

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 CIVIL DIVISION

3
4 STEVEN A. BRIGANCE, as personal
5 representative of the Estate of
6 Maurice Brigance, Jr., deceased
7 and on behalf of the wrongful death
8 beneficiaries of Maurice Brigance, Jr.

PLAINTIFFS

9 vs. CASE NO. CV-2009-651 (VI)

10
11 THE BROOKFIELD AT FIANNA OAKS, LLC
12 d/b/a THE BROOKFIELD AT FIANNA OAKS;
13 WILSON, DARNELL AND MAN, PA;
14 CRAWFORD CONSTRUCTION COMPANY;
15 CRAWFORD CONSTRUCTION COMPANY, INC. ;
16 ROBERT "BOB" BROOKS; and MITZI BAILEY

DEFENDANTS

17 VIDEOTAPED DEPOSITION

18 OF

19 JEANIE MADDOX

20 (Taken November 19, 2010, at 10:49 a.m.)
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APPEARANCES

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ALSO PRESENT: ROBB HELT, Videographer

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TESTIMONY OF JEANIE MADDOX

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DEPOSITION CONCLUDED

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COURT REPORTERS CERTIFICATE

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CAPTION

ANSWERS AND ORAL VIDEOTAPED DEPOSITION OF
JEANIE MADDOX, a witness produced at the request of
the PLAINTIFFS, taken in the above-styled and
numbered cause on the 19th of November, 2010, before
Shana Leding, Arkansas Certified Court
Reporter, at 10:49 a.m., at Kutak Rock, LLP, 234 E.
Millsap Road, Suite 400, Fayetteville, Arkansas.

1 THE VIDEOGRAPHER: This is a videotape
2 deposition of Jeanie Maddox taken on behalf
3 of the plaintiff. Today's date, the 19th of
4 November 2010. The time is 10:49 a.m. and
5 we're on the record.

6 All counsel present from the previous
7 depositions in this matter are again present
8 for this deposition. And would the court
9 reporter please swear in the witness.

10 WHEREUPON,

11 JEANIE MADDOX

12 after having been first duly sworn, deposes and says in
13 reply to the questions propounded as follows, to-wit:

14 DIRECT EXAMINATION

15 BY MR. CHRONISTER:

16 Q. Good morning, ma'am.

17 A. Hi.

18 Q. My name is Rex Chronister and I'm here to take
19 your deposition. You've been listed as an expert
20 witness in the case we have set for trial starting the
21 Monday after Thanksgiving.

22 Would you state your name for us, please?

23 A. Jeanie Maddox.

24 Q. And, Ms. Maddox, where do you live?

25

1 A. 6405 South Fresno in Fort Smith, Arkansas.

2 Q. How long have you lived in Fort Smith?

3 A. Since 1976 -- 33 -- 34 years.

4 Q. So you and I both had to drive up here to take
5 your deposition here versus Fort Smith.

6 A. Yes.

7 Q. Well. Tell me a little bit about yourself. We
8 never ask -- like to ask a lady her age, but how old
9 are you?

10 A. I had a birthday yesterday. Okay. Well, I -- I'm
11 a registered nurse. I have been since -- well, '73, a
12 long time. I'm as old as dirt, so let's put it that
13 way. And I've had a varied career being an RN.

14 What -- what all do you want to know?

15 Q. Well, take -- take me back through just some basic
16 educational stuff to where -- where were you born?

17 A. I was born in Philadelphia, Mississippi, went to
18 school in Mississippi 12 years and then to nursing
19 school, graduated with an Associate Arts degree in
20 nursing, 1973.

21 Q. And where was that from?

22 A. That was from Meridian Junior College, at that
23 time.

24 Q. Okay. Is that junior college still in existence
25 or has it changed?

1 A. It is a four-year school now.

2 Q. All right.

3 Q. And, actually, I had gone to a diploma program
4 prior to going to that associates arts school.

5 Q. And then -- so take me on from there.

6 A. Well, I worked in our local hospital there for,
7 oh, a couple years as a release supervisor for -- it
8 was a nursing home and hospital combination -- for
9 3:00-11:00 and 11:00 to 7:00 shifts. I did that for,
10 let's see, probably about a couple of years and then I
11 moved to -- I got married and moved to Dyersburg,
12 Tennessee with my husband, who was in oil and gas,
13 lived in Dyersburg for a year and a half, worked at the
14 local hospital there.

15 Q. And what -- just my curiosity -- where is
16 Dyersburg, Tennessee?

17 A. Well, it's about 80 miles -- I think it was like
18 west of Memphis -- let's see, north of Memphis. I
19 don't know. We used to go to Memphis, anyway, for
20 weekends.

21 Q. All right.

22 A. It's been a long time since I've been back to
23 Dyersburg. Let's see -- well, actually, I was a OB
24 nurse there. I've done lots of different types of
25 nursing. As I said, I've had a varied career.

1 Moved to Fort Smith in -- in '76 to stay and
2 been there ever since. I worked at St. Edwards
3 Hospital in the emergency room and OR -- well, recovery
4 room for a little while, but may be in the emergency
5 room part-time. Then I worked for my husband about
6 five years. I dropped out of nursing and worked for
7 him for about five years in some of the dusty
8 courthouses around Arkansas carrying oil and gas, you
9 know, title. So --

10 Q. Land and title work?

11 A. Yes. Uh-huh.

12 Q. So what years did you do that?

13 A. That would've been probably '80 -- '81 -- '81 to
14 '86 probably, went back into nursing in '86 then.

15 Q. And when you went back into nursing, what job did
16 you go back to?

17 A. Actually, I worked for PRN, which was, you know,
18 an employment agency in Fort Smith, because I was just
19 working part-time. So I worked at St. Edwards mainly -
20 - St. Edwards and then some private duty, I believe.
21 Then I did that for a couple of years just part-time.
22 And '87 I was nursing supervisor -- became a nursing
23 supervisor at the ICFMR, which was around -- with Life
24 Care Center in Fort Smith.

25 Q. And what was --

1 A. That's an ICFMR, which just means it's an
2 intermediate care facility for mentally challenged,
3 mentally disabled, mentally retarded children.

4 Q. Okay.

5 A. And, let's see -- are you -- you're sure you want
6 all this history? Okay.

7 Okay. After that then, actually, I went to
8 work for Arkansas Foundation for Medical Care. AFMC is
9 the -- is the name and they had a contract with the
10 Office of Long-term Care in Arkansas and so they had a
11 -- it was the federal contract to do what they call
12 IOC, inspection of care. I was part of the inspection
13 care team, in the state of Arkansas, and it was a part
14 of the Ombudsman 87 Act. And --

15 Q. Let's explain that a little bit to me.

16 A. Okay. Well, they were trying to determine exactly
17 the kind of care that was being given to Medicaid
18 residents. You know, this was a pilot program and so
19 it was -- it funded by the federal government. It was
20 a contract to AFMC, which they subcontracted in to --
21 or they subcontracted that from the state -- the state
22 of Arkansas that did it -- contracted it to AFMC to do.
23 So there was like teams of about six nurses -- or there
24 were six teams of nurses, two on each team, so I did
25 Northwest Arkansas. I worked from Fort Smith to

1 Russellville over to Harrison, Mountain Home area.

2 That was my territory.

3 Q. And what exactly do -- did that job entail you
4 did?

5 A. I went into nursing homes. I went into nursing
6 homes and we did -- utilization -- I was utilization
7 review nurse and so I did a hundred percent Medicaid
8 charts. That meant observation of all the Medicaid
9 residents in nursing homes, at that time, and chart
10 requirements -- you know, the federal requirements for
11 different things pertaining to the care, you know, the
12 delivery of services and care for the elderly.

13 Q. And that was for -- in nursing homes themselves?

14 A. That was in nursing homes, yes, sir.

15 Q. At that point in time, Arkansas, I don't even
16 think, had assisted living facilities, did they?

17 A. No. No. Assisted living did not come to Arkansas
18 till probably about '03 -- 2003.

19 Q. Okay. So finish. I got my --

20 A. Okay.

21 Q. -- kind of --

22 A. Well, after AFMC, then I worked for a little while
23 -- oh, I don't know, probably eight or nine months for
24 Beverly Enterprises as a corporate RN and I traveled
25 with that job.

1 Q. Do you -- when you did the work for -- and I'm
2 losing the initials again -- AN --

3 A. AFMC.

4 Q. AFMC.

5 A. Arkansas Foundation of Medical Care. They are the
6 peer review organization -- well, organization for the
7 state of Arkansas. They do a lot of federal contracts.

