

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

DEPOSITION OF DONNA JOSEPH, R.N.
MONDAY, JULY 31, 2000

The deposition of DONNA JOSEPH, 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 1:00 o'clock p.m. on the day and date above set forth.

1 APPEARANCES:

2

3 On behalf of the Plaintiff

Becker & Mishkind

4 BY: JEANNE M. TOSTI, ESQ.

Skylight Office Tower Suite 660

5 1220 W. 2nd Street

Cleveland, Ohio 44113

6

7 On behalf of the Defendant Judson Retirement
Community

8 Slater & Zurz

BY: BRUCE S. GOLDSTEIN, ESQ.

9 One Cascade Plaza Suite 2210

Akron, Ohio 44308-1135

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On behalf of the Defendant Irvin

11 Davis & Young

BY: JAN L. ROLLER, ESQ.

12 1700 Midland Building

Cleveland, Ohio 44115

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

6 EXAMINATION OF DONNA JOSEPH, R.N.

7 BY MS. TOSTI:

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

10 A. Donna Elaine Joseph.

11 Q. And what is your home address?

12 A. 3792 Hudson Drive, Stow, Ohio, 44224.

13 Q. Is that a single-family home?

14 A. Yes.

15 Q. Have you ever had your deposition
16 taken before?

17 A. Yes.

18 Q. How many times?

19 A. Once.

20 Q. Was it in a medical malpractice case?

21 A. Yes.

22 Q. Was it a case involving Judson
23 Retirement Community?

24 A. No.

25 Q. Could you tell me the subject matter

1 or the allegation of negligence in the case?

2 MR. GOLDSTEIN: Objection. Go ahead.

3 You may answer.

4 A. I can only tell you, it was with
5 MetroHealth. I don't remember the specifics.

6 Q. Do you know how the case was resolved?

7 A. I do not.

8 Q. Were you a defendant in the case?

9 A. Yes.

10 Q. Were you an actual named defendant
11 where your name appeared on the actual pleadings?

12 A. I don't know.

13 MR. GOLDSTEIN: When Ms. Tosti asks
14 you if you were a defendant, she means were you
15 sued personally.

16 A. Oh, no.

17 Q. Was the subject of your care at
18 question in the case?

19 A. No.

20 Q. Do you recall the name of the
21 plaintiff in that case?

22 A. No.

23 Q. How long ago was that case filed?

24 A. Am I allowed to ask a question?

25 MR. GOLDSTEIN: If you need something

1 clarified, go ahead and tell her what you don't
2 understand.

3 A. When you say filed, I'm not sure. Are
4 you saying when was I deposed?

5 Q. That might be an easier question for
6 you. How long ago were you deposed?

7 A. Four years ago, approximately.

8 Q. Have you ever given trial testimony?

9 A. No.

10 Q. I want to go through just some of the
11 ground rules. I'm sure Mr. Goldstein has had a
12 chance to talk with you. This is a question and
13 answer session. It's under oath. It's important
14 that you understand the questions that I ask
15 you. If you don't understand them, if I have
16 phrased them inartfully, let me know. I will be
17 happy to repeat the question or to rephrase the
18 question.

19 Otherwise I'm going to assume you
20 understood my question and that you are able to
21 answer it.

22 A. All right.

23 a. If at some point you wish to refer to
24 any documents that Mr. Goldstein has supplied you
25 with, such as medical records, feel free to do

1 so.

2 It's important that you give all of
3 your answers verbally, because the court reporter
4 cannot take down head nods or hand motions.

5 A. Okay.

6 Q. At some point during the deposition,
7 defense counsel may choose to enter an
8 objection. You are still required to answer my
9 question unless you are instructed not to do so.

10 Do you understand those rules?

11 A. Yes.

12 Q. Would you tell me what you have
13 reviewed in preparation for this deposition?

14 A. I reviewed the addendum note written
15 by Laurie Thill. I also reviewed the e-mail hard
16 copy from Diane Soukup to myself in regard to her
17 follow up with Pat Redwood and the ordering of
18 the studies.

19 MR. GOLDSTEIN: If I might, the record
20 should reflect that is the document produced in
21 supplementation to the plaintiff's discovery.

22 Q. If you would just tell me which
23 document here you are speaking of and then we
24 will mark it.

25 A. I looked at this document.

1 Q. This one here.

2 - - -

3 (Thereupon, JOSEPH Deposition
4 Exhibit 1 was marked for
5 purposes of identification.)

6 - - - -

7 Q. We will just leave that in front of
8 you for now.

9 So you reviewed that memo that we have
10 just marked as Plaintiff's Exhibit 1, as well as
11 the addendum note that was made by Nurse Thill.

12 Did you review any other documents in
13 preparation?

14 A. No.

15 Q. Have you reviewed any deposition
16 testimony?

17 A. I looked at the deposition testimony
18 of Laurie Thill in regard to myself and her
19 stating what took place in our communication
20 about the follow-up and the writing of the
21 addendum note.

22 Q. Did you review anyone else's
23 deposition in this case?

24 A. No.

25 Q. What about the other Judson Retirement

1 Community medical records, did you review the
2 complete chart of Mr. Hayes?

3 A. No.

4 Q. Any records from Hillcrest Hospital?

5 A. No.

6 Q. Have you seen the death certificate or
7 the autopsy?

8 A. No.

9 Q. Do you have any personal notes or a
10 personal file that you have prepared on this
11 case?

12 A. No.

13 Q. Have you ever generated any notes that
14 would not be contained in the Judson Retirement
15 Community records?

16 A. No. I need to clarify.

17 Q. Go ahead.

18 A. When you say in the Judson Retirement
19 Community records, are you saying those records
20 you have right there, because I don't know --

21 Q. The medical records.

22 A. No.

23 Q. Any notes besides those that would be
24 found in the medical records that would relate
25 specifically to William Harrison Hayes that you

1 have knowledge of?

2 A. No. The reason -- I recall while I
3 was director of nursing having a file on Hayes
4 with the follow-up information in it. I don't
5 recall what it was, and I haven't seen that file
6 since the time that that file was made. It
7 probably had like this e-mail in it.

8 Q. Why would you have a file on him
9 separate from his medical records?

10 A. Because any kind of paperwork that I
11 would receive in my office, I would file in my
12 own file, and so I would note it according to the
13 subject matter. And the subject here is Hayes.

14 Q. And in regard to that file, do you
15 know where it is now?

16 A. No.

17 Q. Do you know what happened to it?

18 A. It would have been filed in my
19 office. I am not working there anymore, so I
20 don't have any idea where it would be.

