

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JUNE M. HAYES, etc.,)
)
Plaintiff,)
)
vs) Case No. 383210
)
JUDSON RETIREMENT)
COMMUNITY, et al.,)
)
Defendants.)
)

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DEPOSITION OF PHYLLIS HAYES, R.N.

MONDAY, APRIL 24, 2000

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The deposition of PHYLLIS HAYES, R.N., the
Witness herein, called by counsel on behalf of
the Plaintiff for examination under the statute,
taken before me, Vivian L. Gordon, a Registered
Diplomate Reporter and Notary Public in and for
the State of Ohio, pursuant to agreement of
counsel, at the offices of Becker & Mishkind,
Skylight Office Tower, Cleveland, Ohio,
commencing at 3:35 o'clock p.m. on the day and
date above set forth.

1 APPEARANCES:

2
3 On behalf of the Plaintiff
4 Becker & Mishkind
5 BY: JEANNE M. TOSTI, ESQ.
6 Skylight Office Tower Suite 660
7 1220 W. 2nd Street
8 Cleveland, Ohio 44113

9 On behalf of the Defendant O'Toole
10 Roetzel & Andress
11 BY: R. MARK JONES, ESQ.
12 One Cleveland Center 10th Floor
13 1375 East Ninth Street
14 Cleveland, Ohio 44114

15 On behalf of the Defendant Judson Retirement
16 Community
17 Slater & Zurz
18 BY: BRUCE S. GOLDSTEIN, ESQ.
19 One Cascade Plaza Suite 2210
20 Akron, Ohio 44308-1135

21 On behalf of the Defendant Irvin
22 Davis & Young
23 BY: JAN L. ROLLER, ESQ.
24 1700 Midland Building
25 Cleveland, Ohio 44115

26 On behalf of the Defendant Atkinson
27 Weston, Hurd, Fallon, Paisley & Howley
28 BY: MARTIN J. FALLON, ESQ.
29 2500 Terminal Tower
30 Cleveland, Ohio 44113-2241

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1 PHYLLIS HAYES, R.N., a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF PHYLLIS HAYES, R.N.

7 BY MS. TOSTI:

8 Q. Would you please state your full name
9 for us.

10 A. Phyllis Coreen Hayes.

11 Q. And what is your home address?

12 A. 3189 Van Aken Boulevard, Shaker
13 Heights, Ohio, 44120.

14 Q. Is that a single-family home or an
15 apartment?

16 A. Single-family.

17 Q. Have you ever had your deposition
18 taken before?

19 A. No.

20 Q. I am going to go through a few of the
21 directions that go along with the deposition. I
22 am sure Mr. Goldstein has had a chance to speak
23 with you. This is a question and answer
24 session. It's under oath.

25 It's important that you understand my

1 questions. If you don't understand them, just
2 let me know and I'll be happy to repeat the
3 question or to rephrase it. Otherwise I'm going
4 to assume that you understood what I asked you
5 and that you are able to answer it.

6 It's important that you give all of
7 your answers verbally, because the court reporter
8 can't take down head nods or hand motions. And
9 at some point, if you would like to look at the
10 medical records, feel free to do so. It's not a
11 memory test at all.

12 A. Okay.

13 Q. At some point, one of the defense
14 counsel here may choose to enter an objection.
15 You are still required to answer my questions
16 unless your counsel instructs you not to do so.