8 Q. And do they do peer review for just nursing homes?
9 Do they --

10 A. They do peer review for doctors' offices, for
11 numerous things. I mean, people have to actually --
12 well, I don't know what all they do now, because that's
13 been, you know, many years ago. I'm sure that they
14 have -- they have other -- I think they do medical --
15 well, for doctors -- medical doctors. They do peer
16 review on medical doctors, for different kinds of
17 facilities, I think, but, you know, I'm not for sure.

18 Q. Was that your first -- at the time you worked for
19 them, is that the first time you had done any work in
20 the nursing home field?

21 A. No, sir. I, actually -- when I graduated from
22 nursing school and while I was going to nursing school,
23 I worked in our local nursing home in Philadelphia,
24 Mississippi.

25 Q. And what was that job there?

1 A. It was -- well, mainly, you know, delivering
2 medications to the patients that were in the nursing
3 home. I was just -- I was the charge nurse.

4 Q. All right. So when you finished the peer review
5 job, you went to work for Beverly for a period of time?

6 A. Yes. I had went to work for them, I think, it was
7 probably about eight or nine months and I had seven
8 facilities that I oversaw as -- as being their nursing
9 consultant. I worked with a regional manager. And it
10 was constant road travel, constantly being away from
11 home, so I went back to work for AFMC after about nine
12 months.

13 Q. Okay. Let me ask you a little about the Beverly
14 time. When you were there, you weren't in any one
15 particular facility?

16 A. I was -- usually spend -- like, for instance, if I
17 was going to the one at Harrison, I would spend the
18 week there. And, usually -- I mean, I spent -- you
19 know, it was every week I was somewhere and I would
20 spend the week usually in a facility.

21 Q. And what did you do at those facilities?

22 A. Well, a lot of it was probably -- mainly, just
23 overseeing -- helping with administration. Of course,
24 the director of nursing in those facilities, I was her
25 main, you know, resource for any kind of issues or

1 problems that might be going on.

2 There was one occasion when I was actually
3 called to go into a facility that was not necessarily
4 designated as my facility, but to help with the fast
5 track, which the state had given this -- this
6 particular facility a fast track to get things, you
7 know, in compliance. So if there was something out of
8 compliance, I was a part of the team of people that
9 would help to, you know, work really hard to get that
10 facility back in compliance. Sometimes, if that meant
11 being an aide -- I did everything, except cook. There
12 were times I did everything except cook.

13 I was -- I was director of nursing sometimes.
14 Sometimes I was a CNA. So, you know, I did whatever it
15 took to get the job done and to take care of people?

16 Q. And then when you left Beverly, you went back to
17 AFMC?

18 A. Yes, sir.

19 Q. And then how long did you stay with AFMC?

20 A. Well, that contact with the state -- let's see,
21 that was -- I worked for them as long as the contract
22 lasted and so it was several months until that contract
23 was over and they did not renew that contract. And
24 that would've been, probably, maybe, 1989, somewhere
25 along there. I can't remember for sure -- '90 -- 1990,

1 maybe, I can't remember.

2 Q. And then I --

3 A. It could have been --

4 Q. You went to work for a company, was it Liaison,
5 Inc.?

6 A. That was -- yes. That was Workman's Comp case
7 management and I did that for about a year. And that
8 was a facility that was -- I mean, not a facility --
9 it's not a facility. It's a -- it's a business that's
10 in -- it was in Dallas, Texas. And -- and so I did
11 Workman's Comp case management, which was, mainly, I
12 would have to go with a Workman's Comp claimant, you
13 know, like to doctor's appointments. I would set up
14 doctor's appointments for them. It might be for
15 therapy. It might be for just, you know, whatever that
16 I was called upon to do, you know, to facilitate the --
17 getting through the -- you know, working through the
18 injury or whatever had happened and making sure that
19 the care was appropriate and so forth.

20 Q. And then you went to work, I guess, for the
21 Arkansas Department of Human Services?

22 A. Yes, sir.

23 Q. And tell me about that job.

24 A. Okay. Well, I was hired as utilization review
25 nurse. That was what we were called, utilization

1 review nurses and I was a part of the team of people
2 who did the annual inspection -- surveys in nursing
3 homes.

4 Q. Explain to me how those work?

5 A. Well, the federal -- there are federal guidelines,
6 of course, and there's also state guidelines, but,
7 mainly, we did the federal guidelines. And the feds,
8 you know, it's the same in state -- from state to
9 state, you have the same set of guidelines. So,
10 basically, I was one of the nurses and I would have to
11 look at skin care. I mean, I would watch treatments
12 being done in nursing homes. I would do a medication
13 paths with the nurses doing medications, a lot of chart
14 review where we'd have to make sure that there were
15 certain criteria that you had to meet for federal
16 guidelines, as far as documentations, things like that.

17 Q. Were these all skilled nurses in these nursing
18 homes?

19 A. Yes, they were -- well, when you say skilled --
20 okay. There is -- in the beginning of nursing homes,
21 they were just called nursing facilities and then
22 somewhere -- I don't know exactly what year that
23 Medicare began to reimburse nursing homes for skills
24 that -- in other words, they began to have what they
25 call SNF Units in nursing homes. And that just stands

1 for skilled nursing facility within a nursing home and
2 Medicare was the -- Medicare would reimburse you 100
3 percent. And, usually, those skilled units held people
4 that had tremendous acute -- you know, they needed
5 acute care nursing. And you were allowed to staff a
6 little bit differently on those units. And so I did,
7 you know, both, I mean, within the nursing homes, you
8 did just the regular nursing home patient plus the
9 skilled patients.

10 Q. And were -- at that time, were there any of the --
11 when you first began, and I want to say, at least, from
12 your CV, it started in about '92?

13 A. Uh-huh.

14 Q. And there were no assisted living facilities,
15 either level I or level II, at the time?

16 A. That's right. Uh-huh. They're RCFs. Now,
17 they're residential care facilities.

18 Q. When all -- when they went to a breakdown of
19 assisted living facilities, did you continue your work
20 within the assisted living facility areas, too, or was
21 all of your work in what is now, I'm going to
22 generically call, skilled nursing?

23 A. No, I converted over. Within -- within the Office
24 of Long-term Care, there was an opportunity given in
25 about '95, '96, somewhere like that. They -- well,

1 this is going to get complicated. They have what they
2 call case mix nurses and I was one of the case mix
3 nurses that --

4 Q. What is a case mix nurse?

5 A. Well, they don't even have them anymore. And that
6 -- it was a program that never really got off the
7 ground. So I probably should just not even go there.
8 It was -- they were going to try do Medicaid
9 reimbursement the same way that they had done Medicare
10 reimbursement. They were developing forms like a
11 minimum data set. I don't know if you're familiar with
12 any of this terminology. They have what they call the
13 MDS to capture the dollars that are spent -- money that
14 is spent, therapies, what -- all the -- everything that
15 happens to a skilled -- to a skilled person, you know,
16 in a nursing home.

17 Q. Uh-huh.

18 A. And that Medicare reimbursements that person for -
19 - they have to have what they call a minimum data set.
20 And so they were -- the state of Arkansas was one of
21 the -- it was a pilot program, again. They were trying
22 to determine if they could reimburse Medicaid, or
23 facilities could get Medicaid reimbursement based on a
24 minimum data set. In my group of nurses, that was what
25 our focus was. But until that program got started then

1 -- the -- my case fix nurses were given the residential
2 care facilities to start inspecting, because they were
3 behind in those areas -- in adult day care. So I
4 started inspecting residential care facilities and
5 adult day cares. And then, as a result of that, the
6 state of Arkansas started exploring and investigating
7 assisted living, because we didn't have what we call
8 the assisted living in Arkansas.

9 And so they went to other states to look at
10 their programs and, you know, that sort of thing. And
11 then I became one of the nurses that started doing the
12 assisted living facilities. I was one of the very
13 first -- well, I was part of the team that did the very
14 first survey for the very first assisted living in
15 Arkansas.

16 Q. Tell me what a survey is.

17 A. Well, a survey is -- there's a certain standard of
18 care that you have to provide for residents in any
19 facility in the state. And so a survey is just a way
20 that you go into that facility. It's an inspection.
21 It's either -- it's interchangeable -- inspection and
22 survey is the same thing.

23 Q. And what is the -- when you say, there's a certain
24 standard of care, tell me what that standard of care
25 is.

1 A. The standard of care is the regulations. In
2 Arkansas, if you've looked at these assisted living as
3 the regulations, that's the standard. That is the
4 standard. There's -- there are things that you have to
5 meet, as far as delivery of services.

6 In the -- in the assisted livings, you don't
7 have what you call a care plan. You have a service
8 plan, because residents are considered to be
9 independent and you allow their -- them to be as
10 independent as long as possible. So you deliver
11 services to them. And their services can be anything
12 from minor bathing assistance up to giving them a total
13 shower or bath, medication administration, or it can be
14 assistance with administration -- with -- with
15 medications.