21 Q. Did you ever destroy it or discard
22 it --

23 A. No.

24 Q. -- during the time that you were at
25 Judson Retirement Community?

1 A. No.

2 Q. Were there any other documents in that
3 file that you recall, aside from a memo?

4 A. I don't recall.

5 Q. What other type of materials would be
6 in a file like that in your office?

7 A. Any e-mail pertaining to follow up or
8 anything having to do with that particular
9 resident.

10 MR. GOLDSTEIN: Just note an objection
11 to the extent that any of that that is an
12 incident report or an investigation into the
13 incident, I would assert a privilege.

14 MS. TOSTI: And I am going to make a
15 request for a copy of that complete file, aside
16 from any incident report that may be contained in
17 there, if it's available.

18 MR. GOLDSTEIN: Understood. And I
19 can't represent to you that it does or does not
20 exist. I will make an inquiry and get back to
21 you.

22 Q. Since this case was filed, have you
23 had any discussions with any physicians about the
24 case?

25 A. No.

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

3 A. No.

4 Q. Who is your current employer?

5 A. I am self-employed.

6 Q. What is it that you do?

7 A. I opened a small business in the food
8 line.

9 Q. What does your business do?

10 A. It sells upscale food to go.

11 Q. And when did you first start that
12 business?

13 A. We opened one month ago yesterday on
14 June 30th, 2000.

15 Q. You are a registered nurse in the
16 State of Ohio?

17 A. Correct.

18 Q. When did you receive your nursing
19 license?

20 A. June 1980.

21 Q. And what type of program was your
22 basic nursing program?

23 A. A bachelor of science of nursing from
24 Kent State in 1980.

25 Q. Do you have any additional

1 professional training beyond your basic nursing
2 program?

3 A. No.

4 Q. Do you hold any certifications in
5 nursing?

6 A. I do have a certification for a
7 director of nursing program, which was
8 approximately 1990, '91.

9 Q. Who was the certifying body?

10 A. I don't recall.

11 Q. Do you recall if it was the American
12 Nursing Association?

13 A. Yes, I recall, and it was not.

14 Q. How long a program was that?

15 A. I believe it was around six weeks.

16 Q. Aside from completing that program,
17 were there any other criteria that you had to
18 have in order to complete it?

19 A. I don't recall.

20 Q. You didn't have to have any particular
21 credentials in order to get into the program?

22 A. I just don't recall.

23 Q. In November of 1997, who was your
24 employer?

25 A. Judson Retirement Community.

1 Q. And when did you first become employed
2 by them?

3 A. 1985 -- I'm sorry, 1995. I believe it
4 was late June.

5 Q. When you first became employed with
6 them, what was your title and position?

7 A. My title at hire was director of
8 nursing, Brunning Health Center.

9 Q. And what is Brunning Health Center?

10 A. Brunning Health Center is one
11 component of the Judson Park Retirement System.
12 There are two campuses, Judson Park being one,
13 and Brunning Health Center was the health center
14 for skilled nursing. We had a floor of skilled,
15 a floor of Alzheimer, and a floor where we
16 included rehab residents. It did not include the
17 assisted living areas.

18 Q. Can you tell me approximately how many
19 patients or residents or patient beds you were
20 over as director of nursing?

21 A. At Brunning Health Center?

22 Q. Yes.

23 A. 138.

24 Q. And during the time that you were
25 director of nursing at Brunning Health Center,

1 did you continue with that title and position
2 until the time that you terminated your
3 employment with them?

4 A. My title remained director of
5 nursing. My responsibilities, after about two
6 years, my responsibilities included the assisted
7 living areas at Judson Park.

8 Q. Approximately when did you pick up
9 those responsibilities?

10 A. I'm not sure. A couple years into it.

11 Q. Do you recall whether that was before
12 or after Mr. Hayes! death?

13 A. Oh, I don't know.

14 Q. When did you leave your employment
15 with Judson Retirement Community?

16 A. October 1, 1999.

17 Q. And what was the reason that you left
18 your employment with Judson Retirement Community?

19 A. I just decided I wanted to do
20 something new and different.

21 Q. So it was your decision to leave?

22 A. Yes.

23 Q. Did you work at all after you left
24 Judson prior to the time that you opened your own
25 business?

1 A. No.

2 Q. Prior to becoming employed at Judson
3 Retirement Community, what did you do?

4 A. I was a director of nursing at
5 MetroHealth Medical Center, east side campus.

6 Q. How long were you director of nursing
7 there?

8 A. Since 1990.

9 Q. So it was about five years?

10 A. About five years, yes.

11 Q. For the balance of this deposition,
12 the questions that I ask are going to refer to
13 the time that Mr. Hayes was a patient at Judson
14 Retirement Community, which was in November of
15 1997. If I am referring to any time different
16 than that, I will let you know, okay?

17 A. Okay.

18 Q. So in November of 1997, then, as
19 director of nursing, who did you report to?

20 A. I reported to David Clark,
21 vice-president of patient services.

22 Q. Was he a registered nurse?

23 A. No.

24 Q. And you were full time at Judson
25 Retirement Community at that time?

1 A. Yes.

2 Q. What hours did you usually work?

3 A. Approximately 8:30 a.m. to 7:00 p.m.

4 Q. Were there any particular days of the
5 week that you worked?

6 A. Monday through Friday.

7 Q. And what were your duties and
8 responsibilities at Judson Retirement Community
9 as director of nursing?

10 A. I was responsible for managing all
11 aspects of care, for managing the hiring and
12 recruitment, and the actual management of the
13 employees; for coordinating the provision of the
14 services, making sure that we had the appropriate
15 people to provide the care on a daily basis, 24
16 hours a day; making sure that we had the
17 appropriate supplies; staff development, all
18 aspects of the running of the department; budget.

19 Q. So determining that there was adequate
20 staff in the clinical units would fall within
21 your responsibilities?

22 A. Yes.

23 Q. During the time that you were employed
24 at Judson Retirement Community, did you encounter
25 any problems with staffing shortages?

1 A. No.

2 Q. Are there mandated state requirements
3 that Judson Retirement Community was required to
4 adhere to in providing patient care?

