

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

2
3 STEVE A. BRIGANCE, A PERSONAL Plaintiffs
REPRESENTATIVE OF THE ESTATE OF
4 DOROTHY BRIGANCE, DECEASED; AND
ON BEHALF OF THE WRONGFUL DEATH
5 BENEFICIARIES OF DOROTHY BRIGANCE
6 vs. Case No. CV-2010-1365
7 THE BROOKFIELD AT FIANNA OAKS, Defendants
LLC, D/B/A THE BROOKFIELD AT FIANNA OAKS
8 AND MITZI BAILEY

9
10 VIDEOTAPED DEPOSITION OF MITZI BAILEY
TAKEN ON THE 6TH OF JULY, 2011
11 3:40 P.M.

12
13 APPEARANCES: ON BEHALF OF:
14
Mr. Rex W. Chronister Plaintiffs
15 Chronister, Fields & Flake
309 North 7th Street
16 Post Office Box 66
Fort Smith, Arkansas 72902
17
Mr. Mark W. Dossett The Brookfield
18 Kutak Rock at Fianna Oaks
234 E. Millsap Road, Suite 400
19 Fayetteville, Arkansas 72703-4099
20 Also Present: Nikki Kirby, Videographer

21
22
23
24 Veronica R. Lane, CCR
1304 Lovers Lane, Van Buren, Arkansas 72956
25 (479) 471-0665

1 Deposition of MITZI BAILEY was taken on July 6,
2 2011 at Chronister, Fields & Flake, 309 North 7th Street,
3 City of Fort Smith, County of Sebastian, State of Arkansas.

4 STIPULATION

5 IT IS HEREBY STIPULATED AND AGREED by and between
6 counsel for the parties hereto that the deposition
7 testimony of MITZI BAILEY may be taken before Veronica R.
8 Lane, a Certified Court Reporter and Notary Public, at the
9 above captioned time and place.

10 Said deposition is taken pursuant to Rule 32(a)(3),
11 Arkansas Rules of Civil Procedure, (Rule 30, Federal Rules
12 of Civil Procedure), with the specific understanding that
13 any objections as to relevance, immateriality, or
14 incompetency are reserved and may be made at the time the
15 deposition is first offered into evidence. Objections as
16 to form of questions are to be noted at the time of taking
17 of the deposition. All formalities with reference to
18 taking, transcribing, forwarding and filing of said
19 deposition are waived.

20
21

22 *REPORTER'S NOTE: "Uh-huh" denotes an affirmative
23 response; "Huh-uh" denotes a negative response.

24
25

1 WEDNESDAY, JULY 6, 2011, FORT SMITH, ARKANSAS

2 * * *

3 THE VIDEOGRAPHER: This is the videotaped
4 deposition of Mitzy Bailey taken on behalf of the Plaintiff
5 in the matter of Dorothy Brigance versus The Brookfield.
6 Today's date is July 6, 2011, and the time is 3:39 p.m. and
7 we are on record.

8 All counsel present for previous depositions in
9 this matter are again present for this deposition, and
10 stipulations will carry forward.

11 Would the court reporter please swear in the
12 witness.

13 MITZI BAILEY, the witness herein named, having been
14 first duly sworn, testified under oath as follows:

15 EXAMINATION

16 BY MR. CHRONISTER:

17 Q How are you this afternoon, Ms. Bailey?

18 A I am doing well. Thank you.

19 Q Just to cover a couple of things upfront. It is
20 my understanding that counsel have agreed that your prior
21 deposition that we took -- I think you were in that very
22 seat -- back December a couple of years ago in the case
23 involving Jack Brigance would be -- that information that
24 overlaps this case and the use of that deposition would be
25 available for use in this case which, hopefully, will cut

1 down on the time here. Is that all right?

2 MR. DOSSETT: That is correct.

3 Q [BY MR. CHRONISTER]: All right. Let me just kind
4 of skim through some things. I guess your background,
5 education, work history and all of that would still be the
6 same, wouldn't it, up to the point in time we took that
7 deposition?

8 A That is correct.

9 Q What is your current address?

10 A The same as it was before, P.O. Box 543, Roland,
11 Oklahoma 74954.

12 Q And I think in the last deposition there was some
13 discussions about whether you were or had or had not
14 obtained your RN. Have you ever gotten your RN yet?

15 A I have not.

16 Q Have you taken the test again since the deposition
17 the last time?

18 A I may have taken it once. I don't remember if it
19 was since the deposition or -- I don't remember.

20 Q All right. And there was one -- there was
21 one letter that was at least involved in the prior case
22 where Mr. Brooks had represented you as being an RN to the
23 state. Did you ever see that e-mail from Mr. Brooks to the
24 state?

25 A I am not familiar with that e-mail.

1 Q Were you aware that he represented you as an RN to
2 the state?

3 A Somebody told me afterwards through the trial that
4 that had been sent.

5 Q And I guess my question was were you aware that he
6 had ever or done that until at that time in the trial?

7 A No.

8 Q Where do you currently work?

9 A Select Specialty.

10 Q And what do you do for them?

11 A A clinical liaison.

12 Q What is a clinical liaison?

13 A Marketing and assessment of patients.

14 Q When did you start for them?

15 A February 1st of last year, 2010.

16 Q Did you leave The Brookfield on February 1, 2010,
17 or had you left them before that day?

18 A Honestly, I don't remember what date that I left
19 Brookfield.

20 Q Did you have any jobs in between The Brookfield
21 and your Select Choice?

22 A No, other than I worked part time at The Buckle in
23 the Central Mall, and I believe during that transition I
24 was still employed there.

25 Q When you left Brookfield, were you still the

1 administrator?

2 A Yes.

3 Q Did you ever take any other jobs with The
4 Brookfield other than administrator through the date you
5 left?

6 A No.

7 Q So there was no lateral move to a position where
8 you handled the advertising or public relations or anything
9 like that?

10 A There was a time when the new administrator came
11 on that I stayed on for any questions or any help that she
12 would need, and at that time I was doing some follow-up on
13 our marketing and everything as far as our leads with
14 potential clients, but I don't know that I ever -- I mean,
15 she had the title as the administrator, and I mean, I was
16 there to help through that. I don't know that I had a
17 different title or anything, but there was an overlap.

18 Q Who was the administrator that took your place?

19 A Meg Rank.

20 Q Do you know when Meg started?

21 A Sometime in mid January, end of January.

22 Q So there was a two- to three-week period of time,
23 maybe a month period of time that there was some overlap
24 there?

25 A I don't know that it was a month. Maybe a few

1 weeks. I don't remember the exact amount of time.

2 Q Why did you leave The Brookfield?

3 A Can I have some tissue?

4 MR. CHRONISTER: Do you want to take a break for a
5 minute?

6 THE VIDEOGRAPHER: Do you want me to go off the
7 record?

8 MR. CHRONISTER: Yes, just go off the record.

9 THE VIDEOGRAPHER: The time is 3:44 p.m. and we
10 are off the record.

11 (Off the record.)

12 THE VIDEOGRAPHER: The time is 3:45 p.m. and we
13 are back on the record.

14 Q [BY MR. CHRONISTER]: So why did you leave The
15 Brookfield?

16 A At the end of my employment with The Brookfield, I
17 was so intimidated and so worried. I feared for my family
18 and I feared for myself being in that location with the
19 ongoing lawsuit that Steve Brigance had with his dad, with
20 us, and it just -- knowing that he was homicidal and
21 suicidal, and knowing that he really -- I felt like he had
22 it out for me. I felt that that was not a location for me
23 to be at with him being so close.

24 And so in transition, I left The Brookfield. And
25 at the same time, another opening came up with Select that

1 had better benefits and everything, so I moved on.

2 Q So the benefits were better with Select?

3 A (The witness nods her head in the affirmative.)

4 Q What was the pay with Select? Did your pay go up,
5 down, stay the same?

6 A It went down.

7 Q And apparently based upon the stress level you
8 were under, that justified the change?

9 A (The witness nods her head in the affirmative.)
10 Yes.

11 Q And what made you believe that Mr. Brigance was
12 suicidal and homicidal?

13 A I heard it in the depositions.

14 Q Were you here for Mr. Brigance's deposition?

15 A I believe I was. And then, you know, some of the
16 actions he had towards me at the facility when all of this
17 happened.

18 MR. DOSSETT: Rex, I should say, too, she was a
19 party to the lawsuit for a time, and she may have been
20 privy to some of that, the depositions and reports as we
21 reported those to you.

22 MR. CHRONISTER: That is fine.

23 Q [BY MR. CHRONISTER]: So can I summarize what
24 you're telling me by saying the incident involving Steve's
25 father and the stress related to that ongoing lawsuit was a

1 problem for you?

2 A It wasn't the stress of the lawsuit. It was the
3 fear of knowing that somebody that unstable could have been
4 so close to where I worked, and knowing that I am leaving
5 myself wide open.

6 Q And at the time you left, that would have been in
7 February of '10?

8 A Correct.

9 Q And at that point in time, Mr. Brigance's mother,
10 her accident was in November of '09; is that right?

11 A I don't remember the exact dates or years.

12 Q Let's kind of keep it simple. Dorothy Brigance
13 was no longer in the facility at that time, correct?

14 A No.

15 Q When you left there?

16 A No.

17 Q She was still there?

18 A She was not there.

19 Q Okay. So Mr. Brigance was not in and out of the
20 facility and had not been around the facility at the time
21 you made the decision to leave?

22 A No, but he lives very close to the facility.

23 Q He lives there in Fianna Hills?

24 A Correct.

25 Q So did you -- were you involved in training the

1 new administrator, Ms. Meg Ryan you said her name was?

2 MR. DOSSETT: Rank.

3 THE WITNESS: Meg Rank.

4 MR. CHRONISTER: Meg Ryan is the actress, isn't
5 she?

6 THE WITNESS: Yes. I helped with the transition
7 in bringing her in and getting her set up and everything.

8 Q [BY MR. CHRONISTER]: And was there ever a time
9 where you felt like your job was in jeopardy or it was your
10 choice 100 percent to leave?