17 Do you understand those directions?

18 A. I do.

19 Q. Would you tell me what you have
20 reviewed in preparation for this deposition.

21 A. I looked over the chart.

22 Q. And when you are referring to the
23 chart, are you referring just to the Judson
24 Retirement Community records?

25 A. I am.

1 Q. You haven't reviewed any records of
2 other facilities; such as Cleveland Clinic or the
3 EMS?

4 A. No.

5 Q. Hillcrest Hospital records?

6 A. No.

7 Q. Have you seen the autopsy or death
8 certificate of Mr. Hayes?

9 A. No.

10 Q. Have you reviewed any deposition
11 testimony in this case?

12 A. No.

13 Q. And other than with counsel, have you
14 discussed this case with anyone else?

15 A. No.

16 Q. Do you have any personal notes on this
17 case?

18 A. No.

19 Q. Have you ever generated any personal
20 notes?

21 A. No.

22 Q. Who is your current employer?

23 A. Starmed.

24 Q. And what do you do for -- is it
25 Starmed?

A. S-T-A-R-M-E-D.

Q. What do you do for Starmed?

3 A. I work as a registered nurse.

4 Q. Is that a temporary staffing agency?

5 A. Yes, it is.

6 Q. How long have you been employed by
7 Starmed?

8 A. I'm going to guess. Four years.

9 MR. GOLDSTEIN: We call that a best
10 estimate. So approximately four years.

11 Q. Who was your employer in November of
12 1997?

13 A. That day that I went there?

14 Q. Okay. Let's use the day that you
15 worked at Judson Retirement Community.

16 A. Rand Agency.

17 Q. And was that a temporary staffing
18 employer?

19 A. Yes.

20 Q. Have you ever been employed by Judson
21 Retirement Community?

22 A. No.

23 Q. Prior to November 27th, 1997, had you
24 worked at Judson Retirement Community before?

25 A. Yes.

1 Q. How often, if you can tell me, were
2 you working there, prior to that date?

3 A. It was sporadic. Two months out of a
4 year maybe, three months out of a year.

5 MR. FALLON: I'm sorry, I missed that
6 one.

7 MR. GOLDSTEIN: Two to three months
8 out of a year.

9 MR. FALLON: Thanks.

10 Q. Did you work a day here and a day
11 there, or were you working an extended period of
12 time when you worked at Judson in 1997?

13 A. Repeat that question.

14 Q. Were you working like a single shift
15 at Judson, or when you worked at Judson, did you
16 work a block of time, say, a week or two weeks?

17 A. A single shift.

18 Q. And was there a particular shift that
19 you worked when you worked at Judson in 1997?

20 A. I worked evening shift and night
21 shift.

22 Q. Now, you are a registered nurse in the
23 State of Ohio; is that correct?

24 A. Yes.

25 Q. When did you receive your nursing

1 license?

2 A. 1991.

3 Q. And what type of program did you
4 graduate from?

5 A. Community College, Cuyahoga.

6 Q. And beyond your basic nursing program,
7 have you had any additional training in nursing?

8 A. Every two years we have to take
9 another course to renew it. I mean, you know,
10 CEU course. I have done that every two years.

11 Q. Do you have any additional
12 certifications?

13 A. No.

14 Q. And I am speaking of recently, when is
15 the last time you worked at Judson Retirement
16 Community? Just approximately.

17 A. Probably I think it was two days later
18 from the 27th of '97.

19 Q. But let me rephrase my question. From
20 today, when is the last time that you worked at
21 Judson?

22 A. That would be the 29th.

23 Q. Okay. So in other words, 1997 was the
24 last time?

25 A. That's correct.

1 Q. And it was about two days after you
2 cared for Mr. Hayes on November 27th?

3 A. Yes.

4 Q. Did you receive any type of
5 orientation when you first started picking up
6 shifts at Judson Retirement Community?

7 A. Yes, I did.

8 Q. What did your orientation consist of?

9 A. The wings, the units, the treatment
10 books, the MAR, the medication records, just the
11 way the facility was designed, the charts, the
12 people. I believe that's it.

13 Q. Had you prior to the time that you
14 cared for Mr. Hayes ever cared for a patient that
15 had had bilateral total knee replacement surgery?

16 A. Yes.

17 Q. Had you cared for any such patients at
18 Judson Retirement Community prior to Mr. Hayes?

19 A. I don't know.

20 Q. Had you cared for such patients in an
21 extended care type of an environment?

22 A. Yes.

23 Q. Now, for the balance of this
24 deposition, unless I tell you differently, I'm
25 speaking of the time period of November of '97

1 when Mr. Hayes was a patient at Judson Retirement
2 Community. So if I ask you a question, that's
3 the time period I'm talking about, okay?

4 A. Okay.

5 Q. You cared for Mr. Hayes on November
6 27th, **1997**; correct?

7 A. Yes.

8 Q. Had you worked on unit E of Judson
9 Retirement Community any time prior to that in
10 the week or so before that?

11 A. Yes.

12 Q. Okay. When did you work there?

13 A. I think two days before that. The
14 24th.

15 Q. So what days did you care for Mr.
16 Hayes?

17 A. The 24th, the 27th, and that would be
18 it.

19 Q. And what shift did you work on those
20 two days?

21 A. The 24th was a night shift, 11:00 to
22 7:30. The 27th was an evening shift, 3:00 to
23 11:30.

24 Q. What were your duties and
25 responsibilities when you worked at Judson

1 Retirement Community in that time period?

2 A. Pass medication, give treatments,
3 assist the nursing assistants.

4 Q. When you would come on duty, did you
5 get a report from the nurse that was leaving
6 duty?

7 A. I did, yes.

8 Q. And when you were on duty, did you
9 have responsibility for communicating with the
10 physicians regarding the patients under your
11 care?

12 A. Not normally.

13 Q. Who would be responsible for
14 communicating with the physicians?

15 A. I would, if there was something going
16 on.

17 Q. So if there was a problem that needed
18 immediate attention, you would communicate with
19 the physician?

20 A. Yes.

21 Q. And in other instances, if it was
22 something that didn't require immediate
23 attention, who would be in communication with the
24 physicians?

