 happened. You asked her for diaper and sheets?

23 THE WITNESS: Yes.

24 JUDGE AMCHAN: And she said something about
25 she doesn't have a folly?

1 THE WITNESS: Yes.

2 JUDGE AMCHAN: And then what happened?

3 THE WITNESS: And then she said, okay and
4 proceeded to send Sam, the patient care tech, in with the
5 diaper and linens for the bed.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Based on your years of experience, Ms. Smith,
9 and your practice of performing head to toe assessments,
10 would you observe whether or not a patient had a folly?

11 A. Yes.

12 Q. And do -- I'm sorry, in doing that head to toe
13 assessment?

14 A. Yes.

15 Q. Okay. At the time when Ann was standing in
16 the, what you've described as the doorway by the call
17 light, did Ann perform what you understand to be, based on
18 your experience, did you observe Ann perform what you
19 understand to be based on your experience a head to toe
20 assessment of the patient?

21 A. No, you can't see the patient.

22 Q. Okay. Did you observe Ann perform what you
23 understand to be hourly rounding at the time she was
24 standing at the door?

25 A. No.

1 Q. Okay. When was the next time that you
2 communicated with Ann?

3 A. After that it was right about three o'clock.

4 Q. Okay. And what did that communication consist
5 of?

6 A. I was wondering if somebody was going to come
7 and be relieving me for the day.

8 Q. Okay. How did you, how did you find Ann to
9 communicate with her; did you leave the room?

10 A. No. Sam was going by the door and I looked out
11 and he was there and I asked him if somebody was going to
12 come to relieve me and he apparently had gone and talked
13 with Ann and then she came to the door.

14 Q. Okay. Did Ann come in the room at that time?

15 A. Part way into the room.

16 Q. Okay. Let me show you the exhibit. I'm
17 referring to you again to the diagram that's Respondent's
18 Exhibit 13. Based on your recollection where do you
19 remember seeing Ann?

20 A. Right before the sink area.

21 Q. Okay.

22 JUDGE AMCHAN: Between the sink and the door?

23 THE WITNESS: Yes.

24 JUDGE AMCHAN: I guess it's not clear. The
25 sink is this little oval thing?

1 THE WITNESS: Yes.

2 JUDGE AMCHAN: There's a word that says

3 curtain' and but between that word and the door opening

4 there's a little oval, that's the sink?

5 THE WITNESS: Yes it is.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Okay. At that time did you observe Ann perform
9 what you understand to be a head to toe assessment of the
10 patient?

11 A. No.

12 Q. At that time did you observe Ann perform what
13 you understand to be hourly rounding on the patient?

14 A. No.

15 Q. Okay. Did someone eventually take over for you
16 as the patient sitter?

17 A. Yes.

18 Q. What time did that happen?

19 A. Right after 4:15.

20 Q. Okay. Do you know who the sitter taking over
21 for you was?

22 A. It was a patient care tech from one of the
23 other floors.

24 Q. Okay. And when the sitter, who was taking over
25 for you, came into the room, were you still present in the

1 room?

2 A. Yes I was.

3 Q. Was Ann Wayt in the room when the patient care

4 technician arrived --

5 A. No.

6 Q. -- and when you left? Did you see Ann after

7 you left the patient's room for the day?

8 A. No.

9 Q. Did you see Jeremie Montabone before you left

10 the hospital?

11 A. No.

12 JUDGE AMCHAN: So at 4:15 you went home?

13 THE WITNESS: Roughly.

14 Q. Did you report anything about the events of

15 August 28th to any hospital managers?

16 A. Yes, I reported it to Jeremie the next day.

17 Q. Okay. And what did you tell Jeremie?

18 MS. LAWHON: Objection, foundation. Where

19 were they; what time was it --

20 MS. BRUNDAGE: For what she told Jeremie?

21 MS. LAWHON: -- anybody else present. The

22 normal.

23 MS. BRUNDAGE: I think she's got foundation

24 --

25 MS. LAWHON: For a conversation --

1 MS. BRUNDAGE: -- to answer the question that

2 I've asked but I'm happy to lay the rest of it --

3 JUDGE AMCHAN: Okay.

4 MS. BRUNDAGE: -- if you'd like me to.

5 JUDGE AMCHAN: Sure, go ahead.

6 MS. BRUNDAGE: Lay it?

7 JUDGE AMCHAN: Yeah.

8 MS. BRUNDAGE: Do you want me to lay -- okay.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. You've testified Ms. Smith that you spoke with

12 Jeremie. What time did you speak with Jeremie?

13 A. It would have been first thing the next morning

14 when I seen him come through the doors.

15 Q. Okay. And for you what time is first thing in

16 the morning?

17 A. Well we got there between 6:00 or 6:30 the next

18 morning; I'm not sure.

19 Q. Okay. And it would have been in that

20 timeframe?

21 MS. LAWHON: Objection. Your Honor --

22 JUDGE AMCHAN: Well I --

23 MS. LAWHON: -- the witness --

24 JUDGE AMCHAN: -- don't think it's -- it's

25 early in the morning, I mean if it's 6:30 or 7:30, I mean,

1 do you have any recollection as to --

2 THE WITNESS: Time wise no.

3 JUDGE AMCHAN: Early the next morning you saw
4 him?

5 THE WITNESS: Yes.

6 JUDGE AMCHAN: And where?

7 THE WITNESS: Inside the department, open
8 heart department.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Okay and what did you tell Jeremie?

12 A. I told him that I was concerned because no one
13 was there to relieve me at time and had I been on call for
14 open heart, no one would have known where I was to get in
15 touch with me cause my phone was down in the locker, my
16 locker, and I was up on the floor.

17 And, but no one was really coming in to see the
18 patient other than the people that were sitting.

19 Q. Okay. Did any hospital managers encourage you
20 to report your concerns to Jeremie?

21 A. No.

22 Q. What did Jeremie say when you shared your
23 concerns with him?

24 A. That he would take it to Susan Kress because
25 she was the manager covering that unit for that day and

1 follow up with it.

2 Q. Okay. Did Susan Kress ever contact you about
3 the events of August 28th?

4 A. Yeah, I spoke with her a couple days later.

5 Q. Okay. What did that conversation consist of?

6 MS. LAWHON: Objection, foundation.

7 MS. BRUNDAGE: You --

8 MS. LAWHON: Again --

9 JUDGE AMCHAN: Well --

10 MS. LAWHON: -- where was it? Who else --

11 MS. CENDROSKY: What time --

12 MS. LAWHON: -- was there? What time was it?

13 This is normal foundation for a rep-, for a testimony
14 about a conversation.

15 JUDGE AMCHAN: Well I think you're being a
16 little overly technical. You can ask on cross. You can
17 test her memory. She said she spoke to -- that's enough
18 for me.

19 MS. BRUNDAGE: May I proceed --

20 JUDGE AMCHAN: Did you have conversation --

21 MS. BRUNDAGE: Your Honor?

22 JUDGE AMCHAN: -- with Susan Kress a couple
23 days after the 29th?

24 THE WITNESS: Yes.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. And what did that conversation consist of?

3 A. She basically asked me what had happened and I
4 told her the same thing I had told Jeremie.

5 Q. Okay. Did anyone else from hospital management
6 follow up with you about what you had reported?

7 A. A couple -- a week later or so Paula and Jason,
8 who is the manager and director over Orthopedics, they
9 asked me what happened.

10 Q. Do you recall the time of day that they spoke
11 with you?

12 A. No I don't.

13 Q. Do you recall the exact date they spoke with
14 you?

15 A. The exact date, not off the top of my head, no.

16 Q. Do you recall where you were when they spoke
17 with you?

18 A. I was in the conference room between the cath
19 lab and open heart.

20 Q. Okay. Did you ever speak with Paula or Jason
21 again about the events of August 28th?

22 A. Yes, they had asked me if I had left the room
23 at any time and I told them no.

24 Q. Okay. Did you ever sign a statement of your
25 account of the events of August 28th?

1 A. Yes I did.

2 Q. Did that occur before or after you were asked
3 about the, whether or not you had left the room?

4 A. After.

5 Q. Okay.

6 MS. BRUNDAGE: Okay. I have no further
7 questions for this witness.

8 MS. CENDROSKY: Your Honor, I would like a 10
9 minute break to look over the notes for cross.

10 JUDGE AMCHAN: All right.

11 MS. CENDROSKY: Thank you.

12 JUDGE AMCHAN: Off the record.

13 (Whereupon a brief time was taken off the record)

14 JUDGE AMCHAN: Back on the record.

15 MS. CENDROSKY: Are we back on?

16 JUDGE AMCHAN: Yes, back on the record.

17 CROSS-EXAMINATION

18 BY MS. CENDROSKY:

19 Q. Hi Ms. Smith. My name's Sharlee Cendrosky.
20 I'm an attorney with the United States Government and
21 counsel for the National Labor Relations Board.

22 I have a couple quick questions for you. If you
23 don't understand my question just let me know, okay?

24 A. Okay.

25 Q. Or if you can't hear me just let me know. Now

1 I have -- this, this question's pretty simple, it's just
2 going to be yes or no.

3 Did Ann at any time delegate her duties to you to
4 round on the patient?

5 A. No.

6 Q. Next I have another very simple yes or no
7 question for you. Did any of the patient's family members
8 ever make a complaint to you about Ann's care of the
9 patient?

10 A. No.

11 Q. And you testified that you spoke with your
12 supervisor Mr. Montabone the following day and expressed
13 some concerns to him?

14 A. Yes.

15 Q. Okay. Why didn't you say something to Ann the
16 previous day, you were there the whole day, why didn't you
17 say anything to her if you had these concerns?

18 A. Being a co- -- you know basically on the same
19 level it's not my responsibility to ask Ann why she's not
20 doing stuff. Plus when I went to lunch she could have
21 done it and I didn't know.

22 Q. Okay.

23 MS. CENDROSKY: Thank you. That's all I
24 have.

25 JUDGE AMCHAN: All right.

1 MS. CENDROSKY: Thank you.

2 CROSS-EXAMINATION

3 BY MS. LAWHON:

4 Q. Good morning Ms. Smith. I'm Jane Lawhon. I
5 think I might have already introduced myself however, I'm
6 the attorney for the Union, the Charging Party in this
7 procedure, proceeding, excuse me. I'm getting the medical
8 in my brain.

9 Ms. Smith, you're familiar with a nurse at the
10 hospital by the name of Cinda Keener?

11 A. Yes.

12 Q. Okay. And she works in -- what unit is she in?

13 A. She's in the cath lab.

14 Q. Okay. And that shares a break room with your
15 unit, CVOR, right?

16 A. Yes it does.

17 Q. Okay. And you're also familiar with an
18 individual by the name of Susan Kelly, a nurse at the
19 hospital?

20 A. Yes.

21 Q. Okay. And Susan is also in the cath lab,
22 right?

23 A. Yes.

24 Q. And Susan and Cinda are often in the break room
25 when you are there, isn't that true?

1 A. No.

2 Q. You -- have you -- during the months of, of, of
3 July and August of 2012, you had occasion to engage with
4 Cinda and Susan in the course of your working as an OR
5 Nurse, CVOR, and they're working in the cath lab, right?

6 A. Yes.

7 Q. Okay. And you were aware of what Cinda's view
8 towards the Union was, isn't that true?

9 A. Yes.

10 Q. Okay. And she was actively opposing the Union
11 at the hospital, isn't that correct?

12 A. Yes she was.

13 Q. And Susan Kelly was also actively opposing the
14 Union at the hospital, isn't that correct?

15 A. Yes.

16 Q. In fact you never heard anybody in the break
17 room that you shared with them speak out in favor of the
18 Union, isn't that correct?

19 A. Employee wise no.

20 Q. That's correct. I'm actually when I and I
21 thank you for correcting me, Ms. Smith, I'm asking about
22 Registered Nurses, so and your answer is that you've never
23 heard a registered nurse in your work area speak out in
24 favor of the Union, is that correct?

25 A. That's correct

1 Q. And you heard a fair number of comments
2 opposing the Union in the course of either at the nurses'
3 station or in the break room, isn't that correct?

4 A. Yes.

5 Q. And there were materials from the Union
6 campaign that were in your break room, isn't that correct?

7 A. Yes.

8 Q. There were documents that you assumed must have
9 come from the Union, right?

10 MS. BRUNDAGE: Objection, that calls for
11 speculation.

12 JUDGE AMCHAN: Well --

13 MS. LAWHON: I'll rephrase.

14 JUDGE AMCHAN: -- did you -- well, okay. Did
15 you see any materials that you recognize as being
16 pro-Union?

17 THE WITNESS: Yes.

18 CROSS-EXAMINATION (CONT'D)

19 BY MS. LAWHON:

20 Q. You saw materials that were anti-Union too,
21 isn't that right?

22 A. Yes.

23 Q. Do you remember there was a, sometime in
24 probably the week or two before the election there was a
25 kind of glossy brochure that had a lot of nurses photos on

1 it said, I'm voting yes.

2 Do you remember seeing that?

3 A. There was a voting but I don't know who was in

4 it.

5 Q. Okay. There were lots of photos in fact,

6 right?

7 A. Yes.

8 Q. On, on the single brochure, right, that, that

9 you remember?

10 A. Yes.

11 Q. And you saw that before the election, isn't

12 that correct, Ms. Smith?

13 A. It was in the room but that's as far as it

14 went.

15 Q. Okay. This glossy brochure with photos of

16 nurses was in the room before the election, isn't that

17 correct?

18 A. Yes.

19 Q. Okay. And when you say the room you mean the

20 break room, is that right?

21 A. Yes.

22 Q. And how do you -- and how would you refer to

23 that break room?

24 A. Basically it's more or less our kitchen, our

25 refrigerator's in there that we could put our lunches in

1 and there's a coffee pot and that's as far as it goes.

2 There's a little table.

3 Q. No, I'm sorry, my question probably wasn't

4 clear. I, I want to call it the right name. Do you call

5 it the CVOR, CVSICU, cath lab break room or how do you

6 call it, just the break room?

7 A. Just, just the break room.

8 Q. Okay. Got it. Now you've never worked on a

9 med surg unit, isn't that correct?

10 A. That's correct.

11 Q. And rounding is not part of your job

12 responsibilities as a CVOR Nurse, isn't that correct?

13 A. That's correct.

14 Q. And the OR Nurses don't have to do hour, head

15 to toe assessment, isn't that correct?

16 A. That's correct.

17 Q. How long was Susan Kress in the patient's room

18 on the morning of August 28th?

19 A. She was in there long enough to help get the

20 patient over to the bed and she told me that they would

21 bring papers in for me to fill out for the sitting and

22 that they, that was to have been shown how to do them.

23 Q. Understood. How long was she in the room, to

24 the best of your recollection?

25 A. Fifteen, 20 minutes.

1 Q. If I were to tell you that Ms. Kress was
2 actually there for 10 minutes does that seem inaccurate to
3 you?

4 A. I really -- time wise I really don't know.

5 Q. Okay. You personally opposed the Union, isn't
6 that correct Ms. Smith?

7 A. I prefer not to answer that.

8 Q. Well Ms. Smith it's important for your
9 testimony today that you testified --

10 MS. BRUNDAGE: I'm going to object --

11 MS. LAWHON: Excuse me counsel, I'm not
12 finished.

13 JUDGE AMCHAN: Well she's objecting to the
14 question.

15 MS. LAWHON: I understand but I thought I
16 could --

17 MS. BRUNDAGE: Yes, I believe you're finished
18 with the question, I thought you were.

19 MS. LAWHON: I was in the middle of it, word,
20 but that's okay. Go ahead.

21 MS. BRUNDAGE: Okay. My objection would be
22 that it would be a violation of labor law to require this
23 witness to testify as to her opinion view on the Union or
24 whether or not she voted in the election --

25 MS. LAWHON: I didn't --

1 MS. BRUNDAGE: -- and how she voted.

2 MS. LAWHON: I didn't ask her how she voted

3 nor if she voted --

4 JUDGE AMCHAN: Yeah, I --

5 MS. LAWHON: I asked her what was her opinion

6 of the Union and I'm entitled --

7 JUDGE AMCHAN: Are you --

8 MS. BRUNDAGE: I think she --

9 MS. LAWHON: Yes, for bias Your Honor,
10 absolutely.

11 MS. BRUNDAGE: Well I think she has the right
12 to not answer the question --

13 JUDGE AMCHAN: Yeah I think so too.

14 MS. BRUNDAGE: -- if it makes her
15 uncomfortable.

16 JUDGE AMCHAN: I mean if she, if she openly
17 demonstrated, you know openly campaigned against the Union
18 or demonstrated her opposition that's one thing but I
19 don't, I don't think --

20 MS. LAWHON: Okay. I'll --

21 JUDGE AMCHAN: -- I don't think you can ask
22 her her opinion, her subjective opinion.

23 CROSS-EXAMINATION (CONT'D)

24 BY MS. LAWHON:

25 Q. Did you express your views towards the Union

1 towards your co-workers Ms. Smith?

2 A. No I did not.

3 Q. Did you argue with your co-workers who were
4 opposing the Union about their reasons? Did you disagree
5 with them?

6 A. No.

7 Q. Now you were directed to be the sitter by your
8 supervisor, Jeremie Montabone, isn't that correct?

9 A. Yes.

10 Q. Ann was not your supervisor that day, right?

11 A. That's correct.

12 Q. And you also knew that since you were directed
13 to be the sitter you were supposed to go to the patient's
14 room, isn't that correct, when you arrived on the unit?

15 A. Yes.

16 Q. Now as the sitter, you were -- let me put it
17 this way. The first line of defense for the patient if
18 the patient needed something, right?

19 A. Yes.

20 Q. So if the patient was uncomfortable that would
21 come to your attention first?

22 A. Yes.

23 Q. And you were a registered nurse so you had all
24 of your duties as a licensed registered nurse in relation
25 to that patient, isn't that correct?

1 A. Yes.

2 Q. And when you were -- you said you were an OB
3 Nurse. Were you -- what portion of OB did you work in?

4 A. It was a very small unit so we covered the
5 whole area, labor and delivery, nursery and post-partum.

6 Q. And typically when you had assignments that
7 weren't labor and delivery, for example, when you were
8 assigned to certain patient, patients, what was your
9 patient assignment; how many?

10 A. It would have been up to four mother baby
11 couplets.

12 Q. Okay. Your specialty as a nurse is not
13 orthopedics, isn't that correct?

14 A. That's correct.

15 Q. And you have never had experience caring for
16 five patients at once on an orthopedic floor, isn't that
17 correct?

18 A. That's correct.

19 Q. And under the Ohio Nursing Practice Act it
20 would be appropriate for Ann to document care that was
21 provided by others, isn't that correct?

22 MS. BRUNDAGE: Objection, that, that calls
23 for a legal conclusion --

24 JUDGE AMCHAN: Well --

25 MS. BRUNDAGE: -- and, and, or let me append,

1 lack of foundation.

2 JUDGE AMCHAN: Well I don't know, she may
3 know.

4 MS. LAWHON: Yeah, you're a licensed
5 registered nurse. I'm sure you're familiar with the
6 Nursing Practice Act.

7 MS. BRUNDAGE: Well, I, I --

8 JUDGE AMCHAN: Well, she's --

9 MS. BRUNDAGE: -- respectfully I renew my
10 objection. I don't think counsel can testify she's sure
11 the witness is familiar with the Pract- --

12 JUDGE AMCHAN: Well --

13 MS. BRUNDAGE: -- the Nursing Practice Act
14 and the level of familiarity she has. So I would like
15 that foundation laid.

16 JUDGE AMCHAN: Well, I guess the question is,
17 do you, do you know?

18 THE WITNESS: I can't say I know every single
19 thing in the --

20 MS. LAWHON: No, that's not the question.

21 THE WITNESS: -- Act, but --

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. The question is, you are aware that it's
25 appropriate under the laws that govern you as a licensed

1 registered nurse for Ann to document care that she knows
2 was provided based on her collection of data, isn't that
3 correct?

4 A. If the person's asked she could write it down.
5 You know, if you observe somebody doing it and you say per
6 this person --

7 Q. Right, so if the patient care technician
8 reports to Ann that something was done, Ann would note
9 that in the chart and that would be appropriate, isn't
10 that correct?

11 A. Yes.

12 Q. The -- Ms. Smith, based on, and I'm asking you
13 now about the times you were in the room, based on your
14 presence in the room as a registered nurse, is it fair to
15 say that the patient, you made sure the patient was
16 comfortable, in a safe position and clean?

17 A. Yes.

18 Q. Now, the one time that you saw the patient
19 appear to be in discomfort, that was promptly addressed by
20 Ann who gave the patient medication, isn't that correct?

21 MS. BRUNDAGE: Objection, mischaracterization
22 of, of evidence. I'm not -- I don't know if Rhonda has
23 addressed the period of time whether it was prompt,
24 delayed, normal.

25 MS. LAWHON: That's why I'm asking her

1 counsel.

2 MS. BRUNDAGE: Well you didn't ask her --

3 MS. LAWHON: It's cross.

4 MS. BRUNDAGE: I'm sorry, Ms. Lawhon, but you
5 didn't ask her how promptly it was provided. You, you
6 mischaracterized the evidence respectfully.

7 JUDGE AMCHAN: Well I don't know --

8 MS. LAWHON: There's no evidence.

9 JUDGE AMCHAN: Well, I mean you can --

10 MS. BRUNDAGE: The evidence provided on
11 direct, I'm sorry if I was unclear.

12 JUDGE AMCHAN: Well, I -- she came in around
13 noon, right, and gave a pain medication, correct?

14 THE WITNESS: Yes.

15 JUDGE AMCHAN: And your question is?

16 MS. LAWHON: And you had just gotten back
17 from lunch at noon, right?

18 THE WITNESS: Yes.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. And you hit the call button and Ann came in,
22 all in short order, isn't that correct?

23 A. We did not hit the call button. Jonalee, who
24 was, had relieved me for lunch, went out --

25 Q. Okay.

1 A. -- as she was leaving she stopped and mentioned
2 it.

3 Q. And Ann was in the room within five minutes,
4 isn't that correct?

5 A. I -- time wise I don't know.

6 Q. You have no reason -- if I were to tell you
7 that the chart reflects an injection, IV push morphine at
8 12 noon, you have no reason to question that, isn't that
9 correct?

10 A. No. Oh --

11 Q. You don't have any reason to think that's not
12 true, isn't that right?

13 A. Yes.

14 Q. It's my question was bad, sorry. Did you know
15 what the medication was at the time it was administered?

16 A. No I did not.

17 Q. Okay. So when counsel asked you questions
18 about administering Morphine, you didn't know it was
19 Morphine?

20 A. No, I knew it was something for pain.

21 Q. Understood. And you also observed that shortly
22 after the administration of that medication the patient
23 appeared to have calmed down, is that right?

24 A. A little bit but not much.

25 Q. Okay. Did you bring to the attention of Ann

1 that the patient continued to be agitated after she
2 administered the medication at noon in the next three
3 hours?

4 A. I think I mentioned it to Sam whenever we were
5 changing her she was kind of ouchy at that time because I
6 couldn't leave the room.

7 Q. Okay. You could use a call button, isn't that
8 correct?

9 A. Yes.

10 Q. And you elected not to, is that right?

11 A. Well, yes because I know pain medication you
12 can only give every so often, you know at least every two
13 hours.

14 JUDGE AMCHAN: Particularly Morphine, right,
15 cause it suppresses respiration?

16 THE WITNESS: Right.

17 Q. When you met with Susan Kress, Ms. Smith, did
18 she ask you to give her a statement of what had occurred?
19 Did she ask you to write down what had occurred?

20 A. No.

21 JUDGE AMCHAN: This is -- did you meet with
22 Susan Kress more than once? I forgot.

23 THE WITNESS: I believe it was just the once.

24 JUDGE AMCHAN: And that was how long after
25 the 28th?

1 THE WITNESS: That was a couple days after.

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. LAWHON:

4 Q. And Ms. Kress, did she -- she didn't present
5 any notes to you that she had taken after the meeting for
6 you to review for accuracy, isn't that correct?

7 A. That's correct.

8 Q. And when you -- if I were to tell you that your
9 meeting with Paula and Jason was actually not until
10 September 13th, do you have any reason to question that
11 date?

12 A. No.

13 Q. And when you met with Paula and Jason, they
14 didn't request that you give them anything in writing,
15 isn't that correct?

16 A. That's correct.

17 Q. Nor did they present you with any statement
18 that they had written up of what you had told them after
19 the meeting for you to review, isn't that correct?

20 A. Not right away.

21 Q. Not right away meaning, not within the week
22 after September 13th, isn't that correct?

23 A. Yes.

24 Q. With respect to the diagram, Respondent's
25 Exhibit 13, Ms. Smith, the diagram of the room, the, the

1 furniture in the room can be configured, has been
2 configured differently at different times when you've been
3 in that room when it was, when you were there as OB, isn't
4 that correct?

5 I'm referring to the exact position of the bed in
6 relation to the chairs and the portable bedside table.

7 A. Actually, other than the portable table,
8 bedside table, being on the other side of the bed, the
9 furniture was the exact same way it is in the diagram.

10 JUDGE AMCHAN: Just -- you're saying that
11 when you worked, when you worked up there in OB, the
12 furniture was the same as in the diagram, as -- I'm a
13 little confused about what you're --

14 You're telling me it's the same from what
15 compared to what?

16 THE WITNESS: Basically the portable bedside
17 table sometime was on the other side of the bed versus
18 where it's at and the same way with the IV was moved to
19 the other side of the bed.

20 JUDGE AMCHAN: Now you're talking about when
21 you worked there in OB?

22 THE WITNESS: As, as an OB Nurse, yes.

23 JUDGE AMCHAN: Okay.

24 THE WITNESS: But other than that the rest of
25 the furniture is basically the same as it was then. You

1 know the chairs might have been different chairs but they
2 were relatively in the same spot.

3 CROSS-EXAMINATION (CONT'D)

4 BY MS. LAWHON:

5 Q. Ms. Smith, that big chair was ordered specially
6 for the orthopedic department, isn't that correct?

7 A. I don't --

8 Q. That was different?

9 A. I said the chairs may have been different but
10 it was basically in the same spots.

11 Q. You never met with Angie Boyle about the events
12 of August 28th, isn't that correct?

13 A. That's correct.

14 Q. You never met with Bill Osterman about the
15 events of August 28th, isn't that correct?

16 A. That's correct.

17 MS. LAWHON: Nothing further.

18 JUDGE AMCHAN: Do you have anything on
19 redirect?

20 MS. BRUNDAGE: No Your Honor.

21 JUDGE AMCHAN: You're done.

22 THE WITNESS: Thank you.

23 MR. BRYAN CARMODY: One moment Judge?

24 JUDGE AMCHAN: Sure.

25 (WITNESS EXCUSED)

1 (Whereupon a brief time was taken off the record)

2 JUDGE AMCHAN: Back on the record.

3 MS. BRUNDAGE: Affinity Medical Center would
4 now like to call Jonalee Lesjak.

5 JUDGE AMCHAN: Raise your right hand.

6 WHEREUPON,

7 JONALEE LESJAK,

8 A witness herein, after first being duly cautioned and
9 sworn, was examined and testified as follows:

10 JUDGE AMCHAN: Okay. Have a seat. Our
11 microphone does not amplify so you have to speak up.

12 THE WITNESS: All right.

13 DIRECT EXAMINATION

14 BY MS. BRUNDAGE:

15 Q. Good morning. Could you please state and spell
16 your first and last name for the record?

17 A. Jonalee T. Lesjak, J-o-n-a-l-e-e L-e-s-j-a-k.

18 Q. Are you currently employed?

19 A. Yes.

20 Q. Who is your employer?

21 A. Affinity Medical Center.

22 Q. What position do you hold?

23 A. Registered Nurse.

24 Q. How long -- in what department do you work in?

25 A. CVOR.

1 Q. And how long have you worked in the CVOR?

2 A. Since 2009.

3 Q. Is the CVOR an acronym or shorthand term for a
4 department?

5 A. Yes it's the cardiovascular operating room.

6 Q. To whom do you report?

7 A. Jeremie Montabone.

8 Q. Okay. Were you working at the hospital on
9 August 28th, 2012?

10 A. Yes.

11 Q. What hours do you typically work?

12 A. When we have no cases we usually go in at 6:30
13 to typically 3:00.

14 Q. Okay.

15 A. Or we leave early, we can leave early.

16 Q. Okay. On August 28th, 2012, do you recall if
17 you left at three o'clock?

18 A. No I believe we had no cases so I left early.

19 Q. And what is a case?

20 A. Surgery.

21 Q. And when you say early, approximately what time
22 do you, did you leave on Thursday, I'm sorry on August
23 28th, 2012?

24 A. It was after, after noon.

25 Q. After 12 o'clock?

1 A. Yes.

2 Q. What were your job duties on August 28th, 2012?

3 A. When we first went in we had no cases so we
4 filled rooms, stocked the department. If patients needed
5 to be seen we seen patients to educate them and I believe
6 that's the day that I went to relieve Rhonda.

7 Q. Okay. And when you say you went to relieve
8 Rhonda, what did you go do?

9 A. She was sitting with a patient.

10 Q. Okay. What is sitting mean?

11 A. When a patient's like disoriented they sit to
12 make sure the patient does not harm to themselves.

13 Q. Okay. Approximately what time did you relieve
14 Rhonda?

15 A. Eleven.

16 Q. And how long did you serve or how long did you
17 sit?

18 A. I think it was somewhere between 45 minutes,
19 maybe an hour, give or take.

20 Q. Okay. Jonalee, you have a document in front of
21 you. There's a pile of documents but in it there's a
22 document that's marked Respondent's Exhibit 12. I've also
23 got a larger version of that document here.

24 Do you see it? It's actually these two pages
25 together.

1 A. Oh.

2 Q. There you go.

3 A. All right.

4 Q. Okay. Do you see this diagram?

5 A. Yes.

6 Q. And do you recognize this diagram?

7 A. Yes.

8 Q. What does it depict?

9 A. The ortho floor I believe.

10 COURT REPORTER: She needs to speak up

11 please.

12 MS. BRUNDAGE: Can you speak up a little --

13 JUDGE AMCHAN: Yeah, you have to speak louder

14 --

15 MS. BRUNDAGE: -- for the Court Reporter.

16 JUDGE AMCHAN: -- cause especially since

17 you're turning towards her. You might even have to shout

18 a little bit.

19 THE WITNESS: It looks like the ortho floor.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. And do the room numbers, to your

23 recollection, match the room numbers on the orthopedic

24 unit?

25 A. I can't really say.

1 Q. Okay. Do you recall on the day of August 28,
2 2012, where the patient that you were sitting with, where
3 that patient was located?

4 A. She was at the end of the hall on the right.

5 Q. Okay. So would that be the room that's at the
6 lower left hand side of this --

7 A. Yes.

8 Q. -- board?

9 A. Yes.

10 Q. Okay. And for the record the witness has
11 indicated room 3420. When you entered the room to serve
12 as a sitter, was Rhonda Smith in the room?

13 A. Yes.

14 Q. I'm showing you what's been marked as
15 Respondent's Exhibit 13. Do you recognize this document?

16 A. Yes.

17 Q. Or I'm sorry, I'm sorry, this diagram?

18 A. Yes.

19 Q. Okay. And what does this diagram depict?

20 A. The patient's room.

21 Q. Okay. How do you know that?

22 A. I just remember it.

23 Q. Okay. And when you were in the patient's room
24 where was Rhonda -- was Rhonda in the room?

25 A. Yes she was. She was standing by the bedside

1 table.

2 Q. Okay. And you testified that you relieved

3 Rhonda as sitter. Does that mean that she left the room?

4 A. Yes.

5 Q. Okay. And when Rhonda left the room did you,

6 where did you go?

7 A. I stood by the patient's right side.

8 Q. Okay.

9 A. By the bedside table.

10 Q. Was anyone else in the room?

11 A. Her son and another female family member.

12 Q. Okay. When you say her son, you're referring

13 to the patient?

14 A. The patient.

15 Q. Okay. And where were they located?

16 A. The son was in the big chair and the other

17 woman was in the chair beside him.

18 Q. Okay. Were you the primary RN responsible for

19 the patient's care on August 28th?

20 A. No.

21 Q. Was there a nurse assigned from another unit

22 who would be responsible for her care?

23 A. I believe the nurse on the ortho floor.

24 Q. Okay. And do you know who the nurse assigned

25 to the patient you sat with on August 28, 2012, was?

1 A. Ann.

2 Q. Ann?

3 A. Ann Wayt.

4 Q. Okay. At the time that you served as a sitter,
5 do you recall, had you met Ann?

6 A. No, that was the first time I met her when she
7 came in the room.

8 Q. Okay. At the time that you served as a sitter,
9 do you recall whether a Union campaign was taking place at
10 the hospital?

11 A. I know they were campaigning.

12 Q. Okay. Did you know whether or not Ann
13 supported the Union during this campaign?

14 A. I didn't.

15 Q. When you were located in the patient's room
16 serving as the sitter, were you sitting or standing in the
17 room?

18 A. Standing.

19 Q. Why?

20 A. The patient was fidgety and kept trying to pull
21 at her IV so I just kind of stood at her bedside and kind
22 of kept talking to her and she would doze on and off.

23 Q. Okay. While you were sit-, while you were
24 serving as the sitter did Ann enter the patient's room at
25 all?

1 A. Yes.

2 Q. What did she do when she entered the room?

3 A. The patient had an IV which was beside me, it
4 wasn't on an IV, it wasn't in a pump and she placed the IV
5 tubing into the IV pump.

6 Q. Okay. And what does it mean to place an IV, an
7 IV tubing into a pump for those of us who don't have much
8 clinical knowledge?

9 A. It's basically putting it into a pump so it
10 regulates the drip rate.

11 Q. Okay. Did Ann speak with anyone in the room at
12 that time?

13 A. We introduced each other, to each other, and
14 she talked to the son for a moment.

15 Q. Okay. When you say a moment, would, how many
16 minutes would you estimate?

17 A. Probably give or take three or four.

18 Q. Okay. After that occasion when Ms. Wayt placed
19 the IV bag or tubing into the pump, did you observe
20 Ms. Wayt in the patient's room at any other time while you
21 served as the sitter?

22 A. No.

23 Q. Are you familiar with the term head to toe
24 assessment?

25 A. Yes.

1 Q. Based on your experience, what do you believe
2 the head to toe assessment to include?

3 A. Exactly how it sounds, a head to toe. You
4 start neuro and you work your way down, listen to the
5 lung, bowel sounds, check pulses --

6 Q. Okay. Do you --

7 A. -- check skin.

8 Q. Okay. Anything else?

9 A. That's it basically.

10 Q. Do you perform head to toe assessments in the
11 CVOR?

12 A. No.

13 Q. But are you still trained on the procedure for
14 head to toe assessment?

15 A. Yes.

16 Q. At the time when Ann Wayt was in the room to
17 place the IV bag in the IV pump, did you observe Ann
18 complete what you understand to be a head to toe
19 assessment of the patient?

20 A. No.

21 Q. Did you see Ann -- did you observe Ann at any
22 other point in time complete what you understand to be a
23 head to toe assessment of the patient?

24 A. No.

25 Q. Did you leave the patient unattended in the

1 room at any point in time while serving as the patient's
2 sitter?

3 A. No.

4 Q. Did you utilize the bathroom while you were
5 serving as the patient's sitter?

6 A. No.

7 Q. Why not?

8 A. I was only up there for a short period of time
9 so plus I have nurses' bladder, which can be held for
10 eight to 10 hours, so I --

11 Q. Okay.

12 A. -- and plus I probably would have used the
13 restroom before I went, being that it was only for a lunch
14 relief.

15 Q. Okay. Do you know where the bathrooms are
16 located on the orthopedic unit?

17 A. No I don't.

18 Q. Okay. Did you leave the room for any reason at
19 any point in time while serving as the sitter?

20 A. No.

21 Q. Did you wait for Rhonda Smith to return from
22 lunch before you left?

23 A. Yes.

24 Q. When Rhonda returned from lunch, I'm going to
25 show you Respondent's Exhibit 13. When Rhonda returned

1 from lunch, referring to this diagram, do you recall where
2 you were standing?

3 A. By the patient's right side, by the bedside
4 table.

5 Q. And was that the same area in which you had
6 been standing for most of the time you served or all of
7 the time?

8 MS. LAWHON: Objection, compound.

9 MS. BRUNDAGE: Okay. I'm sorry. I'll
10 rephrase.

11 Q. Is that where you stood for the entire, the
12 time you served as a sitter?

13 A. Yes.

14 Q. When Rhonda returned from lunch did the two of
15 you speak?

16 A. Yes.

17 Q. What was that, what did that conversation
18 consist of?

19 A. I just told her that the patient was kind of
20 talking incoherently and fidgety and would doze on and off
21 and also it seemed like she was in some pain.

22 Q. Okay. Did you and Rhonda discuss what, if
23 anything, should be done about the patient's pain?

24 A. I told Rhonda that I would stop at the nurses'
25 station to tell Ann about that she seemed to be in pain.

1 Q. Okay.

2 A. See if she had anything ordered.

3 Q. Okay. Did you speak with Ann at the nurses'
4 station?

5 A. Yes.

6 Q. Okay. What did -- how -- what did that
7 conversation consist of?

8 A. I just told her that the patient seemed to be
9 in some pain. She was kind of grimacing when she laid on
10 her side and she said that she would check to see if
11 anything was ordered.

12 Q. Okay.

13 JUDGE AMCHAN: The she's are -- the first she
14 was the patient. The second she was --

15 THE WITNESS: Was Ann --

16 JUDGE AMCHAN: -- Ms. Wayt?

17 THE WITNESS: -- Ann would check to see --

18 JUDGE AMCHAN: Right.

19 THE WITNESS: -- if anything was ordered.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. After you left the nurses' station where
23 did you go?

24 A. I believe I went home. I went down and changed
25 and there's nothing else to do in the department so I went

1 home.

2 Q. Okay. Did you report the events of August
3 28th, 2012, to any hospital management?

4 A. No, not while I was there.

5 Q. Did hospital management ever contact you about
6 the events of August 28th, 2012?

7 A. Yeah.

8 Q. Who contacted you?

9 A. Paula I believe is her name and Jason.

10 Q. Okay. And do you recall approximately when
11 that would have occurred?

12 A. Probably several weeks after maybe or a week;
13 I'm not quite sure exact-, probably a week or so after.

14 Q. Okay. What did that conversation consist of?

15 A. They just kind of -- they asked me what
16 happened while I was there sitting.

17 Q. Okay.

18 A. And I told them what happened when I was there.

19 Q. Okay. Did Susan Kress ever contact you?

20 A. Yes.

21 Q. And how -- what was -- where -- I'm sorry, when
22 did that occur approximately?

23 A. Probably around the same time, maybe a day or
24 so after I talked to Paula I believe --

25 Q. Okay.

1 A. -- and Jason. She peeked her head in to the
2 CVOR and asked if I went to the restroom while I was
3 there.

4 Q. Okay. Is -- and Susan -- you've testified
5 Jeremie is your manager. Is Susan also your manager?

6 A. Susan is the manager of CVSICU, which we work
7 very closely together because that's where all our
8 patients go post-op.

9 Q. Okay. Is her office located near your
10 department?

11 A. Yes.

12 Q. Did you ever sign a statement which recounted
13 the events of August 28th, 2012?

14 A. Yes.

15 Q. When approximately did you do that?

16 A. Several weeks after.

17 Q. Okay. Who asked you to sign a statement?

18 A. Jason.

19 Q. Okay. Did you prepare the statement yourself?

20 A. No.

21 Q. Who prepared -- if you know, who prepared it
22 for you?

23 A. I believe Jason did.

24 Q. Okay.

25 A. But I can't say for sure.

1 Q. Did you verify the statement?

2 A. Yes.

3 Q. Did you make any changes to the statement?

4 A. Yes.

5 Q. Okay. Do you recall what those changes were?

6 A. I don't recall off hand. I just remember

7 something not being exactly what I remembered and he made

8 the changes and came back to me a day or so later and I

9 signed them.

10 Q. Okay. I'm going to show you what's been marked

11 as Respondent's Exhibit 15; actually is Respondent's, not

12 just marked, it's Respondent's Exhibit 15.

13 Do you have a copy up there?

14 A. Yes.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. I believe it's the sitter checklist or sitter

19 checklist.

20 Q. Okay. Do you see your handwriting on this

21 document anywhere?

22 A. Yes.

23 Q. Where is that?

24 A. Starting at 11 and ending at noon.

25 Q. Okay. And these indications, do they have

1 meaning to you?

2 A. Yes.

3 Q. Okay. What is that meaning derived from?

4 A. The numbers over here.

5 Q. Okay and you're referencing the key on the left
6 hand side of the page?

7 A. Yes.

8 Q. Okay.

9 MS. BRUNDAGE: I have no further questions
10 for this witness.

11 JUDGE AMCHAN: I just, before they start.
12 You talked about, did anybody else come into the room?
13 You've talked about when you saw Ms. Wayt and you saw the
14 family people and Ms. Smith was there when you entered and
15 she came in when you left.

16 Did anybody else come into the room?

17 THE WITNESS: No, not that I recall.

18 JUDGE AMCHAN: Okay. Cross?

19 MS. CENDROSKY: Could I have a few minutes?
20 Not very long.

21 JUDGE AMCHAN: Okay. We'll go off the
22 record.

23 (Whereupon a brief time was taken off the record)

24 JUDGE AMCHAN: Back on the record.

25 MS. CENDROSKY: At this time General Counsel

1 has no cross.

2 JUDGE AMCHAN: Okay.

3 MS. LAWHON: I have a few questions.

4 CROSS-EXAMINATION

5 BY MS. LAWHON:

6 Q. Good afternoon Ms. Lesjak. I'm Jane Lawhon,
7 the attorney for the National Nurses Organizing Committee.

8 Did you meet with counsel for the Employer before
9 testifying today?

10 A. Yes.

11 Q. When did you do that?

12 A. It was around 8:30 I think.

13 Q. 8:30 this morning?

14 A. Uh-huh.

15 Q. And had you met with them prior to 8:30 this
16 morning, any, any person, attorney representing the
17 hospital?

18 A. This morning?

19 Q. No, any other time besides 8:30 this morning?

20 A. Yes.

21 Q. When was that?

22 A. Couple weeks ago maybe.

23 Q. Okay. And with whom did you meet then?

24 A. Kaitlin.

25 Q. Okay. And did she show you the diagram that

1 she asked you about of the room this morning when you met
2 with her?

3 A. Yes.

4 Q. How long did you meet with her approximately?

5 A. Twenty minutes, give or take.

6 JUDGE AMCHAN: Be sure to keep your voice up.

7 Q. How, how long have you been a registered nurse

8 Ms. Lesjak?

9 A. Since 2001.

10 Q. Okay. And what kind of experience did you have

11 before coming to the CVOR in 2009?

12 A. I worked a year in Step Down.

13 Q. Okay.

14 A. And I then, the rest of the time has been in

15 the cardiovascular OR.

16 Q. Okay. So when you say Step Down, that's an

17 in-patient unit between ICU and Telemetry and --

18 A. Yes.

19 Q. -- or -- okay. Okay. And was that your first

20 year out of nursing school you worked in the Step Down

21 unit?

22 A. Yes.

23 Q. And then you began to specialize in OR?

24 A. Yes.

25 JUDGE AMCHAN: And you've been at Affinity

1 that entire time or what --

2 THE WITNESS: No.

3 JUDGE AMCHAN: -- you worked some place else?

4 THE WITNESS: I worked at Altman Hospital

5 until 2009 when I went to Affinity.

6 JUDGE AMCHAN: Is that also in Massillon?

7 THE WITNESS: It's in Canton.

8 CROSS-EXAMINATION (CONT'D)

9 BY MS. LAWHON:

10 Q. And aside from your first year as a nurse,
11 Ms. Lesjak, you haven't had responsibility for performing
12 head to toe assessments as a nurse, isn't that correct?

13 A. Yes, not on a daily basis.

14 Q. Now, isn't it true that parts of the head to
15 toe assessment can be done just by the nurse looking at
16 the patient, isn't that true?

17 A. Yes.

18 Q. Is it fair to say that when Ann came in and
19 attached the IV tubing into the IV pump that she looked at
20 the patient?

21 A. She only probably saw the shoulders up because
22 the patient was covered.

23 Q. I understand Ms. Lesjak but she observed the
24 patient's face and any part of the patient that was
25 outside of the covers, isn't that right?

1 A. Yes.

2 Q. Now, if you look at Respondent's Exhibit 15,
3 the I believe you called it the, I'll call it the sitter
4 observation sheet. Do you know what I'm talking about?

5 A. Yes.

6 Q. Okay. And you marked it, you marked four
7 entries on it -- five entries on it, is that right, 11,
8 11:15, 11:30, 11:45 and 12?

9 A. Yes.

10 Q. Okay. And you were there at each of those
11 times, isn't that correct?

12 A. Yes.

13 Q. Now if I were to tell you that from reviewing
14 affidavits from Jerem-, from Jason McDonald and Paula
15 Zinsmister that they did not meet with you until September
16 19th.

17 Do you have any reason to think that's not
18 correct?

19 A. No, I mean I honestly -- I, I didn't know
20 anything that was going on with anything until they talked
21 to me.

22 Q. Okay.

23 JUDGE AMCHAN: Is that your recollection that
24 it was several weeks after the --

25 THE WITNESS: Yeah, I mean it was, I mean it

1 was a while.

2 MS. LAWHON: Nothing further.

3 JUDGE AMCHAN: Do you have anything else?

4 MS. BRUNDAGE: No I don't.

5 JUDGE AMCHAN: You can step down.

6 (WITNESS EXCUSED)

7 MS. BRUNDAGE: Would now be an appropriate
8 time for us to take a lunch break?

9 MS. LAWHON: Seems good to me.

10 MS. CENDROSKY: Yeah, sure.

11 MS. BRUNDAGE: Is that okay with you Bryan?

12 MR. BRYAN CARMODY: Your Honor?

13 JUDGE AMCHAN: Sure.

14 MR. BRYAN CARMODY: Okay.

15 JUDGE AMCHAN: How long do you want?

16 MR. BRYAN CARMODY: Are we off the record
17 Your Honor?

18 JUDGE AMCHAN: Yeah, let's go off.

19 (Whereupon a lunch recess was taken at this time)

20 JUDGE AMCHAN: Back on the record.

21 MS. CENDROSKY: Real quickly Your Honor,
22 where are the other two witnesses that were here this
23 morning?

24 MR. BRYAN CARMODY: Uh, we're not --

25 MS. CENDROSKY: Are they back in the room?

1 MR. BRYAN CARMODY: No, we're not calling
2 them actually.

3 MS. CENDROSKY: Okay.

4 MR. BRYAN CARMODY: Are we on the record?

5 JUDGE AMCHAN: Yes.

6 MR. BRYAN CARMODY: Okay. Thank you Your
7 Honor. Affinity calls Susan Kress.

8 JUDGE AMCHAN: Since I already swore you in,
9 one size fits all, I don't have to do it again.

10 THE WITNESS: Okay. Thank you.

11 JUDGE AMCHAN: You're still under oath.

12 WHEREUPON,

13 SUSAN KRESS,

14 A witness herein, after previously being duly cautioned
15 and sworn, was re-examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BRYAN CARMODY:

18 Q. Welcome back Susan.

19 A. Thank you.

20 Q. Can you please summarize your educational
21 background for the Judge please?

22 A. I graduated in 1985 from the University of
23 Cincinnati with a Bachelor of Science Degree in Nursing
24 and I'm presently pursuing my Masters Degree at the
25 University of Akron.

1 MS. LAWHON: I'm sorry I couldn't hear. At
2 the University of?

3 THE WITNESS: Akron.

4 MS. LAWHON: Thanks. The witness -- Your
5 Honor if you would ask the witness to speak up --

6 THE WITNESS: I will.

7 MS. LAWHON: -- especially the end of the
8 sentence.

9 DIRECT EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Okay Susan, subsequent to your graduation from
12 nursing school did you obtain a RN license?

13 A. I did.

14 Q. What year was that if you recall?

15 A. 1985.

16 Q. Thereafter did you work as a staff nurse?

17 A. I did.

18 Q. Can you please summarize briefly your
19 experience working as a staff nurse?

20 A. From 1985 to '89 I worked at Alliance Community
21 Hospital as a staff nurse in the intensive care unit.
22 From '89 to '99 I worked at Akron General Medical Center
23 as a staff nurse in the open heart recovery unit.

24 And then from '99 to when I went to Affinity in
25 2007 I worked at Grand Strand Medical Center in Myrtle

1 Beach as a rounding nurse for the open heart surgeons and
2 as a staff nurse in the open heart unit.

3 Q. Thank you. Do you still hold an RN license?

4 A. I do.

5 Q. And do you carry a duty under your license to
6 abdicate for the patient?

7 A. I do.

8 Q. How do you abdicate for the patient?

9 A. What I do every day working I follow all
10 policies and procedures set forth by the hospital to
11 provide safe and quality care to all of our patients.

12 Q. And with respect to Affinity, what are these
13 procedures to which you just referred?

14 A. In the morning we start at 8:30. We start with
15 a safety huddle and at that team, at that time all the
16 leadership team meets. We discuss any safety concerns or
17 any events that have been put into the event recording
18 system.

19 After that's conveyed we meet at nine o'clock
20 with only the leader, a nursing leadership team and our
21 CNO and then we discuss any staffing and census issues
22 that we might have to adapt to.

23 We then, again, meet at 3:30 with the nursing
24 leadership team and the CNO and we discuss census and
25 staffing for the night shift. That's every day, Monday

1 through Friday.

2 Q. Thank you. I believe this is in the record

3 already but just to reset the table so to speak, what's

4 your current title at Affinity?

5 A. I'm Director of Critical Care Services.

6 Q. Thank you. And as Director of Critical Care

7 Services do you manage particular units or departments?

8 A. I do, three of them.

9 Q. Okay. Can you please list those for the Judge?

10 A. The Intensive Care Unit, the Cardiovascular

11 Surgical Intensive Care Unit and the Step Down unit when

12 it's open.

13 Q. Thank you. Susan, I want to direct your

14 attention to the week of August 27th of last year. Do you

15 recall whether any of your fellow managers happen to be on

16 vacation that week?

17 A. There was.

18 Q. Okay. Who was that?

19 A. It was Paula Zinsmister of the orthopedic

20 floor.

21 Q. And while she was on vacation was anyone

22 serving as the acting director of orthopedics?

23 A. Yes.

24 Q. Who was that?

25 A. I was.

1 Q. Do you happen to recall the duration of Paula's
2 vacation?

3 A. August 27th to September 3rd.

4 Q. Did you take any steps to inform Paula's staff,
5 particularly the nurses working in the orthopedic unit,
6 that you would be covering for Paula while she was out on
7 vacation?

8 A. I went up every morning and either tried to go
9 up after noon or made a phone call to the unit but I think
10 Paula conveyed it to her staff that I was covering for her
11 too.

12 Q. Thank you. I want to direct your attention,
13 Susan, to a particular day that week, that day being
14 Tuesday the 28th of August.

15 Do you recall how your work day started that day?

16 A. I was sitting at my desk and Jeremie Montabone
17 came into my office and he informed me that the nurse who
18 was sitting for the patient that Ann was taking, that had,
19 Ann had, had some concerns about the quality of care that
20 the patient received during that time.

21 Q. Okay. I want to direct your attention to
22 August 28th of, of last year. Did you attend --

23 MS. LAWHON: Excuse me Your Honor. Could we
24 have the last question and answer read back?

25 MR. BRYAN CARMODY: I believe the Court

1 Reporter has said that isn't possible.

2 MS. LAWHON: It is possible I believe. It's
3 very quick. I just -- I need -- I just need to hear --

4 JUDGE AMCHAN: Can you do it?

5 (Whereupon the Court Reporter played back the last
6 question and answer)

7 JUDGE AMCHAN: All right.

8 THE WITNESS: On August 28th we were at the
9 bed huddle at 8:30 in the morning and the phone rang.

10 DIRECT EXAMINATION (CONT'D)

11 BY MR. BRYAN CARMODY:

12 Q. You saw we, we were at the bed huddle. Who's,
13 who's the we?

14 A. Nursing leadership team, the head of the house
15 supervisors and Bill Osterman -- no, not Bill Osterman,
16 sorry, not Bill Osterman.

17 Q. Okay. And what, what time of day was this
18 approximately?

19 A. 8:30 -- nine o'clock in the morning.

20 Q. Okay. Where does this bed huddle take place?

21 A. It takes place in the coordinator's office.

22 Q. Okay. What floor is that on?

23 A. It's on the second floor.

24 Q. Is there a phone in that room?

25 A. There is.

1 Q. Did the phone ring during that days', that
2 morning's bed huddle?

3 A. It did.

4 Q. Who picked up the phone?

5 A. Beth Farner, the manager of the house
6 supervisors.

7 Q. And when Beth hung up the phone did she say
8 anything to you?

9 A. She did. She said that an ED Nurse was on, was
10 that called her and that they called up to the ortho floor
11 and Ann refused to take a patient to the orthopedic be- --

12 Q. You, you mentioned Ann, last name?

13 A. Wayt.

14 Q. Thank you. Now at that point in time --

15 MS. LAWHON: Excuse me. Your Honor, I'm not
16 sure if counsel saying was Ann Wayt's name used or if he's
17 trying to clarify for the record who she means by Ann. I
18 think it is --

19 JUDGE AMCHAN: I thought the latter.

20 MR. BRYAN CARMODY: It was the latter, Your
21 Honor, and obviously so.

22 JUDGE AMCHAN: Well did, did the -- I can't
23 remember the name of the lady that --

24 MS. LAWHON: Beth Varner.

25 THE WITNESS: Beth Varner.

1 JUDGE AMCHAN: Did she mention Ms. Wayt?

2 THE WITNESS: She said Ann.

3 JUDGE AMCHAN: She said Ann.

4 THE WITNESS: Uh-huh.

5 DIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. And when Ms. Varner mentioned Ann did you
8 understand Ms. Varner to be referring to any particular
9 Ann?

10 A. Ann Wayt, there is the only Ann that worked on
11 the orthopedic floor.

12 Q. Thank you ma'am. In response to what Beth said
13 to you, what did you do, if anything?

14 A. Picked up the phone and called Ann to tell her
15 that it was not appropriate procedure for any nurse in the
16 hospital to refuse a patient.

17 We'd been instructed by our boss, Bill Osterman,
18 that we were not allowed to do that because it impeded the
19 flow of the hospital and it could jeopardize patient
20 safety.

21 Q. Okay. And were you able to reach Ann --

22 A. I was.

23 Q. -- Did you talk to her on the phone? And what
24 do you recall about your conversation with Ms. Wayt?

25 A. I told her that it was not appropriate for her

1 to refuse the patient and she told me that the patient
2 needed a sitter and I told her that we would get one for
3 her and it still was not appropriate for her to refuse the
4 patient.

5 Q. What's a sitter?

6 A. A sitter is a person assigned to a patient that
7 has a condition like dementia or Alzheimer's that the
8 person supervises the patient so to ensure their safety.

9 Q. Great. When you hung up the phone with Ann
10 what did you do next?

11 A. I went directly up to the orthopedic floor.

12 Q. Before -- was Mr. Montabone, Jeremie Montabone,
13 in attendance at this bed huddle?

14 A. He was.

15 Q. Okay. Before you left for the ortho floor did
16 you speak to Mr. Montabone?

17 A. I did. Well I made a general statement. I
18 said orthopedics needs a sitter. Does anyone have anybody
19 available and he said since they had --

20 MS. CENDROSKY: Objection Your Honor hearsay.

21 Is Mr. Montabone coming to testify?

22 MR. BRYAN CARMODY: He is.

23 MS. CENDROSKY: Okay.

24 JUDGE AMCHAN: Well, but she's testifying
25 about what she heard, which she can do.

1 THE WITNESS: He said there were no cases
2 that day and he would be able to send somebody. He didn't
3 know who but he would send somebody.

4 DIRECT EXAMINATION (CONT'D)

5 BY MR. BRYAN CARMODY:

6 Q. Okay. After speaking with Mr. Montabone, where
7 did you go?

8 A. I went directly to the orthopedic floor.

9 Q. Do you recall approximately what time you got
10 to the orthopedic floor?

11 A. About 9:10.

12 Q. Where's the orthopedic department in relation
13 to where your bed huddle was taking place?

14 A. It's on the third floor.

15 Q. When you got to the orthopedics floor what did
16 you observe?

17 A. I walked directly to the nurses' station. They
18 did seem busy. I saw Ann at the nurses' station and I,
19 again, reiterated that she shouldn't have refused the
20 patient.

21 Q. Do you recall if Ms. Wayt said anything to you
22 in reply?

23 A. That -- I made another statement first. I
24 said, you know I, I would have taken care of this for you,
25 and she grabbed me around my waist and kind of gave me a

1 shrug and said, I know Susie you would have.

2 Q. What happened next?

3 A. Then I saw the patient coming by the nurses'
4 station and I walked with the ED nurses to the patient's
5 room.

6 Q. About how long did you, after you go to the
7 ortho floor, did you notice the patient arriving?

8 A. Three or four minutes at the most probably.

9 Q. Okay.

10 A. Not very long.

11 Q. Do you happen to remember the last name of this
12 patient, the first letter of her last name?

13 A. P.

14 Q. Okay. So I'm going to refer to this patient as
15 Ms. P at times as we go through this. Now who was with
16 Ms. P when she arrived on the orthopedic floor?

17 A. There were two ED nurses escorting the patient.

18 Q. When you saw the patient what did you do?

19 A. I walked back with the ED nurses to the
20 patient's room.

21 Q. Do you recall what room Ms. P was located in?

22 A. It was a corner room; it was 3420.

23 Q. Did anyone else actually help you wheel, I
24 guess the word would be --

25 A. Sam Burgett, a PCT, met us.

1 Q. Okay. Let me just finish --

2 MS. LAWHON: Objection.

3 Q. -- finish the --

4 MS. LAWHON: Excuse me.

5 MR. BRYAN CARMODY: Counsel, I, I know what
6 you're objection is --

7 MS. LAWHON: Wait, I'm objecting to --

8 MR. BRYAN CARMODY: Did anyone else --

9 MS. LAWHON: -- help you -- excuse me
10 counsel, but you really are not clairvoyant. I'm
11 objecting to help you wheel the patient cause there's no
12 evidence in this record that's, this witness had anything
13 to do with wheeling the patient.

14 So it mis-states the record. Did anyone help you
15 wheel the patient, she hasn't said she wheeled the
16 patient.

17 THE WITNESS: I walked with the patient on
18 the side of the gurney to the room.

19 MS. LAWHON: That's fine. That's not the
20 same thing --

21 MR. BRYAN CARMODY: Did anyone help you --

22 MS. LAWHON: -- as wheeling it.

23 MR. BRYAN CARMODY: Did anyone help you in
24 the process you just described, Susan?

25 THE WITNESS: Yeah, the PCT Sam Burgett.

1 MR. BRYAN CARMODY: Thank you.

2 DIRECT EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. What's a -- simply put, what is the role of a
5 PCT?

6 A. To assist nurses with duties.

7 Q. Once the patient was brought to this room, what
8 occurred?

9 A. We transported the patient from the gurney to
10 the bed.

11 Q. At about that point in time did anyone else
12 come into the patient's room?

13 A. Rhonda Smith did.

14 Q. And did you know Rhonda Smith?

15 A. I did.

16 Q. Who is she?

17 A. She is a CVOR nurse who's been at the hospital
18 for a very long time.

19 Q. Okay. Did Rhonda say anything to you when she
20 got to the patient's room?

21 A. She said that she would be the sitter for the
22 day.

23 Q. What happened at that point? At that point in
24 time is the patient still in the bed, the gurney?

25 A. The gurney. We as a team moved the patient

1 over.

2 Q. And after the patient was transferred over to
3 the bed in the ortho unit, what happened next?

4 A. The ED nurse said nothing had changed and I
5 left the room.

6 Q. Okay. What time did you, approximately, left
7 the patient's room?

8 A. About 9:25.

9 Q. Okay. From the time that you brought the,
10 assisted bringing Ms. P into her room to the time that
11 you, yourself, departed Ms. P's room, did you see Ms. Wayt
12 in the room?

13 A. No I did not.

14 Q. When you left this room 3420 where did you go?

15 A. I went back out to the nurses' station. I saw
16 Duana and I told her if there is anything else that she
17 needed throughout the day that she could contact me.

18 Q. You mentioned --

19 JUDGE AMCHAN: Who's Duana?

20 THE WITNESS: Duana Nadzam is another nurse
21 on the orthopedic floor.

22 DIRECT EXAMINATION (CONT'D)

23 BY MR. BRYAN CARMODY:

24 Q. Did you later return to the orthopedics
25 department that day?

1 A. I did, it was about 1:30.

2 Q. And what, what happened when you returned to
3 the floor about 1:30?

4 A. I, again, saw Duana and I asked her if there
5 was anything that I could do for her and she said no, that
6 they would be fine and then I went back to my unit.

7 Q. Thank you. Susan, now, now I want to direct
8 your attention to August 29th, the following day. Did you
9 go to work that day?

10 A. I did.

11 Q. At any point early that day did anyone approach
12 you to talk about Ms. P?

13 A. Jeremie Montabone, the manager of the CVOR.

14 Q. Do you have any approximation as to when that
15 conversation took place?

16 A. It was right after I got there cause I was
17 opening up my computer, so it was about 7:30, 7:45 in the
18 morning.

19 Q. Thank you. And please recount the conversation
20 you had with Jeremie?

21 A. He came in my office and he said that one of
22 his nurses, Rhonda Smith, came to him with a lot of
23 concerns about the quality of care that the patient
24 received while she was sitting with the patient up on the
25 orthopedic floor.

1 Q. Okay. When Jeremie shared these, these
2 concerns with you that he had received from Rhonda, did
3 you form any conclusion as to the identity of the nurse
4 who was taking care of the patient?

5 MS. LAWHON: Objection, mischaracterizes the
6 testimony. She didn't say anything about Jerry, Jeremie
7 sharing his concerns.

8 She said he reported that he had been told that
9 the sitter had a lot of concerns. Nothing IN this record
10 about Mr. Montabone's concerns.

11 JUDGE AMCHAN: Well, your question was did
12 she know who was, which nurse was in charge of the patient
13 the day before.

14 MR. BRYAN CARMODY: Yes, sir.

15 THE WITNESS: I did. Ann Wayt.

16 MR. BRYAN CARMODY: Thank you.

17 DIRECT EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. After you spoke with Jeremie what did you do?

20 A. Boy --

21 Q. Take your time. Did you have occasion to talk
22 with any other hospital manager that day?

23 A. I did. Mid morning I saw Jason McDonald. I'm
24 sorry, I'm just nervous. I saw Jason McDonald in the
25 hallway and I told him of the concerns that were presented

1 to me from Jeremie.

2 Q. Okay. What's Jason's title or position at the
3 hospital?

4 A. He is Director of the Orthopedic program.

5 Q. So after you spoke with Jason what did you do
6 next?

7 A. After I did that I told Jason that I would do a
8 preliminary investigation and then I went up to the
9 orthopedic floor to look at the patient's medical record.

10 Q. And why did you decide to look at Ms. P's
11 medical record?

12 A. From the concerns that Jeremie had given to me
13 that would be the only place that I could look to find the
14 answers to the things that he told me.

15 Q. Okay. And was there any particular medical
16 record that you did review when you went up to perform
17 your review of the medical record?

18 A. I looked at the 24 hour assessment and the
19 hourly rounding sheet.

20 Q. Can you please retrieve -- you have a stack of
21 exhibits there Susan.

22 A. Uh-huh.

23 Q. If you'll look at Respondent's Exhibit 5.

24 A. Okay.

25 Q. Do you have it there in front of you Susan?

1 A. I do.

2 Q. And do you recognize this document?

3 A. I do.

4 Q. And what's this document?

5 A. This is the 24 hour flow sheet for Mrs. P.

6 Q. Is this one of the documents you reviewed at
7 that point in time?

8 A. It is.

9 Q. Can you now go to, I think it's going to be
10 General Counsel's Exhibit 7, yes, General Counsel's
11 Exhibit 7.

12 A. Okay.

13 Q. And if you look at the very last page, 26 --

14 A. No, there's only two pages on 7.

15 Q. Oh, I think you're looking at --

16 MS. CENDROSKY: Look for the GC.

17 THE WITNESS: GC.

18 MS. CENDROSKY: Thank you. It would be --
19 it's kind of a packet.

20 MR. BRYAN CARMODY: Let me help you. Here.

21 DIRECT EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. I'm handing you a document Susan what is this
24 labeled?

25 A. GC E-x-h 7.

1 Q. Okay. Can you please turn to the final page of
2 the document?

3 A. Uh-huh. Okay.

4 Q. Is that a document you recognize?

5 A. It is our hourly rounding log.

6 Q. And is that one of the documents that you
7 looked at while looking over Ms. P's records?

8 A. It is.

9 MS. LAWHON: Objection. Leading. Your
10 Honor, this is critical to their defense, this witness'
11 conduct and if this witness has memory of it, it seems
12 appropriate to elicit it without leading.

13 MR. BRYAN CARMODY: Your Honor, the witness
14 had testified that she had looked at Ms. P's rounding log.

15 JUDGE AMCHAN: Yeah, well she answered.
16 Let's go on.

17 DIRECT EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Susan, after reviewing the patient's 24 hour
20 assessment, did you develop any concerns?

21 A. I did.

22 Q. Can you please share with us what those
23 concerns were?

24 A. The first concern was, there was nothing
25 document, documented about the skin integrity of the

1 patient that I noticed on the patient. I also noticed a
2 harsh cough on the patient and that was nowhere
3 documented.

4 Also there were indications that hourly rounding
5 was started at 7:00 a.m. on the patient on the 24 hour
6 assessment and the patient was not in the department at
7 7:00 a.m.

8 Q. Okay. Had you, during your time with Ms. P,
9 noticed any skin, skin issues on Ms. P's person?

10 A. I did.

11 Q. What did you observe?

12 A. She had a skin tear on her ambicuticle space
13 and she had --

14 Q. What, what's that?

15 MS. CENDROSKY: Thank you.

16 A. That is -- sorry. It's the crease of your
17 elbow.

18 Q. Thank you.

19 A. And then she had a very bruised heel.

20 Q. Susan, did you consider the time at which
21 Ms. Wayt had completed, purported to complete, her head to
22 toe assessment?

23 A. Yeah, it was documented at 9:00 a.m.

24 Q. And was that of concern to you?

25 A. Yes it was cause the patient didn't arrive to

1 the floor till 9:15 a.m.

2 Q. Thank you. After reviewing Ms. P's chart, what
3 did you do next?

4 A. I went with my concerns to my boss, Bill
5 Osterman.

6 Q. And what do you recall of your conversation
7 with Bill, Mr. Osterman?

8 A. I told Bill of the things that I found and the
9 things that were recorded and he told me to finish
10 gathering all the material and to report to Paula when she
11 got back.

12 JUDGE AMCHAN: So you talked to Mr. Osterman
13 on the 29th?

14 THE WITNESS: Uh-huh.

15 JUDGE AMCHAN: You have to answer audibly.

16 THE WITNESS: Yes, sir.

17 DIRECT EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Thank you, Susan. The next day, so August
20 30th, did you pursue any investigation so far as Ms. P was
21 concerned?

22 A. I did. I talked to Rhonda Smith and Sam
23 Burgett on those days.

24 Q. And please tell the Judge about the
25 conversation you had with Rhonda --

1 MS. LAWHON: I'm sorry, Your Honor, did the
2 witness just say on those days?

3 THE WITNESS: On that day.

4 JUDGE AMCHAN: On August 30th.

5 MS. LAWHON: Okay.

6 THE WITNESS: On that day, yes.

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Please tell me about your conversation with
10 Rhonda?

11 A. I went over everything that I had found in the
12 chart and verified that all the stuff that I had found was
13 true with Rhonda.

14 Q. Did Rhonda share with you any concerns that she
15 had with --

16 A. She --

17 Q. -- Ms. P's --

18 MS. LAWHON: Objection.

19 THE WITNESS: -- did.

20 MR. BRYAN CARMODY: -- care?

21 MS. LAWHON: Leading. This is a critical
22 conversation, Your Honor.

23 JUDGE AMCHAN: Well --

24 MS. LAWHON: Who said what is the normal form
25 of examination when counsel would like to elicit

1 unassisted recollection.

2 JUDGE AMCHAN: I, I think --

3 MR. BRYAN CARMODY: Your Honor --

4 JUDGE AMCHAN: -- it's overly technical. I

5 think it's a preliminary question. She doesn't -- I mean

6 obviously I would want somewhat of a narrative now.

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. So what do you recall Rhonda saying to you,
10 Susan, if anything?

11 A. Rhonda was very concerned that a nurse did not
12 go into the room, did not assess the patient, that no
13 nurse did hourly rounds on the patient, that the only time
14 that she did see a nurse was when she put on the call
15 light because the patient was having extreme pain and
16 because she needed a diaper because the patient needed
17 changed.

18 Q. Thank you.

19 JUDGE AMCHAN: Well what did you tell that
20 those were, that was one occasion or two different
21 occasions?

22 THE WITNESS: Those were two different
23 occasions.

24 DIRECT EXAMINATION (CONT'D)

25 BY MR. BRYAN CARMODY:

1 Q. And Susan, did you find these concerns that
2 Rhonda was sharing with you to be credible or not
3 credible?

4 A. I found them to be very credible.

5 Q. Why?

6 A. Because Rhonda is an excellent nurse and she is
7 very credible and why would she lie about it.

8 Q. What was the -- you said you spoke with Sam.
9 Please tell the Judge about the conversation you had with
10 Sam that day?

11 A. I met with Sam in the orthopedic waiting room
12 and I asked him if he remembered if Ann had been in the
13 room or remembered anything about that day.

14 Q. And what did Sam say to you?

15 A. He said he was very busy that day. He did not,
16 he could not state the fact that Ann ever came into the
17 room because he did not know.

18 Q. Okay. And what did you do next in terms of
19 your investigation after having spoken with Rhonda and
20 after having spoken with Sam?

21 A. I did nothing that day. The next day I met
22 with Bill and told him of my concerns and he told me that
23 he would address this issue with Angie Boyle, the head of
24 HR.

25 Q. Okay. Did Ms. -- did Paula return from her

1 vacation as scheduled the following week?

2 A. She returned on September 4th.

3 Q. Okay. And did you have occasion to talk with

4 Paula upon her return from vacation about Ms. P and Ann

5 Wayt?

6 A. I did but I did not speak with her until

7 September 5th cause my unit was very busy September 4th.

8 Q. Okay. And what do you recall -- was anyone

9 else present when you talked with Paula or was it just the

10 two of you?

11 A. Actually Jason McDonald's, Jason McDonald was

12 with us too.

13 Q. And please tell the Judge about the

14 conversation you had amongst the three of you?

15 A. I did copy the chart on the 24 hour assessment

16 and I showed Paula the concerns I had. We then pulled the

17 patient's chart and went over all the documentation.

18 Q. Did you make Paula aware of the information you

19 had, Paula and Jason, aware of the information you had

20 gained from Rhonda and Sam?

21 A. I did.

22 MS. LAWHON: Objection, leading.

23 THE WITNESS: It was part of my investigation

24 and I relayed all, all my findings to her at that time.

25 MS. LAWHON: Your Honor, what this witness

1 said without being assisted by leading questions is

2 crucial in this case.

3 JUDGE AMCHAN: I, I understand that.

4 MR. BRYAN CARMODY: Your Honor, I am --

5 JUDGE AMCHAN: But, but --

6 MR. BRYAN CARMODY: -- trying to observe your

7 --

8 JUDGE AMCHAN: -- but I --

9 MR. BRYAN CARMODY: -- command to be civil

10 here. I think these objections are misplaced. They are

11 overly technical.

12 JUDGE AMCHAN: Well they're --

13 MS. CENDROSKY: They're not misplaced.

14 JUDGE AMCHAN: Well I --

15 MS. CENDROSKY: They may be interruptive to

16 you.

17 JUDGE AMCHAN: Well I, I did think so.

18 MR. BRYAN CARMODY: Okay, demonstrate to me

19 how that's an exercise in --

20 JUDGE AMCHAN: All right, let's --

21 MR. BRYAN CARMODY: -- civility

22 Ms. Cendrosky.

23 JUDGE AMCHAN: All right, let's continue.

24 MS. CENDROSKY: I don't need to.

25 JUDGE AMCHAN: Okay. You know what --

1 MR. BRYAN CARMODY: Cause you can't.

2 JUDGE AMCHAN: -- actually, I got a
3 suggestion. Instead of addressing each other, why don't
4 you just throw your bricks up here, all right.

5 MR. BRYAN CARMODY: I would rather not throw
6 any bricks, Judge --

7 JUDGE AMCHAN: I'll duck.

8 MR. BRYAN CARMODY: -- I'd rather question
9 the witness.

10 MS. LAWHON: I have an objection because I
11 believe the witness is being led through a critical area
12 of inquiry in this case.

13 JUDGE AMCHAN: I'm, I'm paying attention.

14 MS. LAWHON: Thank you.

15 DIRECT EXAMINATION (CONT'D)

16 BY MR. BRYAN CARMODY:

17 Q. Okay. Susan, after the meeting that you had
18 with Paula and, and Jason, did you have any further role
19 in the investigation?

20 A. No I did not.

21 Q. Okay. Did you conduct any further review of
22 Ms. P's chart?

23 A. No I did not.

24 Q. After this meeting that you had with Paula and
25 Jason, did you talk to any other employees about what was

1 taking place with Ms. P?

2 A. The only time I talked to another employee is
3 when I, Paula showed me a document that Ms. Mahon had sent
4 and it said that somebody relieved Rhonda Smith as a
5 sitter.

6 And I went to the person that, after I found out
7 who it was I went to that person and asked her if she did
8 relieve Rhonda to go to the bathroom and she told me no.

9 Q. And who was --

10 A. That was the only part that I ever did.

11 Q. And who was that person?

12 A. It was Jonalee Lesjak.

13 Q. Thank you. Ms. Kress, did you make the
14 decision to terminate Ms. Wayt's employment?

15 A. No I did not.

16 Q. Before Ms. Wayt's employment was terminated,
17 did Paula seek out your opinion on whether she should be
18 terminated?

19 A. No she did not.

20 Q. Did Jason --

21 JUDGE AMCHAN: Well did you offer your
22 opinion to anyone?

23 THE WITNESS: It's not of my opinion to give,
24 sir. She's not my employee.

25 JUDGE AMCHAN: Well I'm just asking, did you

1 give it?

2 THE WITNESS: No.

3 JUDGE AMCHAN: You didn't?

4 THE WITNESS: No.

5 JUDGE AMCHAN: Okay.

6 DIRECT EXAMINATION (CONT'D)

7 BY MR. BRYAN CARMODY:

8 Q. And how about with Jason, did he --

9 JUDGE AMCHAN: Well she said, she said to
10 anybody, right, you didn't --

11 THE WITNESS: I did not with anybody.

12 JUDGE AMCHAN: And you never talked to
13 Ms. Wayt about this?

14 THE WITNESS: No I did not.

15 DIRECT EXAMINATION (CONT'D)

16 BY MR. BRYAN CARMODY:

17 Q. Okay, Susan, I'd like to switch gears now and
18 ask you if you know a person by the name of Kelly Sawyer?

19 A. I do.

20 Q. Okay. How is it that you know Ms. Sawyer?

21 A. She was a staff nurse in intensive care unit.

22 Q. Did you -- were you who supervisor?

23 A. I was.

24 Q. Susan, at any point in time did you ever ask
25 Ms. Sawyer whether she voted in the, in the Union election

1 which took place?

2 A. No I did not.

3 Q. Susan, I want to direct your attention to --

4 JUDGE AMCHAN: Let's go back. Did you ever
5 talk to her about the election at all --

6 THE WITNESS: No --

7 JUDGE AMCHAN: -- or the Union?

8 THE WITNESS: -- I did not.

9 MR. BRYAN CARMODY: May I proceed?

10 JUDGE AMCHAN: Uh-huh.

11 DIRECT EXAMINATION (CONT'D)

12 BY MR. BRYAN CARMODY:

13 Q. Susan, I'd like to direct your attention to
14 early January of this year and ask whether you had
15 occasion to find any ADO's in your mailbox?

16 A. I did.

17 Q. Okay. Do you recall approximately when that
18 occurred?

19 A. It was January 3rd.

20 Q. And you recall what you, what you did once you
21 got this ADO in your mailbox?

22 A. I do. I was positioned in front of the nurses'
23 station, in front of the ward clerk --

24 Q. In what, in what department?

25 A. In the intensive care unit.

1 Q. And what, what happened once you got this ADO?

2 A. I was very upset at receiving the ADO. SO I

3 kind of had a break down right in the middle of, well a

4 little bit of a break down in the unit.

5 Q. What happened?

6 A. Previous to that, the Sunday after Christmas, I

7 had went in for the staff and worked 18 hours. Also on

8 Christmas Eve I went in and did 11 to 7 shift.

9 So I was very tired and the ADO addressed one of
10 those days that I worked to even go help my staff and it
11 said one nurse had a three to one assignment but I was
12 still in there with them helping them. So I was very
13 upset at it, sir.

14 Q. And did --

15 MS. LAWHON: I'm sorry, I didn't hear the
16 witness. I was very upset, what?

17 A. I was very upset at it, at receiving the ADO
18 after I had worked 18 hours one day and an eight hour
19 shift on the same week.

20 Q. And did you have any -- did you make any
21 statements to anyone about the ADO's?

22 A. I didn't -- I made a general, general statement
23 where I was standing.

24 Q. Okay. And what, what did you, what did you
25 say?

1 A. I said I feel like slapping these on your
2 forehead so you can walk around and look how stupid you
3 look with them.

4 Q. Okay. And were you directing that statement to
5 anyone in particular?

6 A. No, it was just a general statement.

7 Q. Okay. And when -- do you know a gentleman by
8 the name of Ryan, a nurse with his first name is Ryan?

9 A. I do.

10 Q. What's his last name?

11 A. Chismatea.

12 Q. Okay. Was he working in your ICU that day?

13 A. He was.

14 Q. And did you around this period of time send,
15 change his work assignment?

16 A. I did.

17 Q. Okay. What, what, what took place?

18 A. I sent him back to the CVSICU because I had
19 tripled those nurses up.

20 Q. When you say you had tripled those nurses up,
21 what do you mean?

22 A. I gave them a three to one patient assignment
23 down in the open heart unit.

24 Q. And is that a relatively high or low level of
25 patient assignment?

1 A. It depends on the type of patient and the
2 acuity of the patient.

3 Q. Did there come a time where you left the ICU at
4 some point that day, I assume?

5 A. I did. I was very upset after that so I
6 immediately left the unit to try to calm down. And then I
7 came back later knowing that I should have not held that
8 outburst in the middle of the unit and pulled one of the
9 nurses in to apologize to her, because she was the charge
10 nurse, for my behavior.

11 MS. LAWHON: Your Honor, I would sugg- -- the
12 witness is testifying in a narrative. She's --

13 JUDGE AMCHAN: Well that's good.

14 MS. LAWHON: She's not --

15 JUDGE AMCHAN: That's good, it's not leading.

16 MS. LAWHON: Beg your pardon.

17 JUDGE AMCHAN: It's good. I like narratives
18 because it's not leading. She's testifying from her --

19 MS. LAWHON: Right but it's not --

20 JUDGE AMCHAN: -- recollection.

21 MS. LAWHON: -- the question asked. It
22 suggests --

23 MR. BRYAN CARMODY: Counsel, objection.

24 MS. LAWHON: The question was --

25 MR. BRYAN CARMODY: -- you can't have this --

1 MS. LAWHON: The --

2 MR. BRYAN CARMODY: -- both ways.

3 MS. LAWHON: Excuse me.

4 JUDGE AMCHAN: Well I assume it's an
5 objection.

6 MS. LAWHON: Beg your pardon?

7 JUDGE AMCHAN: I assume it's an objection.

8 MS. LAWHON: It is an objection because she
9 was asked a question. Her answer goes way beyond the
10 response to insert many facts of use to Respondent's case
11 --

12 THE WITNESS: But it's what I did.

13 MS. LAWHON: -- like how upset she was, et
14 cetera, et cetera.

15 JUDGE AMCHAN: Okay, what --

16 MS. LAWHON: Which are non responsive.

17 JUDGE AMCHAN: What was -- what's your next
18 question?

19 DIRECT EXAMINATION (CONT'D)

20 BY MR. BRYAN CARMODY:

21 Q. At some point later that day, Susan, you came
22 back to the ICU?

23 A. I did.

24 Q. Okay. And did you talk to anybody when you
25 came back to the ICU?

1 A. I did, Kari Andreski.

2 Q. Okay. And what did you say to Ms. Andreski?

3 A. I told her I was sorry for the outburst, I was

4 just really upset and felt very unappreciative.

5 Q. Okay.

6 JUDGE AMCHAN: Appreciative or unappreciated?

7 THE WITNESS: Unappreciated.

8 Q. Do you recall Susan, whether around this, at

9 any point that day you had a conversation with Kelly

10 Sawyer concerning patient charts?

11 A. I did not.

12 Q. Okay. Did you at any time bring any patient

13 charts to Ms. Sawyer's attention and asked about initials

14 in those charts?

15 A. No I did not.

16 Q. At any point in time during that day were you

17 reviewing patient charts in the ICU area?

18 A. I did not review any charts on that day.

19 Q. Okay. Susan, are you familiar with the term,

20 chain of command?

21 A. I am.

22 Q. What's the chain of command?

23 A. It is the process that we use at the hospital

24 for any department that has any concern that you need to

25 get an answer to or a change in something.

1 Q. How would the chain of command operate for a
2 nurse?

3 A. The chain of command would, if you're a staff
4 nurse you would go to your charge nurse; the charge nurse
5 either to a manager or director or a house supervisor if
6 they were there.

7 If you didn't get the results you needed you
8 would go to the CNO and then from the CNO to his boss,
9 CEO.

10 Q. And Susan with respect to this ADO that you had
11 identified before, to your knowledge had any of the nurses
12 invoked the chain of command?

13 A. They did not.

14 Q. To your knowledge since you've taken over the
15 ICU, have any ICU nurses invoked the chain of command?

16 MS. CENDROSKY: Objection Your Honor --

17 MS. LAWHON: Objection.

18 MS. CENDROSKY: -- relevance.

19 JUDGE AMCHAN: Well, I'm a little -- I don't
20 know what that means.

21 MS. CENDROSKY: I'm lost here. Yeah.

22 JUDGE AMCHAN: I mean they put the ADO's in
23 her box and she's above them. So I'm not sure what it is
24 you're asking or what she's answering.

25 MR. BRYAN CARMODY: This, this line of

1 questioning, Judge, goes to the defense that we have
2 concerning the allegation about the ADO's being protected
3 concerted activity.

4 JUDGE AMCHAN: Yeah.

5 MR. BRYAN CARMODY: We talked about --

6 JUDGE AMCHAN: I, I do understand that but
7 the thing about chain of command. There were ADO's in her
8 box. Are you asking her whether anybody took them any
9 further?

10 MR. BRYAN CARMODY: No, no, I'm asking why --
11 I believe that she has indicated that already inasmuch as
12 she has testified that none of the nurses involved in this
13 issue invoked the chain of command.

14 JUDGE AMCHAN: But I don't know what that
15 means.

16 MS. LAWHON: But --

17 MS. CENDROSKY: How's that relevant?

18 MR. BRYAN CARMODY: You don't know what what
19 means, Judge?

20 JUDGE AMCHAN: They didn't invoke the chain
21 of command, meaning, meaning what, they didn't go to their
22 charge nurse first?

23 MR. BRYAN CARMODY: Correct. She has
24 described the chain of command as the nurse going from
25 charge nurse --

1 MS. LAWHON: Please.

2 MR. BRYAN CARMODY: -- to department manager,
3 so on and so forth, the reporting structure. And she has
4 testified that none of these nurses who are at the subject
5 or implicated by this ADO invoked that chain of command.

6 JUDGE AMCHAN: Right. What you're asking her
7 is the chain of command would be the staff nurse goes to
8 the charge nurse and she's not the charge nurse, she's
9 above the charge nurse and they gave the forms to her
10 directly instead of going through the charge nurse.
11 That's what you're getting at.

12 MR. BRYAN CARMODY: What I'm getting at,
13 Judge, is simply that that chain of command was not
14 invoked --

15 JUDGE AMCHAN: Well yeah but I --

16 MS. LAWHON: But --

17 JUDGE AMCHAN: -- want --

18 MS. LAWHON: So what.

19 JUDGE AMCHAN: -- I'm trying to nail down
20 exactly -- am I right, what you're saying is, they didn't
21 go to the chain of the command.

22 They didn't go to the charge nurse first and
23 therefore it's not protected concerted activity, that's
24 your argument?

25 MR. BRYAN CARMODY: Judge, my argument is

1 that the chain of command was not followed and the chain
2 of command was the means by which any concerns that these
3 nurses had concerning this objection, that is the means by
4 which they should have articulated their objection.