11 A It was my choice to leave.

12 Q Did you discuss that with Mr. Brooks?

13 A Yes.

14 Q And what did you tell Mr. Brooks about the
15 decision to leave and why you were leaving?

16 A I honestly don't -- I can't recall the
17 conversation with him.

18 Q Did you tell him you were concerned about Steve
19 Brigance or fearful with the situation with Mr. Brigance?

20 A I don't remember exactly what I told him.

21 Q But you are telling me that predominantly it was
22 you felt intimidated and fearful because of Mr. Brigance;
23 is that right?

24 A Correct.

25 Q When did that fear factor start developing with

1 Mr. Brigance?

2 A You know, I had concerns throughout the time that
3 I was there because there were times that he would -- I
4 think in one of my other testimonies where he had yelled
5 and everything. And there were times that he wasn't kind
6 and I felt very intimidated by him.

7 Q Well, let's hold those. I want to come back to
8 those in a minute as we work our way through this, okay?

9 When you were the administrator at The Brookfield
10 during the time that Jack Brigance and Dorothy Brigance
11 were there, and I know some of this we hit on in your other
12 deposition and I just want to touch on it briefly, but you
13 were -- you handled all of the hiring and firing of
14 employees?

15 A I did.

16 Q And you also handled all of the staffing?

17 A Yes.

18 Q You handled the training of employees?

19 A Define training. What are you meaning by
20 training?

21 Q What did you do when you hired someone to get them
22 ready to do the job? Who handled their on-the-job training
23 or training in accordance with the standards that you set
24 up for Brookfield?

25 A It would depend on the position that they were in.

1 And it would depend on their level of knowledge, their
2 level of experience.

3 Q What about training as far as charting on
4 residents, did you maintain charts for your residents?

5 A We did.

6 Q And what was the purpose of maintaining charts of
7 the residents?

8 A You know, can you ask that a different way? I
9 don't know exactly what you are asking.

10 Q Okay. You have residents at the facility, right?

11 A Uh-huh.

12 Q And those residents, while they have some level of
13 independence, they need assistance. That is the basis for
14 assisted living; is that correct?

15 A Yes.

16 Q And in providing that assistance, did you maintain
17 a resident chart of the different things that were done for
18 your residents?

19 A Yes.

20 Q And let's kind of go through the paperwork. For
21 the residents that are there, and I may have the terms
22 wrong so help me with the terms, okay? There is some care
23 plan when they come in as to what their specific needs and
24 things you assist them on, right?

25 A Uh-huh. Yes.

1 Q And then to implement that care plan, do you have
2 a chart for each of your residents where you write down the
3 things that you are doing for them pursuant to their care
4 plan?

5 A You know, Rex, I apologize, it has been a long
6 time since I been in there. I don't remember the forms,
7 per se. I don't remember the set-up. I mean, I have been
8 gone too long. I don't remember them.

9 Q Okay. But do you recall keeping charts where you
10 write down different things for your residents?

11 A I remember each patient or each -- they are not
12 patients, each resident would have their own charts, yes.

13 Q And what type of information would go into those
14 charts?

15 A You know, I would have to see one to tell you
16 everything that went in it. I don't even remember them.

17 Q Was there any -- when you trained your employees,
18 was there any specific training that you gave the employees
19 for charting?

20 A I don't remember.

21 Q Well, as administrator, was it your responsibility
22 to see that the residents' records and information was
23 properly kept?

24 A I would say so, to an extent.

25 Q Okay. To what extent would it be -- would it not

1 be your responsibility to follow up with the records or the
2 charting for your residents?

3 A I mean, you can't follow behind every employee and
4 make sure that they do every single thing. I mean, can you
5 ask a more specific question?

6 Q Okay. As opposed to following behind every
7 employee and checking everything they do, what procedures
8 did you have to document what you did for the residents?

9 A Again, Rex, I know that we probably had some
10 forms. I don't recall off the top of my head what forms we
11 used, what they looked like or, you know, in what order or
12 what event that they would chart or do.

13 Q Did you ever -- did you personally ever have any
14 regular training meetings with your employees, specifically
15 on charting what you do and don't do for residents?

16 MR. DOSSETT: Object to the form.

17 THE WITNESS: Can you ask that again? I'm sorry.

18 Q [BY MR. CHRONISTER]: Okay. Let's just go through
19 the example. I am going to bring my mother to The
20 Brookfield.

21 A Uh-huh.

22 Q And she has -- she can ambulate, and there is some
23 requirements, and do you recall what those requirements are
24 to actually be in an assisted living facility as opposed to
25 a skilled nursing facility?

1 A I don't remember specifically all of them at this
2 time.

3 Q Tell me the ones you do remember.

4 A That they would need be to able to get themselves
5 to and from the dining room; that they would need to be
6 able to evacuate if there was a fire; that they would need
7 to be able to feed themselves; and I know there is others
8 that I am missing.

9 Q But they -- you as the facility can provide
10 assistance in getting up and down off the toilet?

11 A Correct.

12 Q And taking showers?

13 A Assistance, I remember that.

14 Q And assistance for getting them ready for bed and
15 into bed, right?

16 A Yes.

17 Q And then you could assist them by getting them up
18 in the middle of the night to remind them to go to the
19 restroom?

20 A Yes.

21 Q And the facility was equipped with call lights to
22 where if they needed assistance, they could call and you
23 would come call on them and check on them, right?

24 A Correct.

25 Q My question is if those are your responsibilities,

1 did you maintain a chart so that you would have a back-up
2 to show that you were fulfilling those responsibilities for
3 the residents?

4 A You know, I am sure there was some type of forms.
5 At this time, I don't remember what they were or how they
6 were kept.

7 Q Okay. Do you recall ever having any -- as the
8 administrator, when it came to charting -- let me ask it
9 this way.

10 As the administrator, your job was to be sure that
11 the quality of care that was necessary was being given; is
12 that right?

13 MR. DOSSETT: Object to the form.

14 THE WITNESS: Can you ask that again. I am sorry.

15 MR. CHRONISTER: I'm sorry?

16 THE WITNESS: Could you ask that again, please. I
17 am sorry.

18 Q [BY MR. CHRONISTER]: Okay. As the administrator,
19 was one of your job duties to be sure that the facility
20 gave the level of care that needed to be given to your
21 residents?

22 A That is a hard question to answer. When you say
23 the level of care that was given, was it my responsibility?

24 Q Was it your responsibility to be sure that your
25 staff, the people who worked for you, did their job to

1 provide the requisite level of care?

2 A Yes.

3 Q And as the administrator, would you have safeguards
4 in place, and I am not saying you go and follow each and
5 every employee doing each and every job, but would you
6 have the -- would it be important to you as the
7 administrator to have the requisite safeguards in place to
8 be sure that each employee was discharging their duties to
9 the particular residents?

10 A It would be important for me to know that the
11 residents were getting the care.

12 Q And at least as far as the charting is concerned,
13 would the existence of a chart be important to you so you
14 could go back and check and make sure that people weren't
15 complaining, and that people were properly being taken care
16 of so if I called you and said, hey, Mitzi, I don't think
17 you all are doing A, B, C for my mother, you could pull
18 that chart and go, well, yes, Rex, we did. Here is what
19 the staff said at these dates and these times.

20 A Well, if I were to get a phone call like that from
21 you, I mean, I would immediately -- I would handle it
22 different ways, you know.

23 Q Tell me the different ways you would handle it.

24 A There are many different ways that I would handle
25 it. I would talk to staff. I would talk to the family. I

1 would talk to the resident. There are many different --
2 and I can't just even narrow one certain incident or
3 anything or one certain concern. I mean, there would be
4 different ways.

5 Q So you talk with family?

6 A And I am not saying that I would do all of this in
7 this order, Rex. I mean, don't take that out of the
8 context, please, I mean --

9 Q I understand, but you would -- if there was a
10 complaint or a concern, you would follow up by in some
11 whatever protocol or whatever order?

12 A I can tell you this, if there was a complaint, I
13 would get on it and I would research it and I would find
14 out and I would do everything I could to fix it.

15 Q Okay. But as far as the charts were concerned,
16 the resident charts, I think from what you are telling me
17 that you are not aware of any guidelines you had for when
18 people should or should chart things?

19 A I am sure that there was some, but at this time I
20 don't remember them.

21 Q If there were some guidelines as to what should
22 and should not be charted, would you have developed those
23 as the administrator or would those have been given to you
24 by Mr. Brooks because of his ownership in other facilities?

25 A I don't know that I can answer that because at

1 this time, Rex, I don't remember the charts. I don't
2 remember the charting. Where I am at right now, it is a
3 whole different charting ball game and I don't want to --

4 Q Do you recall from the other deposition you gave
5 about the incident reports, and that those incident
6 reports, I think, were created by Mr. Brooks, but were
7 modified to some extent by you at the time you took over as
8 administrator. Do you remember that?

9 A I don't remember that.

10 Q But if there were guidelines for charting, you are
11 telling me right now you have no recollection or memory of
12 coming up with those guidelines yourself?

13 A (The witness shakes her head in the negative.) I
14 don't.

15 Q And if there were guidelines for charting, and you
16 are not saying there were or there weren't, but if there
17 were guidelines for charting, you may have gotten those
18 either from Mr. Brooks or whoever he brought them from to
19 the facility and you just continued doing it that way?

20 A I don't feel like I can answer this question right
21 now without, you know, going back and really looking and
22 thinking and remembering everything because at this time I
23 don't -- I can't answer that. I don't know.

24 Q Do you have the ability to go back if Mr. Dossett
25 can get these records and have you look at the different

1 charts and things like that and spend some time with them,
2 but being able to answer these questions for me?

3 A I don't know that I could by looking. I mean,
4 there is a lot that I don't remember between now and then.
5 It has been a long time.

6 Q So I just want to be sure I am narrowing this down
7 as much as I can under the circumstances. You don't recall
8 if you do or do not have any specific guidelines for
9 charting?

10 A At this time I don't remember.

11 Q And you don't know if you -- since you don't know
12 if you do or didn't have them, you don't know or remember
13 what they were?

14 A (The witness shakes her head in the negative.)

15 Q You are nodding. You still have to give us an
16 oral answer.

17 A No, I am saying I don't remember right now.

18 Q All right. And you don't have any -- other than
19 the fact that you should have them, it is important to have
20 them, you can't tell us any recollections of the
21 guidelines, rules or regulations for your employees to fill
22 them out; is that what you are telling me?