16 Q. It's -- it's, basically -- let me see if I'm
17 understanding what you're telling me. What -- what you
18 do there within an assisted living facility is kind of
19 come up with an individual plan for each of those
20 residents to meet their needs and let them be as
21 independent as they can be?

22 A. Yes, sir. Yes, sir.

23 Q. Is that -- is that a fair statement?

24 A. Yes. Assisted living fosters independence. It --
25 we try to allow the resident to remain as independent

1 and help them to remain as independent for as long as
2 possible and let them age in place, you know, like if
3 come to an assisted living. And -- and most of my
4 focus is level II facilities. Because that's the
5 company that I work for now, that if -- and there were
6 more level II facilities actually in Arkansas than
7 there -- then there are AL-Is.

8 Q. And what is the difference within the regs between
9 AL-Is and AL-IIIs?

10 A. Well, the basic difference -- probably the biggest
11 difference, at this point, is the fact that AL-IIIs are
12 allowed to participate in the Medicaid Waiver Program
13 and AL-Is are not. It's all private pay money. The
14 Medicaid Waiver Program, in Arkansas, actually allows a
15 level II facility to take care of what they would
16 consider a level III resident that would be in a
17 nursing home. In other words, you're allowed to take a
18 nursing home resident in an AL-II where as an AL-I,
19 you're not.

20 Q. And is -- I think, an AL-II is required to have an
21 RN on staff?

22 A. Yes, sir. Well, you can have one on contract.
23 They don't -- you don't have to be particularly
24 employed by the AL-II, as long as you can have one on
25 contract, can be reached by pager or phone, or, you

1 know, can be reached easily. And, yes, you do have to
2 go onsite and -- I mean -- and I work strictly, you
3 know, for a company that I am their RN.

4 Q. Now, I'm missing one -- when -- you left the
5 Department of Human Services in 2007?

6 A. Yes, sir, January.

7 Q. Why did you leave there?

8 A. Well, I'd been there for 15 years and I had really
9 just felt that it was my time to go. I wanted to do
10 something else. I was approaching 60 years old and I
11 wanted to do something else with my life and I felt
12 like that I have something to contribute. I love the
13 geriatric population. I'd always had a, you know,
14 affinity, I guess, for elderly people and I was getting
15 older myself. But I just wanted to do something
16 different and I felt like I had an opportunity that had
17 come to me. And so the door had opened for me to try
18 something different and that was to go to work for
19 Willowbrook, which was owned by the Americas
20 Corporation in Fort Smith.

21 Q. And what did you do for Willowbrook?

22 A. I was the executive director there, which is the
23 same as an administrator.

24 Q. So you were, effectually, the administrator of the
25 facility?

1 A. Yes, sir. That was my very first time to be an
2 administrator.

3 Q. And tell me what duties that entailed being the
4 administrator.

5 A. Well, you know, it's -- you are -- you're -- are -
6 - you're the main person in the facility. Everything
7 comes to you. I mean, it's like -- yes, you have
8 department heads and, hopefully, you have department
9 heads that carry out their own -- their duties and do
10 their jobs. But you're over those people, you know.
11 There were certain things that I had to do, as far as
12 like -- well, on a weekly basis, I had to submit all of
13 the invoices to the corporate office. I'd have to do a
14 spend down every week, keep up, keep track, you know,
15 of the money, keep track of -- we had, you know,
16 budgets to follow. Each department had a budget. And
17 they were supposed to try to, you know, work within
18 their budget and then they would do -- they would track
19 their money that they -- the outgo of the week and then
20 they would give it to me on Fridays and I'd have to put
21 the spend down into the computer and send it to the
22 corporate office.

23 And a lot of that, you know -- I guess, the
24 biggest part of being a -- being an administrator in
25 the facility is dealing with families with the

1 residents making sure that their needs are met, making
2 sure that they're happy. You know -- you know, you
3 can't make of all happy, but you do spend a lot of time
4 doing a lot of just, what I call, you know, just good
5 PR.

6 Q. Do -- do -- do you make sure that the -- the rooms
7 are safe and the facility is safe for their use as an
8 administrator?

9 A. Well, there would be times, maybe, that you would
10 go and look at a situation or, maybe, you know, if
11 somebody come to you and said -- you know, ask you,
12 specifically, to maybe come look at something, you
13 would do that. But if there was -- you know,
14 sometimes, you would just leave it to your maintenance
15 man to --

16 Q. Would you ever review the work the maintenance man
17 did?

18 A. Yes, you could. I mean, if it was something that
19 a family member asked you, I guess, to follow up on or
20 something like that and you wanted to make -- if you
21 had to get back to them. Say, for instance, if they,
22 you know, called you about it. They were out of state
23 -- let's just say, you know, if it was somebody out of
24 state and they called you about something and -- that
25 mom was concerned about or whatever and that you would

1 need to get back them, but it wouldn't necessarily be a
2 maintenance issue. It'd be most anything. You know,
3 it could be anything.

4 Q. And so the administrator -- everything kind of
5 comes to the administrator to filter out; is that what
6 you're telling me?

7 A. Yeah, it could. Yes, it -- it certainly could.

8 Q. When you were at the Willowbrook, did they have a
9 governing body?

10 A. Yes, sir, I believe, we did.

11 Q. And did the Willowbrook have a -- is it quality
12 assessment or quality assurance unit; which is it?

13 A. Uh-huh. Yeah, QA. Yeah. It's a requirement in
14 the state of Arkansas that you have to have a QA.

15 Q. And what -- what does a QA do?

16 A. Well, basically, the QA is there to identify and
17 investigate areas within your facility, maybe, where
18 you have a weakness, where you know that -- say, for
19 instance, you were having a lot of falls or something.
20 And you're going to -- well, most every facility has a
21 way to track falls in a facility and you're looking at
22 whether this had happened more on this shift as opposed
23 to this shift. Just, you know, things like that. That
24 would be part of your QA that you would look at those
25 kinds of things and see how you could identify if there

1 was a problem, how you could eliminate that problem and
2 work really hard at -- it could be -- main -- mainly,
3 it was food. I mean, food is a big deal to older
4 people and I would have to say that the biggest QA
5 issue in most any facility is food complaints and so,
6 like, you have a food committee that works really hard
7 at trying to --

8 Q. Do you have a maintenance or a safety committee
9 within the QA?

10 A. It's not a requirement, but -- I can't say that at
11 Willowbrook that we had -- we had a safety committee,
12 but -- certainly, we have a way to track -- we -- you
13 know, we had to track -- a way to tract the falls. I
14 mean -- I mean, people fall. I mean, this population
15 falls, so...

16 Q. Well, in -- within that, would you have a way to
17 track and be sure that maintenance issues or physical
18 issues within the facility didn't increase the
19 likelihood of injury or risk to your residents?

20 A. Now, ask that again. Say that again, because I --

21 Q. All right. Does the -- if what you're looking at
22 with your quality assessment unit, does it, also, look
23 for perhaps problems within the facility that could
24 increase the risk of falls or injuries to the
25 residents. If you have -- by example, if you have a

1 handrail loose, if you have a problem in a room with
2 something that's making the floor unlevel --

3 A. Uh-huh.

4 Q. -- if someone brings in rugs that don't have
5 rubber backing on them, are those things that the
6 quality -- the QA would look for?

7 A. Well, I'll just use the rug as an example. The
8 rug is something that you fight on a daily basis. Any
9 time that you admit a resident in the facility, you're
10 going to have extension cords and you're going to have
11 rugs that don't have rubber backing. Those are the
12 kind of things that everybody has to follow up on, not
13 just -- not just your maintenance man, but housekeeper,
14 CNAs, anybody that's in the room, you know. Yes, so, I
15 guess, you could say that that would be -- that would
16 be safety issues that you have to -- everyone has to be
17 aware of.

18 Q. And that's something everybody should follow
19 through --

20 A. Yes, that's something everybody needs to be aware
21 of.

22 Q. Okay. And how does the QA work with the
23 administrator, or do -- do they work with you?

24 A. Well, the administrator usually does the meeting
25 and, you know, usually, it's going to be department

1 heads that are going to be part of that QA team. And
2 so the administrator sets the meeting date and time
3 usually and, you know, make sure that it's done --
4 conducts it, so...

5 Q. And -- and if the administrator is in -- if the QA
6 is doing its job and brings things to the administrator
7 that are problems or issues they see, what does the
8 administrator do from there?

9 A. Well, usually, somebody is given to -- you know,
10 somebody is given -- is delegated out, usually, to the
11 department that it should go to. If it's food, you
12 know, or if it's a maintenance issue, if it's nursing,
13 I mean, it's given to that department head to implement
14 and make sure that it is followed through on. Whatever
15 decisions are made in the QA meeting, you know, if
16 whatever, you know, is done in there, or decisions that
17 are made.