5 JUDGE AMCHAN: Well yeah --

6 MS. CENDROSKY: Are you familiar with labor
7 law?

8 JUDGE AMCHAN: Hold on. Well no I mean,
9 yeah, but this is a legal --

10 MS. CENDROSKY: I mean, honest to God.

11 JUDGE AMCHAN: -- this is a legal argument.

12 MS. CENDROSKY: Exactly.

13 JUDGE AMCHAN: You're saying that in order
14 for it to be protected concerted activity they have to go
15 through the hospital, through the hospital's chain of
16 command. I don't know if you're right on that, actually I
17 suspect you're wrong.

18 MR. BRYAN CARMODY: I'm sorry, I missed that.

19 JUDGE AMCHAN: I suspect you're wrong.

20 MR. BRYAN CARMODY: Wrong about what?

21 JUDGE AMCHAN: That they have to go through
22 the hospital's chain of command in order to be engaged in
23 order --

24 MS. CENDROSKY: No they don't.

25 JUDGE AMCHAN: -- order to be --

1 MS. LAWHON: Please, he must be kidding.

2 JUDGE AMCHAN: -- engaged in protected

3 concerted activity but as a matter -- I want to get the

4 facts straight. What you're saying is, my problem is the

5 term, doesn't clarify exactly what happened.

6 What, what -- I think what you're saying and ask

7 any of the witnesses, if they followed the hospital's

8 chain of command they should have gone to the charge nurse

9 first, correct, that's what you're asking?

10 MR. BRYAN CARMODY: Yes.

11 JUDGE AMCHAN: Right, that's what you would

12 expect?

13 THE WITNESS: Yes, sir.

14 JUDGE AMCHAN: And they didn't?

15 THE WITNESS: No.

16 JUDGE AMCHAN: And you're not the charge

17 nurse, you're above the charge nurse.

18 THE WITNESS: I am.

19 JUDGE AMCHAN: They skipped at least one

20 step. It's like in the Army, if you don't go to your

21 platoon commander you go to the Colonel, who's the Brigade

22 commander, right?

23 THE WITNESS: Correct.

24 JUDGE AMCHAN: All right. I know what you're

25 saying.

1 MR. BRYAN CARMODY: Okay.

2 JUDGE AMCHAN: They didn't, they didn't go to
3 the lieutenant first.

4 MR. BRYAN CARMODY: That's right, nor did
5 they go to the chief nursing officer, nor did they go to
6 the chief executive officer.

7 JUDGE AMCHAN: They went to her --

8 MS. LAWHON: You mean after the threats did
9 they pursue it?

10 JUDGE AMCHAN: Well, no, we're just talking
11 about whether, whether the, putting the ADO's in your
12 mailbox?

13 THE WITNESS: Yes.

14 JUDGE AMCHAN: Is --

15 THE WITNESS: In my mailbox.

16 JUDGE AMCHAN: -- protected concerted
17 activity, that's their issue, and the nurses who filled
18 out the ADO's put them in Ms. Kress' box insofar as she
19 knows, nowhere else. They didn't give them to anybody
20 else.

21 MR. BRYAN CARMODY: That, that's correct,
22 Judge. They did not pursue their complaints at any higher
23 rung on this ladder.

24 And our position here is that if they had
25 concerns about this problem, they had an alternate means,

1 the hospital established means by which to articular and
2 pursue their objections.

3 JUDGE AMCHAN: I didn't know whether under
4 the NLRA they're required to do that but --

5 MS. CENDROSKY: And I would like to also note
6 for the record that, you know, she just testified she
7 threatened to smash them in their foreheads. So I think
8 that pretty much quieted the issue. They weren't going to
9 bring that up again.

10 JUDGE AMCHAN: Well that's a matter for
11 argument.

12 MR. BRYAN CARMODY: That's correct.

13 JUDGE AMCHAN: But, but you just establish
14 the fact is so far as you know the nurses that filled out
15 the ADO's didn't do anything with them except put them in
16 your mailbox?

17 THE WITNESS: Exactly.

18 MR. BRYAN CARMODY: That's all I'm looking to
19 establish Judge.

20 MS. LAWHON: And --

21 JUDGE AMCHAN: Okay.

22 MS. LAWHON: -- and the relevance --

23 MR. BRYAN CARMODY: Okay.

24 MS. LAWHON: -- of that for Section 7 is
25 zero.

1 JUDGE AMCHAN: Well --

2 MS. CENDROSKY: That's right.

3 JUDGE AMCHAN: That's what you say --

4 MR. BRYAN CARMODY: And that's going to be --

5 JUDGE AMCHAN: -- he's going to say, tell me
6 something different.

7 MS. LAWHON: I'm, I'm -- I have no
8 apprehension about that.

9 JUDGE AMCHAN: Okay.

10 MS. CENDROSKY: But Your Honor --

11 MR. BRYAN CARMODY: Ms. Kress, are you
12 familiar with the event --

13 MS. CENDROSKY: Your Honor, I'm, I'm still --

14 JUDGE AMCHAN: Hold, hold on one second.

15 MS. CENDROSKY: -- trying to stress this
16 objection because I believe the complaint also includes
17 Union activity, Union activity and/or protected concerted
18 activity --

19 JUDGE AMCHAN: Okay.

20 MS. CENDROSKY: -- so I don't believe it's
21 relevant.

22 JUDGE AMCHAN: That's a matter of argument.
23 You can say they engaged in Union -- regardless of whether
24 it's -- you know I actually have it on a, I guess what
25 you'd call a macro, Section 7.

1 It says, you know, whatever the magic word is
2 cause I don't trust myself in a decision to get it right
3 so I, you know, copied for the statute and just hit the
4 button every time but you're going to say it doesn't
5 matter whether it's the other activities, blah, blah,
6 blah, blah, that it's Union activity and it doesn't matter
7 --

8 MS. CENDROSKY: The same thing we (laughing)
9 --

10 JUDGE AMCHAN: -- why?

11 MS. CENDROSKY: Correct.

12 JUDGE AMCHAN: Okay. That's a matter of
13 argument.

14 MS. CENDROSKY: Okay.

15 JUDGE AMCHAN: Just -- I just want to get the
16 facts straight and I think we got that now.

17 MR. BRYAN CARMODY: Okay. May I proceed Your
18 Honor?

19 JUDGE AMCHAN: Yes.

20 MR. BRYAN CARMODY: Thank you, sir.

21 JUDGE AMCHAN: I'm not talking.

22 MR. BRYAN CARMODY: Okay.

23 DIRECT EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. Ms. Kress, are you familiar with a event

1 reporting system at Affinity?

2 A. I am.

3 Q. How does this event reporting system operate?

4 A. Staff nurses can complete it when there are
5 medication errors, when they have inadequate staffing
6 levels, when there are lost belongings. They can be used
7 for many purposes.

8 Q. Ms. Kress, have you provided the ICU staff with
9 your personal phone number?

10 A. I have.

11 Q. Have you given them permission or not to use
12 your personal phone number to articulate concerns that
13 arise at the work place?

14 A. They can call me 24 hours a day, seven days a
15 week.

16 Q. Has that ever taken place?

17 A. Yes it has.

18 Q. Susie --

19 JUDGE AMCHAN: Well, I mean, I think what
20 you're asking is have they ever called her in the middle
21 of the night?

22 THE WITNESS: Oh yes they do.

23 JUDGE AMCHAN: Okay.

24 MS. LAWHON: What's the relevance, objection
25 Your Honor to this line of questioning.

1 JUDGE AMCHAN: Well he's saying -- his, his
2 position is that they had procedures to bring their
3 concerns to the hospital's attention, they didn't follow
4 them. Therefore it's not protected. I, I frankly don't
5 think that's right --

6 MS. LAWHON: Okay.

7 JUDGE AMCHAN: -- but it's a matter of legal
8 argument.

9 MR. BRYAN CARMODY: I understand Your Honor.

10 DIRECT EXAMINATION (CONT'D)

11 BY MR. BRYAN CARMODY:

12 Q. Susan, can you, do you see an ADO in the stack
13 of documents that you have in front of you? I believe
14 it's marked as General Counsel's Exhibit 17.

15 JUDGE AMCHAN: Cause let me, let me just --
16 sorry, I'm on a roll. If the people decide to walk up --
17 well I guess in healthcare --

18 MR. BRYAN CARMODY: AG.

19 MS. LAWHON: No, they can, absolutely.
20 Unorganized workers can walk off the job in a hospital as
21 well. There's no AG notice governing union, governing
22 employees.

23 JUDGE AMCHAN: Okay. See I didn't know this
24 but let's --

25 MS. LAWHON: Yeah.

1 JUDGE AMCHAN: -- let's just say it wasn't a
2 hospital --

3 THE WITNESS: I do.

4 JUDGE AMCHAN: -- if people go on strike they
5 don't have to go through the employer's procedure.

6 MR. BRYAN CARMODY: That's, that's not
7 accurate, Judge. There is case law. There was a recent
8 case in the Second Circuit that establishes that even in
9 circumstances where a Union isn't involved, employees
10 don't have the right to pick up and walk off the job if
11 there's any risk of patient safety.

12 JUDGE AMCHAN: Well I was talking about the
13 non- -- well I don't know about -- we were talking about
14 in a non-hospital situations to whether as a general
15 proposition.

16 Well, maybe you're saying in the healthcare
17 industry the rules are different but certainly an employer
18 may have an internal dispute resolution policy in a
19 non-healthcare facility and they can, if they're unionized
20 or not, they can walk off the job.

21 MR. BRYAN CARMODY: I --

22 MS. LAWHON: It's true in healthcare as well
23 Your Honor, non union employees have the right to --
24 they're not subject to AG, it does not apply to them. It
25 applies to unions.

1 JUDGE AMCHAN: Okay. We -- that's an
2 argument for when I get the briefs.

3 DIRECT EXAMINATION (CONT'D)

4 BY MR. BRYAN CARMODY:

5 Q. So Susan do you have a copy of this ADO in
6 front of you?

7 A. I do.

8 Q. General Counsel's Exhibit 17. Okay. Have you
9 -- how many of these ADO's have you received while the
10 Director, serving as the Director of the ICU?

11 A. Probably about 15 of them; 15 to 20. A lot.

12 Q. And what have these ADO's complained about?

13 A. Three to one nurse to patient ratio, missed
14 breaks, missed lunches.

15 Q. Who is -- who has completed these ADO's?

16 A. Usually I find them to be completed by one of
17 two nurses in the ICU, either Pam Gardner or Sarah
18 Falanga.

19 Q. And to your knowledge have any of the
20 complaints, which have been raised by any of these ADO's,
21 also been the subject of any nurse invoking the chain of
22 command?

23 A. No they haven't.

24 MS. LAWHON: Wait, Your Honor, could I have a
25 standing objection --

1 JUDGE AMCHAN: Right.

2 MS. LAWHON: -- by the Charging Party to this
3 irrelevant line of inquiry?

4 JUDGE AMCHAN: Right. Can I just ask, on
5 January 3rd there was more than one ADO in your box, am I
6 correct or you don't know?

7 THE WITNESS: I don't recall that. That was
8 -- the one that I looked at was the date and that was
9 after I had done all the extra shifts in the unit and --

10 JUDGE AMCHAN: You don't know whether there
11 was one or more than one in your box?

12 THE WITNESS: I don't. I'm sorry. No.

13 JUDGE AMCHAN: And before your meltdown?

14 THE WITNESS: No I don't.

15 JUDGE AMCHAN: Okay.

16 MR. BRYAN CARMODY: I've nothing further Your
17 Honor. Thank you Susie.

18 JUDGE AMCHAN: Okay. We're ready for cross.
19 Just -- I would ask you not to re-plow ground that was
20 re-plowed when you --

21 MS. CENDROSKY: That has been plowed, Your
22 Honor.

23 JUDGE AMCHAN: -- had her on as a 6.11(c)
24 witness.

25 MS. LAWHON: In service of that Your Honor,

1 could we have a few minutes. I want to review my --

2 JUDGE AMCHAN: Sure.

3 MS. LAWHON: -- previous notes?

4 JUDGE AMCHAN: Yeah, that's fine. We'll take
5 a break.

6 (Whereupon a brief time was taken off the record)

7 JUDGE AMCHAN: Back on the record.

8 MS. CENDROSKY: General Counsel has no cross.

9 CROSS-EXAMINATION

10 BY MS. LAWHON:

11 Q. Good afternoon Ms. Kress. I'm Jane Lawhon the
12 Union's attorney. Now, when you spoke to Jason McDonald
13 on Wednesday the 29th you ran into him, isn't that
14 correct?

15 A. I saw him in the hallway.

16 Q. Right, you were not enroot to see him but you
17 saw him coincidentally, isn't that correct?

18 A. It is.

19 Q. And you didn't tell Jason McDonald that the
20 information you had was second hand, isn't that correct?

21 A. I don't recall if I said that.

22 Q. Okay. You didn't specifically tell
23 Mr. McDonald that you had not spoken with Rhonda Smith,
24 isn't that correct?

25 A. That's correct.

1 Q. Now, as a nurse Ms. Kress you're familiar with
2 the fact that whether or not a patient has a cough can
3 change in the course of a shift, isn't that correct?

4 A. That's correct.

5 Q. In fact that's why there are at least two
6 assessments per shift where cough is one of the items,
7 isn't that correct?

8 A. That's true.

9 Q. And it would not be an indication of
10 substandard nursing care for a patient to have the
11 indicated by the day shift nurse not to have a cough and
12 for the night shift nurse to find a cough, isn't that
13 correct?

14 A. That would depend, ma'am.

15 Q. Right but there are circumstances in which it
16 would be perfectly consistent with conscientious nursing
17 care that one nurse in her assessment would find no cough
18 and the other nurse 14 hours later would find a cough,
19 isn't that correct?

20 A. That's true.

21 Q. And in fact a nurse is obligated by her license
22 to honestly record what she finds on the assessment, isn't
23 that correct?

24 A. She should be, yes, ma'am.

25 Q. Okay. So a nurse is not supposed to be

1 attempting to be consistent with the findings of a prior

2 nurse, isn't that correct?

3 A. You should never go by prior findings, ma'am --

4 Q. Exactly.

5 A. -- you should go by the findings that you find

6 when you're assessing your patient.

7 Q. Exactly. And the same is true -- okay, never

8 mind. Now, I'm sorry I'm not sure if I recall -- how long

9 have you been in nursing management?

10 A. I've been in nursing management for about six

11 years.

12 Q. Okay. And in the course of your experience as

13 a nursing manager you have reviewed charts, isn't that

14 correct?

15 A. I have.

16 Q. It's a, it's a normal process that goes on as

17 part of being a nurse manager, isn't that correct?

18 A. I do it consistently, yes.

19 Q. Okay. Have you ever seen a chart with a wrong

20 time for a patient assessment prior to reviewing the chart

21 that was filled in by Ann Wayt?

22 A. And how would I know if that's a wrong time,

23 ma'am?

24 Q. Okay. Have you ever seen a time that gave you

25 pause as to wonder how could it be that the assessment --

1 for example let's say -- no I don't need to give you an
2 example.

3 Have you ever seen a time in a chart that ever
4 gave you any question as to whether it was accurate or not
5 prior to August 29th, 2012?

6 A. Not in my dealings.

7 Q. Okay. How many -- is it fair to say you've
8 reviewed thousands of charts?

9 A. A lot of them. I wouldn't say a -- I couldn't
10 tell you a number but I've reviewed a lot of them. It's
11 part of my quality to do weekly.

12 Q. Okay. One approach as a manager if you see a
13 time in the chart that you believe is not accurate is to
14 ask the nurse what happened; how could this, is this the
15 right time, that's one approach, right?

16 A. That's one approach.

17 Q. Right. That's not the approach you chose here,
18 right?

19 A. No, it was my -- no it wasn't.

20 Q. Now, is it fair to say that you have seen
21 errors by nurses in charting that you judged to be part of
22 human error?

23 A. Nurses have documented those errors
24 appropriately.

25 Q. No, is it fair to say that you have seen nurses

1 make errors in charting and not even correct them at the
2 time you were reviewing that?

3 A. No.

4 Q. You, you've never seen a chart with --

5 A. I don't know --

6 Q. -- what you found --

7 A. -- if it's an error, ma'am.

8 Q. Have you ever seen a chart that's missing a
9 portion?

10 A. Yes.

11 Q. Okay. Would you consider that to be an error?

12 A. Yes.

13 Q. Okay. And in those circumstances you would
14 make the assumption that it was unintentional that the
15 nurse omitted that portion, isn't that right?

16 A. I don't know that.

17 Q. Okay. Prior to Ann Wayt have you ever
18 encountered a chart where it was your belief that the
19 nurse intentionally left out a part of the assessment?

20 A. It has not been in my experience, no.

21 Q. Okay. Now when you met with Rhonda Smith, was
22 it just the two of you?

23 A. It was.

24 Q. Okay. And that was in person?

25 A. Yes.

1 Q. Okay. And how long did that take?

2 A. I don't know. I wasn't looking at my watch. I
3 don't know.

4 Q. I understand. Can you make an educated
5 estimate if it was within the range of 10 to 30 minutes?

6 A. Yes.

7 Q. Okay. And was it within that range?

8 A. Most probably yes.

9 Q. Okay. Was anyone else in the room?

10 A. No.

11 Q. Okay. You didn't ask Rhonda to give you a
12 written statement of what she had told you, isn't that
13 correct?

14 A. That's correct.

15 Q. Did you memorialized notes you had taken in
16 order for her to review them to make sure that you
17 accurately understood what she was saying?

18 A. I did -- after I talked with her I did make a
19 few notes.

20 Q. Okay. Where are those notes?

21 A. They were on bullet points that I made into
22 this statement. The statement that you guys showed me --

23 Q. Okay.

24 A. -- I got the dates wrong.

25 Q. Okay. You never showed that to Rhonda to

1 ensure that you had accurately understood her --

2 A. No I didn't --

3 Q. -- isn't that correct?

4 A. -- because it was a preliminary investigation.

5 So no I did not.

6 Q. Now you testified that when you met with Paula

7 Zinsmister and Jason McDonald you had copied the 24 hour

8 assessment and then you pulled the chart?

9 A. Uh-huh.

10 Q. What are you referring to when you say you

11 pulled the chart besides the 24 hour assessment?

12 A. The whole chart. The copulation of all the

13 medical records.

14 Q. Okay. Nothing in the chart beyond the 24

15 assessment and the -- nothing in the chart beyond the 24

16 hour assessment -- excuse me, let me back up here.

17 Do you remember giving a sworn statement with

18 respect to the events at issue in this case?

19 A. My affidavit?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. And did you prepare this affidavit or

23 was it prepared for you?

24 A. It was typed for me.

25 Q. Okay. And you didn't dictate it, did you?

1 A. No I did not.

2 Q. Okay. So it was prepared for you?

3 A. It was.

4 Q. Okay. And did you review it carefully to be
5 sure it was accurate before you signed it?

6 A. Obviously I didn't because the hourly rounding
7 that I referred to yesterday should have been 24 hour
8 assessment.

9 Q. Okay. You're not testifying that --

10 A. I did that yesterday.

11 Q. Ms. Kress, I'm sorry but I understand. I'm not
12 asking you anything about yesterday.

13 A. Okay.

14 Q. I'm saying, apart from the error which you have
15 just volunteered, as far as you know this was truthful and
16 fully accurate when you signed it, is that correct?

17 A. As far as I'm aware.

18 Q. Okay. So isn't it true that you stated in this
19 affidavit that when you talked to Sam he told you that he
20 had been busy during the day and he did not remember
21 anything, isn't that correct?

22 A. Yes.

23 Q. Okay. In fact Sam never told you he didn't
24 know if Ann came into the room, isn't that correct?

25 A. He was too busy -- yes, that is correct.

1 Q. There's no permanent charge nurse in the ICU,
2 isn't that correct?

3 A. There are designated permanent charge nurses,
4 yes, ma'am.

5 Q. Are those -- are there designated individuals
6 who are excluded from the RN bargaining unit? Were they
7 able to vote, the people you're talking about?

8 A. In the ICU?

9 Q. Yes.

10 MR. BRYAN CARMODY: Objection. That calls
11 for speculation.

12 MS. LAWHON: Well she knows. She's a
13 manager.

14 MR. BRYAN CARMODY: Were they able to vote?

15 MS. LAWHON: Yes.

16 JUDGE AMCHAN: Yeah, were they --

17 MS. LAWHON: Were they management or were
18 they in the bargaining unit, that's the question. She's
19 their manager. I think she knows.

20 THE WITNESS: They're not classified as
21 permanent charge nurses --

22 MS. LAWHON: Okay.

23 THE WITNESS: -- in the sense as their
24 thinking. They are not of any, they are not of any
25 management role --

1 MS. LAWHON: Right.

2 THE WITNESS: -- that we have --

3 MS. LAWHON: -- so they're not really --

4 THE WITNESS: -- designated people who take
5 charge all the time in there.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. They're sometimes also called relief charge
9 nurses, right?

10 A. They can be.

11 Q. Okay. These particular people are, do serve as
12 relief charge nurses, correct?

13 A. They can.

14 Q. Understood. And they're not part of the
15 management chain of command, isn't that correct?

16 A. Charge Nurses are part of the chain of command.

17 Q. No, these relief charge nurses --

18 A. If they're functioning in the role of a charge
19 nurse --

20 Q. -- Ms. Kress?

21 A. -- yes they are.

22 Q. Okay.

23 JUDGE AMCHAN: Well, I guess I --

24 MS. CENDROSKY: Wow.

25 JUDGE AMCHAN: I don't, I don't -- what are

1 you driving at, as to what his question about chain -- I

2 mean because I was very confused about his --

3 MS. LAWHON: No, I'm just trying --

4 JUDGE AMCHAN: -- I mean is somebody --

5 MS. LAWHON: -- to clear up that there is no

6 charge nurse. If you want to talk about chain of command

7 in this department, there is no fixed person below

8 Ms. Kress who has consistently every time she works has

9 supervisory authority. There is no one.

10 There are people who are in the bargaining unit

11 who serve as relief charge nurses. The Employer

12 stipulated to their eligibility in the bargaining unit and

13 they voted.

14 JUDGE AMCHAN: Well, okay. So are there, are

15 there any people in your --

16 THE WITNESS: There's a --

17 JUDGE AMCHAN: -- unit that is a permanent

18 charge nurse?

19 THE WITNESS: There is a charge nurse

20 designated every shift.

21 JUDGE AMCHAN: Right.

22 THE WITNESS: Every shift, no matter what.

23 MS. LAWHON: That's not the question.

24 JUDGE AMCHAN: Well --

25 THE WITNESS: And they function in that role.

1 So if a staff nurse would need something, yes that is the
2 next person that they would go to, sir, absolutely.

3 JUDGE AMCHAN: Well I don't know that we need
4 to spend --

5 MS. LAWHON: I, I, I'm --

6 JUDGE AMCHAN: -- a lot of time on this --

7 MS. LAWHON: I agree.

8 JUDGE AMCHAN: -- because your position is
9 that they don't, that has nothing to do with the NLRA.

10 MS. LAWHON: Correct.

11 CROSS-EXAMINATION (CONT'D)

12 BY MS. LAWHON:

13 Q. Now you spent 10 minutes with the patient
14 Ms. P, right Ms. Kress?

15 A. I did.

16 Q. Totally, right?

17 A. I did.

18 Q. Okay. I mean that's all you ever spent with
19 her, right?

20 A. It is.

21 Q. Okay. And you commented that one of the
22 reasons you were concerned about the charting was because
23 -- well let me find it.

24 JUDGE AMCHAN: It was something about --

25 MS. LAWHON: There was a very bruised heel

1 and you didn't see that on the chart, right?

2 THE WITNESS: There was multiple things that

3 I didn't see --

4 MS. LAWHON: Excuse me, Ms. Kress --

5 THE WITNESS: -- on the chart -- yes.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. Thank you. I'd like to show you Charging Party

9 Exhibit 1, which is the repeated assessments by the

10 emergency room nurses and let me know if you see anything

11 about a bruised heel in that charting?

12 A. No there's not.

13 Q. Okay. Thank you. Thank you Ms. Kress.

14 A. You're welcome.

15 Q. And is it fair to say that there are multiple

16 assessments of this patient in the ER starting at

17 2:43 a.m. until the --

18 A. That's correct.

19 Q. -- transfer of the patient to ortho?

20 A. That's correct.

21 Q. Seven hours later?

22 A. That's correct.

23 Q. Six, six hours and some later. Now on a

24 different occasion than the time you previously testified

25 you shredded an ADO form on the ICU unit, isn't that

1 correct?

2 MR. BRYAN CARMODY: Objection, Your Honor,
3 that's not alleged by the complaint. So it's not
4 relevant.

5 JUDGE AMCHAN: Well --

6 MS. LAWHON: It's --

7 JUDGE AMCHAN: -- it has potential relevance.
8 The potential relevance is that, you know, she said this
9 was a reaction to a particular occasion. She's trying to
10 prove that it's more than that.

11 THE WITNESS: I ripped it in half and threw
12 it in the shredder.

13 CROSS-EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. Okay. So the answer to that is yes?

16 A. I ripped it in half, I didn't shred it. I just
17 --

18 Q. You just said --

19 A. -- ripped it in half.

20 Q. -- you put it in the shredder.

21 A. And I put it in the shredder.

22 Q. That's usually what shredded means.

23 JUDGE AMCHAN: Well --

24 MR. BRYAN CARMODY: Objection.

25 JUDGE AMCHAN: -- in any event, she, she tore

1 it up and --

2 MS. LAWHON: Um, and, and --

3 JUDGE AMCHAN: -- she put it in the shredder

4 and --

5 MS. LAWHON: And you --

6 JUDGE AMCHAN: -- this was prior to January

7 the third?

8 THE WITNESS: I don't know what day it was.

9 JUDGE AMCHAN: Do you know whether it was
10 before January the third or after?

11 THE WITNESS: No I don't.

12 CROSS-EXAMINATION (CONT'D)

13 BY MS. LAWHON:

14 Q. You did that in the presence of one or more ICU
15 nurses?

16 MR. BRYAN CARMODY: Objection, Your Honor.

17 MS. LAWHON: Isn't that, isn't that correct?

18 JUDGE AMCHAN: Well, okay.

19 MR. BRYAN CARMODY: Objection. This is
20 prosecuting an allegation that doesn't exist in the
21 complaint.

22 JUDGE AMCHAN: Well --

23 MS. LAWHON: It's background.

24 JUDGE AMCHAN: -- it also -- she gave an
25 explanation as to why she reacted --

1 MS. CENDROSKY: Uh-huh.

2 JUDGE AMCHAN: -- as she did on January the
3 third and --

4 MR. BRYAN CARMODY: She did --

5 JUDGE AMCHAN: -- they're trying to show --

6 MR. BRYAN CARMODY: -- and that explanation
7 was were those particular ADO's found in her mailbox on
8 that --

9 JUDGE AMCHAN: Right.

10 MR. BRYAN CARMODY: -- particular day.

11 JUDGE AMCHAN: But they're trying to show
12 that she had a bigger problem with them than just the
13 reaction to the ingratitude of those that submitted them,
14 which I think is legit.

15 As to whether it's relevant in the final analysis
16 I don't know but I'm going to allow her to explore that.

17 THE WITNESS: I was told not to accept them.

18 CROSS-EXAMINATION (CONT'D)

19 BY MS. LAWHON:

20 Q. Who told you not to accept them?

21 A. They were not a form that the hospital
22 recognized. I was told they had no relevance.

23 Q. Ms. Kress, I'm sorry, you didn't answer my
24 question. I said who told you that?

25 A. Upper management told me.

1 Q. Would you please identify the individual who
2 told you that?

3 A. It was, it was in a meeting we were told not to
4 accept them.

5 Q. Okay. Who said that at the meeting?

6 A. I don't recall.

7 Q. Who else was at the meeting?

8 A. The whole management team.

9 Q. Every nursing director at the hospital was
10 present?

11 A. All leadership team.

12 Q. Okay. But that doesn't answer my question.
13 I'm not familiar as you are Ms. Kress with exactly what --

14 A. It could be, it could be --

15 Q. Excuse me, excuse me. With what leadership
16 team encompasses. Are all of the nursing directors
17 encompassed by leadership team when you're using that
18 term?

19 A. Nursing and ancillary directors.

20 Q. Okay. And the CNO was at that meeting?

21 A. I don't recall that particular day. I don't, I
22 don't know.

23 Q. Was the CEO at the meeting?

24 A. I don't recall.

25 Q. Someone with authority over you made this

1 statement --

2 A. Somebody with authority over me.

3 Q. Who are those individuals in the line of
4 nursing?

5 A. In the line of nursing?

6 Q. Correct.

7 A. Bill Osterman's the only one above me at the
8 nursing level.

9 Q. Okay.

10 JUDGE AMCHAN: Now what -- just one thing.

11 You were told this prior to January the third?

12 THE WITNESS: Yes.

13 Q. I presume you weren't told to put them in the
14 shredder, is that right?

15 MR. BRYAN CARMODY: Objection Your Honor, I
16 believe this line of questioning is encroaching upon
17 attorney client privileges.

18 MS. CENDROSKY: Oh you told her to put them
19 in the shredder?

20 MS. LAWHON: That's interesting.

21 MS. CENDROSKY: That's interesting.

22 MS. LAWHON: Let's amend the complaint to add
23 counsel.

24 MS. CENDROSKY: You know what it's not too
25 late, I --

1 JUDGE AMCHAN: Well let's --

2 MS. CENDROSKY: -- haven't closed my case.

3 JUDGE AMCHAN: I --

4 MS. CENDROSKY: Actually, Your Honor --

5 JUDGE AMCHAN: I don't think it really
6 matters. I mean your allegation is that the nurses
7 engaged in the protected or union activity or other
8 protected activity under Section 7 by filling out these
9 forms and submitting them. And they were -- what do you
10 say about them.

11 Well it's clear from her testimony that she was
12 under direction not to, not to receive them and not to
13 honor them.

14 Let me just see what -- her, her reaction, at
15 least in some part, was consistent with her instructions,
16 whatever that's worth.

17 CROSS-EXAMINATION (CONT'D)

18 BY MS. LAWHON:

19 Q. Was counsel at the meeting you just described
20 where you were told not to accept ADO's?

21 A. Counsel, what are you referring to?

22 Q. I'm referring to hospital attorneys. Were
23 there any present at the meeting?

24 MR. BRYAN CARMODY: Objection, Your Honor,
25 that's immaterial.

1 MS. LAWHON: Well, well --

2 MR. BRYAN CARMODY: What matters is whether
3 or not an attorney was participating whether in person or
4 over the phone.

5 Now I can represent to you Judge that the
6 conversation the witness is testifying to with upper
7 management was a conversation on which counsel was
8 participating via telephone.

9 She is probing into communications which are at
10 the heart of the attorney client privilege.

11 MS. LAWHON: Unbeknownst to be a simple
12 attorney client objection might have solved that counsel.

13 JUDGE AMCHAN: Okay. He just made it.

14 MS. LAWHON: And I understand and I'll
15 withdraw further questions on that meeting.

16 CROSS-EXAMINATION (CONT'D)

17 BY MS. LAWHON:

18 Q. Ms. Kress, when you got the ADO -- well let me
19 get the language right. On the occasion when you told the
20 nurses in response to the ADO, I feel like slapping these
21 on your forehead and so forth, you had actually written on
22 that ADO that, so that caused you to react that way, isn't
23 that correct?

24 A. Not that I'm aware of, no.

25 JUDGE AMCHAN: Are you asking her whether it

1 was the substance of the complaints in the ADO that caused
2 her to react that way?

3 MS. LAWHON: No. I asked her if she wrote on
4 the ADO form that supposedly prompted this, I feel like
5 slapping these on your forehead comment. And she -- and
6 her answer was not that, I guess she doesn't recall.

7 THE WITNESS: No.

8 CROSS-EXAMINATION (CONT'D)

9 BY MS. LAWHON:

10 Q. No or you don't recall?

11 A. No, I didn't -- not, not that I can recall, no.

12 Q. Didn't you tell the nurses, go ahead and fill
13 out ADO's?

14 A. Not that I'm aware of, no.

15 MS. LAWHON: No further questions.

16 JUDGE AMCHAN: Any redirect?

17 MR. BRYAN CARMODY: Nothing Your Honor.

18 JUDGE AMCHAN: You're done for the second
19 time.

20 (WITNESS EXCUSED)

21 MR. BRYAN CARMODY: A moment Judge?

22 JUDGE AMCHAN: We'll go off the record.

23 (Whereupon a brief time was taken off the record)

24 JUDGE AMCHAN: Back on the record.

25 MS. CENDROSKY: All right Your Honor I'm

1 sorry at this time General Counsel moves to amend the
2 third Order consolidating cases due to a new allegation
3 that has just been brought to the General Counsel's
4 attention, in which I consulted with the Regional Attorney
5 and we wish to amend the complaint, Paragraph 13.

6 JUDGE AMCHAN: Yeah.

7 MS. CENDROSKY: And we would like that
8 paragraph currently to read 13(a) and right beneath that
9 we would like Paragraph 13(b) and I would like that
10 paragraph to read:

11 "On or about the first week of January or shortly
12 thereafter the exact date being unknown, Respondent by
13 Kress coercively shredded assignment despite objection
14 forms in the presence of registered nurses and said that
15 she could not accept these forms from employees and
16 thereby prevented the employees from engaging in union
17 and/or concerted activities and to discourage employees
18 from engaging in these activities."

19 MR. BRYAN CARMODY: Your Honor, may I have a
20 moment please?

21 JUDGE AMCHAN: Sure.

22 MR. BRYAN CARMODY: I would like to address
23 the motion to amend. Just need to pull up a document very
24 quickly on my laptop.

25 (Whereupon a brief time was taken off the record)

1 JUDGE AMCHAN: Back on the record.

2 MR. BRYAN CARMODY: Your Honor, I actually
3 don't have the formal papers in front of me but I'm
4 confident that they would include the charge that was
5 filed by the Union in case number 8-CA-095833.

6 That charged was filed on the fourth of January
7 of this year and in that charge there is an allegation
8 concerning the shredding of ADO's in the presence of RN's.

9 That allegation, needless to say, was not in the
10 complaint which is the third Order, the current complaint,
11 the amended consolidated complaint.

12 The General Counsel had his opportunity to
13 litigate that issue. They ought not. They had notice of
14 that allegation from the Charging Party and ought to have
15 included it in the, the amended consolidated complaint
16 that's at issue.

17 JUDGE AMCHAN: Well --

18 MR. BRYAN CARMODY: So we would oppose the
19 amendment.

20 MS. CENDROSKY: And Your Honor --

21 JUDGE AMCHAN: Well, I'm going to allow the
22 amendment.

23 MS. CENDROSKY: Okay.

24 JUDGE AMCHAN: I think they're entitled to
25 amend the complaint even if the complaint is at the end of

1 the hearing and she testified to what she testified to and
2 we'll see what their, matches the allegation or whether it
3 violates the Act.

4 Are you still looking for the charge?

5 MR. BRYAN CARMODY: No, sir.

6 JUDGE AMCHAN: Okay cause I just had it.

7 MR. BRYAN CARMODY: No, I had it here too,
8 sir. That's all Your Honor.

9 MS. BRUNDAGE: Ms. Cendrosky anything else
10 before we proceed with our next witness?

11 MS. CENDROSKY: That will be it.

12 MS. BRUNDAGE: Okay, great. Affinity Medical
13 Center calls Jeremie Montabone to the stand please.

14 JUDGE AMCHAN: Raise your right hand.

15 WHEREUPON,

16 JEREMIE MONTABONE,

17 A witness herein, after first being duly cautioned and
18 sworn, was examined and testified as follows:

19 JUDGE AMCHAN: Okay. Have a seat. Be sure
20 to keep your voice up because the microphone doesn't
21 amplify, it just records.

22 THE WITNESS: Okay.

23 DIRECT EXAMINATION

24 BY MS. BRUNDAGE:

25 Q. Good afternoon.

1 A. Afternoon.

2 Q. Could you please state and spell your name for
3 the record?

4 A. Jeremie Montabone. J-e-r-e-m-i-e Montabone,
5 M-o-n-t-a-b-o-n-e.

6 Q. Are you currently employed?

7 A. Yes.

8 Q. Who is your employer?

9 A. Affinity Medical Center.

10 Q. And what position do you hold at Affinity
11 Medical Center?

12 A. Manager of Open Heart Surgery.

13 Q. Is that the same as the cardiovascular CV --

14 A. CVSOR, yes.

15 Q. Cardiovascular operating room?

16 A. Correct.

17 Q. Okay. Otherwise known as the CVOR?

18 A. Uh-huh.

19 Q. Okay. You should say yes or no for the record.

20 A. Yes.

21 Q. Okay thanks. And could you describe for us
22 your responsibilities as the manager of the open heart
23 surgery or CVOR department?

24 A. I oversee the day to day activities of the
25 department and make staff assignments and scheduling, et

1 cetera.

2 Q. Do you supervise any employees as part of your
3 responsibilities as the manager?

4 A. Yes I am the supervisor for all of the
5 employees in the CVOR.

6 Q. And who are those employees? Not by name,
7 just by general title.

8 A. Right. Registered Nurses, Surgical Assistants,
9 Para operative Specialists, Perfusionists.

10 Q. Okay. As the manager do you participate in
11 surgeries?

12 A. Yes.

13 Q. What type of surgeries?

14 A. Any cardiovascular or thoracic surgery, adult.

15 Q. Okay. DO you recall whether you were working
16 at the hospital on August 28th, 2012?

17 A. Yes.

18 Q. And did your department, the CVOR, have any
19 surgeries scheduled on that day?

20 A. No.

21 Q. What are your employees, the employees that you
22 manage, what are their job duties on days when there are
23 no surgeries scheduled?

24 A. They're given the opportunity at times to take
25 the day off. If they do come in they're expected to put

1 away supplies, stock the rooms, pull cases for the next
2 day whatever they may be, go and see patients that are on
3 the operating schedule for the next day.

4 Q. Would any of your staff ever have occasion to
5 serve as a sitter?

6 A. They, they could. They do float to other areas
7 in the hospital.

8 Q. Did any of your RN's serve as sitters at any
9 point in time on August 28th, 2012?

10 A. Yes.

11 Q. Who was that?

12 A. Rhonda Smith and Jonalee Lesjak.

13 Q. Okay. What is a sitter?

14 JUDGE AMCHAN: I don't know whether we -- I
15 think the record --

16 MS. LAWHON: Yeah.

17 JUDGE AMCHAN: -- is pretty clear on this.

18 MS. BRUNDAGE: Okay.

19 JUDGE AMCHAN: I don't think you have to go
20 over it again.

21 MS. BRUNDAGE: As long as we all understand
22 then I'm --

23 JUDGE AMCHAN: I think so.

24 MS. BRUNDAGE: -- fine with striking the
25 question.

1 THE WITNESS: Okay.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. What time, if you know, approximately did
5 Rhonda serve as a sitter?

6 A. She got up to the floor around nine o'clock.

7 Q. Okay. And when you say the floor, to which
8 floor are you referring?

9 A. The orthopedic unit.

10 Q. Okay. And do you know what time she finished
11 serving as a sitter?

12 A. I believe it was around four o'clock.

13 Q. Okay. And what about Jonalee?

14 A. She gave Rhonda lunch that day from somewhere
15 between noon and one o'clock.

16 Q. Okay. How are nurses from the CVOR chosen to
17 serve as sitters on August 28th?

18 A. In the daily flash meeting the, discusses the
19 staffing needs of the hospital. It was indicated that
20 there was a need for a sitter on the orthopedic unit.

21 So since we did have no cases that day and I did
22 have some nurses that were there, I did volunteer their
23 services to go up and act as a sitter for that day.

24 Q. Okay. Do you recall who mentioned the need for
25 a sitter on the orthopedic unit?

1 A. I believe it was the coordinator.

2 Q. Okay. How was it determined that Rhonda Smith
3 and Jonalee Lesjak in particular, of amongst your
4 employees, would serve as sitters?

5 A. Rhonda in particular I volun-, or I asked her
6 if she would volunteer to go and she said she would. And
7 the reason I asked her was because she was at least
8 familiar with the floor having worked up there when it was
9 the labor and delivery unit.

10 Q. Okay. And what about Jonalee?

11 A. Jonalee would, just happened to ask before she
12 was heading home for the day if there was anything else I
13 needed her to do and I asked her to go give Rhonda lunch.

14 Q. Okay. On August 28th, 2012, did Rhonda return
15 to the CVOR at any point in time during the day while you
16 were working?

17 A. No.

18 Q. What time --

19 MS. LAWHON: Objection. I'm sorry. There's
20 no foundation that this witness would know whether Rhonda
21 Smith returned to the department or not.

22 JUDGE AMCHAN: Well he's -- wait, I think the
23 record -- he's not aware that she did, correct?

24 MS. LAWHON: That's fine. Whether she
25 returned or not.

1 THE WITNESS: Yeah, I'm --

2 JUDGE AMCHAN: Well he -- right. He doesn't

3 --

4 MS. LAWHON: How would he know.

5 JUDGE AMCHAN: He doesn't -- if she did --

6 MS. BRUNDAGE: If you'd like me to rephrase

7 --

8 JUDGE AMCHAN: -- he doesn't know about it.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Did you, did you observe Rhonda Smith return to
12 the unit at any point in time?

13 A. No I did not.

14 Q. Okay. Thank you. What time did you leave work
15 on August 28th, 2012?

16 A. Sometime after 3:30, four o'clock; somewhere in
17 there.

18 Q. Okay. Did you have any manager's meetings in
19 the afternoon?

20 A. Yes we do have that same flash meeting for the
21 staffing for the evening shift and into the night shift.
22 And I did let them know that they would be needing to
23 provide someone to relieve Rhonda as her shift was ending.

24 Q. When you were in that meeting was it your
25 understanding that Rhonda was still serving as the sitter?

1 A. Yes.

2 Q. Did you see Rhonda Smith at any point in time
3 after approximately nine o'clock a.m. on August 28th,
4 2012?

5 A. No.

6 Q. Were you scheduled to work the next day, August
7 29th, 2012, at the hospital?

8 A. Yes.

9 Q. Was Rhonda Smith also scheduled to work?

10 A. Yes.

11 Q. Did you have any conversations with Rhonda
12 Smith that morning?

13 A. Yes.

14 Q. Where did those take place?

15 A. In the hallway just outside the operating room
16 prior to starting a surgery.

17 Q. And so approximately what time would that have
18 been?

19 A. Probably right around eight o'clock.

20 Q. Okay. And what did your conversation with
21 Rhonda consist of?

22 A. She just wanted to voice her concern to me from
23 her assignment the day before. She was concerned for the
24 care of the patient that there was a lack of hourly
25 rounding and just overall nursing care provided to the

1 patient.

2 And she also expressed concern that when she told
3 the staff in the department that it was running well past
4 her shift that if she were to be on call, she would have
5 been already expected to be back down in the department to
6 take care of her duties as the on call nurse for the CVOR.

7 Q. Okay. And how did you respond?

8 A. I told her that I would take care of it and
9 that was it.

10 Q. Okay. Did you relay Rhonda's concerns to
11 anyone else at the hospital?

12 A. Yes. Just -- since we were just getting ready
13 to start the surgery and I knew that the 8:30 flash
14 meeting was come up, coming up, I did relay that
15 information to Susan Kress.

16 Q. Okay. What did you tell Susan?

17 A. Just what Rhonda said about the lack of hourly
18 rounding and overall care for the patient.

19 Q. How did Susan respond?

20 A. She said she would present it at the safety
21 meeting.

22 Q. Okay. After speaking with Susan on August
23 29th, 2012, did you participate in any further
24 investigation of Rhonda's statements to you?

25 A. No.

1 Q. Did you participate in any discipline of a
2 nurse by the name of Ann Wayt?

3 A. No.

4 Q. Did you participate in any decision making
5 involving the discharge of an employee by the name of Ann
6 Wayt?

7 A. No.

8 Q. Okay.

9 MS. BRUNDAGE: I have no further questions.

10 JUDGE AMCHAN: I guess I have one. Was there
11 a safety meeting that, I guess it's the 29th --

12 THE WITNESS: Uh-huh.

13 JUDGE AMCHAN: Was there a safety meeting at
14 the end of the day?

15 THE WITNESS: Not a safety meeting, no.
16 There was an 8:30 safety meeting and then there's flash
17 meeting staffing huddles at the beginning and ending of
18 each day.

19 JUDGE AMCHAN: Okay. SO there was a meeting
20 at the end of the day?

21 THE WITNESS: On the 29th?

22 JUDGE AMCHAN: Yes.

23 THE WITNESS: Yes.

24 JUDGE AMCHAN: And was there any discussion
25 of the concerns that Rhonda Smith had raised at that

1 meeting?

2 THE WITNESS: We were in surgery so I did not
3 attend that meeting.

4 JUDGE AMCHAN: Oh, you did not go?

5 THE WITNESS: No.

6 JUDGE AMCHAN: Okay. Do you want a couple
7 minutes off the record?

8 MS. CENDROSKY: A few, thank you.

9 MS. LAWHON: Are there any statements?

10 MS. CENDROSKY: I don't have any.

11 MS. LAWHON: Okay.

12 (Whereupon a brief time was taken off the record)

13 JUDGE AMCHAN: Back on the record. Are you
14 ready?

15 MS. CENDROSKY: General Counsel has no cross.

16 JUDGE AMCHAN: Ms. Lawhon?

17 MS. LAWHON: Yes, thank you.

18 CROSS-EXAMINATION

19 BY MS. LAWHON:

20 Q. Mr. Montabone, I'm Jane Lawhon, the attorney
21 for National Nurses Organizing Committee. You said that
22 Susan Kress told you she would present it in the safety
23 meeting?

24 A. Uh-huh.

25 Q. And what time was the safety meeting happening?

1 A. The safety meeting happens every day at 8:30.

2 Q. Okay. But you don't know if she ever did,
3 isn't that correct?

4 A. That's correct.

5 Q. Is it fair to say that you never heard the
6 issue that was raised to you by Ms. Smith discussed in the
7 safety meeting at any point after that?

8 A. No.

9 Q. You never heard it, right?

10 A. No, not in the safety meeting.

11 Q. Okay.

12 JUDGE AMCHAN: Well, did you hear it
13 discussed elsewhere?

14 THE WITNESS: No.

15 Q. Now, what time was the procedure you were going
16 into that morning?

17 JUDGE AMCHAN: Which one, on the 29th?

18 MS. LAWHON: Yes, I'm sorry. Yes, I'm sorry
19 Your Honor, yes.

20 THE WITNESS: I believe it was scheduled for
21 8:30.

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. Okay. And how long in advance of a scheduled
25 procedure would you typically be in the procedure room

1 performing your nursing duties?

2 A. Probably about 45 minutes to an hour.

3 Q. Okay. So you would have been in the procedure

4 room from somewhere from 7:30 to 7:45 a.m.?

5 A. I'm not necessarily would not have been no.

6 There's other nursing staff that do the room set up and

7 things of that nature.

8 Q. Okay. Is it fair to say that as you sit here

9 today, you don't remember what time you went into the

10 procedure room for the 8:30 procedure on Wednesday, August

11 29th?

12 A. No, I don't remember the exact time, no.

13 Q. And how, how soon after -- what time do you --

14 Mr. Montabone, what time do you usually get -- well what

15 time did you usually get to work in the latter part of

16 August, 2012?

17 A. On any given day it's between six and seven

18 o'clock in the morning.

19 Q. And do you remember on Wednesday, August 29th,

20 when you arrived?

21 A. I don't.

22 Q. Do you recall approximately how long you had

23 been in the unit before Rhonda Smith talked to you?

24 A. Not really, I mean, no.

25 Q. And was anyone else in hearing distance of this

1 conversation?

2 A. No.

3 Q. Rhonda Smith also have a procedure assignment
4 that morning, Wednesday the 29th, at which she was, to
5 which she was assigned as a nurse?

6 A. I believe she would have been in that case,
7 yes.

8 Q. Okay. The same case you were in?

9 A. Yes.

10 Q. I see. Is it fair to say her conversation with
11 you lasted couple of minutes at most?

12 A. Five minutes at most.

13 Q. Somewhere between two and five minutes, would
14 that be accurate?

15 A. Yes.

16 Q. Did you -- you didn't ask Rhonda to write down
17 what she told you, isn't that correct?

18 A. Correct.

19 Q. Mr. Montabane (sic), Montabone, I think I was
20 saying it wrong, sorry.

21 A. That's all right.

22 Q. Montabane or bone?

23 A. Bone.

24 Q. Bone, sorry. If I were to represent to you --
25 no, let me back off here. If -- as between you and

1 Rhonda, would you say her recollection of what she told
2 you that morning is better than yours?

3 A. Most certainly.

4 MS. LAWHON: Nothing further.

5 JUDGE AMCHAN: Anything else?

6 MS. BRUNDAGE: No.

7 JUDGE AMCHAN: You're excused. Thank you.

8 (WITNESS EXCUSED)

9 MS. BRUNDAGE: Can we take a moment?

10 JUDGE AMCHAN: Yeah. We'll go off the
11 record.

12 (Whereupon the hearing was adjourned at 5:00 p.m. on
13 Wednesday, May 1, 2013 and will reconvene on Thursday,
14 May 2, 2013, at 9:30 a.m.)

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1 C E R T I F I C A T E

2 This is to certify that the attached proceedings
3 before the National Labor Relations Board were held
4 according to the record and that this is the original,
5 complete, true and accurate transcript which has been
6 compared to the reporting and recording accomplished at
7 the hearing, that the exhibit files have been checked for
8 completeness and no exhibits received in evidence or in
9 the rejected exhibit files are missing.

10

11 _____

12 RHONDA LAMVERMEYER - OFFICIAL REPORTER

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1 THE UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 8
4
5 CASE NO. 08-CA-090083 08-CA-090193 (VOLUME 4 of 5)
6 08-CA-093035 08-CA-095833
7
8 In the Matter of:
9 DHSC, LLC D/B/A AFFINITY MEDICAL CENTER,
10 Employer,
11 and
12 NATIONAL NURSES ORGANIZING COMMITTEE,
13 Petitioner.
14
15
16
17
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19
20

21 The above entitled matter came on for hearing pursuant
22 to notice before ARTHUR AMCHAN, Administrative Law Judge,
23 at Anthony J. Celebrezze Federal Building, 1240 East 9th
24 Street, Room 1695, Cleveland, Ohio, on Thursday, May 2,
25 2013, at 9:58 a.m.

1 A P P E A R A N C E S

2 On Behalf of the General Counsel:

3 Sharlee Cendrosky, Esq.

4 NATIONAL LABOR RELATIONS BOARD REGION 8

5 Anthony J. Celebrezze Federal Building

6 Cleveland, Ohio 44199

7

8 On Behalf of the Charging Party:

9 Ms. Jan Lawhon

10 NATIONAL NURSE ORGANIZING COMMITTEE

11 2000 Franklin Street

12 Oakland, California 94612

13

14 On Behalf of the Respondent:

15 Bryan Carmody, Esq.

16 134 Evergreen Lane

17 Glastonbury, Connecticut 06033

18 Don Carmody, Esq.

19 P.O. Box 3310

20 Brentwood, Tennessee 37024

21

22 Carmen DiRienzo, Esq.

23 Kaitlin Brundage, Esq.

24 62 Ledgewood Road

25 West Hartford, Connecticut 06107

1	I N D E X					
2	VOIR					
3	WITNESSES	DIRECT CROSS REDIRECT RECROSS DIRE				
4	JASON McDONALD	748	815			763
5				783		
6						
7	PAULA ZINSMEISTER	852	878			842
8						
9	WILLIAM OSTERMAN	898	961	978	989	902
10		961		906		
11				909		
12				910		
13				937		
14				938		
15				986		
16						
17	CINDA KEENER	992	1005			
18		1007				
19						
20	ERIN SULLIVAN	1010	1024	1029	1030	1020
21						
22						
23						
24						
25						

1 EXHIBITS

2 JOINT

3 EXHIBIT NO. IDENTIFIED IN EVIDENCE

4 1-6 745 746

5

6 RESPONDENT'S

7 EXHIBIT NO.

8 16 762 766

9 17 782 785

10 18 839 850

11 19 854 857

12 20 857

13 21 901 904

14 22 904 906

15 23 908 911

16 24 936 939

17 25 979 (Rejected)

18 26 985 988

19 27 1010 1019

20

21 CHARGING PARTY'S

22 EXHIBIT NO.

23 3 747 747

24 4 827

25 5 888 892

1 PROCEEDINGS

2 May 2, 2013 9:58 a.m.

3 JUDGE AMCHAN: Back on the record. So do we
4 need to move for admission of the Joint Exhibits and --

5 MS. LAWHON: Yes.

6 JUDGE AMCHAN: -- CP3 and 1, CP3?

7 (Whereupon, Joint Exhibit Numbers 1 through
8 6 were marked for identification.)

9 MS. LAWHON: Your Honor, I believe -- well,
10 at various people's requests, we have agreed that the
11 following should be entered into the record.

12 The Petition to Revoke Subpoenas by Charging
13 Party Nurses National Organizing Committee has been marked
14 as Joint Exhibit 1. It contains the four subpoenas to
15 which it was addressed as exhibits. I offer it at this
16 time.

17 JUDGE AMCHAN: Okay.

18 MS. LAWHON: Do you want me to do them
19 one-by-one or altogether?

20 JUDGE AMCHAN: Well, let's do it one fell
21 swoop.

22 MS. LAWHON: Okay. One fell swoop. All
23 right. The second joint exhibit is a one-page document
24 entitled Order Granting Petition to Revoke Subpoenas.

25 The third document is a -- is entitled -- it's

1 marked Joint Exhibit 3. It's entitled Charging Party
2 National Nurses Organizing Committee's Motion in Limine.
3 And it contains as exhibits the Consent Election
4 Agreement, the -- I believe the approve Consent Election
5 Agreement, and the Report on Objections. Well, to read it
6 correctly, the Report on Challenged Ballots and
7 Objections.

8 And Joint Exhibit 4 is the Respondent's
9 Opposition to Charging Party's Motion in Limine.

10 Joint Exhibit 5 is the counsel for the Acting
11 General Counsel's Response to the Charging Party's Motion
12 in Limine.

13 And Joint Exhibit 6 is the Order Granting the
14 Charging Party's Motion in Limine, two pages. And that --
15 those are the joint exhibits that I distributed.

16 JUDGE AMCHAN: Okay. So has everybody agreed
17 that I can receive them?

18 MR. BRYAN CARMODY: Yes, sir.

19 MS. CENDROSKY: Yes, Your Honor.

20 MS. LAWHON: Yes.

21 JUDGE AMCHAN: They're admitted into the
22 record.

23 (Whereupon, Joint Exhibit Numbers 1 through
24 6 were received into evidence.)

25 (Whereupon, Charging Party's Exhibit Number

1 3 was marked for identification.)

2 MS. LAWHON: And I also marked, Your Honor,
3 pursuant to discussion we had off the record yesterday
4 afternoon, an excerpt from the Ohio Administrative Code
5 which was promulgated pursuant to the Ohio Nursing
6 Practice Act which addresses -- the title is "Standards
7 for Applying the Nursing Process as a Registered Nurse."
8 And, in particular, it addresses assessment. And it's a
9 two-page excerpt.

10 JUDGE AMCHAN: Do you have any objection to
11 my receiving that?

12 MR. BRYAN CARMODY: I do not, Your Honor.

13 JUDGE AMCHAN: Okay. It's received.

14 (Whereupon, Charging Party's Exhibit Number
15 3 was received into evidence.)

16 MS. LAWHON: And this would be Charging
17 Party's 3, if I didn't so identify it.

18 JUDGE AMCHAN: Right.

19 MS. LAWHON: Thank you.

20 MR. BRYAN CARMODY: Your Honor, I also
21 understand, please correct me if I'm incorrect, that to
22 the extent that we'll be relying upon sections of the Ohio
23 Nurses Practice Act in our post hearing submissions to
24 Your Honor, that Your Honor will take judicial notice of
25 --

1 JUDGE AMCHAN: Right.

2 MR. BRYAN CARMODY: Thank you, sir.

3 JUDGE AMCHAN: Okay.

4 MS. BRUNDAGE: Are there any other

5 preliminary matters? Okay, seeing none, Affinity Medical

6 Center calls Jason McDonald to the stand.

7 JUDGE AMCHAN: Okay. You're still under

8 oath, so you understand that?

9 THE WITNESS: Yes, sir.

10 WHEREUPON,

11 JASON McDONALD,

12 A witness herein, having been previously cautioned and

13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BRUNDAGE:

16 Q. Okay. And I don't think you need to spell your

17 name for the record, as it's already in the record. So

18 I'll just ask you, and I believe you've testified to some

19 background.

20 But can you tell us what position you hold for

21 the sake of the record at Affinity Medical Center?

22 A. Yes. The Orthopedic and Therapy Services

23 program director.

24 Q. And how long have you served in that position?

25 A. Since, roughly, October 2011.

1 Q. Were you employed by Affinity Medical Center
2 prior to 2011?

3 A. Yes, ma'am.

4 Q. And what role did you play, or what position
5 did you occupy prior to 2011?

6 A. Director of Therapy Services.

7 Q. Okay. And for how long did you serve in that
8 position?

9 A. I started that position May of 2009.

10 Q. Okay. Who is your supervisor in your current
11 position?

12 A. William Osterman, chief nursing officer.

13 Q. Okay. Please describe for us briefly your role
14 at the hospital.

15 A. My role, currently, at the hospital for the
16 Orthopedic and Spine Center is to oversee general
17 direction of the unit, marketing for the units, physician
18 satisfaction, patient satisfaction.

19 To work with staff to better -- have better flow
20 on the unit to make sure everything's functioning the way
21 it should, as well as to interact just generally with
22 staff.

23 Q. Turning your attention to the Orthopedic Unit,
24 are there any other supervisors who are in charge of
25 supervising that unit?

1 A. Yes.

2 Q. Who is that?

3 A. Paula Zinsmeister. She's my clinical manager
4 on the unit.

5 Q. Okay. And what is a clinical manager?

6 A. A clinical manager, Paul Zinsmeister is an RN.

7 I am not. I'm a physical therapist. So she is
8 responsible for directly overseeing the nurses, day-to-day
9 operations, clinical documentation, just basic nursing
10 care.

11 Q. Okay. When was the Orthopedic Unit opened?

12 A. It was opened in September of 2011.

13 Q. Okay. Who decided that you and Paula would
14 co-supervise the unit in this way?

15 A. Bill Osterman, the chief nursing officer.

16 Q. And why did he make that decision?

17 A. He made that decision. Initially Paula was our
18 director for the OB Unit. That unit closed down June of
19 2011. That unit had significantly high patient
20 satisfaction scores, which is something we were obviously
21 interested in for a new service line, or an additional
22 service line, I should say.

23 So he wanted to keep her on for that reason, as
24 well as knowing her general background as a nurse was very
25 good.

1 Q. Okay. Describe for us briefly the services
2 that are provided the Orthopedic Unit.

3 A. The Orthopedic and Spine Center provide
4 services for patients who have had various elective
5 orthopedic surgeries, such as knee replacements, hip
6 replacements. We also see patients with hip fractures and
7 spine surgery.

8 Q. Do you have an office in the hospital?

9 A. Yes, I do.

10 Q. Where is that office located?

11 A. It is on the first floor back in the back of
12 the Therapy Services Department.

13 Q. Is that also where the Orthopedic is located --

14 A. No. The Ortho --

15 Q. -- the Orthopedic Unit is located?

16 A. No. The Orthopedic Unit is located on the
17 third floor.

18 Q. Okay. On an average day at the hospital for
19 you, where do you spend most of your time?

20 A. I spend the vast majority of my time down in
21 the Therapy Services Department in my office.

22 Q. Okay. Do you spend much time on the Orthopedic
23 Unit?

24 A. Yes, I do. I don't spend a very large amount
25 of time, I would say five to ten minutes occasionally, and

1 more occasionally less.

2 Q. Okay. And why is that?

3 A. Just because, again, I'm there to basically
4 direct the general flow of the unit, marketing, those
5 things.

6 I don't necessarily interact on a regular basis
7 for clinical issues. That's why I leave it up to Paula.
8 So she's on the unit for the vast majority of the day.

9 Q. Okay. Do you recall whether you were working
10 at the hospital on August 28th, 2012?

11 A. Yes, ma'am, I was.

12 Q. Okay. Do you recall where you spent most of
13 your time at the hospital on August 28th, 2012?

14 A. Again, down in the Therapy Services Department.

15 Q. Okay. Did you spend any time on the Orthopedic
16 Unit on that date?

17 A. I believe I spent maybe five or ten minutes in
18 the morning.

19 Q. Okay. And do you remember whether you returned
20 to the Orthopedic Unit at any point after your initial
21 visit in the morning?

22 A. I don't remember returning to the unit.

23 Q. Okay. Do you recall whether the unit was busy
24 or slow?

25 A. It seemed fairly busy, the surgery schedule,

1 from what I can remember, seemed fairly busy.

2 Q. Okay. Was Paula Zinsmeister present, to your
3 knowledge, on August 28th, 2012?

4 A. No, she wasn't.

5 Q. Why not?

6 A. She was on vacation that week.

7 Q. Okay. Was there another clinical manager for
8 your Orthopedic Unit?

9 A. Yes. To cover the Clinical Management
10 Services, we had Susan Kress, who's the director for the
11 CVS-ICU.

12 Q. Okay.

13 JUDGE AMCHAN: I do think there are a lot of
14 things that aren't in dispute that we've been over before,
15 which we could kind of pass over.

16 MS. BRUNDAGE: Okay. Okay.

17 JUDGE AMCHAN: I do remember Ms. Zinsmeister
18 was on vacation.

19 MS. BRUNDAGE: Okay. All right.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. I'd like to turn your attention to the next
23 day, Mr. McDonald, August 29th, 2012. Do you recall if
24 you worked on that day?

25 A. Yes, I was.

1 Q. Did you speak with Susan Kress about the
2 Orthopedic on that day?

3 A. For a very short period of time, yes.

4 Q. Okay. And what did the conversation that you
5 had consist of?

6 A. The general conversation, as I can recollect
7 was she stopped me in a hallway and said that there was a
8 problem with patient care regarding one of the nurses on
9 the unit that had been reported.

10 Q. Was the problem happening contemporaneously, or
11 had it already occurred?

12 A. It had already occurred the previous day.

13 Q. Did Susan know the name of the nurse involved
14 in the complaint?

15 A. Yes, she did.

16 Q. What was that?

17 A. Ann Wayt.

18 Q. Okay. And what was your reaction to learning
19 that the nurse involved in this patient care complaint was
20 Ann Wayt?

21 A. I was surprised.

22 Q. Why?

23 A. Prior to this, all indications that we had were
24 the -- was that she was a very good nurse.

25 Q. Okay. Was someone going to investigate the

1 complaint that Susan Kress relayed to you about Ann Wayt's
2 care of the patient on August 28th?

3 MS. LAWHON: Objection. Foundation. There's
4 no evidence this witness would know unless it was said to
5 him by Kress.

6 JUDGE AMCHAN: Well, he'll tell us.
7 Overruled.

8 THE WITNESS: Yeah, Susan did indicate that
9 she was going to continue the investigation.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. BRUNDAGE:

12 Q. Okay. Why didn't you continue the
13 investigation?

14 A. I am not a nurse, so I would not have the
15 clinical ground knowledge to continue the investigation.

16 Q. Okay, Jason, I'd like to turn your attention to
17 the next day, August 30th, 2012.

18 A. Okay.

19 Q. Did you speak to anyone at the hospital
20 regarding the complaint about Ann Wayt's care of a patient
21 on August 30th -- on the date of August 30th, 2012?

22 MS. LAWHON: Objection. Mischaracterizes the
23 testimony. There's no reference to a complaint.

24 JUDGE AMCHAN: Well, he said somebody raised
25 a concern about patient care, so --

1 MS. LAWHON: That's right. He said there was
2 a problem with patient care.

3 JUDGE AMCHAN: Did anybody talk to you about
4 that?

5 THE WITNESS: Yes. My direct supervisor,
6 Bill Osterman, did.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. BRUNDAGE:

9 Q. Okay. And what did he relay to you?

10 A. He relayed to me that he had heard from Susan
11 Kress that there was a problem with patient care, and that
12 she was going to continue to investigate it.

13 And he also related to me an incident that
14 Ms. Wayt had with John Perone, our pharmacy director.

15 Q. Okay. And what was the nature of the incident
16 involving John Perone?

17 A. The nature of that incident was that John
18 Perone had had an interaction that he viewed as
19 unprofessional with Ms. Wayt in regards to wanting to
20 clarify a discrepancy with a PYXIS system, which is our
21 medication dispensing system.

22 Q. Okay. How did you respond to Bill?

23 A. Again, I was very surprised.

24 Q. Okay. What did you -- did you -- what, if
25 anything, did you tell Bill that you would do next?

1 A. I told him that we would follow up when Paula
2 Zinsmeister got back from vacation the following week.

3 Q. Okay.

4 MS. LAWHON: I'm sorry. I didn't hear the
5 end of the sentence.

6 MS. CENDROSKY: Me neither.

7 THE WITNESS: Oh, I'm sorry. I said we would
8 follow up when Paula Zinsmeister got back from her
9 vacation on the following week.

10 MS. LAWHON: Oh, on the follow week. Yes.
11 Thank you.

12 THE WITNESS: I'm sorry.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. BRUNDAGE:

15 Q. Prior to Paula returning from vacation, did you
16 contact Paula about either of these issues involving
17 Ms. Wayt?

18 A. Yes, I did.

19 Q. Okay. When?

20 A. I believe it was on August 30th. I contacted
21 her on her personal cell phone and just let her know that
22 there was this patient care issue that had been raised, as
23 well as the issue with John Perone.

24 Q. Okay. And how did that conversation conclude?

25 A. She was very surprised. And, again, we agreed

1 we'd follow up on it when she got back from vacation.

2 Q. Okay. When Paula returned from vacation, did
3 you discuss these incidents with her?

4 A. Yes, I did.

5 Q. And what date would that have been on?

6 A. That would have been on September, the
7 following Tuesday, because Labor Day was that Monday.

8 Q. Okay. And what did your conversation with
9 Paula consist of at that time?

10 A. Our conversation, at that time, consisted of
11 the accusation that had been made, that there was
12 inappropriate patient care that was given to this
13 particular patient, as well as we discussed the incident
14 regarding John Perone.

15 Q. Okay. Did you reach any conclusions about the
16 incident involving John Perone?

17 A. We did reach a conclusion that it did need to
18 be addressed with Ms. Wayt as a write-up.

19 Q. Okay. Why?

20 A. We felt that just because of the unprofessional
21 nature and the community care standards that we have, that
22 it did need to be addressed.

23 Q. Okay. As regard the patient care concerns that
24 had been raised, was there any discussion of who would
25 continue the investigation?

1 A. Yes, there was. At that point, we had decided
2 that we would continue the investigation, that would be me
3 and Paula Zinsmeister.

4 Q. Okay. In order to continue the investigation,
5 did you meet with anyone?

6 A. Yes, we did. We met with Susan Kress, who had
7 started the preliminary portion of the investigation. And
8 she had indicated what the results of her investigation
9 were to us.

10 Q. Okay. When did that meeting occur?

11 A. I believe that occurred on, it was either
12 September 4th or September 5th.

13 Q. Okay. What details did Susan share with her --
14 share with you about her investigation?

15 MS. LAWHON: Objection to the form of the
16 question. The usual mode of examination is what did she
17 say?

18 JUDGE AMCHAN: Okay. What'd she say?

19 THE WITNESS: She told us that she had
20 investigated and she had spoken with Rhonda Smith, who was
21 one of the nurse sitters.

22 And she had indicated -- Rhonda Smith had
23 indicated to Susan Kress that there was no head-to-toe
24 assessment performed by Ms. Wayt, as well as there was
25 also an indication from Susan Kress that she did not see

1 Ms. Wayt in the room while -- during the period of time
2 when she as there.

3 DIRECT EXAMINATION (CONT'D)

4 BY MS. BRUNDAGE:

5 Q. And when you say when she was there, to whom
6 are you referring?

7 A. Susan Kress.

8 Q. Okay. Did Susan conduct any review of the
9 patient's chart?

10 MS. LAWHON: Objection. Leading.

11 JUDGE AMCHAN: Well, overruled. He'll either
12 say yes or no.

13 THE WITNESS: Yes, she did.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. Okay. And did you discuss that during your
17 meeting?

18 A. Yes, we did discuss it with the meeting. She
19 showed us some areas of the chart that she had looked
20 over, especially the head-to-toe assessment, that it was
21 documented that it was performed, as well as the community
22 cares hourly rounding was performed.

23 Q. Okay. Turning your attention to what should be
24 up there as Respondent's Exhibit 5, it'll be marked with
25 an R5.

1 A. Okay.

2 Q. Do you recognize this document?

3 A. Yes. This is the patient 24-Hour Assessment.

4 Q. Okay. Is this the document that you reviewed

5 -- I'm sorry, is this the document that Ms. Kress said she

6 had reviewed?

7 A. Yes.

8 Q. Okay.

9 JUDGE AMCHAN: Well, did she actually show it
10 to you, or did she just tell you about her examination of
11 the chart?

12 THE WITNESS: With this document, Your Honor?

13 JUDGE AMCHAN: Yes.

14 THE WITNESS: Yes, she did show us this
15 document.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Okay. After meeting with Susan Kress, did you
19 conduct a review of this Respondent's Exhibit 5?

20 A. Yes, we did. Paula Zinsmeister and I both
21 looked over it. Since Paula has the clinical knowledge
22 she looked through the 24 -- or the head-to-toe
23 assessment.

24 Q. Okay. Returning your attention to the incident
25 that you described previously regarding John Perone.

1 A. Yes.

2 Q. Was any discipline issued to Ann Wayt --

3 A. Yes.

4 Q. -- for -- involving that incident?

5 A. Yes. She was issued a written warning.

6 Q. Okay. What was the written warning for?

7 A. The written warning for was -- was for

8 violation of the community cares policy, as well as

9 unprofessional conduct.

10 Q. Okay.

11 (Whereupon, Respondent's Exhibit Number 16

12 was marked for identification.)

13 Q. Mr. McDonald, I'm now showing you what's been

14 marked as Respondent's Exhibit 16. Do you recognize this

15 document?

16 A. Yes, I do.

17 Q. And what is this document?

18 A. This is the written warning that was issued to

19 Ms. Wayt.

20 Q. Okay. I'm going to direct your attention to

21 the date at the top right side. That date is 9/4/12.

22 Does that match the date that is indicated by the

23 signatures at the bottom of the page?

24 A. No, it does not.

25 Q. Okay. What day was the discipline issued, to

1 the best of your knowledge?

2 A. This was issued on September 5th, 2012.

3 Q. Okay. And does your signature appear on this
4 document?

5 A. Yes, it does.

6 MS. BRUNDAGE: Okay. I'd like to move to
7 enter this exhibit into evidence, please.

8 MS. LAWHON: Voir dire?

9 JUDGE AMCHAN: Sure.

10 VOIR DIRE EXAMINATION

11 BY MS. LAWHON:

12 Q. Good morning, Mr. McDonald. Did you prepare
13 this document?

14 A. I believe that Paula Zinsmeister prepared this
15 document. But I believe I did help her filling it out.

16 Q. I'm sorry. Where did you -- what part of this
17 did you help her fill out?

18 A. Just the discussion between us with which type
19 of a discipline she'd be given.

20 Q. I'm sorry, Mr. McDonald, I thought you said you
21 helped her fill out the form. Did you contribute to any
22 of the wording on the form?

23 A. Yes, we discussed --

24 Q. What -- what --

25 A. -- the wording on the form.

1 Q. Oh, you and she together discussed it?

2 A. Yes.

3 Q. Before she filled it out.

4 A. While we were filling it out.

5 Q. Oh, you saw her filling it out on the computer
6 while you were in her office?

7 A. Yes.

8 Q. Okay. No -- oh. And do you know what is
9 blacked out on this document?

10 A. I do not. I cannot read through the black-out.

11 MS. LAWHON: Counsel, do you have one that's
12 not --

13 MS. BRUNDAGE: I don't. I --

14 MS. LAWHON: -- blacked out?

15 MS. BRUNDAGE: -- I can ask.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Mr. McDonald, was this document in this format
19 the document that was issued to Ms. Wayt, to the best of
20 your recollection?

21 A. To the best of my recollection, it is. I don't
22 know if that blacked out area is a highlighted area that
23 maybe just didn't copy well. I don't know.

24 Q. Okay.

25 MS. LAWHON: Could we go off the record for a

1 second?

2 JUDGE AMCHAN: Sure. Off the record.

3 (Off the record.)

4 JUDGE AMCHAN: Back on the record. You

5 object to the admission because of the part that --

6 MS. LAWHON: The redaction.

7 JUDGE AMCHAN: -- appears to be blacked out?

8 MS. LAWHON: Yes.

9 JUDGE AMCHAN: I'm going to receive it. I
10 don't think it's --

11 MS. CENDROSKY: Actually, Your Honor, I have
12 a copy that was provided to me earlier in the
13 investigation in which you can read through the black-out.
14 And so I think we may be able to stipulate --

15 JUDGE AMCHAN: Well, show it to --

16 MS. CENDROSKY: -- that it does say policy.

17 MS. BRUNDAGE: We can stipulate that it --
18 no, I'm not comfortable with that, Sharlee, and I'll tell
19 you why. If this was issued to Ms. Wayt with that word
20 blacked out, then there's a substantive difference.

21 If says review the PYXIS, we can have testimony
22 about what that means. And if it's problematic in the
23 format that I've given it to you, I can call our HR
24 director to explain that this is how it appears in her
25 file.

1 JUDGE AMCHAN: I don't know, I'm -- to me,
2 it's a tempest in the teapot. I'm going to receive the
3 exhibit. If it's an issue, you know, we can put Ms. Wayt
4 back on the stand and say what she got was different.

5 (Whereupon, Respondent's Exhibit Number 16
6 was received into evidence.)

7 MS. BRUNDAGE: Okay.

8 JUDGE AMCHAN: I mean, the essential point it
9 was issued, and I understand what the General Counsel and
10 the Union's position is on that.

11 MS. BRUNDAGE: Okay.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. On the day when this discipline was issued, did
15 you observe Ann Wayt write on this document?

16 A. Yes, I did.

17 Q. Where?

18 A. She wrote it on the employee remarks section,
19 as well as the signature.

20 Q. Okay. Why did she write in the employee remark
21 section, to the best of your knowledge?

22 MS. LAWHON: Objection. Calls for
23 speculation.

24 JUDGE AMCHAN: Well, sustained.

25 MS. BRUNDAGE: Okay.

1 JUDGE AMCHAN: She wrote, and it's there.

2 MS. BRUNDAGE: Okay.

3 JUDGE AMCHAN: Unless she told -- unless he

4 -- she told him something, said something to him.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. BRUNDAGE:

7 Q. Did you have any conversation about this

8 discipline when it was issued to Ms. Wayt -- with

9 Ms. Wayt?

10 A. Yes, we did.

11 Q. And what did that conversation consist of?

12 A. I believe Paula Zinsmeister was one that had

13 informed her that if she had any additional comments to

14 make on the disciplinary action itself, that she should

15 make it in the employee remarks.

16 Q. Okay. What was your observation of Ms. Wayt's

17 demeanor during that meeting?

18 A. She was very --

19 MS. LAWHON: Objection. Relevance.

20 JUDGE AMCHAN: To -- well --

21 MS. BRUNDAGE: Your Honor, it would go to the

22 question of whether or not the discipline was properly, in

23 Ms. Wayt's opinion, properly issued.

24 MS. LAWHON: No.

25 MS. CENDROSKY: No it would not.

1 MS. LAWHON: That would call for speculation,
2 absolutely. Some people are very good at not reflecting
3 their emotions.

4 JUDGE AMCHAN: I'm going to sustain the
5 objection.

6 MS. BRUNDAGE: Okay.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. BRUNDAGE:

9 Q. At this time, did you discuss the patient
10 chart, Respondent's Exhibit 5 with Ms. Wayt at that
11 meeting?

12 A. Yes, we did.

13 Q. How did that conversation begin?

14 A. The conversation began. I informed Ms. Wayt
15 that we were auditing this patient's chart. Asked her if
16 she recognized the patient's name via the patient label
17 that was on the document.

18 She indicated that she did. And I had asked her
19 specifically if she was certain that her documentation was
20 accurate.

21 Q. Okay. Why did you discuss the patient care
22 issue with Ann at this meeting?

23 A. I discussed it, number one, out of opportunity
24 to, we had her there. As well as the way we brought it up
25 was just so that we didn't inject emotion into it, you

1 know, indicating that at this time that there was
2 falsification accusations that may inject various
3 attitudes or biased opinions.

4 I wanted her to look at this as plainly and as --
5 as openly as she could.

6 Q. Okay. And you've testified that you used the
7 word "audit." Are you familiar with the word "audit"?

8 A. Yes.

9 Q. And what is your understanding of the word
10 "audit"?

11 A. My understanding of the word "audit" is you are
12 reviewing the chart for documentation accuracy.

13 Q. Okay.

14 JUDGE AMCHAN: I'm sorry, maybe I wasn't
15 listening close enough. You told her you were -- you told
16 Ms. Wayt that you were performing an audit?

17 THE WITNESS: Yes.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. Okay. During this meeting with Ms. Wayt, did
21 you tell her what time the patient in question had arrived
22 to the floor?

23 A. No, I did not.

24 Q. Why not?

25 A. Again, I asked her if she remembered the

1 patient and she indicated that she did. I didn't feel

2 there was any further need to do that.

3 Q. Okay. How did Ann respond to your question of

4 whether the chart was accurate?

5 A. She said, to the best of her recollection, yes,

6 it was.

7 Q. Okay. What, if anything, did you do next?

8 A. I then asked her to initial certain areas on

9 the chart just to indicate that that documentation was, in

10 fact, correct.

11 Q. Okay. I'm going to turn your attention to

12 General Counsel's Exhibit 7.

13 MS. CENDROSKY: It's a larger packet.

14 THE WITNESS: Okay. Let's see, I've got a

15 lot of packets up here. Okay.

16 MS. CENDROSKY: I know.

17 THE WITNESS: Okay.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. Okay. And I'll point your attention to Page 18

21 of General Counsel's 7.

22 A. Okay.

23 Q. Okay. Do you recognize this document?

24 A. Yes, I do.

25 Q. And turning your attention to the line,

1 technically, I guess it would be two lines down from the
2 date line.

3 A. Yes.

4 Q. It says "Time" and "Initials."

5 A. Yes.

6 Q. And it appears there are two sets of initials.

7 A. Yes.

8 Q. Can you explain those two sets of initials?

9 A. The initial on the -- or the initials on the
10 left-hand side is what I asked Ms. Wayt to do to identify
11 that the documentation is -- or the documentation was
12 correct.

13 The initials on the right-hand side of 0900 are
14 her initials that she timed it while she was doing that
15 documentation.

16 Q. During your meeting --

17 MS. LAWHON: Objection. This calls for
18 speculation on the part of this witness. He has no idea,
19 he's not a nurse.

20 What standard nursing practice is as to how the
21 -- when the time is entered. For him to say it was
22 entered contemporaneously, he has no basis for that.

23 MS. CENDROSKY: And I'm going to object --

24 MS. LAWHON: Move to strike.

25 MS. CENDROSKY: -- and I'm going to object to

1 the form, as well.

2 JUDGE AMCHAN: Well --

3 MS. CENDROSKY: You are giving your opinion

4 that she wrote it at that time contemporaneously.

5 JUDGE AMCHAN: Well, okay, I think the --

6 what we're getting at that's material, I'm looking at Page

7 18?

8 MS. BRUNDAGE: Yes, Your Honor.

9 MS. LAWHON: Yes.

10 JUDGE AMCHAN: Okay. That the initials to
11 the left of 0900 were done in your presence on September
12 5th; is that what you said?

13 THE WITNESS: Yes, Your Honor.

14 JUDGE AMCHAN: Okay. You weren't there when
15 the other initials were entered.

16 THE WITNESS: No, I was not.

17 JUDGE AMCHAN: Okay.

18 MS. LAWHON: So, Your Honor, is my move to
19 strike granted as to his testimony about --

20 JUDGE AMCHAN: Well, I think --

21 MS. LAWHON: -- when the others --

22 JUDGE AMCHAN: I talked over you. I
23 apologize. I think what's material, he knows that she put
24 the initials to the left in his presence. He doesn't --
25 he wasn't there when the other initials were entered.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. BRUNDAGE:

3 Q. Is this the only place, this documentation to
4 the left, or the initialing to the left of 0900, is that
5 the only place where Ms. Wayt initialed the chart during
6 your meeting on the 5th?

7 A. No, it is not.

8 Q. Okay. Can you indicate to us the other areas
9 of the chart where Ms. Wayt initialed?

10 A. Yes. Give me a moment to find them here.

11 Q. Sure.

12 A. All right. On Page 23 that's circled, the
13 bottom where it says "Community cares rounding." Just to
14 the right of that vertical column there's a set of
15 initials there.

16 On Page 24, about halfway down the page in the
17 bar that says "Safety" up towards the top of it, there's
18 initials there.

19 And on Page 25, the top left-hand box where it
20 says "Other" that's vertical, there are initials there.

21 Q. Okay. Turning your attention back to Page 18.

22 A. Okay.

23 Q. Why did you request that Ms. Wayt verify the
24 time of the -- why did you ask Ms. Wayt to put her
25 initials in the time, slash, initials box as you've

1 testified to?

2 MS. LAWHON: Objection. Asked and answered.

3 MS. CENDROSKY: Uh-huh.

4 MS. LAWHON: He said to show it was accurate.

5 JUDGE AMCHAN: Okay. Overruled. He can
6 answer again.

7 JUDGE AMCHAN: Just to have her indicate that
8 the documentation was accurate.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Okay. Would that be true for all the initials
12 added at the meeting on September 5th?

13 A. Yes, it would.

14 Q. Did you discuss anything else at your meeting
15 with Ms. Wayt on December 5th of 2012?

16 A. No. At that time we concluded the meeting.

17 Q. Okay. Did you report the events of your
18 meeting with Ms. Wayt to anyone at the hospital?

19 A. Yes, we did. Later on, I don't remember if it
20 was that morning, or earlier this afternoon -- earlier
21 that afternoon, we did meet with Bill Osterman, the chief
22 nursing officer.

23 JUDGE AMCHAN: "We," meaning you and
24 Ms. Zinsmeister?

25 THE WITNESS: Yes, I'm sorry. Me and

1 Ms. Zinsmeister.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. Okay. What did the conversation of your
5 meeting with Bill consist of?

6 A. It consisted of us reviewing the 24-Hour
7 Assessment, what we had discussed with Ann, what we had
8 asked her to do, and that this again was not in
9 correlation with what had been reported by Susan Kress.

10 Q. Okay. In your meeting with Bill, did either
11 you or Paula express to Bill whether you had reached any
12 conclusions with regard to your investigation into
13 Ms. Wayt?

14 A. At this point, we did believe that the record
15 was falsified.

16 JUDGE AMCHAN: Well, did you tell
17 Mr. Osterman that?

18 THE WITNESS: Yes. Yes, we did.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. BRUNDAGE:

21 Q. How did Bill respond?

22 A. He was very surprised, too.

23 Q. Did he agree or disagree?

24 A. After reviewing the investigation that had been
25 up to that point and the documentation we provided, he did

1 agree.

2 Q. Okay. What did -- what, if anything, did Bill
3 instruct you to do next?

4 A. He instructed us to go over to Human Resources
5 and speak with Angie -- Angie Boyle, who was our vice
6 president of Human Resources.

7 Q. Did you meet with Angie?

8 A. Yes, we did.

9 Q. And what did you and -- I'm assuming when you
10 say "we," again, you're referring to yourself and
11 Ms. Zinsmeister; correct?

12 A. Yes, I'm sorry. Yes, me and --

13 Q. That's okay. What did you and Ms. Zinsmeister
14 discuss at your meeting with Angie?

15 MS. CENDROSKY: I just want to object real
16 quick. Just, can you state when the meeting was? I don't
17 need the whole foundation. Just I want to know what
18 meeting and what day.

19 MS. BRUNDAGE: Sure.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. So you've testified you met with
23 Ms. Boyle. On what date, to the best of your
24 recollection, did that meeting occur?

25 A. The best of my recollection, it was on

1 September 5th, I believe.

2 Q. Okay.

3 JUDGE AMCHAN: The same day that you spoke to

4 Osterman.

5 THE WITNESS: Yes. I do believe so.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Okay. What did you and Ms. Zinsmeister discuss

9 at your meeting with Ms. Boyle?

10 A. We reviewed the investigation that had been

11 done up to that point, as well as reviewing the patient

12 record with her and what our feelings were that we had

13 come to as a conclusion of the investigation that the

14 record was falsified.

15 Q. Okay. Did -- what, if anything, did Angie

16 inform you she would do next?

17 A. I believe she informed us that because of the

18 seriousness of these -- seriousness of these allegations, they

19 were going to be sent on to our corporate risk manager and

20 Quality Department.

21 Q. Do you know whether Angie brought this issue to

22 corporate?

23 A. Yes, she did.

24 Q. Okay. Do you know what the results of Angie

25 making corporate aware of the investigation and the

1 conclusion were?