23 A I don't remember.

24 Q Was that a "yes"; is that what you are telling me?

25 A Yes, I don't remember at this time.

1 Q But you do know there were charts?

2 A Yes.

3 Q And you do know -- based on your training as an
4 administrator for the job, you know it is important to have
5 the charts and to chart the care that is given to the
6 residents, right?

7 MR. DOSSETT: Object to the form.

8 THE WITNESS: Again, Rex, I don't remember what
9 was charted.

10 Q [BY MR. CHRONISTER]: I am not asking you if you
11 remember what was charted, but as the administrator, you do
12 know it is important to have the charts for the paper
13 back-up for the care you provided your residents; is that
14 right?

15 A I don't think that is a fair question because I
16 don't -- I am not saying that it is not a fair question,
17 but I don't remember what they charted. I don't remember
18 what was supposed to be charted at this time.

19 Q Do you ever recall going back and looking at the
20 charts yourself?

21 A I would go back and look at the charts, yes.

22 Q And what would cause you to go back and look at
23 the charts?

24 A You know, I can't even give any specifics. I
25 don't know. I mean, I know I would look at the charts. I

1 can't give you any specific circumstances as to why I was
2 looking in the charts.

3 Q Well, if there had been an accident, would you go
4 look at the chart?

5 A Sure.

6 Q If there was a complaint about someone not being
7 cared for properly, would you back and look at the chart to
8 see --

9 A I could have.

10 Q -- who was on duty; who was in there; and what was
11 going on? Those would all be important to you, wouldn't
12 it?

13 A Yeah, and again, I mean, not only would I possibly
14 go to a chart, there would be other avenues that I would go
15 through.

16 Q But would you agree with me that the chart would
17 be a good place to start because it would give you an
18 outline of the ongoing care of that particular resident?

19 A There again, it depends on the situation. It
20 depends on a concern, a complaint.

21 Q But if you keep charts, there is a reason for
22 keeping them, isn't there?

23 A Yes.

24 Q So can you tell me, just whatever you can remember
25 at this point in time, of the reasons you keep a chart?

1 A Again, I am sitting here trying to think. I mean,
2 I can't even remember everything we kept in the charts.
3 You know, I am in a different atmosphere now and, I mean, I
4 am exposed to different charts, different charting,
5 everything, and I can't -- it would take me a while.

6 Q Well, where you are now -- let's talk about charts
7 where you are now. Tell me about what you chart there and
8 why you chart it?

9 A I don't chart there. My job and the position I am
10 at is to look through charts to gather information.

11 Q Okay. So you look through charts?

12 A Uh-huh.

13 Q So you are reviewing the information that other
14 people put in the charts?

15 A Correct.

16 Q As a chart reviewer, what is important to you
17 about what goes in these charts?

18 MR. DOSSETT: Object to the form.

19 THE WITNESS: What goes in an assisted living
20 chart and what goes in an acute long-term care chart, they
21 are totally different.

22 Q [BY MR. CHRONISTER]: But what goes in the
23 charts -- let's differentiate them. What goes into charts
24 that you have at this point in time? The charts you
25 review, what information is in there?

1 A Charts that I normally review, Rex, are usually in
2 a hospital setting.

3 Q Okay. But what information is in there?

4 A Information in those charts, there is labs; there
5 is x-rays; there is doctor's notes; there is --

6 Q When one of the caregivers goes in and checks on
7 that person, for whatever reason, is it noted in the chart?

8 MR. DOSSETT: Object to the form.

9 THE WITNESS: Where I am at right now, the
10 nurse -- I don't look at what the nurse's write.

11 Q [BY MR. CHRONISTER]: But when you review it, is
12 that all the information that is in the chart?

13 A Like I said before, what is in the chart that I
14 look at, there is labs; there is x-rays. There is multiple
15 things.

16 Q And so if people are writing things down in the
17 chart at The Brookfield, would you expect pertinent
18 information for your resident to be in the chart?

19 MR. DOSSETT: Object to the form.

20 THE WITNESS: Rex, I don't remember what was in
21 the charts at The Brookfield.

22 Q [BY MR. CHRONISTER]: Mitzi, I am just asking you,
23 would you expect -- if you are the administrator there --
24 do you still have an administrator's license?

25 A I do not.

1 Q When did it lapse?

2 A I couldn't tell you when it lapsed. I didn't
3 renew it.

4 Q Did you just choose not to renew it?

5 A I chose not to renew it.

6 Q But when you were at The Brookfield, it kept
7 charts, right?

8 A Yes.

9 Q And would you agree with me that charts are
10 important to keep the information that you put in about
11 your residents, right?

12 A I would agree with that.

13 Q All right. Now, if you didn't note a problem in
14 the chart, where else would you -- if someone had a
15 complaint or a problem or the resident voiced a complaint
16 or a problem, if it wasn't in the chart, where else would
17 you have it?

18 A If they voiced a complaint?

19 Q Uh-huh.

20 A Again, like I said before, if there was a
21 complaint, I would take many different avenues, not saying
22 I would do this first or that second, but I could interview
23 families. I could talk to patient -- I could talk to the
24 staff, you know, many different avenues.

25 Q Were the charts -- did you ever have someone, such

1 as your job right now, did you have someone review charts
2 of residents at The Brookfield? Did you have anyone at The
3 Brookfield who would review, independently review charts
4 for residents ever?

5 MR. DOSSETT: Object to the form.

6 THE WITNESS: Can you specify it as reviewing
7 charts? I mean, are you talking about, you know, did staff
8 members review them? I mean, what are you --

9 Q [BY MR. CHRONISTER]: Any of the above. Did you
10 have people who worked for you ever review charts to make
11 sure things were charted and placed in charts?

12 A I don't remember at this time if we specifically
13 had somebody that would follow up on those or not.

14 Q Do you recall whether or not you should have?

15 A No.

16 MR. DOSSETT: Object to the form.

17 Q [BY MR. CHRONISTER]: Do you -- did you have a
18 quality assurance committee at The Brookfield?

19 A We did.

20 Q Did the QA ever review charts?

21 A I have a question.

22 Q I am not asking who they are or what they did. I
23 am just asking you did they review charts as part of their
24 job?

25 MR. DOSSETT: Let me just say for the record that

1 we want to preserve our privilege with regards to quality
2 assurance, and so I am being sensitive about where we go,
3 and I know you are, too. And these questions that we
4 allow, I just want the record to be clear we are not
5 intending to waive our privilege by letting you kind of
6 poke around the edges on it.

7 MR. CHRONISTER: I understand.

8 MR. DOSSETT: And for the witness's sake, if we
9 get into an area he shouldn't inquire about, I will object
10 again and instruct you not answer.

11 THE WITNESS: Okay.

12 MR. DOSSETT: Okay.

13 THE WITNESS: For quality assurance, we could look
14 in the charts.

15 Q [BY MR. CHRONISTER]: Do you know if that was ever
16 done?

17 A I believe it was.

18 Q Would you have any records of that occurring?

19 A I don't know that the record would state that
20 it -- we specifically looked at the chart to get this
21 information.

22 Q Well, let me show you, this is Ms. Brigance's
23 resident progress notes or chart for the period -- and it
24 goes in reverse order. This one is just from the period of
25 April of '09 through November 19th, the date of her

1 accident.

2 A And this is --

3 Q That is in reverse order, so you can go to the
4 back and go forward. However you want to put it.

5 A And what year is this on top, then?

6 Q It would be 2009.

7 A So you are going 8 of '09 to 11 of '09?

8 Q I think it is April of '09, 4 of '09 is the first
9 one.

10 A It says 8/8 of '09.

11 Q April 8, '09.

12 A Okay.

13 Q And just kind of scan it a minute.

14 MR. DOSSETT: Do you need her to, for the purpose
15 of your questions, to look at each of these entries or are
16 you going to ask her general --

17 MR. CHRONISTER: No, she can just scan them.

18 MR. DOSSETT: Okay.

19 MR. CHRONISTER: Since she doesn't remember them,
20 let her take a few minutes just to read them.

21 MR. DOSSETT: Sure. She is taking the time now to
22 read the entries and I didn't know if you asked her to do
23 that or not.

24 THE WITNESS: Okay.

25 Q [BY MR. CHRONISTER]: Let me just ask you a few

1 questions about that. It looks to me like there were -- I
2 am not trying to pin you on these, so I will use the word
3 ballpark.

4 A Okay.

5 Q It looks to me like there was a ballpark one entry
6 the entire month of April for Ms. Brigance. It will be on
7 the very farthest back page.

8 A Looks like there was four or five, five entries.

9 Q Five entries for April?

10 A Uh-huh.

11 Q Let me see. Okay. I am sorry. One, two, three,
12 four, five for April. How many for May?

13 A It appears to be one.

14 Q One for the entire month of May. And what was
15 that entry for the entire month of May?

16 A It looks like it was an entry made by me; that I
17 had called Steve and let him know that Dot had refused to
18 let us change her outfit. And it looks like he had called
19 back later and talked to someone else and said just to wash
20 it with a wet rag and tell her she needed to look nice for
21 lunch.

22 Q And how many of those are in your handwriting, can
23 you tell me?

24 A On this page, five.

25 Q Anybody else on that page? How many entries

1 totally are on that page?

2 A Twelve.

3 Q So 5 of those 12 you wrote down?

4 A Uh-huh.

5 Q And what about the next page?

6 A And your question about the next page?

7 Q Well, I guess how many -- if my calculations are
8 right, starting in August there were 58 entries in the
9 month of August.

10 A Okay.

11 Q Do you recall what triggered the sudden increase
12 in charting in August?

13 A I would have to look through here and see what is
14 going on. Do you want me to go ahead and read through all
15 of these and see exactly what was going on?

16 MR. CHRONISTER: We can take a break for a minute
17 and you can do that, if you want to.

18 THE VIDEOGRAPHER: The time is 4:19 p.m. and we
19 are off the record.

20 (Off the record.)

21 THE VIDEOGRAPHER: The time is 4:28 p.m. and we
22 are back on the record.

23 Q [BY MR. CHRONISTER]: You have had a chance to
24 review that chart?

25 A Uh-huh. Yes.

1 Q And tell me what was the last date that you noted
2 your handwriting in the chart?

3 A My handwriting? I have to double check because
4 there is MH's on here and that is what mine used to be.

5 Q Weren't you under Mitzi Bailey when you were
6 hired?

7 A Correct, yes.

8 Q Just you are pausing when you see the MH?

9 A I do, yes. It appears to me, I believe, 10/1/9;
10 is that what you were thinking?

11 Q I thought that. If that were your initials, then
12 that is what it looked like.

13 A Okay. I mean, that is what it appears to me,
14 unless I am overlooking something.

15 Q Can you tell my why in that chart you go from like
16 one time in May to two or three times in June to one or two
17 times in July to 58 times in August?