18 Q. And how does the governing body then interface
19 with all of that?

20 A. Well --

21 Q. Or do they?

22 A. Okay. You know, I'll just let -- I'll just use
23 the Willowbrook as an example. My -- the governing
24 body at Willowbrook, you know, and -- this is never --
25 there's not like some big neon sign there that says,

1 you know, this is the governing body. I presume my
2 governing body -- I had a regional manager, I had -- I
3 had a nurse and a regional director that came to my
4 building quarterly and then once a week you had a
5 telephone meeting, so if there was any -- but, mainly,
6 it was for marketing reasons. I mean, we didn't
7 discuss a lot of QA issues with them. But you did have
8 oversight. I mean, you had people that were -- they
9 would come in quarterly and look at records. You know,
10 look at your charts, look at your -- your
11 documentation, so to speak, for the different things.

12 Q. Would -- would they look at maintenance records,
13 would they look at issues --

14 A. Not necessarily.

15 Q. -- affecting involve -- or affecting safety?

16 A. They didn't -- I don't recall that they
17 particularly looked at maintenance records unless it
18 was something they were going to have to spend money on
19 in the building to fix, you know. If it was -- now, if
20 it -- yes, if it was something that was concerning -- I
21 mean, if it was an issue that needed to be fixed --
22 let's just say that it was going to cost the
23 corporation money, then you had to have good rationale.
24 You know, you had -- you needed some good backup to --
25 to prove to them why you're asking for, you know, an

1 outgo of money to be spent somewhere.

2 Q. All right. And it -- I -- I think, your final job
3 is with Healthmart Services?

4 A. Yes, sir.

5 Q. And what do you do for them?

6 A. Well, I am their corporate RN. So what I do for
7 them is, I travel to five different facilities and I
8 oversee -- I have to do record reviews in all of those
9 facilities. I do a hundred percent record review on
10 all of our residents. So this week I'm -- this week
11 I've been working Hopes Creek in Van Buren and I've
12 been doing charts every day. I have to make notes in
13 those charts every quarter. So I sign off on all of
14 the incident and accident report, all of the occurrence
15 reports. If there is -- if I'm not in a facility and,
16 say, something happens and -- they fax all of the
17 reports to my office in Van Buren and, of course, I'm
18 not usually in that office, because I'm on the road
19 somewhere, you know, in a facility.

20 Q. Let me -- let me stop you there. I don't mean to
21 --

22 A. Okay.

23 Q. -- to cut you off. But there's one thing I just
24 want to follow up on what you're telling me there some.

25 Tell me how an incident or an accident report

1 is addressed within your company? You said you sign
2 off on all the time.

3 A. Yes. Well, see there's a requirement in Arkansas,
4 the RN has to sign off on all incident/accident reports
5 within five days after the administrator signs. Let me
6 just kind of tell you what the requirement is, if I
7 may.

8 Let's just say -- just a -- a fall in the
9 facility, in the state of Arkansas, it requires an
10 incident/accident report to be done. You have five
11 days, actually, to even fill out the report, whoever
12 witnessed it. You know, whoever knows about it or
13 witnesses. Why do you wait five days, I don't know.
14 Usually, you're going to do it, you know, when you see
15 it happened. You know, because you can forget what
16 happened within five days. So, let's just say, we're
17 going to -- somebody falls today, well, then you write
18 up that incident report. If you don't see the fall,
19 you know, like, for instance -- and many times they
20 don't. A resident will say, "Well, I fell last night,
21 but I didn't call anybody." So then you sit down with
22 that resident and, you know, it's usually a CNA -- a
23 lot of times it is a CNA, which is a certified nursing
24 assistant, and she writes down what the resident says.

25 Then we -- you know, then they're examined

1 for bruising or anything like that or -- you know,
2 things like that, call the family member and then it
3 goes to -- it goes to what we call our director of
4 care. Each of our buildings has an LPN that is the
5 director of care in that building. She is over the
6 other LPNs and they, you know, do the med
7 administrations and then it goes to the administrator.
8 The state of Arkansas requires the administrator to
9 sign that I&A form within five days -- to review it and
10 sign. And then the RN, being me, has another five days
11 to sign and review that incident report.

12 Q. But that -- that last step to be signed by the RN,
13 is that just for a level II facility, or is that for a
14 level I, also?

15 A. Yes. Yeah, because a level I facility doesn't
16 require an RN.

17 Q. Okay. Then -- then it goes to the state from
18 there?

19 A. No. No, it doesn't go through the state.

20 Q. Where does it go to, at that point in time?

21 A. It just -- it's just filed in a folder. We -- you
22 know, we -- we keep the I&As from survey to survey.
23 Like, when we get two surveys a year, usually. And in-
24 between, if you have a complaint, you get a -- what
25 they call a complaint survey. So, let's just say you

1 do two surveys a year. So if we had one in January,
2 anything that happens from January to -- if they come
3 in June or July, then they look at all of the incidents
4 reports that happened within that six-month span. And
5 then you can file those, you know. But we keep them
6 like in a binder, the most current on top you know,
7 so...

8 Q. Now, you work with Mr. Hightower?

9 A. Yes, sir.

10 Q. And what is his relationship within that business
11 to you, is he your boss? Is he --

12 A. Well, he's my -- well, technically, he and --
13 well, his son, Todd Hightower, they both kind of, you
14 know, run the company. And so my immediate -- I guess,
15 I -- I actually, I have three -- three different men in
16 my life there. And Harry Garman is -- is the
17 operations director and Harry and I usually talk of a
18 daily basis. I don't always talk to David or Todd.
19 You know, sometimes once a week because Harry and I are
20 on the road usually. We're the ones in the facilities
21 and on the road, so Harry and I talk about a lot of
22 things. So, you know, how we'll report to Harry and if
23 it's something really, really significant, Harry will
24 either, you know, call Todd to tell him, or I would
25 call them or something like that.

1 Q. And you've been listed as an expert, in this case.
2 Have you ever been an expert before?

3 A. I don't know if they called me an expert, but I
4 did give a deposition once several years ago.

5 Q. And what was that on?

6 A. It was actually on an injury in RCF here in
7 Arkansas. They -- they -- yeah, I was working for the
8 state.

9 Q. So, at that point in time, you were called as a
10 witness in the case?

11 A. I gave a deposition, but, I believe, it settled.
12 Then I don't know if I was -- I don't know that they
13 called me an expert witness. I don't recall that they
14 -- I just know that they requested from the Office of
15 Long-term Care if my partner and I could -- could give
16 a deposition and we did.

17 Q. And how were you contacted in this case?

18 A. Actually, Mr. Hightower. I guess, you could say
19 my boss, David. He mentioned -- he said -- he
20 mentioned it to me and then, I believe, Suzanne --
21 Suzanne called me and we made an arrange -- well, she
22 came down to Fort Smith to -- you know, to see me -- or
23 to be here.

24 Q. And --

25 A. And asked me about it, you know.

1 Q. So the first communication you had, in this case,
2 was from Mr. Hightower?

3 A. He asked me -- yes -- if I would be interested.

4 Q. What did he tell you?

5 A. Well, he -- actually, what he told me was, he was
6 at -- he's going to be in California for a week and he
7 said, "Would it be okay?" I think is what he asked me,
8 would it be okay if maybe Suzanne contacted me if there
9 was any questions because, at that point, he was
10 involved. I was not. But since I was -- since he was
11 going to be out of state and unavailable, if there was
12 any kind of questions or anything that came up, would I
13 be willing to, you know, answer anything. And, at that
14 time, I didn't realize that I was going to be doing
15 this. So I just thought I was going to be available
16 for a phone call or something in a case they wanted to
17 ask -- ask any questions about regulations or, you
18 know, something like that. That was kind of the way it
19 was presented to me.

20 Q. Okay. So, well, tell me how it kind of grow -- or
21 grew into being this?

22 A. Okay. Well, I guess after Suzanne and I met that
23 day --

24 Q. And what did Suzanne tell you when -- when you all
25 first met? Did she tell you anything about the case?

1 A. Yeah, I guess,

2 THE WITNESS: You called me first,
3 didn't you? Yeah, you called me on the
4 phone.

5 A. And we just visited on the phone. And, I think,
6 you know, we -- yeah, we visited on the telephone and
7 just briefly a little bit about the case. And did I --
8 you know, and I -- she thought that I could possibly
9 add something, I guess, to -- you know, some way help
10 them --

11 Q. (BY MR. CHRONISTER) Well, when you --

12 A. -- and would I be willing to do that. And then I
13 said, "Well, maybe." And we talked a little bit, and I
14 said, "Yeah, I could do that probably," and so that's
15 kind of how --

16 Q. Well, when you visited about the case, what
17 exactly did Suzanne tell you about the case?

18 A. Well, to be honest, I don't know that I even
19 remember. I knew that it was Brookfield.

20 Q. Do you know Mr. Brooks?

21 A. No, sir -- well, actually, I think, I -- I saw him
22 and, maybe met him at a workshop like at -- you know, a
23 year or a year and a half ago or something, but I don't
24 know him to know it.