2 MS. LAWHON: Objection, unless this is to
3 what was told to him or a document he saw.

4 JUDGE AMCHAN: Yes. I guess the question was
5 how would he know?

6 MS. CENDROSKY: How does he know? Yes.

7 MS. BRUNDAGE: Yes. Sure.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. BRUNDAGE:

10 Q. I'm sorry. Would -- did Ms. Boyle make you
11 aware of the results of her notifying corporate?

12 A. Yes, she did.

13 Q. Okay. And what were those results?

14 MS. LAWHON: Objection. Foundation.

15 MS. CENDROSKY: And I want to know when he
16 was made aware.

17 MS. LAWHON: That's what I mean by
18 foundation. When -- at least when and --

19 MS. CENDROSKY: Timing is very important.

20 MS. BRUNDAGE: Okay.

21 JUDGE AMCHAN: Okay. So on September 5th
22 Ms. Boyle tells you that she's going to contact corporate;
23 right?

24 THE WITNESS: Yes.

25 JUDGE AMCHAN: And then at some point she

1 tells you what corporate said.

2 THE WITNESS: Yes, Your Honor.

3 JUDGE AMCHAN: And they want to know when.

4 THE WITNESS: I believe that was on -- it was
5 the following week. I believe it was September 11th.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Okay. Mr. McDonald, I want to refer your
9 attention to General Counsel's Exhibit 19.

10 A. All the way at the bottom.

11 Q. I'll give you a moment to review the exhibit.

12 A. Okay.

13 MS. LAWHON: It's -- Your Honor, I object in
14 the sense that I don't know if this witness -- is this
15 being used to refresh his recollection? I don't know if
16 he's ever seen it before.

17 MS. BRUNDAGE: Your Honor, I can strike the
18 question and the reference to the exhibit. I believe that
19 Mr. --

20 JUDGE AMCHAN: Uh-huh.

21 MS. BRUNDAGE: -- McDonald has answered that
22 he believes he was notified of the corporate response on
23 September 11th, and we can proceed from there.

24 JUDGE AMCHAN: All right.

25 MS. BRUNDAGE: Okay.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. BRUNDAGE:

3 Q. Okay. And to the best of your recollection,
4 what was the response from corporate?

5 A. The response from corporate to the -- the best
6 I can remember is they did feel that the allegations were
7 substantiated and that termination was the appropriate --

8 JUDGE AMCHAN: Well, how do you know that?
9 Do you know that from reading an e-mail, or because
10 Ms. Boyle -- that's what Ms. Boyle told -- you didn't
11 speak to the corporate people; right?

12 THE WITNESS: No, I did not speak to the
13 corporate people.

14 JUDGE AMCHAN: So your knowledge of what
15 corporate said is from?

16 THE WITNESS: I believe it was from Angie
17 Boyle, to the best of my recollection.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. Okay. Based on what Ms. Boyle relayed to you
21 regarding the corporate response, what did you do next?

22 A. We decided that we were going to go ahead and
23 set up a meeting with Ms. Wayt.

24 Q. And who is the "we" to whom you're referring?

25 A. I'm sorry, I'm bad at that. Myself and Paula

1 Zinsmeister. Decided we were going to call Ms. Wayt and
2 get a meeting set up with her.

3 Q. Okay. And what would the purpose of the
4 meeting you were setting up have been?

5 A. At this point, we believed it was going to be a
6 disciplinary meeting for termination.

7 Q. Okay. Did you make plans to meet with Ann
8 Wayt?

9 A. Yes, we did. We --

10 Q. Okay. How did you do that?

11 A. We had called her, I believe, on September
12 12th. I don't remember if it was her home phone or cell
13 phone, that we had called her and informed her that we
14 would like for her to come into the hospital for a meeting
15 on September 12th to discuss patient care issues.

16 Q. Okay. Did Ms. Wayt agree to come in for a
17 meeting on September 12th?

18 A. Initially, no, she did not. She had told us
19 that she was not able to come in that day because she was
20 busy.

21 Q. Okay. Were you able to schedule an alternate
22 meeting time?

23 A. Yes, it was for the following day, September
24 13th.

25 Q. Did Ann say anything to you about union

1 representation during this call?

2 A. Yes, she did. She had indicated that she was
3 entitled to union representation at this meeting.

4 Q. Okay. How did you respond?

5 A. I indicated to her that she was not correct
6 with this, that this was a disciplinary meeting. And at
7 that point, she does not have an entitlement to union
8 representation.

9 Q. How did Ann respond?

10 A. Ann responded that we did not understand
11 Weingarten rights.

12 Q. Okay.

13 A. Myself and Paula Zinsmeister did not understand
14 Weingarten rights.

15 Q. When Ann responded that you did not understand
16 Weingarten rights, how did you respond to Ann?

17 A. I responded, I had a piece of paper that had,
18 on the second page at the bottom, a bolded area that
19 explained that Weingarten rights are -- something along
20 the lines of Weingarten rights are not to be afforded when
21 it's a disciplinary meeting, but I just don't remember the
22 exact words.

23 (Whereupon, Respondent's Exhibit Number 17
24 was marked for identification.)

25 Q. Okay. Mr. McDonald, do you recognize this

1 document?

2 MS. LAWHON: I'm sorry, Counsel -- oh, you
3 just put it on my stack?

4 MS. BRUNDAGE: Yes, I'm sorry.

5 MS. LAWHON: That's okay, I just -- I was
6 looking aside. Thank you. Sorry.

7 DIRECT EXAMINATION (CONT'D)

8 BY MS. BRUNDAGE:

9 Q. Mr. McDonald, do you recognize this document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It is the document that I read from to Ms. Wayt
13 on this phone call.

14 Q. Okay. And which section of this document did
15 you read to Ms. Wayt?

16 A. The very last paragraph that is bolded.

17 MS. BRUNDAGE: Okay. I'm going to move to
18 have this entered into evidence, please, R17.

19 MS. LAWHON: Voir dire?

20 JUDGE AMCHAN: Sure.

21 VOIR DIRE EXAMINATION

22 BY MS. LAWHON:

23 Q. Mr. McDonald, this was a piece of paper you had
24 in front of you at the time you and Paula called Ann Wayt?

25 A. Yes.

1 Q. Is this a piece of -- which -- where did you
2 call from?

3 A. My office.

4 Q. Is this a piece of paper you kept in your
5 office?

6 A. I don't remember if it was my piece of paper,
7 or that Paula Zinsmeister had brought. I don't remember.

8 Q. Had you ever seen this piece of paper prior to
9 making the phone call to Ann Wayt?

10 A. Yes, I had.

11 Q. When?

12 A. I believe it was -- I know it was in a meeting.
13 I don't remember exactly when, but it was previous to
14 this.

15 Q. Who was in that meeting?

16 A. It was some of management staff. I believe we
17 were just being educated on what Weingarten rights were,
18 because this was a completely new atmosphere for us.

19 Q. And you kept a -- you received a copy of this
20 document at that meeting?

21 A. I do believe so, yes, but I do not know, like I
22 said, if it was my document or Paula's document that we
23 read from.

24 Q. You -- did you bring this document so you had
25 it right in front of you right before you made the phone

1 call?

2 A. I do believe so, yes.

3 Q. And that was your individual decision to do

4 that?

5 A. I do not remember whose decision it was. It

6 may have been on my desk, it may have been filed away, I

7 do not remember.

8 Q. I'm sorry, I know you answered me, but where

9 was the phone call made from?

10 A. My office.

11 MS. LAWHON: Okay. I have no further voir

12 dire. No objection.

13 JUDGE AMCHAN: I received it.

14 (Whereupon, Respondent's Exhibit Number 17

15 was received into evidence.)

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Mr. McDonald, did you say anything to Ann about

19 termination during the phone call that you had with her on

20 September 12th, 2012?

21 A. No, I did not.

22 Q. Did you make any threats to Ann during the

23 phone call -- did you believe you made any threats to Ann

24 during the phone call that you had on September 12th,

25 2012?

1 MS. CENDROSKY: Objection.

2 MS. LAWHON: Objection. Calls for a legal
3 conclusion.

4 MS. CENDROSKY: Thank you.

5 MS. LAWHON: Could we at least hear what he
6 said?

7 JUDGE AMCHAN: Yes. What do you remember
8 saying to her?

9 MS. BRUNDAGE: I believe he's testified to
10 what he said --

11 JUDGE AMCHAN: Well --

12 MS. BRUNDAGE: -- which was that he read the
13 paragraph. If you'd like for him to --

14 JUDGE AMCHAN: Well, did he -- did you say
15 anything else to her?

16 THE WITNESS: After I read this paragraph,
17 she continued to indicate that we were misinformed on
18 Weingarten rights.

19 I asked Ms. Wayt if she was refusing to come for
20 the meeting. She then indicated, no, that she would come
21 in for the meeting the following day.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. BRUNDAGE:

24 Q. Okay. Mr. McDonald, you testified that when
25 you made the call to Ms. Wayt on September 12th, 2012, the

1 planned purpose of the meeting you were scheduling with

2 Ms. Wayt was termination.

3 A. At that point, yes.

4 Q. Did the planned purpose of the meeting with Ann

5 change, at any point in time?

6 A. Yes, it did.

7 Q. How did it change?

8 A. It changed later that day. We were called by

9 our VP of Human Resources, Angie Boyle. She had decided

10 that as opposed to doing a termination, we should do

11 further investigation. And, again, try and hear out more

12 of Ann's side of the story if there was anything that was

13 missed.

14 Q. Okay. So after speaking with Ms. Boyle, what

15 did you understand the purpose of the meeting on September

16 13th, 2012 to be?

17 A. After speaking with Ms. Boyle, it was going to

18 be an investigative or a suspension meeting.

19 Q. Okay. Based on your understanding of

20 Weingarten rights, did this change Ann's right to have a

21 union representative present at the meeting?

22 A. Yes, it did.

23 Q. And how did it change Ann's right?

24 A. Under an investigatory meeting, they are

25 entitled -- an employee is entitled to union

1 representation.

2 Q. Okay. Do you know whether anyone informed
3 Ms. Wayt of the fact that she would be entitled to union
4 representation at the meeting scheduled for September
5 13th?

6 A. As I understand in conversation with Ms. Boyle
7 that day, she indicated that she was going to call Ann.

8 Q. Okay. Did you attend a meeting with Ms. Wayt
9 on September 13th, 2012?

10 A. Yes, I did.

11 Q. Who else was present at that meeting?

12 A. It was myself, Paula Zinsmeister, Angie Boyle,
13 Ann Wayt, and Bob McKinney.

14 Q. And who is Bob McKinney?

15 A. Bob McKinney was the union rep, representative
16 that she chose to bring to the meeting.

17 Q. Okay. What was discussed at the meeting on
18 September 13th with Ms. Wayt?

19 A. We again had showed -- shown Ms. Wayt the
20 documents that was the 24-Hour Patient Assessments. We
21 discussed with her that there were allegations from a
22 patient sitter that no head-to-assessment was performed,
23 that community cares rounding had not been performed. And
24 that inadequate patient care had been given.

25 Q. Okay. In reviewing, or in asking Ms. Wayt

1 about the 24-Hour Assessment Form, did you ask Ms. Wayt if
2 she had any independent recollection of the patient?

3 A. We did. We asked her if she remembered the
4 patient. She indicated that she did. Again, we had shown
5 her the patient label and she indicated that she
6 remembered the patient.

7 Q. Okay. How did Ann respond to your questions
8 about the various portions of the 24-Hour Assessment Form
9 that you just stated you discussed?

10 A. Well, we were going through the 24-Hour
11 Assessment Form, and had informed her that the allegation
12 had been made by the patient sitter that no head-to-
13 assessment was done.

14 Her response was that if it's in the -- if it's
15 in the record, it must be correct, or something along
16 those lines.

17 Q. Okay. At the meeting on September 13th, 2012,
18 did you inform Ms. Wayt that she'd be placed on an
19 investigatory suspension?

20 A. Yes.

21 Q. Do you recall whether anyone present in the
22 meeting discussed an opportunity for Ann to submit
23 evidence to the hospital?

24 A. Yes. At the very end of the meeting Ms. Boyle
25 had indicated to both Ann and Bob McKinney that they would

1 have opportunity to submit any other documentation or
2 evidence that the wished to.

3 Q. Okay. During the meeting on September 13th,
4 did you make a plan with Ms. Wayt or Mr. McKinney to
5 schedule a follow-up meeting?

6 A. Yes. We had planned on following up that
7 following Monday, I believe, September 17th.

8 Q. Okay. After meeting with Ms. Wayt --

9 MS. LAWHON: Your Honor, I'm sorry. But,
10 again, this form of questioning is -- I can't tell who's
11 saying what here, we made a plan. I don't know with --

12 JUDGE AMCHAN: Well, he --

13 MS. LAWHON: -- if management said something
14 --

15 JUDGE AMCHAN: Well --

16 MS. LAWHON: -- the rep said something.

17 JUDGE AMCHAN: Who made the plan, and did you
18 communicate that to Ms. Wayt?

19 THE WITNESS: Yes. She was in the room when
20 we indicated this. And by "we," I meant myself, Paula
21 Zinsmeister, and Angie Boyle.

22 Angie Boyle had made the statement that she did
23 have opportunity to turn in further evidence and
24 documentation, if she wished.

25 MS. LAWHON: But that's not even the

1 question, Your Honor, that was most recent. The question
2 is this plan to meet again. I don't know who said what on
3 that.

4 JUDGE AMCHAN: Well, I thought he said that
5 it was -- that they -- somebody told Ms. Wayt that they
6 were going to meet again on September 17th.

7 MS. LAWHON: I don't know who.

8 JUDGE AMCHAN: Do you remember?

9 THE WITNESS: I don't remember if it was
10 myself or Angie Boyle, no, I do not.

11 JUDGE AMCHAN: Okay.

12 MS. LAWHON: And what, if anything, the Union
13 representative said. An agreement is not unilateral.

14 MS. BRUNDAGE: I'm going to --

15 JUDGE AMCHAN: Well, I mean, he -- so was
16 there any response from either Ms. Wayt or the union rep?

17 THE WITNESS: I don't remember if there was a
18 response or not.

19 MS. CENDROSKY: Your Honor, I'm going to have
20 to ask for, and I apologize, I don't mean to interrupt
21 your testimony, that I need about a two or three minute
22 recess here, because this is new to the General Counsel,
23 this allegation that the meeting was planned at that time.

24 And, unfortunately, sitting in, who I had no
25 plans to have testify, is Mr. McKinney, the rep. So I

1 would like to have Mr. McKinney sequestered at this time

2 to --

3 JUDGE AMCHAN: Okay.

4 MS. CENDROSKY: -- to put on for rebuttal.

5 JUDGE AMCHAN: Okay.

6 MS. CENDROSKY: Thank you.

7 JUDGE AMCHAN: Off the record.

8 (Off the record.)

9 JUDGE AMCHAN: Back on the record.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. BRUNDAGE:

12 Q. Okay. Mr. McDonald, after meeting with

13 Ms. Wayt on September 13th, 2012, did you continue your

14 investigation?

15 A. Yes, we did.

16 Q. How did you do that?

17 MS. LAWHON: Objection. Your Honor, the

18 record is not going to read well, because this witness

19 consistently answers in the plural.

20 And I don't -- it's -- it would be helpful, I

21 think, if he were to answer with a name or names because,

22 otherwise --

23 THE WITNESS: I do apologize.

24 MS. LAWHON: -- it's unclear.

25 THE WITNESS: I will focus on that.

1 JUDGE AMCHAN: Okay.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. Okay. So when you were referring to "we," who
5 was it that followed up on the investigation?

6 A. Myself and Paula Zinsmeister followed up on the
7 investigation.

8 Q. Okay. How did you and Ms. Zinsmeister follow
9 up on the investigation?

10 A. Ms. Zinsmeister and myself, or myself, went
11 down to talk to Rhonda Smith, who was the primary patient
12 sitter on the day in question.

13 Q. Okay. What did your conversation with
14 Ms. Smith consist of?

15 A. We -- we went over with Ms. Smith basically her
16 recollection of the time when she got to the room as the
17 patient sitter, to the time when she left the room as the
18 patient sitter.

19 MS. CENDROSKY: Can I just have a
20 clarification as to the date when this investigation's
21 going on, because I don't -- I mean, if --

22 THE WITNESS: I --

23 MS. CENDROSKY: -- you have a meeting, it
24 would be great if I know what day.

25 THE WITNESS: Yeah. I believe it was that

1 same day of September 13th.

2 MS. CENDROSKY: So September 13th, okay.

3 THE WITNESS: I do believe so.

4 MS. CENDROSKY: Thank you.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. BRUNDAGE:

7 Q. Why did you and Ms. Zinsmeister meet with

8 Ms. Smith?

9 A. We just -- we met with Ms. Smith to again

10 confirm the investigation had been correct up to that

11 point, and to carry on the investigation with the

12 investigatory suspension.

13 Q. Okay. Okay. Did you meet with anyone else as

14 part of your continuing investigation on or around

15 September 13th, 2012?

16 A. Yes, we did. We met with Jonalee Lesjak, or

17 "Leesjak," I'm not sure how to say her last name, because

18 she had filled in for Rhonda Smith as the sitter while

19 Rhonda Smith was on lunch break.

20 MS. LAWHON: Again, Your Honor, the witness

21 is indicating some plural of an unknown people.

22 THE WITNESS: Myself and Paula Zinsmeister

23 had talked with Jonalee Lesjak, because she was the sitter

24 that took over the patient --

25 MS. LAWHON: And --

1 THE WITNESS: -- or for the patients.

2 MS. LAWHON: And if we could have foundation
3 on this, as well, Your Honor, as to when this conversation
4 occurred.

5 MS. BRUNDAGE: Your Honor, I can lay
6 foundation for all of these. Ms. Lawhon, at the beginning
7 of my direct of Mr. McDonald, I believe, wanted me to try
8 and move quickly with some of the foundational questions.
9 I can slow down now if it --

10 JUDGE AMCHAN: Yes.

11 MS. BRUNDAGE: -- if it's become necessary.

12 JUDGE AMCHAN: Well, I guess she wants to
13 know what day it was.

14 MS. LAWHON: Yes, I do.

15 JUDGE AMCHAN: When did -- do you recall?

16 MS. BRUNDAGE: I believe that he's testified
17 to that, but --

18 MS. LAWHON: He has not.

19 MS. BRUNDAGE: Okay.

20 JUDGE AMCHAN: When --

21 THE WITNESS: I believe it was that same day
22 of September 13th that Mrs. Zinsmeister met with
23 Ms. Lesjak.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. Mr. McDonald, you testified that during your
2 meeting with Ms. Wayt on the 13th there was a plan that
3 was developed by, or expressed by either yourself, Angie
4 Boyle, or Paula Zinsmeister to Ms. Wayt and Mr. McKinney
5 that you would meet again on or around the 17th of
6 September 2012 --

7 A. That is correct.

8 Q. -- is that correct?

9 A. Yes.

10 Q. Did a meeting occur on September 17th, 2012?

11 A. No, a meeting did not occur.

12 Q. Why not?

13 A. The meeting did not occur, because we had
14 received word that there was going to be a letter that was
15 going to be put in on Ms. Wayt's behalf, by the Union.

16 Q. Okay. And who -- when you referred to --

17 MS. LAWHON: Objection, again, Your Honor, we
18 have "we."

19 MS. BRUNDAGE: I'm -- Attorney Lawhon, I'm
20 happy to clarify for you. I'm aware that that is
21 offensive to you, and I will make sure that the witness
22 clarifies if "we." Promise. I'm going to do my best.

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. BRUNDAGE:

25 Q. Okay. When you reference "we," to whom are you

1 referring?

2 A. Ms. Zinsmeister and myself had received word
3 that the Union was going to be putting in a letter on
4 behalf of Ms. Wayt.

5 JUDGE AMCHAN: From?

6 MS. CENDROSKY: From who?

7 MS. LAWHON: From whom?

8 THE WITNESS: From the Union. At that point,
9 I don't believe we knew --

10 MS. BRUNDAGE: Did you know the --

11 MS. LAWHON: That the Union contacted you?

12 THE WITNESS: The Union did not contact me.
13 We had received word --

14 MS. BRUNDAGE: Okay.

15 THE WITNESS: -- that the Union was going to
16 be putting in a letter on behalf of Ms. Wayt. As for
17 exactly who, I don't know.

18 MS. LAWHON: Right.

19 MS. BRUNDAGE: Your Honor, if I may raise an
20 objection to counsel questioning my witness during my
21 direct examination.

22 JUDGE AMCHAN: Well, she's going to object.

23 So --

24 MS. LAWHON: Yes. And I'm going to --

25 MS. BRUNDAGE: Well, I would -- I'd

1 appreciate if she would object, then, rather than posing
2 questions to my witness.

3 JUDGE AMCHAN: Well, I guess what she wants
4 to know is, you said you got word. There's always a
5 problem with passive tense.

6 Ms. Boyle -- did Ms. Boyle tell you that the
7 Union was going to submit a letter. Who -- how'd you find
8 that out?

9 THE WITNESS: I believe it was Ms. Boyle that
10 informed us, yes.

11 JUDGE AMCHAN: Okay.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. Are you aware of the receipt of a letter on
15 Ms. Wayt's behalf?

16 A. Yes, I am aware of a receipt of a letter.

17 Q. Okay. Did you see the letter?

18 A. Yes, I did.

19 Q. Okay. I'm going to point your attention to
20 Respondent's Exhibit 8, please.

21 JUDGE AMCHAN: I have one handy, if you can't
22 find it.

23 THE WITNESS: Oh, there it is. Okay. Yes.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. Okay. Do you recognize this -- I'll give you a
2 minute to review. I know there's multiple pages. Just
3 take a brief moment to review this document.

4 A. Yes, this is the letter that was received.

5 Q. Okay. And you saw this letter?

6 A. Yes.

7 Q. Okay. Referring your attention to Page 3 of
8 Respondent's Exhibit 8, I'd like you to read for yourself,
9 or review for yourself the paragraph that begins with "As
10 described above" that begins approximately halfway down
11 the page.

12 MS. LAWHON: Objection, Your Honor. I'm not
13 sure why the witness is reading this now. If it's to
14 refresh his recollection in testifying, I don't think it's
15 appropriate, there's no exhaustion.

16 MS. BRUNDAGE: I would --

17 MS. LAWHON: I don't know what the purpose
18 is.

19 MS. BRUNDAGE: I was going to ask him if the
20 paragraph prompted any further investigation from the
21 hospital, but I wanted to let him see what it said before
22 he answered that question.

23 MS. LAWHON: Well, you haven't even
24 established that he saw this letter or when he saw it.

25 JUDGE AMCHAN: Well --

1 MS. LAWHON: He saw it, but when, you don't
2 know.

3 MS. BRUNDAGE: Your Honor, I'll wait for a
4 ruling.

5 MS. LAWHON: I object to the witness
6 reviewing substantive content before any basis for his
7 reviewing it is clear.

8 MS. CENDROSKY: I think it's leading.

9 JUDGE AMCHAN: Well, he said he saw the
10 letter. Did you read it?

11 THE WITNESS: When we received it?

12 JUDGE AMCHAN: Yes.

13 THE WITNESS: Yes, I did.

14 JUDGE AMCHAN: And did you do anything after
15 you read it?

16 THE WITNESS: Yes, it did prompt further
17 investigation.

18 JUDGE AMCHAN: And, specifically, what?

19 THE WITNESS: As I remember it, I'm trying to
20 read the paragraph to --

21 MS. LAWHON: Well, Your Honor --

22 MS. CENDROSKY: And this why I'm going to
23 object, because --

24 MS. LAWHON: -- this is why I objected.

25 MS. CENDROSKY: -- I'm going to object

1 because it's leading.

2 JUDGE AMCHAN: Well, I guess, well, let's

3 see, what do you remember doing?

4 THE WITNESS: What I remember, we did further

5 investigation. I believe it brought up, and I don't

6 remember where in the letter, but there was an area in the

7 letter that brought up a different time when Ms. Wayt

8 performed her, or allegedly performed her head-to-toe

9 assessment --

10 JUDGE AMCHAN: Okay.

11 THE WITNESS: -- was one area. I know there

12 was another area, but I would have to review it to be

13 certain.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. Okay. In order to investigate the different

17 time that Ms. Wayt alleged she performed the head-to-toe

18 assessment, did you undertake any investigatory steps?

19 A. Yes, we did. After receiving this letter, we

20 did do further investigation.

21 Q. And what did you do?

22 A. We re-interviewed --

23 MS. CENDROSKY: Who's "we"?

24 MS. LAWHON: Yes. Your Honor, maybe it would

25 be helpful if you could explain to the witness that --

1 JUDGE AMCHAN: Well, he understands. It's
2 just --

3 MS. LAWHON: The plural is not useful.

4 JUDGE AMCHAN: He understands that.

5 THE WITNESS: I understand. I do apologize.
6 I'm trying.

7 Ms. Zinsmeister and myself re-interviewed
8 Ms. Rhonda Smith, the sitter, to see if she had left the
9 room at any point during the time that she was sitting to
10 use the restroom. She indicated -- Ms. Smith indicated
11 that she did not.

12 We then re-interviewed Ms. Lesjak about the same
13 question, whether --

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. And may I ask who the "we" is in your
17 reference?

18 A. Ms. Zinsmeister and myself, we re-interviewed
19 Ms. Lesjak to see if she had left the room at any point to
20 use the restroom. She again indicated that she had not.

21 Q. Do you recall whether Susan Kress was present
22 when you spoke with Ms. Lesjak?

23 A. Yes, she was.

24 Q. Okay. To the best of your recollection, does
25 this letter describe how Ann completed her hourly rounding

1 on the date of September 28th, 2012?

2 MS. LAWHON: Objection. Relevance.

3 MS. BRUNDAGE: I'm going to establish that.

4 JUDGE AMCHAN: Well, he read the --

5 MS. LAWHON: At this --

6 JUDGE AMCHAN: -- he read the letter. I

7 mean, you're asking do you think the letter's accurate?

8 MS. BRUNDAGE: I'm asking him if he recalls

9 what the explanation for rounding was, and if that led

10 them to -- led the hospital's management team or

11 Mr. McDonald to make any conclusions about the voracity of

12 the statements in the letter.

13 MS. LAWHON: Well --

14 JUDGE AMCHAN: Okay. So you read the letter.

15 You and Ms. Zinsmeister talked to Rhonda Smith and

16 Ms. Lesjak again. And she's asking did you form any

17 conclusions; is that what you're saying?

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. As regard to hourly rounding, did anything in

21 the letter make you more or less likely to believe that

22 Ms. Wayt's account was true?

23 A. In the letter it described that Ms. Wayt had

24 stuck her head in the room to check on the patient

25 periodically throughout the day.

1 Myself knowing the way the rooms that are there,
2 the way that this room is set up, that is just not
3 possible just to stick your head into the room to check on
4 the patient hourly.

5 Q. And why not?

6 A. Because of the setup of the room. The head of
7 the bed -- when you walk in, you go down a hallway. You
8 walk in the door, you go down a hallway.

9 And then the head of the bed actually sits behind
10 a corner in the room, and you just cannot see the patient
11 when you stick your head in the door just barely into the
12 room. You cannot see anything but the feet of the
13 patient.

14 Q. Okay. After speaking with Ms. Smith and
15 Ms. Lesjak, did the hospital do any further investigation
16 of the patient care incident of August 28th, 2012
17 involving Ms. Wayt?

18 A. No. At that point our investigation was
19 completed.

20 Q. Okay. Did you make any conclusions as a result
21 of your completed investigation?

22 MS. LAWHON: Again, objection, unless "you"
23 is clarified. Is she asking did Mr. McDonald make any
24 conclusions?

25 JUDGE AMCHAN: I think so.

1 MS. LAWHON: Okay. That's fine.

2 THE WITNESS: Myself and Paula Zinsmeister,
3 after interviewing the witnesses again and comparing their
4 statements to what was in the letter, as well as what was
5 in the letter compared to what we know about the
6 configuration of the room, we did form the conclusion that
7 the record was falsified.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. BRUNDAGE:

10 Q. Okay. Did you form any conclusions about what
11 actions should be taken as to Ms. Wayt's employment with
12 Affinity Medical Center?

13 A. We did again feel that termination was an
14 appropriate course of action.

15 Q. Okay. Mr. McDonald, I'm going to refer your
16 attention to Respondent's Exhibit 16. And you testified
17 earlier that this is a written warning issues to Ms. Wayt
18 on September 5th, 2012.

19 A. Yes.

20 Q. Did this written warning play any role in the
21 decision to terminate Ms. Wayt?

22 A. No, it did not.

23 JUDGE AMCHAN: Well, he didn't actually make
24 -- say that he made the decision to terminate her.

25 MS. LAWHON: No, he certainly didn't.

1 MS. BRUNDAGE: Okay. I can strike that
2 question.

3 DIRECT EXAMINATION (CONT'D)

4 BY MS. BRUNDAGE:

5 Q. Did this written warning, Respondent's Exhibit
6 16, make -- factor into your personal belief that
7 Ms. Wayt's actions, as understood by the hospital,
8 warranted termination?

9 A. No.

10 Q. Okay, Mr. McDonald, I want to turn your
11 attention next to GC's Exhibit 7.

12 A. Okay.

13 Q. Page 14 of that document.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes, I do.

17 Q. What is it?

18 A. This is the statement from Rhonda Smith, the
19 patient sitter.

20 Q. Okay. Who prepared this document?

21 A. This was prepared --

22 Q. If you know.

23 A. I don't know.

24 Q. Okay.

25 MS. LAWHON: Your Honor, I'm not sure where

1 this is going, but this document, for the truth of
2 anything stated here, was not used when Ms. Smith
3 testified.

4 And as far as it goes, it's part of what they
5 submitted to the Board of Nursing. It has no other
6 probative value.

7 JUDGE AMCHAN: Well, I don't know what her
8 next question is about it.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Did you -- did Ms. -- do you see Ms. Smith's
12 signature on this document?

13 MS. LAWHON: Objection, foundation of whether
14 this witness knows Ms. Smith's signature.

15 JUDGE AMCHAN: Well, did you see --

16 MS. LAWHON: He's not her supervisor.

17 JUDGE AMCHAN: Did you see her sign this
18 document?

19 THE WITNESS: Yes, I did see her sign this
20 document.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. BRUNDAGE:

23 Q. When did you see her sign this document?

24 A. I don't remember the date that we --

25 Q. Okay. And when you say "we," you're referring

1 to?

2 A. Myself and Paula Zinsmeister.

3 Q. Were you the ones who presented, you and

4 Ms. Zinsmeister the ones who presented this document to

5 Ms. Smith for signature?

6 A. Yes, myself and Paula Zinsmeister were.

7 MS. LAWHON: Objection. Foundation.

8 JUDGE AMCHAN: What?

9 MS. LAWHON: Nice to know when. It would be
10 nice to know when he's talking about.

11 JUDGE AMCHAN: Do you know when?

12 THE WITNESS: I don't remember the date. I
13 -- I see it as dated September 24th, but I don't remember
14 the date, off the top of my head, that we had her sign it,
15 no.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Okay. On the date -- on the date when you had
19 Ms. Smith sign this document, do you recall whether Rhonda
20 Smith was given an opportunity to review the statement?

21 A. Yes, she was. Paula Zinsmeister and myself
22 specifically told her to please review the document for
23 accuracy. If there's anything inaccurate, please let us
24 know and we will have it amended.

25 Q. Okay. Turning your attention now to General

1 Counsel's Exhibit 7, Page 15.

2 A. Yes.

3 Q. Do you recognize this document?

4 A. Yes. This is the statement by Jonalee Lesjak,
5 the sitter who covered for Rhonda Smith while she was on
6 lunch.

7 Q. Did you observe Ms. Lesjak sign this document?

8 A. Yes, I did.

9 Q. Do you recall the date?

10 A. Again, I don't.

11 Q. Okay.

12 JUDGE AMCHAN: Was it the same day as
13 Ms. Smith signed her statement, the one on the previous
14 page?

15 THE WITNESS: I don't remember, because they
16 were not done concurrently.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. Okay. So they were done at separate points in
20 time.

21 A. Yes. Yes.

22 Q. Okay. Do you recall whether Ms. Lesjak was
23 given an opportunity to review this statement before
24 signing it?

25 A. Yes, she was. I again informed her to please

1 review the statement before she signed it to ensure
2 accuracy.

3 Q. Do you recall whether Ms. Lesjak -- do you know
4 whether Ms. Lesjak reviewed the document?

5 A. Yes, she did.

6 Q. How do you know that?

7 A. She did read over the document and said that
8 there was an error in the document. I do not remember
9 what the error was, but she did want it amended and we did
10 do that for her.

11 Q. Okay. After --

12 MS. LAWHON: Objection. Could we know who
13 "we" is there?

14 THE WITNESS: I was just going to say we.

15 MS. LAWHON: Okay.

16 THE WITNESS: I took it to Ms. Boyle and had
17 it amended.

18 MS. BRUNDAGE: Okay.

19 THE WITNESS: So those were the "we."

20 JUDGE AMCHAN: Okay. There was a prior
21 version of this document. And she said there was a
22 problem. So you're in the room with Ms. Lesjak and
23 Ms. Zinsmeister.

24 THE WITNESS: When I had asked Ms. Lesjak to
25 review it?

1 JUDGE AMCHAN: Yes.

2 THE WITNESS: No, it was myself and

3 Ms. Lesjak.

4 JUDGE AMCHAN: Okay.

5 THE WITNESS: Ms. Zinsmeister was not there.

6 JUDGE AMCHAN: Okay. So then she says there
7 was a problem. You go to Ms. Boyle and a change was made.

8 THE WITNESS: Yes.

9 JUDGE AMCHAN: And then you brought it back
10 to Ms. Lesjak.

11 THE WITNESS: Yes.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. And did she sign the document at that time?

15 A. Yes, she re-read it to ensure that the change
16 was made that she requested, and then she signed it.

17 Q. Okay.

18 MS. LAWHON: So, Your Honor, when the witness
19 said "we took it to Boyle," that was a mistake?

20 JUDGE AMCHAN: Yes. He said he --

21 MS. LAWHON: Now he's saying he was alone?

22 JUDGE AMCHAN: Yes, he took it to Boyle.

23 THE WITNESS: Yes, I took it to Ms. Boyle.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. And I apologize, I may have asked this question
2 before, I can't recall. After completing its
3 investigation into the patient care concerns regarding
4 Ms. Wayt's care of a patient on August 28th, 2012, what
5 conclusion, if you know, did the hospital reach about the
6 complaints against Ann Wayt?

7 MS. LAWHON: Objection. This witness has
8 nothing --

9 JUDGE AMCHAN: Well --

10 MS. LAWHON: -- probative to offer on that.
11 He said his opinion, and he wasn't -- he's not in the
12 minds of the other decision-makers.

13 JUDGE AMCHAN: Correct. Correct. I mean,
14 did you --

15 MS. BRUNDAGE: Okay. As -- were you -- sure.
16 I can rephrase.

17 JUDGE AMCHAN: Did you -- I'm sorry. Go
18 ahead.

19 MS. BRUNDAGE: Please, go ahead, Your Honor.
20 I'm sorry.

21 JUDGE AMCHAN: Well, I was going to say, did
22 you communicate anything to anybody else after you had the
23 two documents signed?

24 THE WITNESS: We did communicate, "we" being
25 myself and Ms. Zinsmeister after reviewing everything,

1 after reviewing the investigation again, did communicate
2 with Mr. Osterman that we believe the allegations still
3 continued to be correct and that falsification had
4 occurred.

5 MS. BRUNDAGE: Did you make any
6 recommendations --

7 MS. LAWHON: I'm sorry, Your Honor. Could we
8 get foundation on that? When did they speak to
9 Mr. Osterman?

10 JUDGE AMCHAN: Do you know when?

11 THE WITNESS: I do not remember the exact
12 date, no, I do not.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. BRUNDAGE:

15 Q. Do you recall if it was after the receipt of
16 the September 9th -- was it after the receipt of
17 Respondent's Exhibit 8?

18 A. It was after the receipt of that exhibit, and
19 before the termination. So sometime between September
20 19th and September 26th.

21 Q. And do you recall whether it was before or
22 after you spoke with Ms. Smith and Ms. Lesjak to ask if
23 they had left to use the restroom?

24 A. It was after.

25 Q. Okay. When you spoke with Mr. Osterman, did

1 you or Mrs. Zinsmeister give a recommendation as to the
2 appropriate discipline for Ms. Wayt?

3 A. Ms. Zinsmeister and myself did --

4 Ms. Zinsmeister and myself both concluded and gave a
5 recommendation that termination would be the appropriate
6 punishment for this.

7 Q. Okay. Did Mr. Osterman agree or disagree with
8 your recommendation, if you know?

9 A. Mr. Osterman, after reviewing all of the
10 documents that we had collected and all of the evidence
11 again, did feel that this was the appropriate course.

12 JUDGE AMCHAN: Well, did he say that to you?
13 Now I feel his -- his subjective. Did he tell you that?

14 THE WITNESS: Yes, he did.

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. BRUNDAGE:

17 Q. Okay. Was Ms. Wayt terminated?

18 A. Yes, she was.

19 Q. Do you recall the date upon which?

20 MS. LAWHON: Your Honor, we don't need this.
21 The termination's in the record.

22 JUDGE AMCHAN: Right.

23 MS. BRUNDAGE: Okay.

24 MS. LAWHON: Cumulative.

25 MS. BRUNDAGE: I have no further questions

1 for the witness.

2 MS. CENDROSKY: We're going to need a break.

3 JUDGE AMCHAN: Okay.

4 MS. CENDROSKY: Thank you.

5 JUDGE AMCHAN: Off the record.

6 (Off the record.)

7 JUDGE AMCHAN: Back on the record.

8 MS. CENDROSKY: The GC has no cross.

9 MS. LAWHON: Yes, I have questions, Your
10 Honor. Thank you.

11 CROSS-EXAMINATION

12 BY MS. LAWHON:

13 Q. Good morning, Mr. McDonald.

14 A. Good morning, ma'am.

15 Q. Mr. McDonald, are you looking at Respondent's
16 Exhibit 16, the written warning?

17 A. Yes, I have it.

18 Q. Okay. And you testified that --

19 MR. BRYAN CARMODY: Counsel, hang on just one
20 second, please.

21 MS. LAWHON: Oh, sure. Sorry.

22 MR. BRYAN CARMODY: Okay.

23 CROSS-EXAMINATION (CONT'D)

24 BY MS. LAWHON:

25 Q. You were -- I believe your testimony is you

1 were present -- well, let me back up. Whose office were
2 you in when you and Ms. Zinsmeister composed Respondent's
3 16?

4 A. Mrs. Zinsmeister and I were in
5 Ms. Zinsmeister's office, I believe.

6 Q. Okay. And this is a form on the computer that
7 you fill in; isn't that correct?

8 A. Yes, it is.

9 Q. Okay. And who was actually typing, or were you
10 taking turns?

11 A. I believe Mrs. Zinsmeister was typing.

12 Q. Okay. And you saw her type the date September
13 4th; right?

14 A. Yes.

15 Q. Okay. And to your recollection, you assumed
16 she was typing the accurate date; right?

17 A. Yes, I assumed.

18 Q. So looking at this document, to the best of
19 your recollection, it was created on September 4th; isn't
20 that correct?

21 A. Yes.

22 Q. And before you created this document, you
23 hadn't reviewed the -- you, personally -- when I say you,
24 Mr. McDonald, every time I mean you, one person, Jason
25 McDonald.

1 A. Okay.

2 Q. You, personally, hadn't reviewed the PYXIS
3 policy; isn't that correct?

4 A. Myself, no.

5 Q. Okay. And you did not observe Ms. Zinsmeister
6 review the PYXIS policy; isn't that correct?

7 A. I did not see her specifically read the PYXIS
8 policy, no.

9 Q. Okay. And you had never, you, individually,
10 had never asked Ann Wayt what happened with Mr. Perone
11 before this written warning was typed on September 4th;
12 isn't that correct?

13 A. No.

14 Q. No, you hadn't asked?

15 A. No, I had not asked.

16 Q. Okay. And, to your knowledge -- well, let me
17 put it this way. Never in your presence had
18 Ms. Zinsmeister asked Ann Wayt what happened with John
19 Perone on the 30th of August before she typed Respondent's
20 16; isn't that correct?

21 A. Not in my presence, that is correct.

22 Q. Well, I asked in -- to your knowledge, she
23 hadn't asked her --

24 A. To my knowledge, not in -- yeah, to my
25 knowledge, not in my presence. I don't know outside of my

1 presence if she did or not.

2 Q. Okay. And let's -- let me just ask the
3 question one more time, because there's a lot of pronouns
4 and confusing things.

5 A. Yeah.

6 Q. Isn't it correct, Mr. McDonald, that to your
7 knowledge, Zinsmeister, Ms. Zinsmeister had not asked Ann
8 Wayt what happened on the 30th of August at the time she
9 typed Respondent's Exhibit 16; isn't that correct?

10 A. To my knowledge, that is correct.

11 Q. Whose signatures are at the bottom on the right
12 of Respondent's 16, Mr. McDonald, under -- above
13 supervisor counselor, whose is that?

14 A. That is mine.

15 Q. Okay. And below that, is there another
16 signature dated 9/5?

17 A. There is.

18 Q. Whose is that?

19 A. I believe that is Paula Zinsmeister's.

20 Q. Okay. Are you guessing, or do you know her
21 signature?

22 A. I know she signed it. I do not know her
23 signature. But I know she signed it. I did not --

24 Q. Okay. Did you --

25 A. -- see her write that signature.

1 Q. -- see her sign it?

2 A. Yes.

3 Q. Okay. Now, I'd like to direct your attention
4 to a meeting you described having with Susan Kress where I
5 believe you testified she indicated the results of her
6 investigation. You know the meeting to which I'm
7 referring?

8 A. Yes.

9 Q. Okay. You testified that she showed you
10 Respondent's Exhibit 5, which is the 24-Hour Assessment
11 document, I believe. Let me find it, myself. Okay. Do
12 you see Respondent's 5?

13 A. Yes, I have it in front of me.

14 Q. Okay. And you testified that Ms. Kress showed
15 you Respondent's Exhibit 5 at that meeting; right?

16 A. That is my recollection, yes.

17 Q. And this is the only document that Ms. Kress
18 showed you at that meeting; isn't that correct?

19 A. I do believe so, yes.

20 Q. Now, Mr. McDonald, are you familiar with the
21 term "chart audit," as it's used in hospitals?

22 A. Yes, I am, ma'am.

23 Q. Okay. Is it fair to say that hospitals
24 frequently conduct chart audits for a variety of reasons?

25 A. Yes. Usually for patient -- or for

1 documentation accuracy is what the chart audit is done

2 for.

3 Q. Okay. But you, yourself, are not a nurse;

4 right?

5 A. I am not a nurse.

6 Q. And the chart is a documentation that's filled

7 in by a licensed registered nurse; right?

8 A. Yes.

9 Q. Yes. So, you personally don't participate in

10 auditing charts by registered nurses; isn't that correct?

11 A. No, actually, yes, I do. I am part of the --

12 Q. The hospital assigns you to review registered

13 nurse documentation?

14 A. Yes. I am part of a committee at the hospital

15 that performs chart audits every month, or every quarter

16 on monthly charts.

17 Q. Okay. And a lot of times that chart auditing

18 is done of randomly selected charts; isn't that correct?

19 A. Yes.

20 Q. And that's because the hospital wants to check

21 quality control and just chooses a variety of charts to

22 make sure that the documentation is as it's supposed to

23 be; right?

24 A. For that specific meeting, yes.

25 Q. Now, the chart is a legal document; isn't that

1 correct?

2 A. Yes, it is.

3 Q. And it's your testimony that you directed a

4 registered nurse to make additions to the chart long after

5 the care was administered; is that right?

6 A. No, that is incorrect. She made --

7 Q. Okay. Wait. Excuse me. You testified that

8 you directed Ann to initial to show the documentation was

9 correct; isn't that right?

10 A. That is correct.

11 Q. You're asking her to make marks on the chart

12 after the time the patient care is administered; isn't

13 that correct?

14 A. On a copy of the chart.

15 Q. Yes or no?

16 A. No, that is not correct.

17 Q. Oh, you had a copy?

18 A. Yes.

19 Q. That you kept separately?

20 A. Yes.

21 Q. Okay. The purpose of your showing that chart,

22 Respondent's Exhibit 5, to Ann Wayt on September 5th was

23 to investigate whether the chart had been falsified; isn't

24 that correct?

25 A. We were not investigating whether they had been

1 falsified. We were trying to get Ms. Wayt's recollection
2 as to whether that was her recollection of her
3 documentation.

4 Q. Okay.

5 A. It was just the initial beginning part of the
6 investigation.

7 Q. Ms. Kress had already communicated to you that
8 she believed the documentation was falsified, isn't that
9 correct, before that meeting?

10 A. She believed that the documentation did not
11 match from her conversations with the sitter.

12 Q. Did Ms. Kress use the word she believed the
13 documentation was falsified, or words to that effect with
14 you before this meeting, yes or no?

15 A. I don't remember. She may have at this
16 meeting, but I don't --

17 Q. Well, excuse me.

18 A. -- specifically remember.

19 Q. Okay. You gave Ms. Wayt no information at that
20 meeting that the hospital had any issues with the accuracy
21 of this charting; isn't that correct?

22 A. I told her that I was auditing the chart which
23 goes over accurate documentation.

24 Q. And maybe you didn't answer my question. Let
25 me try it one more time. You are at a meeting with Ann

1 Wayt. You show her charting. You give her no indication,
2 whatsoever, that you perceive a problem with this
3 charting; isn't that correct?

4 A. We did not --

5 Q. Yes or no, Mr. McDonald.

6 A. -- specifically tell her that there was a
7 problem with the chart, but we did tell her that we were
8 auditing the chart which indicates accurate documentation.

9 Q. Right. Many, many charts are audited; right?

10 A. Yes.

11 Q. Okay. Mr. McDonald, you testified that you
12 took Jonalee Lesjak's statement to Ms. Boyle for a
13 correction to be made; right?

14 A. To the best of my recollection, yes.

15 Q. And that's because Ms. Boyle had that document
16 on her computer; right?

17 A. I can't testify whether she had the document on
18 her computer or not.

19 Q. From whom did you receive the document to show
20 to Ms. Lesjak.

21 JUDGE AMCHAN: You mean the original one?

22 MS. LAWHON: Yes.

23 THE WITNESS: I believe we received them from
24 Ms. Boyle.

25 CROSS-EXAMINATION (CONT'D)

1 BY MS. LAWHON:

2 Q. And again, Mr. McDonald, I would --

3 A. We, my --

4 Q. -- who --

5 A. -- myself and Paula Zinsmeister.

6 Q. Do you --

7 A. Received the one concerning Rhonda Smith.

8 Q. Well, I'm not asking about that one.

9 A. Oh, I'm sorry.

10 Q. Let me -- I'm asking about Ms. Lesjak's
11 statement.

12 A. Okay.

13 Q. From whom did you get it? You said you
14 presented it to Ms. Lesjak. Who gave it to you?

15 A. I remember receiving that statement from
16 Ms. Boyle.

17 Q. Okay. And, to the best of your knowledge,
18 Ms. Boyle had prepared it; right?

19 A. I don't know who prepared it.

20 Q. Okay. But when a correction had to be made,
21 you took it to Ms. Boyle; right?

22 A. To the best of my recollection, yes.

23 Q. Okay. And what was the turnaround time for
24 getting the document back corrected?

25 A. I don't remember.

1 Q. Was it the same day?

2 A. I -- again, I do not remember how quickly it
3 got back.

4 Q. Could it have been three or four days later?

5 A. It's possible. I do not remember. It was
6 sometime prior to the 26th and after the 19th of
7 September.

8 Q. Well, again, you had the document, Page 15 of
9 General Counsel's 7 in hand when you showed it to
10 Ms. Lesjak; right? Or a slightly modified version --

11 A. I was --

12 Q. -- or a slightly different version; right?

13 A. I was just going to ask which -- which time.

14 Q. Okay. Okay. The first time you showed a
15 written statement for Ms. Lesjak to review, it was dated
16 September 24th; isn't that right?

17 A. I don't know what the original date was on the
18 original one, because this was not the first one.

19 Q. Were the statements -- did you receive the
20 statement for Rhonda Smith at approximately the same time
21 as you received the statement for Jonalee Lesjak?

22 A. Typed, I do believe so. I don't know if it was
23 the same day, but they were around the same time.

24 Q. Okay. And you received the statement from --
25 the typed statement for Ms. Smith to sign from Angie

1 Boyle; right?

2 A. To the best of my recollection, yes.

3 Q. And you received the statement for Rhonda

4 Smith, you saw the date of September 24th; right?

5 A. It's possible. I don't know that I

6 specifically looked at the date on it. I was more

7 concerned with getting it down to Ms. Smith to verify that

8 it was correct.

9 Q. Now, Mr. McDonald, you gave an affidavit -- you

10 signed an affidavit with respect to some of the facts in

11 this case, at some point, that was to be presented to the

12 National Labor Relations Board; right?

13 A. Yes.

14 Q. Okay. And who prepared that affidavit?

15 A. That was prepared by our attorneys.

16 Q. Okay. And it was your understanding that this

17 affidavit was to be a full and accurate account of your

18 individual participation in the events at issue in this

19 case; isn't that correct?

20 A. Yes.

21 Q. And before you signed it, you reviewed it to

22 make sure that everything in it was accurate; isn't that

23 correct?

24 A. I did the best job I could, yes.

25 Q. Okay. And you also reviewed it to make sure it

1 did not omit any important aspects of what you personally
2 had done in the investigation of Ms. Wayt's conduct; isn't
3 that correct?

4 A. For what I recollected at that time, yes,
5 that's correct.

6 MS. LAWHON: I'm going to have this -- I'm
7 going to admit this for impeachment, Your Honor. And I'll
8 have it marked as Charging Party's next in order, which is
9 4. And this is General Counsel's affidavit. So do you
10 have another copy so I could just mark this one?

11 MS. CENDROSKY: You can mark that. I can --
12 have it stored --

13 MS. LAWHON: Okay.

14 MS. CENDROSKY: -- in my computer.

15 MS. LAWHON: Okay. And I'll show it to
16 counsel, obviously, although I'm sure they have it.

17 MR. BRYAN CARMODY: Okay.

18 MS. LAWHON: And we'll just verify that this
19 is the document first, Your Honor.

20 (Whereupon, Charging Party's Exhibit Number
21 4 was marked for identification.)

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. Mr. McDonald, I'm showing you a document marked
25 for identification as Charging Party 4. It's identified

1 as "Affidavit of Jason McDonald."

2 A. Uh-huh.

3 Q. It's sworn -- it indicates it was sworn and
4 subscribed before a notary public on the 8th day of
5 November, 2012. And it appears to be a ten-page document.
6 I'd ask you to review that and tell me that's your
7 affidavit.

8 (Long pause.)

9 A. It does appear to be, yes.

10 Q. Okay. Is there any question in your mind?
11 You're using the "appear to be." Is that your affidavit?

12 A. Yes, it's my affidavit.

13 JUDGE AMCHAN: She's not picking you up.

14 MS. LAWHON: Okay.

15 THE WITNESS: Oh, I'm -- which one?

16 MS. LAWHON: No, she's not picking me up.

17 Sorry.

18 THE WITNESS: Okay. Sorry about that.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. Is that your affidavit, Mr. --

22 A. Yes, it is my affidavit.

23 Q. Okay. Mr. McDonald, directing your attention
24 to -- and, let me make sure. This affidavit was submitted
25 because an unfair labor practice charge was filed; isn't

1 that correct? You knew that; right?

2 A. Yes.

3 Q. Okay. And, directing your attention to

4 Paragraph 18, do you see that? It's on Page 7.

5 A. Yes.

6 Q. It says, "After our meeting with Ann Wayt," do

7 you see that?

8 A. Yes.

9 Q. And this paragraph reflects a meeting with

10 Rhonda Smith on September 13th; correct?

11 A. Yes, that's what the paragraph says.

12 Q. Yes. And nowhere in this affidavit is there a

13 reference to a meeting with Jonalee Lesjak on September

14 13th; isn't that correct?

15 A. In that specific paragraph, no.

16 Q. In any paragraph, Mr. McDonald.

17 A. Actually, there is.

18 Q. No, I'm asking again. Listen to my question,

19 Mr. McDonald. Nowhere in this affidavit does it refer to

20 a meeting with Jonalee Lesjak on September 13th, that's my

21 question; isn't that correct?

22 A. That is correct.

23 MS. LAWHON: Nothing further, Your Honor.

24 I'd like to move Charging Party Exhibit 4 into evidence.

25 MS. BRUNDAGE: I'm going to object. It's

1 been used for impeachment purposes. I'm not sure why it
2 would be necessary.

3 JUDGE AMCHAN: Yes. Why do you need the
4 whole thing in? I mean --

5 MS. LAWHON: That's fine, you're right.

6 JUDGE AMCHAN: Okay.

7 MS. LAWHON: I don't.

8 JUDGE AMCHAN: Do you have anything on
9 redirect?

10 MS. BRUNDAGE: No, I don't.

11 JUDGE AMCHAN: You can step down. Thank you.

12 THE WITNESS: Thank you, sir.

13 (WITNESS EXCUSED.)

14 MS. BRUNDAGE: Would now be an appropriate
15 time for us to take a lunch break?

16 JUDGE AMCHAN: Everybody okay with that?

17 MS. CENDROSKY: I'm fine. Yes.

18 MS. LAWHON: That's fine.

19 JUDGE AMCHAN: All right. Are we doing an
20 hour again?

21 MS. BRUNDAGE: Let's do that.

22 JUDGE AMCHAN: All right. Off the record.

23 (Whereupon, the noon recess was taken from
24 12:18 p.m. to 1:18 p.m.)

25 JUDGE AMCHAN: Okay. Back on the record.

1 But you, Ms. Lawhon, you first wanted to see whether they
2 would stipulate to that?

3 MS. LAWHON: Correct. In an off-the-record
4 discussion, the parties have agreed upon the following
5 stipulation:

6 That the affidavit of Jason McDonald about which
7 Mr. McDonald was questioned by counsel for the Charging
8 Party, refers to only one conversation with Jonalee
9 Lesjak, and that conversation took place on or about
10 September 19th.

11 MS. BRUNDAGE: So stipulated.

12 JUDGE AMCHAN: Okay. And the other thing is
13 you want me to look up the word "avulsion" in an
14 authoritative source.

15 MS. LAWHON: Yes. Because I'm positive, Your
16 Honor, that I was under the mistaken impression that it
17 meant abrasion, and I may have questioned witnesses with
18 that in mind.

19 JUDGE AMCHAN: Okay.

20 MS. LAWHON: It has nothing to do with skin.
21 I thought it did.

22 MR. BRYAN CARMODY: And we would reserve our
23 rights to respectfully contest the propriety of Your Honor
24 doing so.

25 MS. LAWHON: Okay.

1 MS. BRUNDAGE: Okay. If those are all the
2 preliminary matters, then Affinity Medical Center will
3 call Paula Zinsmeister back to the stand.

4 JUDGE AMCHAN: You're still under oath, so we
5 don't have to go through --

6 THE WITNESS: Oh, okay.

7 JUDGE AMCHAN: -- the procedure again.

8 You're spared.

9 WHEREUPON,

10 PAULA ZINSMEISTER,
11 A witness herein, having been previously cautioned and
12 sworn, was examined and testified further as follows:

13 DIRECT EXAMINATION

14 BY MS. BRUNDAGE:

15 Q. Okay. Good afternoon, Ms. Zinsmeister.

16 A. Hi.

17 Q. I wanted to start by asking you some background
18 information in a little more depth than you previously
19 testified to. What is your position, for the record, at
20 Affinity Medical Center?

21 A. I'm the clinical manager of the Orthopedic and
22 Rehab Departments.

23 Q. How long have you held that position?

24 A. Since -- well, Orthopedic since September of
25 2011, and Rehab around June of 2012.

1 Q. Okay. What -- did you hold any positions at
2 the hospital before becoming the manager of Orthopedics
3 and the manager of Rehab?

4 A. I was the clinical manager of the Obstetrics
5 Department starting in around 2008, until they closed in
6 2011. And prior to that for 25 and a half years I was a
7 staff nurse in the Obstetrics Department.

8 Q. Okay. Can you briefly describe your role as
9 the manager of the Orthopedic Unit?

10 A. As the clinical manager, I oversee all the
11 clinical nursing duties and charts.

12 Q. Okay. As the clinical manager of the
13 Orthopedic Unit, are you familiar with the term head-to-
14 toe assessment?

15 A. Yes, I am.

16 Q. And what does head-to-toe assessment mean?

17 MS. LAWHON: Objection. Cumulative.

18 JUDGE AMCHAN: Well, didn't we go -- we did
19 go through all this, didn't we --

20 MS. CENDROSKY: All of this.

21 MS. LAWHON: Everything.

22 JUDGE AMCHAN: -- when she was on the stand
23 before?

24 MS. BRUNDAGE: I don't know that the witness
25 has been given an opportunity to explain what it is, and

1 also what I'm driving at, and I'd be happy to get right
2 there without laying foundation, would be what she has
3 informed the nurses that she supervised, a head-to-
4 assessment entails.

5 JUDGE AMCHAN: Okay. That's what you're
6 driving at.

7 MS. BRUNDAGE: Yes.

8 JUDGE AMCHAN: So why don't we go there.

9 MS. BRUNDAGE: Okay.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. BRUNDAGE:

12 Q. Ms. Zinsmeister, as the clinical manager of the
13 Orthopedic Unit, do you supervise the care provided on the
14 unit?

15 A. Yes.

16 Q. And as part of that care do you set
17 expectations for things like head-to-assessments?

18 A. Yes.

19 Q. And what is the expectation on the Orthopedic
20 Unit regarding head-to-toe assessments?

21 A. That every head-to-assessment should be done
22 every patient upon arrival to the unit.

23 Q. Why is it important that the head-to-toe
24 assessment be done upon arrival?

25 A. In order to establish a baseline. When you

1 establish that initial baseline, then you're aware if
2 there are any changes in the patient's condition
3 afterwards.

4 Q. Does the importance of the head-to-toe
5 assessment, in any way is that affected by the acuity or
6 severity of the patient's condition?

7 A. Well, in an Orthopedic Unit, most of our
8 patients are elective surgeries. And when they come back
9 from surgery, of course, you have to meet the, you know,
10 the nurses from the recovery room right there in the room.

11 But when you have a patient come in the emergency
12 room with a hip fracture, that's a higher acuity patient,
13 that's a more severe patient, just because of the fact
14 that they're usually elderly and they have other
15 illnesses.

16 Q. And does that affect for them the importance of
17 having a head-to-toe assessment performed?

18 A. You definitely want to get a head-to-toe
19 assessment as soon as you can, because that patient could
20 die right on your unit.

21 Q. Okay. As the clinical manager of the
22 Orthopedic Unit, are you familiar with the term "hourly
23 rounding"?

24 A. Oh, yes.

25 Q. And what is hourly rounding?

1 A. Hourly rounding --

2 MS. LAWHON: Objection. Cumulative.

3 JUDGE AMCHAN: Overruled.

4 THE WITNESS: Hourly rounding is rounding
5 that's done by the nurse on an hourly basis. They go in
6 and they actually engage with the patient asking them, you
7 know, what's their pain level, are you comfortable in your
8 position, do you need repositioned, do you have to use the
9 bathroom, that's potty. And making sure that all their,
10 like their phone and all their possessions are close to
11 them.

12 Q. Okay. As the clinical manager of the
13 Orthopedics Unit have you trained your staff on hourly
14 rounding?

15 A. All of my staff had to go through a skills lab
16 and they had to pass it. And then I have talked with them
17 at numerous staff meetings about the importance of hourly
18 rounding.

19 Q. Okay. And in training those nurses in the
20 manner that you've described, have you explained to the
21 nurses that you supervise where a nurse should be located
22 in the room when they are doing the hourly rounding?

23 A. In with the patient.

24 MS. LAWHON: Objection. Leading.

25 MS. BRUNDAGE: I haven't --

1 JUDGE AMCHAN: Overruled.

2 THE WITNESS: Should be -- should be in, you
3 know, with the patient. You can't determine if they're
4 comfortable or if they're in pain if you're not there by
5 the bedside.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Okay. Paula, I'd now like to show you what's
9 been marked as General Counsel's Exhibit -- actually, I'm
10 going to go with Respondent's Exhibit 5, please.

11 A. Is that in this --

12 Q. There's a -- there should be a pretty big stack
13 of documents there. Okay. Let me give you a hand.

14 JUDGE AMCHAN: It looks like it might be the
15 one on -- right there to your right hand.

16 THE WITNESS: This one?

17 JUDGE AMCHAN: Yes. I think so.

18 THE WITNESS: Oh, this one.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. BRUNDAGE:

21 Q. Yes. And then it's marked down --

22 A. Okay. R5, okay. Thank you.

23 Q. Paula, do you recognize this document?

24 A. Yes.

25 Q. And what is it?

1 A. It's the patient 24-Hour Assessment Sheet.

2 Q. For a particular patient?

3 A. Yes. There's one --

4 Q. You don't need to say which patient.

5 A. Yeah, there's one per patient, yes.

6 Q. Okay. And for this -- have you reviewed this

7 particular 24-Hour Assessment before?

8 A. Yes, I have.

9 Q. When?

10 A. Back in, it would be September.

11 Q. Okay. And why would you have been reviewing

12 this?

13 A. I was -- I had just returned from vacation and

14 I had been notified that there had been some omission,

15 they believed, an omission of an assessment, you know, on

16 a patient, and that there was some falsification of

17 documentation done.

18 Q. Okay. And in your review of this document, I

19 want to point your attention to the fourth page of the

20 document. It's marked Page 4 of 8.

21 And, Ms. Zinsmeister, you've already testified

22 regarding the lack -- during the first date on which you

23 provided testimony, you testified about the lack of

24 markers in the 7 a. to 7 p. box; is that correct?

25 A. Correct.

1 Q. And, similarly, you testified about the lack of
2 markers in the -- or the skin intact marker in 7 p. to 7
3 a.; correct?

4 A. Yes. Yes.

5 Q. Okay.

6 (Whereupon, Respondent's Exhibit Number 18
7 was marked for identification.)

8 MS. BRUNDAGE: Your Honor and opposing
9 counsel, I've got a document that includes a photograph.
10 I made it -- I made the photocopies this morning, and I've
11 only got one color copy.

12 I'm going to give you for now the black-and-
13 whites, but I thought I'd show you the color copy. Here
14 you go.

15 THE WITNESS: That would be great. Thank
16 you.

17 MS. CENDROSKY: Do we keep the --

18 MS. BRUNDAGE: Yes. And I will get -- I can
19 state that I'll get color copies. I just didn't have the
20 ability to do that with the technology at the hotel I'm
21 staying at.

22 MS. LAWHON: I'm sorry, I didn't get to see
23 that.

24 MS. BRUNDAGE: I'm sorry.

25 MS. LAWHON: Was that the color photo?

1 MS. BRUNDAGE: Yes.

2 MS. LAWHON: Thank you.

3 MS. BRUNDAGE: No problem.

4 MS. LAWHON: It'll just take me a second.

5 MS. BRUNDAGE: Sure.

6 JUDGE AMCHAN: I'm sorry, what number is

7 this?

8 MS. BRUNDAGE: This is R17 -- 18.

9 MS. LAWHON: And do you have one of these

10 that's -- is this the way it looks with the photo covering

11 up the line of type?

12 MS. BRUNDAGE: I believe it is. The copy I

13 have there is a copy from a medical records. That's -- my

14 understanding is Medical Records is the one who produced

15 that, so I'm assuming that's how -- whenever it's copied.

16 The original would probably be, I believe, it's a photo on

17 top of a --

18 MS. LAWHON: It's covering up the type.

19 That's the problem.

20 MS. BRUNDAGE: Okay. So if it's necessary,

21 what I can do is replace this exhibit, which -- with the

22 photo attached to the page, if we need to get duplicates

23 of the photo.

24 MS. LAWHON: Okay. Thank you.

25 MS. BRUNDAGE: All right. Thank you.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. BRUNDAGE:

3 Q. Paula, I'm showing you what's been marked as

4 Respondent's Exhibit 18. Do you recognize this document?

5 A. Yes.

6 Q. What is that?

7 A. It's the photographic documentation. And then

8 underneath it they write how the wound looked. They check

9 it off.

10 Q. Okay. And when you say "they," to whom are you

11 referring?

12 A. The nurses.

13 Q. Okay. And on your unit?

14 A. Yes.

15 Q. Okay. And directing your attention to the

16 date, on which date was this photograph taken?

17 A. 8/28 --

18 Q. Okay. And at what time was this --

19 A. -- 2012.

20 Q. -- photograph taken?

21 A. Twenty-two hundred.

22 Q. What time is that for --

23 A. Ten o'clock at night.

24 Q. Ten o'clock. Those of us not familiar with --

25 A. Yeah, ten o'clock, yeah.

1 Q. -- nursing time, military time.

2 A. Correct.

3 Q. And then do you recognize the signature that's

4 located in the upper right-hand corner?

5 A. Yes.

6 Q. Whose signature is that?

7 A. Priscilla Harrison, registered nurse.

8 MS. BRUNDAGE: Okay. I'd like to introduce

9 this into evidence as Respondent's 18.

10 MS. CENDROSKY: Voir dire?

11 JUDGE AMCHAN: Okay.

12 VOIR DIRE EXAMINATION

13 BY MS. CENDROSKY:

14 Q. Ms. Zinsmeister, were you present when this

15 photograph was taken?

16 A. No. No. Huh-uh.

17 Q. Are -- did you see -- you weren't there on

18 August 28th, were you?

19 A. Correct.

20 Q. So you never met this patient?

21 A. No, I did not.

22 MS. CENDROSKY: Okay. Then, Your Honor, I'm

23 going to move that there's no way she can authenticate

24 that this is a photograph representation of the patient at

25 issue, or that this was Paula (sic) Harrison that actually

1 took the photo on the date at issue.

2 MS. BRUNDAGE: I can lay some more

3 foundation, if you'd like, Your Honor.

4 MS. CENDROSKY: She can't authenticate it.

5 MS. BRUNDAGE: I can lay some more

6 foundation, if you'd like.

7 JUDGE AMCHAN: All right.

8 MS. BRUNDAGE: Okay. Thank you.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. BRUNDAGE:

11 Q. Ms. Zinsmeister, did you obtain this photograph

12 -- this document, at some point in time?

13 A. Yes, I did.

14 Q. Where did you obtain the document from?

15 A. From the Medical Records Department where the

16 patient's chart went after she was discharged.

17 Q. Okay. And when you say the patient's chart,

18 referring your attention to the box on this document which

19 states "Affinity Medical Center" at the bottom, most of

20 that has been redacted, but is there some identifying

21 information which remains?

22 A. The patient's -- well, the date. The fact that

23 this was a female and the room number.

24 Q. Okay. And referring to Respondent's Exhibit 5,

25 and referring you again to the Affinity Medical Center box

1 which is mostly redacted --

2 A. Yes.

3 Q. -- does the information between the two
4 documents match?

5 A. Yes, they do.

6 MS. LAWHON: I'm sorry, Counsel. Are you
7 asking her whether the hospital name, the date, female,
8 and thirty twenty are on both?

9 MS. BRUNDAGE: Yes. Thirty -- yes.

10 MS. LAWHON: Okay. All right.

11 MS. BRUNDAGE: Okay. I'm now going to move
12 for admission of the exhibit into evidence.

13 MS. LAWHON: The same objection, Your Honor.

14 MS. CENDROSKY: Yes. Same exact reason.

15 JUDGE AMCHAN: Well --

16 MS. BRUNDAGE: I can call someone from
17 Medical Records, if necessary.

18 JUDGE AMCHAN: Well, let me try.

19 MS. CENDROSKY: You -- I think you're going
20 to need Patricia (sic) Harrison.

21 JUDGE AMCHAN: How did -- how did you obtain
22 the -- go through the steps -- when did you obtain this
23 document?

24 THE WITNESS: When I came back from vacation
25 and we -- we had -- you know, and I realized that I needed

1 to investigate why the night shift had marked off skin
2 intact, I -- I went down and had Medical Records pull this
3 particular patient's chart. And I went through it page by
4 page until I found her wound documentation.

5 MS. LAWHON: Your Honor, that really wasn't
6 responsive to the when.

7 JUDGE AMCHAN: Well, she said when she --
8 well, are you talking about the first day you were back on
9 September the 4th?

10 THE WITNESS: No, because I didn't talk to
11 Priscilla that first day. We hadn't -- we hadn't had the
12 meeting with Ann yet, so it was after that.

13 JUDGE AMCHAN: Can you give me an approximate
14 date?

15 THE WITNESS: It was probably in -- in
16 September, and later -- like later part of September.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. Paula, would it have been after the
20 investigatory suspension meeting you had with Ann?

21 A. It was after that.

22 Q. Would it have been --

23 A. Then I had to meet with Priscilla and then I
24 had to --

25 Q. Would it have been before Ms. Wayt's

1 termination date?

2 A. Yeah. That was September 26th, yes.

3 Q. Okay.

4 JUDGE AMCHAN: So you had a meeting with
5 Priscilla Harrison.

6 THE WITNESS: Yes.

7 JUDGE AMCHAN: And then you went down to
8 Medical Records --

9 THE WITNESS: Correct.

10 JUDGE AMCHAN: -- and you asked them what?

11 THE WITNESS: To pull their chart for me. To
12 pull this patient's chart --

13 JUDGE AMCHAN: Okay. And then you --

14 THE WITNESS: -- so that I could --

15 JUDGE AMCHAN: Then you looked through the
16 chart.

17 THE WITNESS: Uh-huh.

18 JUDGE AMCHAN: And then what'd you do?

19 THE WITNESS: I found the documentation.

20 Priscilla told me she did the documentation. She

21 specifically said to me that she remembered having the

22 camera in the room, taking the picture, cleansing the

23 wound, applying a dressing. And I said that I would then

24 go down to Medical Records and look for that

25 documentation.

1 JUDGE AMCHAN: Okay. So you found it, and
2 then you asked them to make you a copy.

3 THE WITNESS: No, I didn't make a copy of it.

4 JUDGE AMCHAN: So how did -- all right. What
5 happened?

6 MS. BRUNDAGE: But do you recognize this to
7 be the --

8 THE WITNESS: Yeah, I do recognize this.

9 MS. BRUNDAGE: -- same document that you
10 reviewed?

11 THE WITNESS: Yes, absolutely.

12 JUDGE AMCHAN: All right. I think that --

13 THE WITNESS: I mean, that's Priscilla's -- her signature
14 and -- and all, and --

15 JUDGE AMCHAN: And that's the -- you're
16 pretty sure that's what you looked at in the Medical
17 Records Department?

18 THE WITNESS: Yes.

19 JUDGE AMCHAN: Well, I think it's a business
20 record, and I'm going to receive it.

21 MS. CENDROSKY: Your Honor, I would object to
22 the photo as, it's fine if you want to say that you pulled
23 the record.

24 THE WITNESS: Uh-huh.

25 MS. CENDROSKY: But as far as to the patient

1 at issue being in there, I have no way to determine if

2 that's the actual patient.

3 JUDGE AMCHAN: Well, did it -- what you

4 looked at, did it look like this, or was the photo and the

5 thing separate?

6 THE WITNESS: Well, there's an actual photo

7 that was placed on there.

8 JUDGE AMCHAN: Yes.

9 THE WITNESS: It's not a copy. You know,

10 it's an actual photo that's placed on there.

11 MS. BRUNDAGE: Is it the same photo that's --

12 THE WITNESS: Yes.

13 MS. BRUNDAGE: -- on that page?

14 THE WITNESS: And the patient's identifying

15 factors of, you know, their medical records number,

16 account number, and their name, and everything are right

17 in here, and it matches that down here at the bottom.

18 JUDGE AMCHAN: So if she obtained this from

19 the Medical Records Department, I don't understand your

20 objection.

21 MS. LAWHON: First of all, I don't -- I have

22 one question, Your Honor, which is I don't understand if

23 the witness is saying this part that's obviously like some

24 kind of piece of paper is in the photo, or superimposed on

25 the photo by somebody in Medical Records.

1 THE WITNESS: No, no. No. Are you talking
2 about this?

3 MS. LAWHON: Yes.

4 JUDGE AMCHAN: Well, when you looked at it --

5 THE WITNESS: Yes.

6 JUDGE AMCHAN: -- okay, was the photo
7 attached to the piece of paper?

8 THE WITNESS: This whole photo was attached
9 here, yes.

10 JUDGE AMCHAN: Okay. As it appears in this
11 copy.

12 THE WITNESS: As it appears, like this. All
13 photos have to be taken with the patient's identifying
14 information --

15 JUDGE AMCHAN: Uh-huh.

16 THE WITNESS: -- in it.

17 JUDGE AMCHAN: So why is this not a business
18 record?

19 MS. CENDROSKY: I'm not doubting that it's a
20 business record. My issue is, is whether or not the
21 photograph is that of the patient at issue. She didn't
22 take the photo. She wasn't there when the patient was
23 there.

24 JUDGE AMCHAN: Well, it was in the file.
25 This is --

1 MS. CENDROSKY: I think that goes one step
2 further. I makes us assume --

3 JUDGE AMCHAN: Yes. Well, actually --

4 MS. CENDROSKY: -- that that is actually the
5 patient.

6 JUDGE AMCHAN: I don't --

7 MS. CENDROSKY: I'm not trying to be
8 disrespectful, Your Honor.

9 JUDGE AMCHAN: That's fine.

10 MS. CENDROSKY: I'm going to just keep the
11 objection for the General Counsel.

12 JUDGE AMCHAN: Okay. And I'll receive it.

13 (Whereupon, Respondent's Exhibit Number 18
14 was received into evidence.)

15 MS. CENDROSKY: Thank you.

16 JUDGE AMCHAN: No offense taken.

17 MS. CENDROSKY: Thank you. What is this,
18 R18?

19 JUDGE AMCHAN: Yes.

20 MS. BRUNDAGE: Yes.

21 MS. LAWHON: Your Honor, in the course of
22 being questioned about this photograph, the witness
23 described a number of things that are, of course, not
24 related to what you can see in the photograph. And I
25 would ask that those not be taken; they were

1 nonresponsive.

2 And if -- if counsel wants to put those in the
3 record, I think they should be elicited in normal question
4 and answer.

5 She made a number of side descriptions of things
6 that happened in her conversation with the nurse, which I
7 don't believe --

8 JUDGE AMCHAN: Well, that was just the
9 circumstance under which --

10 MS. LAWHON: Okay. If that's all it went for
11 --

12 JUDGE AMCHAN: -- which she --

13 MS. LAWHON: -- that's fine.

14 JUDGE AMCHAN: -- which led her to go down
15 and look for this.

16 MS. LAWHON: Okay. If that's --

17 JUDGE AMCHAN: Or to look through the file
18 and find this.

19 MS. LAWHON: I don't object to the testimony
20 with respect to why she went to look for the record.

21 JUDGE AMCHAN: Right.

22 MS. LAWHON: If there's anything further
23 about it, I would like it to be elicited, as opposed to
24 volunteered.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Okay. Ms. Zinsmeister, directing your
3 attention to the Respondent's Exhibit 5, noting again the
4 mark next to 7 p./7 a. on Page 4 of 8, that notes skin
5 intact. Is that marked correct?

6 A. No, it's not.

7 Q. And did the nurse -- who is the nurse that made
8 that mark?

9 A. Priscilla Harrison.

10 Q. Okay. And did -- when you -- did you speak
11 with Priscilla Harrison about this?

12 A. Yes.

13 Q. And what did she state?

14 MS. LAWHON: Objection. This is all on this
15 witness' first day of testimony.

16 JUDGE AMCHAN: No, I don't think so.

17 MS. LAWHON: She testified about their
18 conversation, she did, Your Honor. But that's okay, if
19 you want to have it a second time.

20 JUDGE AMCHAN: Well, if you're right, I don't
21 remember it.

22 MS. LAWHON: That's fine.

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. BRUNDAGE:

25 Q. Okay. Did you speak with -- and who is the --

1 is there a place on this Respondent's Exhibit 5 where who
2 the nurse that made that mark on 7 p. to 7 a., where she
3 would be identified?

4 A. On the last page, Page 8.

5 Q. Okay.

6 A. Her signature is to the right at the bottom.

7 Q. Okay. Do you recognize that signature?

8 A. Yes, I do.

9 Q. Why do you recognize that?

10 JUDGE AMCHAN: Well, I don't think there's
11 any question --

12 MS. BRUNDAGE: Okay.

13 JUDGE AMCHAN: -- that Ms. Harrison was the
14 nurse --

15 MS. BRUNDAGE: Okay.

16 JUDGE AMCHAN: -- from 7 p.m. until 7 a.m.
17 the next morning.

18 MS. BRUNDAGE: Okay.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. BRUNDAGE:

21 Q. So when you noticed this marked skin intact,
22 did you speak with Priscilla Harrison?

23 A. Yes, I did.

24 Q. And what did she say to you?

25 A. She said it was an error on her part. It was a

1 mistake. That she had done the wound documentation, had
2 taken the picture, cleansed the wound, and applied a
3 dressing.

4 Q. Okay. Were you able to verify her account?

5 A. I was able to find the wound documentation in
6 Medical Records on the patient's chart.

7 Q. Had it been done by Priscilla Harrison?

8 A. Yes, it has.

9 Q. Okay. Based on this error on the chart, was
10 Ms. Harrison counseled?

11 A. She was just counseled verbally, because there
12 was no actual omission. It was just an error on her part
13 checking the wrong box.

14 Q. Any omission of what?

15 A. No omission of document -- skin documentation.

16 Q. Okay.

17 (Whereupon, Respondent's Exhibit Number 19
18 was marked for identification.)

19 Q. Paula, I'm now showing you what's been marked
20 as R19. Do you recognize this document?

21 A. Yes, I do.

22 Q. What is this document?

23 A. It was an e-mail that John Perone had sent to
24 me and Bill Osterman.

25 Q. Who's John Perone?

1 A. John Perone is the director of pharmacy.

2 Q. And who is Bill Osterman?

3 A. He's the chief nursing officer.

4 Q. Okay. And what does this, you don't need to

5 read it word for word, certainly, what is this e-mail

6 conveying to you?

7 A. He just wanted to let me know that he had an

8 encounter, an altercation with Ann Wayt. There was a

9 discrepancy in the PYXIS machine and he wanted -- it was a

10 narcotic and he wanted to fix it.

11 Q. Okay. And I'm taking your attention to the

12 date of Thursday, August 30th, 2012.

13 A. Uh-huh.

14 Q. Do you recall whether you received and read

15 this e-mail on -- I'm sorry. Strike that.

16 Do you recall if you read this e-mail on

17 Thursday, August 30th?

18 A. I did not.

19 Q. When did you read this e-mail?

20 A. When I came back from my vacation on the 4th.

21 Q. Of what month?

22 A. Of September.

23 MS. BRUNDAGE: Okay. I'd like to enter this

24 into evidence as Respondent's 19.

25 MS. LAWHON: It's already in evidence, but if

1 you want a duplicate.

2 JUDGE AMCHAN: Well, there's -- GC18 is -- I

3 don't know that it's the same. I mean --

4 MS. LAWHON: It is.

5 MS. CENDROSKY: I have actually -- I included

6 two e-mails for GC --

7 JUDGE AMCHAN: Oh.

8 MS. CENDROSKY: -- and this is the second

9 one.

10 MS. BRUNDAGE: Yes, and there's a -- yes, I

11 wanted it in in its original form without forwards or

12 other dates associated. That was the purpose for --

13 JUDGE AMCHAN: All right.

14 MS. BRUNDAGE: Okay.

15 JUDGE AMCHAN: But it's -- okay. I'll

16 receive it, but it's the same as --

17 MS. LAWHON: Yes.

18 JUDGE AMCHAN: -- one of the e-mails on the

19 second page of GC18.

20 MS. BRUNDAGE: The, right; correct. The

21 lower e-mail should be it.

22 JUDGE AMCHAN: Right. Okay.

23 (Whereupon, Respondent's Exhibit Number 19

24 was received into evidence.)

25 (Whereupon, Respondent's Exhibit Number 20

1 was marked for identification.)

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. Paula, I'm now showing you what's been marked
5 as Respondent's Exhibit 20. Do you recognize this
6 document?

7 A. Yes, I do.

8 Q. What is this document?

9 A. It was John sending me another e-mail to let me
10 know that he had returned to the floor to deliver another
11 medication and Ann did apologize to him.

12 Q. Okay. And pointing your attention again to the
13 date on this e-mail. It's August 30th of 2012. Do you
14 recall whether you read this e-mail on August 30th, 2012?

15 A. I did not.

16 Q. When did you read this e-mail, if ever?

17 A. On September 4th.

18 Q. Okay.

19 MS. CENDROSKY: Voir dire? Did you move --
20 I'm sorry, you didn't move yet.

21 MS. BRUNDAGE: I was just about to, thought,
22 so I'll move the exhibit into evidence.

23 MS. CENDROSKY: Okay. Voir dire?

24 JUDGE AMCHAN: Okay.

25 MS. CENDROSKY: Actually, you know what, I

1 don't know if you can testify to this, because it says

2 Thursday, August 30th, 2012 at twelve thirty-eight p.m.

3 And then I see that R19 has the same exact date and time.

4 THE WITNESS: Huh.

5 MS. CENDROSKY: So I think we're going to

6 need Mr. Perone back on the stand to clarify how he sent

7 two e-mails with the same exact time.

8 JUDGE AMCHAN: Well, why is that -- I mean,

9 she testified that she read them both on the 4th. So what

10 --

11 MS. CENDROSKY: Pardon me? Okay. You know

12 what, then I'll just raise that issue with Mr. Perone.

13 JUDGE AMCHAN: Okay.

14 MS. CENDROSKY: We'll receive it.

15 JUDGE AMCHAN: I guess if they don't put him

16 back on -- I mean, if they call him back, that's fine.

17 But I -- I don't see why it's necessary. She said she

18 read them both. Then do you know if you read them one

19 right after the other?

20 MS. BRUNDAGE: Paula?

21 JUDGE AMCHAN: I'm sorry.

22 THE WITNESS: Well, I -- I don't recall. I

23 mean, you know, when you come back from vacation you have

24 a million e-mails, but --

25 JUDGE AMCHAN: Would you have read it the

1 same day?

2 THE WITNESS: -- but I did read them, yes, on
3 the same day. And it was an addendum, so I assumed he
4 thought of it right after he wrote the first one.

5 MS. LAWHON: Well, objection.

6 MS. CENDROSKY: Are you putting --

7 MS. LAWHON: Move to strike that testimony.

8 Ms. Zinsmeister's assumptions are really not --

9 JUDGE AMCHAN: Well, I don't think it
10 matters.

11 MS. LAWHON: -- probative of anything.

12 JUDGE AMCHAN: The point is, she said she
13 read them both on September the 4th, which is before the
14 written warning was issued.

15 MS. LAWHON: It's actually the same day.

16 JUDGE AMCHAN: I thought it was issued the --

17 MS. LAWHON: It's dated the 4th and presented
18 to the employee the 5th.

19 JUDGE AMCHAN: I've got it.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. After reviewing these e-mails, Ms. Zinsmeister,
23 did you conduct any further investigation into the events
24 that are described in the e-mails?

25 A. Yes. I called John Perone to talk to him about

1 it.

2 Q. And what did your discussion consist of?

3 A. He was very concerned that she was very
4 agitated and -- and disrespectful to him. And he was
5 worried, really, he's a director, if somebody was talking
6 to him that way, you know, he was worried about his staff.

7 MS. LAWHON: Objection. And would ask that
8 the witness be questioned about what said.

9 JUDGE AMCHAN: Right.

10 MS. LAWHON: It's hard to tell whether she's
11 describing his mental state, or what he said.

12 JUDGE AMCHAN: Right. What --

13 MS. BRUNDAGE: Did he say to you that he was
14 --

15 JUDGE AMCHAN: Well, what did he say?

16 MS. LAWHON: No.

17 JUDGE AMCHAN: What did he say to you?

18 THE WITNESS: He did say to me that he was
19 worried about how she was treating his staff.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. Did you speak with Ann Wayt as part of
23 your investigation of these two e-mails?

24 A. Yes.

25 Q. When was that?

1 A. Not until September 5th, the next day.

2 Q. Okay. Pointing your attention to Respondent's

3 Exhibit 16, let me know if it's available to you up there.

4 A. I have it.

5 Q. Okay. Do you recognize this document?

6 A. Yes.

7 Q. Okay. Do you -- and what is it?

8 A. It's an employee counseling or disciplinary

9 notice.

10 Q. Okay. And what is the -- there is a date

11 reflected on the top right-hand corner. What does that

12 date indicate?

13 A. September 4th, 2012.

14 Q. Okay. And why is the document dated September

15 4th, if you know?

16 A. After I had spoken to John and -- had, you

17 know, read the e-mails and spoken to John then, of course,

18 Jason and I spoke about it.

19 And we decided that something, you know,

20 disciplinary action should be taken. And we went ahead

21 and wrote it up on that day.

22 Q. Okay. And then I'll bring your attention down

23 to the bottom to the -- there appear to be three

24 signatures here.

25 Can you read any of the three dates that are on

1 -- next to those signatures?