18 A I mean, I can't answer that exactly.

19 Q Do you have any recollection as to anything that
20 would have caused you to instruct the staff to do more
21 intensive charting on Ms. Brigance in August?

22 A Not that I can think of right now.

23 Q And I think it went to what, six times in
24 September?

25 A Something like that, yes.

1 Q Any reason to -- any reason reflected in the chart
2 to reduce the charting between August and September?

3 A I don't remember.

4 Q Is there anything reflected in the chart that
5 would refresh your memory in that regard?

6 MR. DOSSETT: Object to form.

7 THE WITNESS: I don't remember.

8 Q [BY MR. CHRONISTER]: And I think there is 22
9 times in October?

10 A I don't remember.

11 Q And 19 times apparently every day in November?

12 A I don't know.

13 Q I think if -- because some of those charts are two
14 and three times on the same day, aren't they, some of those
15 notations?

16 A It appears so.

17 Q And was there a gap in there in October and
18 November of about 12 to 14 days of nothingness? Let me see
19 if I can narrow this down for you.

20 A Right here.

21 Q I want to say between October 22nd and November
22 the 11th, is that a ballpark time frame?

23 A It is the 22nd, November 12th.

24 Q November 12th.

25 A It doesn't appear.

1 Q And there was nothing charted during that period
2 of time?

3 A Doesn't appear to be.

4 Q Do you know any reason why the chart would stop
5 and start or why there were so many on one day or so many
6 in one month and very few in the next month? Do you have
7 any rhyme or reason for that at all?

8 A I don't.

9 Q Is there anything within The Brookfield's in your
10 training of staff or anything you can recall regarding an
11 explanation as to why the charting is so hodgepodged in
12 there?

13 MR. DOSSETT: Object to the form.

14 MR. CHRONISTER: Don't like the word hodgepodge?

15 MR. DOSSETT: I think it is two words, but I don't
16 like either one of them.

17 THE WITNESS: I mean, I can't answer that right
18 now. I don't remember.

19 Q [BY MR. CHRONISTER]: Can you think of any reason
20 why a chart would be broken down this way as far as the
21 number one month followed by a reduced number the next
22 month, followed by --

23 A I mean, I can't give a specific explanation. I
24 don't know.

25 Q Do you have an opinion? Do you have any thoughts

1 on it?

2 MR. DOSSETT: Object to the form.

3 Q [BY MR. CHRONISTER]: Or would you just be
4 guessing?

5 A I would be guessing.

6 Q All right. Is there -- other than this chart, did
7 you maintain at the -- let's go ahead and make this an
8 exhibit to the deposition. Exhibit 1.

9 MR. DOSSETT: Exhibit 1 is the progress notes?

10 MR. CHRONISTER: For Ms. Brigance for those
11 periods from April through November.

12 MR. DOSSETT: Okay.

13 Q [BY MR. CHRONISTER]: If a resident or a
14 resident's family made complaints to either staff or to
15 you, would that be charted or written down somewhere?
16 Would you keep a running log of such information?

17 A Again, I don't remember. I mean, I don't know
18 that it would all be charted. I mean, and again, depending
19 on the complaint, the issue, it would all depend on --

20 Q Well, if you investigated a complaint or a concern
21 by a resident's family or a resident, would there be
22 documentation of your investigation somewhere?

23 A And I am going to be real vague with this because,
24 I mean, if they would have said the green beans were cold,
25 I mean, that is a complaint. I mean, I don't know that I

1 would document that anywhere.

2 Q A complaint that a person was allowed to sit on
3 the toilet 20, 30 minutes waiting on call lights, would
4 that be documented somewhere?

5 A Again, I don't remember.

6 Q From just an administrative point of view, in all
7 of your training, have you ever heard the word -- heard the
8 term if it is not charted, it doesn't exist?

9 A I have.

10 Q And for just that reason, is it important to chart
11 items for not only your resident's protection, but for
12 yours, as well?

13 MR. DOSSETT: Object to the form.

14 THE WITNESS: In hindsight, charting every single
15 minute, yeah, probably.

16 Q [BY MR. CHRONISTER]: And is it important to chart
17 things that you have a hyper-vigilant resident or family
18 member, like the squeaky wheel always gets the grease?

19 MR. DOSSETT: Object to the form.

20 MR. CHRONISTER: You didn't like that, either.

21 MR. DOSSETT: Well, and I didn't like the
22 question, generally, even without the squeaky wheel part.

23 Q [BY MR. CHRONISTER]: But if you have a complaint
24 by a resident, then is it important to chart it and
25 document what you've done about it?

1 A I am going to go back and say, you know, depending
2 on the complaint, and depending on what the complaint was
3 and depending on how we handle it, I don't know that it
4 would all be charted.

5 Q If the complaint was serious, would you chart or
6 document that?

7 A You would have to give me a more specific.

8 Q Well, with Ms. Brigance, was there an incident
9 where there was an allegation that she was allowed to have
10 a soiled garment and a urine soaked bedding?

11 A Okay.

12 Q Do you recall that?

13 A I do.

14 Q And I think, actually, there was an incident
15 report generated over that, wasn't there? Let me show you
16 a document dated 10/30/09. Take a minute to review that.

17 A (Witness complies.) Is this supposed to be a
18 front and back copy or is --

19 Q I think so.

20 A -- there another one?

21 Q That is the way we received it in discovery, but
22 that is the way I understand it.

23 Mark, if want to take a look at it to make sure.

24 MR. DOSSETT: Yeah, I don't know if it is just the
25 way the photocopy turned out, but these go together.

1 THE WITNESS: Okay. Because it said see other
2 side.

3 MR. DOSSETT: Yeah, it probably is.

4 MR. CHRONISTER: That is my understanding of what
5 it is.

6 MR. DOSSETT: I think that is what it is, too.

7 THE WITNESS: Okay. Okay. And your question
8 again?

9 Q [BY MR. CHRONISTER]: All right. On that
10 instance, there was an independent incident report
11 prepared.

12 A Uh-huh.

13 Q Why?

14 A I don't recall all the specifics. I mean, and I
15 hate to assume anything, but, I mean, from what I remember
16 at this time, this was a night shift incident, and a lot of
17 times -- as you know, we work separate shifts. I am not
18 there three shifts. And usually the night shift people go
19 home. And your question was why was this generated?

20 Q There was an incident there pertaining to
21 Ms. Brigance where at least someone reported up the chain
22 of command to you.

23 A Yes.

24 Q That there was an incident involving the facts set
25 forth in that report, right?

1 A Yes.

2 Q And as result of that, this incident report was
3 created?

4 A Uh-huh.

5 Q My first question is why was there an incident
6 report created for this particular event or incident?

7 A Well, I mean, this -- this happened on a night
8 shift, and from what I remember, I spoke to her over the
9 phone and I let her know that I was going to go ahead
10 and -- she, in fact, disputed it in the phone conversation,
11 and I told her that I was going to go ahead and leave this,
12 if she would just sign it for me, so . . .

13 Q So you created an incident report to document an
14 alleged incident involving Ms. Brigance?

15 A Yes.

16 Q And did you create similar incident reports for
17 other residents under the same or similar set of
18 circumstances?

19 A I don't remember. I would have to see them. I
20 mean, I don't know that we had another incident as like
21 this one.

22 Q So I guess my question becomes what distinguishes
23 this one from any other oral or comment or allegation that
24 was made on behalf of Ms. Brigance or any other resident?
25 Why was this one reduced to an incident report?

1 A I can't answer that right now. I would have to
2 put some thought into that.

3 Q And you said a minute ago because it happened on
4 third shift, whether it happened on second shift or first
5 shift, would you have handled it the same with the same
6 type of documentation?

7 A Again, I don't know. I don't remember any other
8 incidents like this one that ever occurred in our facility.
9 So, I mean, this was an incident that was brought to my
10 attention, and this was an incident that, you know, needed
11 resolved and made sure that it didn't happen again.

12 Q And it was brought to your attention, you
13 investigated it, and that was generated for it, correct?

14 A Yes.

15 Q Other complaints that were brought to your
16 attention, were they equally investigated and incident
17 reports prepared?

18 A I can assure you I always investigated any, any
19 concerns, any comments, any questions, any issues that
20 there was in the facility. I don't know that all of them
21 were in a written form, but I can assure you that I covered
22 every single -- that was brought to my attention -- any
23 concern that was brought to my attention.

24 Q Well, it is important for us to know what
25 incidents involving Ms. Brigance were investigated and

1 documented. Are you telling me that there may very well
2 have been other incidents that you investigated but were
3 never reduced to documentation, and you don't have any
4 specific memory of those at this point in time, whether
5 there was one, three, five or twenty-five of them?

6 MR. DOSSETT: Object to the form.

7 Q [BY MR. CHRONISTER]: Is that what you are telling
8 me?

9 A What I am telling you is that any time with any
10 resident, not just Mrs. Brigance, any time there was an
11 issue, any complaint, any concern, I followed up on it. I
12 followed through. I would investigate it. And I am saying
13 that not all of them were documented; that all of them
14 would be an incident report. I don't remember.

15 Q Okay. So there could be, and you don't remember,
16 so what you are telling me is -- and I just want you to
17 tell me there very could well have been other incidents
18 involving Ms. Brigance that you may have investigated that
19 were never reduced to writing, and you don't remember the
20 details of those or anything else about them. They were
21 just investigated and handled orally without any supporting
22 documentation?

23 MR. DOSSETT: I am going to object to the form of
24 the question. Calls for speculation. It has been asked
25 and answered.

1 THE WITNESS: I am going to go back to the green
2 beans or the shades being -- I mean, the beans were cold, I
3 don't know that I would have documented that. If somebody
4 complained that the light from the shade was in their eye
5 and they wanted the shade shut, that it was a problem, I
6 don't know that I would have documented that, so that is --

7 Q [BY MR. CHRONISTER]: If there were incidents,
8 alleged incidents of failure to answer call lights in a
9 timely manner, you may have investigated those, but never
10 have reduced them to a written incident report; is that
11 right?