5 A. There are mandated state requirements
6 and Judson met those.

7 Q. So to your knowledge, for all shifts
8 each day, the minimum state staffing requirements
9 were met by Judson?

10 A. Yes.

11 Q. Did you as director of nursing
12 permanently provide any clinical care to
13 patients?

14 A. No.

15 Q. Were there any staff members that
16 routinely reported directly to you?

17 A. Could you define staff members?

18 Q. Anyone that was an employee of Judson
19 Retirement Community, was there anyone that
20 reported directly to you?

21 A. Yes.

22 Q. And what category of personnel was
23 that, that reported directly to you?

24 A. The supervisors, we had round the
25 clock supervisors that reported directly to me.

1 We had a clinical nurse specialist who reported
2 directly to me. We had people who were
3 responsible for documentation coordination who
4 reported directly to me. And we had managers for
5 each of the floors who reported directly to me.

6 Q. When you say supervisors, you are
7 referring to RN supervisors?

8 A. Correct.

9 Q. How many RN supervisors would work on
10 the day shift?

11 A. There were -- none. There were
12 managers on the day shift. The supervisors
13 worked the 3:00 to 11:00 and the 11:00 to 7:00
14 shifts.

15 Q. And on the 3:00 to 11:00 and 11:00 to
16 7:00 shifts, how many RN supervisors would you
17 have?

18 A. One.

19 Q. Now, you mentioned that there was a
20 clinical nurse specialist.

21 A. Correct.

22 Q. How many clinical nurse specialists
23 were there?

24 A. There was one clinical nurse
25 specialist reporting to me.

1 Q. And what hours did she generally work?

2 A. Her hours were generally 7:00 a.m. to
3 5:00 p.m.

4 Q. Did she work any particular days of
5 the week?

6 A. Generally Monday through Friday.

7 Q. And what were her duties and
8 responsibilities?

9 A. Her responsibilities were to work
10 closely with the managers in assessing the
11 current needs, like a hands-on clinical support
12 for the managers and the staff on the units.

13 If there were areas where there was
14 expertise that had needed to be developed, she
15 would assess that. She would also help provide
16 that as an instructor, so she -- say that there
17 was somebody coming in, say, a trache patient, we
18 would make sure that the staff that were
19 currently there had the opportunity to work with
20 trache care prior to that resident coming in. So
21 that was her job to do that assessment with the
22 managers.

23 Q. And if the nurses had questions about
24 a particular patient's care, could they consult
25 with her?

1 A. Absolutely. She had systems built in
2 where, say there was a resident with a pressure
3 ulcer that had developed, and she needed to be on
4 that right away, so there were systems.

5 She carried a beeper, as well, 24
6 hours a day, and if they needed to have consult,
7 she was available for that.

8 Q. Was that true also like on 3:00 to
9 11:00 shift or on the weekends, if one of the
10 nurses had questions, that she could beep the
11 clinical nurse specialist and consult with her
12 over the phone?

13 A. That was true both of the clinical
14 nurse specialist and the managers for that unit.

15 Q. So the managers were almost like a
16 head nurse that had responsibilities over the 24
17 hour period for the unit?

18 A. Correct.

19 Q. And they were available for
20 consultation if nurses had questions?

21 A. Frequently, yes. Always available.

22 Q. Now, you mentioned a document
23 coordinator. What is a document coordinator?

24 A. Documentation coordination.

25 Q. I'm sorry.

1 A. To meet the state requirements in
2 regard to the minimum data set and the assessment
3 tools that are required by the federal
4 government.

5 And that person would coordinate to
6 make sure that -- there is very specific time
7 frames that everything has to be done, and she
8 would coordinate to make sure that the staff were
9 up on knowing about the changes in the minimum
10 data set, all the questionnaires -- it's a seven
11 page assessment tool -- and that they were done
12 at an appropriate time.

13 Those then had to be data entered and
14 sent to the state electronically, so she
15 coordinated that.

16 **a.** At Nurse Thill's depo, she mentioned a
17 person called a unit coordinator. Is that
18 someone different than a documentation
19 coordinator?

20 A. The unit coordinator would have been
21 like the unit secretary.

22 Q. Now, did Judson Retirement Community
23 have unit secretaries or unit coordinators that
24 assisted the nurses in transcribing orders?

25 A. We haven't reached that point yet

1 where they were actually transcribing.

2 Q. What were the duties of the unit
3 coordinators?

4 A. The unit coordinators were maintaining
5 the phones, assisting with ordering supplies
6 within the unit, making appointments, outside
7 appointments. That's basically it. Having some
8 interface with greeting the residents and
9 families as they would come on and off the unit.

10 Q. And were the unit secretaries also
11 under your supervision?

12 A. They reported directly to the unit
13 manager, who reported to me. **So**, no, not
14 directly.

15 Q. My question was probably phrased
16 poorly.

17 Ultimately, did you have overall
18 supervisory responsibility for the unit
19 secretaries and unit coordinators?

20 A. Yes.

21 Q. Now, was the Judson Retirement
22 Community nursing staff responsible for seeing
23 that written doctor's orders were carried out
24 appropriately?

25 A. Yes.

1 Q. And were they responsible for
2 verifying that diagnostic tests were scheduled
3 and carried out as ordered?

4 A. Yes.

5 Q. Now, in the case of scheduling a
6 diagnostic test outside of the facility, how
7 would that be handled after an order was written
8 for it? Who would be responsible for acting upon
9 the order?

10 A. In 1997?

11 Q. Correct.

12 A. To my best recall, in 1997, the
13 responsibility would have been with the nurse
14 taking off the order. The unit coordinator would
15 provide assistance with that as requested.

16 Q. And what assistance would the unit
17 coordinator be allowed to do within her job
18 description?

19 A. She would be allowed to call an
20 ambulance company or a clinic, schedule the
21 appointment, and document same, communicate back
22 to the nurse that that's been done. I guess
23 that's all.

24 Q. Would the registered nurse or the
25 supervisor nurse be ultimately responsible for

1 making sure that that delegation to the unit
2 coordinator was carried out appropriately?

3 A. Yes.

4 Q. Did the unit coordinators have to have
5 any specialized training to become a unit
6 coordinator?

7 A. No.

8 Q. But they were required to be
9 supervised by a registered nurse?

10 A. Correct.

11 Q. Were there unit coordinators available
12 on all three shifts all the time?

13 A. No.

14 Q. Was there any particular time that
15 unit coordinators were available?

16 A. Unit coordinators in 1997 worked from,
17 as I recall, it was a 9:00 to 5:30 shift and
18 there was a unit coordinator.

19 MS. ROLLER: I'm sorry, what did you
20 say?

21 THE WITNESS: 9:00 to 5:30.

22 MS. ROLLER: Thank you.

23 A. There was a full-time position for the
24 6th floor where Pat Redwood worked. I believe
25 the other two floors shared a unit coordinator at

1 that time.