2 A. 9/5/2012.

3 Q. Okay. And why is that date a day later?

4 A. Well, Ann was off on September 4th and I -- I

5 wasn't going to call her and have her drive all the way

6 over --

7 Q. Okay.

8 A. -- on the 4th. But she was at work on the 5th.

9 Q. And why is it that you -- you've stated that
10 you spoke with Ann on the 5th about this investigation.

11 A. Yes.

12 Q. Was it as a part of issuing this discipline?

13 MS. LAWHON: Objection.

14 JUDGE AMCHAN: Well, your question is, why
15 did you speak to her?

16 MS. BRUNDAGE: When did you speak to her?

17 MS. LAWHON: That's objection, asked and
18 answered. She already said that, the next day at a
19 meeting.

20 MS. BRUNDAGE: Okay. So I don't know if she
21 said at a meeting, but if --

22 JUDGE AMCHAN: So, okay. You spoke to her on
23 the 15th -- on the 5th.

24 THE WITNESS: Yes.

25 JUDGE AMCHAN: And did you call her into your

1 office, or what happened?

2 THE WITNESS: Yes, I did. She was at the
3 nurses' station and I asked her if she had a moment could
4 she come into my office, we needed to speak to her about
5 something.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. BRUNDAGE:

8 Q. Okay, and at that time --

9 THE COURT REPORTER: Could you keep your
10 voice up?

11 MS. BRUNDAGE: Speak up a little.

12 THE WITNESS: Sorry.

13 JUDGE AMCHAN: Move the microphone closer to
14 you.

15 MS. CENDROSKY: You can move the mike. Yes,
16 there you go.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. What is your typical -- as the clinical manager
20 of the Orthopedic Unit, what is your typical practice, in
21 terms of investigating employees before issuing
22 discipline?

23 A. Well, we investigate the -- the infraction. And
24 if we believe that it is -- you know, it violates policy,
25 then we'll go ahead and just administer the action, the

1 disciplinary action.

2 Q. As part of administering the discipline, do
3 employees speak at the meetings?

4 MS. LAWHON: Objection. This is leading and
5 it's inappropriate. If counsel wants a certain record,
6 she should proceed in the normal way for direct
7 examination.

8 JUDGE AMCHAN: Well, yes. I guess you want
9 to -- what's your normal practice?

10 THE WITNESS: Well, we go ahead and issue --
11 we actually give them this paper that's written up, and we
12 let them read it.

13 And then we talk to them about the infraction and
14 show them what policy or practice that has been violated.
15 And then we encourage them to reply in some way.

16 And Ann did make a comment that, well, I did -- I
17 did apologize to John later in the day. And I even said
18 to Ann, well, you know, Ann, you know, you can write that
19 down in the employee comment section, and she did.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. And why would you want her to note that
23 in the employee comment section?

24 A. I think it's important that the employee does
25 write some kind of a rebuttal, because then we submit this

1 to HR and they read it.

2 Q. Does -- are you aware in your tenure as the
3 manager of the Orthopedic and Rehab Units of HR reviewing
4 disciplines --

5 MS. LAWHON: Objection.

6 JUDGE AMCHAN: Why?

7 MS. LAWHON: We don't even know how many
8 disciplines this person has ever been involved with.

9 JUDGE AMCHAN: Well, if she hasn't been in
10 any, she'll say no. I mean, do you have personal
11 experience?

12 THE WITNESS: Yes.

13 JUDGE AMCHAN: Okay.

14 THE WITNESS: Yes.

15 JUDGE AMCHAN: What is your personal
16 experience?

17 THE WITNESS: With?

18 JUDGE AMCHAN: Disciplines that you've
19 issued.

20 THE WITNESS: With disciplines?

21 MS. LAWHON: With HR review, I think, was the
22 question.

23 JUDGE AMCHAN: Right.

24 THE WITNESS: Oh.

25 JUDGE AMCHAN: Well, what -- like, what

1 happens after you do it?

2 THE WITNESS: Well, you turn -- you turn it
3 in to the HR director and they review it. And if there's
4 any problem with it, HR will let you know.

5 JUDGE AMCHAN: Well, how many times have you
6 submitted a disciplinary form to HR?

7 THE WITNESS: Oh, I don't -- I can't -- I
8 don't know a number. I don't know an exact number. I
9 couldn't tell you.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. BRUNDAGE:

12 Q. Have you done it before?

13 A. Yes.

14 Q. In the times that -- more than once?

15 A. Yes.

16 Q. More than, would it be fair to say -- strike
17 that. In the times that you have, have you ever had
18 discipline sent back by HR?

19 A. Actually, I did it once. When I became manager
20 of the Rehab Department, the former manager who had
21 retired had -- or not retired, but resigned, she had
22 written up a rehab employee for excessive absences.

23 And the HR director, when I became manager, she
24 came to me and said that the former manager had miscounted
25 the number of absences, and she asked me to go and talk to

1 that employee and let her know that we were rescinding the
2 disciplinary action based on what had been written.

3 Q. Okay. Okay. Returning your attention to
4 Respondent's Exhibit 16. What was the issue for which
5 this -- what was the issue that Ms. Wayt was disciplined
6 for?

7 MS. LAWHON: Objection. The document speaks
8 for itself.

9 JUDGE AMCHAN: I think it does, and I think
10 we've been over it.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. BRUNDAGE:

13 Q. Okay. Are offenses regarding medical
14 discrepancies common, in your experience as the clinical
15 manager?

16 A. As far as --

17 Q. I'm sorry. Let me strike that.

18 MS. LAWHON: Objection. Incomprehensible.

19 JUDGE AMCHAN: Well --

20 Q. Are disciplines involving medical discrepancies
21 common during your -- have they been common during your
22 tenure as the manager?

23 A. They're -- they're probably one of the largest
24 problems, yes.

25 Q. Okay. Medical discrepancies are a large

1 problem for that --

2 A. Medicines, administering.

3 Q. That lead to discipline?

4 A. Yes.

5 Q. Okay. Is it common for -- in your experience
6 as a manager, is it common for your staff to refuse to
7 resolve medical discrepancies?

8 A. No. They're usually very cooperative.

9 Q. Okay. So, why is that, in your experience?

10 MS. LAWHON: Objection.

11 JUDGE AMCHAN: Sustained.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. In your experience as the clinical manager of
15 the Orthopedic Unit, what is the practice on your unit for
16 resolving discrepancies in PYXIS?

17 A. Whenever they see that little discrepancy icon
18 come up on the PYXIS machine, I encourage them to -- to
19 resolve that as soon as possible in order not to have --
20 to have to stay over to fix it at the end of the shift.

21 Q. Okay. Ms. Zinsmeister, do you recall making a
22 phone call to Ann Wayt on September 12th, 2012?

23 A. Yes, I do.

24 Q. Why did you make that phone call to Ms. Wayt?

25 A. Jason and I wanted to inform Ann that we were

1 calling her in for a disciplinary meeting.

2 Q. Okay. And what was the intended purpose at the
3 time of that disciplinary meeting?

4 A. At the time, our intent was to discharge her.

5 Q. Okay.

6 JUDGE AMCHAN: Can I just go back to 16, and
7 maybe this is already in the record. Is your signature on
8 R16?

9 THE WITNESS: No, it is not.

10 JUDGE AMCHAN: Well, do you know whose
11 signatures are on it?

12 THE WITNESS: That -- that looks like Angie
13 Boyle, the HR director's signature.

14 JUDGE AMCHAN: And above that?

15 THE WITNESS: Jason McDonald.

16 JUDGE AMCHAN: I'm sorry. Go ahead.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. When you spoke with Ann by telephone on
20 September 12th, 2012, what was -- what did you say to Ann?

21 A. We asked her if she could come in for a
22 meeting.

23 MS. LAWHON: Your Honor, before we go too far
24 down this road, if the witness could be asked to speak in
25 the first person, it would be helpful. I doubt they said

1 it in unison.

2 JUDGE AMCHAN: Well, I guess, yes, to the
3 extent that you remember whether you said something or
4 Mr. McDonald said something, try to be specific.

5 THE WITNESS: Well, initially, I was -- I
6 asked her -- I -- I, you know, talked to Ann on the phone
7 and asked her to come in. If she could come in for a
8 meeting that day, and it -- you know, and she said, no,
9 she couldn't come in that day.

10 DIRECT EXAMINATION (CONT'D)

11 BY MS. BRUNDAGE:

12 Q. Okay. Were you able to find a meeting time?

13 A. She -- she thought she could come in the next
14 day.

15 Q. Did Ann make any mention of union
16 representation during the phone call you had?

17 A. Yes, she did.

18 Q. Okay.

19 A. She said that it was her understanding that
20 under her Weingarten rights she would be allowed a
21 representative.

22 Q. How did you or Jason, please try and be
23 specific as to who it was --

24 A. Well, initially I said -- I said, well, Ann, I
25 have the Weingarten rights paper in my hand, and I

1 understand, according to this, that if it's a disciplinary
2 meeting, that you would not be entitled to representation.

3 Q. And referring your attention to Respondent's
4 Exhibit 17. Are you able to find that? Okay. Do you see
5 that document, Respondent's Exhibit 17?

6 A. Yes, I do.

7 Q. When you just now referred to the Weingarten
8 paper, or Weingarten rights paper, what document were you
9 referring to?

10 A. This one.

11 Q. And you're referring to Respondent's --

12 A. Weingarten rights.

13 Q. And you're referring to Respondent's Exhibit
14 17.

15 A. Respondent's 17, yes.

16 Q. Okay. Okay. And where did you receive
17 Respondent's Exhibit 17?

18 A. HR handed them out to the managers and
19 directors.

20 Q. Was that before or after, if you recall? If
21 you recall, was that before or after the union election?

22 A. I believe it was after the union election.

23 Q. Okay. When you told Ann that she could not
24 have a union representative present at the meeting, how
25 did she respond?

1 A. She thought that we were -- we were mistaken.

2 Q. Okay. Did you or Jason respond to that
3 comment?

4 A. Then Jason did.

5 Q. Okay. And what did he say?

6 A. He -- I'm trying to find it here. I think --
7 he read this last paragraph --

8 Q. Okay. And you're referring to --

9 A. -- to Ann.

10 Q. -- Respondent's 17?

11 A. Yes.

12 Q. I'm only saying that to make the record clear.

13 A. Yes.

14 Q. And is that the last paragraph on this page of
15 the document? It's one page.

16 A. Yes.

17 Q. Okay. And is it the text -- is it your
18 testimony that Jason read to Ms. Wayt the text in bold?

19 A. Yes.

20 Q. Okay. After Mr. McDonald or Jason read the
21 text in bold, how did Ann respond?

22 A. She kept talking about her Weingarten rights.
23 She didn't seem to understand -- you know, it's very new
24 for everybody, so she didn't seem to understand that --
25 why she wouldn't be allowed to bring in a representative.

1 Q. Okay.

2 MS. LAWHON: Objection. And move to strike
3 to the extent the witness is characterizing that anything
4 about Weingarten rights was new to Ann Wayt. She has no
5 basis for knowing that.

6 MS. BRUNDAGE: I think she said she didn't
7 seem to understand.

8 JUDGE AMCHAN: Well, anyway, she disagreed;
9 right?

10 THE WITNESS: Correct.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. BRUNDAGE:

13 Q. Okay. And did you or Jason respond to Ann?

14 A. Jason asked Ann if she was refusing to come in.

15 Q. And did Ann respond to Jason?

16 A. She said -- she said, no, she wasn't refusing
17 to come in, she would come in the next day.

18 Q. Okay. And was the next day -- this call
19 occurred, you've testified, on September 12th, 2012.

20 A. Correct.

21 Q. Do you recall whether you had a meeting with
22 Ms. Wayt on September 13th, 2012?

23 A. The next day. We had called Ann and she did
24 come in for a meeting in HR.

25 Q. Okay. Was that meeting -- at that meeting was

1 Ms. Wayt terminated?

2 A. No, she was not.

3 Q. Okay. Was any disciplinary action taken with
4 regard to Ms. Wayt at that meeting?

5 A. She was placed on investigatory suspension.

6 Q. Okay. Was she -- as part of that meeting, do
7 you recall any -- who was present at that meeting?

8 A. Me, Jason McDonald, and Angie Boyle, the HR
9 director.

10 Q. What about Ms. Wayt?

11 A. Oh, yes. Ann Wayt came in and she did bring a
12 representative then, and it was Bob McKinney, an RN.

13 Q. Okay. And you've testified that Ms. Wayt was
14 being placed on an investigatory suspension. Did any of
15 the managers from the hospital present explain what that
16 meant to Ms. Wayt?

17 A. Angie Boyle explained that to her.

18 Q. Did Angie Boyle say anything else to Ms. Wayt?

19 MS. LAWHON: Well, objection. We have no
20 idea what she said.

21 JUDGE AMCHAN: Well, she didn't ask her.

22 MS. LAWHON: I know. But she then said "say
23 anything else," as if we knew what she said. There's been
24 no evidence as to what Ms. Boyle said.

25 JUDGE AMCHAN: Well, she explained that she

1 was on investigatory suspension. I mean, you can follow
2 up on cross if she said anything. But then you just asked
3 whether she said anything.

4 MS. BRUNDAGE: I just asked if she said
5 anything.

6 MS. LAWHON: No, I -- Your Honor, my view is
7 that saying she explained investigatory suspension is not
8 probative evidence of what was said. It doesn't say what
9 was said.

10 JUDGE AMCHAN: Well, I'll let you explore it
11 on cross.

12 MS. LAWHON: Okay.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. BRUNDAGE:

15 Q. Okay. So did Ms. Boyle say anything else to
16 Ms. Wayt?

17 A. She explained like how it would affect her pay,
18 you know, and her, you know, her vacation time, and things
19 like that. And also told her that she would be allowed to
20 submit any type of written rebuttal, if you will.

21 Q. Okay. And written rebuttal to what?

22 A. To the investigation that was ongoing, the
23 falsification of documentation, the omission of care.

24 Q. After Ms. Wayt was placed on the investigatory
25 suspension, did the hospital continue its investigation of

1 the allegations against Ms. Wayt?

2 A. Yes.

3 Q. And as it continued its investigation, did the
4 hospital eventually reach a conclusion as to the
5 complaints against Ms. Wayt?

6 A. Eventually we reached a conclusion, yes.

7 Q. What was that conclusion?

8 JUDGE AMCHAN: Well, I mean, that's --

9 MS. LAWHON: We know.

10 JUDGE AMCHAN: Yes.

11 MS. LAWHON: That's why we're here.

12 JUDGE AMCHAN: Right.

13 MS. BRUNDAGE: Okay. And so the --

14 UNIDENTIFIED PERSON: Thanks for letting us
15 know.

16 MS. CENDROSKY: Wait a minute, Your Honor, I
17 have a real problem. We have a witness in the room who is
18 not Ms. Boyle, another witness who keeps making comments.
19 I would never let any of my witnesses make comments.

20 And I'm going to have to ask you to tell her to
21 --

22 MR. BRYAN CARMODY: And I'm going to have to
23 ask counsel for the General Counsel to not make any more
24 assumptions. The person I believe she's referring to is
25 Carmen DiRienzo. She is not a witness.

1 MS. CENDROSKY: Who has not filed a Notice of
2 Appearance in this case.

3 MR. BRYAN CARMODY: Okay.

4 MS. CENDROSKY: So right now she's a witness.

5 MR. BRYAN CARMODY: I thought --

6 MS. DiRIENZO: I'm not a witness, Your Honor.

7 I'll be happy to file a Notice of Appearance. And I

8 appreciate counsel's comment.

9 JUDGE AMCHAN: All right. We're beyond it.

10 I don't think you have to file a Notice of Appearance,

11 unless you're going to appear.

12 MS. BRUNDAGE: Okay.

13 MS. DiRIENZO: Thank you, Your Honor.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. Okay. Ms. Zinsmeister, referring you again to

17 Respondent's Exhibit 16.

18 A. Yes.

19 Q. Was this written warning taken in -- you were a

20 decision-maker in the decision to terminate Ann Wayt;

21 correct?

22 A. Yes.

23 Q. And was this, Respondent's Exhibit 16, written

24 warning part of your decision-making to terminate Ms.

25 Wayt?

1 A. No, it didn't have any part in it at all.

2 MS. BRUNDAGE: Okay. I have no further
3 questions for this witness.

4 MS. LAWHON: Your Honor, I'm -- there's a
5 couple of things I'd like to review that relate to
6 documents produced this morning by counsel. So, in
7 relation to cross-exam.

8 JUDGE AMCHAN: Okay. We'll go off the
9 record.

10 (Off the record.)

11 JUDGE AMCHAN: Back on the record.

12 MS. LAWHON: I just wanted the record to
13 reflect that while we were off the record, I asked counsel
14 for any Jencks statements from Mrs. Zinsmeister.

15 MR. BRYAN CARMODY: Duly noted.

16 MS. CENDROSKY: The GC has no cross.

17 MS. LAWHON: I have a few questions, Your
18 Honor.

19 CROSS-EXAMINATION

20 BY MS. LAWHON:

21 Q. Ms. Zinsmeister, Respondent's Exhibit 16 was
22 fully drafted before you had ever spoken to Ann; isn't
23 that correct?

24 A. Correct.

25 Q. Now, with respect to resolving a PYXIS

1 discrepancy, the nurse's first priority at all times is

2 the care of her patients; isn't that correct?

3 A. Correct.

4 Q. And if the choice is between serving as a

5 patient advocate by providing patient care and immediately

6 resolving a PYXIS discrepancy, the nurse, as a licensed

7 professional, is required to put her patient care first;

8 isn't that correct?

9 A. Correct.

10 Q. Now, when that patient came to Room 3420 on

11 August 28th, Ann Wayt had four other patients; isn't that

12 correct?

13 MS. BRUNDAGE: Objection. Lack of

14 foundation.

15 JUDGE AMCHAN: Well --

16 MS. LAWHON: She certainly investigated, she

17 claims, everything that happened that day.

18 JUDGE AMCHAN: She may know, even though she

19 wasn't there on that day.

20 MS. LAWHON: I recognize you weren't there,

21 Ms. Zinsmeister.

22 JUDGE AMCHAN: Yes. Do you know whether

23 that's correct or not?

24 THE WITNESS: I mean, I -- I wasn't there

25 that week, so --

1 CROSS-EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. I know that, Ms. Zinsmeister. Did you

4 investigate Ann's workload --

5 A. Yes, I did.

6 Q. -- on August 28th?

7 A. Yes.

8 Q. Okay. And in the course of that investigation

9 you determined that she had four other patients at the

10 time she was assigned to the patient in Room 3420; isn't

11 that correct?

12 A. I'm not certain about that, because one patient

13 went to surgery, and another one came back from surgery at

14 different points during the day.

15 Q. I understand. But the maximum number of

16 patients and ortho staff nurse can have is five; isn't

17 that correct?

18 A. Correct. Uh-huh.

19 JUDGE AMCHAN: Well, I guess, do you know

20 what -- I mean, as I understood your answer, that you're

21 not sure she had five at the same time.

22 THE WITNESS: All at one time.

23 JUDGE AMCHAN: But you inferred that you do

24 know that she had five during the course of her shift.

25 THE WITNESS: Yes.

1 CROSS-EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. And the other nurse on the shift that day
4 wasn't available to help her because that nurse had five
5 patients, too; isn't that correct?

6 MS. BRUNDAGE: Objection. Lack of foundation
7 again.

8 JUDGE AMCHAN: Well, maybe --

9 MS. LAWHON: If she knows from her
10 investigation.

11 JUDGE AMCHAN: -- maybe she knows.

12 THE WITNESS: I do know that. Yes, she did.

13 CROSS-EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. And the policy permits PYXIS discrepancies to
16 be resolved at the end of the shift; isn't that correct?

17 A. The policy does, but the practice --

18 Q. That's my question, Ms. Zinsmeister.

19 JUDGE AMCHAN: The answer's yes.

20 A. Yes.

21 Q. And you talked about wanting to protect nurses
22 from having to stay over. Nurses have to stay over to
23 complete their charting not infrequently; isn't that
24 correct, Ms. Zinsmeister?

25 A. That may occur, yes.

1 Q. In fact, that did occur.

2 MS. BRUNDAGE: I'm going to object. This is
3 outside the scope of the direct and --

4 MS. CENDROSKY: Oh, he doesn't like that.

5 JUDGE AMCHAN: Yes. It's not one of my
6 favorite objections. I'm going to let her --

7 MS. CENDROSKY: I learned that on the first
8 day.

9 MS. LAWHON: Besides --

10 JUDGE AMCHAN: I think I let --

11 MS. BRUNDAGE: I'm trying to think of one
12 you'd like better that would --

13 JUDGE AMCHAN: Well, I'm going to let her
14 continue.

15 MS. CENDROSKY: Hold on one second.

16 MS. LAWHON: In fact --

17 JUDGE AMCHAN: So, I'm sorry.

18 MS. LAWHON: I'm sorry.

19 JUDGE AMCHAN: You'd better ask your question
20 again, because I forgot it.

21 MS. LAWHON: I will.

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. In fact, Ms. Wayt had to stay over on August
25 28th; isn't that correct?

1 A. I don't know that.

2 Q. Did you discover that? You --

3 A. I did not.

4 Q. -- you --

5 JUDGE AMCHAN: Well, make sure that she's
6 done asking before you answer --

7 THE WITNESS: I know, I'm sorry.

8 JUDGE AMCHAN: -- otherwise --

9 CROSS-EXAMINATION (CONT'D)

10 BY MS. LAWHON:

11 Q. So you never investigated the entire time
12 before you reached the conclusion that she should be
13 terminated what time Ms. Wayt left the hospital that day;
14 is that your testimony?

15 A. I did not look at Kronos to see what time she
16 clocked out.

17 Q. What time a nurse clocks out would have
18 something to do with her workload that day, in many
19 circumstances --

20 MS. BRUNDAGE: Objection. Calls for
21 speculation.

22 MS. LAWHON: It's --

23 JUDGE AMCHAN: Well, I would say that's a
24 fair question.

25 MS. LAWHON: I'm not finished.

1 CROSS-EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. What time a nurse clocks out gives you some
4 indication of what the nurse's workload was that day;
5 isn't that correct, Ms. Zinsmeister?

6 A. Or it could be an indication of a nurse's
7 inorganization. I mean, they may not organize very well
8 and they have to stay over to finish their charting.

9 Q. Okay. Is it fair to say that Ann Wayt was an
10 extremely skilled, experienced nurse, as of --

11 A. To my knowledge, she was an experienced
12 orthopedic nurse.

13 Q. Yes. You never experienced Ann Wayt as having
14 a lack of organization; isn't that correct,
15 Ms. Zinsmeister?

16 A. I did not observe that, no.

17 Q. Okay.

18 JUDGE AMCHAN: Okay. But, again, be sure
19 that she's done with her question before you answer.

20 MS. LAWHON: She said, I think, I did not
21 observe that. But the first part was when I was still
22 talking, so -- did you get the answer, can you tell?

23 JUDGE AMCHAN: Well, she can't --

24 MS. LAWHON: I'll just ask it again.

25 JUDGE AMCHAN: Yes.

1 MS. LAWHON: I'll just ask it again.

2 JUDGE AMCHAN: Okay. But be -- somebody's
3 going to have to type the transcript. And if they hear
4 two voices at once --

5 THE WITNESS: Okay. I'm sorry.

6 JUDGE AMCHAN: -- you may see them at your
7 hospital.

8 THE WITNESS: Okay. All right.

9 JUDGE AMCHAN: For psychiatric care --
10 reasons.

11 CROSS-EXAMINATION (CONT'D)

12 BY MS. LAWHON:

13 Q. In the period of time that you were the manager
14 of the unit, the Ortho Unit, and Ann Wayt was a staff
15 nurse, you never observed any problem with organization on
16 her part; isn't that correct?

17 A. I didn't observe any, no.

18 Q. Now, at that September 13th meeting, someone
19 from the management representatives was taking notes;
20 isn't that correct?

21 A. Yes.

22 Q. And that was Jason McDonald; right?

23 A. No.

24 Q. Then who was taking notes?

25 A. At the September 13th meeting --

1 Q. Yes.

2 A. -- with -- with Angie and --

3 Q. Yes.

4 A. I was.

5 Q. Oh, okay. I'm sorry. You're right. And you
6 later typed up your notes; right?

7 A. Yes.

8 Q. Okay. And did you ask Jason to review your
9 notes for accuracy, just so the record would be good?

10 A. We read them over.

11 Q. Okay. You and Jason read them over.

12 A. Yes.

13 Q. Did Angie Boyle participate in that?

14 A. I don't recall.

15 Q. Okay. And when you were reviewing your notes,
16 you were checking them for accuracy; isn't that correct?

17 A. Yes.

18 Q. You were also checking your notes for
19 completeness; isn't that correct?

20 A. Yes.

21 Q. You thought it was important that it be
22 recorded what the management representatives said to Ann;
23 isn't that correct?

24 A. Yes.

25 Q. In deciding to terminate Ann, you considered

1 what you believed happened on August 28th, 2012, isn't
2 that correct, as reflected on the termination notice?

3 A. Correct.

4 Q. Okay. And if it would help you to have that in
5 front of you, I'll direct you to it as soon as I figure
6 out what number it is.

7 MS. CENDROSKY: GC8.

8 MS. LAWHON: I'm sorry, Your Honor, could we
9 go off the record for a second?

10 JUDGE AMCHAN: Yes. Off the record.

11 (Off the record.)

12 JUDGE AMCHAN: Back on the record.

13 CROSS-EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. So, Ms. Zinsmeister, you now have, thanks to
16 your counsel, referring to General Counsel's 7, Page 8,
17 that's the termination; right?

18 Oh, no, I'm sorry. That's 7A. It's the big fat
19 7, lots of pages.

20 A. Oh, I don't see it. I'm sorry.

21 Q. It's a comedy of errors here, mostly mine.

22 A. Thank you.

23 Q. Oh, yes, and I have it now, too. Okay. So I
24 asked you, and you -- I believe you already answered that
25 in deciding to terminate Ann Wayt you considered what you

1 believed happened on August 28th; right?

2 A. Correct.

3 Q. What else did you consider?

4 A. All we considered was the omission of care and
5 the falsification of document.

6 Q. Okay. That's it; right?

7 A. Yes.

8 Q. So you did not consider Ann's history with the
9 hospital of over 20 years; is that correct?

10 A. No.

11 Q. Okay. You did not consider her performance as
12 an RN as reflected in her performance appraisals; isn't
13 that correct?

14 A. Correct.

15 Q. Are you aware that the hospital has a policy on
16 discipline and termination of employment, Ms. Zinsmeister?

17 A. Yes.

18 Q. Okay.

19 MS. LAWHON: Can we go off the record for a
20 second, Your Honor?

21 JUDGE AMCHAN: Sure. Off the record.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 (Whereupon, Charging Party's Exhibit Number 5
25 was marked for identification.)

1 CROSS-EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. Ms. Zinsmeister, I -- I'm sorry, I can't recall
4 exactly where I left off. You're aware that there some
5 policy on discipline and termination of employment; right?

6 A. Yes.

7 Q. Okay. You're aware that according to that
8 policy the disciplinary action that is appropriate for any
9 particular act or misconduct depends upon factors such as
10 the employee's prior disciplinary record; right?

11 A. I'm not aware of that, no.

12 Q. Okay. You are aware that before the union
13 election Ann Wayt had no discipline; isn't that correct?

14 A. I'm not aware of that.

15 Q. Are you aware of any discipline against
16 Ms. Wayt in her entire 20-plus years at that hospital?

17 A. I don't personally know. HR would know that.

18 Q. Did you check her personnel file to see if you
19 found prior discipline, prior to making the decision to
20 terminate her?

21 A. No, I did not.

22 Q. Okay. Were you informed that anyone else had
23 checked her personnel file for prior discipline, prior to
24 the decision being made to terminate her?

25 A. I believe that the HR director did.

1 Q. Did you -- did the HR director tell you that
2 she checked Ann's disciplinary record?

3 A. I don't recall.

4 Q. Okay. So, and no one else told you that they
5 checked her disciplinary record; right?

6 A. I don't believe so.

7 Q. Isn't it correct that another factor in
8 considering the disciplinary action that is appropriate is
9 the impact of the misconduct on others?

10 A. I don't know that policy word for word.

11 Q. Okay. And isn't it correct, Ms. Zinsmeister,
12 that without knowing the policy word for word, you're
13 aware that termination of employment should take into
14 account the history of an employee's performance with the
15 hospital?

16 A. I don't know that policy. If that's in there,
17 I'm not -- I -- I don't know that word for -- I just --
18 I'm not that familiar with the policy. It's an HR policy.

19 Q. Okay. So you didn't take into account Ann's
20 performance over the years in that hospital when you
21 decided it was appropriate to terminate her; is that
22 correct?

23 A. Correct.

24 MS. LAWHON: Okay, Your Honor, I would like
25 to offer this policy into evidence as Charging Party's 5.

1 I'll have to withdraw it for copying.

2 JUDGE AMCHAN: Okay. Do you understand that
3 you're supposed to follow that policy?

4 THE WITNESS: Yes.

5 MS. LAWHON: And, Counsel, you have it. Do
6 you need to see it?

7 MS. BRUNDAGE: No.

8 MR. BRYAN CARMODY: No.

9 MS. LAWHON: Okay. Okay, Your Honor, at this
10 time, I'd like to move into admission Charging Party 5.

11 JUDGE AMCHAN: Any objection?

12 MR. BRYAN CARMODY: Well, did you show it to
13 the witness?

14 MS. LAWHON: I don't need to. Oh, I'll --
15 sure, I'll authenticate it. I assumed since you provided
16 it, Counsel, it was a legitimate document. But I'll be
17 happy to show it to the witness.

18 Let the record reflect that Ms. Zinsmeister is
19 now looking through the document marked for identification
20 as Charging Party Exhibit 5.

21 CROSS-EXAMINATION (CONT'D)

22 BY MS. LAWHON:

23 Q. Do you recognize this as the operative
24 discipline policy at Affinity Hospital at the time Ann
25 Wayt was terminated?

1 A. I recognize it as an HR policy, yes.

2 Q. Well, is it a policy on discipline,

3 Ms. Zinsmeister?

4 A. Yes.

5 Q. Okay. And it was in effect as of August 26th;

6 isn't that correct?

7 A. Yes, it was.

8 MS. LAWHON: At this time, I'd like to offer

9 Charging Party 5, the discipline policy.

10 MS. BRUNDAGE: I have no objection.

11 JUDGE AMCHAN: You have no --

12 MS. BRUNDAGE: I have no objection.

13 JUDGE AMCHAN: It's received.

14 (Whereupon, Charging Party's Exhibit Number 5

15 was received into evidence.)

16 CROSS-EXAMINATION (CONT'D)

17 BY MS. LAWHON:

18 Q. Now, Ms. Zinsmeister, I'd like you to look at

19 Page 11 and 12 of General Counsel's Exhibit 7. These are

20 your notes of the September 13th meeting which you

21 previously testified about on cross-exam; right?

22 A. Yes.

23 Q. Nowhere in those notes does it reflect that

24 anyone used the phrase "falsification of documentation";

25 isn't that correct?

1 JUDGE AMCHAN: I'm sorry, what page are you
2 looking at?

3 MS. LAWHON: 11 and 12 of General Counsel's
4 7.

5 THE WITNESS: We did not use that terminology
6 in this form.

7 MS. LAWHON: Your Honor, have you found it?
8 I'll --

9 JUDGE AMCHAN: I had it right in front of me.
10 I don't remember giving it to you.

11 MS. CENDROSKY: I have another.

12 JUDGE AMCHAN: Yes, it's here. It's right in
13 front of me.

14 MS. CENDROSKY: Oh, okay.

15 JUDGE AMCHAN: Someplace. I haven't found
16 it, but it's right in front of me somewhere. GC7.

17 MS. LAWHON: Correct, Your Honor, it's the --

18 JUDGE AMCHAN: I've got it.

19 MS. LAWHON: -- big one. And it's Pages 11
20 and 12.

21 JUDGE AMCHAN: Yes, I've got it.

22 MS. LAWHON: And I, because of the
23 distraction of finding the document, I would request that
24 the reporter read back the question and answer, just
25 because I -- I do want to hear what the witness answered

1 and I was distracted. I know it's not a -- I won't make
2 the --

3 JUDGE AMCHAN: Well, she said she didn't use
4 the term falsification in her notes.

5 MS. LAWHON: Right. I understand.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. And you didn't use the term falsification in
9 your notes, because nobody said falsification; isn't that
10 correct, Ms. Zinsmeister?

11 A. Could you rephrase that?

12 Q. Sure. You accurately reflected every statement
13 made to Ann Wayt to the best of your ability; right?

14 A. That's correct.

15 Q. Okay. And you didn't put down the term
16 "falsification of documentation", the phrase, because no
17 one used that phrase in that meeting with Ann Wayt; isn't
18 that correct?

19 MS. BRUNDAGE: Objection. That's a
20 mischaracterization of the witness' testimony.

21 MS. CENDROSKY: She's asking a question.

22 MS. LAWHON: She, and I'm not going to say
23 more about what she said on direct exam, but it directly
24 relates to her testimony on direct.

25 JUDGE AMCHAN: I guess I'm missing your

1 objection.

2 MS. BRUNDAGE: I believe that what

3 Ms. Zinsmeister said was that she didn't --

4 MS. LAWHON: I would ask counsel not to

5 repeat her testimony on direct.

6 MS. BRUNDAGE: I was --

7 MS. LAWHON: I think it's inappropriate.

8 This is an important moment --

9 MS. BRUNDAGE: I wasn't going to -- I was

10 going to say what she had just said on cross as part of my

11 argument, but I don't mean to --

12 JUDGE AMCHAN: Well, I'll overrule the

13 objection. That way we'll -- your question is?

14 CROSS-EXAMINATION (CONT'D)

15 BY MS. LAWHON:

16 Q. Right. The reason that you don't use the

17 phrase "falsification of documentation" in your notes is

18 because none of the management representatives at the

19 meeting used the phrase "falsification of documentation";

20 isn't that correct?

21 A. You are correct.

22 Q. And when you were showing documents -- no,

23 scratch that.

24 MS. LAWHON: One second, Your Honor. I think

25 I'm close to finishing. Okay.

1 JUDGE AMCHAN: I didn't realize this trial

2 was catered.

3 MS. LAWHON: I have no further questions.

4 JUDGE AMCHAN: Okay. Do you have anything on

5 redirect?

6 MS. BRUNDAGE: No redirect.

7 JUDGE AMCHAN: You're excused. Thank you.

8 THE WITNESS: Thank you.

9 MS. LAWHON: And, Your Honor, I don't -- I'm

10 -- it's a little confusing. I mean, maybe

11 Ms. Zinsmeister, you could just wait for a second. I

12 don't think this will affect you, but just in case it

13 does.

14 General Counsel's 7 went into evidence as the

15 submission to the State Board of Nursing.

16 MR. BRYAN CARMODY: Are we still on the

17 record, Your Honor?

18 JUDGE AMCHAN: Yes.

19 MS. LAWHON: I thought so. Pages 11 and 12,

20 I would like -- I mean, I would like them admitted also,

21 or taken note of separately as the notes of Ms.

22 Zinsmeister about a meeting on September 13th for -- you

23 know, and I don't know if there's any necessity for me to

24 say that, but I want this in evidence for the notes of

25 that meeting, not just that it was submitted to the State

1 Board of Nursing.

2 JUDGE AMCHAN: Well, I think there have been
3 a number of questions about it.

4 MS. LAWHON: Okay.

5 MS. CENDROSKY: Yes.

6 JUDGE AMCHAN: And it's in the record --

7 MS. LAWHON: Okay. Okay. That's fine.

8 JUDGE AMCHAN: -- and I understand that you
9 think it's probative of other things.

10 MS. LAWHON: Thank you, Your Honor. That's
11 all. So, I'm sorry I interfered with your exit, but --

12 JUDGE AMCHAN: You're done.

13 THE WITNESS: It was going dramatic, too.
14 All right. Thank you.

15 (WITNESS EXCUSED.)

16 MS. BRUNDAGE: May we take a break?

17 JUDGE AMCHAN: Sure. Off the record.

18 (Off the record.)

19 JUDGE AMCHAN: Back on the record.

20 MR. BRYAN CARMODY: Affinity calls Bill
21 Osterman to the stand.

22 JUDGE AMCHAN: Okay. And you're still under
23 oath.

24 THE WITNESS: Yes, sir.

25 WHEREUPON,

1 WILLIAM OSTERMAN,

2 A witness herein, having been previously cautioned and
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRYAN CARMODY:

6 Q. Bill, welcome back.

7 A. Oh, thank you.

8 Q. Can you please summarize for the Judge your
9 educational background?

10 A. Yes. In 2001 I got -- received my associates
11 in nursing. 2006 I received my bachelor's in nursing.
12 And then in 2010 I received my MBA with the healthcare --
13 emphasis in healthcare.

14 Q. Subsequent to your graduation from nursing
15 school, did you obtain an RN license?

16 A. In 2011 I did.

17 Q. Thereafter, did you work as a staff nurse?

18 A. Yes. For six months in 2001 I worked on a
19 Critical Care Unit up in Bay Medical Center in Bay City,
20 Michigan.

21 And then from 2001 to 2003 I worked on -- as a
22 floor nurse at Open Heart, Heart Transplant, and Assist
23 Device Unit at Lutheran in Fort Wayne, Indiana.

24 Q. Thank you. Did there come a point in time when
25 you obtained a position in nursing management?

1 A. Yes. In 2003 to 2005 I was a shift supervisor
2 for that Heart Transplant Unit. Then in 2005 became the
3 division director of that department, as well as took on
4 several departments after that, two Med-Surg Departments
5 and a Renal Dialysis Unit.

6 Q. At what point in time did your employment with
7 that facility end?

8 A. That ended in 2010 when I went to Affinity
9 Medical Center as the chief nursing officer.

10 Q. Okay. And that remains still your position
11 today, I assume.

12 A. Yes, sir.

13 Q. Okay. Can you please just state briefly for
14 the record the primary job responsibilities you hold as
15 Affinity's chief nursing officer?

16 A. As the chief nursing officer, my job is to
17 ensure safe quality care, and the development and
18 accountability of the policies.

19 Q. Thank you, sir. Who reports directly to you?

20 A. The department director's unit managers of the
21 Nursing Departments.

22 Q. Thank you. Bill, are you familiar with the
23 term "a doctor's order," or a "physician's order"?

24 A. Yes. That's the order written by the
25 physician.

1 Q. Okay. And, Bill, in connection with a
2 patient's transfer from one unit to another, say from the
3 Emergency Department to the Ortho Unit, does that require
4 a doctor's order?

5 A. Yes.

6 Q. Bill, does a nurse working for Affinity Medical
7 Center have the authority to refuse a patient's admission
8 into their unit?

9 A. No.

10 Q. And why is that, sir?

11 A. Research has shown that, one, you have a
12 physician order; but, also, research has shown the longer
13 you detain or hold a patient from getting into the
14 department that they're ordered for, increase for life,
15 mortality, morbidity.

16 Q. With respect --

17 MS. LAWHON: I'm sorry, I --

18 THE WITNESS: Mortality and morbidity.

19 MS. LAWHON: I didn't hear the word after
20 "increase." Maybe fatality?

21 THE WITNESS: Increases the risk. Increase
22 the risk --

23 MS. LAWHON: Oh.

24 THE WITNESS: -- of mortality and morbidity.
25 Example, going from the ED, that's why right now we have

1 core measures set out by certified -- the Medicare,
2 Medicaid, is the fact that the longer the patient stayed
3 in ED, the increase risk they have to them. That's why
4 you should get them to the floor as quick as possible.

5 DIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Thank you, sir. Have you, with respect to the
8 directors, the department directors that report to you,
9 have you given them any instructions in terms of whether
10 or not the staff nurses have the authority to refuse a
11 patient's admission into their floor?

12 A. Yes, I have. I told them they're not allowed.

13 Q. And in what setting have -- in what setting
14 have you made the department directors that report to you
15 aware of that directive?

16 A. We have flash meetings or huddles twice a day,
17 Monday through Friday, nine and fifteen thirty.

18 Q. Thank you. Bill, I'm sure you're familiar with
19 the term "sitter"; correct?

20 A. Correct.

21 Q. Okay. And rather than ask you for yet another
22 definition of a term, I have a document I'd like to show
23 you. Does Affinity have a policy concerning sitters?

24 A. Yes, sir.

25 (Whereupon, Respondent's Exhibit Number 21

1 was marked for identification.)

2 Q. Okay, Bill, I'm showing you a document that's
3 been marked for identification purposes as Respondent's
4 Exhibit 21.

5 I'm going to ask you to please review the
6 document and let me know if you recognize it?

7 A. Yes, I do.

8 Q. And what is this document?

9 A. This is the policy that covers our sitters,
10 it's the patient observation role and responsibilities.

11 Q. And what's the effective date of this policy?

12 A. 2/13/2012.

13 MR. BRYAN CARMODY: Thank you. I would offer
14 this into evidence, Judge.

15 MS. LAWHON: Could I have a minute, Your
16 Honor, to look at it? I've never seen it before.

17 JUDGE AMCHAN: Yes. Off the record.

18 (Off the record.)

19 JUDGE AMCHAN: Back on the record.

20 VOIR DIRE EXAMINATION

21 BY MS. LAWHON:

22 Q. Okay. So, Mr. Osterman, this policy doesn't
23 particularly cover when a registered nurse is serving as a
24 patient observer; is that fair to say?

25 A. It covers anybody that's covering --

1 Q. Right. But it doesn't assume that the patient
2 observer is a licensed registered nurse; is that fair?

3 A. It does not --

4 Q. Is that correct?

5 A. I guess I don't understand where you're trying
6 to go with your question.

7 JUDGE AMCHAN: She's asking does it apply to
8 sitters who are nurses and sitters who are not registered
9 nurses?

10 THE WITNESS: It applies to all of them, yes,
11 sir.

12 VOIR DIRE EXAMINATION (CONT'D)

13 BY MS. LAWHON:

14 Q. But it doesn't address registered nurses
15 specifically as sitters.

16 MR. BRYAN CARMODY: Objection, Your Honor,
17 relevance, irrespective of the title that the person hold
18 elsewhere. When they are a sitter, those are the
19 responsibilities. They are set forth in Respondent's 21.

20 JUDGE AMCHAN: Well, I mean, I think it's
21 pretty clear. I mean, he hasn't (sic) moved for its
22 admission, but that the document doesn't distinction from
23 the situation --

24 MS. LAWHON: Right.

25 JUDGE AMCHAN: -- where the sitter's an RN

1 and the sitter's not an RN.

2 MS. LAWHON: That's fine. That's all I was
3 going for. No problem. I don't object.

4 JUDGE AMCHAN: Received.

5 (Whereupon, Respondent's Exhibit Number 21
6 was received into evidence.)

7 MR. BRYAN CARMODY: Thank you, Your Honor.

8 DIRECT EXAMINATION (CONT'D)

9 BY MR. BRYAN CARMODY:

10 Q. Bill, rounding, that's a term you're familiar
11 with, is it not?

12 A. Yes, sir.

13 Q. Okay. And, essentially, what is rounding?

14 A. Rounding is where a staff members goes into the
15 patient's room. We do it every hour. And we offer the
16 four P's, pain, potty, positioning, and possessions. It's
17 --

18 Q. Bill, does Affinity have a policy with respect
19 to rounding?

20 A. We use our Community Care Standard Book.

21 MS. CENDROSKY: R22?

22 MS. LAWHON: R22.

23 MR. BRYAN CARMODY: Yes.

24 MS. CENDROSKY: Okay.

25 (Whereupon, Respondent's Exhibit Number 22

1 was marked for identification.)

2 DIRECT EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. Bill, I'm showing you a document that's been
5 marked for identification purposes as Respondent's Exhibit
6 22. I'd ask you to take a look at this document and let
7 me know if you recognize it?

8 A. Yes, this is our Community Cares Culture Book.

9 Q. And is there a particular in this book that
10 refers to rounding?

11 A. Yes.

12 Q. Would you please direct His Honor's attention
13 to that?

14 A. It's on Page 10, "We will demonstrate our
15 commitment to responsiveness by" and this is all nursing
16 staff, "will properly see the patient's needs by
17 participating in hourly rounding."

18 Q. Thank you, sir.

19 MR. BRYAN CARMODY: Your Honor, I would offer
20 Respondent's 22 into evidence.

21 MS. CENDROSKY: No objection.

22 MS. LAWHON: May I voir dire, Your Honor,
23 briefly?

24 JUDGE AMCHAN: Yes.

25 VOIR DIRE EXAMINATION

1 BY MS. LAWHON:

2 Q. Is there any date on this, Mr. Osterman? I --
3 you'd be better equipped than I to find it.

4 A. The date. I don't see one.

5 Q. Okay. And I notice it says "Community Health
6 Systems" on the back. Is this a document that --

7 A. Correct.

8 Q. -- is provided to Affinity by CHS?

9 A. Correct.

10 Q. Okay. And has this been in effect your entire
11 time as the chief nursing officer?

12 A. Yes.

13 MS. LAWHON: I have no objection.

14 JUDGE AMCHAN: It's received.

15 (Whereupon, Respondent's Exhibit Number 22
16 was received into evidence.)

17 DIRECT EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Bill, have the nurses working for Affinity been
20 informed of the requirements of hourly rounding?

21 A. Yes. In 2009 when CHS first started at
22 Affinity, the hospital provided education to the staff.
23 And then in, November time frame of 2011 and currently in
24 2012 and going into 2013, I have held education in skill
25 labs for our Nursing Departments.

1 Q. Can you elaborate to some degree concerning
2 what activities comprise the skill labs you've just
3 referenced?

4 A. The skill lab is where we take a voluntary and
5 have him be the patient in a bed, and in a room. And then
6 myself, the community cares champion, and directors, one
7 of the directors sits there and observes the staff member
8 coming in and performing their hourly rounding, and then
9 we grade them.

10 Q. Thank you, Bill. The record will already
11 reflect already with Ms. Wayt, in the case of Ms. Wayt,
12 Bill, do you have any recollection of Ms. Wayt
13 participating in the skill lab as you've just described
14 it?

15 A. Yes, she did.

16 Q. And as part -- did you observe Ms. Wayt's
17 participation in the skill lab?

18 A. Yes.

19 Q. Did you complete any documentation in
20 connection with your observation of Ms. Wayt taking part
21 in the skill lab?

22 A. Yes, the evaluation.

23 JUDGE AMCHAN: 23.

24 MS. BRUNDAGE: I'm caught up now.

25 JUDGE AMCHAN: All right.

1 MS. BRUNDAGE: It only took me two.

2 MS. CENDROSKY: Thank you.

3 MR. BRYAN CARMODY: Uh-huh.

4 MS. LAWHON: Thank you.

5 (Whereupon, Respondent's Exhibit Number 23
6 was marked for identification.)

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Bill, showing you now a document that's been
10 marked for identification purposes as Respondent's Exhibit
11 23. I'd ask for you to read this document, and please let
12 me know when you are through.

13 A. I -- I'm through.

14 Q. Do you recognize the document?

15 A. Yes. This is the evaluation I filled out.

16 Q. Okay. For any particular employee?

17 A. Oh, for Ms. Wayt.

18 MR. BRYAN CARMODY: Thank you, sir. Your
19 Honor, I would offer Respondent's 23 into evidence.

20 MS. CENDROSKY: If I can have --

21 MS. LAWHON: I have -- go ahead.

22 MS. CENDROSKY: No, you go ahead. I'm still
23 looking at it. I haven't had a chance to decide --

24 MR. BRYAN CARMODY: Sure.

25 MS. CENDROSKY: -- if I need to voir dire

1 yet.

2 MS. LAWHON: I can voir dire, but I'll wait

3 until you finish, Sharlee, so you can listen.

4 (Pause.)

5 VOIR DIRE EXAMINATION

6 BY MS. CENDROSKY:

7 Q. I just have a couple questions.

8 A. Yes, ma'am.

9 Q. So you filled out this form?

10 A. Yes.

11 Q. You put Ann Wayt's name on the form?

12 A. Yes.

13 Q. Okay. And you're -- you were the evaluator;

14 correct?

15 A. Correct.

16 Q. So you -- when you made these checkmarks, did

17 the checkmarks reflect, like if you look to the left it

18 says, "Knock on door prior to entering, ask permission."

19 A. The yes means she did it.

20 Q. Okay. And there's a star up in the corner.

21 A. I put the star because she had a greater than

22 50 percent on this.

23 Q. Okay. Did anyone have greater -- less than 50

24 percent?

25 A. There were a few that I had to go through

1 again.

2 Q. Okay. And then the same thing on the back, I
3 would assume the evaluator, yes, those are your
4 checkmarks?

5 A. Correct.

6 Q. Okay.

7 A. The back one is for bedside reporting, not the
8 hourly rounding.

9 Q. Oh, I see.

10 A. It's a different program.

11 Q. Oh, okay. It was given the same day? Yep?

12 A. Yes, ma'am.

13 MS. CENDROSKY: Okay. I have no other
14 questions.

15 MS. LAWHON: I have only one.

16 VOIR DIRE EXAMINATION

17 BY MS. LAWHON:

18 Q. Is the star the highest you get? The highest a
19 nurse gets?

20 A. It's just a trigger. The highest would be
21 everybody got a hundred -- you know, everything was done
22 on a --

23 Q. No, I understand. But you indicated you put a
24 star because she got greater than 50 percent. Do you put
25 any other symbol up in that right corner other than a

1 star? That's my question.

2 A. No, I don't.

3 MS. LAWHON: Okay. No objection.

4 JUDGE AMCHAN: It's received.

5 (Whereupon, Respondent's Exhibit Number 23
6 was received into evidence.)

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Bill, the term "head-to-toe assessment," is
10 that also a term with which you have familiarity?

11 A. Yes, sir.

12 Q. What, essentially, is a head-to-toe assessment?

13 A. That is the nurse going in and doing an
14 assessment on the patient. And it's really what it is,
15 head to toe. You're assessing the patient down.

16 Q. And with respect to the nurses employed by
17 Affinity during your tenure as its chief nursing officer,
18 when are these head-to-toe assessments supposed to be
19 taking place?

20 A. As soon as the possible on the patient coming
21 to the floor, or after their change of shift. But they do
22 have a time frame, per policy, to complete.

23 Q. I understand. How long, approximately, should
24 a head-to-toe assessment take place?

25 A. Depending on the patient and the -- the skill

1 of the nurse, anywhere from five to fifteen minutes.

2 Q. And, Bill, in terms --

3 MS. LAWHON: I'm sorry. Did the witness say

4 five to fifteen?

5 THE WITNESS: It depends on the patient and

6 the --

7 MS. LAWHON: I understand. I just -- I'm --

8 JUDGE AMCHAN: Yes.

9 MS. LAWHON: -- I'm having a little trouble
10 understanding you.

11 MS. CENDROSKY: Hearing.

12 MS. LAWHON: Maybe -- I don't know if it's a
13 hearing problem, or --

14 THE WITNESS: It's my stuttering.

15 MS. CENDROSKY: No.

16 MS. LAWHON: No, it's not that. No.

17 THE WITNESS: No. I'm sorry. I have a
18 speech problem sometimes.

19 JUDGE AMCHAN: Five to fifteen, is what he
20 said, minutes.

21 MS. LAWHON: Okay. Five to fifteen.

22 JUDGE AMCHAN: Five to fifteen.

23 MS. LAWHON: Got it. Thank you.

24 DIRECT EXAMINATION (CONT'D)

25 BY MR. BRYAN CARMODY:

1 Q. Everybody else is understanding you just fine.

2 Bill, in terms of the overall care of the patients, what

3 is the relative importance of the head-to-toe assessment?

4 A. To establish the baseline of the patient for

5 other healthcare providers, as well as your care

6 throughout the shift.

7 Q. When you say establish a baseline for other

8 healthcare providers, what does that mean in layman's

9 terms?

10 A. Baseline is you're getting an assessment of the

11 patient. And what you're looking for, for yourself, as

12 things might change in -- during your shift, but also for

13 somebody that's following you.

14 Also to report off to a doctor if a doctor comes

15 in, or if you get a new consult, you have a baseline for

16 this doctor to work with, or the other staff members.

17 Q. Bill, as part of the conduct of the head-to-toe

18 assessment, should a nurse detect on the patient's person

19 any abrasions, scrapes?

20 A. Yes.

21 Q. And how is it that the nurse would discover

22 that on the patient's person?

23 A. During their head and toe, they're actually

24 doing the skin assessment, again, working head down. You

25 can remove the gown, of course, making sure the patient's

1 covered.

2 But you're doing that. You're also turning the
3 patient, checking the back, or if the patient's
4 ambulatory, they can get up and move a little bit.

5 JUDGE AMCHAN: So if they're -- you walk in
6 the room and they're under a blanket or a sheet, you're
7 supposed to remove it or look --

8 THE WITNESS: You would remove -- expose
9 different areas at a time. I wouldn't just pull it down
10 and pull everything up, but you would move parts of it so
11 you can make sure you see every part of the body.

12 Q. And how about pain, Bill, is that something
13 that a nurse should be evaluating during the conduct of a
14 head-to-toe assessment?

15 A. Yes.

16 Q. Bill, in the case of the patient who is unable
17 -- I'm sorry, withdraw the question.

18 Is there a pain scale that is used as part of the
19 pain assessment of a nurse conducting head to --

20 A. Yes, we --

21 Q. -- toe assessment?

22 A. Yes, we use the one through ten.

23 Q. And how is that one through ten scale supposed
24 to be administered to a patient who, for some reason,
25 dementia, for example, is unable to comprehend and respond

1 to the pain scale?

2 A. You -- you don't use the one to ten, you use
3 your assessment of the patient.

4 Q. Thank you, Bill. I want to direct your
5 attention now to August of last year, and ask you if
6 anyone in management ever shared with you a concern they
7 had about Ms. Wayt's workplace conduct?

8 A. Yes. August 29th, Ms. Susan Kress came to me.
9 She was expressing to me that Jeremy Montemone was -- had
10 relayed to her that his nurse, Rhonda Smith, while she was
11 sitting up on the ortho floor told him that she didn't
12 think Ann Wayt came in and did an assessment or rounded on
13 the patient.

14 Q. Okay. And do you recall what day this was?

15 A. I believe it was August 29th. I believe it's a
16 Wednesday.

17 Q. Okay. August 29th. At the time of that
18 conversation, August 29th, did Ms. Kress have any
19 connection to the Orthopedics Department?

20 A. Yes. She was the relief director for the
21 department because Paula Zinsmeister was on vacation.

22 Q. Okay. Aside from what you just testified to,
23 what else, if anything, did Ms. Kress share with you?

24 A. She shared to me after Jeremy told her that,
25 she went up and did a chart audit real quick on the

1 patient, and that she saw discrepancies between the
2 documentation that Ms. Wayt and what Rhonda was stating
3 that happened --

4 Q. Thank you, sir.

5 A. -- or lack of.

6 MS. LAWHON: I'm sorry. What did you say?

7 THE WITNESS: The lack of.

8 MS. LAWHON: Thank you.

9 JUDGE AMCHAN: Well, that's what she reported
10 to you when she came back; right? You didn't go with her,
11 she went --

12 THE WITNESS: I did not go with her, no.

13 JUDGE AMCHAN: -- she went upstairs, looked
14 at the chart, and came back and reported to you.

15 THE WITNESS: Right.

16 DIRECT EXAMINATION (CONT'D)

17 BY MR. BRYAN CARMODY:

18 Q. Bill, did there come a point in time when you
19 learned the last name, not saying it here, of the patient
20 involved?

21 A. Yes.

22 Q. Does her last name begin with the letter "P"?

23 A. Yes.

24 Q. And if I refer to this patient as Ms. P, will
25 you know who I'm talking about?

1 A. Yes, sir.

2 Q. Bill, how did you react, if at all, to the
3 information that Ms. Kress was imparting to you concerning
4 Ms. P and Ms. Wayt?

5 A. I definitely was concerned from the fact that
6 I'm hearing reporting of an assessment not being done and,
7 but yet there was documentation for it.

8 So I asked Ms. Kress to continue the
9 investigation. To go out and talk to Rhonda herself, and
10 anybody else that was possibly there or involved, or could
11 have witnessed Ms. Wayt going in or not going into the
12 room.

13 Q. Thank you, sir.

14 JUDGE AMCHAN: Can I just ask a -- do you --
15 I don't know if this has come up. The patient had a
16 fractured hip.

17 THE WITNESS: Yes, sir.

18 JUDGE AMCHAN: Had been brought in from the
19 nursing home to the Emergency Department. She wasn't
20 operated on, was she?

21 THE WITNESS: Not at that time.

22 JUDGE AMCHAN: So she just was brought to the
23 hospital. I mean --

24 THE WITNESS: They some --

25 JUDGE AMCHAN: -- no screw, or anything that

1 was put in, really, nothing had been done yet.

2 THE WITNESS: No. You just have a fracture
3 that -- that's there and then they -- they could keep them
4 for 24 hours before they do a surgery.

5 JUDGE AMCHAN: Was a surgery eventually done?

6 THE WITNESS: I believe it was.

7 MR. BRYAN CARMODY: And, Your Honor, I will
8 have some evidence of that, I would expect, through a
9 subsequent witness.

10 DIRECT EXAMINATION (CONT'D)

11 BY MR. BRYAN CARMODY:

12 Q. Bill, I'm going to ask you to look at --

13 MS. LAWHON: I'm sorry. Excuse me. I'm
14 sorry. You asked if surgery was eventually done, and you
15 said you're going to have evidence of that?

16 MR. BRYAN CARMODY: That surgery was
17 eventually done?

18 MS. LAWHON: Yes.

19 MR. BRYAN CARMODY: Yes.

20 MS. LAWHON: Okay.

21 DIRECT EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. The -- I'm going to ask you to pick up
24 Respondent's Exhibit 19, please. Let me know when you
25 retrieve it, or if you need some help finding it.

1 A. Okay.

2 JUDGE AMCHAN: It was R19 you asked him
3 about.

4 MR. BRYAN CARMODY: I'm sorry, sir?

5 JUDGE AMCHAN: It was R19 that you asked --

6 MR. BRYAN CARMODY: That's correct, Your
7 Honor.

8 THE WITNESS: I have it.

9 DIRECT EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Okay.

12 A. Yes, sir.

13 Q. Bill, is this a document that you recognize?

14 A. Yes. This is an e-mail that came from John
15 Perone, our pharmacy director on August 30th.

16 Q. Okay. Is this an e-mail that you received?

17 A. Yes, sir.

18 Q. Okay. Do you recall when you actually received
19 it? Was it on or around this time?

20 A. It appears to.

21 Q. The same questions regarding Respondent's 20.
22 Bill, is this an e-mail that you received from Mr. Perone?

23 A. Yes.

24 Q. And what did you understand, essentially,
25 Mr. Perone to be conveying to you through these e-mails,

1 Respondent's 19 and 20?

2 A. I had -- that Mr. Perone was letting me know
3 there was unprofessional interaction with Ms. Wayt. But
4 then in the end when he went back to the floor, Ms. Wayt
5 apologized.

6 Q. Thank you, sir. Did you have occasion later
7 that day to share the content of these e-mails,
8 Respondent's 19 and 20 with other member of your
9 management team?

10 A. Yes. I informed Jason McDonald, because I saw
11 Paula was already on the e-mail. So I wanted to let Jason
12 McDonald know, as well.

13 Q. Thank you, sir. Okay, Bill, I'd like to direct
14 your attention to the next day, which I believe would be
15 Friday, the 31st of August, and ask if you had occasion
16 that day to speak with Ms. Kress again about Ms. Wayt?

17 A. Yes. Ms. Kress came back to me. She brought
18 some documentation. Was showing me how the documentation
19 that Ms. Wayt had documented, that there was items
20 missing, as well as the times were different from times
21 with the ED documentation, as far as when the patient
22 arrived to the floor, when the assessment started, and the
23 confusion there.

24 She also informed me what -- reiterated what
25 Ms. Smith said about Ms. Wayt not coming in for rounding.

1 And then she told me she talked to Sam Burgetts, and that
2 Sam remembered that Ms. Wayt did not come in when the
3 patient first got here, but he was too busy to remember
4 any other times.

5 Q. Thank you. Once your conversation with Susan
6 was over, what'd you do?

7 A. I went down and talked to Angie Boyle, the VP
8 over HR.

9 Q. Did you do that that same day, or some later
10 day, when you'd you do that?

11 A. No, I went -- I went down right after I got
12 done talking to Ms. Kress.

13 Q. And please recount your conversation, as you
14 recall it, with Ms. Boyle.

15 A. I went down and informed Ms. Boyle that I was
16 concerned that there was some -- some neglect and
17 falsification on a patient up in our Orthopedic Unit by
18 Ms. Wayt. And I recall -- and explained to her what
19 investigation has been done up to that standpoint.

20 I did also inform her that I did talk to Jason
21 McDonald about the e-mail from John Perone. And, but I
22 told her I wanted to get more investigation and also
23 wanted to get some insight from Paula when she came back
24 the following week.

25 Q. Now, why did you want to get more insight from

1 Paula when she got back the following week?

2 A. With Paula being the regular director for that
3 floor, I wanted to see from Paula through our routine
4 audits if we've had issues with just some poor
5 documentation habits, versus an actual falsification of
6 the chart.

7 Q. And did you have occasion to meet with Paula
8 when she returned from vacation the following week?

9 A. She came back on Tuesday, the 4th. At nine
10 o'clock we had our usual flash meeting and I told her
11 briefly as I was heading off to another meeting to touch
12 basis with Susan Kress to get caught up on one the
13 investigation she did.

14 Q. "She" being?

15 A. Susan Kress.

16 Q. Thank you, sir. And did there come a time when
17 you met again with Paula concerning Ms. Wayt?

18 A. Yes. September 5th, the next day, I met with
19 Paula and Jason, and they went over their investigation of
20 the case of the document review checking the charting, and
21 also talking. And they came up with the same thing, that
22 there was falsification.

23 Q. Okay. Did Paula and Jason have with them and
24 showed you any particular segments from Ms. P's chart?

25 A. Yes. The 24-Hour Assessment, they had the ED

1 chart with them, or the ET (sic) section, and then the

2 nursing --

3 MS. CENDROSKY: I don't know what ET section

4 means.

5 THE WITNESS: ED. I'm sorry.

6 MS. CENDROSKY: ED? Okay.

7 THE WITNESS: It is my accent, I'm sorry. I

8 have trouble --

9 MS. CENDROSKY: And ED is?

10 THE WITNESS: Emergency Department.

11 MS. CENDROSKY: Thank you.

12 THE WITNESS: I'm sorry.

13 MS. LAWHON: Could the witness maybe start

14 over with what the documentation they brought was?

15 THE WITNESS: Sure. There was a 24-Hour

16 Assessment, the Emergency Department, the health baseline,

17 or the health database, health history.

18 DIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Bill, do you see in your pile of exhibits a

21 document that's marked as Charging Party Exhibit 1?

22 A. I -- I do.

23 MR. BRYAN CARMODY: And, do you need a

24 moment, Counsel?

25 MS. CENDROSKY: Yes.

1 MS. LAWHON: Please.

2 MS. CENDROSKY: I'm organized, and I can't
3 find it.

4 MR. BRYAN CARMODY: You can't find it? Here,
5 I have a copy, Sharlee.

6 MS. LAWHON: Here.

7 MS. CENDROSKY: Do you have one? Okay.

8 MS. LAWHON: You know, it's -- I may have not
9 --

10 MS. CENDROSKY: Not made me one.

11 MS. LAWHON: I may have not copied it because
12 I offered it the first day, I think, with this witness.
13 And --

14 MR. BRYAN CARMODY: Okay. Here.

15 MS. CENDROSKY: Do you have a spare?

16 MR. BRYAN CARMODY: You can take mine.

17 MS. CENDROSKY: Oh. Thanks.

18 MR. BRYAN CARMODY: I'll look on with you.

19 MS. LAWHON: Your Honor, do you have CP Ex.
20 1? Because I think I did not distribute it.

21 JUDGE AMCHAN: I actually just gave the
22 witness --

23 MS. LAWHON: Oh, you have it. Okay.

24 JUDGE AMCHAN: I did.

25 MS. LAWHON: Okay.

1 JUDGE AMCHAN: And I gave the witness mine so
2 he didn't have to dig through the pile.

3 MR. BRYAN CARMODY: I don't have particularly
4 extensive questioning about this document.

5 JUDGE AMCHAN: Okay.

6 MR. BRYAN CARMODY: Okay. May I proceed,
7 Your Honor?

8 JUDGE AMCHAN: Yes.

9 DIRECT EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Bill, what do you have in your hand right now?

12 A. I have the nursing documentation from the
13 Emergency Department.

14 Q. Okay. For Ms. P?

15 A. For Ms. P, correct.

16 Q. Okay. And is this one of the documents that
17 Jason and/or Paula presented to you with this -- during
18 this meeting you've testified to?

19 A. Yes, sir.

20 Q. Thank you.

21 JUDGE AMCHAN: That's it?

22 MR. BRYAN CARMODY: Yes, sir. I told you
23 it'd be brief, Your Honor.

24 JUDGE AMCHAN: Okay.

25 DIRECT EXAMINATION (CONT'D)

1 BY MR. BRYAN CARMODY:

2 Q. Bill, if you could grab GC's Exhibit 7, please.

3 And go to, this is a rather voluminous exhibit, so if you
4 could turn to Pages 16 and 17, please. Let me know when
5 you're there.

6 A. Okay.

7 Q. And take your time, sir.

8 A. Okay. Which -- which page, sir?

9 Q. 16 and 17, sir.

10 A. Okay.

11 Q. Do you recognize this document?

12 A. Yes, it's the health history.

13 Q. Is this a document that was shown to you during
14 the course of your meeting with Paula and Jason?

15 A. Yes, sir.

16 Q. And if you stick with that exhibit one more
17 time, please, and I'll refer you to Pages 18 through 25,
18 the same question here, sir.

19 Is this a document that was shown to you during
20 the course of this meeting by Paula or Jason?

21 A. Yes, sir.

22 Q. Thank you. Bill, when this meeting that you
23 had with Paula and Jason came to an end point, what
24 conclusions had you personally reached with respect to the
25 concerns that existed up to that point with respect to

1 Ms. Wayt?

2 A. I -- I felt that there was falsification and
3 neglect of the patient.

4 Q. Okay. With respect to the neglect of the
5 patient, what specific care of Ms. P had Ms. Wayt, in your
6 judgment, neglected?

7 A. The complete head-to-toe assessment.

8 Q. And for you, what was the significance of, or
9 lack of significance of Ms. Wayt neglecting to perform the
10 head-to-toe assessment on Ms. P?

11 A. I think the biggest thing with it is we had an
12 elderly lady that -- with dementia. Had a history of
13 congestive heart failure. Came in for a fractured hip.
14 And that she wasn't -- didn't receive that initial
15 baseline assessment or follow-up assessment.

16 There's a lot of complications that could
17 especially with a patient after a fall. As -- there was
18 identified in the knee there was bruising. We have to
19 worry about compartment syndrome in that leg.

20 That's the third spacing or fluid getting into
21 the tissue in that leg. Unfortunately, I have seen people
22 lose the use of their limbs because of compartment
23 syndrome.

24 This lady also had congestive heart failure.
25 She's bedridden because of a hip fracture. We should be

1 giving pain medicine. Given the pain medicine she's
2 already compromised a little bit. We also have to worry
3 about her developing an ileus in her GI tract.

4 Q. What's an ileus?

5 A. Ileus is a blockage. It ends up becoming a
6 blockage in the GI tract. The pain medicine, itself,
7 slows down the peristalsis or the GI tract. And they have
8 an increased risk of that.

9 Q. Thank you, sir. And for you, what was the
10 significance or lack of significance to your determination
11 that Ms. Wayt had falsified Ms. P's chart?

12 A. The significance was the fact that it was
13 falsified and that we put this patient in --

14 Q. And that you did what?

15 A. And that it put the patient in harm's way.

16 Q. How does the falsification of a record put a
17 patient like Ms. P in harm's way?

18 A. It puts it there because we're documenting
19 something there that the other team members of the
20 healthcare team are reviewing and they're taking it for --
21 that it was done, for word, for face value of it, and
22 they're taking care of the patient based on that value.

23 Q. Thank you, sir. In your experience as the
24 facility chief nursing officer, had you ever encountered a
25 situation like this before, the paring of omission care

1 and the falsification of records?

2 A. No, sir.

3 Q. Based upon the conclusions that you reached as
4 you've testified to them, what decisions did you make, if
5 any, in terms of what ought to be done with respect to
6 Ms. Wayt's employment?

7 A. I felt we should proceed with the termination
8 process.

9 Q. And did you take any steps or ask anybody else
10 to take any steps to effectuate that process?

11 A. I asked Paula and Jason to confer with our HR
12 director, Angie Boyle, and start the termination process.

13 Q. Thank you, sir.

14 MS. LAWHON: Your Honor, is it clear what the
15 date of the meeting he's talking about is?

16 JUDGE AMCHAN: No, I think we --

17 MS. LAWHON: I mean, we've gone into for a
18 long time, but I'm not --

19 JUDGE AMCHAN: The last date I heard was
20 about, you know, he met with Ms. Zinsmeister and Mr.
21 McDonald on September 5th --

22 MS. CENDROSKY: Yes, I'm assuming all this
23 was September 5th.

24 MS. LAWHON: Is this all September 5th?

25 MS. CENDROSKY: That's what the record's

1 going to show.

2 MR. BRYAN CARMODY: Yes. And that's --

3 MS. CENDROSKY: Okay. Good. All right.

4 MS. LAWHON: Okay.

5 DIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Is that consistent?

8 A. Yes, sir.

9 Q. Okay. Did there come a point in time, Bill,
10 when you spoke with Ms. Boyle about Ms. Wayt's employment?

11 A. Yes. We had to get clarification. We always
12 send all our terminations up. And I got clarification
13 that -- from the chief quality officer at corporate agreed
14 with termination.

15 Q. Okay. And did you have a conversation with
16 Ms. Boyle during which she shared that information with
17 you?

18 A. Yes.

19 Q. Okay. And do you recall the date on which that
20 conversation took place?

21 A. I believe that took care the following Monday,
22 which I believe was September 11th.

23 Q. Well, whatever day of the week it was, you
24 recall it was September 11th?

25 A. September 11th.

1 MS. LAWHON: It's actually a Tuesday.

2 Q. What happened next, Bill?

3 A. We got agreement to go ahead, and so Paula and

4 Jason was going to call Ms. Wayt in.

5 Q. Call Ms. Wayt in to do what?

6 A. To do the termination.

7 Q. Okay. Did that take place?

8 A. I'm not sure if the call made (sic) but, no, we

9 -- what ended up happening was, is we, after discussion,
10 we decided to go ahead and do an investigatory suspension,
11 instead.

12 Q. Instead of what?

13 A. Instead of just going ahead with the
14 termination.

15 Q. Okay. And whose decision was that?

16 A. Probably it came from Ms. Boyle.

17 Q. To your knowledge, was there any type of
18 investigatory interview which took place between Ms. Wayt
19 and managers representing the hospital?

20 A. Yes. I believe on the 13th Jason, Paula, and
21 Ms. Boyle met with Ms. Wayt.

22 Q. And did either Ms. Boyle, Angie, Jason, or
23 Paula share with you what occurred during that meeting?

24 A. Excuse me. Jason and Paula told me that during
25 the conversation the one thing that stuck out to them was

1 that Ms. Wayt made the comment if it was documented, it
2 must be true, and that really threw them off.

3 And then at the end, what they told me is
4 Ms. Boyle offered Ms. Wayt to be able to write and
5 document and give a rebuttal, or her comment side of it at
6 the -- the end of the meeting, and she could bring it back
7 in.

8 Q. Okay. And, Bill, to your knowledge, did there
9 come a point in time when any rebuttal was submitted by or
10 on Ms. Wayt's behalf?

11 A. Yes. There was a letter sent in that was
12 written, I believe, by Ms. Mahon on behalf of Ms. Wayt.

13 Q. Okay. Okay, Bill, I would ask you to retrieve
14 from your stockpile of exhibits Respondent's Exhibit 9 --
15 8, rather.

16 A. Is that R8?

17 Q. Yes, sir, R8.

18 A. I have it.

19 Q. Do you have that, sir?

20 A. Yes, sir.

21 Q. And do you recognize this document?

22 MS. LAWHON: Excuse me, Counsel, if you'd
23 give me a second.

24 MR. BRYAN CARMODY: Sure.

25 MS. LAWHON: I'm ready. Thank you.

1 DIRECT EXAMINATION (CONT'D)

2 BY MR. BRYAN CARMODY:

3 Q. You testified you -- did you recognize this
4 document, Bill?

5 A. Yes.

6 Q. Did you ever receive in your own hands a copy
7 of this document?

8 A. I read the copy from Ms. Boyle, or -- yeah,
9 Ms. Boyle.

10 Q. She gave it to you?

11 A. Yes.

12 Q. Did you ever discuss this letter, Respondent's
13 Exhibit 8, with either Paula or Jason?

14 A. Yes.

15 Q. And what do you recall of that conversation you
16 had with Paula and Jason?

17 MS. LAWHON: Objection. Could we at least
18 know the date of it?

19 MR. BRYAN CARMODY: I was assuming that that
20 would be a part of the answer, let's wait and see. If
21 it's not, I'll get it for you.

22 MS. LAWHON: I don't think it's responsive to
23 the question. What does he recall doesn't mean when was
24 it.

25 MR. BRYAN CARMODY: Bill, do you --

1 MS. LAWHON: Objection. Foundation.

2 DIRECT EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. Bill, do you recall the approximate date on
5 which you discussed with Paula and Jason this letter dated
6 September 19th?

7 A. I believe it was the same day or the next day
8 when the letter came.

9 Q. Okay. What do you remember discussing with
10 Paula and Jason?

11 A. I remember discussing with them that Ms. Wayt
12 made a comment in the letter, or it was said in the letter
13 that she did the assessment while the sitter was out of
14 the room.

15 Q. Okay. And did Paula or Jason inform you of any
16 investigation they had conducted in response to Ms.
17 Mahon's letter of September 19th?

18 A. Yes, I -- I talked to them again, and they both
19 went back and re-interviewed Rhonda and Jonalee. And the
20 information that came back was neither one of them were
21 out of the room both at the same time.

22 Q. Thank you. During the course of this same
23 discussion, did Paula or Jason share with you any
24 determination they had made with respect to Ms. Wayt's
25 employment?

1 A. They -- they wanted to continue with the
2 termination process.

3 Q. Did you express any opinion during that meeting
4 on the same subject?

5 A. I agreed with them.

6 Q. Okay. And why did you agree with that, sir?

7 A. Because the same investigation was still there.
8 Even though we had received a letter, we still went back
9 to the two witnesses and talked to them.

10 Jonalee did relieve Rhonda, but at the same time
11 not both of them were out of the room at the same time.
12 There was always somebody in there, and their stories did
13 not change.

14 Q. Thank you, sir. Bill, at some point in time
15 did you gain awareness as to whether any type of
16 discipline had been imposed against Ms. Wayt on account of
17 the exchange that she had with Mr. Perone, as was
18 referenced by Mr. Perone in the e-mails you had referenced
19 before?

20 A. Yes. During one of my conversations with Jason
21 and Paula, it was -- it was brought up that they did a
22 written warning.

23 Q. Okay. And, Bill, with respect to your decision
24 that Ms. Wayt's employment should be terminated what role,
25 if any, did the written warning impose on Ms. Wayt

1 vis-à-vis the Perone incident play?

2 A. None.

3 Q. Bill, in connection with the -- do you recall

4 when Ms. Wayt's employment was terminated, approximately?

5 A. I believe it was around the 26th.

6 Q. Of what month?

7 A. September.

8 Q. Thanks. And in connection with the -- well, at

9 any point in time did you report Ms. Wayt to the Ohio

10 Board of Nursing?

11 A. Yes, after the termination.

12 Q. Okay. Why did you do that?

13 A. She broke the Ohio Nursing Practice Act of the

14 Ohio law, falsifying documentation.

15 Q. Okay. Bill, have you reported -- prior to

16 reporting Ms. Wayt, had you reported any other nurses

17 employed by Affinity to the Ohio Board of Nursing?

18 A. Yes. And RN and an LPN.

19 Q. Okay. And the RN's name?

20 A. Justine Sackman.

21 (Whereupon, Respondent's Exhibit Number 24

22 was marked for identification.)

23 Q. Bill, I'm showing you a document now marked as

24 Respondent's Exhibit 24. And I'd ask for you to look at

25 this document over -- look it over, please, and let me

1 know when you're through.

2 A. Okay.

3 Q. Is this a document that you recognize?

4 A. Yes.

5 Q. What is this document?

6 A. This is the document I used to report

7 Ms. Sackman to the Board of Nursing.

8 Q. And why did you report Ms. Sackman to the Board
9 of Nursing?

10 A. She violated the law with the HIPAA violation.

11 Q. Thank you, sir. Bill, I'd like to switch gears
12 and --

13 JUDGE AMCHAN: Don't you need to move for
14 this --

15 MS. CENDROSKY: Are you admitting this?

16 MR. BRYAN CARMODY: Yes. Thank you. I offer
17 that into evidence.

18 JUDGE AMCHAN: R24?

19 MS. CENDROSKY: Can I voir dire?

20 JUDGE AMCHAN: Yes.

21 MS. CENDROSKY: Thank you.

22 VOIR DIRE EXAMINATION

23 BY MS. CENDROSKY:

24 Q. With respect to R24, you put this packet
25 together?

1 A. Yes, ma'am.

2 Q. Okay. Are -- is this all the documents that
3 was sent to the State Board of Nursing?

4 A. This -- this is all that I have sent to them,
5 yes.

6 Q. So just these one, two, three, four, five
7 pages, that's it?

8 A. Yes.

9 MS. CENDROSKY: Okay. That's all the
10 questions I have. I think Ms. Lawhon might have --

11 MS. LAWHON: I have one voir dire question.

12 THE WITNESS: Yes.

13 VOIR DIRE EXAMINATION

14 BY MS. LAWHON:

15 Q. Mr. Osterman, the date that appears on the
16 first page next to complainant information on the left,
17 7/28/20 -- 11, meaning 2011 --

18 A. Yes.

19 Q. -- that's the date you sent this form in?

20 A. Yes, ma'am.

21 Q. And the attached termination notice reflects it
22 was prepared on July 13th, 2011; is that correct?

23 A. Yes, ma'am.

24 Q. That is the date that this nurse was
25 terminated?

1 A. Yes, ma'am.

2 MS. LAWHON: I have no further voir dire. No
3 objection.

4 JUDGE AMCHAN: R24 is received.

5 (Whereupon, Respondent's Exhibit Number 24
6 was received into evidence.)

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. So now I'd like to switch gears and ask you,
10 Bill, are you familiar with ADO's?

11 A. Yes, sir.

12 Q. Are -- what's an ADO? What's it stand for, if
13 you know?

14 A. Assignment Despite Objection, I believe it is.

15 Q. Okay. If you refer to GC's Exhibit 17.

16 A. I have it, sir. Thank you.

17 MS. LAWHON: GC17, you said?

18 MR. BRYAN CARMODY: 17.

19 MR. BRYAN CARMODY: Thanks.

20 MS. LAWHON: I'm ready, Counsel. Thank you.

21 DIRECT EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. Okay. Bill, do you recognize GC's Exhibit 17?

24 A. Yes.

25 Q. Okay. What is this?

1 A. This is a union form.

2 Q. Do you see the title here at the top?

3 A. Yes.

4 Q. What does that say?

5 A. Assignment Despite Objection.

6 Q. Thank you. Bill, are these forms being filed

7 by any Affinity nurses with Affinity?

8 A. They are filling it out, some of them are.

9 Q. How many, approximately, the number of ADO's
10 have been submitted to the hospital, so far as you're
11 aware, an approximate number?

12 A. I'm not sure an approximate number. We find
13 them under the doors in a couple departments.

14 Q. Okay. You say you find them under the doors.
15 What doors?

16 A. Department directors --

17 Q. Okay.

18 A. -- managers.

19 Q. And, Bill, in connection with any of these
20 ADO's being filed, however there might be precisely, has
21 any nurse come to you and personally communicated the
22 objection that they have --

23 MS. CENDROSKY: Objection, Your Honor.

24 MR. BRYAN CARMODY: I would like to finish my
25 question, please, Counsel.

1 Q. Has -- let me start again. In connection with
2 any of the ADO's that have been filed at the hospital slid
3 under a manager's door, has any nurse come to you
4 personally and complained to you about whatever it is
5 they're complaining about in the form?

6 MS. LAWHON: Objection.

7 MS. CENDROSKY: Now can I object?

8 MS. LAWHON: Oh, sorry. Go ahead. You were
9 first.

10 MS. CENDROSKY: I just don't see the
11 relevance.

12 MS. LAWHON: This is the chain of command
13 argument of protected concerted activity.

14 JUDGE AMCHAN: Well -- yes, well, I'll let
15 him answer.

16 MS. CENDROSKY: Okay.

17 JUDGE AMCHAN: Your position is it doesn't
18 matter.

19 MS. LAWHON: Yes. Could I just register a
20 standing objection --

21 JUDGE AMCHAN: Right.

22 MS. LAWHON: -- by the Charging Party this
23 line of inquiry?

24 JUDGE AMCHAN: Right. You don't think it's
25 relevant. They do think it's relevant.

1 MS. CENDROSKY: Perfect.

2 JUDGE AMCHAN: And the answer is?

3 MR. BRYAN CARMODY: If it could only be that
4 simple, please.

5 THE WITNESS: Not at the same time of the
6 form, no.

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Okay. Thank you. Bill, you just heard
10 reference made by the Charging Party's counsel to chain of
11 command.

12 A. Yes.

13 Q. Is that a term with which you have familiarity?

14 A. Yes, sir.

15 Q. Okay. And what is the chain of command --

16 JUDGE AMCHAN: We kind of went over this, I
17 --

18 MS. LAWHON: This is done.

19 JUDGE AMCHAN: -- I think.

20 MR. BRYAN CARMODY: Your Honor, we did go
21 over it. But we went over it, as I remember -- no, I take
22 that back.

23 I think it's important, Judge, I know it's
24 important for the purposes of our defense on this issue,
25 which is very important to this hospital that the chief

1 nursing officer who is the most senior clinical person at
2 that hospital address, explain the process of the chain of
3 command, address it and explain the importance of a chain
4 of command.

5 JUDGE AMCHAN: I thought we went -- we did.

6 MS. LAWHON: We did. Sue Kress talked about
7 it.

8 MR. BRYAN CARMODY: And Sue Kress is not the
9 chief nursing officer, Judge.

10 JUDGE AMCHAN: But I assume he'd say pretty
11 much the same thing.

12 MS. LAWHON: Yes.

13 MR. BRYAN CARMODY: Well, Judge, I most
14 respectfully -- for us, that assumption, for the sake of
15 the record, is something that I feel obliged to pursue
16 this line of questioning.

17 JUDGE AMCHAN: Would you allow him to ask a
18 leading question on this, since you said your position
19 doesn't matter?

20 MS. LAWHON: I was thinking an offer of proof
21 would be appropriate. We don't need to take up this time
22 now. We've already had one witness. Why is he making --

23 JUDGE AMCHAN: Well, apart from an offer of
24 proof -- rather than an offer of proof, what if he kind of
25 summarized the chain of command --

1 MR. BRYAN CARMODY: I can -- I can ask --

2 JUDGE AMCHAN: -- and ask him and you waive
3 your objection to leading?

4 MS. CENDROSKY: Okay.

5 MS. LAWHON: I'll see if I -- I probably can
6 do it. I'd like to hear the question first.

7 JUDGE AMCHAN: All right.

8 MR. BRYAN CARMODY: Let me try a middle
9 ground, Judge.

10 DIRECT EXAMINATION (CONT'D)

11 BY MR. BRYAN CARMODY:

12 Q. Bill, how does the chain of command integrate
13 with your overall responsibility of the administration of
14 safe patient care?

15 A. It is -- it is one of the -- the processes of
16 the key element in our integrated processes that we have.
17 So the chain of command, any staff member, they see an
18 issue, have a concern, or anything like that, they can
19 talk up to the director, charge nurse, and just falls up,
20 to a point, to me.

21 As well as I have daily twice-a-day meetings with
22 the director. So that way if anything discussed during
23 interactions with their staff, or anything like that, we
24 can discuss there.

25 So we talk about staffing, patient safety, any

1 quality of cares that we might -- issues that we might be
2 concerned about, any equipment, any issues like that we'd
3 discuss there.

4 As well as daily at eight thirty in the morning
5 we also have a safety audit where all the leadership in
6 the hospital get together and discuss items like this.

7 JUDGE AMCHAN: Okay. What I thought this was
8 about is that you expect a staff nurse, if she's got a
9 problem, to go to the --

10 THE WITNESS: Go to the charge nurse.

11 JUDGE AMCHAN: -- charge nurse first.

12 THE WITNESS: Yes. They should go to the --

13 JUDGE AMCHAN: And you --

14 THE WITNESS: -- charge nurse. And if the
15 charge nurse doesn't have the answer or can't help them,
16 then they go on to the director, and all the way up to the
17 CNO.

18 DIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Bill, does the chain of command give a nurse
21 who perceives or sees a problem instantaneous access to
22 this problem solving mechanism that you've just described?