25 A. I don't know.

1 Q. Well, what would you do if such a
2 problem arose; such as a scheduling problem for a
3 test, what would you do?

4 A. A scheduling problem for a test?

5 Q. Yes.

6 MR. GOLDSTEIN: Objection. Go ahead.

7 A. I have been so many places. Normally
8 I would just schedule it myself.

9 Q. At night?

10 A. At night? I would never schedule
11 anything at night.

12 Q. You worked both 3:00 to 11:00 and
13 night shift. If it's night shift and it's not
14 something that requires immediate attention, but
15 it still required intervention with a physician,
16 how would you handle that?

17 A. Pass it to day shift.

18 Q. And they would normally take care of
19 it through their normal routine?

20 A. Exactly.

21 Q. When you worked at Judson on the night
22 shift, how many patients would you be responsible
23 for in that time period?

24 A. 18.

25 Q. And I understand that Mr. Hayes was on

1 a unit called E unit?

2 A. Yes.

3 Q. So would you have responsibility for
4 his unit as well as another unit if you were
5 working?

6 A. Yes.

7 Q. Did you have an immediate clinical
8 supervisor when you worked the night shift at
9 Judson in that time period?

10 A. Yes.

11 Q. Do you know who that was?

12 A. No.

13 Q. How about when you worked 3:00 to
14 11:00 --

15 A. Yes.

16 Q. -- do you know who that was?

17 A. No.

18 Q. Was it a head nurse or a nursing
19 supervisor?

20 A. Evenings, I believe a head nurse.
21 Nights, a supervisor.

22 Q. I would like you to describe for me if
23 a patient was admitted on the 3:00 to 11:00 shift
24 and you were the night nurse that was coming on
25 duty, what information would be provided to you

1 or would you obtain from the nurse leaving from
2 the prior shift?

3 A. I would get the patient's orientation,
4 whether or not he was alert and oriented, the
5 reason he was there, his status, any pertinent
6 information that she observed.

7 Q. Would it be your routine to go through
8 the doctor's orders that were there on the
9 admitting order sheet?

10 A. No.

11 Q. Would you read through the nurses data
12 sheet, the assessment that she did?

13 A. Sometimes.

14 Q. Would you read the nurses notes from
15 the shift prior to yours --

16 A. Yes.

17 Q. -- on a new admission?

18 A. Yes.

19 Q. If the patient came in on a 3:00 to
20 11:00 shift, would those nurses have the
21 responsibility for taking action on the orders,
22 the admission orders?

23 A. I honestly don't remember. For 3:00
24 to 11:00 there was a head nurse and I don't know
25 whose duty that was. As an agency nurse, I would

1 give it to the head nurse. As a staff nurse, I
2 don't know.

3 Q. At Judson Retirement Community, do you
4 know how arrangements were made for diagnostic
5 testing that was done outside the facility?

6 A. No.

7 Q. If there were orders to the effect
8 that a patient was to have a diagnostic test
9 outside the facility, how would you handle that
10 order?

11 A. I would notify the head nurse.

12 Q. And so you would transfer that
13 responsibility to the head nurse to take care of
14 that?

15 A. Yes. I would make her aware. I may
16 take care of it.

17 Q. Do you know if total knee replacement
18 surgery increases the risk for developing deep
19 vein thrombosis?

20 A. Yes.

21 Q. Does it increase the risk?

22 A. Yes.

23 Q. Do you know what Homans' sign is?

24 A. Yes.

25 Q. What is it?

1 A. It's when you check for redness,
2 swelling, pain.

3 Q. How do you elicit Homans' sign?

4 A. I would palpate the thigh, flex it,
5 asking him to flex.

6 MS. ROLLER: I'm sorry.

7 A. I would palpate the thigh -- not the
8 thigh.

9 MR. GOLDSTEIN: You mean the calf?

10 A. -- the calf and ask them to flex it
11 and for him to tell me if he felt any pain. I
12 would also look for redness, any swelling, any
13 pain.

14 Q. What position is the knee in when you
15 check for Homans' sign?

16 A. The knee is straight.

17 Q. And what position is the foot in when
18 you check for Homans' sign?

19 A. The foot is flexed.

20 Q. Okay. What would be a positive
21 finding on Homans?

22 A. As I described. Pain, redness,
23 swelling.

24 Q. And what's the significance if, as a
25 nurse, you elicit the Homans' sign and find out

1 that it's positive? What is that significance to
2 you as a nurse?