2 Q. Now, when you mentioned the 6th floor,
3 is it your understanding that that is the area
4 where William Hayes was a patient?

5 A. Yes. That was Diane Soukup's unit.

6 Q. Did Judson Retirement Community have
7 any written policies and procedures to follow
8 regarding the implementation of doctor's orders?

9 A. Yes.

10 Q. Can you tell me just generally what
11 type of directions were within those policies and
12 procedures regarding the doctor's orders?

13 A. Well, once the order was written, the
14 nurse is responsible for transcribing that order
15 and putting it into the resident kardex and
16 following up on that order and signing off on it
17 that it was done.

18 The nurse would be responsible on the
19 following shifts if there was an order
20 transcribed to sign off the date and the time
21 that that order was completed. **So** the procedures
22 would just, they would walk the nurse through the
23 process that she needed to follow and the
24 particular forms that you would use and where she
25 would sign and what she had to date and where she

1 had to put her signature.

2 Q. Now, in regard to a diagnostic test to
3 be scheduled outside of Judson Retirement
4 Community, the nurse would take that order and
5 then if you would just walk through the steps of
6 what would happen with that particular type of
7 order. After the order is written on a patient's
8 chart, what exactly happens to it, step by step?

9 A. I can't tell you that in 1997. Our
10 process changed greatly in the last few years at
11 Judson as far as the orders and what particular
12 forms were filled out and which form went to who,
13 et cetera. I can't give you the specifics on
14 that.

15 Q. Okay. Well, tell me what you do
16 recall as to how that type of an order had to be
17 processed. And if there is a point where you
18 think there may be a divergence, tell me that.

19 A. There would be the physician order
20 that would be -- say it's a phone order, the
21 nurse would transcribe the phone order. She
22 would then put the order on to the kardex and she
23 would then either follow up herself and then note
24 that it was followed up or she would write on a
25 form to indicate to the secretary that the

1 secretary needed to do that, depending on the
2 time of day.

3 Q. Now, when you say follow up herself,
4 what do you mean by that?

5 A. That means call, make the call.

6 Q. Call and schedule?

7 A. Correct. Do it.

8 Q. Or provide that information to a unit
9 secretary and delegate to her the job of making
10 the call?

11 A. Exactly. And there were forms
12 provided to do that.

13 Q. And then it would be written on a
14 kardex with the appropriate time or date?

15 A. Right,

16 Q. Are the kardexes that were utilized in
17 1997, are those still in existence?

18 A. Are you asking, is that the same form
19 that is currently used?

20 Q. No, I am asking if the kardexes used
21 in November of 1997 were saved as a document at
22 Judson Retirement Community?

23 A. Oh, it's part of the patient record.

24 Q. So this is something --

25 A. All of those should be saved in

1 medical records. I don't know any reason why
2 they wouldn't be.

3 Q. Do they become a part of the patient's
4 chart?

5 A. They do. They are conceptually a part
6 of the chart. They just don't live on the unit
7 in the same binder, but when the chart is put
8 back together to go to medical records, they come
9 back together.

10 Q. Do you recall what the title on the
11 page was or what it looked like?

12 A. The title is called kardex
13 K-A-R-D-E-X.

14 Q. Did you see a copy of Mr. Hayes'
15 kardex in the records that you looked at?

16 A. I didn't look at any records, other
17 than the note from Laurie, the addendum note.

18 Q. Once an admission order for diagnostic
19 studies at the facility was written and it was
20 verified with the physician, and the nurse then
21 either followed up on it by making the
22 arrangements or delegated that job to the unit
23 coordinator and then recorded it on the kardex,
24 who was responsible for arranging transportation
25 for the patient?

1 A. In 1997, I believe it was the
2 secretary would be responsible for arranging
3 transportation, if the resident needed someone to
4 go with them, that sort of thing, call the
5 family.

6 Q. And was there anyone responsible for
7 checking to make sure that the test was actually
8 scheduled as ordered?

9 A. The system in the kardex, it's written
10 as an order for that day that test would be
11 needed.

12 Any physician order -- let me start
13 over. Any physician order that's written is an
14 activity that needs to take place within a time
15 frame. So it has to be signed off. At the end
16 of the day, at the end of each day, the night
17 shift would check to see that all the orders were
18 signed off by the nurses over the last 24 hours.
19 So that was just a check and balance system.

20 Q. The nurse taking off the order, would
21 she be responsible for checking to make sure that
22 the test actually was scheduled the way that the
23 order was written?

24 A. She wouldn't be the only person
25 responsible, because she might not be there for

1 two to three days. So it's the next, it's the
2 shifts that follow that nurse that are
3 responsible for looking to see what happened in
4 the last eight hours, what happens in the next
5 eight hours, et cetera. That person becomes
6 responsible for looking at the care for that
7 resident.

8 Q. But if, in fact, the test is scheduled
9 on the nurses shift, is she responsible for
10 following up to make sure that it's scheduled
11 appropriately?

12 A. If the test is due to happen during
13 that eight hour shift when that nurse is on, she
14 is responsible to make sure that it happens.

15 Q. No, I'm asking about being scheduled.
16 I'm not asking about whether it's been carried
17 out.

18 A. Could you repeat your question then?

19 Q. Yes. My question is, was anyone
20 responsible for checking to be sure that the test
21 was actually scheduled the way the doctor's order
22 was written?

23 Now, the nurse takes off the order.
24 Is she also responsible for making sure that that
25 test was scheduled the way that the doctor's

1 order was written?

2 A. That nurse is responsible for making
3 sure that that test is ordered the way it was
4 written.

5 Q. And then you have an additional backup
6 system where the people on the next shift are
7 checking back, looking at orders --

8 A. Correct.

9 Q. -- in order to determine that each one
10 is acted upon appropriately; correct?

11 A. Correct.

12 Q. Now, if there was a problem in
13 scheduling a diagnostic study as ordered by a
14 physician, would you agree that it would be the
15 responsibility of the nurse's staff to inform the
16 physician about the problem?

17 A. I do agree.

18 Q. And as director of nursing, were you
19 familiar with the patient's bill of rights as a
20 patient in a nursing home?

21 A. Yes.

22 Q. Did Judson Retirement Community
23 provide a copy of the patient's bill of rights to
24 patients when they were admitted to the facility?

25 A. Yes.

1 Q. And would that have included Mr. Hayes
2 being provided with a copy of those bill of
3 rights at the time of his admission to Judson
4 Retirement Community?