12 MR. DOSSETT: Object to the form.

13 THE WITNESS: I have a question? Can I ask a
14 question?

15 MR. CHRONISTER: Sure.

16 MR. DOSSETT: Let's go off the record.

17 THE VIDEOGRAPHER: The time is 4:45 p.m. and we
18 are off the record.

19 (Off the record.)

20 THE VIDEOGRAPHER: The time is 5:11 p.m. and we
21 are back on the record.

22 Q [BY MR. CHRONISTER]: Ms. Bailey, before we took a
23 break, we were talking about the report in front of you.
24 And I guess where we ended up is that as I understand what
25 you are telling me, if you had issues that you had to

1 investigate, whether they were complaints or resident's
2 care; whether or not someone was getting up to the
3 bathroom; whether the call lights were being answered,
4 whatever; that you had different procedures which you would
5 go through to investigate those things?

6 A Correct.

7 Q And those may not all be reduced to a written
8 incident report?

9 A That is correct.

10 Q So some of those you would just investigate, make
11 a decision on and move on without documenting it in any
12 file; is that right?

13 A I would say so.

14 Q Okay.

15 A From what I remember.

16 Q All right. Now, the way the call system -- well,
17 let me ask you this about going in that procedure, then.
18 If the state came in to investigate something because of a
19 complaint or a problem, how would the state ever get the
20 true picture if you had not documented your internal
21 investigations of any complaints or problems?

22 MR. DOSSETT: Object to the form.

23 THE WITNESS: I don't know. That is something you
24 would have to ask the state on their complaint research, I
25 would think.

1 Q [BY MR. CHRONISTER]: I mean, if the state comes
2 in, let's say there is a complaint by someone and the state
3 comes in and the state says, "Let me see your documents,"
4 if you never documented an incident report, if you never
5 documented an investigation you did because of a complaint,
6 and let's say you investigated something and found there
7 was a problem and addressed it internally, but you never
8 reduced that to writing, how would the state know that that
9 was done?

10 A I think you would have to talk to the state
11 employee that would investigate it to find out exactly what
12 they did. I mean, there is many things that they do when
13 they come in to investigate.

14 Q But if they don't see what you have done and you
15 don't tell them what you have done, how are they supposed
16 to know?

17 MR. DOSSETT: Object to the form.

18 THE WITNESS: Again, I would have to go back and
19 say, you know, that is something the state -- that would be
20 a question for the state.

21 Q [BY MR. CHRONISTER]: Okay. That is fair enough.
22 Would you agree with me that if a resident was left on the
23 toilet for 30 to 40 minutes, would that be a problem?

24 MR. DOSSETT: Object to the form.

25 THE WITNESS: You would have to be more specific.

1 Q [BY MR. CHRONISTER]: Well, if a resident was
2 placed on the toilet, the aide went away and they pulled
3 the call light and required to wait 30 or 40 minutes before
4 someone comes to get them off the toilet, is that a
5 problem?

6 MR. DOSSETT: Object to the form.

7 Q [BY MR. CHRONISTER]: As far as you are concerned
8 as an administrator, is that a proper level of care for
9 that resident?

10 MR. DOSSETT: Object to the form.

11 THE WITNESS: I am going to have to say that I
12 would have to know the whole scenario, everything that was
13 going on at that time. If a resident was left on a toilet
14 for that long a period of time, I would have to investigate
15 it and see what was going on during that time.

16 Q [BY MR. CHRONISTER]: And you might or might not
17 make a written incident report about that?

18 A That is correct.

19 Q Did you ever keep any field notes or your own
20 little diary so to speak that might not be in The
21 Brookfield records of any of these investigations that you
22 did or complaints that you followed up on that were never
23 reduced to a formal writing at the facility? Did you ever
24 -- did you keep any personal records to that effect where
25 you could go back and retrace any of that right now?

1 A Not that I can remember.

2 Q Okay. Do you know Sheryl Williams?

3 A I do.

4 Q And did you hire Sheryl at The Brookfield?

5 A I believe I did.

6 Q Was she a good employee?

7 A Can you be specific about that question?

8 Q Did you have any problems with her?

9 A You know, I would have to go back and look. It
10 has been so long. I would have to review things.

11 Q If there was a problem with her, would it be
12 documented in her personnel file?

13 A You would have to be more specific, like what kind
14 of a problem?

15 Q Well, any problem. I mean, I asked you a general
16 question if Sheryl Williams, to your recollection, was a
17 good employee, and that led us to you weren't sure, you
18 needed more specifics. I am trying to ask you now is,
19 again, if Sheryl Williams was not a good employee, would
20 that be documented somewhere?

21 A Well, I think your question before was if I had
22 any issues with her before, maybe.

23 Q Uh-huh.

24 A I would say, no, because one thing that kind of
25 comes to mind, I believe, and this may not have been

1 Sheryl, but, you know, there may have been times that a
2 staff member had a tattoo showing or something, and I may
3 have asked them to cover up or wear sleeves where a tattoo
4 wouldn't show. I don't believe I would document that or
5 write an incident report.

6 Q Okay.

7 A So to answer that question, no, I don't know that
8 any issues that I would have with an employee would be
9 documented.

10 Q All right. Do you recall any issues with Sheryl
11 regarding resident care?

12 A Again, I would have to look through some things.
13 I can't specifically say anything right now off the top of
14 my head.

15 Q If there was an incident with resident care, would
16 that be documented in her personnel file?

17 A I don't know that it would be documented. I know
18 that if there was an issue or if there was a complaint,
19 that I would investigate it and I would talk to her and I
20 would resolve it or get to the bottom of it.

21 Q Was that kind of just your way of doing things, I
22 mean, if there was a complaint, and as I understand what
23 you told me a minute ago, if there was a complaint
24 regarding a resident, you might investigate that, but never
25 reduce it to a report. And if there is an issue with an

1 employee regarding their care of a resident, that may never
2 be reduced to a report, either; is that right?

3 MR. DOSSETT: Object to the form.

4 THE WITNESS: I guess I would have to ask, I mean,
5 can you give me specific of care and --

6 Q [BY MR. CHRONISTER]: Well, if a resident allowed
7 someone to set -- if an employee allowed someone to set on
8 the toilet 45 minutes without coming to get them because
9 they were sitting out back smoking, would that be something
10 you document in a personnel file?

11 A If they were out smoke -- that, again, is a
12 difficult question because if they were out smoking, I
13 mean, it would depend on the circumstances. It would
14 depend on was that her break? Was it -- who else was
15 covering it? Were they the person that should have been
16 covering that? I mean, there is whole scenario there, that
17 I think there is gap between what you are asking and what
18 my answer will be because it depends on the full
19 investigation and what we find out and what is going on.

20 So I will go back to answer that as saying it will
21 depend on how -- you know, what we find out; what the
22 circumstances are.

23 Q And would that type of investigation be reduced to
24 writing and be somewhere where we can find that
25 investigation, if there were such a thing?

1 A I don't know that it would.

2 Q Okay. Well, back to Sheryl. Sheryl ultimately
3 left the employment of The Brookfield, right?

4 A She did.

5 Q Was she terminated or did she voluntarily leave
6 her employment?

7 A I don't remember. I do not remember.

8 Q If Sheryl told us that she just quit, would you
9 have any reason at this point in time to dispute that?

10 A Honestly, I don't remember how she left, why she
11 left, termination or -- I would have to look at the records
12 again.

13 Q Okay. But you don't remember ever giving -- you
14 don't ever remember writing her up for any reason?

15 A I would have to look. Again, I'm sorry, Rex, I
16 don't -- without having those things in front of me, I
17 don't remember.

18 Q And if Sheryl told me that when she left you asked
19 her to reconsider and stay, would you have any reason to --
20 if Sheryl told me that. I think she did, but I am not
21 going to swear to it myself. So if Sheryl told me that,
22 would you have any reason to dispute that?

23 A Again, I would have to -- I would have to review
24 the personnel file. I don't remember.

25 Q Now, did Sheryl ultimately take a job as a sitter

1 for Ms. Brigance?

2 A She did.

3 Q And were there other sitters for Ms. Brigance?

4 A There were.

5 Q Do you recall other residents who had sitters in
6 the facility?

7 A I do.

8 Q Do you recall how many other residents had
9 sitters?

10 A As a number right now off the top of my head, I do
11 not.

12 Q At some point in time, do you recall asking Sheryl
13 or Debbie Upton, the other sitter for Ms. Brigance, what
14 their schedules were so you could staff around their being
15 there?

16 A I don't recall that.

17 Q Could you have done that?

18 A At this time I don't remember.

19 Q All right. So you don't remember doing it; you
20 don't remember not doing it. You could have done it; might
21 not have done it. Is that what you are telling me?

22 MR. DOSSETT: Object to the form.

23 THE WITNESS: That is correct. Sorry to interrupt
24 that. Do you need to exhibit that?

25 MR. CHRONISTER: Yes. Let's go ahead and make

1 this Exhibit 2.

2 Q [BY MR. CHRONISTER]: Do you remember a Mr. and
3 Mrs. Swink?

4 A I do.

5 Q Do you recall if they had sitters?

6 A I do.

7 Q And did they have sitters?

8 A They did, I believe.

9 Q Okay. At some point in time -- well, let's do it
10 this way. In November of 2009, did you prepare some
11 documents for the Brigance family regarding the use of
12 sitters?

13 A I did this, yes.

14 Q All right. Do you recall what precipitated you
15 making that request in November?

16 MR. DOSSETT: What is the date on it?

17 MR. CHRONISTER: November --

18 THE WITNESS: November 1.

19 MR. CHRONISTER: 1 of '09.

20 THE WITNESS: You know -- okay. These are two
21 separate ones. Okay.

22 Q [BY MR. CHRONISTER]: Yes, there is one for Sheryl
23 Williams and --

24 A And one for Debbie Upton, yes. You asked what
25 precipitated?

1 Q Yes.

2 A I don't remember. I don't recall why or what
3 precipitated; what initiated this.

4 Q If I told you that the sitters had been there for
5 Ms. Brigance starting in January or February after Jack
6 Brigance's accident, would you have any reason to disagree
7 with that?