23 A. If --

24 MS. LAWHON: Objection. Vague and ambiguous.

25 JUDGE AMCHAN: Well --

1 MS. LAWHON: I don't know what instantaneous
2 access means.

3 MR. BRYAN CARMODY: I think the witness
4 knows.

5 JUDGE AMCHAN: Well, I mean, I --

6 MR. BRYAN CARMODY: He's about to testify.

7 JUDGE AMCHAN: -- I think what you're getting
8 at is if you want a problem solved, you go to the charge
9 nurse first. That's your --

10 MS. LAWHON: Right.

11 THE WITNESS: Correct.

12 JUDGE AMCHAN: -- what you would understand
13 the purpose of the system.

14 MR. BRYAN CARMODY: It's --

15 MS. LAWHON: Assuming you could find --

16 MR. BRYAN CARMODY: -- it's a little bit more
17 specific than that, Judge. It's not a question simply of
18 who you go, but how quickly you can get there.

19 JUDGE AMCHAN: Right. You're going to get us
20 quicker -- in his opinion and the --

21 MR. BRYAN CARMODY: Real time resolution.

22 JUDGE AMCHAN: -- the purpose -- you're most
23 likely going to get the problem resolved by going to the
24 charge nurse first, rather than knocking on Mr. Osterman's
25 door, without going through the chain of command. That's

1 your point.

2 MR. BRYAN CARMODY: That's part of it, Judge,

3 yes.

4 JUDGE AMCHAN: Well, do you agree with that?

5 THE WITNESS: Yes, sir.

6 JUDGE AMCHAN: All right. What's your own

7 question? I want to speed this along.

8 MR. BRYAN CARMODY: I understand.

9 JUDGE AMCHAN: I'm going it on the fast
10 forward.

11 MR. BRYAN CARMODY: I understand.

12 DIRECT EXAMINATION (CONT'D)

13 BY MR. BRYAN CARMODY:

14 Q. Bill, are you familiar with the terms, or the
15 letters, I guess (E-R-S)?

16 A. Yes. Event Reporting System.

17 Q. Does Affinity have an Event Reporting System?

18 A. Yes, we do.

19 Q. And can you please --

20 MS. LAWHON: Your Honor, we object to this
21 entire line of questioning, as well. We --

22 MR. BRYAN CARMODY: You have a standing --

23 MS. LAWHON: Excuse me, Counsel. ERS is not
24 the same thing as chain of command.

25 MR. BRYAN CARMODY: Well, let's have the

1 witness --

2 MS. LAWHON: I know that. And so --

3 MR. BRYAN CARMODY: We're not a witness in
4 this proceeding, Ms. Lawhon.

5 JUDGE AMCHAN: Well, it's on the record.
6 They think it's relevant. Go ahead.

7 MS. LAWHON: I understand. But I want a
8 standing objection to this line of inquiry, as well, it's
9 irrelevant.

10 JUDGE AMCHAN: You've got it.

11 MS. LAWHON: Thank you.

12 DIRECT EXAMINATION (CONT'D)

13 BY MR. BRYAN CARMODY:

14 Q. The Event Reporting System, before you were
15 interrupted, you were about to explain it.

16 A. The Event Reporting System is a process that we
17 have forms that we can fill out and then we enter in data
18 whether we are concerned with an incident that happened,
19 that we possibly had a minor miss, near miss, items that,
20 from a patient safety standpoint, that we put it -- when
21 we put it in the computerized system that we do analysis
22 off of.

23 Q. Thank you, sir. Bill, how, if at all, do you
24 use the Event Reporting System that you've just described
25 for purposes of analysis? Analysis of patient safety.

1 A. Analysis of patient safety. What we do is
2 based on the item we look at what -- if there was an
3 incident that happened, we look to see if it was a process
4 problem, if there was a staffing problem, if there was
5 equipment problems.

6 So a group of us get together and look at it,
7 including staff members.

8 Q. Bill, are you familiar with the term "root
9 cause analysis"?

10 A. Yes.

11 Q. Okay. What is that, essentially?

12 MS. LAWHON: And, Your Honor, we have a
13 standing line --

14 JUDGE AMCHAN: Right.

15 MS. LAWHON: -- standing objection to all of
16 this.

17 DIRECT EXAMINATION (CONT'D)

18 BY MR. BRYAN CARMODY:

19 Q. Essentially, what is it?

20 A. Root cause analysis is actually taking the item
21 and breaking it down, looking at all the whys, trying to
22 really find out what the cause of an incident, or action
23 --

24 Q. And you -- and, I'm sorry to interrupt, sir.

25 You just used the word "item." By "item," what do you

1 mean?

2 A. We just go down and why, you know, why did this
3 happen? And once we figure this out we go to the next
4 step, why did this happen?

5 So we look at environmental factors, staffing
6 factors, patient factors.

7 JUDGE AMCHAN: I am kind of puzzled about the
8 relevance of the line of inquiry.

9 MS. CENDROSKY: The root cause? Yes.

10 JUDGE AMCHAN: I mean, I thought the whole
11 issue here was whether submission of ADO's was protected.

12 MR. BRYAN CARMODY: I'm sorry, Your Honor?

13 JUDGE AMCHAN: I thought the whole issue here
14 was whether or not ADO's are protected, the submission of
15 ADO's was protected.

16 MR. BRYAN CARMODY: That is the issue, Judge.

17 JUDGE AMCHAN: So --

18 MS. LAWHON: So what --

19 JUDGE AMCHAN: -- so what is the relevance of
20 this? That there's alternative means of bringing matters
21 to management's attention?

22 MR. BRYAN CARMODY: No. There is only one
23 mechanism, one means by which these concerns can be --
24 should be brought to management's attention, and that is
25 the different manifestations of their Event Reporting

1 System, the usage of the chain of command, the root cause
2 that counsel --

3 JUDGE AMCHAN: Yes. And I thought we
4 actually -- that point was made yesterday. Your point is,
5 is that they have a chain of command.

6 And if they choose -- your position is if they
7 choose a different means of complaining about working
8 conditions or bringing something to management's
9 attention, it's not protected by the Act.

10 MR. BRYAN CARMODY: It's -- I don't think
11 it's quite that simple. There's going to be, I expect,
12 testimony through this witness, as well as other
13 witnesses, that the usage of these ADO forms is actually
14 injurious to safe patient care.

15 And that, our argument will be to you, Judge,
16 ought to be taken into account, in terms of whether
17 assessing whether this conduct, even though it might be
18 concerted, should not be considered protected.

19 MS. LAWHON: Well, Your Honor, strike is
20 injurious and it's protected. Injury to an Employer is
21 not the same as lack of protection. And, besides which,
22 it's not -- root cause analysis is not about injury to the
23 Employer.

24 I mean, this is -- we're way far afield, and it's
25 Thursday afternoon at four o'clock. This has no

1 relevance.

2 MS. CENDROSKY: And, I'm --

3 MR. BRYAN CARMODY: Judge, it --

4 MS. CENDROSKY: -- my concern is he has
5 several witnesses he wants to put onto this.

6 JUDGE AMCHAN: Well, I'm not as much
7 concerned about time, if this was relevant. I don't see
8 the relevance.

9 I mean, there's a basic legal argument which is
10 does -- do employees have to choose the Employer's means
11 of communicating concerns to the Employer?

12 MR. BRYAN CARMODY: That's one side of a
13 two-sided coin, Judge. The other side is Ms. Lawhon makes
14 reference to strikes in the fact that they can be
15 injurious, and I wouldn't disagree with that.

16 But there is current Board law, and it goes back
17 many decades, that strikes -- you can't, for example, I --
18 the case is escaping me.

19 But people who work at a machine can't stand up
20 and walk out and watch all --

21 JUDGE AMCHAN: Sure. Sit-down strikes aren't
22 allowed.

23 MS. CENDROSKY: Yes. General Motors is an
24 example.

25 MR. BRYAN CARMODY: Exactly. That's -- I'm

1 thinking of another case. In patient care, we're not
2 dealing with witches, we're dealing with human beings.

3 JUDGE AMCHAN: Uh-huh.

4 MR. BRYAN CARMODY: And if there is going to
5 be a risk of patient harm, and in some cases the actuality
6 of patient injury, that's a problem.

7 And that's something that you ought -- that, yes,
8 I would request that you take in consideration when
9 deciding this issue.

10 This is a seminal case. This is an undecided
11 issue of law. There's no Board case that decides this
12 issue, are these ADO's, which is used by this labor
13 organization all over this country, do they constitute
14 protected concerted activity?

15 The -- this case will need, respectfully, a
16 complete and deep record on this issue.

17 MS. LAWHON: Your Honor, this -- if counsel
18 wants to put in the reason why an ADO is not protected,
19 let him try.

20 But what he's asking about now, root cause
21 analysis, is nothing to do with harm to a patient from
22 filling out an ADO.

23 I mean, if they have evidence that one of our
24 supporters is standing at the nurses' station while a
25 patient expires because the nurse is filling out one of

1 these forms, let's see it.

2 JUDGE AMCHAN: Well, their position is a
3 little bit different than that. That is, that the -- if
4 there's a problem that affects a patient, it won't be
5 addressed as quickly if they bring it to the attention
6 through an ADO, as opposed to their system.

7 MS. LAWHON: Especially since they shred
8 them.

9 MS. CENDROSKY: Well, you know what --

10 MR. BRYAN CARMODY: Your Honor, if the
11 objection currently is a -- this root cause line of
12 questioning, I can move on, Judge, into something else to
13 speed this up.

14 And I can move to the next line -- subject of my
15 inquiry. But I'm expecting --

16 JUDGE AMCHAN: Yes. I don't want -- I'm
17 going to spend a little -- not too much time, because I
18 really do think the --

19 MS. CENDROSKY: Your Honor --

20 JUDGE AMCHAN: -- the issue is strictly a
21 legal one. I mean, do they have to choose your way of
22 bringing concerns to the attention of their --

23 MR. BRYAN CARMODY: It is --

24 JUDGE AMCHAN: -- of management.

25 MR. BRYAN CARMODY: -- it is --

1 MS. CENDROSKY: I've asked to speak three
2 times now.

3 MR. BRYAN CARMODY: You're right. I
4 apologize.

5 MS. CENDROSKY: Thank you. I think it's -- I
6 made this clear the other day, and I'm just going to
7 restate now since we're bringing up this issue again, the
8 GC's Complaint clearly says union activity and/or
9 protected concerted activity.

10 Therefore, the determination as to whether ADO's
11 constitute protective concerted activity is not
12 dispositive as to whether it's union activity, and it
13 doesn't even need to be reached.

14 JUDGE AMCHAN: Well, yes, but their point is
15 it's a defense about whether -- regardless of how you
16 characterize it, that it's -- they're saying it's not
17 protected by any part of Section 7 if they --

18 MR. BRYAN CARMODY: That would be it.

19 JUDGE AMCHAN: -- if they don't --

20 MR. BRYAN CARMODY: Distinction out of the
21 difference for us, Judge.

22 JUDGE AMCHAN: Right? You're saying it's not
23 protected. Their position is it's not protected by
24 Section 7, period, if employees --

25 MS. LAWHON: I guess -- oh, I'm sorry.

1 JUDGE AMCHAN: -- choose the union's way of
2 bringing things to the attention of management, as opposed
3 to the chain of command, or what the Employer has
4 mandated.

5 MS. LAWHON: I mean, if you want to talk
6 about absence of precedent, there are no cases saying
7 that employees lose their Section 7 rights because they
8 don't follow the Employer's route to complain, none.

9 JUDGE AMCHAN: I'm not aware of any.

10 MS. LAWHON: It's not part of Section 7,
11 observe the Employer's chain of command. Never has been.
12 Never will be.

13 JUDGE AMCHAN: I don't think you have to -- I
14 mean, he's already talked about it. I mean, not only he,
15 but Ms. Kress, about the chain of command. And I think
16 it's -- your position's pretty clear.

17 Things will get addressed quicker if they do it
18 the employer's way. The question is whether Section --
19 whether they lose Section 7 protection if they decide to do
20 it differently.

21 MR. BRYAN CARMODY: Your Honor, I'm ready to
22 proceed with the next area of questioning --

23 JUDGE AMCHAN: Okay.

24 MR. BRYAN CARMODY: -- if you'd like me to
25 move.

1 JUDGE AMCHAN: Yes.

2 MR. BRYAN CARMODY: Thank you.

3 DIRECT EXAMINATION (CONT'D)

4 BY MR. BRYAN CARMODY:

5 Q. Okay, Mr. -- Bill, if you can go back to
6 General Counsel's Exhibit 17. Do you have that exhibit,
7 sir?

8 A. Yes.

9 Q. Okay. Is this a document that the hospital
10 created?

11 A. No.

12 Q. Okay. Is it a document that you have been
13 trained on how to use?

14 A. No.

15 Q. Okay. To your knowledge, is it a document that
16 any of your clinical managers have been trained to use?

17 A. No.

18 Q. And, Bill, in your judgment, is there any harm,
19 as a chief nursing officer of this hospital, is there any
20 harm with any of your nurses completing and submitting
21 these forms?

22 A. I feel at the time -- if there's a situation
23 going on at the time, if they're filling this out and not
24 using the chain of command, then there is a risk to a
25 patient's safety. If there's something going on and it

1 gets to that point, I do feel there's a risk there.

2 Q. Okay. And why would there be a risk? Can you
3 just elaborate on that slightly?

4 A. Well, as we were talking, and I know the Judge
5 caught onto this, is we get things done quicker with the
6 chain of command.

7 So if there's a risk going on and they're using
8 the chain of command and getting us involved, and we're
9 going to de-escalate it and then review it after the fact,
10 that's great.

11 But I mentioned earlier, sometimes we don't even
12 get the report through the chain of command, but we end up
13 finding a copy of an ADO laying around.

14 Q. Thank you, sir.

15 JUDGE AMCHAN: Okay. But you'd have the same
16 response if three nurses got together and wrote on a piece
17 of lined paper and slipped it under your door, you know,
18 we were overstaffed last night, it compromised the
19 patients' safety, that's the same problem. You'd expect
20 them to go through the chain of command, as opposed to
21 slipping of --

22 THE WITNESS: Correct.

23 JUDGE AMCHAN: -- a piece of paper signed by
24 three employees under your door.

25 THE WITNESS: Yes, sir.

1 JUDGE AMCHAN: It's really not the ADO, it's
2 not going through the --

3 THE WITNESS: It's the process.

4 JUDGE AMCHAN: -- your procedure.

5 MR. BRYAN CARMODY: Just one minute, Your
6 Honor?

7 JUDGE AMCHAN: Sure. Go off the record.

8 (Off the record.)

9 JUDGE AMCHAN: Back on the record.

10 MR. BRYAN CARMODY: I'm sorry, Judge.

11 DIRECT EXAMINATION (CONT'D)

12 BY MR. BRYAN CARMODY:

13 Q. Bill, how does the chain of command, your three
14 daily meetings, and the ERS tie together to allow you to
15 direct, monitor, and evaluate patient safety?

16 A. It's just an integrated system we have put
17 together so that way we can also act on a situation
18 timely, we can evaluate it, look through it, process it,
19 and be able to educate and reevaluate on that process.
20 It's a way for us to ensure patient safety in the
21 hospital.

22 MR. BRYAN CARMODY: Thank you, Your Honor. I
23 have nothing further.

24 MS. CENDROSKY: I'm going to need some time.
25 I got documents this morning, and I don't know if he --

1 I'm going to need him to respond to any of them, so --

2 JUDGE AMCHAN: I don't --

3 MS. CENDROSKY: -- I mean, I guess we could

4 take it as, you know, I won't look at those documents now.

5 I'll just take ten minutes and see what I need on cross

6 and then have you come back tomorrow. I mean, I don't

7 know. We may need that anyway. I honestly don't know.

8 MR. BRYAN CARMODY: Are we off the record?

9 JUDGE AMCHAN: No, we're still on.

10 MS. CENDROSKY: Oh, sorry. Let's go off the

11 record.

12 MR. BRYAN CARMODY: Can we go off the record,

13 please?

14 JUDGE AMCHAN: Yes. Off the record.

15 (Off the record.)

16 JUDGE AMCHAN: Back on the record.

17 MS. LAWHON: Oh. Do we have any statements

18 by Mr. Osterman?

19 MS. CENDROSKY: I do.

20 MS. LAWHON: All right. Thank you.

21 JUDGE AMCHAN: Off the record.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 MS. CENDROSKY: We have a couple of questions

25 for you.

1 CROSS-EXAMINATION

2 BY MS. CENDROSKY:

3 Q. You testified that the head-to-toe assessment,
4 that it would be best if it were performed in the morning,
5 and you explained the situations as to why its necessity
6 entails that.

7 Do you recall if there's a policy with respect to
8 the head-to-toe assessment indicating what time it should
9 be performed?

10 A. They have to do it -- there's no exact time.
11 It says by the end of their shift.

12 Q. By the end of their shift.

13 A. Correct, ma'am.

14 MS. CENDROSKY: That's all I had. Boy, that
15 was quick.

16 CROSS-EXAMINATION

17 BY MS. LAWHON:

18 Q. And, Mr. Osterman.

19 A. Yes, ma'am.

20 Q. Following right up -- oh, I'm Jane Lawhon, as
21 you -- I already questioned you.

22 You referred to a time frame within the policy,
23 and that's the policy -- and that's the time frame you
24 just described to --

25 A. They have to do one full assessment in their

1 shift.

2 Q. Before the end of their shift.

3 A. Right.

4 Q. Correct. Okay. And I know it's tedious

5 because lawyers questions are totally predictable, but if

6 you could try to wait until I'm finished.

7 A. Oh, I'm sorry.

8 Q. It's okay, but the court reporter will --

9 especially late in the day, it's easier.

10 Now, the patient in question was in the immediate

11 presence of a registered nurse the entire day shift on

12 August 28th; isn't that correct?

13 A. Yes, ma'am.

14 Q. And with respect to the assessment answered --

15 entered by Ms. Wayt in the course of the day shift, there

16 was no other team member who administered care to this

17 patient other than Ms. Wayt; isn't that correct?

18 A. That -- repeat your question so I can see where

19 you're --

20 Q. Sure. You were asked about what harm could

21 come --

22 A. Correct.

23 Q. -- from an assessment that's written. And you

24 said that other team members would provide care based on

25 what was written in that assessment.

1 In fact, on August 28th, the only, quote, "team
2 member" who provided care to this patient was Ms. Wayt,
3 and Rhonda Smith, and a patient care tech; isn't that
4 correct?

5 A. During that shift, correct.

6 Q. Yes. And the night shift nurse did her own
7 assessment; isn't that correct?

8 A. Correct.

9 Q. In fact, there was no harm to this patient;
10 isn't that correct, Mr. Osterman?

11 A. Luckily, the patient was not harmed, correct.

12 Q. Now, you referred to after receipt of the
13 letter from Michelle Mahon that there was a re-interview
14 of Rhonda Smith. Do you remember saying that?

15 A. Jason, yes, correct.

16 Q. Okay. In fact, Jonalee Lesjak was not
17 interviewed by either Jason or Paula until after September
18 9th, or until the receipt of Michelle Mahon's letter;
19 isn't that correct?

20 A. I don't remember.

21 Q. Okay.

22 A. I know they talked to her.

23 Q. You're saying you don't remember if it was on
24 or after September 19th?

25 A. Correct.

1 Q. Okay. Do you remember giving a sworn affidavit
2 to the NLRB about the events in this case after the charge
3 was filed --

4 A. Yes, ma'am.

5 Q. -- by the Union? Right. And would it help you
6 to review your affidavit right now to determine when it
7 was that Jason -- Jason McDonald and Paula Zinsmeister
8 interviewed Jonalee Lesjak?

9 A. Yes, ma'am.

10 MS. LAWHON: Okay. The witness doesn't have
11 the document in front of him. I will show him this
12 affidavit, which I have been provided, the Jencks
13 statement.

14 MR. BRYAN CARMODY: What page, 7?

15 MS. LAWHON: 7.

16 MR. BRYAN CARMODY: All right.

17 MS. LAWHON: Paragraph 16.

18 MR. BRYAN CARMODY: Yes.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. I direct your attention, Mr. Osterman, to Page
22 7, Paragraph 16. I'd ask you to read that to yourself and
23 see if it refreshes your recollection.

24 A. Okay.

25 Q. Does that refresh your recollection that it was

1 --

2 A. September 19th, according to my affidavit,
3 ma'am.

4 Q. Yes. And when I say "it was," I mean that that
5 was the date that Ms. Lesjak was first interviewed by
6 Jason McDonald and Paula Zinsmeister; isn't that correct?

7 A. Yes, ma'am.

8 Q. So when you referred in your testimony to
9 re-interviewing Jonalee Lesjak, that was not correct.

10 A. Correct.

11 Q. Because as of September 19th, when you received
12 the letter, when you first read the letter, she'd never
13 been interviewed; isn't that right?

14 A. Correct.

15 Q. You were aware that there had been a lunch
16 relief sitter for the patient on August 28th; isn't that
17 correct?

18 A. Yes, through the investigation.

19 Q. Well, you would know that anyway, wouldn't you,
20 Mr. Osterman? A nurse is not going to be the sitter for a
21 patient for eight or nine hours continuously with no lunch
22 break; isn't that normal --

23 A. That's correct.

24 Q. -- hospital procedure?

25 A. Correct.

1 Q. So, and it was certainly easily ascertainable
2 who the lunch relief was for Rhonda Smith on August 28th
3 as the sitter; isn't that correct?

4 A. Correct.

5 Q. Now, this Event Reporting Form was never filled
6 out by Rhonda Smith related to the events of August 28th;
7 isn't that correct?

8 A. Correct.

9 MR. BRYAN CARMODY: You said the Even
10 Reporting Form?

11 THE WITNESS: Event Reporting.

12 MS. LAWHON: Yes, I did. The witness
13 testified about Event Reporting Forms in the ERS system
14 where employees fill them out when they're concerned with
15 an event that happened.

16 I'm just curious if Rhonda Smith ever filled one
17 out, and the witness answered she did not.

18 CROSS-EXAMINATION (CONT'D)

19 BY MS. LAWHON:

20 Q. Now, the ADO, General Counsel's Exhibit 17, is
21 designed to be presented to the first line supervisor of
22 the staff.

23 MR. BRYAN CARMODY: Objection.

24 Q. You're aware of that, are you not, Mr.
25 Osterman? Have you ever looked at this form before today?

1 A. Yes.

2 Q. Okay. Are you aware of the instruction as to
3 whom it's supposed to be presented?

4 MR. BRYAN CARMODY: Objection. Instruction
5 on the form, instruction in a verbal? It's ambiguous,
6 your question is.

7 Q. The form. Are you aware that the form
8 specifies --

9 A. Well, it's printed on the back.

10 Q. And could I direct your attention to the first
11 line and the boldfaced type verbally. Do you see that?

12 A. Yes.

13 Q. Okay. Now, isn't it -- are you -- you're not
14 aware of a single instance in which a nurse has filed an
15 ADO and not verbally informed his or her supervisor at the
16 time that they are being given an assignment they believe
17 is unsafe; isn't that --

18 MR. BRYAN CARMODY: Objection.

19 MS. LAWHON: -- isn't that correct?

20 MR. BRYAN CARMODY: Objection. That
21 mischaracterizes his evidence on direct.

22 MS. LAWHON: This is cross-exam.

23 JUDGE AMCHAN: Well, she's -- I don't know
24 what difference it makes. I mean, she said that is he
25 aware of such a situation.

1 THE WITNESS: Could you repeat the question,
2 please?

3 CROSS-EXAMINATION (CONT'D)

4 BY MS. LAWHON:

5 Q. Sure. As you sit here today, Mr. Osterman,
6 you're not aware of a single instance in which an ADO has
7 been filled out which was not accompanied by the nurse who
8 filled it out, or nurses verbally protesting their
9 assignment with their immediate supervisor either at the
10 same time as they filled it out, or they did the verbal
11 notification first and filled it out later; isn't that
12 correct?

13 A. I'm not aware.

14 Q. You're not aware of any such example; right?

15 A. I'm just aware of ones showing up.

16 Q. Right. But you don't know where they showed
17 up, what was said to the charge nurse on that unit at the
18 time that the assignment was first given which is being
19 protested; isn't that correct?

20 A. Correct.

21 Q. So you don't know, Mr. Osterman, whether the
22 nurse who filled out the Assignment Despite Objection
23 followed the chain of command, or did not follow the chain
24 of command; isn't that correct?

25 A. That's correct.

1 Q. It was Ann Wayt who was advocating that the
2 patient, on August 28th, should have a sitter; isn't that
3 correct?

4 A. Correct.

5 Q. And that was consistent with her duty of
6 patient advocacy under State law, that the patient needed
7 to be protected, and in her judgment, from what she was
8 told, as her fifth patient, she was certainly not able to
9 guarantee the patient's safety.

10 MR. BRYAN CARMODY: Objection, Your Honor.
11 Relevance. There's no allegation here that Ms. Wayt was
12 disciplined because of invoking a need for a sitter.

13 JUDGE AMCHAN: Well, yes, but they're saying
14 that it's something that should have been taken into
15 account and wasn't.

16 MS. LAWHON: Yes. I'm not sure, I think
17 maybe the objection cut the question off.

18 JUDGE AMCHAN: I think you were asking
19 whether her asking for a sitter was consistent with her
20 role as a patient advocate.

21 CROSS-EXAMINATION (CONT'D)

22 BY MS. LAWHON:

23 Q. Right.

24 A. It is.

25 Q. Okay. And she followed hospital policy,

1 because she contacted Ms. Kress, who was the interim
2 manager when she was informed by the bed coordinator that
3 she couldn't get a sitter; right?

4 A. No. It was the Emergency Department that
5 called the bed coordinator. I was in the room when --

6 Q. Okay.

7 A. -- the Emergency Department called --

8 Q. Okay. You --

9 A. -- Ms. Kress.

10 Q. You don't know whether Ann Wayt called the bed
11 coordinator separate from the Emergency Department calling
12 or not; isn't that true?

13 A. I don't know after that.

14 Q. Or before that, right?

15 A. Well, that coordinator told me that's the first
16 she heard it.

17 Q. Okay. So you don't know if the call was after
18 that. Understood. Now, with respect to this issue of
19 refusing a patient -- wait a minute.

20 MS. LAWHON: I'm sorry. Just give me a
21 minute, Your Honor. I don't want to --

22 JUDGE AMCHAN: All right. Go off the record.

23 (Off the record.)

24 JUDGE AMCHAN: Back on the record.

25 CROSS-EXAMINATION (CONT'D)

1 BY MS. LAWHON:

2 Q. Ms. Osterman, I believe you testified about a
3 nurse refusing a patient, did you talk about that?

4 A. Whether they can refuse a patient or not?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. In fact, under the Nursing Practice Act,
8 if the nurse believes that she cannot safely care for a
9 patient, it is her obligation to refuse that patient;
10 isn't that correct?

11 A. Correct, there is that stature, yes.

12 Q. There is that what?

13 A. That -- there is that in the Practice Act.

14 Q. Okay. And you have no personal knowledge, do
15 you, Mr. Osterman, of whether or not Ann Wayt refused a
16 patient; isn't that correct?

17 A. Correct.

18 Q. Now, there are patient privacy issues,
19 especially for an assessment of the skin; isn't that
20 correct, Mr. Osterman?

21 A. There's considerations, correct.

22 Q. Yes. That apply particularly to a skin
23 assessment; isn't that correct?

24 A. Just assessment, in general.

25 Q. But particularly to the skin assessment; isn't

1 that correct?

2 A. You can --

3 Q. Because there's certain kinds of assessment,

4 like neurological that you wouldn't necessarily have to

5 observe all parts of the patient's body; right?

6 A. Correct.

7 Q. And some of the assessment can be done just by

8 visual inspection of the patient; isn't that correct?

9 A. Correct.

10 Q. And when a nurse is assessing for pain, that's

11 often a mental process within the nurse looking at the

12 patient; right?

13 A. Looking at the patient, correct, in assessing.

14 Q. I'm sorry, and what?

15 A. In assessing.

16 Q. Right. Mr. Osterman, there are significant

17 portions of every 24 hours where the manager is not

18 present on the unit; isn't that correct?

19 A. Correct.

20 Q. That would be typically from whenever the

21 manager leaves on a -- in a time frame of, I don't know,

22 five to seven p.m. and until they return the following

23 morning on a time frame of --

24 A. Seven a.m.

25 Q. Well, some of your managers don't start at

1 seven; isn't that correct?

2 A. Some of them don't. But the inpatient nurses
3 tend to come in earlier.

4 Q. Oh, the staff nurses?

5 A. No, the inpatient directors.

6 Q. Okay. Okay. But, and there are also weekends
7 when managers are not routinely required to be in their
8 units; isn't that correct?

9 A. Correct. We have house supervisors.

10 Q. Okay. And the occasions when you're aware of
11 when ADO's have been found in -- under the door, that's on
12 occasions when the manager has not been there; isn't that
13 correct?

14 A. Correct.

15 Q. And you, personally, Mr. Osterman, as a part of
16 the chain of command, you're not personally at the
17 hospital 24 hours a day, 7 days a week; correct?

18 A. Correct.

19 Q. There are occasions when the nursing supervisor
20 is the -- and by that I mean the same thing I think you
21 referred to as a house supervisor, is the highest ranking
22 person at the hospital; isn't that correct?

23 A. Correct.

24 Q. Okay. And at the flash meetings, Mr. Osterman,
25 you've been informed by some of your nursing managers that

1 they have been informed by their staff nurses of the
2 nurse's intent to file an ADO based on staffing -- protest
3 of staffing, and they then also tell you they received
4 these ADO's; right?

5 A. Correct.

6 Q. When did -- did you ever tell your nurses they
7 could not accept ADO's -- managers, excuse me? They were
8 not permitted to accept ADO's?

9 A. We told them, correct, because it's not part of
10 the hospital process.

11 Q. Okay. When did you do that?

12 A. I think shortly after the ADO's started showing
13 up at the hospital.

14 Q. Within a week?

15 A. I don't remember.

16 Q. Other than, and I'm not asking you to tell me
17 any conversation you had with attorneys for the hospital,
18 was there any other basis for your informing nurse
19 managers that they should not accept ADO's?

20 A. My -- my concern was the fact that there's not
21 a lot of detailed information, and I was concerned the way
22 they were coming in, versus using our current chain of
23 command process.

24 I truly was concerned that I wasn't -- the chain
25 of command wasn't always getting USED.

1 Q. Even though you don't have a single example of
2 when the chain of command was not used; right?

3 A. Correct.

4 Q. And so it was your decision to reject the
5 ADO's, to tell your nursing managers to reject the ADO's,
6 not to accept them?

7 A. It wasn't my decision solely, no.

8 Q. And apart from your attorneys, who else
9 participated in that decision? If there was no one, then
10 you can just say I can't --

11 A. Administrative team.

12 Q. Who was that?

13 MR. BRYAN CARMODY: I'm sorry, what was your
14 question, Counsel?

15 MS. CENDROSKY: Who's on the administration
16 --

17 MS. LAWHON: Who is that?

18 MS. BRUNDAGE: Ms. Lawhon had asked apart
19 from the lawyers, who was involved in the decision.

20 MS. LAWHON: Well, the lawyers are not part
21 of the administrative team, in any hospital I've ever
22 known.

23 MR. BRYAN CARMODY: Yeah, but the lawyers
24 advise --

25 MS. BRUNDAGE: It's part of the

1 conversations. It's privileged.

2 MR. BRYAN CARMODY: -- the lawyers advise the
3 administrative team.

4 MS. LAWHON: I didn't ask him advised the
5 administrative team, I said who's on it.

6 MS. CENDROSKY: Actually, and I don't know if
7 you heard, because I know you were discussing, but she
8 told him she didn't want any conversations --

9 MR. BRYAN CARMODY: That, I --

10 MS. CENDROSKY: -- that he had with the
11 attorneys.

12 MR. BRYAN CARMODY: That, I heard.

13 MS. CENDROSKY: We're not going there. Okay?

14 CROSS-EXAMINATION (CONT'D)

15 BY MS. LAWHON:

16 Q. So, who's on the administrative team?

17 A. CEO, CNO, CFO, and the COO.

18 Q. Okay. And the names, that's Mr. Bierman, the
19 CEO. Who's the CFO?

20 A. CFO is Magurean, Mickie Magurean.

21 Q. Could you just spell the last name?

22 A. (M-A-G-U-R-E-A-N).

23 Q. And who's the COO?

24 A. Liz Pruitt.

25 Q. (P-R-U-I-T-T)?

1 A. Yes.

2 Q. And yourself, are you the fourth of the A Team?

3 A. I'm the CNO.

4 Q. Right. Right. I understand. So it's just

5 four of you on the administrative team; is that right?

6 A. Correct.

7 Q. Did you have a specific meeting of the

8 administrative team in which you made a decision to reject

9 ADO's?

10 A. Just our meeting with our lawyers.

11 Q. Okay. And that's the same -- is -- if I asked

12 you the timing of that meeting, I think I previously asked

13 you when did you start rejecting them, and you said

14 shortly, like within a week.

15 Do you have any better recollection, now that

16 we've discussed it a little more?

17 A. No. I --

18 Q. Okay. Did you put out a memo, or any kind of

19 directive to managers saying do not accept these forms?

20 A. No.

21 Q. Did you send out an e-mail saying do not accept

22 these forms?

23 A. No.

24 Q. Did you discuss it in a flash meeting and say

25 do not accept these forms?

1 A. Just verbal communication, correct.

2 Q. In the flash meetings?

3 A. Correct.

4 MS. LAWHON: Nothing further.

5 JUDGE AMCHAN: Do you have anything on
6 redirect?

7 MR. BRYAN CARMODY: I may, Your Honor. Can I
8 have a moment?

9 JUDGE AMCHAN: Yes. Off the record.

10 (Off the record.)

11 JUDGE AMCHAN: Back on the record.

12 REDIRECT EXAMINATION

13 BY MR. BRYAN CARMODY:

14 Q. I have, Bill, a few additional questions for
15 you. Bill, is there any process that you have established
16 with your managers by which they're supposed to inform you
17 whether or not they receive an ADO?

18 A. No.

19 Q. Okay. Do you have any knowledge, sir, as to
20 how many ADO's have, in fact, been filed by one of your
21 nurses with the hospital?

22 A. No.

23 MR. BRYAN CARMODY: Can we go off the record,
24 Your Honor, just very briefly?

25 JUDGE AMCHAN: Sure. Off the record.

1 (Off the record.)

2 JUDGE AMCHAN: Back on the record.

3 (Whereupon, Respondent's Exhibit Number 25

4 was marked for identification.)

5 REDIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Okay, Bill, I'm showing you a document that's

8 been marked for identification purposes as Respondent's

9 Exhibit 25. It consists of one, two, three pages.

10 I'd ask you to review the document, and let me

11 know when you're through.

12 A. Okay.

13 Q. Bill, do you see, I'd direct your attention to

14 the first page, Section 7. Do you see that?

15 A. Yes.

16 Q. Do you see the line supervisor notified?

17 A. Correct.

18 Q. Do you see anything written in that line?

19 A. No.

20 Q. Okay. Same question with the second page, do

21 you see anything notified in the -- or anything marked

22 down in the supervisor notified section?

23 A. No.

24 Q. Okay. And the same question with the third

25 page?

1 A. Correct.

2 Q. Have you ever seen any one of these three
3 documents before, sir?

4 A. No.

5 MR. BRYAN CARMODY: Your Honor, I would offer
6 this into evidence.

7 MS. CENDROSKY: You're going to voir dire?

8 MS. LAWHON: Yes.

9 MS. CENDROSKY: Okay. But before you voir
10 dire --

11 MS. LAWHON: Yes.

12 MS. CENDROSKY: -- Your Honor, I -- the
13 General Counsel respectfully requests that an adverse
14 inference be drawn with respect to Subpoena Item Number
15 15, "All documents reflecting, referring, or relating to
16 Assignment Despite Objection Forms," as these have just
17 been produced and have been offered into evidence, and the
18 GC has not had an opportunity to review them.

19 JUDGE AMCHAN: Well, I'm trying to fit this
20 all into the big picture, which is whether the ADO's
21 constitute protected activity, which is their argument.

22 MS. CENDROSKY: Uh-huh.

23 JUDGE AMCHAN: Because they -- it all has to
24 go to allegations regarding Ms. Kress' handing of the
25 ADO's. So, I mean, what difference does it make?

1 MR. BRYAN CARMODY: Well, it makes to us --
2 first of all, Judge, I would like to state for the record
3 that I did produce on Monday when the record opened the
4 other ADO's, not those which are here in the form of
5 Respondent's Exhibit 25, but these documents were --
6 similar documents were produced to the General Counsel.

7 And, also, these are documents that, I'm
8 assuming, in one form or another, are in the possession of
9 the Charging Party.

10 There was no bad faith, it was a simple
11 oversight. So I don't think the General Counsel has a
12 basis for an adverse inference.

13 MS. CENDROSKY: In response, Your Honor, the
14 subpoena went to Respondent not the Charging Party.

15 THE COURT REPORTER: Can you speak up,
16 please?

17 JUDGE AMCHAN: Okay. That -- I'm sorry.

18 MS. CENDROSKY: In response, Your Honor, the
19 subpoena went to the Respondent and not to Charging Party.

20 JUDGE AMCHAN: All right. So the point
21 you're trying to make is that ADO's have been submitted
22 where the supervisor notified hasn't been checked;
23 correct?

24 MS. LAWHON: Well, I -- Your Honor, I can't
25 tell if they've --

1 MS. CENDROSKY: She has voir dire, as well.

2 MS. LAWHON: -- it's kind of a mystery about
3 submitted, since this witness had never seen them before.

4 MR. BRYAN CARMODY: And that's the -- our
5 point, Judge.

6 MS. LAWHON: I don't -- that's not the whole
7 point.

8 MR. BRYAN CARMODY: It's the whole point for
9 us.

10 MS. LAWHON: They can't be put in evidence
11 with -- excuse me. Counsel, can you possibly restrain
12 yourself while I talk?

13 JUDGE AMCHAN: Well, I did ask you to direct
14 comments about opposing counsel here, as opposed to each
15 other.

16 MS. LAWHON: Correct. Sorry, Your Honor.
17 These can't be admitted into evidence through this
18 witness. He has never seen them before. That should be
19 sufficient.

20 JUDGE AMCHAN: Yes. Well, yes, how do you
21 establish that they were even submitted?

22 MR. BRYAN CARMODY: Well, for us, Judge,
23 again, that's the whole point here, is that these
24 documents which purport to be ADO's completed by some
25 nurse working for Affinity Medical Center were never

1 submitted to Mr. Osterman.

2 And according to the forms, themselves, were not
3 submitted to any supervisor of the hospital. So that's
4 the purpose for which we'd offer --

5 JUDGE AMCHAN: So, I mean, I guess I'm sort
6 of like in limbo with these. I mean, there are -- are
7 there any that were -- that is checked?

8 I mean, it's just -- I mean, maybe somebody
9 filled out the form and decided not to submit them. I
10 don't -- what's the relevance of that?

11 MR. BRYAN CARMODY: The only relevance, sir,
12 of the documents that is currently marked as Respondent's
13 Exhibit 25 is what I just articulated.

14 JUDGE AMCHAN: Yes. But I --

15 MS. LAWHON: Your Honor, this --

16 JUDGE AMCHAN: -- I don't know if they were
17 submitted. You know, maybe somebody filled it out and
18 then had a second thought and decided not to submit them.

19 MR. BRYAN CARMODY: I'm sorry, Judge?

20 JUDGE AMCHAN: Maybe somebody filled out this
21 form and had second thoughts about giving it to any
22 manager, just put them in their back pocket --

23 MR. BRYAN CARMODY: Well, Your Honor --

24 JUDGE AMCHAN: -- or somebody filled one out
25 and, you know, gave it to a friend.

1 MR. BRYAN CARMODY: The counsel for the
2 Charging Party opened the door for this line of redirect
3 examination on my part by questioning this witness
4 concerning supervisors' knowledge --

5 JUDGE AMCHAN: Uh-huh.

6 MR. BRYAN CARMODY: -- of these ADO's being
7 received.

8 JUDGE AMCHAN: But he doesn't even know
9 whether it was received.

10 MR. BRYAN CARMODY: I think I circled back,
11 Judge, to that -- that's exactly the point we're seeking
12 to present.

13 JUDGE AMCHAN: Well, but I don't think it
14 proves --

15 MS. LAWHON: It's not protected?

16 JUDGE AMCHAN: -- I mean, I don't want to
17 spend a lot of time on this, but I don't think it proves
18 anything.

19 I mean, if he -- he said he didn't know whether
20 any had been submitted where the supervisor hadn't been
21 notified contemporaneously.

22 And these documents, somebody filled them out. I
23 don't know if they were submitted to anybody in
24 management.

25 I mean, you know, maybe a nurse that doesn't like

1 the union filled it out and decided just to give it to
2 you. I don't know.

3 MR. BRYAN CARMODY: Judge, I'm still in the
4 same place, which is I have these documents marked, and
5 I've offered them into evidence for the purpose I
6 described.

7 JUDGE AMCHAN: Okay. I'll rejected them.

8 MR. BRYAN CARMODY: Then may they be placed
9 in the rejected exhibit file, Judge?

10 JUDGE AMCHAN: Yes.

11 MR. BRYAN CARMODY: Thank you, sir.

12 MS. CENDROSKY: R26?

13 MR. BRYAN CARMODY: Yes.

14 MS. CENDROSKY: Okay.

15 MS. LAWHON: Thank you.

16 (Whereupon, Respondent's Exhibit Number 26
17 was marked for identification.)

18 REDIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Bill, I'm showing you a document that's been
21 marked for identification purposes as Respondent's Exhibit
22 26, which is a document, I must confess, I neglected to
23 ask you about during direct examination.

24 Is this something that you recognize, sir?

25 A. Yes. It's the policy on patient assessment and

1 reassessment process.

2 Q. Okay. Was this in effect last year, sir?

3 A. Yes, sir.

4 MR. BRYAN CARMODY: Thank you. Your Honor, I
5 would offer this into evidence.

6 MS. LAWHON: Could I have a minute to look at
7 it, Your Honor?

8 JUDGE AMCHAN: Sure. Off the record.

9 (Off the record.)

10 JUDGE AMCHAN: Back on the record.

11 MS. CENDROSKY: Voir dire, Your Honor?

12 JUDGE AMCHAN: Sure.

13 MS. LAWHON: One second, Your Honor.

14 VOIR DIRE EXAMINATION

15 BY MS. CENDROSKY:

16 Q. Is this -- I see under policy procedures this
17 PCS49.

18 A. Correct.

19 Q. Okay. Is this document kept together with
20 other documents? Is this policy part of a larger
21 compilation of policies?

22 A. Correct.

23 Q. And where are these policies kept?

24 A. On the intranet.

25 Q. Intranet?

1 A. Yes.

2 Q. Is that something that the employees have
3 access to?

4 A. Yes.

5 Q. Okay. Are employees asked to, or are employees
6 instructed to view these -- review these at any time?

7 A. Anytime they need access to it.

8 Q. Are -- but do they have -- are they told they
9 need to review these?

10 A. They're -- they're told they have to follow the
11 policies and procedures.

12 Q. Okay. Do you have any documentation that would
13 show that maybe the employee like signed off on reviewing
14 the procedure?

15 A. I do not.

16 Q. Are you aware if those records exist?

17 A. No.

18 JUDGE AMCHAN: You're asking him about some
19 memorialization --

20 MS. CENDROSKY: Like, you know --

21 JUDGE AMCHAN: -- acknowledges that --

22 MS. CENDROSKY: -- I've received their policy
23 and signed it.

24 JUDGE AMCHAN: -- they've read the policy.

25 MS. LAWHON: Yes.

1 MS. CENDROSKY: Yes.

2 MS. LAWHON: Yes.

3 JUDGE AMCHAN: You're not aware of any
4 records.

5 THE WITNESS: No.

6 MS. CENDROSKY: Then, Your Honor, I would
7 respectfully request that the exhibit -- well, Jane has
8 her own issues -- but I would respectfully request that
9 the exhibit be limited to the -- limit -- admitted for the
10 limited purposes of showing that it exists, but not
11 necessarily that the employees have knowledge that it
12 exists, or that they have reviewed it.

13 JUDGE AMCHAN: Well, he testified that it's
14 there, it's on the Internet. They can access it. He
15 doesn't know whether they -- he doesn't have any record as
16 to whether they do or not.

17 MS. CENDROSKY: Okay. Jane, go ahead and do
18 your --

19 MS. LAWHON: I am in agreement with General
20 Counsel's concerns, but I don't have voir dire on it. I
21 probably have cross.

22 JUDGE AMCHAN: All right. I'm receiving it.

23 (Whereupon, Respondent's Exhibit Number 26
24 was received into evidence.)

25 MR. BRYAN CARMODY: I have nothing further,

1 Your Honor.

2 JUDGE AMCHAN: I guess we're on recross.

3 MS. LAWHON: Yes.

4 JUDGE AMCHAN: Okay. I sure would like it
5 limited, but go ahead.

6 MS. CENDROSKY: General Counsel has no
7 recross.

8 RECROSS-EXAMINATION

9 BY MS. LAWHON:

10 Q. Mr. Osterman, is there a separate policy on
11 documentation of wounds?

12 A. Yes.

13 Q. And under this policy, even if a nurse did not
14 fill out the patient health history, assuming a patient
15 came in, let's say, in the course of a nurse's shift,
16 right, was not a previously admitted patient, but was
17 admitted to the nurse's unit in the course of her shift,
18 the nurse's failure to complete the health history would
19 not be in violation of this policy; isn't that correct?

20 A. Within 24 hours.

21 Q. Right. So the nurse is not working 24 hours.
22 So if a patient comes in --

23 A. Right.

24 Q. -- at eight o'clock in the morning, the nurse
25 starts at seven, the nurse leaves at seven thirty at night

1 not yet having done the health history, that's not a
2 violation of this policy; isn't that correct?

3 A. No. Because she would work with her team
4 member, whoever's following her, to finish getting it
5 done, correct.

6 Q. Okay. And this patient, with respect to the
7 timing of the assessment of the patient in Room 3420 on
8 August 28th, that patient had been assessed prior to
9 transfer from the ER pursuant to policy; isn't that
10 correct?

11 A. Correct.

12 Q. Okay. And that's under Roman II-F; right?

13 A. Correct.

14 Q. And the reference to performing the assessment
15 on assigned patients every 12 hours is what you previously
16 testified as the -- within policy, meaning within the
17 shift; right?

18 A. Correct.

19 Q. And that's also Roman II-C; right? On the
20 first page.

21 A. Correct.

22 Q. So when a patient's transferred, as opposed to
23 a new admission to a unit, there's less risk when the
24 assessment is not done shortly after admission, because
25 it's been done immediately prior to transfer; right?

1 A. There is less risk, excuse me, yes.

2 MS. LAWHON: Okay. Nothing further.

3 JUDGE AMCHAN: Okay. You can step down, at
4 least for the time being.

5 THE WITNESS: For the time being? Do I go
6 back to the same room, or am I like -- I'm confused.

7 MS. CENDROSKY: Are you -- do you plan on --
8 I don't plan on putting him on today. So --

9 MR. BRYAN CARMODY: No, I don't have any more
10 questions for him.

11 MS. CENDROSKY: Okay. You can actually go,
12 if you want.

13 THE WITNESS: So I can actually go out of the
14 building? Thank you.

15 JUDGE AMCHAN: Okay.

16 THE WITNESS: Thank you.

17 (WITNESS EXCUSED.)

18 JUDGE AMCHAN: Off the record.

19 (Off the record.)

20 JUDGE AMCHAN: Back on the record.

21 MS. DiRIENZO: Ready, Your Honor. We'd --
22 I'm Carmen DiRienzo, and I am also counsel for Affinity
23 Medical Center. And I'd like to call our next witness.

24 JUDGE AMCHAN: If you'd raise your right
25 hand.

1 WHEREUPON,

2 CINDA KEENER,

3 A witness herein, having been first duly cautioned and
4 sworn, was examined and testified as follows:

5 JUDGE AMCHAN: Okay. Have a seat. Our
6 microphones simply record, they don't amplify, so it's
7 important to keep your voice up.

8 THE WITNESS: Okay.

9 DIRECT EXAMINATION

10 BY MS. DIRIENZO:

11 Q. Good afternoon.

12 A. Good afternoon.

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

15 A. My name is Cinda Keener.

16 Q. Can you spell your last name for the court
17 reporter, please, Cinda?

18 A. (K-E-E-N-E-R).

19 Q. And, Cinda, are you presently employed?

20 A. Yes.

21 MS. CENDROSKY: Your Honor, before we
22 continue any further, I would just like to bring to the
23 Court's attention that Ms. Keener moved to intervene on
24 several different instances in this matter and the Board
25 has ruled, most recently three days ago, that she was not

1 permitted.

2 So to the extent any testimony would be not
3 relevant to this proceeding as determined by the Board, I
4 move that she not be permitted to take the stand.

5 JUDGE AMCHAN: Well, I don't know what
6 they're going to ask, but she certainly can testify as a
7 witness.

8 MS. CENDROSKY: Right. I just wanted to
9 bring it to the Court's attention.

10 JUDGE AMCHAN: Right. I --

11 MS. CENDROSKY: Thank you.

12 JUDGE AMCHAN: -- I remember, I remember your
13 name.

14 MS. DiRIENZO: Thank you, Your Honor. We're
15 confident that the witness' testimony is going to be
16 relevant.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. DiRIENZO:

19 Q. Cinda, what is -- where are you employed right
20 now?

21 A. Affinity Medical Center.

22 Q. And you are employed as?

23 A. I'm RN in the Cardiac Cath Lab.

24 Q. That's great. Cinda, did there come a time
25 recently when you had a conversation with the union's

1 representative about the use and purpose of the Assignment

2 Despite Objections Form?

3 A. Yes.

4 Q. Can you tell us about that conversation? Who

5 was it with, first of all, and when it occurred?

6 A. It was about three to four weeks ago I went to

7 a union meeting and I spoke with Michelle.

8 Q. And Michelle is? You're pointing. Let the --

9 A. At Michelle "Mahone".

10 JUDGE AMCHAN: "Mahan."

11 MS. LAWHON: Mahon, actually.

12 THE WITNESS: Mahon.

13 JUDGE AMCHAN: Mahon.

14 MS. LAWHON: Most mispronounced name in the

15 proceedings, I believe.

16 JUDGE AMCHAN: Okay. All right.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. DiRIENZO:

19 Q. We'll do our best to keep it right. Okay. So

20 you said you attended a union meeting about three --

21 A. About -- it was three or four weeks ago.

22 Q. Okay. And can you tell us about the

23 conversation you had which related to the forms commonly

24 called ADO, Assignment Despite Objection?

25 A. I was there at the meeting to gather

1 information. Bob McKinney came in with a large stack of
2 them, presented them. The reception to those was they
3 were very happy. I said, you know, why is this, you know,
4 what is the purpose behind this?

5 Another nurse, Pam Gardner, relayed a story to me
6 of how there was a safe staffing issue on her unit. And
7 then I asked did the management get you the additional
8 nurse you needed; she said yes.

9 I said, so you filed chain of command. You asked
10 for a nurse, you got a nurse. But they said there was a
11 time frame where it was considered unsafe while they're
12 waiting for the nurse to come in.

13 Q. Okay. Cinda, when you say "they," could you
14 just be more specific for us as to -- you said Mr. --
15 someone brought a stack of "them" in. I think you were --

16 A. It was a stack of the ADO's.

17 Q. -- referring to the ADO's. And you said "they"
18 were very happy. Who was very happy?

19 A. The other nurses that were there in the room
20 and the union representative.

21 Q. Okay. And so you referenced Pam Gardner.

22 A. Yes.

23 Q. Is --

24 A. She was relaying a story to me trying to
25 explain the significance of them. I continued to ask why

1 --

2 MS. CENDROSKY: Objection as to the
3 characterization of significance, of Pam Gardner's state
4 of mind.

5 JUDGE AMCHAN: Well, I thought she said --

6 MS. DiRIENZO: I'm sorry, I --

7 JUDGE AMCHAN: -- I thought she said she
8 asked what -- about the significance.

9 MS. DiRIENZO: I think the witness said she
10 asked what was the significance of --

11 JUDGE AMCHAN: Right.

12 MS. DiRIENZO: -- of the forms.

13 MS. CENDROSKY: I believe that's what you
14 asked. That's not what she asked.

15 MS. DiRIENZO: No.

16 JUDGE AMCHAN: I -- well --

17 MS. DiRIENZO: That definitely wasn't what I
18 asked.

19 JUDGE AMCHAN: -- I thought that's what she
20 said.

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. DiRIENZO:

23 Q. Okay. Let's go back, Cinda. Tell us again,
24 you were clarifying that the person speaking about the
25 forms was Pam Gardner. Is Pam also a registered nurse at

1 the hospital?

2 A. Yes.

3 Q. Okay. And what did Pam say to you -- what did
4 you say to Pam, and what did Pam say to you with respect
5 to the ADO forms?

6 A. She said -- relayed a story to me of why they
7 used the ADO Form, that there was a situation that they
8 were all at a two-to-one.

9 A patient came into the Emergency Room, needed to
10 come up to the ICU. They needed another nurse to maintain
11 that ratio. Management called in another nurse.

12 But in the meantime they said that in between
13 while waiting for the nurse to get there was an unsafe
14 staffing.

15 Q. Okay. Who said that it was unsafe?

16 A. Pam said that would have been an example of why
17 you would fill out an ADO.

18 Q. Okay. And you said?

19 A. I said I didn't understand, because there -- if
20 there was a problem, they went to the chain of command,
21 management recognized that, was bringing in the nurse.
22 And they don't appear like a genie out of a bottle, so you
23 have some time frame.

24 Q. Do you know how long it took in that instance
25 for the additional nurse to come to the --

1 A. Pam said about an hour and a half.

2 MS. LAWHON: Object -- okay. Never mind.

3 Q. And was there further discussion then?

4 A. Well, then Michelle continued to banter back

5 and forth with me --

6 MS. CENDROSKY: Objection as to the

7 characterization of banter.

8 MS. DiRIENZO: Cinda, it would be --

9 JUDGE AMCHAN: There was conversation back
10 and forth. I get it.

11 MS. CENDROSKY: Thank you.

12 THE WITNESS: Conversation back and forth.
13 And she eventually said that the amount of ADO's was to
14 agitate.

15 DIRECT EXAMINATION (CONT'D)

16 BY MS. DiRIENZO:

17 Q. The amount of ADO's at the meeting?

18 A. Yes.

19 Q. Was to agitate whom?

20 A. Management.

21 Q. Toward -- do you --

22 MS. LAWHON: Objection. I'm sorry. Your
23 Honor, I can't tell if counsel is questioning what was in
24 this witness' mind, or what was said.

25 MS. CENDROSKY: Yes.

1 JUDGE AMCHAN: No, I thought she said that's
2 what Ms. Mahon said.

3 MS. LAWHON: She didn't say that's what
4 Michelle said. She said agitate whom, and the witness
5 answered. She didn't say Michelle said that.

6 JUDGE AMCHAN: Well, what precisely did
7 Ms. Mahon say?

8 THE WITNESS: She said to agitate.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. DiRIENZO:

11 Q. What was your understanding of what Ms. Mahon
12 meant when she said they were agitate?

13 MS. LAWHON: Objection. Calls for
14 speculation. This witness --

15 JUDGE AMCHAN: Well --

16 MS. LAWHON: -- is adverse --

17 MS. DiRIENZO: No, absolutely not.
18 Absolutely --

19 MS. LAWHON: Excuse me. Counsel.

20 JUDGE AMCHAN: Okay. Wait.

21 MS. LAWHON: This witness is highly adverse
22 to the union, as is well apparent in many papers filed in
23 this action. Her speculation about what Michelle meant
24 has no bearing, whatsoever.

25 MS. DiRIENZO: Absolutely disagree, Your

1 Honor. I asked the witness for her understanding of what
2 was said to her --

3 JUDGE AMCHAN: Yes. I don't think --

4 MS. DiRIENZO: -- and I think that she should
5 be --

6 JUDGE AMCHAN: -- I don't think it's
7 necessary.

8 MS. DiRIENZO: -- able to testify to that.
9 I'm sorry?

10 JUDGE AMCHAN: I'll sustain the objection. I
11 don't think it's necessary. I confer with -- she said
12 what she said. I think there's common understanding.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. DiRIENZO:

15 Q. Okay. Cinda, had you seen the ADO Form prior
16 to attendance at this meeting four weeks ago, or three --
17 this recent meeting?

18 A. Yes.

19 Q. When did you first see it?

20 A. When our representative to the Facility
21 Bargaining Council, Paula Hostetler, brought it back from
22 a meeting.

23 Q. When you say "our" representative, whose
24 representative is Paula Hostetler?

25 A. For the Cardiac Cath Lab.

1 Q. And that's the unit where you're assigned?

2 A. That's the unit where I work.

3 Q. Okay. Can you recount for us what -- when you
4 first saw it, what you were told about the form.

5 A. We were told we were to fill them out if we
6 felt that we were put in an unsafe staffing situation, or
7 anytime that we felt unsafe. And that we were to fill out
8 hundreds, if not thousands of them.

9 Paula went on to say that she was instructed by
10 the union organizers that if her co-workers were not
11 initiating them, that she, herself, was to initiate them
12 and to get the other nurses to sign.

13 Q. And did you receive any instruction in how to
14 fill out the forms?

15 A. We didn't get that in-depth into it, because my
16 department does not use them.

17 Q. Why don't you use them?

18 A. We don't believe in them.

19 MS. LAWHON: Objection.

20 JUDGE AMCHAN: Well, I mean --

21 MS. LAWHON: You can ask her you as an
22 individual.

23 JUDGE AMCHAN: Correct.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. DIRIENZO:

1 Q. Why -- Cinda, you, as a member of your
2 department don't use them. Why don't you personally use
3 the form?

4 A. It's not a hospital approved form. We use our
5 chain of command and follow the policy at the hospital.

6 Q. Have you had occasion to use the chain of
7 command for any safety issue?

8 A. Yes.

9 MS. LAWHON: Objection. We have an
10 outstanding objection, this is -- relevance of this entire
11 line of inquiry to whether it has any bearing on Section 7
12 rights.

13 JUDGE AMCHAN: I understand that.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. DiRIENZO:

16 Q. Cinda, have you used the chain of command with
17 respect to any patient safety issue?

18 A. Yes.

19 Q. Can you give us -- tell -- give us an example
20 of when you've used the chain of command for a safety
21 issue.

22 A. I recently had a patient that came down from
23 another unit for a cardiac cath, had a very nasty looking
24 I.V. in their arm that was reddened and was not safe to
25 use.

1 I went to my supervisor to follow up with that.

2 We investigated further into the charting and why it was
3 also an outdated, we're supposed to rotate every three
4 days, it was not done. Looked.

5 It said that that I.V. was to be used until it
6 failed. Clearly, when it was painful to the patient,
7 reddened, and looked that way, it was, in my mind, failed.

8 Q. Uh-huh.

9 A. So I took that to my supervisor. She said go
10 ahead and start another I.V., and that's what I did.

11 Q. Okay. And as part of your licensed obligation
12 as a registered nurse, do you advocate for patients?

13 A. Absolutely.

14 Q. Can you tell us how you do that?

15 MS. LAWHON: Objection, Your Honor. This is
16 --

17 THE WITNESS: I think that --

18 MS. LAWHON: Excuse me. Excuse me,
19 Ms. Keener. When I say objection, you're not supposed to
20 just keep talking. The Judge has to rule on it.

21 MS. DiRIENZO: Excuse me, Ms. Lawhon, I think
22 the Judge can give Ms. Keener the instructions that need
23 to be given.

24 JUDGE AMCHAN: Okay. Wait for me to rule on
25 objections.

1 MS. DiRIENZO: I don't think she needs
2 instructions from you.

3 JUDGE AMCHAN: Okay.

4 MS. LAWHON: Okay. Objection. I'm trying to
5 remember the question. Something --

6 JUDGE AMCHAN: Do you want to repeat the
7 question?

8 MS. LAWHON: Oh, is -- does she have a
9 patient advocacy obligation. I don't see the relevance of
10 that question to this witness at all.

11 JUDGE AMCHAN: Well, I think that's been
12 established --

13 MS. DiRIENZO: Well, the Union has taken the
14 position --

15 JUDGE AMCHAN: -- that they all do.

16 MS. LAWHON: Yes. She's licensed.

17 MS. CENDROSKY: Uh-huh.

18 JUDGE AMCHAN: Okay. I don't think you need
19 to ask her that.

20 MS. DiRIENZO: Well, I thought that,
21 especially given that the Union has proffered as one of
22 the reasons for the activity with the ADO that it's a
23 protection to license.

24 And this nurse has said that she doesn't believe
25 that she needs to use to protect her license. I'm asking

1 her how does she protect her license and patient advocacy.

2 JUDGE AMCHAN: Right. Well, I don't think
3 you need to ask her that. She says there are other
4 mechanisms to fulfill her obligations.

5 MS. DiRIENZO: Okay. May I have just a
6 minute, Your Honor?

7 JUDGE AMCHAN: Sure.

8 MS. DiRIENZO: I have no further questions,
9 Your Honor.

10 MS. CENDROSKY: I'm going to need about five
11 minutes.

12 JUDGE AMCHAN: All right. Off the record.
13 (Off the record.)

14 JUDGE AMCHAN: Back on the record.

15 CROSS-EXAMINATION

16 BY MS. CENDROSKY:

17 Q. Ms. Keener.

18 A. Uh-huh.

19 Q. Is that how you pronounce your last name?

20 A. Yes.

21 Q. My name is Sharlee Cendrosky. I'm an attorney
22 for the United States Government, National Labor Relations
23 Board. I do have a few questions to ask you today.

24 A. Okay.

25 Q. Isn't it true that you passed out paper that

1 called Bob McKinney a Pied Piper?

2 A. That is not true.

3 MS. DiRIENZO: Objection, Your Honor.

4 MS. CENDROSKY: Isn't it --

5 JUDGE AMCHAN: Well --

6 MS. CENDROSKY: She denied it.

7 MS. DiRIENZO: I'd like some foundation as to

8 when the --

9 MS. CENDROSKY: During the organizing
10 campaign.

11 JUDGE AMCHAN: Well, I guess, what difference
12 does it make? I mean, I'm --

13 MS. CENDROSKY: It doesn't matter if she
14 denied it, right?

15 JUDGE AMCHAN: Well, I'm aware that she's
16 opposed to the union, and that was in the affidavit as so,
17 and unless --

18 MS. CENDROSKY: She -- I believe she
19 testified in her direct examination about Bob McKinney, so
20 that's why I asked the question.

21 JUDGE AMCHAN: All right.

22 MS. CENDROSKY: Okay.

23 MS. DiRIENZO: I don't see how it's relevant,
24 Your Honor, but --

25 JUDGE AMCHAN: I don't know either, but she

1 said no.

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. CENDROSKY:

4 Q. Isn't it also true that you passed out
5 paperwork with Michelle Mahon's home address on it?

6 A. That is not true.

7 Q. Isn't it also true that when you referred to a
8 meeting in which Pam Gardner told you a story, that Pam
9 Gardner was telling you about Sue Kress threatening to
10 smash the ADO's in the foreheads of employees?

11 A. Not the instance I was discussing, no.

12 Q. Isn't it also true that when Ms. Mahon asked
13 you if you believed that nurses had the right to use the
14 ADO's on unsafe, or potentially unsafe situations you
15 replied absolutely?

16 A. I did not.

17 MS. CENDROSKY: That's all I have.

18 CROSS-EXAMINATION

19 BY MS. LAWHON:

20 Q. You're strongly opposed to the union; isn't
21 that correct, Ms. Keener?

22 A. Are we discussing this union for the hospital?

23 Q. I am.

24 A. I am.

25 Q. And you have been from the moment the Union was

1 first present at that hospital; isn't that correct?

2 A. Not from the first moment, no.

3 Q. You have been consistently before the election

4 and since the election; isn't that correct?

5 A. That is correct.

6 Q. So you did not attend the union meeting you're

7 describing as someone who supported the union; isn't that

8 correct?

9 A. I went as an RN at my hospital to gather

10 information about what is going on.

11 Q. That wasn't my question, Ms. Keener.

12 A. That is what I intended.

13 JUDGE AMCHAN: Well, I don't think we -- she

14 went to the meeting. She's hostile to the union.

15 MS. LAWHON: I beg your pardon?

16 JUDGE AMCHAN: She went to the meeting.

17 She's hostile to the union.

18 MS. LAWHON: Right.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. It's fair to say that you were one of the most

22 highly identified opponents to the union at the hospital?

23 A. I would say that's a fair assumption, yes.

24 Q. Okay.

25 MS. DiRIENZO: I also object that it calls

1 for speculation.

2 MS. LAWHON: No, she -- she answered.

3 JUDGE AMCHAN: I mean, I know from the
4 affidavit it was so, being that you actively campaigned
5 against the union.

6 THE WITNESS: True.

7 MS. LAWHON: I have no further questions.

8 JUDGE AMCHAN: Okay.

9 MS. DiRIENZO: I have no questions, Your
10 Honor.

11 JUDGE AMCHAN: You can step down. Thank you.

12 (WITNESS EXCUSED.)

13 JUDGE AMCHAN: You want to try to get
14 somebody in?

15 MS. DiRIENZO: Yes, real quick.

16 JUDGE AMCHAN: All right. Off the record.

17 (Off the record.)

18 JUDGE AMCHAN: Back on the record. If you'd
19 raise your right hand.

20 WHEREUPON,

21 ERIN SULLIVAN,

22 A witness herein, having been first duly cautioned and
23 sworn, was examined and testified as follows:

24 JUDGE AMCHAN: Okay. And be sure to keep
25 your voice up. Our microphone doesn't amplify.

1 THE WITNESS: Okay.

2 DIRECT EXAMINATION

3 BY MS. DIRIENZO:

4 Q. Good afternoon, Erin.

5 A. Hi.

6 Q. Can you state your name, your full name for the
7 record, please?

8 A. Erin Sullivan.

9 Q. And can you tell us where you're employed?

10 A. Affinity Medical Center in the Intensive Care
11 Unit.

12 Q. As?

13 A. A registered nurse.

14 Q. Good.

15 JUDGE AMCHAN: Is Erin (E-R-I-N)?

16 THE WITNESS: Yes.

17 MS. DIRIENZO: Your Honor I have a document
18 I'd like to have --

19 MS. LAWHON: Your Honor, excuse me, but --
20 oh, I'm sorry. Maybe I'll wait until the document.

21 MS. DIRIENZO: I'd like to have this document
22 marked for identification as Respondent's 27.

23 (Whereupon, Respondent's Exhibit Number 27
24 was marked for identification.)

25 MS. DIRIENZO: Can I show it to the witness,

1 Your Honor?

2 JUDGE AMCHAN: Sure.

3 DIRECT EXAMINATION (CONT'D)

4 BY MS. DiRIENZO:

5 Q. Erin, taking a look at this document, it's
6 marked Assignment Despite Objection. Can you tell us what
7 you recollect about this document?

8 A. You want the situation, too?

9 Q. Well, first of all, let me ask you, is that
10 your handwriting on the document?

11 A. Yes.

12 Q. Okay. And can you just read to us what your
13 note says?

14 MS. LAWHON: Objection. The document speaks
15 for itself.

16 MS. DiRIENZO: Your Honor, I think that the
17 handwriting may be in question, and I'd like the witness
18 to read her own handwriting so that the record has a true
19 reflection of what the note says.

20 JUDGE AMCHAN: Yes, because I can't make it
21 out.

22 THE WITNESS: My handwriting is over on the
23 right side. It says, "Pam, I didn't feel it was
24 appropriate to discuss this when it was brought up,
25 because we were at the doorway of Patient Room 7 and 8.

1 But I don't feel it's appropriate to fill this
2 out. I did have three patients, but the acuity of my
3 patients allowed me to take care of all three of my
4 patients with no problem.

5 The number of patients isn't the issue, it's the
6 number and acuity, and I feel my patients' acuities were
7 appropriate to my assignment."

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. DIRIENZO:

10 Q. Okay. Who actually -- when you said --

11 MS. LAWHON: Your Honor, I would note that
12 the witness read not correctly. She read in the "doorway
13 of patient rooms."

14 The word "patient" does not appear on this
15 document, as best I can read it.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. DIRIENZO:

18 Q. Erin, do you have an abbreviation for the word
19 "patient" that you were referring to?

20 A. No. That was -- it says, "in the doorways of
21 Rooms 7 and 8." That was my mistake.

22 Q. Okay. So the -- it's addressed to Pam. Who is
23 Pam?

24 A. Pam Gardner is our ICU union representative.

25 Q. And in the upper left-hand corner of the

1 document in Section 1, is that Pam Gardner's signature as
2 you know it?

3 A. Yes, as I know it.

4 Q. Okay. So can you tell us about the
5 circumstance of being in the patient room and being -- and
6 the conversation that you were referencing --

7 A. Uh-huh.

8 Q. -- in your written note?

9 MS. LAWHON: Objection. Relevance. And also
10 mischaracterizes his testimony -- her testimony. She said
11 she was in the doorway. She didn't say anything about
12 being in the patient room. And she wrote a note on an
13 ADO.

14 JUDGE AMCHAN: Yes.

15 MS. LAWHON: What relevance that has to
16 whether it's protected or concerted -- protected concerted
17 activity is none.

18 MS. DiRIENZO: Your Honor, I think we'll be
19 able to show that relevance in --

20 JUDGE AMCHAN: Well, I'm going to let them
21 make their argument. So the portion that you wrote is the
22 only part of this that you filled out.

23 THE WITNESS: Correct.

24 JUDGE AMCHAN: The rest was filled out by
25 somebody else.

1 THE WITNESS: Correct.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. DIRIENZO:

4 Q. Okay. So can you tell us about the
5 conversation that you had, and precisely where you were
6 when you had that conversation, when you were approached
7 with this document?

8 A. Uh-huh.

9 MS. LAWHON: Well, objection. We haven't
10 heard yet that she was approached with this document.

11 MS. DIRIENZO: She just read her note in
12 which she said that she was.

13 MS. LAWHON: Yes. She didn't say she was
14 approached.

15 JUDGE AMCHAN: Well, tell me, just explain
16 the circumstances that you first saw this note.

17 THE WITNESS: I was in the doorway of Room 8
18 a couple feet from the bed, so basically in the patient
19 room. And I had a three patient assignment. I had just
20 gotten a third patient.

21 And Pam told me that I needed to fill this form
22 out, I had three patients. It was in her mailbox, get one
23 and fill it out. I didn't feel it was appropriate to
24 discuss it in front of a patient, I said okay.

25 I didn't get a chance to talk with her again

1 about it until I was in my patient's room, in Room 7. And
2 she told me again this needs to be filled out, I'll start
3 it for you, you can go ahead and finish it.

4 Again, I didn't feel it was appropriate to talk
5 in front of a patient, I said okay. She ended up leaving
6 early and had left what she filled out on this paper on
7 the table in the break room for me to take care of after,
8 when I had a chance.

9 JUDGE AMCHAN: Okay. So you wrote this note
10 and then what, gave it back to her?

11 THE WITNESS: I wrote the note and I put it
12 back in her mailbox.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. DiRIENZO:

15 Q. And so did anyone sign this form?

16 MS. LAWHON: Objection. The document speaks
17 for itself. The signature she's identified as Pam Gardner
18 is on the document.

19 MS. DiRIENZO: That's a signature of the
20 person who signed in the upper left.

21 MS. LAWHON: That's a signature.

22 MS. DiRIENZO: I'm asking her if --

23 JUDGE AMCHAN: Well --

24 MS. DiRIENZO: -- anyone signed it.

25 JUDGE AMCHAN: Well, I mean --

1 MS. LAWHON: Other than Pam Gardner?

2 JUDGE AMCHAN: Well, yes, I don't know --

3 MS. DiRIENZO: Let the witness answer the
4 question.

5 JUDGE AMCHAN: Well, I mean, it's --

6 MS. LAWHON: It's unclear.

7 JUDGE AMCHAN: Well, I mean, it's pretty
8 obvious from the document. This is the whole document;
9 correct?

10 MS. CENDROSKY: Actually, it's not, Your
11 Honor --

12 MS. LAWHON: Your Honor, it's not.

13 MS. CENDROSKY: -- it's missing several
14 sections.

15 MS. LAWHON: It's missing the bottom. If you
16 look at General Counsel's 17 and compare it, it's cut off.
17 It's Section 5.

18 MS. DiRIENZO: Precisely why I'm asking the
19 question, Your Honor. This is the only document that I
20 have.

21 JUDGE AMCHAN: All right.

22 MS. DiRIENZO: Was this --

23 JUDGE AMCHAN: Well, I mean, do you know
24 whether the -- anybody signed the original?

25 THE WITNESS: No one else -- no one else

1 touched the document besides Pam, and then me when I wrote
2 my note.

3 JUDGE AMCHAN: All right.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. DiRIENZO:

6 Q. So if you'd take a look at the document in
7 Section 3, it's marked ICU.

8 A. Uh-huh.

9 Q. And census.

10 A. Uh-huh.

11 Q. And what -- so the census is 12 --

12 A. Uh-huh.

13 Q. -- on the document. How many nurses were
14 employed in the ICU unit during the shift when there was a
15 census of 12?

16 A. Full staffing would be six. We didn't have
17 that. I don't know -- I don't know many -- I don't recall
18 how many we had that day. But we had enough that I had a
19 third patient. So we at least only had five.

20 Q. Have you ever filled out this, and ADO Form?

21 A. Other than this?

22 Q. Other than writing on this one.

23 A. I have signed one before.

24 Q. Okay. And in the circumstance of you writing
25 this note to Pam, did Pam respond to you that she -- what

1 she would do with the form --

2 A. No.

3 Q. -- since you wrote the note? Okay. And you

4 had no further discussion about it.

5 A. Huh-uh.

6 JUDGE AMCHAN: You have to answer audibly.

7 The answer was no.

8 A. Sorry. No.

9 Q. Okay. And so have there been occasions in the

10 ICU when you have felt that you needed some additional

11 staff, or the patient -- strike that.

12 Have there been occasions in the ICU when you

13 felt that a patient's safety was threatened by the level

14 of staffing on a shift where you were working?

15 A. Rarely. The day that I did sign one, I did

16 feel that we should have had another nurse. But I was not

17 the one with the -- that assignment on that day.

18 Q. Okay. On that day did you -- you said you

19 signed one. Did other nurses sign the same form, as well?

20 A. Uh-huh.

21 JUDGE AMCHAN: You have to answer audibly.

22 A. Yes.

23 Q. Okay. And did you personally alert any

24 supervisor or charge nurse about the patient safety issue

25 on that day?

1 A. I did speak to the charge nurse that day about
2 it.

3 Q. And what was the response that you had from the
4 charge nurse that day?

5 A. I don't recall.

6 Q. Okay.

7 A. It's been a while.

8 Q. Okay. Erin, have you ever been involved in a
9 patient safety incident where either an imminent threat to
10 a patient or an actual harmful event occurred such that
11 you reported that event?

12 A. Not that I can recall.

13 MS. DiRIENZO: Okay. I have no further
14 questions, Your Honor.

15 JUDGE AMCHAN: Did you mean to move for --

16 MS. DiRIENZO: Oh, I'm sorry. I did want to
17 offer this document into evidence.

18 MS. LAWHON: Your Honor, it's an incomplete
19 document. It should not go. It's clearly missing
20 portion.

21 JUDGE AMCHAN: I'll receive it.

22 (Whereupon, Respondent's Exhibit Number 27
23 was received into evidence.)

24 MS. LAWHON: And, okay, could I voir dire,
25 also, Your Honor?

1 JUDGE AMCHAN: Sure.

2 VOIR DIRE EXAMINATION

3 BY MS. LAWHON:

4 Q. Ms. Gardner -- not Ms. Gardner, sorry. Erin,
5 Ms. Sullivan.

6 A. Uh-huh.

7 Q. Is it okay if I call you Erin?

8 A. Sure.

9 Q. I'm Jane Lawhon. I'm the attorney for the
10 Union. Did you keep a copy of this document --

11 A. I did not --

12 Q. -- that you wrote the note on?

13 A. -- personally, no.

14 Q. Okay. When did you first see this document, I
15 guess, the event in -- the events were on March 4th; is
16 that right?

17 A. Correct.

18 Q. Okay. When did you first see this document
19 after you left it for Pam on March 4th before just now
20 standing -- sitting on the witness stand?

21 A. I haven't seen it again since now.

22 Q. Okay. Did you meet with any of the attorneys
23 for the hospital?

24 A. I did speak with one of them briefly.

25 Q. Okay. Which one?

1 A. Carmen.

2 MS. DiRIENZO: The good looking one.

3 JUDGE AMCHAN: Right.

4 Q. Okay. So you don't know what happened to the
5 rest of this document or not, do you?

6 A. No.

7 Q. Do you know that -- do you remember it well
8 enough to say that there was nothing written beyond
9 Section 5 by Pam?

10 A. No, I do not recall that. I did not look it
11 over to see if I needed to fill anything else out, because
12 I didn't feel it needed to be filled out, so I wrote my
13 note and put it in her mailbox.

14 Q. Well, I guess you've received it over the
15 Union's objection that it's an incomplete document.

16 JUDGE AMCHAN: Right.

17 MS. LAWHON: And this witness can't
18 authenticate it.

19 JUDGE AMCHAN: Well, she --

20 MS. LAWHON: Other than her own writing she
21 did.

22 JUDGE AMCHAN: Right. She can authenticate
23 part of it.

24 MS. LAWHON: Okay. So is it time for cross?

25 JUDGE AMCHAN: Yes.

1 MS. LAWHON: Is that where we are?

2 JUDGE AMCHAN: Right. You're done.

3 MS. DiRIENZO: I did have one other question,
4 Your Honor, if you don't mind.

5 JUDGE AMCHAN: Okay.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. DiRIENZO:

8 Q. Erin, did you receive any instruction in the
9 filling out of these forms, or was it your understanding
10 that someone else would fill it out?

11 MS. LAWHON: Objection. Compound, and
12 leading, and --

13 MS. DiRIENZO: I'm sorry, Your Honor. I'll
14 rephrase.

15 Q. Did you receive any instruction on how to fill
16 out the ADO Form?

17 A. Not formally, no.

18 Q. Okay. And did you receive any informal
19 instruction?

20 A. We were told that they were in her mailbox, and
21 that they were pretty self-explanatory. We had to go down
22 through and, you know, fill out the papers and put a copy
23 under the manager's door and put the -- put the original
24 page under the manager's door and a copy in her mailbox,
25 and Pam's mailbox.

1 JUDGE AMCHAN: And this was -- Pam Gardner
2 told you this.

3 THE WITNESS: Correct.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. DiRIENZO:

6 Q. And about how long did that conversation take,
7 that explanation of what you just testified to?

8 A. It wasn't really a conversation. It was while
9 we were working.

10 Q. Okay. And was there any explanation as to why
11 you should -- the direction to -- why you -- why she
12 directed you to put the form under the door, as --

13 A. Other than to give it to the manager, no.

14 Q. Would you ordinarily, if you had something to
15 give to your manager, hand it to the manager?

16 A. Yes.

17 JUDGE AMCHAN: Was the manager always there
18 when you're working?

19 THE WITNESS: If the manager's not there,
20 then we contact the nursing coordinator --

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. DiRIENZO:

23 Q. And who was the nursing --

24 A. -- that's there on off-shifts.

25 Q. -- who's the nursing coordinator?

1 A. It depends on the day.

2 Q. Oh, okay. So if you have a concern and/or --

3 whether you have something to say verbally or in writing

4 --

5 A. Uh-huh.

6 Q. -- is there always a human being at the

7 hospital that you can hand it to?

8 A. Yes. Yes. Either the manager or the nursing

9 coordinator.

10 Q. Okay. But you were instructed with respect to

11 this form to put it under the door, not to hand it to the

12 manager.

13 A. If she's not there, yes.

14 MS. DiRIENZO: Okay. Thank you. I have no

15 further questions, Your Honor.

16 MS. LAWHON: Now --

17 MS. CENDROSKY: General Counsel has no cross.

18 I'm going to let you handle it.

19 JUDGE AMCHAN: Okay.

20 CROSS-EXAMINATION

21 BY MS. LAWHON:

22 Q. Ms. Sullivan, I think I introduced myself to

23 you already. I'm sorry. It's late in the day.

24 A. Uh-huh.

25 Q. You can't leave the ICU to find the house

1 supervisor to give him a form; isn't that correct?

2 A. No, that's not correct.

3 Q. When you have two -- you're assigned two
4 patients in the ICU, it's your -- how often do you leave
5 the ICU to find the house supervisor?

6 A. We don't have to leave often to find them. We
7 can page them, and whoever it is will come over.

8 Q. Okay. Do you work days or nights?

9 A. Days.

10 Q. Okay. Now, this form, Respondent's Exhibit 27,
11 was filled out by Pam protesting her own assignment. Did
12 you understand that from looking at it?

13 A. No.

14 Q. It says two RN's with three patient assignment.
15 You were, as you understood it, one of them; right?

16 A. Yes.

17 Q. And Pam was the other one; right?

18 A. No. As I recall, she did not have two (sic)
19 patients. I took a third one so she did not have to take
20 a third patient.

21 Q. Okay. Are you aware that there was another
22 nurse in the ICU who had a three patient assignment?

23 A. I don't recall.

24 Q. Okay. Typically, the people who put their
25 names under the nurses listed below, and you testified you

1 filled out another one before, are the people who are
2 directly affected; right?

3 A. Our instructions, per Pam, were that every
4 nurse needed to sign it in the unit, not just the ones
5 affected by the situation.

6 Q. Okay. And that's because Pam told you that she
7 thinks that the Union's view is that one safe -- unsafe
8 assignment makes the unit in an unsafe situation; right?

9 MS. DiRIENZO: Objection.

10 JUDGE AMCHAN: Well --

11 THE WITNESS: That was never stated.

12 CROSS-EXAMINATION (CONT'D)

13 BY MS. LAWHON:

14 Q. You never heard that?

15 A. That was not stated to me, no.

16 Q. Now, you have no reason to question that Pam
17 Gardner thought it was appropriate to protest the staffing
18 in the ICU that day; right?

19 A. I don't feel that someone should question
20 someone else's assignment. If I feel mine is unsafe, I
21 will speak up.

22 Q. I understand that's your personal view, Erin.
23 But you have no reason to believe that Pam Gardner was not
24 exercising her duty as an advocate for patients in --

25 MS. DiRIENZO: Objection. Calls for

1 speculation. She can't know what was in Pam's mind.

2 MS. LAWHON: I'm saying she has no reason to
3 believe that Pam Gardner was not exercising her nursing
4 judgment by filling out this form.

5 JUDGE AMCHAN: Well, I'm going to sustain the
6 objection. She can't testify to what --

7 MS. LAWHON: Okay.

8 JUDGE AMCHAN: -- Ms. Gardner's subjective
9 thoughts were.

10 CROSS-EXAMINATION (CONT'D)

11 BY MS. LAWHON:

12 Q. It's true that there was no nurse's aide that
13 day; isn't that correct?

14 A. That's true.

15 Q. And that the unit was short; right?

16 MS. DiRIENZO: Objection. The document
17 speaks for itself.

18 JUDGE AMCHAN: Well --

19 MS. DiRIENZO: There was six nurses and
20 twelve patients.

21 MS. LAWHON: She was asked on direct exam
22 about the number of nurses.

23 JUDGE AMCHAN: That objection's overruled.

24 MS. LAWHON: The unit was short.

25 THE WITNESS: Does that mean I answer?

1 JUDGE AMCHAN: That means -- correct.

2 THE WITNESS: Okay.

3 CROSS-EXAMINATION (CONT'D)

4 BY MS. LAWHON:

5 Q. The unit was short; right?

6 A. If two nurses had three patients, yes, we were
7 short a nurse.

8 Q. Do you have an American Association of Critical
9 Care Nursing Certification?

10 A. No, I do not.

11 Q. How long have you worked as an ICU nurse?

12 A. About seven, either years. Seven or eight
13 years.

14 Q. Are you aware that the standard of care for ICU
15 nurses to have two patients or fewer?

16 A. Yes.

17 Q. Okay. And that standard of care I just asked
18 you about, that's supposed to be in effect at all times;
19 isn't that correct?

20 A. Yes.

21 THE WITNESS: Am I allowed to comment on
22 that?

23 JUDGE AMCHAN: Not -- not --

24 MS. LAWHON: I would rather you didn't.

25 JUDGE AMCHAN: -- not in response to her

1 question.

2 THE WITNESS: Okay.

3 JUDGE AMCHAN: Counsel for the hospital may
4 follow up.

5 THE WITNESS: Okay.

6 CROSS-EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. And you understand, Erin, that if, as a
9 registered nurse, if you believe that your assignment is
10 not safe for the patients, that you have the obligation
11 under your license to protest that; isn't that right?

12 A. Yes.

13 MS. LAWHON: I have no further questions.

14 MS. DiRIENZO: Just a couple, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. DiRIENZO:

17 Q. Erin, with regard to counsel's last question in
18 terms of protesting, what is the ordinary method by which
19 you protest an assignment?

20 A. We contact the -- we talk to our charge nurse.
21 Next would be our manager, and we'd go through the chain
22 of command. And if there's a safety issue, then we fill
23 out an incident report.