5 A. It would have included all residents,
6 including Mr. Hayes.

7 Q. And as director of nursing, was part
8 of your responsibility to protect the rights of
9 patients under your supervision as outlined in
10 that patient's bill of rights?

11 A. Yes.

12 Q. And would you agree that as a resident
13 in a nursing home, the resident has a right to
14 adequate and appropriate medical treatment and
15 nursing care and to other ancillary services that
16 comprise necessary and appropriate care
17 consistent with the program for which the
18 resident contracted?

19 A. Absolutely.

20 Q. And would you agree that the patient's
21 bill of rights mandates that?

22 A. Yes.

23 Q. Would you agree that the nursing staff
24 of Judson Retirement Community had a duty to
25 provide Mr. Hayes with adequate and appropriate

1 medical treatment and nursing care and other
2 ancillary services that comprise necessary and
3 appropriate care consistent with the program for
4 which he contracted?

5 A. Yes.

6 Q. And would you agree that if a patient
7 such as Mr. Hayes did not receive adequate and
8 appropriate medical treatment, nursing care and
9 other ancillary services that comprise necessary
10 and appropriate care consistent with the program
11 for which he contracted, it would be a violation
12 of his patient bill of rights?

13 MR. GOLDSTEIN: Objection. You may
14 answer.

15 A. Yes.

16 Q. Now, I would like to talk about
17 charting of nurse's notes at Judson Retirement
18 Community. Did Judson have a policy that nurse's
19 notes and patients' medical charts were to be
20 completed soon after the events or circumstances
21 described in the notes?

22 A. I don't think we had a policy the way
23 you have said it. Our policy was that the nurse
24 -- 1997. Let me just think a minute.

25 The nurse was responsible for charting

1 any pertinent information on that resident that
2 occurred within the shift that she worked.

3 Q. So by the end of the shift, the nurse
4 was to have recorded any particular comments,
5 observations or important pieces of information
6 in the patient's chart?

7 A. Yes.

8 Q. And Judson's policy did not allow for
9 nurses to come back to the chart long after the
10 patient had been discharged to add additional
11 notes to the chart; correct?

12 A. We had no policy that said they
13 couldn't come back. In fact, if -- I would
14 encourage any nurse on the staff if they felt
15 that they had worked a shift, documented, then
16 went home and realized that they neglected to
17 write something that was pertinent, I would
18 encourage that person to write an addendum note
19 at that time to make sure that that information
20 got into the chart.

21 Q. Isn't it standard nursing practice to
22 indicate the date and the time that a particular
23 nurse's note is written in a patient's chart?

24 A. Absolutely.

25 Q. And did Judson's policies and

1 procedures require that the nurse's notes
2 indicate the date and the time that the note was
3 actually written?

4 A. To my best recollection, it's clear in
5 the policy that that would be true.

6 Q. Did Judson Retirement Community have
7 any policies or procedures regarding the making
8 of late entries in the nurse's notes of a
9 patient's chart?

10 A. I don't recall. I believe we had an
11 addendum policy procedure, but, I don't recall
12 specifically.

13 a. During the course of your employment
14 at Judson, are you aware of any instances where
15 nurses added notes to a patient's chart after the
16 patient was no longer a patient at the facility?

17 A. Yes.

18 Q. How often did that happen?

19 A. Infrequently. Two or three times.

20 Q. And in those instances, were the
21 nurses required to indicate the date and time
22 that they were making the entry?

23 A. They were required to date it just as
24 they would any other note appropriately at the
25 time that it was written, date and time that it

1 was written.

2 Q. Do you have any independent recall of
3 William Hayes, as you sit here?

4 A. No.

5 Q. From your review of the record, did
6 you ever have any personal contact with Mr.
7 Hayes?

8 A. I never had any personal contact that
9 I know of. And I haven't looked at the record
10 probably in a few years, so --

11 Q. Now, from the record it appears that
12 Mr. Hayes was admitted to Judson Retirement
13 Community around 3:00 p.m. on a Sunday, which was
14 on November 23rd. Is it likely you were not
15 present in the facility at that time?

16 A. It's likely. I did work some
17 Saturdays or Sundays and off shifts, but you
18 know, I couldn't guess when those would have
19 been. Most likely, I was not there.

20 Q. Would there have been a nursing
21 supervisor on duty at that time?

22 A. Yes.

23 Q. Do you know in this case who the
24 nursing supervisor was?

25 A. I have no idea.

1 Q. What were the duties and
2 responsibilities of the nursing supervisors when
3 they were working, say, on a Sunday or an
4 afternoon shift?

5 A. The responsibilities were not only to
6 provide the support to the employees on the unit,
7 but to be available if there were any residents
8 that had concerns or questions. They carried a
9 beeper and they were on call to any employee or
10 resident or family member that wanted to have an
11 opportunity to talk to somebody, sort of in an
12 administrative role, or as an additional support
13 as a clinician.

14 They would assist in facilitating
15 admissions that were coming in on the weekend.
16 When I say assist, that means that there was
17 paperwork to be done. We would be having
18 paperwork faxed from the sending facility and
19 they would pick that up and get that to the staff
20 so that the staff knew who was coming in. In
21 general, we help facilitate that admission.

22 Q. So basically if the nurses on the
23 floor had questions, they had a number of people
24 on the nursing staff they can consult, including
25 the unit manager, the clinical specialist, as

1 well as the nursing supervisors?

2 A. Right. And the physicians.

3 Q. If a Judson nurse consulted with a
4 geriatric fellow on call regarding a patient's
5 condition and was dissatisfied with the advice
6 that she was given, did she have any other
7 recourse?

8 What would she do in that case if she
9 was dissatisfied with the information or advice
10 that a physician gave her and the family that
11 something else needed to be done?

12 A. She would be strongly encouraged at
13 all times, whenever she was uncomfortable with
14 something she was hearing, to contact her
15 immediate supervisor to decide on a next step.

16 Q. Did the nurses have access to the
17 medical director if there were questions?

18 A. The medical director, while we had a
19 mechanism to page her, the staff would be
20 sometimes reluctant to make those pages, but she
21 was available by page.

22 Q. And did the supervisors have access to
23 the medical director if they felt it was
24 indicated?

25 A. Yes, absolutely.

1 Q. Now, did you as a director of nursing
2 receive daily reports on patients?

3 A. I received in 1997 -- let me think,
4 because we have different mechanisms. I did not
5 receive daily reports. I received daily reports
6 from my management group on any outliering
7 concerns, family members upset that they have not
8 been able to appease or solve the problem; some
9 problem that's shown up in our system that needs
10 to be addressed, that type of thing. **So** I would
11 have daily interaction with people reporting to
12 me about any of those concerns.