25 Q. Do you know --

1 A. I don't know if I'd know him if he walked in the
2 room.

3 Q. Did you ever know Mitzi Bailey?

4 A. No, sir.

5 Q. Do you know anybody at the Brookfield, at this
6 time?

7 A. I do right now, yes, sir.

8 Q. Have you ever been to the Brookfield?

9 A. I have, actually. I -- I went to their open house
10 because Chuck Getzsky was their cook and Chuck had been
11 my cook at Willowbrook.

12 Q. All right. But other -- other than going there
13 for their open house, have you been back to the
14 Brookfield, at any point in time, because of your
15 involvement in this case?

16 A. No, sir.

17 Q. So when you and Suzanne talked, what did she tell
18 you that she was interested in knowing about -- about
19 this case, what did she ask you as to what you thought
20 about this case?

21 A. Well, since I'd worked for the state of Arkansas
22 and was familiar with regulations, you know, things
23 that are -- that are required, as far as regulations,
24 reporting requirements for incident -- you know,
25 incident reporting, maybe what would be expected of a,

1 you know, administrator, things like that.

2 Q. And, as far as the incident report is concerned,
3 are you supposed to destroy an original incident
4 report?

5 A. Well, when you say destroy -- see, that's -- that
6 is not exactly a terminology that I would use. You
7 sometimes ask for an incident report to be rewritten
8 because it's not factual, it's full of opinions and I
9 have done that. Because we -- you have to give in-
10 services on documenting. I mean, there are certain
11 things that you need to document in incident/accident
12 reports and not your opinion, not what you've heard
13 second or third hand but what you saw, what you
14 observed, or what somebody told you happened. You
15 know, that's what you need to put on the incident --
16 not your opinions and not to -- and there are times
17 when I have asked for more information to be put on an
18 incident report because it -- you know, it just said,
19 found in the floor. Well, okay, but tell me more. I
20 mean, how did you find them in the floor? What -- what
21 -- you know, look -- what did they look like, that kind
22 of thing.

23 Q. Well, when that occurs, do you add information to
24 that report or have you destroyed a actual report and
25 substituted it with another one?

1 A. I have not destroyed an actual report. What I
2 have done is ask for a report to be rewritten to be
3 factual, to be more appropriate and did I --

4 Q. And when you --

5 A. And I throwed -- and I have -- you know, I have
6 thrown a report away, but that's -- when I -- when you
7 say destroyed, see, that's not a -- that's not a term
8 that I feel like is warranted here.

9 Q. Well, have you -- have you thrown one away when
10 another one was rewritten?

11 A. Yes, I have. I've have done that. Uh-huh.

12 Q. And that was done because you wanted more
13 information or wanted it said different or why exactly
14 was that?

15 A. Mainly, it -- well, actually, it really doesn't
16 happen. I can't say that it's happened over once or
17 twice in all of my years. And, mainly, it would be
18 because the person who wrote it did not write the
19 details. It was full of innuendo and opinion, so that
20 would be the major reason that I would ask for
21 something to be rewritten. Just the facts, you know,
22 not your opinion.

23 Q. If you could just interline or change something,
24 would you do that?

25 A. Yeah. I mean, there are times when you can just

1 change a word or you can -- as I said, add -- give me
2 some more information, just add to it, you know, if
3 it's too brief. You know, then you -- you're going to
4 keep the same report, but just add to it. Give me some
5 more information, so...

6 Q. Okay. Well, let me ask you your opinions. You've
7 reviewed several things, in this case. Can you give me
8 an idea of what all you've looked at?

9 A. Well, I've looked at everything in these two
10 books. Just about everything in these two books.

11 Q. Would -- would that include Bob Brooks'
12 deposition?

13 A. Yes, sir. I saw Mr. Brooks' deposition.

14 Q. And Mitzi Bailey's deposition?

15 A. Yes, sir.

16 Q. And the incident report?

17 A. Yes, sir.

18 Q. And the other deposition of other parties. Who
19 all -- what other depositions, if any, have you looked
20 at?

21 A. I read all the depositions.

22 Q. All right. When you say, all the deposition --

23 A. Well, all of the ones that are in my book here.
24 So I don't -- do you want me to --

25 Q. Do you have a laundry list of those?

1 A. These are listed on the front here and I could --
2 I'll tell you. Steve Brigance, Peggy Brigance, Mitzi
3 Bailey, Joe Martin, Rich Ragan, Michelle Enzy, Chuck
4 Getzsky, Cheryl Williams, and then I have Judy Baer.
5 Yeah, she had -- I have her deposition.

6 Q. All right.

7 A. So those were the depositions.

8 Q. How, have you ever given a written opinion to
9 anyone, as to your thoughts in this case?

10 A. No, sir.

11 Q. Well, then I know you're going to be called as a
12 witness at this is what you've been indicated to me,
13 that you're going to have some experts opinions. If
14 you could, I can make this simple and we'll follow up
15 on it.

16 Can you tell me, just starting with number
17 one, two, three, four, however you want to be here and
18 tell me what it is that you anticipate on testifying
19 to, as to your opinions, in this case?

20 MS. CLARK: You're free to look at
21 whatever you need to, including our
22 disclosures.

23 A. Well, I believe, I've been asked to -- well, okay.
24 I think -- well, I believe, one is -- I'm guessing that
25 you're going to tell me what I'm going -- what you're

1 going to ask me. So that's why I'm kind of puzzled
2 about that. I mean, are you going to ask me something?

3 Q. (BY MR. CHRONISTER) Here's -- here's the --

4 A. Rather than me just telling you, you ask me
5 something.

6 Q. I'm not going to be -- I'm not going to be calling
7 you as a witness.

8 A. Okay.

9 Q. They are. And they're going to be asking you your
10 opinions that you've generated relevant to your review
11 of this case?

12 A. Okay.

13 Q. And so, I guess, my question to you is, since I
14 don't know -- I've been given some ideas -- but I'd
15 rather hear it from you what your opinions are in this
16 case?

17 A. Okay. I think, there was a question, as to
18 whether or not the system they had in place to fix
19 things, was in question.

20 Q. All right.

21 A. So my understanding of their system was that Mr.
22 Martin worked one day a week and there were maintenance
23 requests that was, you know, in his folder when he
24 would come in that one day a week and he would look at
25 those requests and he would go and fix those items.

1 And he was -- I guess, sign the sheet and then he would
2 put it in his files that it was fixed. So -- and that
3 is an appropriate -- you know, that is an -- that's an
4 appropriate outcome or standard.

5 Q. All right. Let me kind of take you through that
6 in a minute.

7 A. Okay.

8 Q. Do you know what Mr. Martin's qualifications were
9 as a maintenance man?

10 A. I read what he was asked. I read -- I read his --
11 you know, his depo and I -- it's been a little while
12 since I read it, so I don't remember it word for word.
13 You may have to refresh my memory.

14 Q. Well, did --

15 A. I mean, I'm guessing, he had some experience
16 before he came to work there that -- of fixing things
17 and not, you know, of being maybe a person who was able
18 to -- to be a maintenance man.

19 Q. All right. But nothing sticks in your mind as to
20 what those qualifications may have been?

21 A. No, sir.

22 Q. And, as far as the maintenance man is concerned,
23 in your facilities, how -- do you have maintenance men
24 at the facilities you're at now?

25 A. Yes, I do.

1 Q. And how -- are they part-time? Full-time?

2 A. They're full-time. Uh-huh.

3 Q. Does the fact that a maintenance man comes in one
4 day a week cause you any concern?

5 A. Well, I thought about that and, I'm guessing, that
6 the reason he probably was one day a week was at that -
7 - at the point he was there was probably because they
8 weren't fully -- you know, they didn't have a full
9 house, you know. Like, for instance, they only had a
10 few residents. And so the needs -- maybe there wasn't
11 as many things that needed to be fixed. Because our
12 maintenance men -- you know, and it's very common for a
13 maintenance man -- I mean, a resident will ask them to,
14 you know, go get something for them, or -- I mean, they
15 just do various things. It's not always just
16 maintenance. They were -- they will, you know -- our
17 maintenance men usually know the residents pretty well
18 in our buildings. And so the residents will use them
19 as gophers sometimes. So it's -- it's not uncommon,
20 you know, that the maintenance men doesn't have, maybe,
21 maintenance issues all day long every day, seven -- you
22 know, five days a week that they -- that he has to fix.
23 You know, a lot of his time may be taken up with, you
24 know, just hanging out.