8 A If that is the truth, I wouldn't disagree with it.

9 Q I believe that is the truth because Steve started
10 having sitters come in for his mom actually while his
11 father was still in the hospital before he died.

12 A Yeah.

13 Q I think he died in January of 2009. So I guess my
14 question is what precipitated these requests for the
15 Brigance family some 10 to 11 months after there had been
16 sitters in the facility?

17 A I don't remember.

18 Q Did you do similar waivers for other families with
19 sitters?

20 A I am sure we did.

21 Q Do you have any specific recollection of that?

22 A To my knowledge, you had mentioned the Swinks, I
23 believe that they did, as well. Beyond that, I don't
24 recall who else.

25 MR. CHRONISTER: Mark, you can redact them, but I

1 would like copies of any of other sitter agreements. You
2 can redact them as to the person's name if you want to.

3 MR. DOSSETT: Documents -- can we mark these as an
4 exhibit?

5 MR. CHRONISTER: Yes, we are going to mark those
6 as an exhibit.

7 THE WITNESS: Is that a HIPAA law violation?

8 MR. DOSSETT: Well, we won't produce anything that
9 is in violation of HIPAA, but we will go and look and see
10 what is there before we decide.

11 It is going to be Exhibit 3?

12 MR. CHRONISTER: Three and 4.

13 MR. DOSSETT: Three and 4. And what you are
14 wanting to know, any other documents similar to 3 and 4?

15 MR. CHRONISTER: Yes.

16 MR. DOSSETT: For people other than the Brigances?

17 MR. CHRONISTER: Other than Dorothy Brigance.

18 MR. DOSSETT: Yes, we will look for that. And
19 then if we can just reserve our objection that we might
20 have until we see if there are any so we don't get into a
21 HIPAA problem.

22 MR. CHRONISTER: That is fine.

23 MR. DOSSETT: All right.

24 MR. CHRONISTER: That is why I used the term
25 redacted to such an extent to get a protective order or

1 whatever you need on them.

2 MR. DOSSETT: Okay.

3 Q [BY MR. CHRONISTER]: One of your jobs as the
4 administrator was handling the staffing, right?

5 A Correct.

6 Q When you did the staffing, did you take into
7 account the fact that Ms. Brigance had sitters?

8 A As far as who we scheduled, do we --

9 Q Did you schedule less? Did you reduce your
10 staffing because of the fact that Ms. Brigance had sitters?

11 A Huh-uh. No.

12 Q Did you ever have any meeting with the staff to
13 instruct them on how to deal with people who have sitters,
14 whether it was Ms. Brigance, the Swinks, or anyone else?

15 A I don't recall.

16 Q Did the fact there was a sitter there change any
17 of your responsibilities to the residents?

18 A No, not to my knowledge. Not that I remember.

19 Q So unless there was a specific change in the care
20 plan, then you were to provide the same level of care to
21 these people with or without a sitter, correct?

22 A Or unless a family member would request something,
23 like if they would request that they want the sitter to
24 provide their showers and everything for them, then, you
25 know.

1 Q Well, I think there was, in fact, an amended
2 agreement on the Brigances for Sheryl Williams to do
3 Dorothy Brigrance's shower. Let me show you this one page
4 of an amended service agreement dated October 7th of 2009.

5 THE WITNESS: Do you want this as an exhibit?

6 MR. DOSSETT: I would like it, if you don't mind.

7 MR. CHRONISTER: We are going to. Mark, that is
8 only one page of it. There is like probably 20 or 30
9 pages, but I don't intend to make all of those exhibits.

10 MR. DOSSETT: That is fine. That will be fine.
11 Will that be 5? Will that be Exhibit 5?

12 MR. CHRONISTER: Yes.

13 THE WITNESS: Where is 4? Okay.

14 Q [BY MR. CHRONISTER]: And so if there was -- I
15 guess my question is do you recognize this document?

16 A I do.

17 Q And would that be a document you would generate
18 if, perhaps, a sitter was going to step in and perform some
19 of the duties normally done by your staff?

20 A Yes, consistently done by.

21 Q Okay. So if conversely, I guess, if there is not
22 any amended service agreement, then your staff would
23 continue to provide the full level of care as to anyone who
24 didn't have a sitter, right?

25 A Unless a resident would refuse care or unless, you

1 know, they chose to have somebody else do it that wasn't --

2 Q Do you specifically have any -- or do you have any
3 recollection of coming to Sheryl Williams and/or Ms. Upton
4 wanting to know their schedule so you could, quote,
5 schedule around them?

6 A Not specifically, no.

7 Q If they testified that you came and wanted to know
8 their schedules so you could schedule around their being
9 there, would you have any reason to dispute that?

10 A I don't remember specifically asking that.

11 Q But my question to you is if they said you asked
12 them, would you dispute that?

13 MR. DOSSETT: Object to the form.

14 THE WITNESS: I don't remember asking.

15 Q [BY MR. CHRONISTER]: Okay. And you can't tell us
16 what precipitated doing these releases in November even
17 though sitters had been there since January?

18 A I don't remember.

19 MR. DOSSETT: Objection. Asked and answered.

20 Q [BY MR. CHRONISTER]: Were you ever aware of any
21 complaints made against either Debbie or Sheryl by the
22 staff?

23 A You are asking did my staff come to me and
24 complain about --

25 Q Did your staff ever come to you and complain about

1 any problems that either Debbie or Sheryl were causing
2 because they were there as sitters for Ms. Brigance?

3 A You know, I don't remember right now. I don't.

4 Q Okay. So there is nothing that their being there
5 did to interfere or inhibit your staff doing their job for
6 Ms. Brigance, right?

7 MR. DOSSETT: Object to the form.

8 THE WITNESS: Can you ask that again, please?

9 Q [BY MR. CHRONISTER]: There was nothing that you
10 are aware of that the sitters did to inhibit or interfere
11 with your staff doing their job for Ms. Brigance?

12 A I don't know if it was that they -- inhibit might
13 be a good word. I don't know how to phrase this, but
14 maybe -- I recall Ms. Brigance at times would refuse to let
15 our staff do it if they were there, and does that answer
16 your question?

17 Q Was that documented anywhere in any of the charts
18 or notes or anything like that that you can remember?

19 A I don't remember.

20 Q Okay. Do you ever recall meeting Marcelena
21 Brigance, Ms. Brigance's daughter?

22 A I do. Can we go back to that, to the person you
23 asked about did they interfere or did they -- I believe,
24 and I may be wrong, and this is what I remember right now
25 is that this possibly could have been created because at

1 the time Ms. Brigance was not wanting us to help her with
2 her shower, she wanted Sheryl to.

3 Q Well, I think this was done, the shower
4 modification was made for Sheryl to do it October the 7th,
5 but these documents weren't prepared, then, until November
6 the 1st?

7 A But your question was did they inhibit or did
8 they -- I don't remember the specific words you used, but
9 did they, basically, keep The Brookfield's staff from doing
10 anything, and I think -- that could have been what had led
11 to that was that Mrs. Brigance preferred for Sheryl to do
12 that.

13 Q And this is just an amendment to the service
14 agreement that allowed that to happen, right?

15 A Yes.

16 Q But back to, now, Marcelena Brigance, do you ever
17 remember meeting Marcelena Brigance?

18 A I do.

19 Q Do you ever recall the circumstances under which
20 you met Marcelena?

21 A She came down, I believe, for a visit with her
22 daughter, I believe.

23 Q She and her daughter came to visit her mother?

24 A Correct, yes.

25 Q Okay. Go ahead. I'm sorry.

1 A I met her, yes.

2 Q Did you remember having some discussions with her
3 over complaints on answering call lights?

4 A I do.

5 Q And do you recall what she told you about problems
6 with call lights?

7 A The one specific incident -- instance that I
8 remember is when she came up and said that the call light
9 hadn't been answered, and at that time I went in and we
10 checked them, and I went back and it was working. And then
11 whenever I went back to her and showed her in the room
12 where it was showing up, that they were in fact working,
13 so . . .

14 Q But did she complain that they weren't working or
15 did she tell you they apparently weren't working because
16 nobody was coming to check on her mother when she rang the
17 call lights?

18 A I don't specifically remember how she stated that,
19 but I know that I went and we checked the call lights.

20 Q And I guess my question is for her to have a
21 concern over whether or not the call lights were working or
22 not, there would probably have been an incident where the
23 call light was not answered to raise that question,
24 wouldn't there?

25 MR. DOSSETT: Object to the form.

1 THE WITNESS: I don't know specifically what she
2 came to.

3 Q [BY MR. CHRONISTER]: Did you follow up on that?
4 Do you recall asking her what the problem was; how long
5 they had to wait; anything of that nature?

6 A I don't remember her -- the specific conversation.
7 I remember her bringing a concern to me. I remember
8 checking the lights. I remember having the phone in my
9 hand, standing in the room, pulling the call lights,
10 showing her that it was indeed showing up.

11 Q And again, was that documented anywhere that you
12 did that other than it is in your memory now that it was
13 done?

14 A I don't know that it was documented. I
15 specifically remember that.

16 Q Okay. Let's talk about Steve a minute. I know
17 you told us at first is one of the reasons you --the
18 reason, I guess, you left The Brookfield is that the stress
19 and pressures and concerns with Steve Brigance kind of got
20 the better you; is that a fair statement?

21 A No, it is not. The stress and the pressures, no.
22 It was the concern for my life and my children's life. I
23 mean, I have a family. The concern that, you know, that
24 he -- not knowing when he would react or act on any of his
25 emotions or his feelings and potentially -- you know, he

1 made it obvious that there was an issue with me. And I
2 felt that through the last trial and through the last
3 depositions, and I felt -- I felt for my safety and for my
4 children that it was not a safe place for me to be that
5 close to his home where he resided and lived and worked out
6 of and drove by daily and knew if I was there. And I felt
7 like it was just -- it was not a safe environment for me at
8 that time.

9 Q Well, let's go back in time. Before Jack
10 Brigance's accident, was your relation with Steve Brigance
11 good or did you believe it to be a good relationship?

12 A It was a professional relationship. It was a --
13 it was a family community relationship.

14 Q Did you visit with him regularly when he was in
15 and out of the facility, talk to him and say hi to him when
16 he came in and went out?