24 Q. I see. And with respect to your -- to
25 counsel's question to you earlier about the safe staffing

1 ratio guidance for the Intensive Care Unit, I believe that
2 you, just for clarification, I think that you said it was
3 two to one. Counsel asked you if it was supposed to be
4 that all the time.

5 Are there any other factors that are taken into
6 account when considering what safe patient ratio is in
7 Intensive Care?

8 MS. LAWHON: You're asking, Counsel, under
9 the standard of care, which is what I asked about?

10 MS. DiRIENZO: No, no, no, no. I'm asking
11 Erin if there are factors that are taken into
12 consideration in determining safe standard, other than the
13 pure numerical ratio that you asked her about.

14 THE WITNESS: Yes.

15 REDIRECT EXAMINATION (CONT'D)

16 BY MS. DiRIENZO:

17 Q. And what are those?

18 A. We don't always have ICU acuity patients. We
19 also have step-down patients, and we sometimes have
20 telemetry overflow patients. And those patients are
21 staffed differently than an ICU patient.

22 MS. DiRIENZO: I have no further questions,
23 Your Honor.

24 RECROSS-EXAMINATION

25 BY MS. LAWHON:

1 Q. Every patient on your unit is billed as an ICU
2 patient; isn't that correct?

3 A. No. If they are a telemetry --

4 Q. You're familiar with the hospital's billing
5 practices?

6 JUDGE AMCHAN: No, wait. You're talking over
7 each other.

8 MS. LAWHON: Sorry.

9 THE WITNESS: If they are a telemetry status
10 and that's their ordered status, they are entered in the
11 computer as a telemetry status.

12 RECROSS-EXAMINATION (CONT'D)

13 BY MS. LAWHON:

14 Q. And you know that that correlates to billing.

15 A. Yes.

16 Q. How do you know that?

17 A. That's what we have been told --

18 Q. Okay. You --

19 A. -- from management.

20 Q. That's what you've heard.

21 A. I don't enter that myself.

22 MS. LAWHON: Okay. I have nothing further.

23 JUDGE AMCHAN: Okay. You can step down.
24 You're done.

25 MS. DiRIENZO: Thank you, Erin.

1 (WITNESS EXCUSED.)

2 JUDGE AMCHAN: We're going to adjourn for the
3 evening and I'll see everybody at nine thirty.

4 (Whereupon, the hearing adjourned at
5 6:40 p.m. on May 2, 2013, to be reconvened on
6 May 3, 2013 at 9:30 a.m.)

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1 CERTIFICATE

2 This is to certify that the attached proceedings
3 before the National Labor Relations Board were held
4 according to the record and that this is the original,
5 complete, true and accurate transcript which has been
6 compared to the reporting and recording accomplished at
7 the hearing, that the exhibit files have been checked for
8 completeness and no exhibits received in evidence or in
9 the rejected exhibit files are missing.

10

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12 _____
RHONDA LAMVERMEYER - OFFICIAL REPORTER

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1 THE UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 8
4

5 CASE NO. 08-CA-090083 (VOLUME 5 of 5)

6 08-CA-090193

7 08-CA-093035

8 08-CA-095833

9

10 In the Matter of:

11 DHSC, LLC D/B/A AFFINITY MEDICAL CENTER,

12 Employer,

13 and

14

15 NATIONAL NURSES ORGANIZING COMMITTEE,

16 Petitioner.

17

18

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21 The above-entitled matter came on for hearing
22 pursuant to notice before ARTHUR AMCHAN, Administrative
23 Law Judge, at Anthony J. Celebrezze Federal Building, 1240
24 East 9th Street, Room 1695, Cleveland, Ohio, on Friday,
25 May 3, 2013, at 9:30 a.m.

1 A P P E A R A N C E S

2 On Behalf of the General Counsel:

3 Sharlee Cendrosky, Esq.

4 NATIONAL LABOR RELATIONS BOARD REGION 8

5 Anthony J. Celebrezze Federal Building

6 Cleveland, Ohio 44199

7

8 On Behalf of the Charging Party:

9 Ms. Jan Lawhon

10 NATIONAL NURSE ORGANIZING COMMITTEE

11 2000 Franklin Street

12 Oakland, California 94612

13

14 On Behalf of the Respondent:

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16 134 Evergreen Lane

17 Glastonbury, Connecticut 06033

18

19 Don Carmody, Esq.

20 P.O. Box 3310

21 Brentwood, Tennessee 37024

22 Carmen DiRienzo, Esq.

23 Kaitlin Brundage, Esq.

24 62 Ledgewood Road

25 West Hartford, Connecticut 06107

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I N D E X

VOIR

WITNESSES	DIRECT	CROSS REDIRECT	RECROSS DIRE
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ANGELA BOYLE	1040	1084	1042
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PATRICIA KLINE	1103	1152	1122
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	1175		
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ROBERT McKINNEY	1199	1205	
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WILLIAM OSTERMAN	1210	1242	
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SUSAN KRESS	1246		
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ANN WAYT	1261	1265	
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MICHELLE MAHON	1272	1276	
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1 EXHIBITS

2 GENERAL COUNSEL'S

3 EXHIBIT NO. IDENTIFIED IN EVIDENCE

4 9 1236

5 20 1078 1080

6

7 JOINT EXHIBIT NO:

8 7-10 1038 1039

9

10 RESPONDENT'S EXHIBIT NO.

11 1 1045

12 2 1124

13 28 1144 1144

14 29 1143 1144

15 30 1271 1278

16

17 CHARGING PARTY'S EXHIBIT NO:

18 6 1098 1100

19 7 1246 1260

20

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1 PROCEEDINGS

2 May 3, 2013 9:30 a.m.

3 JUDGE AMCHAN: Okay. So I guess while you're
4 marking them, I'll summarize for you. We had a brief
5 off-the-record discussion to ensure that General Counsel's
6 6, Respondent's Exhibit 13, and Charging Party 5 were in
7 the record. And if I didn't admit them before, they're
8 admitted now.

9 And the understanding, I think that I think I
10 articulated a day or two ago, that was that I accepted
11 Respondent's Exhibit 13, the drawing of the patient's room
12 as a schematic somewhat as if the witness had drawn it,
13 without accepting the dimensions as accurate. Okay?

14 (Whereupon, Joint Exhibit Numbers 7 through
15 10 were marked for identification.)

16 MR. BRYAN CARMODY: Yes, sir. At this time,
17 Your Honor, I believe we have several documents we offered
18 as joint exhibits.

19 Joint Exhibit 7 is a subpoena that was served on
20 the National Union of Healthcare Workers custodian of the
21 records by the Employer.

22 JUDGE AMCHAN: So this is Joint 7?

23 MR. BRYAN CARMODY: Yes, sir. Next, a
24 subpoena served by the Employer, a Ms. Phyllis "Wyllet."
25 This is Joint 8.

1 MS. CENDROSKY: Thank you.

2 MS. LAWHON: It's Willet.

3 MR. BRYAN CARMODY: Willet?

4 MS. LAWHON: Yes.

5 MR. BRYAN CARMODY: Next, Your Honor, would

6 be Joint Exhibit Number 9. This is a letter which is

7 addressed to Your Honor from Attorney Latika Malkani,

8 attorney for NUHW.

9 MS. LAWHON: Latika, just for your future
10 reference.

11 MR. BRYAN CARMODY: Okay.

12 JUDGE AMCHAN: This is Joint 9?

13 MR. BRYAN CARMODY: Joint 9, yes, sir. And,
14 finally, Your Honor, Joint Exhibit 10, which is Your
15 Honor's order granting the NUHW Petition to Revoke.

16 JUDGE AMCHAN: Okay, they're received.

17 (Whereupon, Joint Exhibit Numbers 7 through
18 10 was received into evidence.)

19 MR. BRYAN CARMODY: Thank you.

20 JUDGE AMCHAN: Okay.

21 MS. BRUNDAGE: If there are no other
22 preliminary matters for us, Affinity Medical Center calls
23 Angela Boyle to the stand.

24 JUDGE AMCHAN: If you'd raise your right
25 hand.

1 WHEREUPON,

2 ANGELA BOYLE,

3 A witness herein, having been first duly cautioned and

4 sworn, was examined and testified as follows:

5 JUDGE AMCHAN: Okay. Have a seat. As you've

6 heard, you have to keep your voice up.

7 DIRECT EXAMINATION

8 BY MS. BRUNDAGE:

9 Q. Good morning, Ms. Boyle.

10 A. Good morning.

11 Q. Could you please state and spell your name for
12 the record?

13 A. Angela Boyle, (A-N-G-E-L-A) (B-O-Y-L-E).

14 Q. Are you currently employed?

15 A. Yes.

16 Q. Who is your employer?

17 A. Affinity Medical Center.

18 Q. What position do you hold at Affinity Medical
19 Center?

20 A. I'm the vice president of Human Resources.

21 Q. How long have you held that position?

22 A. I've been vice president for about six years.

23 And previously I was director of Human Resources at one of
24 the predecessors, Doctor's Hospital of Stark County.

25 Q. Okay. Who do you report to?

1 A. I report to the CEO, Ron Bierman.

2 Q. And if you could, briefly describe the duties
3 of your role as the vice president of Human Resources.

4 A. My duties include recruitment and retention of
5 employees, compensation, employee relations, management
6 training. In addition, I oversee the -- all the Human
7 Resource policies throughout the facility.

8 Q. Are you involved in discipline?

9 A. Sometimes, yes.

10 Q. Are you a registered nurse?

11 A. No, I'm not.

12 Q. Does your job as the vice president of Human
13 Resources ever require clinical input?

14 A. Yes, frequently.

15 Q. When it does, what do you do?

16 A. Well, since I am not a clinician, depending on
17 what the discipline is, and we have a variety of
18 disciplines, I go to an authority within the facility, or
19 I have corporate people that I can refer to.

20 Q. Okay. In your role as the vice president of
21 Human Resources, did you know an individual by the name of
22 Ann Wayt?

23 A. Yes.

24 Q. How did you know her?

25 A. She was employee.

1 Q. Okay. Can I turn your attention to
2 Respondent's Exhibit 1, please? It's going to be probably
3 -- probably buried somewhere up there.

4 A. Which one is --

5 JUDGE AMCHAN: Here, I've got one.

6 THE WITNESS: Oh, thank you. Thank you, sir.

7 Yes.

8 Q. Do you recognize this document, Ms. Boyle?

9 A. This is an Employee Disciplinary Action Form
10 from Affinity Medical Center administered to Ann Wayt on
11 February -- it's dated February 22nd, but it looks like it
12 was actually administered on March 12th, 2010.

13 Q. Okay. And do you know where this record would
14 be kept?

15 A. This is from Ms. Wayt's employee file within
16 the Human Resources Department.

17 MS. BRUNDAGE: Okay. I'd move to enter
18 Respondent's Exhibit 1 into evidence.

19 MS. LAWHON: Voir dire?

20 JUDGE AMCHAN: Yes.

21 VOIR DIRE EXAMINATION

22 BY MS. LAWHON:

23 Q. Ms. Boyle, you have no personal knowledge of
24 whether this was administered to Ann Wayt on March 12th,
25 2012; isn't that correct?

1 A. I was not in attendance.

2 Q. Correct. Who wrote "Refused to sign"?

3 A. It would have been one of the two managers in
4 attendance.

5 Q. You don't know who wrote "Refused to sign";
6 right?

7 A. May I?

8 Q. Oh, of course. I'm sorry, Ms. Boyle, I thought
9 you had the document in front of you.

10 JUDGE AMCHAN: Well, I --

11 THE WITNESS: I'm sorry. I --

12 JUDGE AMCHAN: -- I gave it back.

13 THE WITNESS: I gave it back.

14 VOIR DIRE EXAMINATION (CONT'D)

15 BY MS. LAWHON:

16 Q. My question is, you don't know who wrote
17 "Refused to sign"; isn't that correct?

18 A. I know that when I received this, because my
19 signature indicates that it came to Human Resources.

20 Q. I didn't -- yes, I understand that. That's not
21 my question. My question is, you don't know who wrote
22 "Refused to sign," do you?

23 A. I believe that Jan Kassanga, the --

24 Q. Okay.

25 A. -- manager, when she turned this in, told me

1 that Ann had refused to sign it. And I did assume that
2 she wrote that.

3 JUDGE AMCHAN: Jan Kassanga wrote it.

4 THE WITNESS: Yes. And she was the director.

5 MS. LAWHON: Okay. Your Honor, I'll make an
6 offer of proof, that I spoke to Jan Kassanga, who is in
7 California --

8 JUDGE AMCHAN: Uh-huh.

9 MS. LAWHON: -- by telephone. She told me
10 she had no recollection whatsoever of ever issuing
11 discipline. She noted that the signature here is very
12 light.

13 MS. CENDROSKY: You gave her this form.

14 MS. LAWHON: I -- yes. I faxed her
15 Respondent's Exhibit 1 and asked her a number of questions
16 in a fax cover sheet. She left me a voicemail. She --

17 MS. CENDROSKY: Which you can play?

18 MS. LAWHON: Yes, which I still have.

19 MS. CENDROSKY: Do you have the fax response,
20 as well?

21 MS. LAWHON: And I also have a -- I had a
22 personal -- I had a conversation with her over the phone.
23 This is what she told me.

24 I have no recollection whatsoever of ever having
25 any problem with Ann's performance. I don't understand

1 this document.

2 I don't -- she said it looks like my signature,
3 but I have no understanding of why I would have been
4 disciplining Ann, first of all, in February for something
5 in November.

6 How would that have ever even come to my
7 attention? And it wasn't my practice to have that kind of
8 delay.

9 And then she had no idea why it would be from
10 February 22nd to March 12th before the discipline was ever
11 issued. Basically, her testimony is she doesn't recall
12 it.

13 It seems problematic to her. And on that basis,
14 I believe we -- I'm -- the Charging Party opposes
15 admission of this document.

16 MS. CENDROSKY: And the General Counsel would
17 like to keep the record open until Mrs. Kassanga returns
18 from California and have her as a rebuttal witness if this
19 is, indeed, admitted.

20 JUDGE AMCHAN: Well, I'm going to receive it
21 as a business record. I think it's been authenticated
22 sufficiently. Now it's a credibility issue, like
23 everything else.

24 (Whereupon, Respondent's Exhibit Number 1
25 was received into evidence.)

1 JUDGE AMCHAN: I -- when is Ms. Kassanga
2 coming back from California?

3 MS. LAWHON: I believe today. IT's -- I
4 mean, I can't -- yes, I'm thinking I'm remember her -- at
5 one point I thought maybe she would testify like yesterday
6 when I didn't know the schedule of witnesses thing.

7 And so I think I'm -- I think she's coming back
8 today. And I don't even know where she lives, to tell you
9 the truth.

10 I just know that -- I know where I faxed
11 something to her, and it was at a hotel in California.

12 JUDGE AMCHAN: Well, I'll consider leaving
13 the record open and we can --

14 MS. LAWHON: Great.

15 JUDGE AMCHAN: -- decide, you know, how we're
16 going to take her testimony, if that becomes necessary.

17 MS. LAWHON: Okay. So --

18 JUDGE AMCHAN: I mean, I'm just saying video
19 is one possibility.

20 MS. LAWHON: Right. Respondent's Exhibit 1
21 is --

22 JUDGE AMCHAN: Is received.

23 MS. LAWHON: -- received. Okay.

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. Ms. Boyle, in your capacity as the vice
2 president of Human Resources, do you recall whether Ann
3 Wayt was ever placed on investigatory suspension during
4 her employment?

5 A. Yes, she was.

6 Q. And approximately, if you recall, when did that
7 occur?

8 A. I believe it was September 13th, 2012.

9 Q. Okay. And what was the reason for the
10 investigatory suspension of Ms. Wayt?

11 A. There had -- her manager and director had
12 conducted an investigation, and believed that on August
13 28th of 2012 that Ms. Wayt had provided inadequate patient
14 care, substandard patient care. And had, further,
15 falsified the patient record to indicate that she had
16 provided the care.

17 Q. Okay. And so after Ms. Wayt was placed on an
18 investigatory suspension, did the hospital eventually
19 reach a conclusion of its investigation?

20 A. Yes, it did.

21 Q. Okay. And what were the results or the
22 conclusion?

23 A. Ann Wayt was terminated.

24 Q. And what -- if you recall, what was the date of
25 that termination?

1 A. September 26th, 2012.

2 Q. Okay. Why was Ms. Wayt terminated?

3 MS. LAWHON: Objection. The termination
4 document speaks for itself.

5 MS. BRUNDAGE: Okay.

6 JUDGE AMCHAN: Yes. And I --

7 MS. BRUNDAGE: That's fine.

8 JUDGE AMCHAN: -- she's not going to say
9 anything different than your other witnesses.

10 MS. BRUNDAGE: No.

11 DIRECT EXAMINATION (CONT'D)

12 BY MS. BRUNDAGE:

13 Q. To the best of your recollection, when did you
14 first become involved in the investigation involving
15 Ms. Wayt?

16 A. I believe -- I'm not terrific with dates, so
17 bear with me. I believe it was August 30th that I became
18 aware that there was an issue.

19 Q. Okay. And how did you become aware there was
20 an issue?

21 A. Bill Osterman, the chief nursing officer,
22 mentioned to me that there was an allegation that they
23 were investigating, basically a matter just informing me.

24 Q. Okay. And do you recall what the allegation
25 pertained to?

1 A. He said that a nurse who was acting as a sitter
2 had complained that Ann Wayt had never come in and
3 conducted a head to toe assessment in that person's
4 presence.

5 Q. And when you say "that person" --

6 A. The person that made the allegation was Rhonda
7 Smith --

8 Q. Okay.

9 A. -- one of the nurses from another unit.

10 Q. Okay. When you met with Mr. Osterman on or
11 around August 30th, or -- on or about August 30th, had any
12 investigation of Ms. Wayt begun?

13 A. Yes. The investigation had already begun on
14 the 29th, the day that the allegation was brought forth.
15 Paula Zinsmeister, the unit manager, was out on vacation.
16 And Susan Kress, the director of our CVS-ICU at the time
17 was covering that unit for her.

18 So inasmuch as she was the acting supervisor, she
19 had already begun the investigation.

20 JUDGE AMCHAN: I do think we've been over a
21 lot of this stuff, and I don't think there's any --

22 MS. BRUNDAGE: Okay.

23 JUDGE AMCHAN: -- challenge to a lot of this.

24 So --

25 MS. BRUNDAGE: Okay.

1 JUDGE AMCHAN: -- if we could just go to --

2 MS. BRUNDAGE: Move along?

3 JUDGE AMCHAN: -- the stuff that's new.

4 MS. BRUNDAGE: Okay. Stuff that's new.

5 JUDGE AMCHAN: Or, well, anything that might

6 --

7 MS. BRUNDAGE: Let me think about --

8 JUDGE AMCHAN: -- be in dispute. But --

9 MS. BRUNDAGE: Bear with me. I will endeavor
10 to do just that.

11 JUDGE AMCHAN: Okay.

12 DIRECT EXAMINATION (CONT'D)

13 BY MS. BRUNDAGE:

14 Q. Did Bill involve you of any separate -- when
15 you met with Bill on or around August 30th, did he inform
16 you of any separate instances of alleged problematic
17 behavior by Ms. Wayt?

18 A. He did mention to me that there -- that John
19 Perone, the pharmacy director had sent him an e-mail, he
20 had sent it to him and Paula Zinsmeister because he was on
21 the Orthopedic Unit filling the PYXIS machine, and that
22 there's was a medication discrepancy involving a narcotic.

23 And that Ann had refused to -- to reconcile that
24 discrepancy with Mr. Perone, and he was concerned about
25 that.

1 Q. Okay.

2 A. And so he sent an e-mail. So he mentioned that
3 to me, also.

4 Q. Okay. As a part of your investigation -- as a
5 part of the hospital's investigation, did you ever speak
6 with Paula Zinsmeister and Jason McDonald about their
7 investigation of Ms. Wayt?

8 A. Regarding the patient care issue, yes.

9 Q. Do you recall approximately when that would
10 have occurred?

11 A. Well, Paula didn't return from vacation until
12 the day after Labor Day, which I believe was September
13 4th. And that was the day that she began the
14 investigation. And I spoke with her, I believe, the next
15 day, which was the 5th. I spoke with her and Jason
16 McDonald.

17 Q. Do you recall whether you spoke with Bill
18 Osterman?

19 A. I -- did I speak with Bill Osterman. I think I
20 -- I spoke with Bill and -- I'm sorry, I spoke with Jason
21 McDonald and Paula first, and subsequently spoke with Bill
22 Osterman.

23 JUDGE AMCHAN: The same day?

24 THE WITNESS: Yes, the same day.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Okay. And based on speaking with those -- had
3 those three individuals reached any conclusions regarding
4 the complaint against Ms. Wayt?

5 A. Paula and Jason came to see me following their
6 meeting with Bill Osterman. And they said that Bill had
7 directed them to meet with me.

8 That the three of them had met and discussed the
9 events of August 28th, and they felt that there was,
10 indeed, some wrongdoing on Ms. Wayt's part. And they
11 shared with me what their investigation -- how they had
12 investigated the issue.

13 Q. What was their conclusion, if they reached one?

14 A. Their conclusion was that Ann Wayt provided
15 inadequate care, had not completed the head-to-toe
16 assessment, did not complete the hourly rounding that's
17 rounding.

18 And, however, she did document that she provided
19 those -- that care on that day.

20 Q. Did you discuss discipline?

21 A. Their opinion was that she should be
22 terminated.

23 Q. Okay. Why would they report this to you, if
24 you know?

25 A. Because, in my role as vice president of Human

1 Resources, I need to approve every suspension or
2 termination. And I'm involved at that level at every
3 discipline, every disciplinary action at that level.

4 Q. In this case, what did you do next?

5 A. Well, our normal protocol for a termination
6 would be that I then take the information that I'm aware
7 of and seek approval from the corporate division HR
8 director.

9 I have a dotted line responsibility to that
10 individual. His name was Bud Wood.

11 Q. Okay. Would you have discussed this with
12 anyone else at the hospital?

13 A. And before I -- before I did that, I wanted to
14 make sure I understood myself after -- I certainly had
15 discussed it with Jason and Paula, followed up with Bill
16 Osterman.

17 But since I am not a nurse, I did take -- I did
18 ask Pat Kline. Pat Kline is our compliance officer and
19 our risk manager.

20 And I went to her and I asked her, because she is
21 a nurse, I asked her to pull the original patient chart
22 for the patient in question, and to review it, the care
23 that was provided in the first shift that that patient was
24 on the Orthopedic Unit, specifically.

25 And I just said, you know, would you please

1 review this and let me know if you feel that this care was
2 appropriate. Because that's something she's very familiar
3 with and is very adept at.

4 Q. When you spoke with Ms. Kline and requested
5 that she review the patient's file in the manner you've
6 just described, did you inform her that Ms. Wayt was
7 believed by the other members of your clinical team,
8 namely, Bill, Jason, and Paula, that Ms. Wayt had
9 falsified the patient record?

10 A. No. My -- my purpose was to get my own
11 independent verification that there was a problem with the
12 charting.

13 JUDGE AMCHAN: Is Ms. Kline at the Massillon
14 facility?

15 THE WITNESS: Yes, she is. Her office is
16 actually in my suite.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. BRUNDAGE:

19 Q. Okay. To your knowledge, did Pat Kline
20 complete a review of the patient's chart?

21 A. She did. I believe it was the next morning
22 that I asked her to -- that she said she had completed the
23 review, and we went through the chart.

24 Q. The next morning after what?

25 A. I'm sorry. Let's see. If this was the 5th, I

1 believe it would have been the 6th, September 6th.

2 Q. Okay. And so did you ever meet with Pat to
3 discuss the results of her review?

4 A. I did.

5 Q. Okay. And what did Pat say to you?

6 A. Well, Pat's conclusion was that the care was
7 questionable for a variety of reasons. She felt that the
8 charting was -- indicated that the patient had care
9 provided before the time of admission, that it -- that it
10 said what time the patient was admitted.

11 She said there was no skin assessment performed.
12 And she felt there were discrepancies between nurses' --
13 nurses' observations in the Emergency Department notes and
14 observations and notes provided by the nurses that
15 followed the shift of Ann Wayt.

16 Q. After hearing from Pat Kline, did you provide
17 her any additional information?

18 A. Well, it was at that time that I shared with
19 Pat that the allegation was that Ann -- that there was a
20 sitter with the patient. From the time the patient
21 arrived on the floor, the patient was never left
22 unattended.

23 And that no one, the sitters, and in this case
24 were actually registered nurses, and that they did not see
25 anyone -- they never saw Ann come in and actually do the

1 head-to-toe assessment that is necessary, nor did they see
2 her do any hourly rounding.

3 Q. Okay. Did this change or enhance Ms. Kline's
4 of the chart, or conclusions of her review?

5 A. Well --

6 MS. CENDROSKY: Objection.

7 MS. LAWHON: Well, objection. Calls for
8 speculation.

9 JUDGE AMCHAN: Well, what -- did she say
10 anything to you about that?

11 THE WITNESS: Yes, she did.

12 JUDGE AMCHAN: What'd she --

13 THE WITNESS: Originally she felt that the
14 documentation was poor, and the care, based on the
15 documentation, was substandard.

16 Based upon my -- my explaining the allegation,
17 then she said, well, she's documented that she's done
18 this, but you're saying no one saw her do it; so,
19 therefore, this would mean that the record was falsified.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. After meeting with Pat, what did you do
23 next?

24 A. Well, based on that, I then forwarded the -- I
25 spoke with Bud Wood, and I believe I sent him an e-mail,

1 also, requesting his approval to proceed with the
2 termination.

3 Q. Is it standard or unusual to obtain corporate
4 approval for terminations?

5 A. No. Our policy requires that we get corporate
6 approval.

7 Q. Okay. Did Bob -- Bud Wood respond to you?

8 A. Yes, he did.

9 Q. And how did he respond?

10 A. He did provide me approval to proceed with the
11 termination.

12 JUDGE AMCHAN: Verbally? By e-mail? By --

13 THE WITNESS: By e-mail.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. BRUNDAGE:

16 Q. Okay. Before speaking -- before providing that
17 approval to you, are you aware whether or not Bud Wood
18 contacted anyone else about the approval?

19 A. Well, like me, Bud Wood is not a nurse. So Bud
20 referred to his -- to the division quality officer, a
21 nurse, and asked for her opinion regarding the information
22 that I had provided.

23 Q. Do you know what her opinion was?

24 A. Yes.

25 Q. What was it?

1 A. She concluded that the care was substandard.

2 The record appeared to be -- it was falsified. And she

3 also stated that we should proceed to also report Ann to

4 the Ohio Board of Nursing.

5 Q. Okay. Based upon these --

6 MS. LAWHON: Objection. Could we get some

7 foundation on this? I mean, I don't know if this is a

8 phone call, what context this is.

9 JUDGE AMCHAN: Yes. I guess if we could just

10 go back. I mean --

11 MS. BRUNDAGE: Okay.

12 JUDGE AMCHAN: -- I guess, how do you know

13 all this?

14 THE WITNESS: It's in an e-mail. I believe

15 --

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Can -- Angie, can I point your attention to

19 General Counsel's Exhibit 19?

20 A. You need a librarian. Are these -- are they in

21 a pile?

22 JUDGE AMCHAN: Yes. They're probably not in

23 any particular order.

24 THE WITNESS: Oh, okay. Well --

25 JUDGE AMCHAN: I mean --

1 THE WITNESS: -- I just wanted to make sure.

2 DIRECT EXAMINATION (CONT'D)

3 BY MS. BRUNDAGE:

4 Q. Angie, I can provide you with a copy.

5 A. Good. Thank you.

6 Q. Ms. Boyle, I'm providing you what's been marked
7 as General Counsel's Exhibit 19.

8 A. Yes.

9 Q. Do you recognize this document?

10 A. Yes. This is the e-mail.

11 Q. And which e-mail is that?

12 A. This -- well, it begins with my, I believe, let
13 me look. Yes. This is my e-mail to Bud Wood, and his --
14 this is the chain of e-mails regarding the request for
15 Ann's termination.

16 Q. Okay. Does it include correspondence with
17 anyone besides Bud Wood from corporate?

18 A. Yes. Originally, I forwarded it to Bud Wood
19 and Patricia Balwaznyak. She's a different quality
20 director, we have several. But she was unavailable, so --
21 to respond, so Bud forwarded it to Roni Benson, who is in
22 the same role.

23 Q. And are Ms. Benson's e-mails included in GC
24 Exhibit 19?

25 A. Yes, it is.

1 Q. Okay. Thank you.

2 A. There you go.

3 Q. Based upon these recommendations from
4 corporate, what did you do next?

5 MS. LAWHON: Objection. I don't see the word
6 "recommend" anywhere. I know the basis for this --

7 MS. BRUNDAGE: I can strike and rephrase.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. BRUNDAGE:

10 Q. Based upon this approval from corporate, what
11 did you do next?

12 A. I met with Paula Zinsmeister, Jason McDonald,
13 and I don't recall if Bill was in the same meeting or not,
14 to discuss how we would proceed to notify Ann of the
15 decision.

16 Q. Okay. And what was the decision?

17 A. To terminate her.

18 Q. Okay. And in that meeting did you decide how
19 you would notify Ms. Wayt?

20 A. Yes. We talked about the fact that Paula was
21 -- Paula and Jason are her direct supervisors. And
22 normally, that would -- that's our normal way to proceed,
23 that they would contact Ms. Wayt and ask her to come in
24 for a meeting.

25 Q. Okay. And what was the intended purpose of the

1 meeting, if you know?

2 A. The intended purpose of the meeting originally
3 was to terminate Ms. Wayt.

4 Q. Ms. Boyle, prior to the union election, would
5 it have been your practice as the vice president of Human
6 Resources to conduct an investigatory suspension of an
7 employee before termination?

8 A. Yes, it was.

9 Q. Okay. Were you considering any changes to that
10 practice?

11 MS. LAWHON: Objection. I'd like this
12 admission of unlawful conduct. Let's go forward.

13 MS. BRUNDAGE: Go ahead and proceed, Ms.
14 Boyle.

15 MS. LAWHON: We can amend the Complaint
16 again.

17 MS. CENDROSKY: Complaint again.

18 MS. BRUNDAGE: You can proceed, Ms. Boyle.

19 JUDGE AMCHAN: You're not objecting to the
20 question.

21 MS. LAWHON: I'm noting that she's soliciting
22 further unfair labor practices. And we would respond to
23 that by requesting an amendment of the Complaint.

24 JUDGE AMCHAN: Well --

25 MS. LAWHON: The Union is certified to change

1 to, any terms and conditions of employment without
2 bargaining is unlawful.

3 JUDGE AMCHAN: Okay. You're not withdrawing
4 the question, so you can ask it -- answer it.

5 THE WITNESS: So I can answer the question?

6 JUDGE AMCHAN: Right.

7 THE WITNESS: Thank you, sir. I would say in
8 most cases, not all, we would conduct an investigatory
9 meeting and suspend the employee.

10 Following the election, based on the new
11 Weingarten rights, I had to -- one of the things I was
12 considering is do I want to proceed with the decision that
13 -- our usual practice, rather, of having investigatory
14 suspensions which -- by which, in accordance with labor
15 law, the employees would be entitled to Weingarten rights.

16 However, if we proceeded directly to a
17 disciplinary session, they would not be entitled to a
18 Weingarten representative.

19 And in the -- my first impulse, or my first
20 decision about that was that I would proceed by not having
21 investigatory suspensions, I would just proceed to go
22 straight to the discipline.

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. BRUNDAGE:

25 Q. Okay. And I'd like to turn your attention now

1 to Charging Party Exhibit 5, please. I'll give you a
2 minute to locate that in your documents.

3 A. Could you --

4 JUDGE AMCHAN: I don't know, do we have it?

5 THE WITNESS: -- describe it as --

6 MS. LAWHON: Oh, oh, this --

7 JUDGE AMCHAN: I'm not sure it's up here.

8 MS. LAWHON: -- should we go off the record
9 for a second maybe and make copies at this point, only
10 because this is the one nobody has copies of. The Judge
11 --

12 JUDGE AMCHAN: Right. Let's go off the
13 record for a second.

14 (Off the record.)

15 JUDGE AMCHAN: Okay. Back on the record.

16 DIRECT EXAMINATION (CONT'D)

17 BY MS. BRUNDAGE:

18 Q. Ms. Boyle, I'm now directing your attention to
19 Charging Party Exhibit 5. Do you recognize this document?

20 A. Yes, I do.

21 Q. And what is this document?

22 A. This is our Discipline and Termination of
23 Employment Policy.

24 Q. Okay. And what is the effective date of this
25 document?

1 A. 7/1/2011.

2 Q. And is this policy one that you are familiar
3 with?

4 A. Yes.

5 Q. Why?

6 A. This is the policy I refer to regarding any
7 questions of discipline or termination.

8 Q. To your knowledge, does this discipline and
9 discharge policy address investigatory suspensions?

10 A. Yes, it does. On Paragraph 3.5.

11 Q. Okay. And does it require an investigatory
12 suspension?

13 MS. LAWHON: Objection. The document speaks
14 for itself.

15 JUDGE AMCHAN: Correct. I see it.

16 THE WITNESS: Okay.

17 MS. BRUNDAGE: Okay.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. BRUNDAGE:

20 Q. Does the discipline and discharge policy in
21 place at Affinity Medical Center discuss falsification?

22 A. Yes, it does. In Paragraph 9, the policy
23 actually delineates certain actions that may result in
24 immediate termination.

25 Q. Okay.

1 A. And falsification of a medical record is one of
2 those bullets.

3 Q. Okay. Turning your attention back to the
4 investigation into Ms. Wayt, you've testified that Paula
5 and Jason were, as her supervisors, were going to contact
6 Ms. Wayt. Do you know if that happened?

7 A. They did.

8 Q. Okay.

9 A. They called -- my understanding, as they
10 related it to me, was that they called Ms. Wayt, asked her
11 to come in that afternoon.

12 Q. And what day --

13 A. And that's the date --

14 Q. -- around what day would that have occurred?

15 JUDGE AMCHAN: Well, I think we've been over
16 this.

17 THE WITNESS: We know the date. Okay.

18 JUDGE AMCHAN: Right.

19 THE WITNESS: Thank you, Your Honor.

20 JUDGE AMCHAN: I think it's that the call was
21 the 12th, she came in on the 13th.

22 THE WITNESS: The call was made to ask her to
23 come in that afternoon for a meeting. And --

24 DIRECT EXAMINATION (CONT'D)

25 BY MS. BRUNDAGE:

1 Q. Did Paula and Jason inform you of the contents
2 of their conversation with Ms. Wayt?

3 A. Thank you. Yes, they did. They said two
4 things: that Ann said she was not available to come in
5 that afternoon; and that, secondly, she did request a
6 Weingarten representative.

7 Q. Did Jason and Paula inform you of how they
8 handled that request?

9 A. Yes. They --

10 Q. And what did --

11 A. They told Ann Wayt, as we had discussed, as I
12 had directed them, that she would not be entitled to a
13 Weingarten representative, because the meeting would be a
14 disciplinary meeting and not an investigatory meeting.

15 Q. Okay. Did the planned purpose of the meeting
16 with Ms. Wayt on September 13th, 2012 ever change?

17 A. Yes, it did.

18 Q. Okay. Can you elaborate?

19 A. Yes.

20 JUDGE AMCHAN: Well, I think we've also -- I
21 don't think there's any dispute about this either.

22 MS. BRUNDAGE: Okay.

23 JUDGE AMCHAN: I think that's all in the
24 record.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Okay. As regards to the hospital's procedure
3 prior to the union election of holding investigatory
4 suspensions with employees --

5 A. Uh-huh.

6 Q. -- did your decision not to have those after
7 the union election, those investigatory suspension
8 meetings after the union election change?

9 A. Yes. I reversed my own decision that we would
10 forego them.

11 Q. Okay. Why did you do that?

12 A. Because I really, thinking about it, you know,
13 my intention, I felt that they were very valuable, and
14 that -- this probably isn't a great answer -- but I felt
15 it was the right thing to do.

16 And I had to weigh the advantages of foregoing
17 the Weingarten representative, or disadvantages, as well
18 as weigh the value of the investigatory session, and I
19 reversed myself.

20 Q. Okay. Was this before or after Jason and Paula
21 had spoken with Ms. Wayt?

22 A. Unfortunately, it was after they had spoken
23 with Ms. Wayt.

24 Q. Okay. And so did the change of the meeting to
25 an investigatory suspension change Ms. Wayt's right to a

1 Weingarten representative at the meeting?

2 A. It did.

3 Q. How so?

4 A. And I -- I then told -- I informed Jason and
5 Paula that I had reversed my original decision. And I
6 realized that Ann would be perplexed at this change.

7 So I said I will contact Ann myself and explain
8 the change, and inform her that she would, in fact, be
9 entitled to a Weingarten representative.

10 Q. Did you, in fact, call Ms. Wayt?

11 A. I did.

12 Q. And --

13 A. I spoke with her shortly after the call between
14 Jason and Paula. It was definitely that same afternoon.

15 Q. Okay. And what, to the best of your
16 recollection, did you say to Ms. Wayt during that call?

17 A. I know I apologized to her for the confusion,
18 and said that I had directed them that this would be a
19 disciplinary session and that she would not be entitled to
20 a Weingarten representative.

21 However, I had changed my mind and that she would
22 absolutely be entitled to bring a representative with her
23 to the meeting.

24 Q. Did Ms. Wayt respond?

25 A. She said, oh, oh okay. And, I mean, I'm sure

1 she was -- well --

2 Q. Okay. And did Ann -- during that phone
3 conversation, did Ann say anything to you about her
4 earlier call with Paula and Jason?

5 A. I -- I don't recall her saying anything about
6 the call, the earlier call.

7 Q. Okay. Did you attend a meeting with Ms. Wayt
8 the next day?

9 A. Yes.

10 Q. Did Ms. Wayt bring a -- who was present at the
11 meeting?

12 A. Jason McDonald, and Paula Zinsmeister and
13 myself. Ann Wayt came and she brought with her another
14 employee, Bob McKinney, as her Weingarten representative.

15 Q. Okay. And what was discussed during the
16 meeting with Ann on September 13th, 2012?

17 JUDGE AMCHAN: Well, we've been --

18 MS. CENDROSKY: Do you really need to do all
19 this?

20 JUDGE AMCHAN: -- we've been over all this,
21 too, I think.

22 MS. BRUNDAGE: Okay.

23 MS. CENDROSKY: We're under time constraints.

24 JUDGE AMCHAN: Well, I'm -- it's not the time
25 so much as undue repetition.

1 MS. BRUNDAGE: Okay.

2 JUDGE AMCHAN: Unnecessary repetition.

3 MS. BRUNDAGE: Okay.

4 DIRECT EXAMINATION (CONT'D)

5 BY MS. BRUNDAGE:

6 Q. Okay. At the conclusion of the meeting on
7 September 13th, 2012, do you recall whether you spoke?

8 A. I did. I -- I -- I said, because this was
9 essentially Jason and Paula speaking about the offenses,
10 then I recapped for, or explained to Ann Wayt what the
11 consequences of the investigatory suspension would be.

12 I said there would be one of three outcomes.
13 Either she would be exonerated and reinstated with nothing
14 in her file.

15 She would be found to have -- have some
16 discipline awarded and a suspension with -- with
17 disciplinary action. Or she could be terminated.

18 Q. Did you say anything else to Ms. Wayt?

19 A. At that time, then my final remarks, I looked
20 directly at Ms. Wayt, and I believe we were standing at
21 that time, and I looked at her and I said, now, please, as
22 part of this investigation, we would like you to provide
23 any information that you think you would want us to
24 consider as part of this investigation, hence, it's an
25 investigatory suspension. And I said you can e-mail it to

1 me, or you can handwrite it and get it back to me.

2 And then I turned to Bob McKinney, the Weingarten
3 representative because, to my knowledge, Bob had never
4 been in a suspension meeting.

5 And I -- as far as I knew, it was his first -- it
6 certainly was his first time as a Weingarten
7 representative at Affinity. And so I turned to him and I
8 said, Bob, if you'd like, you could bring it in to me. So
9 I left it like that.

10 Q. Okay.

11 A. And this is my usual procedure.

12 Q. Okay. During the meeting on the 13th of
13 September, was a second meeting date with Ms. Wayt
14 discussed?

15 A. Yes. We -- this was a Thursday. And we talked
16 about wanting to reconvene possibly on Monday.

17 Q. Okay. And do you recall whether a meeting with
18 Ms. Wayt occurred on Monday?

19 A. It did not.

20 Q. Okay. Why not?

21 MS. LAWHON: Objection. Cumulative.

22 JUDGE AMCHAN: Yes. I mean, it strikes me
23 that we've been over this before. I mean, there's nothing
24 new and nothing that I think is really in dispute.

25 DIRECT EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Okay. Did you -- after the meeting on the
3 13th, did you receive any additional information from
4 Ms. Wayt?

5 A. I did not from Ms. Wayt, no.

6 Q. Did you receive any information from anyone on
7 Ms. Wayt's behalf?

8 A. Yes, I did. I received a letter from Michelle
9 Mahon on behalf of Ann.

10 Q. Okay. When did you receive that?

11 A. I believe it was the 19th.

12 Q. Okay. Directing --

13 A. Of September.

14 Q. Directing your attention to Respondent's
15 Exhibit 8.

16 A. Is that the letter?

17 Q. Okay. Do you recognize this document?

18 A. I do.

19 Q. What is it?

20 A. This is the letter, or a copy of the letter
21 that I received from Ms. Mahon.

22 Q. Okay. Did you share this letter with anyone at
23 the hospital?

24 A. Yes. I provided, or shared it with Jason and
25 Paula, and Bill Osterman, initially. And then after a

1 little bit of thought, I did take the letter again to Pat
2 Kline, our compliance officer, and she's also our HIPAA
3 privacy officer, because as I read it, I had some concerns
4 that it might be a HIPAA violation. But that isn't my
5 area of expertise, that is Pat's.

6 Q. Okay.

7 A. So I did provide her a copy for her --

8 Q. Okay.

9 A. -- review.

10 Q. Do you recall whether or not the hospital's
11 investigation of Ms. Wayt was ongoing after receipt of the
12 letter on September 19th?

13 A. Yes. It absolutely was, because there were
14 some discrepancies between what our understanding of the
15 events of August 28th were and what was outlined in
16 Ms. Mahon's letter.

17 Q. Okay. At some point in time did the hospital
18 reach a conclusion of its investigation of Ms. Wyatt?

19 A. Yes.

20 Q. Okay. And what was that conclusion?

21 A. The -- the conclusion was that there was
22 nothing in the letter that mitigated our -- our
23 investigation that we could -- that -- that made sense,
24 and we proceeded to terminate Ms. Wyatt.

25 Q. Okay. In making -- and what was your -- what

1 was your involvement in the decision to terminate?

2 A. My involvement was -- my role is to approve the
3 termination. I didn't make -- I don't make -- I don't
4 have the expertise to decide the severity of every detail.
5 The managers do the investigations. They bring it to me,
6 and I conduct a review and approve.

7 Q. Okay. I'd like to turn your attention now to
8 Respondent's Exhibit 16. Let me know if you're having
9 trouble locating it.

10 MS. LAWHON: I'm sorry, Counsel, what number?

11 MS. CENDROSKY: 16.

12 MS. LAWHON: Thank you.

13 JUDGE AMCHAN: 16 is the --

14 THE WITNESS: It's a discipline?

15 JUDGE AMCHAN: Yes, it's a written warning.

16 THE WITNESS: That -- that helps me. Do you
17 mind?

18 JUDGE AMCHAN: Here.

19 THE WITNESS: Oh, yes. Okay.

20 DIRECT EXAMINATION (CONT'D)

21 BY MS. BRUNDAGE:

22 Q. Okay. Do you recognize this document?

23 A. I do.

24 Q. Okay. And did you consider -- and what is
25 that?

1 A. This is a disciplinary action that was
2 administered to Ann Wayt on September 5th of 2012
3 regarding the incident with John Perone.

4 Q. Okay. And in approving Ms. Wayt's termination,
5 do you know whether or not you considered this warning --
6 written warning issued to Ms. Wayt on September 5th?

7 A. No. This -- this had absolutely no bearing on
8 the events of August 28th.

9 Q. Okay. And was Ms. Wayt discharged?

10 A. Yes.

11 Q. And what was the date of that discharge?

12 A. September 26th, 2012.

13 Q. Were you involved in the meeting?

14 A. I was.

15 Q. And can you tell us about the meeting?

16 A. Because this was truly a disciplinary meeting,
17 Ann Wayt, Jason McDonald, Paula Zinsmeister, and myself
18 were in the meeting.

19 And Jason informed Ms. Wayt of the decision. I
20 believe -- my recollection is that the meeting lasted less
21 than three minutes.

22 The minute that Jason said, you know, we've
23 carefully investigated and the -- we've made our decision
24 to terminate you, Ms. Wayt immediately stood up, opened
25 the door to my office, slammed the door, and left the

1 Human Resource -- actually, there's two additional doors,
2 and she went out there, she immediately left the office
3 before we actually finished the conversation.

4 Q. Okay. In your tenure as the vice president of
5 Human Resources, and prior tenure as the Human Resources
6 director, do you recall if you've -- have ever encountered
7 a case similar to Ms. Wayt's, in terms of the allegations
8 that were found to be true?

9 A. No. Nothing -- no. Nothing has -- nothing as
10 egregious as this particular event of a nurse not
11 providing care to a patient for a protracted period of
12 time, and then going back and falsifying the record.

13 MS. BRUNDAGE: Okay. I have no further
14 questions.

15 MS. CENDROSKY: I actually need a break. I
16 have to go speak with Regional authorities. And I assume
17 we need to prepare for cross. So 15 minutes, and I may --
18 that may -- I may have to talk later with them, so --

19 JUDGE AMCHAN: Okay. I would -- your
20 consultation with your supervisors, let's keep it to a
21 minimum.

22 MS. CENDROSKY: I just hope he's here.

23 JUDGE AMCHAN: What?

24 MS. CENDROSKY: It's a little early for him
25 to come in, so I may not even speak with him.

1 JUDGE AMCHAN: Yes. All right.

2 MS. CENDROSKY: Thank you.

3 JUDGE AMCHAN: We'll take a -- go off the
4 record.

5 (Off the record.)

6 JUDGE AMCHAN: Back on the record.

7 CROSS-EXAMINATION

8 BY MS. CENDROSKY:

9 Q. Hi, Ms. Boyle. We've met.

10 A. Yes.

11 Q. I just have a couple questions for you today.

12 You did testify that as the HR representative that you are
13 in charge of the policies throughout the hospital?

14 A. Human Resources.

15 Q. The Human Resources. I'm sorry, I said HR.

16 A. Oh, no, I didn't hear you say anything. I
17 thought you just said policies.

18 Q. Oh, maybe I should -- yes, maybe I should speak
19 up. Sorry about that. Do you know -- recall where all
20 these policies are kept?

21 A. Yes.

22 Q. And how are they kept?

23 A. The HR policies are kept on the -- a particular
24 drive for the management team.

25 Q. Are there any policies that are kept on the

1 Employer's Ethernet?

2 A. The employees have access to the Employee
3 Handbook.

4 Q. I'm going to show you what's been marked as
5 General Counsel's Exhibit Number 20.

6 A. Okay. General Counsel 20?

7 Q. It's going to be a new one.

8 A. Oh, sorry.

9 (Whereupon, General Counsel's Exhibit Number
10 20 was marked for identification.)

11 Q. Ms. Boyle, you are testifying here today
12 pursuant to the subpoena I issued on the custodian of
13 records; is that correct?

14 A. Yes.

15 Q. Are you familiar with the policy I just handed
16 to you?

17 A. Yes.

18 Q. And can you tell us what this policy is?

19 A. This is the Labor Union's policy.

20 Q. And where is this policy kept?

21 A. This is kept with all the Human Resources
22 policies on the leadership drive.

23 Q. Do the employees have --

24 MS. LAWHON: I'm sorry, did you say on the
25 leadership drive?

1 THE WITNESS: The leadership, correct.

2 MS. LAWHON: Okay.

3 THE WITNESS: Leadership drive.

4 MS. LAWHON: Okay.

5 CROSS-EXAMINATION (CONT'D)

6 BY MS. CENDROSKY:

7 Q. Do the employees have access to this policy on
8 the Ethernet?

9 A. They do not. This information is included in
10 the Employee Handbook.

11 Q. It's included in the Employee's Handbook.

12 A. Yes.

13 Q. Okay. Are employees asked to review the
14 Employee Handbook at any given time?

15 A. Yes.

16 Q. Are employees required to sign off on the
17 Employee Handbook?

18 A. The answer is yes, all new employees are
19 required to sign off on the Employee Handbook. I would
20 have to verify whether -- I believe they are.

21 Q. Okay. And I'd like to direct your attention to
22 the bottom of the GC's Exhibit 20. And it says effective
23 June 1st, 2004. Is that correct?

24 A. Yes.

25 Q. To your knowledge, has this policy been in

1 effect since that date?

2 A. Yes.

3 MS. CENDROSKY: Okay. Your Honor, at this
4 time, I'd like to move to admit General Counsel's Exhibit
5 Number 20 into evidence.

6 MS. BRUNDAGE: Okay. And for what purpose is
7 this being -- this exhibit being entered into evidence?

8 MS. CENDROSKY: Because once it's entered
9 into evidence, the counsel for the General Counsel, since
10 we just got this yesterday, was it, you sent me the
11 e-mails with all the policies?

12 MR. BRYAN CARMODY: That sounds right, yes.

13 MS. CENDROSKY: We are going to amend the
14 Complaint.

15 JUDGE AMCHAN: Well, I'm going to receive it.
16 (Whereupon, General Counsel's Exhibit Number 20
17 was received into evidence.)

18 MS. CENDROSKY: Okay.

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. CENDROSKY:

21 Q. As the custodian of records, have you reviewed
22 all the documents that were given to me pursuant to that
23 subpoena today?

24 A. I believe so, yes.

25 Q. Okay. Isn't it true that Affinity submitted no

1 documentation showing that John Perone issued any verbal
2 and/or written discipline to any employee on the account
3 of that employee's failure to follow hospital policies
4 regarding medication discrepancies and/or attitude
5 reasons?

6 MR. BRYAN CARMODY: Can you repeat that
7 question?

8 MS. CENDROSKY: I sure will.

9 MS. LAWHON: Yes, could you, please?

10 CROSS-EXAMINATION (CONT'D)

11 BY MS. CENDROSKY:

12 Q. Yes. I know it's a long one.

13 A. I know.

14 Q. Isn't it true that Affinity submitted no
15 documentation showing that John Perone issued any verbal
16 and/or written discipline to any employee on the account
17 of that employee's failure to follow hospital policies
18 regarding medication discrepancies and/or attitude
19 reasons?

20 A. I --

21 JUDGE AMCHAN: Other than to Ms. Wyat.

22 Q. Other than to Ms. Wayt.

23 A. Correct. There's two parts. Is other to
24 Ms. Wyat part of that discipline -- is that part of the
25 question?

1 Q. Other than Ms. Wayt.

2 A. But that's not correct.

3 Q. Did you review the documents before you gave
4 them to me today? Do you recall any document that has
5 John Perone issuing discipline --

6 A. May I take a moment and review something?

7 Q. Yes.

8 THE WITNESS: Okay. May I answer this in two
9 questions -- two parts, Your Honor?

10 JUDGE AMCHAN: It's her question, not mine.

11 Q. Well, let's see how your answer is.

12 A. Okay.

13 Q. And then I'll let you know if maybe I need to
14 re-ask the question. Okay?

15 A. Well, let me answer that Mr. Perone did not
16 administer the discipline to Ann Wayt.

17 Q. Correct.

18 A. Okay. I --

19 Q. Uh-huh.

20 A. -- I was thinking you were saying that he did.

21 Q. No. Huh-uh.

22 A. No, he did not. I -- he --

23 Q. So he provided no -- there was no --

24 A. There was -- I provided to you no discipline
25 issued by John Perone --

1 Q. Okay.

2 A. -- that is correct.

3 Q. So when -- so my next question is, isn't it
4 also true that Affinity submitted no documentation showing
5 that any employee received any verbal and/or written
6 discipline on the account of John Perone's reporting to
7 their supervisor that the employee failed to follow
8 hospital policy regarding medication discrepancies and/or
9 for attitude reasons?

10 A. That is correct.

11 MS. CENDROSKY: Okay. Your Honor, would you
12 like us to finish cross first, and then move to amend the
13 Complaint? How do you want that?

14 JUDGE AMCHAN: Either way?

15 MS. CENDROSKY: Okay. Go ahead and finish
16 cross.

17 MS. LAWHON: Okay. Sure.

18 MS. CENDROSKY: I was just paged.

19 MS. LAWHON: Do you want me to wait?

20 MS. CENDROSKY: No.

21 MS. LAWHON: Okay.

22 MR. BRYAN CARMODY: Your Honor, may we go off
23 the record for a moment, please?

24 JUDGE AMCHAN: Yes. Off the record.

25 (Off the record.)

1 JUDGE AMCHAN: Back on the record.

2 CROSS-EXAMINATION

3 BY MS. LAWHON:

4 Q. Ms. Boyle, you're aware that a complaint form
5 was submitted to the Ohio State Board of Nursing; isn't
6 that correct?

7 A. I am aware.

8 Q. Okay. Did you review that form before it was
9 submitted?

10 A. I did not.

11 Q. Okay. And the -- you were asked questions
12 about General Counsel's Exhibit 19. Do you remember which
13 one that was, the e-mail string? I'll wait until you find
14 it.

15 A. Yes, I have it.

16 Q. Okay. And this was the -- this represents the
17 entirety of the communication between Affinity and
18 Ms. Benson; isn't that correct? About Ann Wayt's
19 termination.

20 A. I am not certain whether there was any phone
21 communication or not. I -- I really could not say --

22 Q. Okay.

23 A. -- whether there was any discussion over the
24 telephone. I don't believe so, but I would not be --

25 Q. Okay. But this is the entirety of the written

1 communication.

2 A. Yes, it is. Uh-huh.

3 Q. Okay. Now, your -- I'd like to direct you

4 first to your e-mail, the kind of initiating e-mail of

5 this, which is on hand-numbered page -- well, the fact

6 that it's from you is on Page 8, and the contents on Page

7 9.

8 A. I see it.

9 Q. Okay. And you refer to -- did you write this?

10 A. I did.

11 Q. Okay. And you refer to three witnesses stating

12 that Ms. Wayt never -- I'll direct first -- never even

13 entered the patient's room until noon. Do you see that?

14 A. I do.

15 Q. Who are those three witnesses to who you were

16 referring?

17 A. At this time, I believe that the witnesses were

18 definitely Rhonda Smith, Susan Kress, and I -- whatever I

19 would say would be a guess for the third person.

20 Q. Okay. Now, at the time you sent this -- well,

21 let me back up for a minute.

22 You were aware, were you not, that Susan Kress

23 was in the patient's room for ten minutes?

24 A. Ten to fifteen minutes, yes.

25 Q. Okay. You knew that. So to the extent that

1 she's being cited as a witness for the period of time from
2 nine fifteen to noon, the only part she's a witness for is
3 for what you call ten or fifteen minutes; is that right?

4 A. I -- I believe that your reading of the
5 sentence was not my intent of the sentence.

6 Q. It says, "Three witnesses stated that Ms. Wayt,
7 in fact, never conducted an assessment, or even entered
8 the patient's room until noon." What are the three
9 witnesses stating?

10 A. My intent --

11 Q. No. What did you mean when you wrote --

12 A. What did I mean.

13 Q. -- three witnesses -- no. Let me back up.

14 Were you -- did you mean to say three witnesses
15 stated that Ms. Wayt never conducted an assessment?

16 MS. BRUNDAGE: Objection.

17 JUDGE AMCHAN: Well, I don't -- it says what
18 it says, I mean, but --

19 MS. LAWHON: Yes.

20 JUDGE AMCHAN: -- are you asking her at the
21 time that you sent this e-mail, which was --

22 MS. LAWHON: September --

23 JUDGE AMCHAN: -- 6th.

24 THE WITNESS: 6th, uh-huh.

25 JUDGE AMCHAN: Are you asking if she knew

1 that -- you -- did you know at that time that Ms. Kress
2 had only been there for ten or fifteen minutes.

3 MS. LAWHON: She already answered that, Your
4 Honor. She said yes --

5 THE WITNESS: Yes.

6 MS. LAWHON: -- she. That was my question
7 before this one.

8 JUDGE AMCHAN: And what you're saying is that
9 she didn't know of anybody -- who else did you know that
10 had been in the room?

11 You mentioned Smith. So, really, the only person
12 you knew who was there throughout the shift was Paula
13 (sic) Smith. Is that what you're driving at?

14 MS. LAWHON: Or until noon, yes.

15 CROSS-EXAMINATION (CONT'D)

16 BY MS. LAWHON:

17 Q. The only person you knew that had been in the
18 patient's room who could say that Ann Wayt hadn't come in
19 was Rhonda Smith; isn't that right?

20 A. I cannot say to you today that I did not know
21 at that date that there was another person. But I can't
22 recall whether I was citing Sam Burgett, or whether I was
23 citing Jonalee, my recollection of that. And the other
24 part of this is that --

25 Q. There's no question pending.

1 A. Okay.

2 Q. Well, Ms. Wayt you -- excuse me. I'm sorry.

3 Ms. Boyle.

4 A. Ms. Boyle.

5 Q. You sat in this room throughout the --

6 A. Uh-huh.

7 Q. -- this is the fifth day of hearing. You've

8 been here for every moment we've been in this hearing on

9 the record; isn't that correct?

10 A. Almost.

11 Q. Okay. At the time you wrote this e-mail on

12 September 6th, Paula Zinsmeister had not interviewed

13 Rhonda Smith; isn't that correct?

14 A. That is correct.

15 Q. At the time you wrote this e-mail, Jason

16 McDonald had never interviewed Rhonda Smith --

17 A. That is --

18 Q. -- isn't that correct?

19 A. Correct.

20 Q. At the time you wrote this e-mail Bill Osterman

21 had never interviewed Rhonda Smith; isn't that correct?

22 A. That is correct.

23 Q. You had no sworn statement from Rhonda Smith

24 prior to the time of sending this e-mail; isn't that

25 correct?

1 A. I did not.

2 Q. In fact, at no point before terminating Ms.

3 Wayt on the basis --

4 A. Uh-huh.

5 Q. -- in part, of what Ms. Smith said, you have no
6 sworn statement from her; isn't that correct?

7 A. I don't require sworn statements.

8 Q. You could answer my question, please,
9 Ms. Boyle. My question is, isn't it true you had nothing
10 sworn from Ms. Smith at the time the termination decision
11 was made with respect to her version of the facts.

12 A. I had no sworn statements.

13 Q. Okay. And at the time you sent this e-mail,
14 you had no statements from Rhonda Smith whatsoever; isn't
15 that correct?

16 A. Correct.

17 Q. And at the time you sent this e-mail, you had
18 no memorialization of any interview with Rhonda Smith;
19 isn't that correct?

20 A. No.

21 Q. You had a memorialization of an interview with
22 Rhonda Smith as of September 6th?

23 A. I had spoken with three supervisors about --

24 Q. Excuse me, Ms. Boyle. Maybe you're not
25 familiar with the term "memorialization." That means

1 something in writing.

2 You had nothing in writing from anyone with
3 respect to what Rhonda Smith said happened as of September
4 6th; isn't that correct?

5 A. No, I did not. That is correct.

6 Q. No hospital representative had spoken to
7 Jonalee Lesjak about the events of August 28th as of the
8 date you sent this e-mail; isn't that correct?

9 A. I believe that is correct.

10 Q. Now -- and you sent to Bud Wood the 24-Hour
11 Assessment Form; right?

12 A. Yes.

13 Q. And what, if anything, else did you send him
14 with this e-mail? It says, "Please review the attached
15 documentation." That's what I'm looking at.

16 A. Yes, that would be the -- may I review these,
17 because I'm not familiar with the -- the -- I want to make
18 sure I'm saying it correct.

19 Q. Of course. Respondent's 5 is the, what I'm
20 referring to as the 24-Hour Assessment Form.

21 A. Yes, that's correct.

22 Q. Okay. You sent him that, you already said
23 that.

24 A. Yes.

25 Q. My question is, what else, if anything, did you

1 send him?

2 A. I don't believe anything else, but I would have
3 to check my records.

4 Q. Well, you were the custodian of records. It's
5 my understanding this document was produced pursuant to a
6 subpoena. I would assume that you did check your records.

7 The attachment normally shows up on an e-mail. I
8 don't see a reference to an attachment on an e-mail here.
9 Can you explain that?

10 A. Yes. Because I believe what was printed was
11 the final version of the e-mail.

12 Q. Okay.

13 A. And the attachment would not have --

14 Q. But in responding to the subpoena did you not
15 review the records and produce the attachment?

16 A. I must admit, I may have overlooked that.

17 Q. Okay. All right. So, since we can't resolve
18 that, we'll move on.

19 To the best of your recollection, the only
20 attachment was --

21 A. Yes.

22 Q. -- the 24-Hour Assessment Form; correct?

23 A. Yes, that's correct.

24 Q. Okay. So your then -- you send Mr. Wood the
25 description on Page 9. And the next thing you hear is

1 that Mr. Wood, on the 10th of September, and this on Page
2 6, forwards you a string of e-mails with a direction to
3 you -- well, with a statement to you, FYI, we need to be
4 able to respond to Roni's questions; right?

5 A. Correct.

6 Q. And what he's referring to, and Roni is, I
7 gather, Ms. Benson's nickname; right?

8 A. Yes, Veronica Benson.

9 Q. Okay. So, and Ms. Benson's questions to which
10 he's referring are on Page 7 where she says, "I'd be
11 interested to know the details on this nurse, including
12 age, tenure, and prior disciplinary action"; right?

13 A. Yes.

14 Q. That's what Wood was asking you to respond to;
15 right?

16 A. Yes.

17 Q. And the response which you then provided to
18 Mr. Benson -- Ms. Benson and Bud Wood is on Page 2; right?
19 Starts on Page 2 with the e-mail September 11th, nine
20 fifty-four a.m.; right?

21 A. Nine fifty-four.

22 Q. That's your response.

23 A. Yes.

24 Q. Okay. And you -- your response consisted of
25 forwarding an e-mail that was sent by Paula Zinsmeister;

1 right?

2 A. Yes.

3 Q. Okay. And nowhere in that e-mail does Paula

4 Zinsmeister provide the detail of Ms. Wayt's age; correct?

5 A. Correct.

6 Q. Nowhere in that e-mail does she provide the

7 detail of Ms. Wayt's tenure employment with that hospital;

8 correct?

9 A. Correct.

10 Q. Nowhere in that e-mail does she provide the

11 prior disciplinary action against Ms. Wayt; isn't that

12 correct?

13 A. That is correct.

14 Q. And you were aware that Ms. Zinsmeister's

15 knowledge base as of September 11th with respect to having

16 spoken to Rhonda Smith was the same as it was on September

17 6th. She had not spoken to her; right?

18 A. Yes.

19 JUDGE AMCHAN: I'm not sure that the -- you

20 answered affirmatively; correct?

21 A. Yes.

22 Q. You were also aware that her knowledge base

23 with respect to speaking to Jonalee Lesjak was no greater

24 as of September 11th than it was September 6th. She had

25 not spoken to her; right?

1 A. She had not.

2 Q. Nor had Jason McDonald, who is a cc here,

3 spoken to either of those two individuals at the time

4 Ms. Zinsmeister, on September 11th, sent this recitation

5 of facts; right?

6 A. Could you repeat that question, please?

7 Q. Sure. Nor had Jason McDonald spoken to either

8 Rhonda Smith or Jonalee Lesjak at the time Ms. Zinsmeister

9 sent this recitation of facts on September 11th; isn't

10 that correct?

11 A. Yes.

12 Q. And your possession of a statement of any kind

13 concerning what Ms. Smith said was the same on September

14 11th as it was on September 6th, you had nothing; correct?

15 Do you need me to repeat it?

16 A. No. I'm pondering what you mean by nothing.

17 Q. You had nothing in writing stating what --

18 A. I --

19 Q. -- Ms. Smith had said.

20 A. That's correct.

21 Q. From anyone.

22 A. Correct.

23 Q. And you, of course, had never spoken to

24 Ms. Smith either; right?

25 A. No.

1 Q. Isn't it correct that you had not spoken to
2 her? I'm -- it's -- I'm not challenging your answer.
3 It's a bad question on my part.

4 JUDGE AMCHAN: It's what the no means is
5 she's getting at. You -- there's ambiguity if you look at
6 the question and answer.

7 Q. You -- let me ask it this way, Ms. Boyle. Did
8 you speak to Rhonda Smith before September 6th?

9 A. No.

10 Q. Did you speak to Rhonda Smith before September
11 11th?

12 A. No.

13 Q. Did you ever speak to Rhonda Smith before
14 Ms. Wayt was terminated?

15 A. I did not.

16 Q. Ms. Boyle, I think in describing General
17 Counsel's Exhibit 19 when I was asking you about the
18 attachments you said this is the final version.

19 A. I --

20 Q. I understood you to mean this is the string,
21 and what happens when you reply to something with an
22 attachment, is the attachment drops off. Is that what you
23 meant?

24 A. That is absolutely what I meant.

25 Q. There's no --

1 A. No.

2 Q. -- other version. Okay.

3 A. I wouldn't know how to do that.

4 Q. Okay. Now, you testified that you told Pat

5 Kline that the sitters said they didn't see the nurse come

6 in when you gave her -- actually, was that your

7 conversation with Kline after she had reviewed the chart?

8 A. After she reviewed the chart.

9 Q. Okay. That's right. Now, as a matter of fact,

10 you had no idea what one of the sitters had said at that

11 point, because no one at the hospital, at the time of your

12 conversation with Pat Kline, had even asked Jonalee Lesjak

13 what happened; isn't that correct? Yes or no?

14 A. That is correct.

15 Q. So when you testified I told her the sitters

16 didn't come in, did you actually tell her the sitters said

17 that Ann didn't come in?

18 A. I did say that.

19 Q. Okay. You said that despite the fact that you

20 had no information from one out of two people who had

21 worked as a sitter that day; is that correct? Yes or no?

22 A. Can I say correct?

23 Q. You can say correct, yes, sir.

24 A. I don't know yes or no.

25 Q. That's fine. And with respect to this change

1 of decision about the character of the meeting, you were
2 contacted by the union representative Michelle Mahon in
3 the interim between the denial of Weingarten rights to Ann
4 Wayt and the meeting the next day; isn't that correct?

5 A. My conversation with --

6 Q. Excuse me, Ms. Boyle. If you can answer the
7 question without a narrative, I would like you to answer
8 it. Isn't it true that Michelle Mahon contacted you about
9 the hospital's denial of Ann Wayt's Weingarten rights in
10 between the phone call with Jason and Paula when they were
11 denied, and your calling Ann Wayt to tell her that is not
12 true?

13 MR. BRYAN CARMODY: Objection, Your Honor.
14 There's no allegation of a denial of Weingarten rights in
15 this complaint.

16 JUDGE AMCHAN: I thought there --

17 MS. LAWHON: And nor I --

18 MS. CENDROSKY: Yes, there is.

19 JUDGE AMCHAN: I thought there was.

20 MS. CENDROSKY: There is. I wrote it.

21 MR. BRYAN CARMODY: There's no -- there's a
22 threat --

23 MS. BRUNDAGE: There's a threat.

24 MR. BRYAN CARMODY: -- for her having
25 allegedly -- the allegation is there is a threat by

1 Mr. McDonald to terminate her, but there is no allegation
2 of a denial of the Weingarten right.

3 JUDGE AMCHAN: Yes, that's true.

4 MS. LAWHON: I need a minute, Your Honor, to
5 look for a document.

6 JUDGE AMCHAN: Okay. Off the record.

7 (Off the record.)

8 JUDGE AMCHAN: Okay. Back on the record.

9 MS. LAWHON: Okay. And I'll have this marked
10 as Charging Party next in order, which I believe would be
11 6.

12 (Whereupon, Charging Party's Exhibit Number 6
13 was marked for identification.)

14 CROSS-EXAMINATION (CONT'D)

15 BY MS. LAWHON:

16 Q. Ms. Boyle, your meeting on the 13th of
17 September 2012 with Ann Wayt was at one p.m.; isn't that
18 correct?

19 A. Yes.

20 Q. Okay. And now that you have this document in
21 front of you, Charging Party's 6, is that your e-mail
22 address, Angie_Boyle@chs.net?

23 A. Yes.

24 Q. Okay. This reflects that you received an
25 e-mail from Michelle Mahon prior to your meeting with Ann

1 Wayt on September 18th; is that correct?

2 A. Correct.

3 Q. And this was an e-mail after you had had a
4 phone conversation with Michelle Mahon about Weingarten
5 rights; isn't that correct?

6 A. Yes.

7 Q. And the phone conversation was in between the
8 phone call to Ann Wayt and the meeting the next day; isn't
9 that correct? And prior to this e-mail.

10 MR. BRYAN CARMODY: Objection, Your Honor.

11 THE WITNESS: Say that --

12 MR. BRYAN CARMODY: This is totally
13 irrelevant. What does this have to do with any -- what
14 connection does this line of questioning have to any
15 allegation which is in this Complaint?

16 MS. LAWHON: Your Honor, they put on evidence
17 from this witness that she had a change of heart about
18 Weingarten representation.

19 JUDGE AMCHAN: Well, it could -- I mean, I
20 can't remember the case about, you know, a violation that
21 can be cured under --

22 MS. LAWHON: Oh, Passavant? This is not
23 Passavant, I can assure you. I'm quite familiar with
24 that. You have to post a notice.

25 JUDGE AMCHAN: Well, whether they would argue

1 --

2 MR. BRYAN CARMODY: That is not true.

3 JUDGE AMCHAN: -- that it's -- there's -- my
4 recollection, there's -- at least some Board members have
5 said that you don't have to dot all the I's and cross all
6 the T's that are set forth in Passavant.

7 MS. BRUNDAGE: That's correct.

8 MR. BRYAN CARMODY: That's correct, Your
9 Honor.

10 JUDGE AMCHAN: So --

11 MR. BRYAN CARMODY: Judge, this e-mail has to
12 do with who was going to be serving as the Weingarten rep.
13 What do you mean?

14 JUDGE AMCHAN: Right. But she's using --
15 she's using it to establish that -- she's trying to
16 establish that change of heart wasn't all self-initiated.

17 MS. LAWHON: Correct. At this time, I'd like
18 to offer Charging Party 6.

19 MR. BRYAN CARMODY: Your Honor, we would
20 object on relevance.

21 JUDGE AMCHAN: Okay. I'll receive it.

22 (Whereupon, Charging Party's Exhibit Number 6
23 was received into evidence.)

24 MS. LAWHON: Nothing further.

25 JUDGE AMCHAN: Anything on redirect?

1 MS. BRUNDAGE: No redirect.

2 JUDGE AMCHAN: You're done.

3 THE WITNESS: Thank you.

4 (WITNESS EXCUSED.)

5 MS. CENDROSKY: Your Honor, at this time,
6 counsel for the General Counsel moves to amend its third
7 order consolidating case 20 --

8 MR. BRYAN CARMODY: Sharlee, hang on for one
9 second.

10 JUDGE AMCHAN: Off the record.

11 (Off the record.)

12 JUDGE AMCHAN: Back on the record.

13 MS. CENDROSKY: Okay. At this time, General
14 Counsel moves to amend its Third Order Consolidating
15 Complaint. We will be adding a new paragraph.

16 This paragraph would start with 17. So Paragraph
17 17, 18, 19, 20 as they currently read will all be -- need
18 to be renumbered accordingly.

19 This new paragraph will read 18A -- I mean, I'm
20 sorry, 17A: Since on or about June 1st, 2004, Respondent
21 has maintained a labor union policy.

22 17B will read: Employees have access to and/or
23 have reviewed this policy as part of Respondent's Employee
24 Handbook.

25 It reads, in relevant part: 3.0 labor

1 organization activity. Upon discovery of any labor
2 organizing activity, it shall be the responsibility of the
3 manager discovering the activity to immediately inform the
4 facility administration of the situation.

5 The facility chief executive officer or designee
6 should immediately contact the divisional vice president
7 responsible for the operation of the hospital in the
8 corporate Human Resources Department.

9 Paragraph 17C should read: Respondent's policy
10 has the tendency to coerce employees with regard to their
11 Section 7 rights and/or creates an impression amongst its
12 employees that their union activities are under
13 surveillance by Respondent.

14 Paragraph 17D should read: Respondent's
15 promulgated and maintained their policy described above to
16 discourage its employees from forming, joining, and
17 assisting the Union or engaging in other concerted
18 activities.

19 MR. BRYAN CARMODY: Your Honor, we would
20 oppose the amendment, and we would deny all of the
21 allegations as they have been dictated into the record by
22 Ms. Cendrosky.

23 And -- well, first things first. We would deny
24 the Motion to Amend or, rather, we would oppose the Motion
25 to Amend.

1 JUDGE AMCHAN: I'm going to grant it.

2 MS. CENDROSKY: Thank you.

3 MR. BRYAN CARMODY: I could say for the
4 record now that we deny those allegations, and we'll look
5 forward to defending them.

6 JUDGE AMCHAN: Okay. Off the record.

7 (Off the record.)

8 JUDGE AMCHAN: Back on the record. Your next
9 witness is?

10 MR. BRYAN CARMODY: Pat Kline.

11 JUDGE AMCHAN: Ms. Kline, if you'd raise your
12 right hand.

13 WHEREUPON,

14 PATRICIA KLINE,

15 A witness herein, having been first duly cautioned and
16 sworn, was examined and testified as follows:

17 JUDGE AMCHAN: Okay. Our microphone doesn't
18 amplify, so be sure and keep your voice up.

19 DIRECT EXAMINATION

20 BY MR. BRYAN CARMODY:

21 Q. Pat, good morning.

22 A. Good morning.

23 Q. Will you please summarize your educational
24 background for the Judge?

25 A. Okay. I'm a graduate of St. Thomas Hospital

1 School of Nursing. I have a diploma in nursing. I
2 graduated in 1972.

3 And after that, I have had several courses at
4 some local universities, Kent State University, Akron
5 University.

6 Q. Thank you. Subsequent to your graduation from
7 nursing school, did you obtain an RN license?

8 A. Yes, I did.

9 Q. Do you recall what year that was?

10 A. 1972.

11 Q. Thereafter, did you do any work as a staff
12 nurse?

13 A. Yes, I did.

14 Q. Can you summarize, briefly, that work
15 experience for the Judge, please?

16 A. For approximately ten years I worked at various
17 acute care hospitals, Robinson Memorial Hospital in
18 Ravenna, Ohio, St. Tom -- excuse me -- Riverside Methodist
19 Hospital in Columbus, Ohio, and Altman Hospital in Canton,
20 Ohio.

21 Basically, I was an afternoon staff nurse and
22 sometimes charge nurse on the afternoons.

23 Q. Thank you, Pat. Do you still hold a license as
24 a registered nurse?

25 A. Yes, I do.

1 Q. Are you presently employed?

2 A. Yes, I am.

3 Q. By whom?

4 A. Affinity Medical Center.

5 Q. When did your employment with Affinity Medical
6 Center begin?

7 A. 1992.

8 Q. What position did you accept this part of your
9 hire with Affinity?

10 A. I was the director of Home Health Services.

11 MS. LAWHON: I'm sorry, I didn't hear the
12 witness. Director of?

13 THE WITNESS: Home Health Services.

14 MS. LAWHON: Thank you.

15 JUDGE AMCHAN: So was the hospital called
16 Affinity back then?

17 THE WITNESS: No, it was not. It was called
18 Doctor's Hospital.

19 JUDGE AMCHAN: This may already be -- when
20 did the name change?

21 THE WITNESS: Approximately seven years ago.
22 Six years ago.

23 DIRECT EXAMINATION (CONT'D)

24 BY MR. BRYAN CARMODY:

25 Q. Pat, did there come a time when you obtained a

1 new position for Doctor's, slash, Affinity?

2 A. Yes.

3 Q. Okay. Do you recall approximately when that

4 was?

5 A. I --

6 Q. Approximately.

7 A. About 15 years ago.

8 Q. Okay. And what positions did you pick up at

9 that point in time?

10 A. The compliance officer.

11 Q. Do you still hold that position for Affinity?

12 A. Yes, I do.

13 Q. What other positions, if any, do you currently

14 hold for Affinity?

15 A. The HIPAA privacy officer, risk manager, and

16 patient safety officer.

17 Q. Do you recall approximately when you assumed

18 the patient -- or privacy officer position?

19 A. I would say about 12, 13 years ago.

20 Q. Thank you. And approximately when you obtained

21 the position of risk manager for Affinity?

22 A. Six to seven years ago.

23 Q. Thank you. Can you describe for the Judge the

24 essential job duties that you carry as Affinity's

25 compliance officer?

1 A. I'm basically responsible for maintaining a
2 compliance program at the hospital making sure that all of
3 our employees, including our physicians, follow Federal,
4 State, and local regulations as they relate to healthcare
5 operations.

6 In that capacity, I audit and I trend, you know,
7 data information. If there's any infarctions I do
8 investigative discovery and follow-up action with that.

9 Q. Is there any education associated with your
10 position as compliance officer, staff education?

11 A. At that time, we were owned by a corporation
12 and they provided training for all of the individuals who
13 were compliance officers. It was a three-day week -- a
14 three-day training at their facility.

15 Q. Okay.

16 JUDGE AMCHAN: You're talking about around
17 the year 2000, or?

18 THE WITNESS: That was back when I became the
19 compliance officer.

20 DIRECT EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. I'm sorry. My question was imprecise.

23 A. Okay.

24 Q. I wanted to know within the last five years, to
25 pick a number, in connection with your role as the

1 compliance officer, has that involved you educating staff?

2 A. Oh, I'm sorry. I didn't understand.

3 Q. It was my fault.

4 A. Yes, I do. I'm responsible for all new hire

5 orientation. I do an hour presentation with every new

6 person that comes into Affinity. That includes our

7 employed physicians, our volunteers.

8 And then throughout the year I do updating to our

9 -- to our staff, basically through our leadership group.

10 If we have any changes in regulations or policies and

11 procedures, I educate those updates to our leadership

12 group, and then they, in turn, take that back to the

13 individual departments and educate their staff on those

14 updates.

15 Q. Thank you, Pat. You mentioned you're also

16 currently the privacy officer for Affinity going back the

17 last several years.

18 A. Right.

19 Q. What is that position required of you?

20 A. Again, I'm responsible for maintaining a -- an

21 effective privacy program. The goal of that program is to

22 protect patient healthcare information.

23 I do that, again, through educating all new staff

24 when they come to the hospital, and then ongoing education

25 throughout the year.

1 Q. Thank you, ma'am. And the same question with
2 respect to your risk manager, Pat. In the last several
3 years, what is that required of you?

4 A. Okay. The -- the risk manager program is a
5 very comprehensive intense program where I'm responsible
6 for identifying potential risk areas, not only for our
7 patients, but for the -- the hospital, as a whole.
8 Identifying those areas and then auditing to see if there
9 are any issues that do need to be addressed.

10 I also look at trending that information to see
11 if we have a problem or don't have a problem. I work with
12 all of the -- all of the staff in the hospital, primarily
13 with leadership, individual staff, as -- as necessary.

14 You know, I -- I again do auditing, if we do find
15 anything and I report up. I report to -- I report our
16 hospital committees, I report to our administrative team.
17 I even report up to corporate.

18 And if necessary, I would -- I would report to
19 the Federal Government, if -- if need be.

20 Q. I understand. Thank you, ma'am. Pat, in
21 carrying out any one of these jobs that you've described,
22 how frequently or infrequently are you reviewing patients'
23 charts?

24 A. On a regular basis. With all three of these
25 activities, I would say on a weekly basis I'm reviewing at

1 least one chart or documentation from a -- from a clinical
2 record.

3 Q. Thank you. You know Angie Boyle, of course.

4 A. Yes, I do.

5 Q. And how do you know Angie?

6 A. Angie is the vice president of Human Resources,
7 and we basically share office space.

8 Q. Thank you. Do you know Ann Wayt?

9 A. Yes, I do.

10 Q. How so?

11 A. Ann's been an employee at -- she was an
12 employee at Doctor's Hospital, and also Affinity Medical
13 Center. And I know her through her work at -- at both
14 places.

15 Q. Pat, I want to direct your attention to
16 September of last year and ask you whether Angie ever
17 spoke to you about you conducting some review of
18 Ms. Wayt's care of any patient at Affinity?

19 A. Yes, she did.

20 Q. Do you recall approximately what day that
21 conversation with you and Ms. Boyle took place?

22 A. It was early in September, I think, around the
23 5th.

24 Q. What do you recall Angie asking of you?

25 A. She asked me to review Ann's documentation in a

1 specific record, the nurse's notes and the nursing
2 assessment.

3 Q. After talking with Angie, what did you do?

4 A. I reviewed the chart.

5 Q. Thank you. The chart that you reviewed, was it
6 the original chart, or was it a copied version of the
7 chart?

8 A. It was the original chart.

9 Q. Thank you, ma'am. Do you recall, without
10 saying the patient's last name, the last name of the
11 patient?

12 A. Yes.

13 Q. Did it begin with the letter "P"?

14 A. Yes.

15 Q. So as we proceed with some questions, Pat, I
16 might refer to this patient as Mrs. P.

17 A. Fine.

18 Q. Okay. Pat, I'm going to --

19 MR. BRYAN CARMODY: Your Honor, this might be
20 easier to do off the record. I want to bring some
21 exhibits to the witness' attention. There's going to be
22 several. We can do it on the record, if you'd prefer,
23 sir.

24 JUDGE AMCHAN: Yes. I don't know, there
25 might be some objections about the --

1 MS. LAWHON: Are these new exhibits?

2 MR. BRYAN CARMODY: No, no, no. They're --

3 MS. LAWHON: Oh.

4 MR. BRYAN CARMODY: -- they're already in
5 evidence. Okay.

6 JUDGE AMCHAN: You mean just sort of
7 arranging for -- them for her?

8 MR. BRYAN CARMODY: Yes, sir.

9 JUDGE AMCHAN: Do you have any problem with
10 that?

11 MS. LAWHON: What is he doing? I'm sorry.

12 MS. CENDROSKY: He wants to organize them.

13 JUDGE AMCHAN: He wants to --

14 MS. LAWHON: Oh, organize them up there. I
15 don't have any problem.

16 MS. CENDROSKY: No, go ahead.

17 JUDGE AMCHAN: Yes. So that it doesn't take
18 her --

19 MS. LAWHON: No.

20 JUDGE AMCHAN: -- ten minutes to find each
21 one.

22 MS. LAWHON: No.

23 MR. BRYAN CARMODY: I think it will save some
24 time.

25 MS. LAWHON: That's fine with me.

1 JUDGE AMCHAN: Okay. We'll go off the
2 record.

3 (Off the record.)

4 JUDGE AMCHAN: Back on the record.

5 DIRECT EXAMINATION (CONT'D)

6 BY MR. BRYAN CARMODY:

7 Q. Pat, I've put in front of you Respondent's
8 Exhibit Number 3, which is -- appears to be a health
9 history outpatient form, do you see that, ma'am?

10 A. Yes, I do.

11 MS. LAWHON: I'm sorry, we didn't know what
12 you put in front of her, so can you help --

13 MR. BRYAN CARMODY: Okay. I --

14 MS. LAWHON: -- maybe tell us --

15 MS. CENDROSKY: R3.

16 MR. BRYAN CARMODY: Okay. I don't know if
17 she's going to be able to read on the -- from the actual
18 documents.

19 MR. BRYAN CARMODY: So Respondent's Exhibit
20 3.

21 MS. LAWHON: Thank you. Could we go off the
22 record for a second?

23 JUDGE AMCHAN: Yes. Off the record.

24 (Off the record.)

25 JUDGE AMCHAN: Back on the record.

1 DIRECT EXAMINATION (CONT'D)

2 BY MR. BRYAN CARMODY:

3 Q. Pat, do you have in front of you -- can you --
4 do you have in front of you Respondent's Exhibit 3, which
5 is a health history outpatient form?

6 A. Yes, I do.

7 Q. Okay. Do you have in front of you Respondent's
8 Exhibit 5, which is a patient 24-Hour Assessment?

9 A. Yes, I do.

10 Q. Do you have in front of you Respondent's
11 Exhibit 6, which is a physician's order sheet?

12 A. Yes.

13 Q. Do you have in front of you Respondent's
14 Exhibit 7, which is a medication administration record?

15 A. Yes.

16 Q. Do you have in front of you a nurse
17 documentation, Charging Party Exhibit 1?

18 A. Excuse me. Can you repeat that again?

19 Q. The -- it's a six-page document, nurse
20 documentation.

21 A. From ProMed?

22 Q. That's right.

23 A. I do not.

24 JUDGE AMCHAN: Off the record.

25 (Off the record.)

1 JUDGE AMCHAN: Back on the record.

2 DIRECT EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. Do you have a copy of Charging Party's Exhibit
5 1 in front of you?

6 A. Yes, I do.

7 Q. Okay. What's this document?

8 A. This is the nursing documentation from the
9 ProMed Clinical System that they utilize in the Emergency
10 Department.