25 Q. Who makes the decision, within your company, as

1 far as if the maintenance man's in over his head or has
2 a problem that perhaps needs to be considered by someone
3 else?

4 A. Well, I -- I don't know if I can quite answer
5 that, because I'm not over the maintenance man in our
6 building. Now, if the maintenance man -- let me just
7 say this would be my philosophy. Okay. You hire
8 somebody, your maintenance man, you've hired this
9 gentleman or this person because they -- well, number
10 one, they've come and applied for a job. So if -- and
11 he's got some background experience. Maybe he's a
12 tinker or a fixer or something like that. And you
13 think, hey, make a good maintenance man. He needs to
14 be, you know, cordial. He needs to be accommodating,
15 you know, for residents and be willing to, you know,
16 work with other people, play nice, you know, work with
17 other people, that kind of thing. So -- but my
18 expectation would -- of him would be that I've hired
19 him to do a job. And if I have to follow behind him,
20 you know, and make him do his job, then I don't need
21 him. So, therefore, you hire people that you feel like
22 will do a job and you're not going to be constantly
23 micromanaging them. They have a job to do. They go do
24 their job. Now, it's not necessary that they always
25 report back to you, because you can -- I mean, you can

1 depend on them to do it and when -- if you know them
2 well enough, you know that they took care of it. So,
3 therefore, you're not going to go and -- you know, bug
4 them about it or ask them about it.

5 Q. So would it be safe to say that your opinion on
6 your maintenance man, a lot depends on, one, their
7 qualifications and your level of trust you've developed
8 in them?

9 A. Right. Yes, sir.

10 Q. And do you have to rely on your maintenance man,
11 is that what you're telling me?

12 A. Yes, sir.

13 Q. And you understand you're responsible for his
14 actions. If he does something wrong, it falls back on
15 you?

16 A. Right. I understand that. As the administrator,
17 I understand that. If I was the administrator in that
18 building, I would understand that. The buck stops with
19 the administrator.

20 Q. All right. And, if the maintenance man gets in
21 over his head, you would expect him to tell you about
22 it?

23 A. Yes, I would. I would expect that person to come
24 to me and say, I don't know how to do this. If there's
25 something, you know, that he feels like that he's not

1 up to fixing or doesn't know how to fix, then I would
2 expect him to -- to come and tell me, you know,
3 probably. Yeah.

4 Q. If you had recurrent problems --

5 A. I mean, he could. I mean, I'm not saying that
6 everybody does that. I don't even know if any of our
7 guys in our buildings have done that. But I would
8 guess that -- that that would be an acceptable thing to
9 do unless -- you know, but there was -- I'm not -- I
10 can't -- I don't know if I can really honestly, you
11 know, speak to that -- you know, just how you want me
12 to speak to it.

13 Q. And, as far as in your current buildings, I think
14 Mr. Hightower told me that there are sheets that are
15 turned in every night when people go through the
16 building and find things. There are sheets that are
17 turned in every night that come back to the
18 administrator to look at and be sure the things are
19 fixed and taken care of; is that right?

20 MS. CLARK: I'm going to object to the
21 form of the question.

22 Q. (BY MR. CHRONISTER) Well, assume for the moment,
23 that that's what Mr. Hightower told me in his
24 deposition; is that your understanding --

25 MS. CLARK: I'm still going to object to

1 the form of the question.

2 Q. (BY MR. CHRONISTER) -- what happens at those --
3 at your facility?

4 A. That's not my understanding, no, sir.

5 Q. So what happens?

6 A. It's not that I've got -- I mean, I don't think
7 that those --

8 THE WITNESS: Can I answer?

9 MS. CLARK: Yes.

10 A. I don't know that the form actually goes to the
11 administrator. It goes to the maintenance man's box.
12 I mean, I'll just say, you know, I filled out a
13 maintenance request before, but I've put it in the
14 maintenance man's box for him to fix.

15 Q. (BY MR. CHRONISTER) As the administrator --

16 A. But it was in the administrator -- well, his box
17 was actually in the copy room in the -- in the
18 administrator -- off of the administrator's office and
19 so, in -- in one regard, yes, I guess, Mr. Hightower is
20 correct, that if the box is in the administrator's
21 office or in the -- or let's just say it's in the
22 confines of the front office where the administrator is
23 located, then the request is -- is in there.

24 Q. And -- well, tell me what is your understanding of
25 the responsibility, standard of care of -- and I may

1 have asked you, but I just want to be sure -- what is
2 your understanding of the standard of care of the QA?
3 What do they do to discharge their obligations?

4 A. The Q&A committee?

5 Q. Yes.

6 A. Well, they meet quarterly. They should have
7 issues or areas of concern -- maybe if there's, you
8 know, areas of concern in the facility that needs to
9 have more attention. You're going to focus -- I mean,
10 it's not to say that it's going to be the same every
11 quarter, but it could be the same every quarter.

12 As I said before, food is a big issue. If
13 you're having problems with -- okay, let's just say --
14 I'll just use the example of our Little Rock facility
15 where we had constant turnover with dietary aides. You
16 can't deliver a food product unless you've got good
17 cooks. And you can't deliver a good product if you
18 don't have people there to do, you know, the jobs, no
19 cause, no show, those kinds of things. I mean, it's
20 constant staffing issues sometimes and so that may be a
21 problem.

22 So that's -- you're going -- you're going to
23 have to keep -- you know, it's really going to be a
24 constant QA problem almost every quarter with delivery
25 of food service or, you know, quality food. You know,

1 the cooking of the food, the distribution of it.

2 That's the kinds of things.

3 So your QA committee identifies those weak
4 areas, and then you have -- you try to put a plan in
5 place to correct those weak areas. You don't always
6 correct it, so you may have the same problem in another
7 quarter.

8 Q. Now, are weak areas things that just kind of have
9 reoccurring issues with?

10 A. Yes, sir.

11 Q. So, whatever it is, if you have some reoccurring
12 issues, those are things that the QA should be on top
13 of?

14 A. Yes. I mean, I would think so, yeah. They QA is
15 going to -- I mean, their QA meeting is to -- to
16 discuss some weaknesses in your facility and to correct
17 those weaknesses or get a plan in place to correct
18 them.

19 Q. And --

20 A. Whether it be hiring a person or doing away with a
21 person or just, you know, whatever it might be. I
22 mean, the plan is going to be -- it's -- it's going
23 depend on the circumstance.

24 Q. And the QA reports to the administrator on that.
25 The administrator heads that committee. Is that

1 normally what happens?

2 A. Yeah. It's usually held in the administrator's
3 office.

4 Q. And then what is the standard of care for a
5 governing body?

6 MS. CLARK: Object to the form of the
7 question.

8 A. I don't know that the regulation actually tells
9 you what a governing body is. It can be one or 10. I
10 mean, I guess, I presumed that our governing body for
11 Healthmart Services would be the owners -- the owners.
12 It can be an owner.

13 MR. CHRONISTER: All right. We need to
14 take a break, so he can change tapes.

15 THE VIDEOGRAPHER: The time is 11:40
16 a.m. We're off the record.

17 (Off the record from 11:40 a.m. to 11:48 a.m.)

18 THE VIDEOGRAPHER: The time is 11:48
19 a.m. We're back on the record.

20 CONTINUED BY MR. CHRONISTER:

21 Q. Ms. Maddox, before we took a break, I think, I was
22 asking you about the governing body. I just kind of
23 want to follow up on that.

24 What is your understanding of the
25 requirements of a governing body to be within the

1 standard of care?

2 A. Well, I would -- to me, now, the governing body is
3 that -- is the owners. And the standard of care that
4 has been established by policy and procedures and your
5 policy and procedures in your facility is actually
6 guided by the state regulations. Most everybody, when
7 the ALs -- when they came into existence, there was a
8 real problem with a lot of the owner/operators coming
9 up with policies and procedures. So the state, you
10 know, gave them some guidance and then they were
11 allowed to ask other operator/owners that had done a
12 good job at writing policy and procedure, and most of
13 the policy and procedures in the state of Arkansas are
14 written, you know, using the guideline of the state
15 regulations. So that is the standard of care.

16 Q. And what was --

17 A. The governing body -- you know, the owner/operator
18 usually, of the facility, to me, that's their governing
19 body. But it doesn't really specify -- that's -- it's
20 kind of one of those things in the regulations, I feel,
21 that is a little bit unclear.

22 Q. But that governing body is supposed to have
23 ultimate authority, correct?

24 A. Yes, I would say so.

25 Q. Isn't that the exact wording of the regulation?

1 A. Yeah.

2 Q. They're to have ultimate authority?

3 A. Yeah. Yeah. I mean, if -- the owner/operator --
4 the owner, I mean, they -- they hold the purse strings.
5 I mean, and you can't -- you know, you've got to
6 operate within some guidance of them plus the
7 regulations and, you know, then you have to have --
8 probably, you know -- that's enough said.