3 A. That there is a possible clot, a
4 thrombus.

5 Q. And what do you do if you find a
6 patient has a positive Homans' sign on assessing
7 the patient?

8 A. I would notify the doctor.

9 Q. If a patient has a positive Homans'
10 sign, are there any precautions that you take as
11 a nurse?

12 A. Yes. I would keep the patient
13 immobile.

14 Q. And why do you do that?

15 A. To keep the clot from moving.

16 Q. And if the patient is allowed up to
17 the bathroom, would that be something that you
18 would allow them to do?

19 A. No.

20 Q. Do you routinely check all patients at
21 Judson for Homans' sign? Is that something that
22 is done on every assessment?

23 A. No.

24 Q. So that would be a nursing discretion
25 to check a patient for that?

A. Yes.

Q. For that particular sign?

A. Yes.

Q. Do you have any independent recollection of William Hayes?

A. Yes.

Q. Aside from what you reviewed in the record, you remember him?

A. Yes.

1 Q. And from your review of the records or
1 your recollection, you cared for him on the 24th,
1 as well as on the last day that he was there?

1 A. Yes.

1 Q. When you cared for him on the 24th,
1 what time did your shift start?

1 A. 11:00 o'clock.

1 Q. And was that an eight hour shift that
1 you were working?

1 A. Yes.

2 Q. And then you also cared for him on the
2 27th; correct?

2 A. Yes.

2 Q. And what time did your shift start
2 that day?

2 A. 3:00 o'clock.

1 Q. And did you work through until 11:00
2 or 11:30?

3 A. Yes.

4 Q. What time did your shift end?

5 A. 11:30.

6 Q. Now, on the 24th when you assumed care
7 of Mr. Hayes, was the nurse that you assumed care
8 from Ms. Thill?

9 A. I don't remember.
10 According to the records.

11 Q. Do you know who she is?

12 A. Yes.

13 Q. I mean, you have worked with her
14 before?

15 A. Yes.

16 Q. Do you recall receiving a report from
17 her when you assumed care of Mr. Hayes?

18 A. No.

19 Q. Do you have any recollection of being
20 told that she had found him to have a positive
21 Homans' sign?

22 A. No.

23 Q. What information would you normally be
24 given in the report?

25 A. The patient's status during her

1 shift. Any problems, the condition.

2 Q. You said normally you would read
3 through the notes from the prior shift; correct?

4 A. We got a report for each person.

5 Q. You also mentioned earlier that you
6 normally would read the notes from the prior
7 nursing shift; correct?

8 A. Yes.

9 Q. Would the nurse, if a diagnostic study
10 was ordered at the time of admission, would that
11 be something that the nurses would normally tell
12 you about?

13 A. No.

14 Q. How would you know what orders you
15 were to carry out for a patient if you were the
16 night shift taking report from the evening shift
17 on a new admission?

18 A. The orders would already be
19 transcribed on to the MAR and the treatment book,
20 in the treatment book.

21 Q. And you would go by what is in the
22 treatment book?

23 A. And the medication records.

24 Q. Do you know a Dr. Ahmed that worked at
25 Judson Retirement Community?

1 A. No.

2 Q. Never had contact with anyone named
3 Dr. Ahmed, to your recollection?

4 A. No.

5 Q. I am handing you what's been marked as
6 Plaintiff's Exhibit 1. And I would just like to
7 ask you if you can tell me if any of the nurses
8 notes on that document are yours.

9 A. Yes.

10 Q. Would you tell me which portion is in
11 your handwriting?

12 A. Dated 11-24-97. The entry for 12:30
13 a.m. and the entry for 5:00 a.m. that same date.

14 Q. If you would turn it to the reverse
15 side and tell me if any of that documentation is
16 in your handwriting?

17 A. Yes.

18 Q. Can you tell me which portion?

19 A. Dated 11-27-97 starting at 7:35 p.m.,
20 7:45 p.m., 8:05 P, 8:11, 8:33 and 8:45 p.m.

21 Q. Now, if you would take a look at the
22 documentation that is written just prior to the
23 time that your documentation is written on
24 11-24-97 and it's signed by Nurse Thill, and in
25 the last couple lines, I think she has indicated

1 complaints of slight pain in the right calf
2 during Homans, no redness or warmth.

3 Do you see that?

4 A. I do.

5 Q. Okay. Now, if you were aware of that
6 information, either from report or in reviewing
7 her nurses notes, on the night shift, would that
8 be something that you would be assessing?

9 A. Yes.

10 Q. And how would you do that?

11 A. Do a Homans' test.

12 Q. Now, isn't that something that you
13 would record in your nurses notes since it had
14 been recorded to be positive?