11 Q. Okay. The exhibits that you have collectively
12 in front of you, do you recognize this documentation?

13 A. Yes.

14 Q. How so?

15 A. This is the documentation from the clinical
16 record of the patient in question that I reviewed?

17 Q. Thank you. And after your review of this
18 clinical documentation, Pat, did you develop any concerns
19 with respect to Ms. Wayt's care of this patient?

20 A. Yes, I did.

21 Q. Can you please tell the Judge what your
22 concerns were?

23 A. Okay. If we refer to the --

24 MS. LAWHON: Well, Your Honor, I'm -- for the
25 moment, I'm -- I'm not objecting to this, only because I'm

1 assuming that counsel is really asking her who -- to whom
2 -- what she said to someone, rather than just what was in
3 her mind.

4 MR. BRYAN CARMODY: No.

5 MS. LAWHON: I mean, to the extent it's in
6 her mind, it's irrelevant. She has to have communicated
7 it to someone who had a role in this discipline, which I
8 assume she did, based on the previous witness.

9 MR. BRYAN CARMODY: We're going to get there,
10 Judge. There is a communication of these concerns to
11 someone else. I thought it would make sense --

12 MS. LAWHON: Well, can't we get it at once.

13 JUDGE AMCHAN: Well, I'll allow him to ask
14 her what her subjective analysis was, and then --

15 MR. BRYAN CARMODY: It'll be subject to that
16 connection, Your Honor.

17 JUDGE AMCHAN: All right.

18 DIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. So, Pat, can you please share with the judge
21 the concerns that you developed based upon your review of
22 the documentation you have in front of you, ma'am.

23 A. Yes. On Document R3, health history
24 outpatients, on the second page under for skin impairment
25 assessment at the very bottom, I see that there -- I'm

1 assuming a line through no skin impairment noted and
2 signature representing Ann Wayt.

3 Yet, when I reviewed the ProMed documentation,
4 Exhibit CP-1, there is documentation here that there were
5 bruises noted. Let me find the pages for these.

6 On Page 2 of Page 6 of Exhibit CP1, towards the
7 middle of the page, extremities, we have injuries noted to
8 left elbow, so that is not --

9 MS. LAWHON: I'm sorry, what page is the
10 witness on?

11 THE WITNESS: Page 2 of 6.

12 MS. LAWHON: Oh, I see, yes.

13 THE WITNESS: In the middle under -- beside
14 extremities, injury to left elbow. On the same page up a
15 little bit further, location of injuries, I have the
16 patient has injuries, injury or injuries. Left elbow has
17 abrasion.

18 JUDGE AMCHAN: And you're looking at the ER
19 report.

20 THE WITNESS: Yes, I am. And there's
21 something else. On Page 3 of Page 6 of Exhibit CP1,
22 nursing documentation from ProMed. In the middle of the
23 page beside "muco," musculoskeletal you'll note bruising
24 noted in pelvis reason (sic), Dr. Ashbaugh notified.

25 Reassessment was completed, documented on the

1 same page, 8/28/2012 at five twelve, the reassessment.

2 Going down to musculoskeletal again it states no change in
3 bruising.

4 So we have documentation from the nurses in the
5 Emergency Room that there was injury to the elbow area.
6 That included an abrasion, and that there was bruising.
7 And that is not documented in the health history
8 documentation by Ann Wayt.

9 DIRECT EXAMINATION (CONT'D)

10 BY MR. BRYAN CARMODY:

11 Q. Thank you, Pat. Based upon your review of
12 these records, did you develop any other concerns
13 concerning Ms. Wayt's care for Ms. P?

14 A. Yes. On Exhibit R5, the patient 24-Hour
15 Assessment. On Page 2 of 8 in the middle section for
16 cardiovascular, you will note that there is -- are no
17 notations for the documentation of rhythm for pulses,
18 edema, and capillary refill.

19 And given the fact that this patient had a
20 history of congestive heart failure, in my personal
21 opinion as a registered nurse, I feel that that should
22 have -- there should have been an assessment there, and
23 that should have been documented.

24 Q. How was it, Pat, that you're able to determine
25 that the patient had a history of congestive heart

1 failure?

2 A. Again, going back to the ProMed documentation,
3 the exhibit CP-1.

4 I'm sorry, that was incorrect. I -- I don't see
5 it there. I do see it in the SBAR. The exhibit R2. I
6 apologize. I do not see it in the ED documentation.

7 MS. LAWHON: Your Honor, she never reviewed
8 the SBAR, according to her testimony a few moments ago.
9 So I don't understand.

10 MR. BRYAN CARMODY: Your Honor --

11 MS. LAWHON: It's not appropriate for the
12 witness to be reviewing exhibits that are on that table
13 that she just testified the documents, the totality of the
14 documents she reviewed in the SBAR wasn't one of them.

15 MR. BRYAN CARMODY: Your Honor, I -- the
16 witness' testimony was not the totality of the documents
17 that she looked at.

18 The question was did she look at the documents
19 that I presented her to, and she said yes.

20 MS. LAWHON: She said this is the
21 documentation that I reviewed.

22 JUDGE AMCHAN: Yes. Well, I guess it's a
23 question, I mean, why did she have some concerns about
24 that one column.

25 MR. BRYAN CARMODY: And, Your Honor, she --

1 JUDGE AMCHAN: And it doesn't, at least right
2 now, it doesn't sound like she had any basis to be
3 concerned about the --

4 DIRECT EXAMINATION (CONT'D)

5 BY MR. BRYAN CARMODY:

6 Q. Pat, can I direct your attention to
7 Respondent's Exhibit 3, the health history outpatient
8 form?

9 A. Yes.

10 Q. Is there any indication on this form concerning
11 congestive heart failure?

12 A. Yes, there is.

13 Q. Can you direct His Honor's attention to that?

14 A. I can. Yes. On the very first page, Page 1 of
15 2, in the block in the upper half of the documentation
16 there is cardiovascular, and there are areas beneath it
17 and beside is written "CHF." CHF stands for congestive
18 heart failure.

19 Q. And, Pat, as part of your review of the
20 patient's chart, did you review the SBAR that you
21 mentioned --

22 A. Yes, I did.

23 Q. -- shortly ago in your testimony?

24 A. Yes, I did.

25 Q. Okay. And if you'll look at --

1 MS. LAWHON: I'll note for the record this is
2 leading.

3 Q. And if you look at Respondent's Exhibit 2, do
4 you recognize that document?

5 A. Yes.

6 Q. What is that?

7 A. That is the SBAR.

8 MR. BRYAN CARMODY: Your Honor, I would offer
9 that into evidence. It's been marked, I don't think yet
10 received.

11 JUDGE AMCHAN: Well, I guess, when did you
12 look at it?

13 MS. LAWHON: I beg your pardon, Your Honor?

14 THE WITNESS: What?

15 MR. BRYAN CARMODY: It's a question to the
16 witness.

17 JUDGE AMCHAN: Well, I mean, you asked her if
18 she reviewed R2. The question is when?

19 MS. LAWHON: Right.

20 DIRECT EXAMINATION (CONT'D)

21 BY MR. BRYAN CARMODY:

22 Q. When did you review the SBAR report?

23 A. When I reviewed the original documentation in
24 the patient's chart on September 5th.

25 MR. BRYAN CARMODY: I would offer

1 Respondent's Exhibit 2 into evidence.

2 MS. LAWHON: I want to confer for a moment,
3 if I may, Your Honor.

4 JUDGE AMCHAN: Sure.

5 MS. LAWHON: Thank you.

6 JUDGE AMCHAN: Off the record.

7 (Off the record.)

8 JUDGE AMCHAN: Back on the record.

9 MS. LAWHON: I would like to voir dire, Your
10 Honor.

11 JUDGE AMCHAN: All right.

12 VOIR DIRE EXAMINATION

13 BY MS. LAWHON:

14 Q. Good morning, Ms. Kline.

15 A. Good morning.

16 Q. Jane Lawhon, attorney for the National Nurses
17 Organizing Committee. None of the writing on this SBAR
18 was entered by Ann Wayt; isn't that correct?

19 A. That's correct.

20 Q. This is all filled in, in the ER.

21 A. Yes.

22 Q. And what is your understanding of what it means
23 -- what it says next to faxed?

24 A. The nurse in the Emergency Room would be using
25 this as a communication vice -- device between the --

1 herself and the nurse that was taking report, or to the
2 floor where it would be going to.

3 They give a verbal report condition update of the
4 patient, and then they complete the SBAR, which is a
5 communication tool. And the fax means that it was faxed,
6 this -- this form was faxed to the other floor.

7 Q. I understand, Ms. Kline. Perhaps my question
8 wasn't clear. I'm asking you to read next to faxed. When
9 you reviewed it, what did you think this said?

10 A. The numbers?

11 Q. Yes.

12 A. 0848.

13 Q. Okay. And is that the time of faxing as the
14 system is used in the hospital?

15 A. As I'm looking at that, I would assume that,
16 yes.

17 Q. And did you put these circles on this document?

18 A. I did not touch this document, other than hold
19 it in my hands.

20 Q. Okay. Did the circles appear on it when you
21 looked at it?

22 A. Yes.

23 Q. Are those standard markings on an SBAR?

24 A. I can't say that they're standard. They've
25 been -- they've been added to the -- to the form.

1 Q. Well, you testified you review documentation
2 once a week. I'm asking, when you review -- do you review
3 SBAR's?

4 A. Yes, I do.

5 Q. Okay. Are they typically with circles?

6 A. I -- I cannot say that every SBAR that I've
7 looked at has circles on them.

8 Q. That wasn't my question, though. Do they
9 typically have circles?

10 A. Do they typically have circles?

11 Q. Yes.

12 A. I would say they do not typically have circles.

13 MS. LAWHON: Okay. I have no further voir
14 dire. No objection.

15 JUDGE AMCHAN: It's received.

16 (Whereupon, Respondent's Exhibit Number 2
17 was received into evidence.)

18 DIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Pat, beyond what you've covered thus far in
21 your testimony, did you develop any other concerns with
22 respect to Ms. Wayt's care of Ms. P?

23 A. Yes.

24 Q. Please explain to His Honor.

25 A. As we go to Page -- Page 7 of Page 8 of the

1 patient 24-Hour Assessment tool, at the very top there are
2 slashes in the columns identified as 070809, and so forth
3 across the top of the page. Those slashes are
4 representing that an assessment was done of the patient at
5 that time.

6 And you can see that there are slashes in the
7 category for bed rest. That means an assessment was done
8 of the patient on the ortho floor at seven a.m.,
9 eight a.m., and nine a.m.

10 And this assessment was completed by Ann Wayt.
11 And the patient was never discharged from the Emergency
12 Room until nine ten.

13 Q. How did you know that, Pat?

14 A. When you go back to the ProMed documentation,
15 the Exhibit CP1, and we go to --

16 JUDGE AMCHAN: Well, I don't think there's
17 any dispute about that.

18 THE WITNESS: Okay.

19 MS. LAWHON: Yes, there isn't.

20 THE WITNESS: Okay. So the patient was
21 discharged from the Emergency Room at nine ten, therefore,
22 an assessment could not have been done on the orthopedic
23 floor at seven a.m., eight a.m., and nine a.m.

24 DIRECT EXAMINATION (CONT'D)

25 BY MR. BRYAN CARMODY:

1 Q. Thank you, Pat. Did you develop any other
2 concerns based upon your review of this documentation?

3 A. Yes, I did. In the -- again, on Exhibit R5,
4 the 24-Hour Assessment, looking at the narrative
5 documentation, there is documentation by --

6 Q. What page, Pat?

7 A. Page 8 of 8. The very last page. There --

8 Q. Thank you.

9 A. -- there is narrative documentation for the
10 date 8/28, time 1630. It states, "Very agitated. Sitter
11 still present," and then signed Ann Wayt, RN.

12 So at 1630 we've -- Ann has evaluated that the
13 patient is very agitated and documents that. I then saw
14 that on the MAR, which is Exhibit R6, on the second page.

15 Q. I'm sorry, you're looking at the MAR?

16 A. I'm looking at the MAR.

17 Q. Okay. Is that Respondent's --

18 A. Oh, I'm -- excuse me.

19 Q. That's okay.

20 A. I'm looking at the physician order sheet.

21 Q. And that's Respondent's 6, Pat?

22 A. And that is R6. On the second page. Date at
23 the top 8/28, 1745. There are telephone orders that were
24 received from Dr. Raugh by Ann Wayt.

25 And the second order received was change Ativan

1 to 0.5 milligrams IM, may repeat 30 minutes, if needed.

2 Q8 hours prn agitation.

3 That order then was taken off at eight forty,

4 approximately an hour later. And then when I looked at

5 the MAR, which is Exhibit 7, I saw that that Ativan, 0.5

6 milligrams wasn't given until 2200. It was actually given

7 by the nurse on the next shift following Ann.

8 My concern with this is that we have

9 documentation that the patient was assessed at 1630 and

10 appeared very agitated.

11 We did receive an order from the physician for

12 medication to relieve that agitation. And that order was

13 taken off an hour later and then not given for several

14 hours additionally later.

15 So there was a considerable period of time from

16 the period that we identified the patient was very

17 agitated and in need of some medication, and that

18 medication then was not administered until much later.

19 JUDGE AMCHAN: I guess --

20 MS. LAWHON: Objection. I move to strike. I

21 mean, there's indication that the patient was very

22 agitated and not medicated? That's your testimony?

23 THE WITNESS: Yes.

24 MS. LAWHON: Okay. I'll take it on cross.

25 JUDGE AMCHAN: Can I just ask, when you said

1 at 1640 the order was taken off, is that what you said?

2 THE WITNESS: Yes, I did.

3 JUDGE AMCHAN: That means what?

4 THE WITNESS: When a nurse receives these
5 orders and then we -- they -- they have to -- they have to
6 make sure that these orders are placed and can be acted
7 upon. And so these are medication orders, so they would
8 be written on the MAR.

9 The order would be copied and it would be faxed
10 down to Pharmacy, so that Pharmacy was aware that these
11 medications were being ordered for the patient. So they
12 take action when they take off an order to make that order
13 happen.

14 JUDGE AMCHAN: Well, that's what I'm missing.
15 Take off means what? The doctor ordered the Ativan at
16 1745.

17 THE WITNESS: Exactly.

18 JUDGE AMCHAN: And then at 1640 (sic) who did
19 what?

20 MS. LAWHON: Your Honor, I'm sorry, but just
21 --

22 THE WITNESS: At 1840.

23 MS. LAWHON: -- this time has been -- she
24 first said eight forty, then you said sixteen forty.

25 JUDGE AMCHAN: I'm sorry, it's eighteen --

1 MS. LAWHON: It's actually eighteen forty --

2 JUDGE AMCHAN: Eighteen forty. Right.

3 MS. LAWHON: -- which is six forty, not eight
4 forty.

5 JUDGE AMCHAN: Again, that's why I never made
6 a D6. I'm sorry. It's eight --

7 THE WITNESS: It's taken off at 1840.

8 JUDGE AMCHAN: By whom?

9 THE WITNESS: By Ann Wayt.

10 JUDGE AMCHAN: And that means that she
11 acknowledged that the order was there?

12 THE WITNESS: She acknowledged the order was
13 there and she took action to -- to order the medication,
14 to put it on the patient's MAR so that that would
15 communicate to other nurses that that was an ordered
16 medication that was available to be given to the patient.

17 JUDGE AMCHAN: Okay.

18 DIRECT EXAMINATION (CONT'D)

19 BY MR. BRYAN CARMODY:

20 Q. Pat, did you develop any other concerns aside
21 from what you've testified to as far -- based upon your
22 review of this documentation?

23 A. I think that's it.

24 Q. I'm sorry?

25 A. I think that's it.

1 Q. Pat, the concerns, as you've just described
2 them, did you share those concerns with anyone?

3 A. I did.

4 Q. And with whom?

5 A. Angie Boyle.

6 Q. When did that take place?

7 A. Later that day.

8 Q. And sharing the concerns with Ms. Boyle, did
9 you show Ms. Boyle any of the documentation that you've
10 just reviewed during your testimony?

11 A. I had the chart and I reviewed those -- these
12 documents with Angie.

13 Q. And once you reviewed -- shared your concerns
14 with Angie and reviewed the documentation with Angie what,
15 if anything, did she say to you?

16 A. What -- what -- what did that mean to me? Did
17 that show that there was falsification of the record?

18 Q. And how did you respond, ma'am?

19 A. I believe I felt that given the -- given the
20 data that was in the chart, that it was false information
21 in the chart.

22 JUDGE AMCHAN: Well, did you say that to
23 Ms. Boyle?

24 THE WITNESS: Yes.

25 DIRECT EXAMINATION (CONT'D)

1 BY MR. BRYAN CARMODY:

2 Q. Thank you, Pat. Pat, did there come a time
3 when you spoke with Angie again about Ms. Wayt?

4 A. Yes.

5 Q. When was that, approximately?

6 A. I believe a week later there was a fax that --
7 that had come into Angie and Angie had asked me to look at
8 that -- that faxed letter that she received.

9 Q. And you say a faxed letter that she received.
10 Who is the letter signed by?

11 A. Michelle Mahon.

12 Q. Okay. I'd ask you to find, and I'll assist you
13 in the effort, I think, Respondent's Exhibit 8. Pat, do
14 you have Respondent's Exhibit 8 in front of you?

15 A. Yes, I do.

16 Q. Do you recognize this letter?

17 A. Yes, I do.

18 Q. Is this a letter that you -- that you read?

19 A. Yes, I did.

20 Q. When did you read it?

21 A. On September 19th.

22 Q. Upon your review of this letter, did you
23 develop any additional concerns with respect to Ms. Wayt?

24 A. Yes, I did.

25 Q. And can you please tell the Judge --

1 MS. LAWHON: Objection. Relevance. I --

2 MR. BRYAN CARMODY: I'm sorry?

3 MS. LAWHON: I said relevance. I believe

4 it's undisputed based on the termination document and

5 based on the submission to the State Board of Nursing,

6 that there was never an issue -- she was never charged

7 with any kind of HIPAA violation. That's what the

8 submission to the Ohio State Board of Nursing says. So

9 what is the relevance if --

10 MR. BRYAN CARMODY: That --

11 MS. LAWHON: Excuse me, Counsel, if you

12 would, please.

13 MR. BRYAN CARMODY: I can withdraw the

14 question, Your Honor.

15 JUDGE AMCHAN: Okay.

16 DIRECT EXAMINATION (CONT'D)

17 BY MR. BRYAN CARMODY:

18 Q. Pat, in connection with your role as the

19 hospital's privacy officer, did you develop any concerns

20 after having read Ms. Mahon's letter of September 19th?

21 A. Yes.

22 Q. Okay. And what were those concerns?

23 A. I was concerned that there were patient

24 identifiers listed in this -- in this letter. And based

25 on the -- who the letter was being sent to and -- and the

1 purpose of the letter, that it was a HIPAA violation.

2 Q. What patient identifiers did you see in
3 Ms. Mahon's letter?

4 A. I saw the -- I saw the admission date of the
5 patient. I saw the fact that the patient had been in the
6 Emergency Room. That the patient had come from a nursing
7 home.

8 That diagnostic information about the patient,
9 that she was confused. I have the room number of the
10 patient. Those would all be considered patient
11 identifiers.

12 Q. You say that the -- from what you could
13 determine, was this letter sent to anyone?

14 A. Well, it was sent to Angie Boyle. And then at
15 the end of the letter on the last page, I see that it was
16 cc'd to other union members, and to Affinity Medical
17 Center RN Facility Bargaining Council. So, yes, it was
18 sent to other people.

19 Q. And, Pat, as the privacy officer of the
20 hospital, did you reach any judgment as to whether or not
21 Ms. Mahon was entitled to this information?

22 A. Yes, I did.

23 Q. And what was that judgment?

24 A. I felt that she was not entitled to this
25 information based on the hospital's HIPAA privacy policy,

1 and based on Federal HIPAA Regulations on the need to know
2 patient information.

3 And the fact that without patient consent for
4 disclosure of their identifiable information, that it's in
5 the hospital, it's only to be used for providing care to
6 the patient, for billing purposes, and for hospital
7 operations. And none of that met with -- with this
8 letter.

9 Q. Pat, so far as you're aware, the day that you
10 received this letter, had Ms. Mahon provided to the
11 hospital any assurances that she would comply with HIPAA
12 requirements?

13 A. Yes, she did.

14 Q. Okay. And what's your knowledge concerning
15 that?

16 A. There was a Power Point presentation developed
17 by our corporate office that is used in orientation, and
18 that was provided to the union officials as appropriate
19 HIPAA training for the individual, the union individuals
20 that were on site at the hospital.

21 Q. And, Pat, I'm showing you now Respondent's
22 Exhibit 10. I'd ask for you to review that document,
23 please.

24 A. Okay.

25 Q. Do you recognize this document?

1 A. Yes, I do.

2 Q. Okay. What's the document?

3 A. It is the Power Point presentation that was
4 used -- used for the union officials HIPAA privacy
5 education.

6 Q. Does Affinity have any HIPAA policies?

7 A. Yes, we do.

8 Q. Are those policies reflected in this document
9 you're holding, ma'am?

10 A. Yes, they are.

11 Q. After you reviewed Ms. Mahon's letter and
12 developed the concerns you've testified to, what action,
13 if any, did you take next?

14 A. I told Angie that I would need to do an
15 investigation. It's part of my normal process when I
16 identify that there's a potential -- a potential, then I
17 need to talk to the people involved and get the
18 information from them. So I asked to have a meeting with
19 Ann and Michelle.

20 Q. And did that, in fact, take place?

21 A. Excuse me. Yes, it did.

22 Q. Do you recall approximately when it took place?

23 A. The following Monday or Tuesday, I believe it
24 was the 24th of September.

25 Q. Who was in attendance at that meeting?

1 A. Ann Wayt, Michelle Mahon, Angie Boyle, and
2 myself.

3 Q. What's your recollection of what was said
4 during that meeting?

5 A. I -- we reviewed -- I believe that we showed
6 them the -- the e-mail letter that came. I asked Ann if
7 she had given the patient information that was listed in
8 the e-mail, if she was the one who had given that
9 information to Michelle. She said that she had.

10 I then asked her if she had -- that as an
11 employee of the hospital, had she not attended HIPAA
12 privacy training on an annual basis. She said she did.
13 Excuse me.

14 I then asked her if she did not recollect --
15 recollect that when you're disclosing patient health
16 information, it can only be disclosed for three primary
17 reasons without consent, and that is for healthcare
18 operations, for providing patient care, and for billing
19 purposes. And she said she was -- I believe she said that
20 she was aware of that.

21 And I -- I said that, you know, by putting these
22 identifiers, or by giving this information to Michelle and
23 having that documented in this letter, that I felt that
24 that was a HIPAA privacy violation.

25 I believe her response back to me was, well, if I

1 hadn't have given that information, you know, we needed
2 that for -- for -- for how else would we have done this.

3 I believe that Michelle had said that they did
4 not have the patient's name in the letter, therefore, it
5 was not identifiable.

6 And that giving -- given the information that was
7 in the letter, that nobody could put that all together and
8 identify the patient's name. And that was basically the
9 summary of it.

10 Q. Thereafter, did you develop any determination,
11 or make any determination with respect to whether
12 Ms. Mahon had violated HIPAA?

13 A. Yes, I did.

14 Q. And what was that determination?

15 A. That she had violated the HIPAA Privacy Act.

16 Q. By doing what?

17 A. By putting the patient identifiers in this
18 letter, that that -- that, in itself, was -- was a HIPAA
19 violation, and then disseminating that to other people,
20 individuals who had no need to know that, who had no need
21 to know the patient's room number, or the diagnosis, or
22 that she lived in a nursing home. Any of the people that
23 this was sent to had no need to know that information
24 about her.

25 Q. And in light of that determination on your

1 part, Pat, did you take any action, remedial action on the
2 hospital's behalf?

3 A. I did. I made a recommendation that I felt
4 Michelle -- Michelle should not come back to the hospital,
5 should not be permitted on our grounds.

6 Q. Thank you. Pat, I'd like to shift gears here
7 and ask you, what are the systems the hospital has in
8 place for ensuring patient safety?

9 A. We have -- we -- we have a lot. We have, of
10 course, education for all of our staff. We have policies
11 and procedures that we develop and review on an annual
12 basis. We have -- we have procedures in the hospital
13 where we're addressing patient safety on a daily basis.

14 We have a safety huddle in the morning where all
15 of our leadership gets together for approximately 15 to 30
16 minutes. And every department director gives an update of
17 the status of their department. We review the census for
18 the day.

19 Everybody evaluates the staffing that they
20 currently have for the day. They identify whether or not
21 they have adequate staffing, equipment, beds available,
22 everybody, the clinical, the ancillary staff, even our
23 housekeeping staff who cleans the beds and -- and gets
24 them ready so that we have sufficient flow and timeliness
25 in getting our patients. We -- we do that, as I said,

1 every morning, the entire leadership team.

2 After that, approximately nine o'clock in the
3 morning we have a meeting of all the clinical directors
4 and some administrators who, again, review staffing.
5 Staffing is very important to patient safety.

6 So, again, they're reviewing the ratio of staff
7 to the patients, not only number-wise, but looking at the
8 acuity of the patients, looking at the needs.

9 That is done at nine o'clock in the morning so
10 that we can assure that we can make arrangements and do
11 what is necessary to have appropriate staffing.

12 Then again at three p.m. we have another staffing
13 meeting where the same people get together. We review the
14 day, we review staffing for the evening shift and getting
15 through until the next -- to the next day.

16 And that helps us, then, prevent any
17 inappropriate staffing where we would have issues with
18 taking care of our patients appropriately.

19 And then we have committees. We have programs in
20 place where we can gather data about the patient care. If
21 we have any negative patient outcomes. We have an --

22 MS. LAWHON: I'm sorry, I didn't hear the
23 word the word witness said --

24 THE WITNESS: Nega --

25 MS. LAWHON: Excuse me. I'm sorry. Excuse

1 me, Ms. Kline, I wasn't -- I'm not supposed to ask you
2 questions now and I wasn't trying to.

3 MR. BRYAN CARMODY: Okay. Can you please --

4 MS. LAWHON: I thought -- yes. I just didn't
5 hear what she said before "patient outcome." There was
6 some word --

7 THE WITNESS: Negative.

8 MS. BRUNDAGE: Negative.

9 MS. LAWHON: Thank you. That's all I was
10 asking. Thank you.

11 THE WITNESS: We have a process in place for
12 documenting and evaluating any negative patient outcomes.
13 It's called the Event Reporting System.

14 It's a database that all staff can utilize by
15 putting concerns into this system regarding any negative
16 patient outcomes.

17 We take that information and we evaluate it, and
18 we do any -- a review with all staff involved. It would
19 lead us to do a root cause analysis, which we identify why
20 this happened. And then we do a corrective action plan as
21 to how we can prevent this type of thing from happening
22 again.

23 So, to answer your question of what safety
24 measures we have in place for our patients, we -- we have
25 a multitude, we have an integrated system of -- of

1 processes.

2 MR. BRYAN CARMODY: Thank you.

3 MS. LAWHON: And, Your Honor, I will defer
4 from moving to strike anticipating your ruling. But I
5 believe if this has any relevance at all, it goes to the
6 idea that if the hospital has procedures for ensuring
7 patient safety, they're entitled to prohibit and punish
8 nurses for using ADO's.

9 In the absence of that relevance, it has none
10 whatsoever. And that, in itself, is not relevant. And I
11 have a standing objection to all evidence in that area.

12 MR. BRYAN CARMODY: Your Honor, this is
13 testimony that is relevant to the ADO issue in this
14 proceeding.

15 JUDGE AMCHAN: Okay. You moved to strike, I
16 deny it.

17 MS. LAWHON: And I have a standing objection.

18 JUDGE AMCHAN: Correct.

19 MS. LAWHON: Thank you.

20 JUDGE AMCHAN: 28, I think; right?

21 MS. CENDROSKY: Yes. The last one I have is
22 27.

23 THE COURT REPORTER: Yes, 28.

24 (Whereupon, Respondent's Exhibit Number 28
25 was marked for identification.)

1 MS. LAWHON: Is this 27?

2 MS. CENDROSKY: 8.

3 MR. BRYAN CARMODY: 28.

4 JUDGE AMCHAN: 28.

5 MS. LAWHON: Oh, sorry.

6 DIRECT EXAMINATION (CONT'D)

7 BY MR. BRYAN CARMODY:

8 Q. Okay, Ms. Kline, I'm showing you a document
9 that's been marked for identification purposes as
10 Respondent's Exhibit 28.

11 I'd ask for you to review it, please, and let me
12 know when you're through.

13 MS. LAWHON: Could we just stipulate that
14 this is a hospital policy?

15 MR. BRYAN CARMODY: Sure.

16 MS. CENDROSKY: Okay.

17 MR. BRYAN CARMODY: On the event reporting
18 policy?

19 MS. CENDROSKY: Yes. No problem.

20 MS. LAWHON: It appears to be that.

21 MR. BRYAN CARMODY: Okay. Well, you're
22 offering me the stipulation. I would assume you know what
23 you want to stipulate to.

24 MS. LAWHON: That this is the policy. You
25 don't have to waste time authenticating it.

1 MS. CENDROSKY: Yes.

2 MR. BRYAN CARMODY: All right. So
3 stipulated, Pat?

4 THE WITNESS: Yes.

5 MR. BRYAN CARMODY: Okay. Well, can we go
6 off the record, Your Honor?

7 JUDGE AMCHAN: Yes. Off the record.

8 (Off the record.)

9 (Whereupon, Respondent's Exhibit Number 29
10 was marked for identification.)

11 JUDGE AMCHAN: Back on the record. And I
12 don't -- I only have 28, I don't have anything else.

13 MR. BRYAN CARMODY: Oh, I'm sorry, Judge.

14 MS. LAWHON: Okay. We're back on the record.

15 MR. BRYAN CARMODY: So, Your Honor, I
16 understand from your off-the-record discussion that we
17 have a stipulation as to the authenticity of Respondent's
18 Exhibit 28 and 29.

19 I would offer them into evidence. I understand
20 that counsel for the Charging Party has an objection,
21 however.

22 MS. LAWHON: And I can anticipate your
23 ruling, Your Honor, consistent with your prior rulings.
24 We object on the grounds of relevance.

25 JUDGE AMCHAN: Okay. I'll receive them both.

1 (Whereupon, Respondent's Exhibit Numbers
2 28 and 29 were received into evidence.)

3 MR. BRYAN CARMODY: Thank you, Your Honor.
4 May I proceed?

5 JUDGE AMCHAN: Yes.

6 MR. BRYAN CARMODY: Thank you, sir.

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. BRYAN CARMODY:

9 Q. Pat, you've described in a prior answer the
10 Event Reporting System at Affinity.

11 A. Yes.

12 Q. When you receive information that's generated
13 by the operation of the Even Reporting System, what do you
14 do with it?

15 A. I evaluate it. I look at all the information
16 that's been entered into the ERS. And then what do is I
17 usually contact the department director, if I need to have
18 additional information.

19 I will work with the individual staff members,
20 you know, and -- and with the department director in
21 investigating the event. Any other people that would be
22 necessary involved in the event, we would review that.

23 We gather all the data, we analyze that. We,
24 again, identify possible causes for the event. And then
25 once we go through that process, we look at and try to

1 develop a corrective action plan, which is not to be
2 corrected action necessarily against the individual who
3 may have performed the event, but involved in it, the
4 corrective action to prevent the event from happening
5 again.

6 Q. Thank you, Pat. What steps, if any, does
7 Affinity take to educate its employees and managers with
8 respect to the functioning of the Event Reporting System?

9 A. It's a part of our orientation with all new
10 employees. I, personally, will work with the department
11 directors, the clinical, new -- new clinical department
12 directors.

13 I offer one-on-one training with them where,
14 actually, I like to have them come to my office and we go
15 over the policy, we go over the data entry into the
16 computer system, we go over the follow-up responsibilities
17 as far as the investigation and creating an action plan.

18 Q. Thank you, Pat. You're familiar, I assume,
19 with the term chain of command?

20 A. Yes, I am.

21 Q. Put simply, what is it?

22 A. Chain --

23 MS. LAWHON: Is my standing objection on the
24 record?

25 JUDGE AMCHAN: Well, I think we've been

1 through this. I think the record establishes --

2 MS. LAWHON: And, yes.

3 JUDGE AMCHAN: -- what the chain of command
4 is.

5 MR. BRYAN CARMODY: No, I --

6 MS. LAWHON: Objection. Cumulative, as well
7 as relevance.

8 MR. BRYAN CARMODY: Well, Your Honor, she is
9 the risk manager of the hospital. I don't believe --

10 MS. CENDROSKY: So what?

11 MR. BRYAN CARMODY: -- that she had referred
12 to chain of command. Maybe she did. I didn't hear it in
13 her prior testimony.

14 JUDGE AMCHAN: No, but the -- but other
15 witnesses have. I think it's established in the --

16 MR. BRYAN CARMODY: Okay. So --

17 JUDGE AMCHAN: -- in the record what it is.

18 MR. BRYAN CARMODY: So --

19 JUDGE AMCHAN: And that your client would
20 like staff to follow it.

21 DIRECT EXAMINATION (CONT'D)

22 BY MR. BRYAN CARMODY:

23 Q. So, Pat, if during the course of an

24 investigation of a patient's safety issue you discovered

25 that the chain of command was not followed --

1 A. Yes.

2 Q. -- what do you do as the risk manager?

3 A. Again, I would go back to those individuals. I
4 would go back to the department director. I would -- we
5 would investigate as to why chain of command was not
6 followed.

7 If we have a staff member who has issues and they
8 feel that they're not getting resolution to those issues,
9 could be a staffing issue, it could be response from a
10 physician, it could be getting assistance from another
11 department.

12 If they feel they're not getting the help that
13 they need by going to their -- their immediate supervisor
14 or immediate director, they can evoke the chain of command
15 and go up -- up the ladder of -- of authority in the
16 hospital.

17 So they could go, if it was the afternoon or
18 evening, they can go to the house supervisor. The house
19 supervisor could assist them.

20 If they felt that the house supervisor was not
21 giving them the response that they needed, they can
22 actually go to the administrator on call.

23 Q. Thank you, Pat. If you see, Pat, a trend of
24 certain patterns that are contributing to negative patient
25 incidents, what do you do?

1 A. Usually I -- I go back to that individual
2 department director or to the CNO. We would -- we would
3 investigate that further.

4 We could do a root cause analysis, bring in
5 multiple disciplines. We would bring in staff, other
6 areas that were involved, and we would -- we would do a
7 very detailed investigation.

8 Break it down to the point where we keep asking
9 how could this have been prevented, how could it have been
10 prevented, so that we get to, basically, the root cause of
11 what happened.

12 Q. And, Pat, does the hospital have a full time
13 nurse educator?

14 A. Yes, we do.

15 Q. Pat, are you aware of the ADO form?

16 A. Yes, I am.

17 Q. Okay. As risk manager, have you ever been
18 presented with one?

19 A. No, I have not.

20 Q. Do you have any concerns about ADO forms being
21 used at Affinity?

22 A. I really do.

23 Q. What are they?

24 A. I feel that --

25 MS. LAWHON: Objection. Relevance.

1 JUDGE AMCHAN: Yes. Why is it relevant?

2 MS. LAWHON: Beg your pardon?

3 JUDGE AMCHAN: Why is it relevant.

4 MS. DiRIENZO: She's the risk manager.

5 MR. BRYAN CARMODY: She's the risk --

6 MS. LAWHON: Yes. She doesn't determine

7 Section 7 rights.

8 JUDGE AMCHAN: Well, what -- yes. I mean,

9 the question's whether --

10 MS. DiRIENZO: Well, where -- the hospital's

11 business is the provision of patient safety, and this is

12 the lady that's responsible for it. You claim that the

13 forms are addressing patient safety and protecting nursing

14 licenses.

15 I mean, this is the person that knows. I think

16 it's highly relevant, Judge.

17 JUDGE AMCHAN: Well, I don't know.

18 MS. LAWHON: Your Honor, whether this witness

19 thinks it's a good idea or a bad idea is really not

20 relevant to whether employees have Section 7 rights here.

21 MS. DiRIENZO: But that's wasn't the

22 question, Jane, in fairness. The question --

23 MS. LAWHON: That is the issue --

24 MS. DiRIENZO: No.

25 MS. LAWHON: -- in question in this hearing.

1 MS. DiRIENZO: The -- right. But the
2 question to this witness was as risk manager. What is her
3 concern about them, and I think that the Judge ought --

4 MS. LAWHON: And that's not relevant.

5 MS. DiRIENZO: Yes, it is relevant. Because,
6 I mean, from the -- I mean, obviously, we have a
7 disagreement about what the correct response is here.

8 JUDGE AMCHAN: You know what, I'll --

9 MS. DiRIENZO: But the question of relevance
10 is --

11 JUDGE AMCHAN: I'll overrule the objection.
12 But I happen to -- do think it's irrelevant, but go ahead
13 and answer.

14 THE WITNESS: I -- my concerns rely -- are in
15 regards to the ADO, is that it creates a duplicate system
16 that our staff have to do to address patient safety.

17 If a -- if a nurse has issues regarding the
18 assignment that they're given, or if they feel that there
19 is not enough -- there are not enough nurses on the floor,
20 again, that's where we would invoke the chain of command.

21 They have an opportunity to express that to their
22 department director. It's their obligation to identify
23 whether or not they -- they feel that they need additional
24 staffing, or the staffing is inappropriate.

25 Their responsibility at our facility is to report

1 that to their immediate supervisor, not document it on a
2 -- on another piece of paper. That piece of paper is not
3 protected. It doesn't go anywhere. It -- it's not
4 trended.

5 I don't -- they're -- I -- I don't see a process
6 for it that we can identify per unit that we've had a
7 history of staffing problems and what are we doing about
8 it.

9 I -- I see -- I see -- and, again, it's my
10 personal opinion. I see no -- no valid reason for that
11 when we already have -- the hospital is responsible for
12 the staffing and the safe patient care.

13 And the hospital has established processes, and
14 has them in place and has educated the staff on what to do
15 when they feel that there is a situation where there would
16 be unsafe patient staffing.

17 And -- and I feel introducing another process
18 into that is only confusing the issue. It's duplicating
19 work that our staff is currently doing.

20 And from a risk manager perspective, I think it
21 adds a level of liability to the organization that we have
22 these forms that are not protected, where our process is
23 protected. And it -- it -- it's -- it -- it doesn't serve
24 a purpose, in my opinion.

25 MR. BRYAN CARMODY: Thank you, Your Honor. I

1 have nothing further.

2 JUDGE AMCHAN: No further questions at all?

3 MR. BRYAN CARMODY: Yes, sir.

4 JUDGE AMCHAN: Okay. I thought that was a
5 fake, you only meant on this line. Okay. All right.

6 MS. CENDROSKY: May we go off the record?

7 JUDGE AMCHAN: Off the record.

8 (Off the record.)

9 JUDGE AMCHAN: Back on the record.

10 MS. LAWHON: Are there any statements? So, I
11 need a few minutes to look at this, Your Honor. It's
12 shorter than some.

13 JUDGE AMCHAN: Okay. Off the record.

14 (Off the record.)

15 JUDGE AMCHAN: Back on the record.

16 MS. CENDROSKY: GC has no cross.

17 JUDGE AMCHAN: I'm sorry?

18 MS. CENDROSKY: GC has no cross.

19 CROSS-EXAMINATION

20 BY MS. LAWHON:

21 Q. Good afternoon, Ms. Kline.

22 A. Good afternoon.

23 Q. I'm Jane Lawhon, the attorney for National
24 Nurses Organizing Committee. Directing your attention to
25 Respondent's Exhibit 8, the letter from Michelle Mahon?

1 A. Yes.

2 Q. And this is a yes or no question. Isn't it
3 true that without a further HIPAA violation by someone,
4 it's impossible from the information in this letter to
5 identify the patient --

6 A. No.

7 Q. -- isn't that correct?

8 A. No.

9 Q. Wouldn't someone have to review the hospital
10 records to see the name of the patient in Room 3420 on
11 August 28th in order to tell who that patient was?

12 A. No.

13 Q. Did you know the identity of the patient from
14 the information in this letter?

15 A. Yes.

16 Q. Tell me how you came to that.

17 A. Well, I -- I -- I knew the information prior to
18 receiving the letter.

19 Q. Well, that's not my question, Ms. Kline. I'm
20 saying the reader of this letter could not determine the
21 identity of the patient from the information that you
22 described as -- that you considered to be patient
23 identifiers, isn't that correct, unless that reader of the
24 letter engaged in a HIPAA violation of his or her own by
25 checking hospital records; isn't that correct?

1 A. No.

2 JUDGE AMCHAN: Well, I think the answer (sic)
3 is if all you have is this letter, could you tell the
4 patient is? The only information you have is this --

5 THE WITNESS: I, personally, or anybody.

6 JUDGE AMCHAN: Anybody.

7 MS. LAWHON: Anybody.

8 THE WITNESS: Yes. Or no -- please restate
9 it again.

10 CROSS-EXAMINATION (CONT'D)

11 BY MS. LAWHON:

12 Q. Certainly. If you have this letter in your
13 hand and this is all you have, all you know, you cannot
14 determine the identity of the patient from this letter
15 alone; isn't that correct?

16 A. I'm still going to say no.

17 JUDGE AMCHAN: Well, let's say, let's look at
18 the people who are cc'd.

19 THE WITNESS: Okay. But she's saying
20 anybody.

21 JUDGE AMCHAN: Well, let's just talk about
22 Mr. Moy.

23 THE WITNESS: Okay.

24 JUDGE AMCHAN: Mr. Moy gets this letter, he
25 has no other information. All he has is this letter, no

1 other information, how can he tell who the patient is?

2 THE WITNESS: If the question is specifically
3 towards that individual knowing from this information, the
4 answer would be I would -- I would agree that he could not
5 get the patient, he would not know who the patient is
6 based on this information.

7 CROSS-EXAMINATION (CONT'D)

8 BY MS. LAWHON:

9 Q. And you asked that about --

10 A. That individual.

11 Q. I'm sorry, Ms. Kline, I didn't mean to -- you
12 asked that about Mr. Moy?

13 A. Yes.

14 JUDGE AMCHAN: Correct.

15 Q. And the same answer is true for Roy Hong; isn't
16 that correct?

17 A. I would say that's correct.

18 Q. And the same answer is true for me as counsel;
19 isn't that correct?

20 A. That's correct.

21 Q. And the same answer is true for nurses at
22 Affinity, unless they checked hospital records.

23 A. That's incorrect.

24 Q. How is Pam Gardner going to know who this
25 patient is by reading this letter?

1 A. Pam --

2 MR. BRYAN CARMODY: Objection, Your Honor.

3 These questions are taking place in a totally artificial
4 context. Pam Gardner works at the hospital. Mr. Moy was
5 an organizer at the hospital. Roy Hong was an organizer
6 at the hospital.

7 JUDGE AMCHAN: Well --

8 MS. LAWHON: So what?

9 JUDGE AMCHAN: -- no, the question is whether
10 this letter, in fact, is a HIPAA violation, or --

11 MS. LAWHON: How is Pam Gardner --

12 JUDGE AMCHAN: -- and her point is that if
13 all you had is his -- if all you had was this letter, you
14 can't tell who the patient is. That's what she's driving
15 at.

16 MS. LAWHON: Yes.

17 JUDGE AMCHAN: That's what she's trying to
18 establish.

19 MR. BRYAN CARMODY: Okay. I understand
20 that's what she's driving at. I'll address this otherwise
21 through other witnesses and evidence.

22 CROSS-EXAMINATION (CONT'D)

23 BY MS. LAWHON:

24 Q. Okay. Pam Gardner works in the ICU; right?

25 A. Yes.

1 Q. Okay. Pam Gardner, let's just say, receives
2 this letter -- wherever she receives it, she receives this
3 letter, and that's all she knows is what's in this letter
4 because, of course, I'm positing that she's not committing
5 a HIPAA violation by looking to see who was in the
6 patient's room, or looking to see who Dr. Raugh's patients
7 were, or checking the log of nursing home admissions, et
8 cetera, et cetera.

9 Reading this letter alone, Pam Gardner, a member
10 of the Facility Bargaining Council could not tell who the
11 patient is; isn't that correct?

12 A. That's correct.

13 JUDGE AMCHAN: Well, you did leave out one
14 thing. You're also assuming that she didn't talk to
15 someone who has personal knowledge.

16 MS. LAWHON: Right. Pam Gardner reading this
17 letter alone --

18 JUDGE AMCHAN: Right. But --

19 MS. LAWHON: -- having no other information,
20 could not tell the identify of the patient; isn't that
21 correct?

22 MR. BRYAN CARMODY: Your Honor, could I just
23 have a standing objection to this line of questioning,
24 sir?

25 JUDGE AMCHAN: Sure.

1 MR. BRYAN CARMODY: Thank you, sir.

2 CROSS-EXAMINATION (CONT'D)

3 BY MS. LAWHON:

4 Q. Do you remember --

5 A. That's correct.

6 Q. -- the question?

7 A. That's correct.

8 Q. Okay. And the same is true for every other
9 member of the Facility Bargaining Council; isn't that
10 correct?

11 A. That is not correct.

12 Q. There was one nurse working with Ann Wayt on
13 the Ortho Unit that day; right?

14 A. I don't know that for sure.

15 Q. Do you know what the staffing of the Ortho Unit
16 is on -- the maximum RN staffing of the Ortho Unit?

17 A. I --

18 MR. BRYAN CARMODY: Objection. That assumes
19 that this patient was on the floor only one day, the day
20 of August 28th.

21 Q. You do not know, Ms. Kline, that any of the
22 members of the Facility Bargaining Council were working on
23 the Ortho Unit on the day in question, or any other day
24 when this patient was admitted; isn't that correct?

25 A. That is correct.

1 Q. Okay. So you have no way of knowing that even
2 the FBC members on the Ortho Unit could identify the
3 patient from the information given here, if all they were
4 reading was the letter; isn't that correct?

5 A. That's correct.

6 Q. Right. And this patient admission had ended
7 long before this letter; isn't that correct, Ms. Kline?

8 MR. BRYAN CARMODY: The patient's admission
9 had -- you mean she was discharged?

10 Q. Yes. The patient had been discharged long
11 before this September 19th letter; isn't that correct?

12 A. That's correct.

13 Q. Okay. In that meeting that you attended with
14 Ann Wayt and Michelle Mahon, you said that normally the
15 hospital would issue a verbal warning in the situation of
16 that letter; isn't that correct?

17 And then you explained why the hospital did not
18 follow that process in this case. Do you recall saying
19 that?

20 A. A verbal warning to who?

21 Q. To the employee involved.

22 A. That's correct.

23 JUDGE AMCHAN: I forget -- I didn't catch the
24 first part of your question.

25 Q. Sure. In the meeting about this alleged HIPAA

1 violation on, I believe it's September 24th, you stated
2 that normally the hospital would respond to what you
3 viewed as the problems in R Ex. 8 by issuing a verbal
4 warning to the employee; isn't that correct?

5 A. That is correct.

6 Q. But you said that because the letter was sent
7 to the individuals it was sent to, it raised a different
8 problem; isn't that correct?

9 A. I said that it -- it -- it increased the
10 exposure of the violation.

11 Q. Now, you gave an affidavit to the National
12 Labor Relations Board after the charge was filed
13 concerning the discharge of Ann Wayt; isn't that correct?

14 A. I --

15 Q. Do you remember providing a sworn statement?
16 I'm sorry, I --

17 MR. BRYAN CARMODY: We'll stipulate. We'll
18 stipulate that she provided an affidavit to the Region.

19 Q. Okay. And my question is probably confusing
20 because she may not have known it went to the NLRB.

21 You -- before a notary public you swore to the
22 truth of a statement on November 9th; right?

23 A. Yes.

24 Q. Okay. And in that statement you attempted to
25 put, or you -- you didn't draft the statement; right?

1 A. No --

2 Q. Do you know that you --

3 A. -- no, I did not.

4 Q. Okay. Who drafted it, if you know?

5 A. It was prepared and given to me.

6 Q. By whom?

7 A. By -- by counsel.

8 Q. Which individual?

9 A. Kaitlin.

10 Q. Okay. And after Kaitlin gave it to you, you

11 reviewed it for accuracy; right?

12 A. Yes.

13 Q. And you reviewed it carefully for completeness;

14 isn't that correct?

15 A. That's correct.

16 Q. And you understood that every important piece

17 of your involvement with the Ann Wayt should be included;

18 isn't that correct?

19 A. Yes.

20 Q. Isn't it a fact, Ms. Kline, and I'll show you

21 this in a moment, that you never mentioned once in your

22 affidavit having reviewed the charting of Ann Wayt at the

23 request of Ms. Boyle? And I'll show you the document.

24 A. Okay.

25 MR. BRYAN CARMODY: Which part are you

1 looking at?

2 MS. LAWHON: The entire thing.

3 MR. BRYAN CARMODY: Oh, that you didn't
4 mention. Okay.

5 THE WITNESS: And -- and, again, I apologize,
6 but what is your question?

7 CROSS-EXAMINATION (CONT'D)

8 BY MS. LAWHON:

9 Q. My question is, nowhere in that statement did
10 you say anything about reviewing the documentation of Ann
11 Wayt at the request of Angie Boyle, or any other hospital
12 representative?

13 MR. BRYAN CARMODY: Is your question -- your
14 question is whether she reviewed it at the request of
15 somebody, or whether she reviewed the documentation?

16 MS. LAWHON: Counsel, my question is, nowhere
17 in that affidavit does she state that she reviewed the
18 chart of Ann -- that she reviewed Ann's documentation.

19 MR. BRYAN CARMODY: Which affidavit have you
20 shown her, because there's two?

21 THE WITNESS: But this -- this is
22 specifically on the HIPAA violation, which has nothing to
23 do with the documentation.

24 MS. LAWHON: Is it your testimony --

25 MS. BRUNDAGE: There are two affidavits --

1 MR. BRYAN CARMODY: Which affidavit?

2 MS. BRUNDAGE: -- that were produced to you,
3 Jane.

4 MS. DiRIENZO: There are two separate ones.

5 MR. BRYAN CARMODY: You --

6 MS. LAWHON: I think when I asked counsel --
7 can we go off the record?

8 JUDGE AMCHAN: Yes. Off the record.

9 (Off the record.)

10 JUDGE AMCHAN: Back on the record.

11 MS. LAWHON: Good afternoon, Ms. Kline.

12 THE WITNESS: Good afternoon.

13 JUDGE AMCHAN: Well, first of all, we wanted
14 to clarify that the --

15 MS. LAWHON: Oh, yes, I will do that, Your
16 Honor.

17 JUDGE AMCHAN: -- there's -- go ahead.

18 CROSS-EXAMINATION (CONT'D)

19 BY MS. LAWHON:

20 Q. Ms. Kline, prior to going off the record I had
21 been questioning you about an affidavit submitted to the
22 Region. I was unaware at the time that there was a second
23 affidavit, and that affidavit does reflect that you
24 reviewed documentation.

25 A. Okay.

1 Q. Is that -- okay. Now, I'd like to direct your
2 attention to that review of documentation. Each of the
3 three concerns you identified when you were questioned by
4 the attorney for the hospital were important to your
5 conclusion concerning Ann Wayt's documentation; isn't that
6 correct?

7 A. Correct.

8 Q. Is it fair to say that if one or more of them
9 had not been present you would not necessarily have
10 reached the same conclusion?

11 A. No.

12 Q. You're saying you would have reached the same
13 conclusion in the absence of if you had only one concern
14 of the three you mentioned, that would have been
15 sufficient for you to reach the conclusion that there was
16 a falsification of documentation?

17 A. No.

18 Q. Okay. So you were relying on the fact that
19 there were the three you identified, isn't that correct,
20 three concerns?

21 A. I wouldn't say that I was relying on just those
22 three, it was the -- it was what they were. I mean, it
23 was the --

24 Q. I understand.

25 A. Okay.

1 Q. I'm not saying any three. I'm saying the three
2 you testified about are the three concerns, and you
3 relying on all three of them when you conferred -- when
4 you informed Ms. Boyle what your conclusion was after
5 reviewing the documentation.

6 A. Yes.

7 Q. Okay. Turning to the concern about that no
8 skin impairment was noted. You were reviewing this record
9 in, I think you said in early September; right?

10 A. Yes.

11 Q. Okay. Would you look at Respondent's Exhibit 5
12 and tell me where the night nurse says anything about skin
13 impairment? And by the night nurse, I mean the nurse
14 following Ms. Wayt the next shift.

15 (Pause.)

16 A. I don't see any documentation.

17 Q. Okay. I'd like you to examine the night
18 nurse's documentation with respect to recording an injury
19 to the elbow and bruising.

20 And I'm mentioning them both, just so you can
21 look at the same time. I'll make sure that the question
22 is clear that it's two separate things.

23 A. And, again, we're referring to Exhibit R5,
24 correct?

25 Q. That's the only documentation from the night

1 nurse you had; isn't that correct, Ms. Kline?

2 A. Correct. Again, I see no documentation.

3 Q. Okay. You see no documentation of the injuries

4 to the elbow; right?

5 A. That's correct.

6 Q. And no documentation reflecting bruising; isn't

7 that correct?

8 A. That's correct.

9 MS. CENDROSKY: She can't hear you.

10 A. I'm sorry. That's correct.

11 Q. And by both of my questions, I'm sorry, I said

12 no documentation, I meant, and I think you were answering,

13 no documentation by the night shift nurse --

14 A. That --

15 Q. -- who followed Ms. Wayt; right?

16 A. That is correct.

17 Q. Okay. Now, the -- you were asked about

18 Respondent's Exhibit 5, Page 2 of 8, the fact that pulses,

19 and edema, and capillary refill were not filled in under

20 cardiovascular. Do you remember testifying about that?

21 A. I do.

22 Q. The absence of any data in those columns

23 necessarily doesn't show falsification; isn't that

24 correct?

25 A. That is correct.

1 Q. Okay. And now I assume, Ms. Kline, that in
2 your weekly review of documentation you've seen omissions
3 by different professional staff in the hospital at -- on
4 occasion; isn't that correct?

5 A. That is correct.

6 Q. It's not uncommon for a nurse to occasionally
7 forget to enter some part of the assessment; isn't that
8 right?

9 A. Would you repeat that again?

10 Q. Sure. It's not an uncommon occurrence for a
11 nurse to omit a part of an assessment; isn't that correct?

12 A. No.

13 MS. CENDROSKY: That's a double negative.

14 JUDGE AMCHAN: Well, wait. No, it is not
15 uncommon?

16 THE WITNESS: No, it's not uncommon.

17 CROSS-EXAMINATION (CONT'D)

18 BY MS. LAWHON:

19 Q. Oh, okay. Thank you.

20 A. No, I'm sorry. No, that's not correct. I
21 thought you said was it --

22 JUDGE AMCHAN: Well, let's try it again.

23 Q. I'll back up. I'll ask the question a
24 different way.

25 Isn't it true that on many occasions when you've

1 been reviewing charts you find one or more omissions by
2 someone who is responsible for documentation?

3 A. No.

4 Q. It's certainly -- okay. Looking at Page 6 of
5 8, there are, across from community cares rounding, you
6 see that? At the bottom there are six rows --

7 A. Yes.

8 Q. -- of identified things?

9 A. Yes.

10 Q. Five out of six of those do not reflect any
11 care provided prior to ten a.m.; isn't that correct?

12 A. Correct.

13 Q. Similarly, on the next page, looking at the
14 rows under activity there are six entries, or scratch
15 that.

16 Looking under safety there are eight items --
17 actually, I guess it's charted. There are six items
18 charted. Do you see that?

19 A. I do.

20 Q. Okay. And in all of those items, there's no
21 reflection of any care provided prior to ten a.m.; right?

22 A. Right.

23 Q. Okay. When you were reviewing this
24 documentation, did you have Respondent's Exhibit 14 in
25 front of you? And I don't know if you have it now.

1 A. I do.

2 Q. Okay. That's a part of the patient's chart;
3 right?

4 A. It is.

5 Q. Okay. And you --

6 MR. BRYAN CARMODY: Jane, hang on one second,
7 please.

8 MS. LAWHON: Oh, sure.

9 MR. BRYAN CARMODY: You said 14?

10 MS. LAWHON: I did.

11 MR. BRYAN CARMODY: What is it?

12 MS. LAWHON: What is R Ex. 14?

13 MR. BRYAN CARMODY: Yes.

14 MS. LAWHON: Oh, it's the hourly rounding
15 sheet.

16 MR. BRYAN CARMODY: Okay.

17 MS. LAWHON: Community cares rounding log.

18 MR. BRYAN CARMODY: Okay.

19 CROSS-EXAMINATION (CONT'D)

20 BY MS. LAWHON:

21 Q. You had this document in front of you in which
22 rounding was checked beginning at nine thirty-five for
23 this patient throughout the day shift; isn't that correct?

24 A. That is correct.

25 Q. Checked and initials; right?

1 A. That is correct.

2 Q. And did you have Respondent's Exhibit 15 in
3 front of you, the patient observer monitoring checklist at
4 the time you were reviewing the documentation?

5 A. Yes.

6 Q. Okay. You're familiar with the fact that
7 Rhonda Smith is a registered nurse employed at Affinity
8 Medical Center; right?

9 A. Right.

10 Q. And you see that she initialed it on the
11 bottom, right, as one of the sitters?

12 A. Right.

13 Q. And are you familiar with the fact that Jonalee
14 Lesjak is one of the registered nurses employed by
15 Affinity Medical Center?

16 A. I'm not aware that she -- no.

17 Q. You're not aware as you sit here today? Or you
18 weren't aware at the time you reviewed this documentation?

19 A. I don't know her. I see that her signature's
20 on here, so I would assume that she is an employee of the
21 hospital.

22 Q. Okay. Well, you saw a signature that has a
23 title RN next to it; right?

24 A. Yes.

25 Q. Okay. So you knew that at least the first two

1 -- and you knew that these RN's were serving as a sitter;

2 right?

3 A. Yes.

4 Q. That's why they were on this form.

5 A. Yes.

6 Q. And you saw that there were entries made every

7 15 minutes from ten through -- well, on this document,

8 from ten through the end of the day shift and longer;

9 right?

10 A. Yes.

11 Q. Now, you testified that the patient -- you --

12 turning you now -- asking you now to turn to Page 8 of

13 Respondent's Exhibit 5, the 24-Hour Assessment, your

14 attention was directed to the entry "Very agitated.

15 Sitter still present." Do you recall testifying about

16 that?

17 A. Yes.

18 Q. And you testified that you were concerned that

19 the patient continued to be in pain, and that Ativan was

20 not administered until sometime on the night shift. Do

21 you recall that?

22 A. I didn't say that I was concerned about her

23 continuing to be in pain.

24 Q. You had no concerns about the patient being in

25 pain?

1 A. That's not what I said. I believe I said I was
2 concerned that she was very agitated.

3 Q. Okay. Now, you reviewed this chart carefully;
4 right?

5 A. Yes, I did.

6 Q. Okay. And you must have reviewed that on Page
7 6 of 8 a morphine injection was given to this patient at
8 1630.

9 A. I did.

10 Q. Okay. Isn't it correct that it's the judgment
11 of the primary nurse whether to combine a morphine
12 injection with Ativan?

13 A. Yes.

14 Q. In fact, not only is it the judgment of the
15 nurse, but the nurse is required, as a condition of her
16 license, to exercise judgment whenever administering
17 medication to a patient; isn't that correct?

18 A. That's correct.

19 Q. And you had nothing in this charting to suggest
20 that Ms. Wayt did not exercise nursing judgment in not
21 giving an Ativan injection; isn't that correct?

22 A. That's correct, because there's nothing
23 documented as to whether or not the pain was relieved, or
24 that the patient did not need additional medication.

25 Q. Let me direct your attention on Page 6 of 8 to

1 the entry five p.m., or seventeen thirty. You see that,
2 time and initials and next to one hour -- above, right
3 above one hour reassessment?

4 A. On Page 6 of 8? I do.

5 Q. Yes. That's where I am. In the pain
6 assessment box, underneath the injection at 1630, there's
7 an entry at 1730 above the morphine indication, do you see
8 that? Below it, excuse me, immediately below it. In the
9 box time, slash, initials. Do you see that?

10 A. I -- I don't know what you're referring to.
11 I'm sorry.

12 MS. LAWHON: I'll just -- may I approach the
13 witness, Your Honor?

14 JUDGE AMCHAN: Sure.

15 Q. I'll direct her to it.

16 A. Right there. That --

17 Q. 1730? No, above it. The number.

18 A. Okay.

19 Q. Your finger is covering up what I'm asking you
20 to look at. There.

21 A. The time and initials?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. And it says below time and initials in
25 the box for one hour reassessment calm; isn't that

1 correct?

2 A. Yes, it does.

3 Q. Okay. That reflects that the nurse performed a
4 one-hour reassessment after injecting the morphine, in the
5 documentation; isn't that correct?

6 A. That does, yes.

7 Q. So your testimony a few moments ago that
8 there's no documentation and that the patient stopped
9 being agitated was incorrect; right?

10 A. This is regarding the morphine and the pain.

11 The pain --

12 Q. It says calm.

13 A. -- assessment.

14 Q. It says calm.

15 MR. BRYAN CARMODY: Your Honor, counsel
16 shouldn't interrupt the witness when she's answering.

17 MS. LAWHON: I apologize.

18 A. I -- I -- I understand what you're saying. But
19 the pain -- the pain -- the morphine was given for pain.

20 The -- the agitation is -- I mean, she's calm
21 after giving the -- the morphine. I -- she -- there was
22 an assessment done.

23 Q. Okay.

24 A. And she had -- identifies that the patient is
25 calm, yes.

1 Q. Okay. And calm means not agitated; right?

2 A. Yes, it does.

3 Q. Okay. So would you like to correct your

4 earlier testimony that there was no documentation of the

5 patient's condition after the morphine objection (sic) --

6 A. I will correct that.

7 Q. -- the injection?

8 A. I will -- I will correct that.

9 MS. LAWHON: Okay. Nothing further.

10 EXAMINATION

11 BY JUDGE AMCHAN:

12 Q. I have a question. You looked at R14?

13 A. Yes.

14 Q. So this is the -- this is an hourly rounding

15 sheet.

16 A. Yes.

17 Q. And does it indicate that an hourly rounding

18 was done by somebody?

19 A. There are initials on the far right-hand side.

20 Q. Do you know who that -- whose those are? Well,

21 it looks like a different set.

22 A. Right, it does. If -- if I were to go back

23 through the chart, we could probably find them identified

24 where there's a signature. I don't know who those --

25 whose those -- who those individuals are.

1 Q. But it indicates that somebody did the hourly
2 rounding.

3 A. Yes, it does.

4 JUDGE AMCHAN: Okay.

5 MS. LAWHON: I have no further questions.

6 JUDGE AMCHAN: Do you have anything else?

7 MR. BRYAN CARMODY: One moment, Your Honor.

8 No, Your Honor, I don't have any questions.

9 JUDGE AMCHAN: You can step down. Thank you.

10 THE WITNESS: Thank you.

11 (WITNESS EXCUSED.)

12 JUDGE AMCHAN: Off the record.

13 (Off the record.)

14 JUDGE AMCHAN: Back on the record.

15 MR. BRYAN CARMODY: Your Honor, at this time,
16 we have no further witnesses. However, before we formally
17 rest, as a procedural matter, there are a few issues that
18 I wanted to address.

19 Number one, there were two amendments, I believe,
20 to the Complaint, which were made during the course of
21 these proceedings, one just earlier this morning. And we
22 would like to have an opportunity to present evidence
23 responsive to those allegations.

24 The other issue, Judge, does concern the, what
25 we've been terming the affiliation defense raised by the

1 Answer that my client filed in this proceeding.

2 I -- as I understand Your Honor's rulings
3 concerning this issue, Your Honor, did decide that we
4 could present evidence on this issue at -- during -- at
5 trial that's already in our possession.

6 JUDGE AMCHAN: Right.

7 MR. BRYAN CARMODY: The complication that we
8 have with that, Judge, is the evidence that's in our
9 possession concerning this issue comes from an unfair
10 labor practice proceeding which took place out in
11 California before Region 31 --

12 MS. DiRIENZO: 21.

13 MR. BRYAN CARMODY: 21, close, before Judge
14 Laws. And that evidence which consisted of both testimony
15 and documentation, I don't want to be any more specific
16 than that, because it was and remains under the protection
17 of a protective order that was issued after that record
18 closed.

19 JUDGE AMCHAN: Uh-huh.

20 MR. BRYAN CARMODY: After that record closed,
21 there was a motion. There's quite a bit of motion
22 practice, actually, by the Charging Party in that
23 proceeding, the same Charging Party in this proceeding.

24 But, ultimately, Judge Laws did issue a
25 protective order. So what we would like to do is file a

1 motion with Judge Laws asking for her to allow a limited
2 exception --

3 JUDGE AMCHAN: Uh-huh.

4 MR. BRYAN CARMODY: -- to her protective
5 order allowing us to take that evidence, both documentary
6 and testimonial and introduce it into this record before
7 Your Honor.

8 MS. LAWHON: And --

9 JUDGE AMCHAN: I'm --

10 MS. LAWHON: Oh, I'm sorry.

11 JUDGE AMCHAN: No, go ahead and speak.

12 MS. LAWHON: Certainly. I think Judge Laws'
13 order, and I have it right in front of me, says the
14 transcript of this testimony by the witness shall not be
15 furnished to outside parties pursuant to the Freedom of
16 Information Act, or any other requests.

17 Affinity Medical Center is an outside party to
18 this proceeding, unquestionably. Whether counsel has it,
19 is irrelevant.

20 Their client shouldn't even have ever seen this
21 testimony, and it's not appropriate for it to be
22 introduced.

23 There was extended motion practice, as counsel
24 says, and this is the order issued. And Affinity is an
25 outside party.

1 So, I mean, I guess they can ask Judge Laws to
2 reconsider her order and consider Affinity not an outside
3 party, but they clearly are an outside party.

4 And nothing further can happen with this, because
5 if this -- if these attorneys have showed (sic) this stuff
6 to anybody from Affinity, they're already in violation of
7 the order.

8 MR. BRYAN CARMODY: And I can represent --

9 MS. BRUNDAGE: We certainly have not.

10 MR. BRYAN CARMODY: -- no, it hasn't. And,
11 frankly, I have not read it. I just know that it exists.
12 I mean, to --

13 JUDGE AMCHAN: So --

14 MS. CENDROSKY: How do you know it exists, if
15 you --

16 JUDGE AMCHAN: Well, because he was -- well,
17 he was counsel to the --

18 MS. LAWHON: No, he was not, Your Honor.

19 MS. CENDROSKY: No.

20 MS. BRUNDAGE: His firm. His firm.

21 MR. BRYAN CARMODY: I have a Notice of
22 Appearance that's filed in that proceeding, Jane.

23 MS. LAWHON: You were not at the hearing.

24 MR. BRYAN CARMODY: That doesn't matter. I'm
25 representing that client in that proceeding. I filed a

1 Notice of Appearance. It was never withdrawn.

2 JUDGE AMCHAN: So, but this is not
3 information that Affinity has. This is information that
4 another hospital has.

5 MS. DiRIENZO: That --

6 MS. LAWHON: Correct.

7 MS. DiRIENZO: -- and that hospital has the
8 same corporate ownership as Affinity, Your Honor, which is
9 why we think that Judge Laws might consider an exception
10 to the protective order.

11 And all we're really asking that to the degree
12 that you are willing to entertain that information
13 pursuant to your own determination here, that you would
14 grant us leave to seek that limited exception.

15 JUDGE AMCHAN: I will grant you leave to make
16 the motion to Judge Laws. I won't -- what --

17 MS. DiRIENZO: Well, we want you to say that
18 to the degree --

19 JUDGE AMCHAN: -- how do -- I'm not saying
20 that she should give it to you. It seems to me that you
21 can --

22 MR. BRYAN CARMODY: I understand.

23 MS. DiRIENZO: No, we understand that. We
24 understand that, Judge. We're just saying would you agree
25 that to the degree that Judge Laws makes the exception,

1 that you would consider that document in furtherance of
2 your decision on the Motion in Limine and the motion here?

3 JUDGE AMCHAN: Well, here's the thing. I
4 would allow you to make the motion and you could -- you
5 know, your client can respond to Judge Laws and tell her
6 --

7 MS. LAWHON: We will.

8 JUDGE AMCHAN: -- that it's relevant. Will I
9 take it into account? I think -- well, you can present --
10 if she grants the motion, you can present it to me.

11 MS. DiRIENZO: Okay.

12 JUDGE AMCHAN: My inclination is, is that
13 it's not relevant to whether Affinity can refuse to
14 bargain with the Union.

15 MS. DiRIENZO: Thank you, Your Honor. We
16 believe that we'll be able to convince you of that to the
17 degree that Judge Laws makes the exception.

18 JUDGE AMCHAN: All right.

19 MS. DiRIENZO: So we appreciate the leave to
20 seek it.

21 JUDGE AMCHAN: Okay.

22 MS. DiRIENZO: Thank you.

23 JUDGE AMCHAN: Now we --

24 MS. LAWHON: And, Your Honor, I -- oh, I'm
25 sorry.

1 JUDGE AMCHAN: I was going to say, you know,
2 you obviously can oppose the motion to Judge Laws.

3 MS. LAWHON: Absolutely.

4 JUDGE AMCHAN: And it does bring to mind one
5 of my favorite quotes from Harry Truman that I like to
6 distinguish, he said the buck stops here.

7 MS. CENDROSKY: Uh-huh.

8 JUDGE AMCHAN: By passing it onto Judge Laws,
9 I'm demonstrating that I don't ascribe to that mentioned.

10 MS. CENDROSKY: Your Honor, the GC would
11 request that some sort of time frame be put on for them to
12 make this motion. I don't want this to be something that
13 --

14 JUDGE AMCHAN: Well, I'm going to set a
15 briefing date at the end of the --

16 MS. CENDROSKY: So, regardless, we -- oh,
17 perfect. Thank you.

18 JUDGE AMCHAN: -- 30 will be June 7th and I
19 --

20 MS. CENDROSKY: Notwithstanding the leave,
21 sounds great.

22 JUDGE AMCHAN: -- would intend to stick to
23 that.

24 MS. LAWHON: I would assume, and I think just
25 because I don't want it to come as any surprise, to the

1 extent that Judge Laws permits the introduction of
2 evidence currently under a protective order by an outside
3 party to that litigation, in this, it would, I would
4 assume, necessarily be under the same protective order in
5 this litigation. Otherwise, it's complete and run around
6 the protective order.

7 JUDGE AMCHAN: Yes. I -- well --

8 MS. LAWHON: It would have to be, Your Honor.

9 JUDGE AMCHAN: Right. It would really be
10 limited to --

11 MS. DiRIENZO: I'm sure Judge Laws would
12 address that.

13 JUDGE AMCHAN: It would really be limited to
14 the parties in this case and employed personnel who would,
15 you know, have reason to handle the record in this case.

16 MS. LAWHON: Well, it would be limited so, if
17 it were under a protective order. But if it's not, then
18 what --

19 JUDGE AMCHAN: Yes. I mean, I -- the thing
20 is, I guess I would have to, I guess, issue my own
21 protective order --

22 MS. LAWHON: You would. You would. And --

23 JUDGE AMCHAN: -- and that would probably
24 mirror her -- I probably would cut-and-paste.

25 MS. LAWHON: Yes. And I -- I mean, our first

1 position is Affinity's an outside party and we will argue
2 to Judge Laws that they don't come within -- they're
3 squarely prohibited by the protective order.

4 But I'm just saying if, by any chance, it's
5 granted, it would have to be pursuant to a similar, or
6 essentially substantially identical protective order in
7 this proceeding.

8 JUDGE AMCHAN: Yes. Okay. Are we on the
9 record or --

10 THE COURT REPORTER: Yes.

11 JUDGE AMCHAN: We're still on the record.
12 Okay. Next item.

13 MR. BRYAN CARMODY: Well, that's it, Your
14 Honor. As I'm thinking more about this, though, actually,
15 I -- I'm not in a position, I don't think, to actually
16 formally rest, so long as I have a need, as I do, to
17 present evidence responsive to these new allegations in
18 the Complaint.

19 And, also, the -- hopefully have an opportunity
20 to put into the record in furtherance of our defense in
21 this proceeding the evidence that currently exists in this
22 California proceeding.

23 JUDGE AMCHAN: Well, I'll leave the record
24 open for that, although I'm probably going to tell you to
25 have briefs in on June 7th, in any event. And we'll see

1 if I can stick to that.

2 And it does seem to me that the amendments are
3 both based on the documents client -- your client's
4 documents, rather than testimony. So I don't -- I mean,
5 if you have additional information, then we can -- I can
6 deal with it the.

7 But I don't -- it seems to me there it's a
8 violation -- well, I'm just looking at GC20, either it's
9 -- well, there are two things with GC20.

10 It's what it says and the fact that it's
11 contained in the handbook, which is what Ms. Boyle
12 testified to.

13 MR. BRYAN CARMODY: No, I understand the
14 basis of the allegation.

15 JUDGE AMCHAN: And I can't remember what the
16 other one was.

17 MS. CENDROSKY: The other one was Ms. Kress'
18 testimony on the stand --

19 MS. LAWHON: Shredding.

20 MS. CENDROSKY: -- about the shredding.

21 JUDGE AMCHAN: Right.

22 MS. CENDROSKY: So that -- it is what it is.

23 JUDGE AMCHAN: Right. It's hard for me to
24 see what additional evidence, but I'm certainly willing --
25 I mean, I certainly don't want -- if you have something,

1 I'll consider it.

2 MR. BRYAN CARMODY: I understand, Your Honor.

3 MS. LAWHON: Your Honor, are you saying if he

4 has something, you'll consider it after we close the

5 record?

6 JUDGE AMCHAN: I'm not -- I'm going to leave

7 the record open for him to submit -- well, let's, how

8 about this?

9 With regard to any additional evidence with

10 regard to the amended portions of the Complaint, why don't

11 you let me know by, well, really, let's say next Thursday.

12 MR. BRYAN CARMODY: Yes, sir.

13 JUDGE AMCHAN: All right? Whether you have

14 anything.

15 MS. LAWHON: And then we would have to come

16 back.

17 JUDGE AMCHAN: Possibly.

18 MS. LAWHON: Okay. But it's not contemplated

19 they would put in declarations or something; right?

20 JUDGE AMCHAN: Unless you could agree to it.

21 MS. LAWHON: Okay.

22 JUDGE AMCHAN: I mean, you know, from what --

23 I think that you might, because my guess is whatever they

24 come up with, you'll say and the General Counsel will say

25 it isn't relevant.

1 Given Ms. Kress' testimony, given the document,
2 and what Ms. Boyle said, there's really nothing that they
3 can say that -- of a factual nature that changes anything.

4 MS. LAWHON: Thank you for clarifying, Your
5 Honor.

6 JUDGE AMCHAN: Fortunately, it's on the
7 record, so I won't have to go from memory as to what I
8 said.

9 MS. LAWHON: And that was this coming
10 Thursday, a week from yesterday --

11 JUDGE AMCHAN: Right.

12 MS. LAWHON: -- the 9th? I believe May 9th.

13 JUDGE AMCHAN: That's correct, it's May 9th.

14 MR. BRYAN CARMODY: I'm sorry. That's next
15 Thursday?

16 JUDGE AMCHAN: Right.

17 MS. LAWHON: Yes.

18 MR. BRYAN CARMODY: Okay. And it's by that
19 date, Your Honor, just so I'm clear, that you want me to
20 advise you as to, and of course the parties here, as to
21 whether we intend to offer any evidence --

22 JUDGE AMCHAN: Correct.

23 MR. BRYAN CARMODY: -- in defense of these
24 two oral amendments to the Complaint.

25 JUDGE AMCHAN: Amendments.

1 MR. BRYAN CARMODY: Okay.

2 MS. LAWHON: And then when are we seeing the
3 evidence? I thought that was the date to put the evidence
4 in.

5 JUDGE AMCHAN: No. I -- well, I would say
6 he'll let me know, because I don't know what evidence he
7 could have. And then maybe we can talk about it and reach
8 a stipulation. But, I mean, if he -- or, do it by video
9 or come back. All sorts of possibilities.

10 MR. BRYAN CARMODY: I have nothing further,
11 Your Honor, having addressed those issues.

12 JUDGE AMCHAN: Okay. So you --

13 MS. LAWHON: Oh, I'm sorry. Could we go off
14 the record for a second?

15 JUDGE AMCHAN: Yes. Off the record.

16 (Off the record.)

17 JUDGE AMCHAN: Back on the record.

18 MS. LAWHON: And, Your Honor, I just wanted
19 to clarify one thing, which is that counsel represented
20 that he was going to seek to admit documents on the
21 affiliation defense subject to the protective order.

22 JUDGE AMCHAN: Uh-huh.

23 MS. LAWHON: And I understand that. But I --
24 my understanding is if there's anything not subject to a
25 protective order, today's the day to offer it, or else

1 it's not going in the record on that issue.

2 And I just want to make sure that's clear.

3 Because they have certainly been amply notified of the
4 need to produce the evidence that was in their possession.

5 JUDGE AMCHAN: Yes.

6 MS. DiRIENZO: Your Honor, given the question
7 surrounding --

8 THE COURT REPORTER: I can't hear you.

9 MS. DiRIENZO: Oh, I'm sorry. Given the
10 question surrounding whether or not you would give leave
11 to accept from the protective order, we haven't done that
12 complete evaluation.

13 And I told counsel off the record that I would
14 need to discuss that with co-counsel in order to make a
15 determination of what documents there may be that are not
16 subject to the protective order, given that as my
17 co-counsel here said today, Mr. Carmody said today, there
18 was a great deal of back and forth and motion practice
19 related to the protective order.

20 MS. LAWHON: We had no discussion of the kind
21 you just represented, Counsel. What I said is tell me
22 what documents you think are subject to protective order.

23 To the extent the documents are not subject to
24 the protective order, I am going to separately move that
25 they not be admitted to the record.

1 MS. DiRIENZO: Okay.

2 MS. LAWHON: You have the opportunity, you
3 were at that hearing. You should know better than I which
4 documents are subject to protective order, and which are
5 not.

6 And I'm just saying that it's not appropriate to
7 attempt to submit documents that have nothing to do with
8 the protective order later on. Today is the day for that.

9 JUDGE AMCHAN: Well, I agree with you,
10 although I would say you couldn't submit whatever, you
11 know -- well, I guess whatever Judge Laws allows you to
12 submit. And anything else, and you've noted your
13 objection, and I probably won't consider it.

14 I mean, I think I've made it pretty clear --
15 first of all, I don't think what happened on the West
16 Coast is relevant. The other entity is not the
17 Respondent.

18 The other thing is I did read a lot of the
19 continuity representation cases I think all last Friday,
20 and the focus of them is generally about changes that
21 affect the bargaining unit employees.

22 And the one case I'm -- of course, I don't
23 remember what I did a week ago, but CPS Chemical, at 340
24 -- 324 NLRB 1018 strikes me that, you know, what I would
25 expect is information that directly affected bargaining

1 unit employees as a matter that would be relevant, not
2 something that happened out -- with -- between the
3 Charging Party and any larger organization.

4 MR. BRYAN CARMODY: Your Honor, I was going
5 to --

6 JUDGE AMCHAN: And I've heard Kravis, too.

7 MR. BRYAN CARMODY: Thank you, sir.

8 JUDGE AMCHAN: That's how I found the other,
9 CPS Chemical.

10 MS. LAWHON: Was that 324 Board what? I'm
11 sorry, Your Honor, I missed the page.

12 JUDGE AMCHAN: It is 324 NLRB, and that's
13 when -- I'll tell you, that's how -- I looked at Raymond
14 Kravis, which is 351 143.

15 I just had it here, CPS Chemical, which is 324
16 NLRB 1018, a 1997 case. May Department Stores, which is
17 at 289 NLRB 661. I thought there was one other I had.
18 Oh, yes. Mike Basil, (B-A-S-I-L), Chevrolet, which is at
19 331 NLRB 1044. And I highlighted that, which --

20 MS. LAWHON: We cited that in our motion,
21 Your Honor, Mike Basil.

22 JUDGE AMCHAN: Yes. For me, these cases I am
23 very skeptical as to whether any of the stuff from the
24 other hearing is relevant at all.

25 MR. BRYAN CARMODY: Your Honor, I did -- I'm

1 sorry to interrupt you, sir.

2 JUDGE AMCHAN: Well, I was going to say, you
3 know, I mean, if I don't accept these, you can at least
4 make an offer of proof. And if I'm wrong about this, then
5 you've preserved your rights.

6 MR. BRYAN CARMODY: Your Honor, the
7 difficulty for us, Your Honor, is the fact that our
8 ability to come into possession of relevant evidence has
9 been hamstrung by virtue of Your Honor's ruling on the --

10 JUDGE AMCHAN: Uh-huh.

11 MR. BRYAN CARMODY: -- on the subpoenas.
12 That we were expecting --

13 JUDGE AMCHAN: Right.

14 MR. BRYAN CARMODY: -- to gain through those
15 subpoenas which were served both -- on both members of the
16 affiliation responsive documents. And that, obviously, is
17 not an opportunity that we've had by virtue of your
18 ruling, Your Honor.

19 JUDGE AMCHAN: Right. And I made that ruling
20 because I don't think it's relevant.

21 MR. BRYAN CARMODY: I guess the struggle that
22 I'm having just sort of understanding, if that's the -- I
23 mean, an issue is either relevant or it's not, I think.

24 JUDGE AMCHAN: Uh-huh.

25 MR. BRYAN CARMODY: And if it's Your Honor's

1 determination that the affiliation defense isn't relevant,
2 then I'm struggling to understand why your -- you would --
3 I understand why you'd accept an offer of proof.

4 JUDGE AMCHAN: Uh-huh.

5 MR. BRYAN CARMODY: But I'm having a hard
6 time why you would be willing to take evidence that's
7 already in our possession, which would be --

8 JUDGE AMCHAN: Well, because I was wondering
9 whether you had any evidence either -- a couple of things,
10 whether you had relied on the affiliation to refuse to
11 bargain with the Union, or whether you had any evidence of
12 things that happened here with regard to the bargaining
13 unit.

14 I think it's -- I'd have to look at my -- if you
15 look at the kind of changes that occurred in the Mike
16 Basil Chevrolet case, that, I think, would make a
17 difference.

18 And I'm unaware of you're even alleging that
19 anything happened here with --

20 MS. LAWHON: No.

21 MR. BRYAN CARMODY: So, Your Honor, it's --

22 MS. LAWHON: It would be hard for them --

23 MR. BRYAN CARMODY: -- it's your
24 interpretation of the law, Your Honor, that what's
25 necessary is not just changes in the identity of the labor

1 organization, but changes in the bargaining unit, itself?

2 JUDGE AMCHAN: Yes. Let's just --

3 MS. LAWHON: It's in the motion, Counsel --

4 JUDGE AMCHAN: Well, if you look at --

5 MS. LAWHON: -- that I filed.

6 JUDGE AMCHAN: -- Mike Basil -- I'm sorry.

7 MS. LAWHON: Oh, go ahead.

8 JUDGE AMCHAN: Well, okay. So in Mike Basil

9 Chevrolet the employees voted unanimously to affiliate
10 with a large organization.

11 The Board goes on, this will result in some loss
12 of autonomy previously enjoyed, but they will continue to
13 have a voice in the administration of the collective
14 bargaining representative after affiliation.

15 MS. DiRIENZO: Your Honor, in this instance,
16 our employees did not have an opportunity to vote. And we
17 believe that a whole series of actions on the part of the
18 CNA-NNOC with respect to their affiliation with the
19 National --

20 MR. BRYAN CARMODY: Union.

21 MS. DiRIENZO: -- Union of Health Workers
22 changes at a very fundamental level the character of this
23 union and allocates its resources differently than was the
24 expectation of the people who voted. And that change took
25 place four weeks after certification.

1 MS. LAWHON: Your Honor, Kravis expressly
2 rejects, as they must after First Seattle National Bank,
3 any inquiry into --

4 JUDGE AMCHAN: Right.

5 MS. LAWHON: -- the mechanics of voting.

6 JUDGE AMCHAN: Correct.

7 MS. LAWHON: That is irrelevant.

8 JUDGE AMCHAN: Yes.

9 MS. LAWHON: The Board has already ruled that
10 irrelevant.

11 JUDGE AMCHAN: Well, here, why don't you make
12 a -- instead of going through this thing with Judge Laws,
13 why don't you just make an offer of proof --

14 MS. LAWHON: Right.

15 JUDGE AMCHAN: -- and we'll leave it at that,
16 because I don't think it's relevant. And if I'm wrong,
17 the case comes -- and as I said, I think, in our
18 conference call, the case comes back in three years.