9 Q. And are -- are they advised of the -- the
10 governing body, should they be advised of the ongoing
11 issues within the facility, should they know what's
12 going on at their facility?

13 A. You know, some do and some don't. Now, some --
14 some owner/operators like to know more than others and
15 so it just depends from -- it's different, you know,
16 from facility to facility I would say. So it's not
17 necessary that they know everything that goes on,
18 because that's why they hire you. You know, it's like
19 Harry and I always say -- I mean, David hired us to do
20 a job. So, therefore, we do our job. And we don't
21 have to report to David about everything or tell David
22 everything, because he has hired us to make sure that
23 we're the ones with the headaches. We're the ones up
24 nights, you know, if we're -- if it's necessary or
25 whatever, so...

1 Q. So, I think, your first opinion, if I -- if I
2 understand it correctly, is that, you believe there was
3 in place a procedure at the Brookfield to properly
4 address safety issues?

5 MS. CLARK: Object to the form of the
6 question.

7 A. Well, I don't -- you know, I think, it depends on
8 the circumstance and I -- hindsight is always great. I
9 mean -- you know --

10 Q. (BY MR. CHRONISTER) Well, in hindsight --

11 A. Yeah.

12 Q. -- did the Brookfield, in your opinion, have the
13 proper protocols in place to provide safety?

14 A. At the -- at the time, that -- of the knowledge
15 that they have of what they knew they were dealing
16 with, they did what I felt like they were supposed to
17 do, at that time. So, without -- I think, that they
18 probably did the best that they knew to do or could do
19 or knew of -- knew what to do, at the time, yes.

20 Q. Well, let's -- let's talk about that on what they
21 knew and -- if you have a new building --

22 A. Uh-huh.

23 Q. -- that you know is under warranty?

24 A. Uh-huh.

25 Q. Uh-huh meaning, yes?

1 A. Yes. Yes, sir. I'm sorry.

2 Q. That's just --

3 A. Yes, sir.

4 Q. And you have a construction company coming in and
5 out doing different things.

6 A. Okay.

7 Q. Is it appropriate to start putting shims in
8 doorframes without telling anybody or telling the
9 construction company about it?

10 A. I don't know that, because I am not a construction
11 person. I wouldn't know a shim from a sham. I mean,
12 I'm sorry, but I don't think that I can probably answer
13 that question for you.

14 Q. As an administrator, would you want to know before
15 your maintenance man did something like that?

16 A. Well, everybody is different. So I don't -- I --
17 I really don't know that I would probably question it.
18 You know what I'm saying? I don't know that I would
19 question it, at that time, because I am not a
20 maintenance person. I am not a construction person
21 that knows a lot about how to fix stuff. So if he --
22 you know, I would probably think it was okay. So I'm
23 not saying that I --

24 Q. I guess, my -- my question is, if the buck stops
25 with you and that's what you told us, right?

1 A. Yeah.

2 Q. If the buck stops with you and you're unknowing
3 about something, as to whether it's good, bad or
4 indifferent.

5 A. Uh-huh.

6 Q. Should you pass that on to the governing body or
7 the owner and get some --

8 A. Yes, I would think so.

9 Q. All right. So if something can to your attention
10 that was -- I'm not sure about -- it would've gone up
11 the ladder to the owner, right?

12 A. It's a -- yeah, I -- a possibility it -- I
13 probably wouldn't -- the owner -- I'm guessing --

14 MS. CLARK: Object to the form of the
15 question. It's just if something -- if --
16 can you -- can you get an idea of what that
17 something is?

18 MR. CHRONISTER: Well, by me --

19 MS. CLARK: So she can answer the
20 question.

21 Q. (BY MR. CHRONISTER) You -- you just -- you just
22 said a minute ago that if you didn't know what shims
23 were and you were kind of -- you didn't know a shim
24 from a sham, I think?

25 A. Yeah.

1 Q. And if you didn't know what those were and your
2 maintenance man is making modifications to a door
3 that's on a facility six months old, you know you've
4 got a warranty with the construction company, they're
5 in and out. I think, we know from the depositions that
6 you've got phone numbers to call. If something came to
7 your attention -- because the buck stops with you?

8 A. Uh-huh.

9 Q. And you were uncomfortable about it. You didn't
10 know a shim from a sham, do you think it's your
11 responsibility to, at least, start asking questions
12 about that?

13 MS. CLARK: Object to the form of the
14 question.

15 A. Everybody is different and I'll just have to
16 relate it to -- I possibly would have, but then I
17 don't -- I can't answer for certain that I would. I
18 mean, I'm -- I may have, but I don't know for absolute
19 certainty that I -- that I would.

20 Q. (BY MR. CHRONISTER) Are you aware that Mr. Brooks
21 has testified that if he'd known about it, he would
22 have called the construction company?

23 MS. CLARK: Object to the form.

24 A. It's been a -- well, I don't recall exactly what
25 he said.

1 Q. (BY MR. CHRONISTER) I think it's in his
2 deposition.

3 A. Yeah, it's probably in his deposition.

4 MS. CLARK: Object to the form,
5 misstatement of the testimony.

6 MR. CHRONISTER: It doesn't misstate
7 anything.

8 MS. CLARK: It's misstating the
9 testimony.

10 A. I don't remember what he said about that, I'll be
11 honest.

12 Q. (BY MR. CHRONISTER) Well --

13 MR. CHRONISTER: Let me see something
14 here. We can take a break for just a second.

15 THE VIDEOGRAPHER: You want to go off
16 the record?

17 MR. CHRONISTER: Go off the record.

18 THE VIDEOGRAPHER: The time is 11:55
19 a.m. We're off the record.

20 (Off the record from 11:55 a.m. to 11:57 a.m.)

21 THE VIDEOGRAPHER: The time is -- the
22 time is 11:57 a.m. We're back on the record.

23 CONTINUED BY MR. CHRONISTER:

24 A. I don't think this is the right one. It is.
25 Okay.

1 Q. Page 60, line 23 -- in that area.

2 A. Okay. Page 60, line 23.

3 Q. I think, that's what it is.

4 Does Mr. Brooks, at that point in time, say
5 that, "When it comes to pins coming out of door or
6 shims in doors, Crawford should have been called"?

7 A. Yeah. Yes, I see that. Yes, that's what he said.

8 Q. So --

9 MS. CLARK: And -- and just a second,
10 Rex. I'm just going to remind you that
11 Jeanie is here testifying as an expert as to
12 the conduct of Mitzi Bailey, not Bob Brooks.

13 MR. CHRONISTER: All right.

14 Q. (BY MR. CHRONISTER) And, I guess, the issue is,
15 as the administrator, when the buck stops with you --

16 A. That's going to come back to haunt me, isn't it?

17 Q. -- when it comes to -- when it -- when it -- when
18 it -- Harry Truman said it, I guess, best, didn't he?

19 A. Well, that just always been a kind of a given that
20 we've always said that.

21 Q. When it came time to things being done in your
22 facility, maintenance issues in your facility, that you
23 are uncomfortable with what -- or unknowing, unfamiliar
24 with what's going on, is that something you would leave
25 to chance or to follow-up on with your owner?

1 A. I guess, if I -- if I knew about it. I mean, if
2 somebody came to me and say, for instance, if I -- if I
3 knew about it, I probably would.

4 Q. All right. And if the buck stops with you, as far
5 as maintenance issues in your facility are concerned, I
6 think, Mr. Brooks said in his deposition, Mitzi's
7 obligation was to review the maintenance records?

8 MS. CLARK: Object of the form.

9 Q. (BY MR. CHRONISTER) To know about it.

10 MR. CHRONISTER: I can look it up.

11 MS. CLARK: I'm still objecting to the
12 form.

13 MR. CHRONISTER: All right.

14 Q. (BY MR. CHRONISTER) But, if Mr. Brooks testified
15 to that, would that have been within Mitzi's job?

16 A. I don't know if -- well, I just -- can I tell you
17 what -- I don't think that our administrators look at
18 the maintenance records in our --

19 Q. I think Mr. Hightower said they did.

20 A. Yeah. Okay. Well, okay.

21 Right now, you know, I'm not serving in the -
22 - in -- I am not serving as an administrator even
23 though I have -- I still have a current administrator's
24 license and I could be an administrator at any of our
25 buildings. I don't know that on daily basis or on a

1 weekly basis that I would probably look at maintenance
2 records, because I depend upon my maintenance man to
3 take care of issues and if he doesn't, then he knows,
4 you know, people to call, or he -- he takes care of it.
5 If it's something that has happened as a result of --
6 it depends on -- it would just depend on the situation.