15 A. If it was positive for me.

16 Q. But what if it was negative for you?

17 A. No.

18 Q. You would not record it?

19 A. Depends. It varies.

20 Q. Do you know whether in this case with
21 Mr. Hayes you checked him for a Homans' sign?

22 A. Yes.

23 Q. And did you or did you not check him?

24 A. Yes.

25 Q. What did you find?

1 A. It was negative. He denied pain.

2 Q. In his right calf; correct?

3 A. Right.

4 Q. How many times did you check him?
5 Once?

6 A. Once.

7 Q. Mr. Hayes had a DVT study that was to
8 be done on November 25th. Did you have any
9 knowledge of the fact that Mr. Hayes was to have
10 a DVT study?

11 A. No.

12 Q. And you did not normally review Mr.
13 Hayes' orders you mentioned earlier; correct?

14 A. Correct.

15 Q. How would the day shift become aware
16 of the fact that a DVT study was to be done on a
17 patient? Is it recorded someplace other than
18 just on the doctor's order sheet?

19 A. I don't know.

20 Q. Did you have a cardex or some other
21 form where you recorded when a person was
22 supposed to go have a particular test so that you
23 would be aware of it?

24 A. I don't remember.

25 Q. So you don't know whether the day

1 shift was aware that Mr. Hayes was supposed to
2 have a DVT study; correct?

3 A. Correct.

4 Q. And you don't know of any
5 documentation other than in the doctor's order
6 sheet that a DVT study in Mr. Hayes' case was
7 supposed to be done; correct?

8 A. Correct.

9 Q. Do you find that to be a problem in
10 that maybe somebody might perhaps miss it, since
11 it's not written down someplace?

12 MR. FALLON: Objection.

13 MR. GOLDSTEIN: Objection.

14 MR. JONES: Objection.

15 Q. You may answer the question.

16 A. Normally there is a cardex, okay? I
17 haven't been there in three years. I have been
18 to different places every night in the last three
19 years. I don't recall if at that facility the
20 cardex was at the nurses station, if the head
21 nurse kept it, but normally there is a cardex
22 with the patient's orders on it.

23 Q. So normally once an order is
24 transcribed, it gets written down on a cardex or
25 some form?

1 A. For tests, yes.

2 Q. So someone would be aware that the
3 patient was supposed to go for the test; correct?

4 A. Right.

5 Q. Now, when you cared for Mr. Hayes, you
6 noted that he had a fever, correct, in your
7 nurses notes?

8 A. Yes.

9 Q. Do you know why he had a fever?

10 A. That's common after surgery.

11 Q. So did you do anything in regard to
12 his fever?

13 A. Gave him Tylenol.

14 Q. Did you report that to anyone?

15 A. I would assume in report the next day
16 I did.

17 Q. So you communicated to the nurses on
18 the day shift?

19 A. Yes.

20 Q. And --

21 A. We gave a tape record. Don't ask me
22 what I said at that time, but I'm assuming, yes.

23 Q. This wouldn't be something that you
24 would normally call a doctor about; correct?

25 A. Correct.

1 Q. Now, you also noted that he was having
2 some confusion; correct?

3 A. Correct.

4 Q. Do you know what was causing his
5 confusion?

6 A. His diagnosis includes dementia.

7 Q. Do you know how long he was having
8 that problem?

9 A. No.

10 Q. Do you know whether it was something
11 that occurred recently or whether it had been a
12 long-term problem for him?

13 A. No.

14 Q. When you cared for Mr. Hayes, was he
15 wearing any type of therapeutic stockings?

16 A. I believe he was wearing thigh high
17 stockings.

18 Q. How do you know that?

19 A. According to the notes.

20 Q. Which notes are you referring to?

21 A. Let's see. 11-26-97, 10:00 p.m.

22 Q. Do you know, was he given any
23 directions regarding the use of those therapeutic
24 stockings, when he was supposed to wear them,
25 when he would take them off?

1 A. It would be listed in the treatment.
2 I don't know where that is. It would be listed
3 in the treatment.

4 Q. When you completed your care of Mr.
5 Hayes on the night of November 24th, did you give
6 a report to the day shift nurse coming on duty?

7 A. Yes.

8 Q. From the record, can you tell me who
9 that person was?

10 A. No.

11 Q. Now, you also cared for Mr. Hayes on
12 the evening of November 27th; correct?

13 A. Yes.

14 Q. And you were working the evening shift
15 that evening; correct?

16 A. Yes.

17 Q. And did you receive a report on Mr.
18 Hayes that day?

19 A. Yes.

20 Q. Do you recall what information you
21 were given about him?

22 A. No.

23 Q. Can you tell me who you received
24 report from by looking at the chart?

25 A. Ms. Thill -- no.

1 No.

2 Q. Okay. Now, did you do an assessment
3 on Mr. Hayes at the beginning of your shift on
4 November 27th?

5 A. Yes.

6 Q. Did you record your assessment?

7 A. No.

8 Q. Why not?

9 A. I don't normally record my assessment.

10 Q. You don't make a notation in your
11 nurses notes or anything in regard to your
12 assessment?

13 A. Not unless something is different. I
14 summarize it at the end.

15 Q. In Mr. Hayes' case, was there anything
16 different in his assessment?

17 A. Not until I started the chart, no.

18 Q. So when you say if there was something
19 different, are you referring to different from
20 the prior shift's assessment?