13 Q. When did you learn that Mr. Hayes had
14 died?

15 A. You know, I don't have any recall of
16 the sequence of events with this gentleman at
17 all. I can't speak to the case. I haven't
18 looked at the record. I just have no recall at
19 all.

20 Q. What was the usual procedure if a
21 patient died suddenly, unanticipatedly, what was
22 the usual procedure in November of 1997?

23 A. In November of 1997, to my best
24 recall, we had a report on the deaths that came
25 across that I would check daily, but it wouldn't

1 tell me whether that was sudden or not sudden.

2 If there was some reason that the manager thought
3 that because -- there are deaths, enough deaths,
4 one or two, a couple a week, there are enough
5 deaths that unless something is really an outlier
6 for the manager, I'm not going to hear about it.

7 If the manager thought there was
8 something that was a sudden death that they
9 weren't expecting and there was some concern, it
10 probably would have been communicated to both
11 myself and David immediately.

12 Q. In Mr. Hayes' case, do you recall ever
13 receiving any type of notification in regard to
14 his death?

15 A. I just don't recall. I mean, the
16 routine is that I would have been notified.

17 Q. And in regard to sudden deaths that
18 were not anticipated, did you have any type of
19 follow up that you would normally do in those
20 cases?

21 A. Generally, what would happen is that
22 David Clark would call a meeting and we would
23 meet with the manager of the unit, myself, Dr.
24 O'Toole, to see, you know, is there anything here
25 that you think is a major concern; are we at

1 fault here, you know, to start some type of an
2 investigation. If there is some concern, there
3 would be, you know, as much investigation as
4 possible to see if there was a concern.

5 Q. And in the case of Mr. Hayes, do you
6 recall whether such a meeting was held?

7 A. I remember meeting about Mr. Hayes. I
8 just don't remember anything about that.

9 MR. GOLDSTEIN: Don't discuss contents
10 of the meeting. You may tell her that there was
11 a meeting. You may not discuss any contents.

12 THE WITNESS: I don't recall any
13 contents anyway.

14 MR. GOLDSTEIN: That's fine, I am
15 instructing you not to.

16 Q. Did you ever have any conversations
17 that you recall with Mr. Hayes' family?

18 A. No, I don't recall any.

19 Q. Did you at some point in time
20 eventually learn that he died of pulmonary
21 emboli?

22 A. At some point in '97, I'm sure that I
23 did become aware of that.

24 Q. Do you know whether it was prior to
25 the time that this case was filed?

1 A. Oh, I don't know.

2 Q. Why do you specifically recall that it
3 was sometime in '97?

4 A. Well, I guess I am just going back to
5 '97. I don't know what the death date -- well,
6 I guess he had to die in '97. But I don't know.
7 We are talking about '97, that's all I remember.

8 Q. My question then -- and let me
9 reiterate my question. My question is, did you
10 eventually learn that he died of a pulmonary
11 emboli, and your answer was, I think I did
12 sometime in 1997?

13 A. Right.

14 Q. And what I am asking is, why is it
15 that you recall that it was sometime in 1997?

16 A. Well, I don't know that it was '97. I
17 mean, I guess I'm assuming that we are talking
18 late '97, and so I don't know.

19 Q. And aside from the meeting that you
20 just discussed, did you ever have any discussions
21 with any other physicians at any time about Mr.
22 Hayes' death?

23 A. No.

24 Q. Do you recall discussing it with any
25 of the nurses?

1 A. The only --

2 MR. GOLDSTEIN: Let me just caution
3 you, do not discuss anything that was part of
4 peer review.

5 THE WITNESS: Okay.

6 A. The only thing that I recall is that
7 when I think of Mr. Hayes, I think of this note
8 that Laurie wrote and I saw that today, and I
9 remember, when I see that note, I remember, I can
10 see Laurie sitting with me and with one other
11 person. Whether that was the clinical nurse
12 specialist, whether that was Diane Soukup, but I
13 can remember meeting with Laurie about the fact
14 that we had questions.

15 I mean, there were questions about
16 this case, and we asked Laurie, did you chart
17 everything that occurred during that shift. And
18 then Laurie shared things that she hadn't charted
19 -- this is to my best recall -- she hadn't
20 charted, and we advised her that she needed to
21 chart those.

22 Q. Do you recall when that meeting was
23 with Laurie?

24 A. I have no idea.

25 Q. Laurie previously testified that this

1 was a considerable amount of time after Mr.
2 Hayes' death. Do you have any recollection as to
3 how long after his death this meeting with her
4 occurred?

5 A. I have no idea.

6 Q. Now, you indicated that there was a
7 meeting in which you discussed Mr. Hayes' death.

8 Did you do any other investigation
9 aside from what went on in that meeting to
10 investigate any of the circumstances surrounding
11 his death?

12 A. I did not.

13 Q. Do you know of anyone else that did?

14 A. The person that would have been asked
15 to do that would have been the manager of the
16 unit.

17 Q. And who in this case was the manager
18 of the unit?

19 A. That was Diane Soukup.

20 Q. Do you know whether she did any
21 further investigation?

22 A. I believe she did further
23 investigation, and that would have been the
24 routine that she would have. I mean, that would
25 have been our norm, to investigate anything out

1 of the norm.

2 Q. Do you know what she found after she
3 investigated?

4 A. I have no idea.

5 Q. Is there a point in time when you
6 became concerned that the family of William Hayes
7 may be contemplating legal action because of his
8 death?

9 A. Is there a point in time when I became
10 concerned?

11 Q. Yes.

12 A. No, I don't think that occurred.

13 Q. Now, I want you to assume that Nurse
14 Thill testified that you had indicated to her
15 that you were concerned the family was
16 contemplating a legal action and that that was
17 the reason that you wanted her to write a note.
18 I want you to assume that that's what her
19 testimony was.

20 A. Okay.

21 Q. Would you disagree with that
22 statement?

23 MR. GOLDSTEIN: Objection. Go ahead
24 and answer.

25 A. I feel a little Catch 22 in the

1 question.

2 I know that I spoke to Laurie Thill
3 about the fact that there was a concern. Whether
4 or not I said that I was concerned that the
5 family was going to sue, I don't remember.