7 But I don't know that our administrators, on
8 a daily basis, look at all the maintenance records.
9 I'm sorry.

10 Q. All right. So, I think, it's your opinion from
11 what I've read that you believe that they had the
12 appropriate protocols and safeguards in place to
13 provide safety within the regulations; is that right?

14 A. Yes, sir.

15 Q. All right. Can you tell me what evidence you've
16 seen in all of the depositions of the existence of a
17 governing body that was -- that had ultimate authority?

18 A. I don't know that I can -- I mean, I don't know
19 that I can answer that like you -- I don't think I can
20 answer that from all the depositions.

21 Q. All right. So, I mean, do you -- do you know
22 whether or not there was, first of all, a governing
23 body?

24 A. I think, Mr. Brooks identified himself as such,
25 whether or not he recognized himself as that, but...

1 Q. Did you believe that Mr. Brooks under -- at least,
2 from what you've read -- do you believe Mr. Brooks
3 understood his obligations in acting as the governing
4 body?

5 A. It's been a little while since I read his
6 deposition, so I don't know that I can answer that --
7 you know, I don't know if I can answer that.

8 MS. CLARK: And, again, Jeanie is
9 testifying as an expert as to Mitzi's role.

10 MR. CHRONISTER: All right.

11 Q. (BY MR. CHRONISTER) And then can you find any
12 evidence of the existence of a QA at the Brookfield?

13 MS. CLARK: Object to the form of the
14 question.

15 A. The only thing I have to go on is that is -- it's
16 a requirement, a state requirement to have a QA. You
17 would have to have a QA. You would have to have it
18 because it's a state requirement --

19 Q. (BY MR. CHRONISTER) Well --

20 A. -- and when the surveyors were there to do a
21 survey -- and I'm going -- I'm basing it on the
22 complaint survey, because I haven't seen their surveys.
23 I don't know what their usual, you know, semiannual
24 survey was or when it was or their inspection or -- you
25 know, interchangeable inspection and survey is the same

1 thing. But I did read the two complaint surveys. And
2 I would've thought if there was a problem with the QA,
3 that those -- those surveyors might have possibly
4 looked in -- you know, looked at the QA or looked to
5 see that they had one if they had not had one would've
6 probably written them up for not having one or
7 something.

8 Q. But you're making an assumption; is that right?

9 A. I'm making an assumption, yes, sir, because it is
10 a state requirement and everybody -- in every AL in
11 this state has to have a QA.

12 Q. And -- but you've seen no evidence of one and
13 you've seen no evidence --

14 A. I haven't had -- no, sir, not -- not in --

15 Q. Meetings of one?

16 A. No, sir. I haven't been privileged to any of that
17 information.

18 Q. All right. And so when you say that the proper
19 safeguards were in place, without knowing if there was
20 a QA or without knowing if Mr. Brooks was acting
21 appropriately as a governing body, unless you're making
22 assumptions, how are you arriving at this opinion?

23 A. I'm just basing it on a reasonable standard of
24 care. I'm basing it on a reasonable mind's frame that
25 Mr. Martin, when he came in his one day of week to take

1 care of his maintenance problems, he -- he fixed those
2 items. I think, the state survey said that they looked
3 at 17 incident and accident reports and, maybe, three
4 of those had something to do with doors. So I'm basing
5 it on, you know, the information that's been provided
6 me like that, so...

7 Q. Now, tell me about how these surveys work? They
8 come in responding to a complaint?

9 A. Yes, sir.

10 Q. And do they give you advance notice they're coming
11 in?

12 A. No, sir. They are unannounced.

13 Q. All right. And -- it's unannounced?

14 A. Yeah. I mean, when you do a survey, yeah. Well,
15 it is -- it's against regulation -- it's against the
16 law to -- to tell a facility when you're going to come
17 do their survey. Now, do facilities know -- if you get
18 a survey every six months, it doesn't take a rocket
19 scientist to figure out that we knew we were done in
20 January and we come -- we come -- we -- we're going to
21 start inspecting them in June, you know. That's just
22 the given. But because facilities will say, well,
23 we're expecting surveyors and some-- somebody will
24 overhear it in the hall and they'll call the state and
25 say, well, the surveyors told them that they were

1 coming. Well, the surveyors never told them that.

2 It's just their assumption that they're coming.

3 Q. All right. Have you done life safety code
4 inspections?

5 A. I did. I actually went with the life safety code
6 personnel, you know, from the state many years ago when
7 we first started doing the assisted livings. But, as
8 far as doing the regular survey survey, I did it one
9 time, I think. Well, my partner and I did it -- did
10 one and that's been several years ago. We had a -- you
11 know, you have a checkoff list of things that you look
12 at. I didn't go on the roof. I didn't -- I mean,
13 there were the -- certain things on that checkoff list
14 that we could, you know, look at and note it, yes, this
15 was done or, yes, that was done.

16 Q. As far as documentation requirements are concerned
17 by -- either with the -- I may ask this poorly -- but
18 have you ever attended training stuff on documentation
19 requirements through the -- through the state
20 investigators or through the state surveys on how you
21 document things?

22 A. Well, yes. As ongoing, you know, training, the
23 state always provided us, you know, different types of
24 in-services and opportunities to, you know, for
25 education through the years that I worked with them.

1 Q. Have you come in after the fact on an event, if
2 you're coming in to check something out, what do you
3 rely on when you're doing that? Do you just rely on
4 the complaint that was made and that's it?

5 A. Now, ask that again.

6 Q. All right. Let's say you receive a complaint and
7 you're going to go do a survey based on that complaint.

8 A. Okay.

9 Q. And a survey is the same as an investigation,
10 right?

11 A. Right. Uh-huh. Yes, sir.

12 Q. Do you just look at that limited complaint, or do
13 you expand it out and look at other issues, or do you
14 know?

15 A. You would expand it only if there were -- you
16 know, you -- you would actually focus on -- on the --
17 the body of the complaint. What is it that the
18 complainant is saying? So you're going to focus there
19 and if you find some issues that set off a red flag or
20 something that comes up that prompts you to go look at
21 other things, yes, you would do that. But, basically,
22 you're going to focus on what the complaint -- what the
23 complainant is saying, try to hone your investigation
24 in on -- on that one particular area and, you know,
25 stay with that.

1 Q. Now, as far as the maintenance level, in this
2 facility, you're okay with the half-day maintenance man
3 --

4 MS. CLARK: Object to the form.

5 Q. (BY MR. CHRONISTER) -- or one day a week
6 maintenance man?

7 A. Again, as I said -- and this is maybe an
8 assumption on my part. I am presuming that the one day
9 a maintenance -- week man, that was maybe all that was
10 necessary, at that time, because there wasn't enough
11 residents in the building to, you know, for a
12 maintenance man to be there every day. There wouldn't
13 have been enough, maybe, for him to have done. I have
14 no idea. But, I mean, that's just an assumption on my
15 part and, maybe, that's the wrong assumption. But,
16 yes, I'm okay with that. If that's the question that
17 you're asking and response you want.

18 Q. That's fine.

19 MR. CHRONISTER: Nothing further.

20 MR. MORRIS: In the whole deposition?

21 Okay.

22 CROSS EXAMINATION

23 BY MR. MORRIS:

24 Q. Ma'am, my name is Paul Morris. I represent WDM
25 Architects in this matter.

1 A. Okay.

2 Q. I understand you don't have any opinions with
3 respect to WDM Architects; is that correct?

4 A. That's correct.

5 MR. MORRIS: No further questions.

6 THE WITNESS: Okay.

7 MS. CLARK: No questions.

8 THE VIDEOGRAPHER: The time is --

9 MS. CLARK: Jim, you got --

10 MR. CHRONISTER: Jim, you got questions?

11 Sorry.

12 CROSS EXAMINATION

13 BY MR. TILLEY:

14 Q. The same -- same question. Ma'am, I represent
15 Crawford Construction Company. Do you have any opinion
16 regarding the employees or practices of Crawford
17 Construction Company or construction company practices
18 in general?

19 A. No, sir, I don't have any questions --

20 MS. CLARK: Opinions.

21 A. Or opinions.

22 Q. (BY MR. TILLEY) Opinions?

23 A. Opinions, I don't have an opinion, no, sir.

24 MR. TILLEY: Okay.

25 THE VIDEOGRAPHER: The time is 12:09

1 p.m. This will include the deposition.

2 (WHEREUPON, Deposition concluded at 12:09 p.m.)

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STATE OF ARKANSAS)
) SS
COUNTY OF WASHINGTON)

I, SHANA LEDING, a Certified Court Reporter within and for the State of Arkansas, do hereby certify that the aforesaid witness, 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 by voice writing, and was thereafter reduced to typewritten form by me; and that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

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9 IN WITNESS WHEREOF, I have hereunto set my
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11 of November, 2010.

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