21 A. Correct.

22 Q. So in Mr. Hayes' case, on the 27th up
23 through 7:35 p.m., everything was the same in
24 regard to the day shift's assessment; is that a
25 fair statement?

1 A. Correct.

2 Q. And then you recorded a note at 7:35
3 p.m.; correct?

4 A. Correct.

5 Q. Okay. Would you read us what you
6 recorded at 7:35?

7 A. Nurse called to resident's room,
8 observed family members visiting with resident at
9 this time. Resident lying in bed, family
10 requesting information on resident's medication;
11 also requesting pain medication be given at this
12 time. Daughter acknowledged recognition of nurse
13 and greetings exchanged.

14 Q. Did you notice any other physical
15 problems with Mr. Hayes at that point?

16 A. No.

17 Q. Do you recall who was present in the
18 room?

19 A. The wife, the daughter -- two
20 daughters, maybe three -- son-in-law. That's all
21 I remember.

22 Q. Now, at 7:45 p.m., you wrote another
23 note; correct?

24 A. Correct.

25 Q. And would you read that to us?

1 A. Family requesting resident be
2 toileted. RA and nurse transferred resident from
3 bed to wheelchair and wheelchair to toilet.

4 Q. Were you the nurse that was assisting
5 the resident assistant in that note?

6 A. Yes.

7 Q. Who was the resident assistant that
8 you refer to in that note?

9 A. I don't know.

10 Q. Do you know if that person -- even if
11 you don't know their name -- whether that person
12 still works at Judson Retirement Community?

13 A. I don't know.

14 Q. How was Mr. Hayes taken to the
15 bathroom?

16 A. Via wheelchair.

17 Q. And in regard to getting him up from
18 the bed to the wheelchair, how was that transfer
19 made?

20 A. His legs to the side, set him up, with
21 me on one side, the RA on the other and pivot him
22 into the chair.

23 Q. Was he able to support his weight?

24 A. No.

25 Q. Did you or the RA stay in the bathroom

1 with Mr. Hayes?

2 A. The RA did.

3 Q. And after you assisted him to the
4 bathroom, what did you do?

5 A. Went back to my duties.

6 Q. And what were you doing at the time?

7 A. Passing medication.

8 Q. You have to wait until I finish my
9 question before you answer because the court
10 reporter will have a hard time taking down two of
11 us at the same time.

12 Then at some point were you notified
13 that Mr. Hayes was having a problem?

14 A. Yes.

15 Q. Who notified you?

16 A. The resident assistant.

17 Q. And what were you told?

18 A. I don't recall.

19 Q. From your note, can you tell me what
20 you were told?

21 A. The resident was diaphoretic.

22 Q. And what did you do then when you were
23 told that?

24 A. I went to the resident's room.

25 Q. And what did you observe when you

1 arrived?

2 A. That the resident was diaphoretic and
3 short of breath.

4 Q. How long had it been from the time
5 that you came back to the room to the time that
6 you had taken him to the bathroom? What was the
7 time interval between when he went to the
8 bathroom and when you returned to the room?

9 A. I don't know.

10 Q. Can you tell me approximately?

11 A. No.

12 Q. Was it minutes?

13 A. It was minutes, yes.

14 Q. Now, your note indicates that he was
15 toileted at 7:45 p.m. and that you wrote this
16 note at 8:05 p.m.

17 A. Yes.

18 Q. Is that the time you wrote the note or
19 is that the time that the events occurred?

20 A. That's the time the events occurred.

21 Q. So it's about a 20 minute period from
22 the time he went to the bathroom to the time that
23 *you* noted he was diaphoretic?

24 A. Yes.

25 Q. He had been in the bathroom all that

1 time?

2 A. He went to have a BM.

3 Q. But he had been in there for about 20
4 minutes or so?

5 A. Yes.

6 Q. Is there an emergency call light in
7 the bathroom at Judson?

8 A. Yes.

9 Q. Did the RA, resident assistant, leave
10 Mr. Hayes unassisted when he came to tell you he
11 was getting diaphoretic in the bathroom?

12 A. The family members were present.

13 Q. But there was no medical staff with
14 him?

15 A. Correct.

16 Q. When you arrived in the room, was
17 there any other staff member in the room besides
18 the resident assistant and you?

19 A. I don't know.

20 Q. When you got to the room, you saw that
21 he was diaphoretic and short of breath. What
22 else did you observe about him?