19 MS. DiRIENZO: Your Honor, if I may. Part of
20 the problem is that in making an offer of proof, it would
21 be essential to make reference to the very testimony
22 that's subject to the protective order that Judge Laws
23 issued. And so I feel that we would be --

24 MS. LAWHON: This is circular, Your Honor.
25 They've got nothing.

1 MS. DiRIENZO: That's not true, Your Honor.

2 And I do feel that we would be --

3 JUDGE AMCHAN: Well, what if I just --

4 MS. DiRIENZO: -- hampered in making the
5 offer.

6 JUDGE AMCHAN: -- I'll just --

7 MS. CENDROSKY: Well, can't they state in
8 their offer of proof --

9 JUDGE AMCHAN: -- the following offer of
10 proof will be subject to a protective order --

11 MS. CENDROSKY: Right.

12 JUDGE AMCHAN: -- that I'll --

13 MS. LAWHON: Yes.

14 JUDGE AMCHAN: -- issue on --

15 MS. LAWHON: It's here.

16 JUDGE AMCHAN: -- that I will state on the
17 record.

18 MS. DiRIENZO: And you won't make --

19 MS. LAWHON: It's subject to the protective
20 order.

21 JUDGE AMCHAN: Basically limited to use in
22 this case or any related case.

23 MS. LAWHON: And won't be included in the
24 transcript as it's put up on the website, and that kind of
25 thing.

1 JUDGE AMCHAN: Correct. It'll --

2 MS. LAWHON: Yes.

3 MS. CENDROSKY: And I'll get out of here.

4 JUDGE AMCHAN: -- there is -- huh?

5 MS. CENDROSKY: And I will -- and those of us
6 that don't need to be in here can leave.

7 MS. LAWHON: I don't have a problem with your
8 hearing it. It's not going any further.

9 JUDGE AMCHAN: Yes. There is, actually,
10 because I had the case recently where the Employer wanted
11 a number of things covered by a protective order, and
12 there is a way of, even on the nextion of separating it so
13 it's not available to the public.

14 MS. DiRIENZO: Your Honor, respectfully, I
15 don't think that there's any protection for the Employer
16 by me making that offer of proof, given that I was counsel
17 and subject to the protective order.

18 I mean, I fully respect your authority, but I do
19 have a high degree of discomfort giving, again, the --

20 JUDGE AMCHAN: You're afraid that if you make
21 the offer of proof you'll be violating Judge Law's
22 protective order.

23 MS. DiRIENZO: That's right. Precisely.

24 MS. LAWHON: And I'm saying that the Union
25 will not make that argument, considering that the offer of

1 proof, itself, is subject to a protective order of the
2 same rigor as Judge Law's.

3 In fact, I believe, Your Honor, that this is a
4 complete distraction and irrelevant matter. I would like
5 to see it concluded today.

6 And I will not -- I will represent my client will
7 not challenge counsel as having violated the protective
8 order, provided the offer of proof is, itself, under a
9 protective order substantially identical to Judge Laws'.
10 I have no problem, and I can commit to that, Your Honor,
11 as an officer of the court.

12 MR. BRYAN CARMODY: Your Honor, it's --
13 counsel for the Charging counsel -- or -- counsel for the
14 Charging Party may not seek to engage in any motion
15 practice, but it is Judge Law's order that's --

16 MS. LAWHON: Oh, this is -- this is phony.

17 MR. BRYAN CARMODY: -- she -- she --

18 JUDGE AMCHAN: Well, I -- here -- I'm just
19 going to -- I'll give you a choice. You can either make
20 the offer of proof now, or waive it.

21 And then you can -- you know, if you think I've
22 violated due process rights, that'll be a basis for appeal
23 if I end up ruling against you.

24 MR. BRYAN CARMODY: Well, we'd prefer to wait
25 to make the offer of proof, Your Honor.

1 JUDGE AMCHAN: No. I'm saying now or never.

2 MR. BRYAN CARMODY: Oh, then not now.

3 JUDGE AMCHAN: Okay.

4 MR. BRYAN CARMODY: Not now, I guess not
5 ever.

6 JUDGE AMCHAN: All right. Next item.

7 MS. CENDROSKY: Okay. At this time, I will
8 get my witness.

9 JUDGE AMCHAN: Off the record.

10 (Off the record.)

11 JUDGE AMCHAN: Back on the record.

12 MS. CENDROSKY: Counsel for the General
13 Counsel calls Mr. Bob McKinney to the stand.

14 JUDGE AMCHAN: If you'd raise your right
15 hand.

16 WHEREUPON,

17 ROBERT McKINNEY,

18 A witness herein, having been first duly cautioned and
19 sworn, was examined and testified as follows:

20 JUDGE AMCHAN: Have a seat, and keep your
21 voice up, please.

22 DIRECT EXAMINATION

23 BY MS. CENDROSKY:

24 Q. Bob, if you'd like, you can pull the microphone
25 closer to you. It does not amplify, it just records.

1 Okay?

2 A. Okay.

3 Q. Okay. Can you please state and spell your full
4 name for the record?

5 A. Robert McKinney, (R-O-B-E-R-T)
6 (M-C-K-I-N-N-E-Y).

7 Q. What I'd like for you to do, Mr. McKinney, is
8 if you cannot hear my question or if you do not understand
9 it, just let me know.

10 A. Okay.

11 Q. By who are you employed?

12 A. Affinity Medical Center.

13 Q. And if I refer to Affinity Medical Center as
14 either Affinity or the hospital, will you know who I'm
15 referring to?

16 A. Yes.

17 Q. Are you currently employed with Affinity?

18 A. Yes.

19 Q. And when did you begin your employment with
20 Affinity?

21 A. I believe in 1999.

22 Q. And what is your current position with
23 Affinity?

24 A. A staff nurse.

25 Q. And which department do you work in?

1 A. Telemetry, 2100.

2 Q. Are you considered full time?

3 A. Yes.

4 Q. Did you serve as a union representative for Ann
5 Wayt on September 13th, 2012?

6 A. Yes.

7 Q. Prior to that meeting, did you have any
8 conversation with Ann Wayt?

9 A. Yes. I spoke with her on the phone. She had
10 called me and said she was called about having a meeting
11 with Paula Zinsmeister, something about a patient safety
12 issue. And --

13 JUDGE AMCHAN: Okay. Well, she just asked
14 you if she had a meeting.

15 THE WITNESS: Oh.

16 JUDGE AMCHAN: So wait for the next question.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. CENDROSKY:

19 Q. When you were -- as you were having -- in the
20 phone conversation with Ms. Wayt what, if anything, did
21 you learn from Ann?

22 A. Well, as I started to say --

23 Q. We could piece it up.

24 A. -- she had said that Paula wanted to have a
25 meeting with her about some patient safety issue. And she

1 said she wasn't -- I'm sorry, Ann wasn't able to come in.

2 She was busy or something.

3 I don't -- I don't remember exactly the
4 conversation. But that Paula had said she -- she wanted
5 her -- wanted Ann to come in.

6 And she, Ann, at that point, said she realized
7 she was on a speaker phone, or a conference call, or
8 something, and --

9 Q. Did Ann tell you who else was on the speaker
10 phone?

11 A. That's where I -- yeah. Now, yes. She said
12 that's when Jason, who I didn't know at the time, but she
13 said Jason had said you better come in. And Ann said, you
14 know, she had had some back and forth about she wanted a
15 rep with her.

16 Q. Do you know what she meant by representative?

17 A. A Weingarten rep. I --

18 Q. Okay.

19 A. -- I mean, that was kind of new to a lot of us
20 then. And, you know, she was told, I believe, by Jason
21 that she couldn't have a rep with her.

22 And he -- he was telling her, you know, you have
23 -- you have -- you must come in, you have to come in. I
24 -- I don't remember the -- again, I apologize, the exact
25 words.

1 JUDGE AMCHAN: Well, I'm a little confused.

2 You heard all this, or she's -- or this is just something

3 -- THE WITNESS: She's telling me. No, I didn't

4 hear any of it.

5 JUDGE AMCHAN: Okay. So you weren't party to

6 the conversation.

7 THE WITNESS: No. No.

8 DIRECT EXAMINATION (CONT'D)

9 BY MS. CENDROSKY:

10 Q. What, if anything, else did Ann tell you about

11 the conversation she had with Mr. McDonald and

12 Ms. Zinsmeister?

13 A. Well, I don't know if it was the end of the

14 conversation. But she said Jason said if you don't come

15 in, I'll just fire you over the phone.

16 Because, at that point, I mean, I'm realizing the

17 seriousness of this whole situation now. That -- that's

18 the most -- probably all that I can remember.

19 Q. Okay. Do you recall if you attended this

20 meeting the following day?

21 A. Yes.

22 Q. Okay. Do you recall who attended the meeting?

23 A. Yes.

24 Q. And who attended the meeting?

25 A. It was Angie Boyle, Paula Zinsmeister, Jason,

1 I'm not sure of his last name still.

2 Q. Okay.

3 A. Ann, and myself.

4 Q. Now, in this meeting, do you recall if anyone
5 mentioned to you if you were able to prepare a defense, or
6 submit anything on Ann's behalf?

7 A. No.

8 Q. In that -- no, you don't recall, or did they
9 tell you you could?

10 A. No. Nothing was said about any kind of
11 defense.

12 Q. Okay. In that meeting did anyone from Affinity
13 arrange or schedule for you guys to meet again with regard
14 to Ann?

15 A. Not specifically.

16 Q. Okay. Do you recall if either Paula, or Jason,
17 or anyone from Affinity indicated when they would get back
18 to you?

19 A. That -- yes. It was, you know, in a couple of
20 days when we -- we wrapped up or concluded our
21 investigation, we'll get in touch with Ann and, you know,
22 if -- like we'll resolve this, or something, I don't
23 remember. Again, I don't remember the exact words.

24 Q. Do you recall who was speaking, who told you
25 that?

1 A. That was Angie that said that.

2 Q. Okay. After this meeting, did you speak with
3 anyone at Affinity to try to understand what had happened
4 with Ann on August 28th, 2012?

5 A. I did.

6 Q. Who'd you speak with?

7 A. I spoke with Sam Burgett.

8 Q. And who's Sam?

9 A. He was the nursing assistant the day that all
10 this occurred.

11 Q. And what, if anything, did you learn from Sam?

12 A. He -- he told me that he was told by Paula not
13 to say anything to anybody about this.

14 Q. And what do you mean by "this"? Do you -- did
15 you understand what he meant by "this"?

16 A. Yeah. We were talking about this specific
17 occurrence of -- of what was -- what she was being accused
18 of. And, certainly, I -- I mean, I didn't pursue it. I
19 didn't want, you know, him to get in any -- any trouble.

20 MS. CENDROSKY: Okay. That's all I have for
21 you. Thank you.

22 CROSS-EXAMINATION

23 BY MS. LAWHON:

24 Q. Good afternoon, Mr. McKinney. I'm Jane Lawhon,
25 attorney for NNOC. Did you have experience with unions

1 before NNOC successfully organized your hospital?

2 A. Yes.

3 Q. And what union?

4 A. It was Steelworkers. I don't remember the
5 local.

6 Q. Okay. And approximately how long were you
7 represented by Steelworkers Union?

8 A. About ten, ten years.

9 Q. And at any point in the period when you were
10 represented by the Steelworkers Union, did you serve as a
11 shop steward?

12 A. Yes.

13 Q. And turning now to your current employment as a
14 registered nurse, miracle worker, not steelworker, as one
15 -- were you ever elected to any, or were you ever -- do
16 you serve in any position on behalf of the union among
17 your co-workers?

18 A. As a Facility Bargaining Committee
19 representative.

20 Q. Okay. And is that also sometimes called the
21 Facility Bargaining Council, or FBC?

22 A. The FBC, yes.

23 Q. Okay. And you serve on that as one of the
24 telemetry RN's, telemetry RN's on the FBC?

25 A. Yes.

1 Q. Okay. In the course of the period of time
2 since you've been represented by NNOC, so since the
3 certification date being October 4th, have you had
4 occasion to file Assignment Despite Objection Forms as an
5 individual?

6 A. Yes.

7 Q. Could you recall approximately how many?

8 A. Five to ten.

9 Q. Okay. And what communications, if any, have
10 you had with your immediate supervisor on the occasions
11 when you filed ADO's as an individual?

12 A. I --

13 Q. Let me --

14 A. -- I always notify them, if that's --

15 Q. Yes. When you say you always notify them, is
16 it always the same person you're notifying when you're
17 filing an ADO?

18 A. It's always my supervisor, but not the same
19 supervisor, no.

20 Q. Okay. Are there circumstances, for example,
21 when your manager is not there and you're working?

22 A. Yes.

23 Q. Okay. And in that -- has that circumstance
24 ever arisen when you filed an ADO?

25 A. Yes.

1 Q. Okay. And in that circumstance, who would you
2 inform about the ADO?

3 A. The nursing coordinator, or if somebody was
4 covering for the manager.

5 Q. Okay.

6 A. Some of the managers cover for each other.

7 Q. Right. Have you ever filed an ADO and not
8 informed your supervisor as soon as the incident causing
9 the ADO happened that you intended to file an ADO?

10 A. No.

11 Q. Have you also signed on to group ADO's?

12 A. Yes.

13 Q. Okay. And to your knowledge, has an immediate
14 supervisor been informed about the group ADO by one of the
15 signers at the time the incident provoking the ADO
16 occurred?

17 A. If I'm asked to sign one, I always ask did you
18 notify someone, yes.

19 Q. Okay. And when you say did you notify someone,
20 you mean?

21 A. Supervision, yeah. Yes.

22 Q. Okay. Have you ever been approached by
23 colleagues on your shift about ADO's?

24 A. Yes.

25 Q. And what practice do you have in terms of a

1 conversation with them when you're approached by

2 colleagues about ADO's?

3 A. I try to answer any questions they have. If --

4 again, if they come to me with one, I always say did you

5 notify supervision, someone of this? I mean, that's --

6 that's the basic -- you have to give them a chance to

7 correct the situation.

8 Q. And when you say "them," you mean management?

9 A. Supervision. I'm sorry, yes.

10 MS. LAWHON: No further questions, Your

11 Honor.

12 MR. BRYAN CARMODY: I assume there's no

13 Jencks statements?

14 MS. CENDROSKY: No.

15 MR. BRYAN CARMODY: One moment, Your Honor?

16 JUDGE AMCHAN: Yes. We can go off the

17 record.

18 (Off the record.)

19 JUDGE AMCHAN: Back on the record. You don't

20 have any questions?

21 MR. BRYAN CARMODY: That's correct, Your

22 Honor.

23 JUDGE AMCHAN: Okay. You can step down.

24 Thank you.

25 (WITNESS EXCUSED.)

1 JUDGE AMCHAN: Off the record.

2 (Off the record.)

3 JUDGE AMCHAN: Back on the record.

4 MS. CENDROSKY: At this time, counsel for the
5 General Counsel calls Mr. William Osterman back to the
6 stand.

7 JUDGE AMCHAN: Again, you're still under
8 oath.

9 THE WITNESS: Yes, sir.

10 WHEREUPON,

11 WILLIAM OSTERMAN,

12 A witness herein, having been previously cautioned and
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CENDROSKY:

16 Q. I'll make this simple. I'm going to show you
17 what's been marked as General Counsel's Exhibit Number 9.
18 We're going to take a few minutes and review the stack of
19 documents I just handed you.

20 If we look at the first page, do you see the name
21 of the employee listed?

22 A. Yes.

23 Q. Ms. Elizabeth Blair?

24 A. Yes, ma'am.

25 Q. And I understand that the date of that

1 disciplinary action form is December 21st, 2009; is that
2 correct?

3 A. Yes, ma'am.

4 Q. And if we look, does it -- in the action taken
5 section, do you see what is marked?

6 A. Verbal warning.

7 Q. Okay. And if we look to the discussions, it
8 starts with the letter one -- I mean, a number one. And
9 can you tell us what that says?

10 A. It says, "On December 15th, 2009, ten charts
11 were left without orders being signed off. Order to hold
12 Lovenox was written at 1600. MAR was -- MAR was not
13 changed and medication was administered resulting in
14 medication error."

15 Q. What's Lovenox, do you know?

16 A. It's a blood thinner.

17 Q. Okay. Okay. Let's look at -- let's now turn
18 to Page 2. Do you recognize the name on that for the
19 employee name?

20 A. Yes. Liz Blair.

21 Q. Is Liz the same as Elizabeth Blair?

22 A. Yes.

23 Q. Okay. And what's the date on this one? I'm
24 sorry. I tried to put them in chronological order, but
25 apparently I did not.

1 A. It's 8/11/2008.

2 Q. Okay. And if we look for the action taken, do
3 you see what the mark is?

4 A. Verbal warning.

5 Q. Okay. And we don't need to go through the
6 discussion here, but I'm just -- for the record, wanted to
7 show that there was another verbal warning.

8 Let's turn to Page 3. I should ask, is Ms. Blair
9 a nurse?

10 A. Yes, ma'am.

11 Q. And she was a registered nurse?

12 A. Yes, ma'am.

13 Q. Okay. We're now at Page 3. And what's the
14 employee name listed on this sheet?

15 A. Linda McBride.

16 Q. I'm sorry, Page 3.

17 JUDGE AMCHAN: Yes, that's what I'm looking
18 at.

19 THE WITNESS: Oh.

20 JUDGE AMCHAN: No, it is under --

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. CENDROSKY:

23 Q. Oh, you know what, I think what you have is
24 documentation that would support Page 2. If you look at
25 the bottom is there -- you see where there's a three

1 circled?

2 A. Yes.

3 Q. Okay. That page. I'm sorry. I should have
4 pulled out the supporting documentation. Do you recognize
5 the employee name?

6 A. Yes, ma'am.

7 Q. And who is it?

8 A. Elizabeth Blair.

9 Q. Okay. Is this the same Elizabeth Blair that
10 were in the first two documents that we've just reviewed?

11 A. Yes, ma'am.

12 Q. Okay. And the date for this infraction?

13 A. 11/27/2012.

14 Q. At that time, were you serving as the director
15 of nursing?

16 A. Yes, ma'am.

17 Q. And if we look to the action taken, what is
18 listed?

19 A. Written warning.

20 Q. Okay. Let's go through the explanation offense
21 for this one. I see the second sentence, it says, "It was
22 reported that on 11/19/2012 a patient's wife was visiting
23 with her husband from ten a.m. until nine p.m., and she
24 did not encounter his nurse Elizabeth Blair." Is that
25 correct?

1 A. Correct.

2 Q. Okay. And let's go down a little further. As

3 to the second from the last sentence in the explanation

4 offense it starts with "the patient's wife." Do you see

5 that?

6 A. Yeah.

7 Q. Okay. Can you read that for me?

8 A. "The patient's wife stated that she was unaware

9 of Liz's physical appearance, since she did not enter the

10 room during the time she was visiting, and never

11 personally responded to her questions."

12 Q. Okay. Now let's drop down one section further

13 with the discussion. I see that under Number 3 it seems

14 to mention responsiveness?

15 A. Correct.

16 Q. Okay. And what else does it say?

17 A. "All nursing staff will promptly see to patient

18 needs by participating in hourly rounding."

19 Q. Okay. Now, the very last sentence in this

20 section under discussion, can you tell us what that says?

21 A. These are -- Number 4, sense of ownership, or

22 the very last?

23 Q. The very last sentence. It starts with,

24 "Elizabeth."

25 A. Okay. "Elizabeth's documentation for this

1 shift includes hourly rounding for 0718 physical
2 assessment, and zero eight in medication administration at
3 both zero nine and twelve noon."

4 Q. Okay. So the fact that Ms. Blair documented
5 that she had performed the hourly rounding, and performed
6 a physical assessment, and administered medication, yet,
7 this was not noted by the complaint of the patient's
8 family that they had not seen her all day. That, in fact,
9 they didn't recognize her appearance when she returned.

10 Would the fact that Ms. Blair documented this,
11 would you consider that fraudulent or falsification of
12 documentation?

13 A. Based on these words, yes.

14 Q. Okay. And I want to direct your attention up
15 to the violation box at the top. Is there any box
16 available for falsification of documentation?

17 A. No.

18 Q. Okay.

19 A. He would have to put it in the other.

20 Q. Okay. Let's turn to the fourth page, then.

21 And who is listed on this page?

22 A. Elizabeth Blair.

23 Q. And what's the date for this infraction?

24 A. 3/5/2013.

25 Q. Were you the -- you were the director of

1 nursing at this time; correct?

2 A. Yes, ma'am.

3 Q. Okay. Let's look at the action taken. What is

4 listed as the action taken by the hospital?

5 A. Second written warning, final.

6 Q. Okay. Let's go through the explanation of

7 offense. And do you see about, oh, a third of the way

8 down, it starts with "Upon inquiry."

9 A. Yes.

10 Q. Okay. Can you read that for us?

11 A. "Upon inquiry, the patient stated Liz had not

12 listened to her with her stethoscope at all -- at all this

13 morning."

14 Q. You can continue.

15 A. "I then sent to" -- "I then sent to review the

16 charting for this patient, and there was not any

17 documentation found from either Liz or the nursing

18 student. However, the hourly rounding log on the

19 patient's door shows Liz's initials for hourly rounding

20 completion.

21 "Liz and I met to review her performance on her

22 performance improvement plan, and we discussed the

23 situation. Liz stated she did a mini assessment on the

24 patient.

25 I went in and said hi, and checked her I.V. site,

1 oxygen setting, and wrote my name on the grease board.
2 When asked if she had completed the four P's, potty, pain,
3 position, and possession with each hourly rounding
4 interaction, Liz replied I did not."

5 Q. Okay. So the hourly rounding log on the
6 patient's door showed Liz's initials for the hourly
7 rounding completion.

8 Yet, when you -- when someone asked her about it,
9 she replied I did not. Would this be considered
10 falsification of documentation?

11 A. Yes.

12 Q. Okay. And if we look up to the top under
13 violations, is there any indication that it was marked off
14 as such?

15 A. No.

16 Q. Okay. Let's turn your attention now to the
17 fifth page. Do you recognize the name of the employee
18 listed?

19 A. Nina Vasquez.

20 Q. And she's a registered nurse; correct?

21 A. Correct.

22 Q. And the date listed for the offense?

23 A. 12/7/2011.

24 Q. Okay. And to the action taken box, can you
25 tell us what is denoted?

1 A. A verbal counseling.

2 Q. And for the discussion, I'd like to direct your
3 attention to the third paragraph. It's actually with the
4 number three. And if we look at the second sentence it
5 starts with N. Vasquez. Can you see that?

6 A. Yes.

7 Q. Okay. Can you read that for us?

8 A. "N. Vasquez, RN, entered the sitter patient's
9 room once to assess the patient and pass 2100
10 medications."

11 Q. Okay. And you can continue with the second
12 sentence.

13 A. Oh. "N. Vasquez, RN, neglected her patient
14 care responsibility -- responsibilities and should have
15 completed her hourly rounding."

16 Q. And for the corrective action recommended, just
17 read the first sentence for us.

18 A. "Nina will take full responsibility of the
19 patients assigned to her in a given shift and will conduct
20 hourly rounding on all her patients without fail."

21 Q. Okay. Let's now turn to Page 6. And who is
22 listed as the employee?

23 A. Nina Vasquez.

24 Q. And what is the date on the discipline notice?

25 A. 2/7/2012.

1 Q. And what was the action taken?

2 A. Written warning.

3 Q. Okay. And if we look in the discussion section

4 here, it appears that there's listed November 2009

5 warning, December 2009 suspension, December 2011 verbal

6 counseling. Do you see that?

7 A. Yes, ma'am.

8 Q. Okay. Well, we don't need to read through all

9 of that, because I think the document will speak for

10 itself on that one.

11 But I would like to turn your attention to Page 7

12 now. And can you tell us what the employee name is on

13 this disciplinary action notice?

14 A. Nina Vasquez.

15 Q. And the date of the disciplinary action notice?

16 A. 5/4/2012.

17 Q. Okay. And the action taken on this day?

18 A. Third final written warning.

19 Q. Okay. All right. So let's look at the

20 discussions. It looks like there's a number one, number

21 two, and number three. Can you tell us -- tell me about

22 those?

23 A. He did not receive his BP medication Ultram.

24 Q. What's BP medication? What does that say?

25 A. Blood pressure.

1 Q. Okay. And what's Ultram?

2 A. It's a pain medicine.

3 Q. Okay. And then number two?

4 A. Did not receive his SCD's until the next day,
5 4/6/2012.

6 Q. What's an SCD?

7 A. It's a sequential TEDS. A device that sits on
8 the legs and pumps air.

9 Q. Oh, okay. And then number three listed in the
10 discussion?

11 A. He was not rounded on for three and a half
12 hours.

13 Q. Okay. Let's look to the corrective action
14 recommended, and the second sentence starts with "Failure
15 to hourly round on patients." Do you see that?

16 A. Yes.

17 Q. And then it also continues with "Missed to
18 order medications and render ordered treatment." Okay.

19 Let's now turn to Page 8. And who do we have
20 listed on this disciplinary action form?

21 A. Nina Vasquez.

22 Q. And what's the date of this infraction?

23 A. 5/22/12.

24 Q. And you were the director of nursing at that
25 time; correct?

1 A. Correct.

2 Q. Okay. And the action taken by the hospital?

3 A. A third final written warning.

4 Q. Okay. Let's go ahead and turn to Page 9. And
5 who's listed as the employee on Page 9?

6 A. Nina Vasquez.

7 Q. And the date listed on the -- for the
8 infraction?

9 A. 1/21/2013.

10 Q. Okay. And for this one, what was the action
11 taken by the hospital?

12 A. Termination.

13 Q. Okay. Let's go to the discussion section, and
14 can you describe for us, I think there's about maybe one,
15 two, three sentences, just to give us an idea of what
16 Ms. Vasquez was finally terminated for. You could
17 summarize it, you could read it, however you choose to do
18 it.

19 A. Ms. Vasquez didn't respond to a patient alarm.

20 Q. Okay. Was Ms. Vasquez reported to the State
21 Board of Nursing by anyone from Affinity?

22 A. No.

23 Q. Okay. Let's turn to Page 10. And who's the
24 employee name listed on this disciplinary action notice?

25 A. Sarah Falanga.

1 Q. Okay. Is Sarah Falanga a nurse?

2 A. Yes.

3 Q. And the date listed for the discipline?

4 A. 9/5/2012.

5 Q. Okay. Let's look at the action taken. What

6 sort of discipline did Ms. Falanga receive?

7 A. Verbal counseling.

8 Q. Okay. And for the explanation of offense, it

9 says, "Falanga failed to complete the required change, end
10 of shift chart checks." What's that? Can you just

11 explain that for me?

12 A. This is during bedside reporting.

13 Q. That's bedside reporting, okay.

14 A. Correct.

15 Q. And then it continues and it says, "As a result

16 of this omission," and you're going to have to read that

17 medication.

18 A. Amiodaron.

19 Q. Okay. And go ahead and continue with that

20 sentence.

21 A. "I.V. infusion drip remained off for 12 hours

22 over a shift that should have been infusing continuously."

23 Q. Okay. And then if we go down to the third

24 paragraph in the explanation of offense, I see a sentence

25 that says, "Such errors can result patient harm, up to and

1 including death."

2 A. Correct.

3 Q. What is the infusion drip? Can you tell us

4 what that was for?

5 A. It keeps the arrhythmia of a heart if they're

6 in AFIB, atrial fibrillation. It tries to get them out of

7 atrial fibrillation.

8 Q. So would that be considered a medication that's

9 very important?

10 A. Yes.

11 Q. Okay. I'm going to direct your attention now

12 to Page 12. And who is the employee listed on this form?

13 A. Kellyn Diller.

14 Q. And did you know Kellyn Diller?

15 A. Didn't know her well.

16 Q. Was she a nurse?

17 A. Yes.

18 Q. Okay. Registered nurse; correct?

19 A. Correct.

20 Q. Okay. And the date listed on the disciplinary

21 action notice?

22 A. 1/3/2012.

23 Q. And what was the action taken by the hospital?

24 A. Written warning.

25 Q. Okay. Under the discussion it seems to say

1 that the patient -- oh, you know what, we're going to have
2 to redact this. "Patient went into respiratory distress."

3 Do you see that?

4 A. Yes.

5 Q. And then the second sentence reads, "Kellyn,
6 who assumed care of the patient, had no documentation of
7 the status of the patient until discharged from the
8 floor." Is that correct?

9 A. Correct.

10 Q. Okay. And then continuing about halfway
11 through, it says, "There's no evidence that the patient
12 was assessed during his last hour in ED." Is ED Emergency
13 Department?

14 A. Emergency Department, correct.

15 Q. Okay. And then corrective action recommended
16 was first warning based on insufficient charting and
17 possible neglect of nursing duties. Is that correct?

18 A. Correct.

19 Q. Okay. Let's turn to Page 13. And who is the
20 employee listed on that disciplinary action form?

21 A. Jennifer Shonts-Garrett.

22 Q. Okay. And the date listed?

23 A. 27 June, 2012.

24 Q. Was Jennifer a registered nurse?

25 A. Yes.

1 Q. Okay. And you were employed as a director of
2 nursing at that time; correct?

3 A. Yes.

4 Q. Okay. And the action taken by the hospital?

5 A. Written warning.

6 Q. Let's go to the discussion, and you can go
7 ahead and read that for us.

8 A. "On 6/26/12 at 2120 there was a physician order
9 for a renal ultrasound consult with Dr. Bargarva. BMP in
10 the a.m. This order was signed off as completed by
11 Jennifer at 2255.

12 These orders were not entered in the computer
13 order system, unlisted on KARDEX. A delay in treatment
14 resulted in orders being entered STAT."

15 Q. Okay. What is BMP and -- what is -- can you
16 tell me what that means?

17 A. That's a lab draw to check the renal function.

18 Q. Oh, okay. And it says it was signed off as
19 completed by Jennifer at 2255. Is that a time --

20 A. Yes.

21 Q. -- or is that referring to her room?

22 A. It's a --

23 Q. Okay. It's a time.

24 A. -- time.

25 Q. Now, would this be considered falsification of

1 documents, since it was signed off as completed?

2 A. She signed off that she completed it. It was
3 written on the KARDEX.

4 Q. What's a KARDEZ?

5 A. It's a working sheet that the nurses use to
6 track orders --

7 Q. Okay.

8 A. -- and labs that were done.

9 Q. Okay.

10 A. So when she did it, it looks like she wrote it
11 off on the KARDEX, but the secretary didn't put it in the
12 computer, and so she missed the part of checking the
13 computer to verify it was in there.

14 Q. I see. Thank you. Let's turn to Page 14 now.
15 And who is the employee listed on that page?

16 A. Jennifer Shonts-Garrett.

17 Q. Okay. And the date?

18 A. 20 June, 2012.

19 Q. Okay. And the action taken by the hospital?

20 A. Verbal counseling.

21 Q. Okay. Now, if we look at the discussion, we're
22 going to go to the second section there where it starts
23 with "Incomplete documentation." You can go ahead and
24 read that for us.

25 A. "Incomplete documentation on admission database

1 on 18 June, 2012. Evidence of abuse and neglect was not
2 addressed. Portion of medical history was not omitted.
3 Wound photo documentation form was incomplete. Patient
4 was admitted with multiple eccymotic open and scabbed
5 areas on her leg."

6 Q. Okay. Let's turn the page now to Page 15.

7 JUDGE AMCHAN: There's a handwritten note at
8 the top, "Resigned, DT office theft." What's that about?

9 THE WITNESS: I have no idea.

10 MS. CENDROSKY: I have no idea. Well, I
11 guess we can ask Ms. Boyle. This is the way the documents
12 came.

13 JUDGE AMCHAN: Okay.

14 MS. LAWHON: It may be re-signed, but I don't
15 know what the word theft means, you know, as opposed to
16 resigned.

17 JUDGE AMCHAN: Oh, oh, oh, oh, oh.

18 MS. LAWHON: But I still don't understand
19 "theft."

20 MS. CENDROSKY: We can ask Ms. Boyle. That's
21 fine.

22 DIRECT EXAMINATION (CONT'D)

23 BY MS. CENDROSKY:

24 Q. Okay. Let's turn to Page 15. And who's the
25 employee listed on this page?

1 A. Nancy Davis.

2 Q. And the date of the infraction?

3 A. 5/11/2012.

4 Q. And the action taken by the hospital?

5 A. Verbal counseling.

6 Q. Okay. Let's go to the explanation of offense.

7 Number one, "At 1430 hours Ms. Davis' patient had a

8 heparin infusion documented as infusing at 10.46 units per

9 kilogram per hour." What's heparin?

10 A. It's a blood thinner.

11 Q. Okay. And then number two, can you tell me

12 what that purports to be noting?

13 A. That the pump was set at 32 -- 322 N mls per

14 hour.

15 Q. And next where it says, "An unacceptable high

16 rate." Is that correct?

17 A. Correct.

18 Q. Okay. And then number three, the heparin flow

19 sheet shows no initials following the last dose

20 adjustment. Do you see that?

21 A. Correct.

22 Q. Okay. And then continuing. No initials follow

23 the entry for adjustment at 1600, or for her entire seven

24 a. to seven p. shift; is that correct?

25 A. Correct. They're -- she's -- they're talking

1 about double signing.

2 Q. Double assignment (sic)? Okay. And you can
3 explain that for us, since I'm not familiar with what that
4 is.

5 A. The second nurse.

6 Q. The second nurse --

7 A. She didn't -- she didn't get a second nurse to
8 sign them.

9 Q. Is that required?

10 A. Yes.

11 Q. Is that required under company policy?

12 A. Yes.

13 Q. Okay. Let's turn to Page 16. And the employee
14 here is?

15 A. Nancy Davis.

16 Q. Is this the same Nancy Davis as we saw just a
17 -- on Page 15?

18 A. Yes.

19 Q. As far as you know; correct?

20 A. Correct.

21 Q. Okay. Because it seems like it's a common
22 name. What's the date listed on this disciplinary action
23 notice?

24 A. 8/20/2012.

25 Q. Okay. Okay. And can you tell us what the

1 action taken was?

2 A. Verbal counseling.

3 Q. Okay. And the explanation of offense it says,

4 "Failed core measurement complaints, no ASA within 24

5 hours of admission of MI or onset of MI if already a

6 patient here." What's ASA?

7 A. Aspirin.

8 Q. It's Aspirin. Okay. And why was that

9 significant?

10 A. We have core measures that we follow. MI's

11 that come in should have an aspirin given, or ordered, or

12 a reason not given and documented.

13 Q. I should ask what an MI means.

14 A. It's a heart attack. Myocardial infarction.

15 Q. Myo infarction, that's right. Okay. Let's

16 turn to Page 17 now. And the employee listed, Brenda

17 Haught?

18 A. Yes, ma'am.

19 Q. And the date August the 6th, 2012, and you were

20 the director of nursing at that time.

21 A. Yes.

22 Q. And the action taken?

23 A. Written warning.

24 Q. Okay. And the explanation of offense, it's

25 "Failure to respond to ICU patient call lights. Cardiac

1 vital sign monitoring alarms and I.V. pump alarms."

2 Can you tell us, the call lights, is that if a

3 patient puts on the light to --

4 A. Correct.

5 Q. -- respond to a patient's need?

6 A. Correct.

7 Q. Okay. And what's the cardiac vital signs

8 monitoring alarms? Can you tell us what that is?

9 A. That's the heart monitor.

10 Q. An alarm would mean something's not correct?

11 A. Something's not correct, or the patient's

12 moving, or it could be artifact.

13 Q. Okay. And I assume the nurses, since it's

14 listed, they're supposed to respond to these monitors?

15 A. Correct.

16 Q. Okay. Is Brenda Haught a nurse?

17 A. Yes.

18 Q. Registered nurse?

19 A. Yes.

20 Q. Okay. Let's turn to Page 19. We'll try to get

21 through these a little quicker. The employee name listed?

22 A. Loretta Stockton.

23 Q. And the date, I see that it's 10/29/08.

24 A. Correct.

25 Q. The action was a written warning. And under

1 discussion, see if you agree with me what this handwriting
2 says. I read it as, "Failure to chart correctly on
3 patient pertaining to correct drug and order of" something
4 "given." Can you make out what that second word is to the
5 end?

6 A. No, I cannot.

7 Q. Me neither.

8 MS. LAWHON: It looks like "directive."

9 Q. Okay. Let's turn to Page 20. And we have
10 Ms. Stockton again. And can you tell us what the action
11 taken was?

12 A. Verbal warning.

13 Q. All right.

14 A. She's on a different department now.

15 Q. She's in a different department, I see. Okay.

16 Let's look to Page 22. Because it looks like the entry on
17 21 is just an explanation of 20. Is that how you view 21?

18 A. Well, I couldn't really tell, because this --
19 this is before I was there.

20 Q. Oh, true. That's fine. Let's go to Number 22,
21 then. And the employee name listed?

22 A. Loretta Stockton.

23 Q. Okay. And the date was March 11th, 2010. What
24 was the action taken by the hospital?

25 A. Verbal warning.

1 Q. Okay. Let's go to Number 23. And the employee
2 again?

3 A. Loretta Stockton.

4 Q. And in case I didn't ask, Ms. Stockton is a
5 registered nurse; correct?

6 A. Correct.

7 Q. Okay. And the date listed for the discipline?

8 A. 4/25/2010.

9 Q. And the action taken by the hospital?

10 A. Written warning.

11 Q. Okay. Now, under discussion here I see it
12 says, "See attached sheets." So if we turn to 24, I
13 notice it says, "Disciplinary action notice to Loretta
14 Stockton, and it's dated 4/25/2010."

15 Is it safe to say that this would be what they're
16 referring to as "See attached"?

17 A. It appears that way.

18 Q. Okay. Under the standard of performance, one,
19 attitude, I see it says, "Director," and I'm going to --
20 it's the last sentence there in that sentence.

21 "Director has received several complaints from
22 patients that Loretta had been rude, short, or had an
23 attitude to both patients." Okay.

24 A. True. I don't -- okay.

25 Q. Do you see that? It starts with "Director."

1 A. Yes.

2 Q. Okay. And then I assume these are the
3 statements they're referring to, "See attached sheets."
4 So at this time, I'm just going to direct your attention
5 to Page 29. And who's the employee listed?

6 A. Loretta Stockton.

7 Q. And then this one is December 13th, 2012.

8 What's the action taken by the hospital?

9 A. Third written warning.

10 Q. Okay. And under the discussion I see this
11 discipline is a result of a, actually, you used this word
12 the other day, root cause analysis of an incident that
13 resulted in patient injury." Okay.

14 Shifting forward a little bit, it looks like,
15 "Loretta was notified of a low blood sugar, 56 for this
16 patient, at approximately 0600." Is blood sugar at 56, is
17 that significant?

18 A. It's low.

19 Q. Okay. And if we were to go down a couple
20 sentences -- actually, let's go down to the next
21 paragraph, the same patient fell.

22 And then next sentence, "Loretta's documentation
23 related to the patient fall did not include relevant
24 information related to the fall and the immediate post
25 fall care, including how the patient was returned to bed.

1 An assessment of the patient's left hip/leg area
2 where the patient was reporting pain, the blood coming
3 from the patient's head, documentation laceration to the
4 back of the patient's head."

5 So is it safe to say that Ms. Stockton failed to
6 document certain items that would have been required under
7 hospital policy?

8 A. She failed to document a good assessment.

9 Q. Okay. And then the next page, performance
10 improvement plan. Is this something that you're familiar
11 with?

12 A. Yes.

13 Q. PIP.

14 A. It's a PIP that goes with the discipline.

15 Q. And so Ms. Stockton was put on a PIP after this
16 incident?

17 A. Correct.

18 MS. CENDROSKY: Okay. Your Honor, at this
19 time I'd like to move for the admission of General
20 Counsel's Exhibit Number 9, although we do need to redact,
21 let's see, what page. Did you happen to catch the page?

22 MS. LAWHON: I marked mine.

23 MS. CENDROSKY: I marked mine as --

24 JUDGE AMCHAN: It's 12.

25 MS. CENDROSKY: Page 12 needs to be redacted,

1 the discussion with the patient's name.

2 MR. BRYAN CARMODY: Your Honor, we would
3 obviously not oppose any redactions of this exhibit,
4 whether marked or in evidence.

5 But I would object on relevance grounds, that the
6 offer of any discipline which is in this exhibit which was
7 issued after the date on which Ms. Wayt was terminated.

8 JUDGE AMCHAN: I'm going to receive the whole
9 document.

10 (Whereupon, General Counsel's Exhibit Number 9
11 was received into evidence.)

12 MS. CENDROSKY: Thank you.

13 JUDGE AMCHAN: Do you want me to cross
14 through the copy I have, or do you want to take --

15 MS. CENDROSKY: Yes. And if you want, we can
16 go off the record, I want to make sure they're all
17 redacted.

18 JUDGE AMCHAN: Yes, maybe -- let's --

19 MS. CENDROSKY: That's -- I have a permanent
20 marker.

21 JUDGE AMCHAN: Yes, because I don't --

22 MS. CENDROSKY: Should we go off the record?

23 JUDGE AMCHAN: Yes. Off the record.

24 (Off the record.)

25 JUDGE AMCHAN: Back on the record.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. CENDROSKY:

3 Q. At this time, I'd like to turn your attention
4 back to General Counsel's Exhibit Number 6. And we're
5 going to look at Page 15 of that exhibit. And I should
6 probably direct your -- do you have Exhibit 6?

7 A. I'm looking for it.

8 Q. Okay. Take your time. It's a thicker packet.

9 JUDGE AMCHAN: I've got two of them. Did you
10 just give me one?

11 MS. LAWHON: No. What happened, Your Honor,
12 you couldn't find yours this morning, so she made another
13 one for you.

14 MS. CENDROSKY: And you found it.

15 JUDGE AMCHAN: I forgot twice.

16 MS. CENDROSKY: Well, you can give it to him,
17 if you'd -- oh, you found it? Okay.

18 JUDGE AMCHAN: Yes, I -- oh, you've got it?

19 DIRECT EXAMINATION (CONT'D)

20 BY MS. CENDROSKY:

21 Q. Oh, let's -- so we're at GC6. Let's first turn
22 to Page 14. You and I talked about this the other day.
23 And this is the disciplinary counsel form for Ms. Rebecca
24 Bowser.

25 A. Correct.

1 Q. Okay. And then Page 15 is the documentation
2 attached to that disciplinary action notice; is that
3 correct?

4 A. Correct.

5 Q. Okay. If we look at the third bullet point,
6 and it says somewhere in the middle of that bullet point,
7 "Instead of starting the MAG infusion, Rebecca wrote the
8 MAG bolus on the medication administrative record for the
9 day shift nurse to administer to the patient."

10 A. Okay.

11 JUDGE AMCHAN: The third bullet point?

12 MS. CENDROSKY: The third, yes.

13 JUDGE AMCHAN: What page are we --

14 MS. LAWHON: Fourth sentence in.

15 MS. CENDROSKY: Page 15.

16 JUDGE AMCHAN: I got it.

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. CENDROSKY:

19 Q. Okay. And it says, "MG bolus was ordered for
20 this patient. Rebecca told the oncoming nurse that the
21 bolus had not arrived."

22 All right. Would this be considered
23 falsification of documentation?

24 A. She didn't falsify any documentation. She gave
25 a bad report to the nurse --

1 Q. She gave a bad report.

2 A. -- but she wrote the medication down.

3 Q. Okay. Now let's look at General Counsel Number

4 8. And this is Ms. Wayt's termination paperwork.

5 A. 8?

6 Q. Uh-huh.

7 JUDGE AMCHAN: Well let's go back --

8 MS. CENDROSKY: You have a question?

9 JUDGE AMCHAN: -- go back to 15, yes.

10 MS. CENDROSKY: Okay.

11 JUDGE AMCHAN: Because it says that she wrote
12 the MAG bolus on the medication administration record for
13 the date --

14 MS. CENDROSKY: Yes. I had read it as a
15 falsification.

16 THE WITNESS: She wrote it as the time due.

17 JUDGE AMCHAN: So on the medication
18 administration record it doesn't necessarily -- you could
19 write the time due, even if it's to be given in the
20 future.

21 THE WITNESS: Correct.

22 JUDGE AMCHAN: Okay.

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. CENDROSKY:

25 Q. Let's look at GC8. Are you there? It's a

1 single page. And this is actually Ann Wayt's termination.

2 Do you have it in front of you?

3 A. Yes.

4 Q. And you see in the violation box for Ms. Ann

5 Wayt this was an incident where the Employer inserted

6 falsification of documentation; correct? Under the

7 violation. And it's the one, two, third column of

8 reasons, all the way at the bottom it looks like it was --

9 A. Falsification of documentation, correct.

10 Q. Okay. Was that something that had to have been

11 typed in?

12 A. Correct.

13 Q. Okay. And this wasn't typed in, because you

14 and I just went over GC's Exhibit 9, we found at least two

15 occasions where there had appeared to be some sort of

16 falsification, but it was not noted on those; correct?

17 A. Correct. From the -- when we were

18 investigating it, when Rebecca talked to Liz Blair about

19 it, Blair stated she didn't fully go in the room, but she

20 went to the room and marked them, yes.

21 MS. CENDROSKY: Okay. That's all I have.

22 JUDGE AMCHAN: Do you have anything?

23 MS. LAWHON: No.

24 JUDGE AMCHAN: Do you have anything on

25 whatever this is? I'm not exactly sure.

1 MS. CENDROSKY: GC9.

2 JUDGE AMCHAN: No, no, no. I was just
3 thinking is it recross, redirect, or what?

4 MS. LAWHON: It's rebuttal.

5 JUDGE AMCHAN: I'm not certain how to
6 characterize it.

7 MS. CENDROSKY: Oh.

8 MS. LAWHON: It's GC's rebuttal.

9 MS. CENDROSKY: And so it would be their --

10 JUDGE AMCHAN: Surrebuttal. No, it --

11 MS. LAWHON: It's just rebuttal. We put the
12 --

13 JUDGE AMCHAN: Right. But if whatever they
14 do, is that rebuttal?

15 MS. LAWHON: Surrebuttal.

16 MS. CENDROSKY: Oh, surrebuttal.

17 JUDGE AMCHAN: Well, surrebuttal is putting
18 witnesses, I think.

19 MR. BRYAN CARMODY: Your Honor, can we go
20 outside to talk?

21 JUDGE AMCHAN: Sure. Off the record.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record. I guess
24 you can step down.

25 JUDGE AMCHAN: You can call your next

1 witness.

2 MR. BRYAN CARMODY: Your Honor, that being
3 the case, I would have some questions, then, for
4 Mr. Osterman, after all.

5 JUDGE AMCHAN: Okay. Bring Mr. Osterman
6 back. Off the record.

7 (Off the record.)

8 JUDGE AMCHAN: Back on the record.

9 CROSS-EXAMINATION

10 BY MS. BRUNDAGE:

11 Q. Good afternoon, Bill, how are you doing?

12 A. Good. How are you doing?

13 Q. I'm good. Thanks. I want to point your
14 attention to Page 3 of General Counsel's Exhibit 9. Bill,
15 is there a practice you're aware of at the hospital that's
16 known as delegation of duties?

17 A. Yes.

18 Q. Okay. What is that practice?

19 A. Delegation of duties is an RN can delegate an
20 LPN, PCT, PCA, a nursing tech of some sort.

21 Q. And what sorts of duties are allowed to be
22 delegated?

23 A. Items that are within the scope of practice of
24 those individuals.

25 Q. Okay. What are some of the types of items that

1 might be within the scope of those individuals?

2 A. For LPN's it could be medications, wound care,
3 assessments -- or not assessments, but data collection.
4 PCA can be vital signs, stuff that they're trained to do.

5 Q. Okay. Are your LPN's and CPA's trained to do
6 hourly rounding?

7 A. Correct.

8 Q. Okay. Pointing your attention to Exhibit 3,
9 and turning to the third and fourth lines where --

10 JUDGE AMCHAN: You're talking about Page 3,
11 Exhibit 9?

12 Q. Oh, I'm sorry. Page 3 of General Counsel's 9.
13 Pointing your attention to the third and fourth lines it
14 states, "The wife states" -- of this document, it states,
15 "The wife stated that she had a question for Liz and she
16 advised the NA of this question." Do you know what an NA
17 is?

18 A. Nursing assistant.

19 Q. Okay. Is a nurse -- and who -- what is a
20 nursing assistant?

21 A. That's our PCA. That's the assistant to the
22 nurse.

23 Q. Okay. Are they able to provide certain types
24 of patient care?

25 A. Correct. They're part of the hourly rounding,

1 bathing, taking vital signs, blood sugars.

2 Q. Can a nursing assistant write on a patient's
3 chart?

4 A. Correct.

5 Q. They can? Can -- but can they sign off -- are
6 they -- do they have the same ability as an RN to write on
7 a nurse's chart --

8 A. They --

9 Q. -- or, I'm sorry, a nursing chart?

10 A. They can write what they do.

11 Q. Okay. Are they allowed to sign the chart as a
12 whole?

13 A. Sign the chart as a whole, as completion? They
14 can sign the part they do, and they can do what they do,
15 then the nurse has to go back and co-sign them --

16 Q. Okay.

17 A. -- on certain stuff.

18 Q. I'd like to now turn your attention to the,
19 let's see, line that starts with the word "computer."
20 That might be the easiest way to do this.

21 A. On the same page, computer?

22 Q. Yes.

23 JUDGE AMCHAN: We're still on Page 3?

24 MS. BRUNDAGE: Yes, Your Honor.

25 CROSS-EXAMINATION (CONT'D)

1 BY MS. BRUNDAGE:

2 Q. Here it states Liz advised the PCA to give an
3 answer to the wife. Do you see that?

4 A. Yes.

5 Q. Okay. And is -- advising a family of a
6 question in this manner something that can be delegated by
7 an RN?

8 A. It -- it can, but we prefer the nurse to do it.

9 Q. Okay. But it is something that can be
10 delegated.

11 A. But it is something that can go -- especially
12 if the nurse is in the middle of another nursing task.

13 MS. BRUNDAGE: Okay. I have no further
14 questions for this witness.

15 JUDGE AMCHAN: Okay. You can step down.

16 (WITNESS EXCUSED.)

17 JUDGE AMCHAN: Off the record.

18 MS. CENDROSKY: Counsel for the General
19 Counsel calls Ms. Kress to the stand.

20 JUDGE AMCHAN: And you're still under oath.

21 MS. LAWHON: Actually, we're going to change
22 that. And the Charging Party is going to call Ms. Kress
23 to the stand.

24 JUDGE AMCHAN: All right.

25 MS. LAWHON: And I'm going to have this

1 marked as Charging Party 7 next in order.

2 (Whereupon, Charging Party's Exhibit Number 7
3 was marked for identification.)

4 WHEREUPON,

5 SUSAN KRESS,

6 A witness herein, having been previously cautioned and
7 sworn, was examined and testified as follows:

8 JUDGE AMCHAN: Okay. I think we're on the
9 record, right?

10 THE COURT REPORTER: Yes.

11 MS. CENDROSKY: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. LAWHON:

14 Q. Good afternoon, Ms. Kress. I think I
15 previously introduced himself. I'm Jane Lawhon, the
16 attorney for the Union.

17 I'd like to direct your attention to the first
18 page of Charging Party's Exhibit 7. Do you see that?

19 A. Yes, ma'am.

20 Q. This is the CVS-ICU assignment sheet for
21 January 3rd, 2012; isn't that correct?

22 A. It is.

23 Q. And I'd like to go through the information on
24 this. It appears that originally there were going to be
25 seven nurses on the day shift; correct? Before anything

1 happened.

2 A. No, it's six. One, two, three, four, five,
3 six.

4 Q. Oh, I'm sorry. Correct. I meant to say six.

5 Sorry. And then with respect to RN Cassidy, that person
6 was put on administrative time off on call; right?

7 A. Yes, ma'am.

8 Q. And that means that they were told that they
9 didn't need to come in, but they should be available
10 should they be needed later in the shift; right?

11 A. That is correct.

12 Q. So that's at the hospital's decision, it's not
13 an employee request, ATO, it's a hospital decision;
14 correct?

15 A. It is based on -- on numerous things. But,
16 yeah, it is a hospital decision. Usually the coordinator
17 would have made that decision, because it was the night
18 shift and that's who would do staffing.

19 Q. Understood. You mean the night shift would
20 have decided that RN Cassidy should be put on
21 administrative time off --

22 A. That is correct.

23 Q. -- on call. Okay. And the next name here is
24 RN Chiz --

25 A. Madia.

1 Q. -- Chizmadia. And that person's first name is

2 Ryan; right?

3 A. It is.

4 Q. And this reflects that Ryan was sent to the

5 ICU; right?

6 A. That is correct.

7 Q. And then the last name here, C, slash, O, if

8 you look down, is the same person indicated as six. So

9 that person called in sick; right?

10 A. Correct.

11 Q. So of the six, given one nurse called in sick

12 there were five, and the hospital reduced the staffing to

13 three nurses; isn't that correct?

14 A. That is correct.

15 Q. At the start of the shift.

16 A. That is correct.

17 Q. Okay. And for those nurses, RN McWhitney had

18 two patients; right?

19 A. That is correct.

20 Q. And RN Reed had also had two patients; right?

21 A. That is correct.

22 Q. And one nurse, Berkie, had three patients;

23 right?

24 A. That is correct.

25 Q. And the acuity number, it's -- acuity is on the

1 top part of the, what looks like a fraction enumerator,

2 and the restraint yes or no information is on the

3 denominator position; right?

4 A. That is correct.

5 Q. Okay. And a three patient is, in layperson's

6 terms, sicker than a two patient; right?

7 A. That is correct.

8 Q. Okay. And as the director of the unit, when

9 you come in, if you disagree with the way the unit's been

10 staffed, then you change it; right?

11 A. I have --

12 Q. If you can.

13 A. If I can, and if I agree to it. I mean, do I

14 see the need for it? Sometimes --

15 Q. No, excuse me, Ms. Kress.

16 A. Okay. Okay.

17 Q. I like to keep it --

18 A. Well, okay.

19 Q. -- in a question and answer. I understand that

20 you've had a lot of experience with all of these things.

21 But --

22 A. But my patients are different. CVS-ICU

23 patients are different than normal ICU patients. It's

24 just --

25 Q. But that's not a pending --

1 A. Okay.

2 Q. -- question. Okay?

3 So there was one person that was tripled in the

4 CVS-ICU --

5 A. That is correct.

6 Q. -- when Ryan was missing and in the ICU; right?

7 A. Uh-huh.

8 Q. You have to say yes or no.

9 A. Oh, yes.

10 Q. Okay. And you had two empty rooms on the day

11 shift, 1602 and 1603, and they appear to have been filled

12 sometime in the night shift, but they were not filled in

13 the day shift; correct?

14 A. That is correct.

15 Q. Okay. Then if you look at the second page,

16 this is the ICU assignment sheet, correct, for the day

17 shift on the same date, January 3rd, 2013; right?

18 A. That is --

19 JUDGE AMCHAN: Well, no, wait a second. I

20 thought one was the 2012 and one's 2013.

21 THE WITNESS: No.

22 MS. LAWHON: Did I make that error? You're

23 right, Your Honor. That's a problem. I --

24 THE WITNESS: It's --

25 MS. LAWHON: -- well, can we go off the

1 record for a second?

2 JUDGE AMCHAN: Yes.

3 (Off the record.)

4 JUDGE AMCHAN: Back on the record.

5 MS. BRUNDAGE: Susan, that's correct, right,

6 this isn't --

7 THE WITNESS: That is correct.

8 MS. BRUNDAGE: Okay.

9 THE WITNESS: Absolutely.

10 MS. LAWHON: Are we back on?

11 JUDGE AMCHAN: Yes.

12 MS. LAWHON: Okay. Thank you. In an

13 off-the-record discussion, the parties agreed to stipulate

14 that on the first page of Charging Party Exhibit 7, the

15 date of 1/3/12 is mistaken, and it should be 1/3/2013.

16 MS. BRUNDAGE: So stipulated.

17 JUDGE AMCHAN: Okay. Thank you.

18 DIRECT EXAMINATION (CONT'D)

19 BY MS. LAWHON:

20 Q. Okay. Directing your attention to the second

21 page, Ms. Kress. This is the assignment sheet for the --

22 oh, yes. And just -- I'm sorry, go back to the first page

23 for one minute.

24 A. Uh-huh.

25 Q. CV-ICU.

1 A. Uh-huh.

2 Q. So, overall, in the CV-ICU, at the start of the
3 shift, given the actions that had occurred with respect to
4 Cassidy and Chizmadia, there were seven patients and three
5 nurses; right?

6 A. That is correct.

7 Q. Two nurses had two, one nurse had three.

8 A. Uh-huh. Yes, ma'am.

9 Q. If you go to the second page, this is the ICU
10 assignment sheet for the same date as the first page,
11 January 3rd, 2013; correct?

12 A. Correct.

13 Q. Okay. And looking at this, there are six
14 registered nurses, not counting the one that's crossed
15 through and said "R, slash, O ill"; correct?

16 A. That is correct.

17 Q. And R, slash, O ill means the person is sick
18 and is not there; correct?

19 A. That is correct.

20 Q. Okay. So you had, if you direct your attention
21 first to nurse, is it Nicodena?

22 A. It is.

23 Q. Okay. Nurse Nicodena had only one patient; is
24 that correct?

25 A. That is correct.

1 Q. And that's because of the acuity of that
2 patient, it was a one-to-one patient; correct? That's
3 what you would infer from the fact that they had only one;
4 correct?

5 A. The acuity is still a three, though.

6 Q. I understand that. But it's not your practice
7 to have an ICU nurse have only one patient, where it's an
8 option to give that nurse two patients; isn't that
9 correct?

10 A. It's based on how the -- how busy the patient
11 is.

12 Q. Right. So this patient that, in Room 1010,
13 required a nurse who had no other patients. Is that fair
14 to assume from this staffing sheet?

15 A. No. Because the acuity is a three.

16 Q. Okay.

17 A. If the acuity is higher, than I would have said
18 --

19 Q. But I'll --

20 A. -- yes.

21 Q. Okay.

22 A. But they rated the acuity as a three.

23 Q. And who is "they"?

24 A. The charge nurse from the night shift rated it
25 as a three.

1 Q. Okay. Is it fair to say that you would not
2 assign a nurse three patients and another nurse one
3 patient, except if the nurse who had one patient had a
4 patient whose acuity required one to one?

5 MS. BRUNDAGE: Objection. Asked and
6 answered.

7 MS. LAWHON: I did not ask that.

8 JUDGE AMCHAN: Overruled. You can answer.

9 DIRECT EXAMINATION (CONT'D)

10 BY MS. LAWHON:

11 Q. Did you hear the question?

12 A. I did. Yes, ma'am. I didn't have a chance to
13 talk with the staff to know why it wasn't -- why another
14 patient wasn't assigned to it.

15 I don't know if that patient was really busy. If
16 it was, it shouldn't have been rated as a three, it should
17 have been rated lower than that.

18 Q. That wasn't my question.

19 A. Okay.

20 Q. You want me to repeat my question?

21 A. Sure.

22 Q. Is it fair to say that the staffing
23 coordinator, or -- well, let me back up for a minute.

24 Who gave -- who put these patient assignments on
25 this sheet, to the best of your understanding?

1 A. The charge nurses, ma'am.

2 Q. The charge nurse from the preceding night
3 shift.

4 A. Yes, ma'am.

5 Q. So to the best of your understanding, the
6 charge nurse from the night shift would not assign a nurse
7 one patient and assign another nurse three patients,
8 unless the nurse with the one patient needed to have that
9 few patients in order to adequately care for that patient;
10 isn't that true?

11 A. Usually, yeah. But it was doubled up --

12 Q. Okay.

13 A. -- on night shift. The nurse had --

14 Q. Excuse, Ms. --

15 A. -- the two patients.

16 Q. -- you answered the question. Thank you.

17 You're saying that in the person that had Room
18 1010 on nights had a second patient; right?

19 A. They did.

20 Q. That indicates that something changed about the
21 patient's condition between day and night shift; isn't
22 that correct?

23 A. Could be.

24 Q. Isn't that the most reasonable inference?

25 A. It could be.

1 Q. Okay. Okay. So looking at this staffing
2 sheet, you have -- you have Kelly Sawyer who has three
3 patients; right?

4 A. That's correct.

5 Q. And the other nurses in the ICU, with the
6 exception of Nicodena have two patients; isn't that
7 correct?

8 A. That's correct.

9 Q. Typically, or it's the hospital's goal not to
10 have an ICU nurse have more than two patients; isn't that
11 correct?

12 A. It is a goal.

13 Q. Okay. And Ryan Chizmadia, or if I haven't
14 butchered his name, was in the ICU, as you previously
15 testified, at the point at which you came out and made the
16 statements you previously testified about ADO's; correct?
17 He was there then.

18 A. He was.

19 Q. Yes. And he had -- and he had been in the ICU
20 since the start of his shift, which I believe was eight
21 o'clock; isn't that correct?

22 A. No. He started the shift at seven o'clock,
23 ma'am.

24 Q. Okay. If you look at the fourth page of
25 Charging Party's Exhibit 7, and this is the schedule for

1 the ICU; right?

2 A. It's Concerro. It's not a schedule for the
3 ICU. This is our scheduling system. The ICU doesn't have
4 a paper schedule.

5 Q. Okay. This is a printout of who was scheduled
6 to work in the ICU, and when they were scheduled to work
7 on January 3rd, 2013; isn't that correct? If you would
8 like to compare --

9 A. Not necessarily. If the coordinator forgets to
10 put when a -- when a nurse is transferred out of a unit,
11 sometimes it doesn't go on there.

12 Q. Okay. So Mr. Chizmadia's time was billed to
13 the ICU until eleven o'clock, isn't that correct, that
14 day?

15 A. I don't know. I don't have a sheet that says
16 that in front of me, ma'am.

17 Q. Okay. I'll have this -- I'll just show her and
18 see if this is -- refreshes her recollection. Okay,
19 Ms. Kress, I'm showing you -- I only have one copy of
20 this, Your Honor -- a document produced by your Employer.

21 It purports to be a time detail for an employee
22 Ryan Chizmadia for the 3rd of January, 2013. It shows
23 time from six fifty-seven a.m. to eleven a.m. in one
24 status, and a separate time status from eleven a.m. until
25 seven twenty-nine p.m.; isn't that correct?

1 A. That's correct. That's what the timesheet
2 says.

3 Q. And that would reflect that he was in two
4 different departments; isn't that correct?

5 A. That is correct.

6 Q. And the first department he was in is the ICU;
7 isn't that correct?

8 A. That is correct.

9 Q. And the second department he was in was the
10 CV-ICU; isn't that correct?

11 A. That is correct.

12 Q. And you sent him back to the CV-ICU; correct?

13 A. I did.

14 Q. And your sending back to the CV-ICU meant that
15 Kelly Sawyer had to have three patients; isn't that
16 correct?

17 A. It didn't mean Kelly Sawyer had to have three
18 patients, it meant somebody had to have three patients.

19 Q. Okay. That's fine. That's fine. It meant one
20 ICU nurse had to have three patients.

21 A. That's correct.

22 Q. And the acuities in the ICU that day, if you
23 compare the numbers to the CV-ICU number are, in totality,
24 higher; isn't that correct?

25 A. That is correct.

1 Q. So you previously testified that the RN's in
2 CV-ICU were tripled. As a matter of fact, there was only
3 one RN in the CV-ICU who was tripled at the time you sent
4 Ryan back; isn't that right?

5 A. At that time, yes, ma'am.

6 Q. Okay. And throughout the day shift; isn't that
7 correct?

8 A. That's what that -- that's what this tells,
9 yes.

10 Q. Okay. And by sending Ryan back, you created a
11 triple in the ICU; isn't that correct?

12 A. One was created, yes.

13 Q. Well, the one who created it was you,
14 Ms. Kress, by sending Ryan back to the ICU; isn't --

15 A. I did.

16 Q. -- CV-I --

17 A. I did.

18 Q. Yes.

19 MS. LAWHON: Nothing further.

20 MR. BRYAN CARMODY: Your Honor, can we have a
21 moment?

22 JUDGE AMCHAN: Yes. Off the record.

23 (Off the record.)

24 JUDGE AMCHAN: Back on the record. Are we
25 ready?

1 MR. BRYAN CARMODY: We are, Your Honor.

2 JUDGE AMCHAN: Okay. You didn't move for
3 admission --

4 MS. LAWHON: I was just realizing that, Your
5 Honor. Thank you. At this time, I'd move the admission
6 of Charging Party --

7 JUDGE AMCHAN: 7.

8 MS. LAWHON: -- 7. Thank you.

9 MR. BRYAN CARMODY: Respondent has no
10 objection, Your Honor.

11 JUDGE AMCHAN: It's received.

12 (Whereupon, Charging Party's Exhibit Number 7
13 was received into evidence.)

14 JUDGE AMCHAN: Do you have any questions?

15 MR. BRYAN CARMODY: No, sir.

16 JUDGE AMCHAN: No? You can step down.

17 (WITNESS EXCUSED.)

18 JUDGE AMCHAN: Do you have any other
19 witnesses?

20 MS. CENDROSKY: Yes.

21 JUDGE AMCHAN: Off the record.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 MS. LAWHON: The Charging Party calls Ann
25 Wayt.

1 JUDGE AMCHAN: Okay. Ms. Wayt, you're still
2 under oath.

3 WHEREUPON,

4 ANN WAYT,

5 A witness herein, having been previously cautioned and
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LAWHON:

9 Q. Good afternoon, Ms. Wayt.

10 A. Hi, Jane.

11 Q. I have very few questions. I believe when you
12 testified earlier you mentioned crossing the threshold of
13 the room when you, at one point when you were talking
14 about where you went to do rounding.

15 Could you look at Respondent's Exhibit 14, which
16 has been admitted as a schematic?

17 JUDGE AMCHAN: I think it's 13.

18 MS. LAWHON: I'm sorry, what?

19 JUDGE AMCHAN: It's 13.

20 MS. LAWHON: 13. I'm sorry, Your Honor. I
21 shouldn't have said it from memory.

22 JUDGE AMCHAN: If she's going to mark
23 anything, it's probably better --

24 MS. LAWHON: No, she's not marking anything.
25 I was just referring her to it generally.

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. LAWHON:

3 Q. And can you tell us, looking at that diagram --
4 well, actually, I can hold it up, and you can maybe --
5 Your Honor, maybe you could just let the record reflect,
6 or I should say it.

7 Could you show us on this diagram where, this
8 being the entrance to the room, where you went in the room
9 when you referred to crossing the thresholds on occasions
10 when you were rounding?

11 A. On every occasion when I was rounding, this is,
12 I consider, the threshold. I go into the room to make
13 rounds.

14 MS. LAWHON: Okay. And let the record
15 reflect that the witness gestured that the partial wall
16 that says "clock" is what she considered the threshold.

17 And she indicated that she went into the area
18 kind of midway -- halfway across the bed, is where she
19 went to do rounding.

20 JUDGE AMCHAN: Like the area between the
21 clock and the bed.

22 MS. LAWHON: No. She actually --

23 THE WITNESS: More towards the foot of the
24 bed, sir.

25 JUDGE AMCHAN: All right. But, I guess --

1 okay.

2 THE WITNESS: I mean, that's one hourly
3 rounding. My point is, when I made hourly rounds on this
4 patient in this room, I did not do it from the threshold
5 or just in the threshold, I went into the room.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. Okay. And on an occasion when you testified, I
9 think it was about four and Rhonda Smith appeared angry
10 and brought up someone coming to relieve her, where did
11 that -- where were you when that conversation took place?

12 A. I was standing at the foot of the bed, and
13 Rhonda was at the side of the bed where you see the clock
14 was above her head. And I was at the foot of the bed.

15 Q. Okay.

16 A. That's where that conversation took place.

17 Q. Okay. And at the September 13th meeting that
18 you attended with Bob McKinney as your Weingarten
19 representative, and Angie Boyle, and Jason McDonald, and
20 Paula Zinsmeister, at some point in response to a question
21 did you say words to the effect of if it's documented, it
22 must be true?

23 A. I did.

24 Q. Okay. And can you explain why that was your
25 response, what that meant to you to say that?

1 A. Yes, I will.

2 THE WITNESS: Your Honor, that seems to be a
3 problem with everyone, and I'd like to explain that.

4 MR. BRYAN CARMODY: I'm sorry, I missed the
5 question.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. LAWHON:

8 Q. The question was, did you say words to the
9 effect of, in response to questions, if it's documented,
10 it must be true. And I'd like you to explain why that --
11 why you made that response.

12 A. Yes. I graduated from nursing school 37 years
13 ago in June of 1976. Back in those days, they hammered
14 into our head as young nurses, if you did it, you charted
15 it. If you charted it, you did it.

16 It became a mantra, it became second nature, it
17 became what we need. When we did it, we wrote it down and
18 made sure it got in the record.

19 So when Jason asked me that, the first thing I
20 blurted out is something that I've worked -- have done,
21 carried in my head and worked for 37 years with thousands,
22 thousands of patients.

23 Q. Have you -- were you ever told in that meeting
24 what problem there was with your having written nine a.m.
25 for the head-to-toe assessment?

1 A. Was I told what the problem was?

2 Q. Yes, if -- yes, that there was a problem with
3 having written that time?

4 A. I don't recall they told me what any problem
5 was during that meeting.

6 MS. LAWHON: Okay. No further questions.

7 MR. BRYAN CARMODY: May I have the Jencks
8 statement, please?

9 MS. CENDROSKY: Yes.

10 MR. BRYAN CARMODY: Maybe five minutes, Your
11 Honor?

12 JUDGE AMCHAN: Sure.

13 MR. BRYAN CARMODY: Thank you, sir.

14 JUDGE AMCHAN: Off the record.

15 (Off the record.)

16 JUDGE AMCHAN: Back on the record.

17 CROSS-EXAMINATION

18 BY MR. BRYAN CARMODY:

19 Q. Ms. Wayt, good afternoon. I do have just a few
20 questions for you, ma'am. When was the first time, if you
21 could pinpoint a day, on which you realized that the
22 hospital was charging you with falsification of Ms. P's
23 medical records?

24 MS. CENDROSKY: Your Honor, can I object? I
25 don't know what your practice is for rebuttal and

1 surrebuttal, I mean, how much you want to follow. I know
2 for your direct and cross that it seems to go outside the
3 scope.

4 JUDGE AMCHAN: Well, let's see how much he's
5 got.

6 MR. BRYAN CARMODY: Well, this was also very
7 much the subject of her questioning when she was called by
8 the Charging Party.

9 JUDGE AMCHAN: Okay. All right.

10 MS. LAWHON: No. No, it was not, Counsel.

11 JUDGE AMCHAN: Well, let's go ahead.

12 MR. BRYAN CARMODY: Okay. I don't think this
13 will take long, Judge.

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. BRYAN CARMODY:

16 Q. Can you answer the question, ma'am?

17 A. I'm not sure when exactly I -- but I think it
18 was in the very first meeting that I took Bob McKinney to.
19 I thought at that time they said the charges against you
20 are falsification of documents, and I don't know what
21 else, violation of hospital policy.

22 Q. Okay. Is that the meeting on September 13th?

23 A. I believe so.

24 Q. Does that sound like the correct date?

25 A. Uh-huh. Yes.

1 Q. And, Ms. Wayt, would it be fair to say that you
2 understood Elizabeth Blair to be a supporter of the Union?

3 MS. LAWHON: Objection. That is totally
4 beyond the scope, Your Honor. I asked her nothing about
5 union activity.

6 JUDGE AMCHAN: Well, I think you brought --
7 Ms. Blair was brought up in GC9. I think it's a fair
8 question. If, well, if she actively demonstrated support
9 of.

10 Do you have a -- if there's a union flyer with
11 Ms. Blair's picture.

12 MR. BRYAN CARMODY: I do. And perhaps we can
13 do this by way of a stipulation. I don't care how we do
14 it, Your Honor, as long as I get that in the record.

15 MS. CENDROSKY: Wait a minute. Do I have a
16 copy of that? Because I know I asked for every and all
17 communication that you had with the union in my subpoena.

18 MR. BRYAN CARMODY: No.

19 MS. CENDROSKY: And if I did not, I want an
20 adverse inference drawn. I will --

21 JUDGE AMCHAN: Well, let's cut to the chase.
22 Was this distributed -- was this up in the hospital,
23 posted in the hospital?

24 MR. BRYAN CARMODY: This was provided, Your
25 Honor -- should we go off the record? This was provided,

1 Your Honor, to the hospital by the Union during the course
2 of the campaign, and it does include Ms. Blair's,
3 Elizabeth Blair's picture on one side of the flyer. And
4 if --

5 MS. LAWHON: This is the -- this is already
6 in evidence.

7 MS. CENDROSKY: Okay.

8 MR. BRYAN CARMODY: No, it's not.

9 MS. BRUNDAGE: No, it's not.

10 MR. BRYAN CARMODY: And if that can be
11 stipulated, I have no further questions.

12 MS. LAWHON: Wait a minute. No. There's a
13 problem, as you know. She asked for her picture to be
14 removed, and it was removed. And the one that was
15 circulated doesn't have her picture on it. We'll
16 stipulate to that.

17 MR. BRYAN CARMODY: Your Honor, this was a
18 flyer that was sent to the hospital by the Union with
19 Ms. Blair's picture on it.

20 MS. LAWHON: Your --

21 JUDGE AMCHAN: Well, but, okay, the relevant
22 -- is Ms. Mahon the one that --

23 MS. CENDROSKY: But it was never circulated.

24 JUDGE AMCHAN: -- would have personal
25 knowledge?

1 MS. LAWHON: Yes. Absolutely. Yes.

2 JUDGE AMCHAN: This was established in the
3 record. I mean, was she a union supporter, or known to be
4 a union supporter?

5 I mean, you're saying that a flyer was posted
6 that had her picture on it. They're saying that it isn't.
7 Ms. Mahon indicates that she has -- well, let me -- I
8 guess you can ask Ms. Wayt if she ever saw that posted.

9 MS. LAWHON: Oh, yes. But I think it's
10 important to note for the record, this is an unusual
11 situation, Your Honor.

12 One of the things that happened in the campaign
13 was that we could not put out a flyer without preapproval.
14 So we submitted things that were never used to management.

15 JUDGE AMCHAN: Well, could we have -- just
16 have some testimony? They -- if they think that it's
17 significant that her picture was on a flyer, and that's --

18 MS. LAWHON: Okay.

19 JUDGE AMCHAN: And I think it is significant,
20 since Ms. Blair's one of the people you're relying on to
21 show desperate treatment.

22 MS. LAWHON: Okay. So, I guess he can ask
23 Ms. Wayt if she knows if Elizabeth Blair was a union
24 supporter and if she's ever seen this picture of Elizabeth
25 Blair on a flyer, which is different than the real one.

1 THE WITNESS: Yes.

2 CROSS-EXAMINATION (CONT'D)

3 BY MR. BRYAN CARMODY:

4 Q. Ms. Wayt.

5 A. Uh-huh.

6 Q. Can you answer your -- counsel's question?

7 A. Yes. The only flyer I ever saw was the one
8 with my picture on the front. However, I didn't really --
9 I never once talked to Liz Blair about how she felt about
10 the Union.

11 MR. BRYAN CARMODY: Okay. Your Honor, I have
12 no further questions for this witness, but I would like to
13 recall Ms. Boyle very quickly to speak to this flyer.

14 JUDGE AMCHAN: Okay.

15 MS. LAWHON: Are we finished? Wait, excuse
16 me. But are we finished?

17 JUDGE AMCHAN: With Ms. Wayt.

18 MR. BRYAN CARMODY: I have no further
19 questions.

20 (WITNESS EXCUSED.)

21 MS. LAWHON: No, no, no, we're --

22 JUDGE AMCHAN: Oh, oh, oh.

23 MS. LAWHON: -- we have to finish rebuttal.

24 JUDGE AMCHAN: Oh, wait. Oh, oh. Do you
25 want to put Ms. Mahon on, then?

1 MS. CENDROSKY: Yes.

2 MS. LAWHON: Yes. Sure.

3 JUDGE AMCHAN: Okay.

4 MS. LAWHON: Yes. Go ahead.

5 MS. CENDROSKY: Thank you, Ann.

6 MS. LAWHON: I just -- I thought we should

7 conclude rebuttal --

8 JUDGE AMCHAN: Correct.

9 MS. LAWHON: -- before surrebuttal began.

10 JUDGE AMCHAN: Correct. Okay. So you're
11 still under oath, Ms. Mahon. All right. Go ahead. Well,
12 I guess it should be marked as a Respondent's exhibit.

13 MS. LAWHON: Yes. Okay. What number would
14 that be, 31?

15 THE COURT REPORTER: 30.

16 MS. CENDROSKY: 30?

17 MS. LAWHON: Well, 30 --

18 JUDGE AMCHAN: I don't see a 30, so I think
19 is --

20 MS. LAWHON: Okay, 30.

21 JUDGE AMCHAN: -- so I think this is 30.

22 (Whereupon, Respondent's Exhibit Number 30
23 was marked for identification.)

24 MR. BRYAN CARMODY: Do you have a copy, Jane?

25 MS. LAWHON: Yes, you gave me one a second

1 ago. Thank you. Is there an extra? Because I'd like the
2 witness to look at one, if possible.

3 MR. BRYAN CARMODY: I'm having it marked.

4 MS. LAWHON: Oh, thank you, the extra?

5 WHEREUPON,

6 MICHELLE MAHON,

7 A witness herein, having been previously cautioned and
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LAWHON:

11 Q. Okay. Ms. Mahon, you have in front of you a
12 document marked for identification as Respondent's Exhibit
13 30.

14 Let me ask you a couple preliminary questions.
15 Was the Union permitted to create and distribute any
16 flyers it chose during the campaign?

17 A. No.

18 Q. What was required before the Union could
19 distribute a flyer?

20 A. The -- the hospital had to approve all of the
21 language and -- that would be in any type of literature
22 that was supported to any potential member of the
23 bargaining unit.

24 Q. Okay. And are you familiar with -- could you
25 also look at General Counsel's 11, Ms. Mahon?

1 A. Yes.

2 Q. I -- maybe there's one on your table.

3 A. No, it's empty here now.

4 MS. BRUNDAGE: I've got an extra copy, if
5 that would be helpful.

6 MS. LAWHON: Okay. Great. Thanks.

7 MS. BRUNDAGE: It's not marked, but --

8 MS. LAWHON: That's fine.

9 MS. BRUNDAGE: -- let me show it to you
10 first.

11 MS. LAWHON: No, that -- I'm sure it's
12 correct.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. LAWHON:

15 Q. Which of these documents, Respondent's 30, or
16 General Counsel 11 was distributed at the hospital?

17 A. This one.

18 Q. Let the record reflect the witness is holding
19 up General Counsel 11.

20 Which document was initially submitted to the
21 Employer for potential distribution to nurses?

22 A. This isn't exactly how I was familiar with
23 seeing it. But this resembles the one that I saw to be
24 the draft for approval.

25 Q. Okay. And let the record reflect the witness

1 is holding Respondent's Exhibit 30. And are you aware
2 without looking at it whether or not Ms. Blair's picture
3 appears in the actual flyer distributed at the hospital?

4 A. I'm absolutely aware that it is not in it.

5 Q. Okay. And can you explain the process that led
6 to Ms. Blair's photograph being deleted from the "Get Out
7 the Vote" piece?

8 A. Yes. There was a lot of -- people obviously
9 were understandably pretty nervous about getting their
10 pictures taken to be put on a I'm voting yes for the Union
11 flyer that was going to be seen by management. They were
12 pretty nervous and scared, but -- or strongly just weren't
13 ready to do it.

14 Elizabeth Blair had second thoughts afterwards.
15 She was -- she came to one of the organizer and
16 specifically asked that her picture be removed, that she
17 felt intimidated by her management, and that she could
18 potentially have retribution.

19 And she further went on to say that she was no
20 longer going to be voting yes for the union, because she
21 was afraid that she would lose her job.

22 MR. BRYAN CARMODY: Objection, Your Honor.
23 This is hearsay.

24 MS. LAWHON: You --

25 MS. CENDROSKY: You brought this in.

1 MR. BRYAN CARMODY: This is hearsay.

2 MS. LAWHON: You opened the door.

3 MR. BRYAN CARMODY: Not to hearsay.

4 JUDGE AMCHAN: Well, I -- well, it -- the
5 thing about whether she -- well, here's the thing. You
6 know, I'm looking at the inside of GC11.

7 It certainly looks like the picture of
8 Mr. McKinney, and Deborah McKinney and Bob McKinney is the
9 same picture that's in R30, except Ms. Blair's been
10 cropped out.

11 MS. LAWHON: No, Your Honor, she's not up
12 there. She's in the bottom. She's on the lower left of
13 the --

14 JUDGE AMCHAN: Yes. But if you look at --

15 MS. LAWHON: Oh, yes. I see. I see.

16 JUDGE AMCHAN: If you look at the one on --

17 MS. LAWHON: Oh, you're right. You're right,
18 Your Honor. I'm sorry.

19 JUDGE AMCHAN: -- it looks like she was just
20 cropped out.

21 MS. LAWHON: She was cropped out, right. And
22 Ms. Mahon just explained why and what conversation she had
23 with Ms. Blair.

24 JUDGE AMCHAN: Well, I don't know -- I don't
25 really know whether the -- their point was that her

1 picture was on a flyer. She's saying that flyer was never
2 put up, and that the flyer that went out, her picture was
3 removed.

4 MS. LAWHON: That's correct.

5 JUDGE AMCHAN: Do you have anything else?

6 MS. LAWHON: No.

7 MR. BRYAN CARMODY: Very briefly, sir.

8 CROSS-EXAMINATION

9 BY MR. BRYAN CARMODY:

10 Q. Ms. Mahon, with regard to Respondent's Exhibit
11 30, isn't it true that this is the flyer that the Union
12 submitted to the Employer as part of this preapproval
13 literature process; correct?

14 A. Yes.

15 Q. And isn't it true that on this document, the
16 one that was submitted to the Employer as part of the
17 preapproval process, Ms. Blair's picture was included;
18 correct?

19 A. That's correct.

20 MR. BRYAN CARMODY: I have nothing further,
21 Your Honor.

22 JUDGE AMCHAN: Okay. Well, do you know when
23 it was submitted?

24 THE WITNESS: It -- it would have been
25 submitted within ten or twelve hours of the date that we

1 got the date for our elections.

2 And I think we found out that the election was
3 going to be scheduled for the 29th. I'm not certain a
4 hundred percent, but approximately the 22nd of August.

5 It would be -- it would have been almost seven
6 days before. We -- we would have submitted this instantly
7 to get it out right away.

8 JUDGE AMCHAN: So you want to move for
9 admission of R30, I assume, right?

10 CROSS-EXAMINATION (CONT'D)

11 BY MR. BRYAN CARMODY:

12 Q. Ms. Mahon, one question more, I believe. With
13 regard to GC Exhibit 11.

14 A. Uh-huh.

15 Q. Was this distributed at the hospital, or was it
16 distributed to nurses' homes, or both?

17 A. It was distributed at the hospital.

18 MR. BRYAN CARMODY: Thank you. Your Honor, I
19 would offer Respondent's Exhibit 30 into evidence. I have
20 no further questions.

21 MS. LAWHON: Objection.

22 MS. CENDROSKY: And counsel for the General
23 Counsel will object, and would like to move for an adverse
24 inference because this was -- any documentation related to
25 the Union and the Employer was specifically requested in

1 General Counsel's subpoena. This was not supplied. This
2 is the first time I'm even hearing any of this.

3 JUDGE AMCHAN: I -- well, I don't know. I
4 think the facts were --

5 MS. CENDROSKY: I'm just got to put it on the
6 record, Your Honor.

7 JUDGE AMCHAN: I'm going to receive it.
8 (Whereupon, Respondent's Exhibit Number 30
9 was received into evidence.)

10 MS. CENDROSKY: That's fine.

11 JUDGE AMCHAN: And I think the facts
12 regarding it have been fully explored. Do you have any
13 more -- can she step down?

14 MS. LAWHON: Yes, Your Honor.

15 JUDGE AMCHAN: Okay.

16 (WITNESS EXCUSED.)

17 JUDGE AMCHAN: So the ball's back in your
18 court.

19 MR. BRYAN CARMODY: I have no questions, Your
20 Honor.

21 JUDGE AMCHAN: Okay. We're done?

22 MS. CENDROSKY: We're done.

23 JUDGE AMCHAN: We're done, except I'm holding
24 the record open for you to let me know whether you have
25 more evidence with regard to the Amended Complaint items.

1 Okay?

2 MR. BRYAN CARMODY: Yes, sir.

3 JUDGE AMCHAN: All right.

4 MS. CENDROSKY: And briefs, do you still want
5 briefs June 7th?

6 JUDGE AMCHAN: I do.

7 MS. CENDROSKY: Okay.

8 JUDGE AMCHAN: I mean, if there's any reason
9 to reconsider, and I'm not making any promises.

10 MS. CENDROSKY: Any specific instructions?

11 JUDGE AMCHAN: No. Just give me a good
12 brief. Help me.

13 MR. BRYAN CARMODY: Your Honor, you did
14 request for some help, I believe, with HIPAA?

15 JUDGE AMCHAN: Specifically.

16 MR. BRYAN CARMODY: Okay. We're done.

17 (Whereupon, the hearing was closed at 5:15 p.m.)

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1 C E R T I F I C A T E

2 This is to certify that the attached proceedings
3 before the National Labor Relations Board were held
4 according to the record and that this is the original,
5 complete, true and accurate transcript which has been
6 compared to the reporting and recording accomplished at
7 the hearing, that the exhibit files have been checked for
8 completeness and no exhibits received in evidence or in
9 the rejected exhibit files are missing.

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12 RHONDA LAMVERMEYER - OFFICIAL REPORTER

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