6 Q. Now, what was your concern?

7 MR. GOLDSTEIN: Objection.

8 A. I don't recall.

9 Q. What was it you told her you thought
10 was unclear in her notes?

11 A. I don't recall. I only remember
12 meeting with her and asking her to tell us if
13 there is anything that she left -- anything that
14 wasn't charted that needed to be charted. And
15 when we heard -- what she said was information in
16 addition to what the note said at the time,
17 whatever that information was.

18 So there was information that she had
19 that she hadn't charted. I don't know exactly
20 what that was, but I know that there was a
21 variance there, and so we asked her to go back --
22 not go back. I shouldn't say it that way. We
23 asked her to do an addendum note and put that
24 information into the chart.

25 Q. I am going to hand you what's been

1 marked as Plaintiff's Exhibit Number 2. It's the
2 addendum note.

3 - - -

4 (Thereupon, JOSEPH Deposition
5 Exhibit 2 was marked for
6 purposes of identification.)

7 - - - -

8 MR. GOLDSTEIN: That's fine, Jeanne,
9 thank you.

10 Q. Is that the addendum note that you are
11 referring to?

12 A. This is the one I saw today.

13 Q. When Nurse Thill wrote an additional
14 note in the chart?

15 A. This is the note I saw today. Now,
16 whether I saw this note when she wrote it, I
17 don't recall.

18 Q. I want you to assume that Nurse Thill
19 has testified that she wrote that note and gave
20 it back to you. Do you have any reason to
21 disagree with her testimony?

22 A. Well, she only would have given it to
23 Diane Soukup or myself or David Clark, so it's a
24 very good possibility that she gave it back to
25 me, but I don't recall actually that happening.

1 Q. Now, you do not know how long after
2 Mr. Hayes' death you requested that she write an
3 addendum to her nurse's notes; correct?

4 A. No, I do not. I have no idea.

5 Q. And you don't recall why you asked her
6 in this instance to write an addendum to the
7 nurse's notes; is that correct?

8 A. Correct.

9 MR. GOLDSTEIN: There is no question
10 before the witness right now. Excuse me for a
11 minute.

12 (Thereupon, a discussion was had
13 between the witness and her counsel out of the
14 hearing of the reporter.)

15 Q. Now, you have had an opportunity to
16 look at the addendum note that Nurse Thill
17 wrote. And the content of that note specifically
18 relates to an interaction she had with Dr. Ahmed
19 and her conversation with him regarding the DVT
20 study.

21 A. Uh-huh.

22 Q. Was your memory refreshed at all as to
23 why specifically these particular issues were
24 discussed in her addendum note and why that was
25 important in this case?

1 A. I just do not recall. I mean, I am
2 reading these words and I don't remember the
3 specifics that go along to build this picture.

4 I remember, I think, that Dr. Ahmed
5 was not one of the physicians that normally
6 answered. I mean, that sounds -- I mean, that's
7 the only thing I can remember. I didn't know Mr.
8 Hayes and I didn't really -- I wasn't involved in
9 the case, so it's like, I don't want to put
10 pieces in there that aren't really supposed to be
11 there. I really don't remember.

12 Q. Well, what would be the purpose of
13 making an addition to a patient's notes long
14 after he was dead regarding his comments or
15 dissatisfaction about his room?

16 A. Oh, well, let me read that.

17 (Pause.)

18 A. Yes, I see it. I don't know why
19 that's there. I mean, I'm not sure what the
20 point is. Resident complained of environment.
21 States room is too small. I don't know.

22 Q. Do you find it concerning that Nurse
23 Thill's note that was made weeks after Mr. Hayes'
24 death mentions concerns he had about his room but
25 doesn't make any mention of the fact that the DVT

1 study that was supposed to be done on November
2 25th of '97 was, in fact, never done?

3 MR. GOLDSTEIN: Objection. Go ahead.

4 A. You know, as a director of nursing, I
5 read many, many notes that nurses have written,
6 and I can't imagine -- I can't tell what is in
7 their head when they are writing that note.

8 All I can tell you, as I said before,
9 when I met with Laurie, I asked her, is there
10 anything that happened or that you wanted to
11 chart, and she maybe said some things that were
12 different than what the chart said, and I
13 encouraged her that you need to be sure that you
14 write an addendum note so that you paint as full
15 of a picture as you can of that time.

16 Q. But this particular point in time
17 there had been a DVT study that was ordered for
18 November 25th and her addendum note addresses
19 that DVT study, but there is no mention of the
20 fact that the DVT study was never done, yet this
21 was weeks after Mr. Hayes died. Don't you find
22 that odd?

23 A. I don't know when this note was
24 written. I have no idea when this note was
25 written.

1 Q. Why is that?

2 A. Well, because I thought that she wrote
3 this note the date that he died. I mean, I
4 thought she dated this the date that he died.

5 MR. GOLDSTEIN: That's dated November
6 23rd, 1997. He died November 27th.

7 A. See, I don't know the dates that you
8 all know, so I'm just --

9 Q. Mr. Hayes was admitted to Judson
10 Retirement Community, I believe, on November
11 23rd. The date that appears on the addendum note
12 also is November 23rd, I believe.

13 A. Okay.

14 Q. Now, you recall speaking with Nurse
15 Thill and asking her to clarify her notes.

16 A. Correct.

17 Q. This was after Mr. Hayes' death;
18 correct?

19 A. Yes. I wouldn't have reason to check
20 her notes and talk to her about the lack of notes
21 if there hadn't been an incident that created me
22 to talk to her, a need for us to talk.

23 Q. There was an incident that created
24 that caused you to talk with her?

25 A. Right. Somebody had to have triggered

1 it.

2 Q. And the incident, do you recall what
3 the incident was that triggered that conversation
4 that you had with Nurse Thill and the nurse
5 specialist?

6 A. I imagine it was the death.

7 Q. And as you sit here today, do you find
8 it concerning that this is after his death that
9 the notes reference the fact that there was a DVT
10 study ordered, but they don't reference the fact
11 that the DVT study was never completed as
12 ordered?

13 A. Well, actually, she has written --
14 nurses often do not write the negative. They are
15 not going to put the negative into the note.
16 They are going to put what they did. They are
17 not going to put -- like, sometimes a nurse will
18 write, I told the doctor such-and-such was
19 happening with the patient, the doctor refused to
20 take an action. But that's not what nurses are
21 encouraged to write about the doctor not taking
22 the action or the outcome; they are not
23 encouraged to write that outcome, they are
24 encouraged to write what they said to the
25 doctor.