23 A. I don't recall.

24 Q. What did you do?

25 A. Assisted the resident back to bed.

1 Q. And then what did you do?

2 A. Proceeded to call the doctor. The
3 wife requested that I call 911 instead, which I
4 did.

5 Q. Did you leave the room after he went
6 back into the bed?

7 A. I went to get oxygen because he was
8 short of breath.

9 Q. Is it your testimony that you called
10 911?

11 A. Yes.

12 Q. You don't have any recollection of
13 telling the family to call 911?

14 A. No.

15 Q. There is a note in here that indicates
16 that there was another nurse that arrived --

17 A. Yes.

18 Q. -- from station 3. Do you know who
19 that nurse was?

20 A. Jackie. I don't recall her last name.

21 Q. When you assisted Mr. Hayes back to
22 bed from the bathroom, was he alert and oriented
23 at the time?

24 A. I don't recall. I don't think he was
25 alert and oriented when he went to the bathroom.

1 Q. Well - -

2 A. He was in the same mental status as he
3 was.

4 Q. What condition was he in when you took
5 him to the bathroom?

6 A. Confused.

7 Q. Was he awake?

8 A. Yes.

9 Q. Was he able to talk to you? Did he
10 say I would like to go to the bathroom?

11 A. No.

12 Q. How did you know he had to go to the
13 bathroom?

14 A. The family.

15 Q. When you took him back to bed, did he
16 say anything to you?

17 A. No.

18 Q. Was your impression that he was aware
19 of what was going on?

20 A. No.

21 Q. Was he trying to assist to get back
22 into the bed at all?

23 A. No.

24 Q. Was he following any type of
25 directions that you were giving him?

1 A. No.

2 Q. And after you got him back in bed, is
3 there a reason why you didn't stay with the
4 patient and send the resident assistant for the
5 oxygen?

6 A. No.

7 Q. Did you have an emergency call light
8 in the room?

9 A. I have a call light.

10 Q. Could you have turned that on and had
11 somebody come to the room rather than leave the
12 patient?

13 A. I could do it quicker than wait for
14 someone to come to the room.

15 Q. Did you check his vital signs? Did
16 you check for a pulse or anything when you got
17 him back into bed before you left to get the
18 oxygen?

19 A. He was breathing.

20 Q. Did you check his pulse?

21 A. He was breathing. He had a pulse.

22 Q. Do you know whether it was a normal
23 pulse or not?

24 A. He was short of breath, so I'm
25 assuming it was rapid.

1 Q. Do you know whether you can have a
2 patient's heart stop and they can continue to
3 breathe?

4 A. No.

5 Q. So is it your testimony that the
6 family told you to call **911**?

7 A. Yes.

8 Q. And tell me what you did when you went
9 out to get the oxygen. When did you make the
10 call?

11 A. From the oxygen station.

12 Q. And what did you tell them?

13 A. That I had a patient diaphoretic and
14 short of breath and the family was requesting
15 that he be sent to Cleveland Clinic.

16 Q. Do you have any recollection of the
17 family calling **911**?

18 A. The family did not call **911**.

19 Q. Do you have any recollection of
20 anybody in the family talking to the people on
21 the **911** line?

22 A. No, I don't.

23 Q. Did the family ever come out to the
24 station to talk to anybody on the phone during
25 when this all was happening?

1 A. I believe the wife was standing with
2 me. I don't recall her taking the phone. She
3 may have. But the conversation, as I recall, was
4 quite short.

5 Q. Once you made the phone call and
6 called 911, what did you do?

7 A. Went back to the patient with the
8 oxygen.

9 Q. And what was the condition of the
10 patient?

11 A. He had stopped breathing.

12 Q. Did he have a pulse?

13 A. No.

14 Q. And what did you do?

15 A. The other nurse was with me. We
16 placed him on the floor and started CPR.

17 Q. Do you have any type of emergency cart
18 or a crash cart or anything like that on the
19 unit, on unit 6?

20 A. Yes.

21 Q. Did anybody go to get that?

22 A. It wasn't necessary.

23 Q. What type of things are on that
24 emergency cart?

25 A. A backboard for if you want to put the

1 patient on a flat surface, which we already had.
2 An Ambu bag which gives them oxygen, which we
3 were doing mouth, I believe. I don't recall.
4 She might have got an Ambu bag. I really don't
5 recall.