17 A Absolutely.

18 Q And did you have e-mails back and forth before his
19 father's accident?

20 A Yes.

21 Q All right. Now, after Jack's death, that
22 relationship changed, right?

23 A I would say that it did.

24 Q All right. And I think you already said this,
25 were you intimidated by Steve?

1 A I was uncomfortable. I wouldn't say intimidated.
2 I would say very uncomfortable because there would be times
3 that he would just come in and sit and not say a word to
4 anybody, but sit in the dining room as everybody was there
5 and just -- it was like we were constantly monitored by
6 him. And he wouldn't say anything, he would just sit
7 there.

8 Q So would he be sitting there with his mother, by
9 himself?

10 A With his mother.

11 Q Was it uncomfortable for you for him to be there?

12 A It was uncomfortable by his actions, I mean, we
13 invited any family members to be there. I mean, we
14 encourage that.

15 Q When you say --

16 A His actions made us uncomfortable.

17 Q Describe for me the actions that made you
18 uncomfortable. A minute ago you said he would just sit
19 there.

20 A Sit there and just look and watch, and it was
21 like -- like I said before, it was like we were constantly
22 monitored.

23 Q But we would be sitting with his mother?

24 A Correct.

25 Q And then would he go back to her room with her

1 when she finished eating?

2 A At times. I mean, I can't specifically -- I mean,
3 he may have left. He may go back with her. I mean, it
4 would vary. You know, very rarely would he sit with her
5 and eat -- I mean, at times he would maybe eat a breakfast
6 with him or something with her, but, I mean, very rarely
7 would he eat dinner or lunch with her, but he would just
8 sit there and just -- basically, we felt like he was
9 monitoring our staff.

10 Q So he would just come in and sit with her while
11 she ate?

12 A Yes.

13 Q And that -- any other actions that he did that
14 made you uncomfortable other than he would just sit with
15 his mother? I know -- maybe you were just sensitive to it.
16 I don't know. I am not trying to say anything either way,
17 okay, but other than just sit there with his mother while
18 she ate, would he ever be disruptive? Was he ever
19 threatening to you while he was there?

20 A A specific instance, and I think we talked about
21 this before in the other deposition was -- and maybe we
22 didn't. I don't remember. But he came in and brought an
23 employee that we asked not to bring in there, and basically
24 taunted us by saying, call the cops if you need to. She is
25 coming back here. She is doing this, and this is how it is

1 going to be, and do what you are supposed to do. And
2 somebody overheard him say -- well, because I was out of
3 the building that day, I believe somebody overheard him say
4 that, "Well, Mitzi is not here. There no use in doing
5 this," and they left. So I mean, I felt like that was a
6 target towards me, just taunting me saying ha, ha, ha, look
7 what I can do.

8 Q Did you ever talk to Mr. Brooks or to anybody
9 else, and I am excluding counsel from this because you were
10 a defendant in that suit, so don't tell me advice with
11 counsel, okay, but did you ever talk to Mr. Brooks or
12 anyone else associated with The Brookfield about your
13 concerns with Steve Brigance and coming back and forth to
14 The Brookfield to see his mother?

15 A No, I -- I wasn't concerned about him going to see
16 his mother. I was concerned about how he was responding to
17 the staff.

18 Q Well, was he ever rude to the staff?

19 A I don't know that I can say that he was rude.

20 Q Was he ever disrespectful to the staff?

21 A There were times where he was loud and very firm
22 with me about things and very demanding.

23 Q And give me some examples of times when he was
24 loud or demanding with you.

25 A Well, after his father was in the hospital, he

1 came in and was very angry. And I remember him behind the
2 desk, and he was very angry, and I -- this is hard for me
3 because usually I'm a very strong person, but when he
4 started getting louder and, I mean, I had started crying
5 then. And at that time he told me it wasn't my fault and,
6 you know, that we are going to -- you know, we are going to
7 make -- we are going to make this right. I am going to --
8 you know, he was loud then.

9 Q Did you ever have anyone tell you not to talk to
10 Steve Brigance or to avoid him?

11 A Absolutely not.

12 Q Did you ever try to go out of your way to avoid
13 him when he was there seeing his mother?

14 A No. Absolutely not.

15 Q Now, the employee you were talking about not
16 bringing back in there was Amanda; is that right?

17 A Yes.

18 Q I don't want to go into all the stuff we went into
19 before with Amanda, but you were aware that Steve wanted
20 Amanda to come in and sit with his mother?

21 A Yes.

22 Q And you did not want Amanda to do that?

23 A It wasn't that I didn't want Amanda to sit with
24 his mother. I didn't feel like she was -- at the time that
25 she had made some threats to The Brookfield, to us in

1 general, and that it was not in our best interest or
2 employees' best interest to have her in there.

3 Q And at that point in time, it is my understanding
4 the instructions to the staff were that they were to call
5 the police when Amanda was there?

6 A Uh-huh.

7 Q You made an "uh", but is that a "yes"?

8 A Yes, from what I remember.

9 Q And then after Steve brought Amanda to see his
10 mother, I think you told me, but what was your reaction to
11 the fact that Steve brought Amanda to see his mother?

12 A Well, because he actually -- I didn't know that he
13 had brought Amanda in the facility to see his mother until
14 there was some photos up on his mother's door. I mean, the
15 door in the hallway where everybody walks by, where
16 everybody can walk past, he had pictures on the door of
17 him -- of his mother and Amanda in her room.

18 Q I think when I had been out to the facility
19 before, there were several residents who had pictures on
20 the door of their room. Is that common --

21 A It is. Wreaths.

22 Q -- to put pictures on the door?

23 A I mean, they can decorate however they wish, but
24 wreaths, flowers, I mean, whatever, you see many different
25 things. You know, you don't -- I don't remember many

1 pictures. I remember a lot of wreaths.

2 Q Well, how long did it take you to find out, to the
3 best of your knowledge, that these pictures show up on the
4 door, how long had it been since Amanda had been there?

5 A I don't even remember now.

6 Q But nobody on the staff reported to you the day
7 you came back to work that Amanda had been there or there
8 had been any problems with Amanda? When you said Steve had
9 made some comments and staff had overheard things, is that
10 because you undertook some investigation after you saw
11 these pictures?

12 MR. DOSSETT: Object to the form.

13 THE WITNESS: We are talking about two separate
14 incidents.

15 Q [BY MR. CHRONISTER]: Oh, she came back to the
16 facility twice?

17 A She came back after -- I believe, if my memory
18 serves me correctly, I believe they came in to get some of
19 Dot's stuff. I don't remember if she had passed or if she
20 was in the hospital, but it was when Mrs. Brigance was not
21 in the facility.

22 Q The time that Amanda was there to see
23 Ms. Brigance, when these pictures were on the wall, you
24 only found out about that after the pictures went up on the
25 wall?

1 A And I don't even remember when she was in there.
2 I don't know that anybody knew that she was in there. I
3 don't know that -- I don't know. I don't remember.

4 Q There was no event such that the staff had
5 reported to you --

6 A That they had seen her.

7 Q -- ahead of time or immediately upon your return
8 to the facility that this had occurred, right?

9 A Not that I remember. I don't know that anybody
10 had seen her in there. I don't remember that anybody had
11 physically seen Amanda walk in during the time of the
12 pictures were taken.

13 Q When the state did their investigations on this,
14 do you remember talking to the state?

15 A On what -- did their investigations on what?

16 Q On Ms. Brigance. There were some things the state
17 investigated on this case. Do you remember talking to the
18 state about that?

19 A You are going to have to refresh my memory. I
20 don't. We had so many investigations with everything.

21 Q Well, was there a time that you suggested to the
22 state that Ms. Brigance was kind of a high maintenance
23 person and was making a lot of demands on the staff's time?

24 MR. DOSSETT: Object to the form.

25 THE WITNESS: You are asking did I tell the state

1 that?

2 Q [BY MR. CHRONISTER]: Yes. And I mean, I can go
3 dig the exact report out.

4 A If you could. I don't remember.

5 Q As I recall -- let me put it in context. As I
6 recall, at least in one of the state reports, you had made
7 the comment, well, Ms. Brigance -- I took it, and this may
8 not have been your words, was kind of high maintenance or
9 spoiled I guess is the right word because she was used to
10 having been one of the only ones there and, therefore, was
11 used to monopolizing a lot of time from people.

12 MR. DOSSETT: Object to the form.

13 Q [BY MR. CHRONISTER]: Do you recall making any
14 type --

15 A I don't recall making a statement like that, but I
16 mean, I can tell you that they were the first residents in
17 there and, you know, our building grew. And you know,
18 there -- Ms. Brigance probably did want more of our time.

19 Q And was there -- did you ever document anything
20 about any demands Ms. Brigance put on staff's time or that
21 she was overly demanding on the staff's time or anything
22 like that?

23 A I don't recall documenting that.

24 Q Do you ever recall talking with anybody from the
25 state, better than that, Ms. Medley, the ombudsman, do you

1 know who she was?

2 A I do.

3 Q Do you ever recall her being in the facility at
4 any point in time?

5 A Oh, yes. Many times.

6 Q Involving Ms. Brigance, do you remember her being
7 in the facility?

8 A Yes.

9 Q Do you recall how many times she was in the
10 facility?

11 A I couldn't tell you a number of times.

12 Q Do you remember having any specific conversations
13 with her about Ms. Brigance?

14 A You know, Debbie and I had many conversations
15 between Mr. Brigance, Mrs. Brigance. Can you narrow it?

16 Q Well, tell me what you remember about your
17 conversations?

18 A I don't remember specific conversations, I mean,
19 depending on different situations because there were
20 different things that she came in or called about.

21 Q But as it pertains to Ms. Brigance, do you have
22 any specific recollection of any of that?

23 A Not at this time. I mean, I would need something
24 to jog my memory. I don't --

25 Q Now, the issues on complaints with Ms. Brigance,

1 though, going back and forth here, the e-mails and other
2 stuff, were you aware that the Brigance family had some
3 complaints regarding answering call lights and toileting
4 issues for Ms. Brigance?

5 MR. DOSSETT: Object to the form. Can you put it
6 in a time.

7 THE WITNESS: Yes.

8 Q [BY MR. CHRONISTER]: In the September, October,
9 November time frame.

10 A I mean, I can't specifically say. I'm sorry, Rex.

11 Q Well, there is a series of e-mails here. There is
12 a series of e-mails, and these aren't all of them, but
13 there is a series of e-mails here starting, I think, in
14 October and running through November maybe 17th, 18th of --
15 I am not sure. Take a minute and look at those.