6 Q. But when you went to get the oxygen,
7 did you get an Ambu bag with it?

8 A. I don't recall. I would say no.

9 Q. So if the patient is not breathing,
10 oxygen isn't going to do them much good?

11 A. I didn't use the oxygen when I saw the
12 patient wasn't breathing.

13 Q. Did somebody go get the emergency cart
14 then or go get the Ambu bag?

15 A. I would say yes.

16 Q. Do you recall whether somebody did
17 that?

18 A. I see it in the room. I would say
19 yes, to the best of my recollection.

20 Q. Did the EMS eventually arrive?

21 A. Yes.

22 Q. What happened then?

23 A. They took over. Started CPR.

24 Q. Did you have any conversations with
25 the family regarding what happened to Mr. Hayes?

1 A. No.

2 Q. What did the family do after the EMS
3 came?

4 A. Left with the patient.

5 Q. So when the patient left, the family
6 went with Mr. Hayes?

7 A. A few minutes behind. They picked up
8 his belongings.

9 Q. Did you contact any physicians in
10 regard to what happened that evening?

11 A. I would say yes. I would probably
12 have called his primary physician and let the
13 doctor know, since I had notified him earlier.

14 Q. Do you know who it was that you talked
15 to?

16 A. No

17 Q. I'm asking you specifically, do you
18 have a recollection of calling a physician and
19 telling them what happened?

20 A. No.

21 Q. So you don't know whether you talked
22 to a physician or not; correct?

23 A. Correct.

24 Q. Any time after the point when the
25 family left with the EMS, did you ever have any

1 further conversations with the Hayes family?

2 A. No.

3 Q. Did you have any conversations that
4 you recall with any physicians regard Mr. Hayes
5 after that point in time?

6 A. No.

7 Q. Did you eventually learn that Mr.
8 Hayes had died?

9 A. Yes.

10 Q. How did you learn that?

11 A. When I came back two days later.

12 Q. Who told you?

13 A. I believe it was in the chart.

14 Q. So you looked at the chart? The chart
15 was still on the floor?

16 A. Yes.

17 Q. In the chart you noted that he died?

18 A. Yes.

19 Q. Did you eventually learn what caused
20 his death?

21 A. Yes.

22 Q. And what, to your knowledge, caused
23 his death?

24 A. Cardiac arrest.

25 Q. But do you know what the cause of the

1 cardiac arrest was?

2 A. Emboli.

3 Q. And where did you find out that he had
4 a pulmonary emboli?

5 A. Mr. Goldstein.

6 Q. But prior to your conversations with
7 him, had anyone told you that?

8 A. No.

9 Q. Did you ever have any conversations
10 with a Dr. Atkinson or Dr. O'Toole in regard to
11 what happened to Mr. Hayes?

12 A. No.

13 Q. Did anyone aside from counsel ever
14 make inquiry of you about a DVT study that was
15 ordered for Mr. Hayes? Did anybody ask you any
16 questions about that?

17 A. No.

18 Q. The director of nursing never asked
19 you whether you had any knowledge of the DVT
20 study?

21 A. No.

22 Q. Did you ever talk to any of the nurses
23 at Judson Retirement Community about what
24 happened to Mr. Hayes?

25 A. No.

1 Q. Do you have any knowledge whatsoever
2 in regard to why his DVT study was never
3 completed?

4 A. No.

5 Q. Do you know what Judson Retirement
6 Community's policy is in regard to making a late
7 entry in the nurses notes; how you are supposed
8 to do that?

9 A. Specifically, no.

10 MS. TOSTI: I don't have any further
11 questions for you.

12 EXAMINATION OF PHYLLIS HAYES, R.N.

13 BY MR. JONES:

14 Q. Your note from November 27th says that
15 you were familiar with this patient's daughter?

16 A. My sister was an acquaintance of hers.

17 Q. So you had met before?

18 A. I had met her through my sister, yes.
19 We weren't friends, no.

20 Q. So that's the only contact? You and
21 she just sort of recognized each other from this
22 past contact?

23 A. Exactly.

24 Q. Have you had any contact with the
25 daughter since this all happened?

1 A. No.

2 MR. JONES: That's all I have.

3 MS. ROLLER: No questions.

4 MR. FALLON: No questions. Thanks.

5 MR. GOLDSTEIN: You have a right to
6 review this in case it's typed up to ensure that
7 the questions and answers have been recorded
8 accurately. Do you want to read it?

9 THE WITNESS: Yes.

10 MR. GOLDSTEIN: We will read it.

11 - - - -

12 (Deposition concluded at 4:30 p.m.;
13 signature not waived.)

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1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 44 and note the following
4 corrections:

5 PAGE LINE REQUESTED CHANGE
6
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16

17 _____
18 Phyllis Hayes, R.N.

19 Subscribed and sworn to before me this _____
20 day of _____, 2000.
21
22

23 _____
24 Notary Public

25 My commission expires _____

CERTIFICATE

State of Ohio,)
) ss:
County of Cuyahoga.)

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named PHYLLIS HAYES, R.N., was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 1st day of May, 2000.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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