16 A (Witness complies.)

17 MR. CHRONISTER: Go off the record a minute.

18 THE VIDEOGRAPHER: The time is 5:53 p.m. and we
19 are off the record.

20 (Off the record.)

21 THE VIDEOGRAPHER: The time is 5:57 p.m. and we
22 are back on the record.

23 Q [BY MR. CHRONISTER]: In reviewing those e-mails,
24 I just want to ask you a couple of questions. First of
25 all, were there any of those e-mails in which Steve

1 Brigance was either offensive, rude or out of line to you?

2 A It is kind of like text messaging, I mean, you
3 can't read into it. How can I -- I don't --

4 Q But there was nothing in there that was rude or
5 offensive?

6 A Again, I have not read all of them. What I have
7 read, I don't see as anything offensive.

8 Q But I think in those he was making complaints
9 regarding call lights and toileting issues and asking for a
10 meeting and wanting the state to be present at the meeting.

11 A That is correct.

12 Q He also made reference to the fact that the
13 sitters were aware of ongoing problems because he wanted
14 them at the meetings.

15 A Okay. I don't see where he wanted them present,
16 but go ahead.

17 Q All right. I guess my question is so you were
18 aware during this time that the Brigances had complaints
19 regarding call lights and toileting issues?

20 A I mean, these are at different dates. Toileting
21 issues, I mean, were back in October.

22 Q And did you do any investigation that you can
23 point us to where you investigated those toileting issues
24 back in October?

25 A Back in October. I mean, ask that again, please.

1 Q Do you have any documentation -- other than the
2 report we saw here earlier, have you got any other
3 documents, any other paperwork where you investigated this
4 stuff? I mean, quite frankly, Mitzi, here is a guy you are
5 a little intimidated by. He is making complaints about the
6 care for his mother.

7 A Uh-huh.

8 Q But you didn't document or write down or do
9 anything to -- do you have any paperwork is what I am
10 asking you to tell us what you did; how you investigated
11 this; or what the outcome of your investigations were?

12 MR. DOSSETT: Object to the form.

13 THE WITNESS: I don't know that I have per se a
14 paper trail or anything, but I can guarantee you when Steve
15 Brigance asked me to do something, boy, I got on that
16 quick. You know, quick.

17 Q [BY MR. CHRONISTER]: But there is nothing that
18 you have that you can point either Mr. Dossett or I to
19 today to say this is what I got on it; this is what I found
20 out; and here was the result of that?

21 A I don't know -- I can't give you a document, but
22 some of the things I can definitely tell you the scenario.

23 Q And I want you to tell me the scenario, but again,
24 you had never documented any of it, right?

25 MR. DOSSETT: Object to the form.

1 Q [BY MR. CHRONISTER]: Never put in writing?

2 MR. DOSSETT: Object to the form.

3 THE WITNESS: I don't know that some of these
4 would have warranted documentation.

5 Q [BY MR. CHRONISTER]: Did you ever go talk to the
6 two sitters for any of the problems that they had
7 documented?

8 MR. DOSSETT: Object to the form.

9 THE WITNESS: They had documented where?

10 Q [BY MR. CHRONISTER]: As far as -- assume for a
11 moment that the sitters maintained a log --

12 A Uh-huh.

13 Q -- of problems or events --

14 A Okay.

15 Q -- that included problems with call lights and
16 toileting with other stuff. Did you ever go talk to them
17 or get any investigation from them?

18 A I did not, I mean, if they had an issue with
19 anything that they saw or if they brought it to my
20 attention, I can assure you that if it was brought to my
21 attention, it was taken care of; that it was investigated
22 some way, somehow, and restored.

23 Q But that would be something that you would have a
24 recollection of, but again, I know I am beating a dead
25 horse here, but it wouldn't be documented anywhere?

1 MR. DOSSETT: Object to the form.

2 Q [BY MR. CHRONISTER]: Right?

3 A It may well have been.

4 Q Okay.

5 A Again, back to the green beans scenario, you know.

6 Q Okay. Let me ask you this. Let's look at --

7 let's look at this exhibit. Well, as I recall from

8 Mr. Brigance's -- okay, let's make those e-mails.

9 As I recall from Mr. Brigance's deposition, if you
10 had an incident where someone is injured and has to be
11 taken to the hospital, there should be a formal incident
12 report prepared for that; is that right?

13 A Again, Rex, I mean, I don't know the policies
14 again right now. I have been out of that for a while. I
15 don't remember exactly.

16 Q Well, would you agree with me that there was an
17 incident report created when Mr. Brigance was injured? And
18 in fact, you had it -- I am not giving you any reasons why,
19 wherefore, anything else like that, but there was an
20 incident report prepared that you actually had rewritten
21 because of the wording of the first report. Do you recall
22 that?

23 MR. DOSSETT: Object to the form.

24 THE WITNESS: Can I have a minute?

25 MR. CHRONISTER: Yes.

1 MR. DOSSETT: Let's go off the record a minute.

2 THE VIDEOGRAPHER: The time is 6:02 p.m. and we
3 are off the record.

4 (Off the record.)

5 THE VIDEOGRAPHER: The time is 6:03 p.m. and we
6 are back on the record.

7 Q [BY MR. CHRONISTER]: Let me rephrase the
8 question.

9 A Okay.

10 Q When Jack Brigance fell or the door came off on
11 him, there was an incident report that Amanda Broughton
12 created, right?

13 A Correct.

14 Q And there was something, whatever it was, about
15 that incident report that you did not think was proper and
16 asked Amanda to rewrite it, right?

17 MR. DOSSETT: Object to the form.

18 THE WITNESS: That is incorrect.

19 Q [BY MR. CHRONISTER]: Okay. Tell me about it,
20 then.

21 A What I recall was whenever she had written the
22 report and we had looked at it and brought it in and talked
23 to her about the report that she wrote, she is the one that
24 looked at it and said, "Oh, I should have wrote he stated
25 that," and she changed it.

1 Q Okay. But there was an incident report prepared?

2 A Correct.

3 Q And as I recall from that deposition, one of the
4 things that you did say was that those incident reports
5 were prepared when someone was injured and had to go to the
6 hospital; that you had those created for your file.

7 So my question to you is throughout all of the
8 discovery in this case, I have never to this day seen an
9 incident report for Dorothy Brigance's injury. Were you or
10 are you aware of one ever being created?

11 A I don't know the answer to that. I don't -- there
12 could have been; there could not have been. I don't know
13 the answer to that.

14 Q Well, if you are the administrator, you went over
15 the report for Jack with the employee who wrote it, right?

16 A Correct.

17 Q Did you ever ask for a report on Dorothy?

18 A It has been so long ago, Rex, I don't -- I don't
19 recall.

20 Q Did you ever interview the employee about
21 Dorothy's incident?

22 A I do remember asking the staff members on staff
23 that night what had happened.

24 Q Did you document any of that?

25 A I don't remember.

1 Q Did you ever look at Ms. Brigance's patient chart
2 for the incidents or events of that night?

3 A I don't know that I did.

4 Q Let's look at Exhibit 1 for a second. And did you
5 ever look at this where a part had been marked out and
6 wrote error on Ms. Brigance's chart for the events of that
7 night?

8 A What date did that happen again?

9 Q It happened on the 19th. Right here where this is
10 marked out and it says error.

11 A I don't remember this. I don't remember seeing
12 this until today.

13 Q So you have no recollection of going back and
14 looking at the chart or asking for an incident report or
15 documenting what anybody told you?

16 A I don't remember. I remember talking to the
17 staff.

18 Q How many accidents involving death occurred at The
19 Brookfield during your term as the administrator?

20 MR. DOSSETT: Object to the form.

21 THE WITNESS: Could you ask that question again,
22 please.

23 Q [BY MR. CHRONISTER]: How many accidents or
24 incidents occurred at Brookfield while you were the
25 administrator where someone died?

1 A I mean, I don't know if it was determined -- I
2 want to be real careful how I word this. I don't know if
3 Mr. Jack Brigance's death resulted in -- I don't now how to
4 term that, but you are asking if any incident happened at
5 the facility that resulted in a death?

6 Q Yes.

7 A And I don't know that the incident specifically
8 resulted in Mr. Brigance's death. I don't know all of the
9 logistics of that.

10 Q But there was Jack Brigance and then Dorothy
11 Brigance.

12 MR. DOSSETT: Object to the form.

13 THE WITNESS: Yeah, I mean --

14 Q [BY MR. CHRONISTER]: What is your understanding
15 of what happened to Ms. Brigance?

16 A What I remember was from what -- because I was not
17 at the facility at this time during this incident.

18 Q When did you find out about this incident?

19 A You know, I don't remember if it was the night of
20 the incident or the next morning. I don't remember.

21 Q Do you remember having the police come out there
22 and investigate?

23 A I remember having them coming out the next
24 morning.

25 Q Who called -- who made that call? Did you make

1 that call?

2 A Yes. I did, yes.

3 Q So you may have found out about it that night or
4 the next. Did you go -- if you found out about it that
5 night, did you go to the facility that night?

6 A Then again, I don't know when I found out about
7 it. I returned to the facility the next morning.

8 Q But other than the police report, you didn't
9 prepare, to the best of your knowledge, an incident report
10 or any other written investigation that you did of the
11 events of that night?

12 A I don't remember. I don't. Again, I remember
13 talking to the staff. I don't remember if I wrote down
14 what they told me. I don't remember -- I remember talking
15 to them to find out what had happened. And at the same
16 time the policeman may have been in there with me at the
17 same time that we talked to them.

18 MR. CHRONISTER: I don't have anything further.

19 MR. DOSSETT: We will reserve our questions for
20 trial.

21 THE VIDEOGRAPHER: The time is 6:10 p.m. and this
22 concludes this deposition.

23 (Deposition concluded at 6:10 p.m.)

24 * * * * *

25

CERTIFICATE

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN) ss

I, Veronica Lane, a Certified Court Reporter, a notary public in and for the aforesaid county and state, do hereby certify that the witness, MITZI BAILEY, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me stenographically and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

VERONICA LANE, CCR
Certified Court Reporter
and Notary Public
State Certificate No. 462

My Commission Expires:
June 28, 2015