1 So I think what she is putting here is
2 what she knew. And I didn't tell her what to
3 write in the note, so I didn't know what she was
4 going to write in the note.

5 **a.** Well, the fact that she is writing a
6 note about the fact that he had leg pain and also
7 that the DVT study was written, doesn't it appear
8 to you that what she was focusing on here was the
9 fact that he possibly had a thrombophlebitis that
10 may have led to a pulmonary emboli?

11 MR. GOLDSTEIN: Objection.

12 MS. ROLLER: Objection.

13 MR. GOLDSTEIN: I think you are asking
14 her to speculate.

15 MS. TOSTI: I am asking her what she
16 interprets that note to mean.

17 A. Actually, I can't interpret Laurie
18 Thill's note. I mean, I truly can't interpret
19 her note. I mean, you know, she has environment,
20 she has DVT study, she has calf pain, she has
21 about the wife being particular, she has a little
22 bit of everything.

23 I know that I asked her if there was
24 anything that she neglected to chart, would she
25 please go back and do an addendum note and

1 include that. And so, I can't judge it.

2 Q. Now, would you agree that because it's
3 dated November 23rd, '97 at 3:45 p.m. -- and I
4 want you to assume that's the approximate dates
5 of his admission -- that it gives the appearance
6 that it was written shortly after Mr. Hayes was
7 admitted to Judson Retirement Community; correct?

8 A. Sure, the date and time would make one
9 believe that.

10 Q. And in fact, anyone reading this note
11 would never know that it was written after Mr.
12 Hayes had died; correct?

13 A. Right.

14 Q. Do you know how the addendum note came
15 to be in Mr. Hayes' medical records, what the
16 process was after she wrote it?

17 A. I don't. The norm would be that she
18 would write the addendum note and put it into the
19 record in the right sequential date. I mean,
20 this should have been dated the date that she
21 wrote it and put it in that correct sequence.

22 Q. Now, is there a point in time where
23 you became aware that Mr. Hayes had been ordered
24 to have a deep vein thrombosis study but the
25 study was never done?

1 A. If that occurred, I am sure I became
2 aware of it at some point in discussions about
3 the case. Do I recall all that?

4 Q. Yes.

5 A. No.

6 Q. Are you aware of anything in the
7 record that would indicate that Mr. Hayes' DVT
8 study was scheduled as ordered?

9 A. Am I aware of anything in the record
10 that says --

11 Q. Anything that you reviewed or any
12 other source that this DVT study was scheduled as
13 ordered?

14 A. The only things I remember are what I
15 am seeing here. No, I don't know.

16 Q. Did you ever conduct a search to try
17 to find any documentation that a DVT study was
18 scheduled?

19 A. I did not.

20 Q. Do you know of anyone else that did?

21 A. I imagine that Diane Soukup would have
22 done that.

23 Q. Well, what I am asking for is your
24 knowledge of anyone.

25 MR. GOLDSTEIN: Don't speculate. Tell

1 her what you know.

2 A. No, I don't know.

3 Q. Why do you think -- Diane Soukup is
4 her name?

5 A. Soukup.

6 Q. Why do you think that Diane Soukup
7 would have searched for scheduling information?

8 A. Well, if there is a question about
9 anything that went on regarding a resident, part
10 of her thorough investigation would be going up
11 all those avenues.

12 Q. You don't have any recollection of a
13 specific investigation that was done in order to
14 determine if there was a DVT study scheduled?

15 A. I do not.

16 Q. Now, would you agree that the nursing
17 staff at Judson Retirement Community had a duty
18 to make appropriate arrangements for Mr. Hayes'
19 DVT study as it was ordered?

20 A. Absolutely.

21 Q. Would you agree that if the nursing
22 staff of Judson Retirement Community did not
23 schedule and make appropriate arrangements for
24 Mr. Hayes' DVT study as ordered that that would
25 be below the standard of care?

1 MR. GOLDSTEIN: Objection. You may
2 answer.

3 A. Yes.

4 Q. Do you know why Mr. Hayes did not
5 receive a DVT study on November 25th, '97 as it
6 was ordered?

7 A. I only know what it says in this note
8 here about the fact that she called and they
9 didn't have an appointment. And then she
10 scheduled an appointment for much later.

11 Q. And would you tell us what you are
12 referring to, for the record?

13 A. I'm sorry. This is the e-mail -- oh,
14 Exhibit Number 1.

15 Q. And when you say she called, who are
16 you referring to?

17 A. Well, in this Exhibit Number 1, Pat
18 states when she called to check -- that she
19 called to check on the appointment, and the
20 person said that he didn't have an appointment
21 for that day and then she scheduled an
22 appointment.

23 Q. And in this particular instance, who
24 would be responsible for following up and
25 checking that the DVT study for Mr. Hayes was

1 scheduled and carried out as ordered?

2 A. The nurses on the unit. That would
3 include the nurse caring for Mr. Hayes and --
4 basically, it's the nurse responsible for that
5 resident.

6 Q. Now, I want you to assume that Nurse
7 Thill was the one that transcribed those orders
8 and verified them. Would she be responsible for
9 making sure that this test was scheduled as
10 ordered?

11 A. She would be responsible. See, you
12 know, that's a toughy. The nurse, she could take
13 an order off at 2:55, on a day shift, and she is
14 leaving at 3:00 and she takes off an order and
15 transcribes it and gives it to the secretary to
16 follow up on. She also logs it on the kardex.
17 It's the succeeding nurse's responsibility to
18 make sure that any order that was written was
19 acted upon. So it's not just her responsibility,
20 it's the people following her.

21 Q. So Nurse Thill, as well as the next
22 shift coming on, was responsible for making sure
23 that Mr. Hayes! DVT study was scheduled as it was
24 ordered; correct?

25 A. Yes.

1 Q. Now, if a nurse, if a unit coordinator
2 is scheduling a test and is unable to schedule it
3 the way the order was given to her, what is she
4 supposed to do?

5 A. She is to report it to her supervisor,
6 which is either the resident care manager, if she
7 is there on that unit that day, and/or the
8 supervisor.

9 Q. And would you agree that in this
10 particular instance, if that deep vein thrombosis
11 study could not be scheduled as it was requested
12 by a physician, that there was a duty on the part
13 of the nurses to notify the physician that there
14 was a problem in scheduling the test?

15 A. Absolutely.

16 Q. Are you aware of any other instances
17 at Judson where diagnostic tests were ordered but
18 never scheduled as ordered?

19 MR. GOLDSTEIN: Objection. You may
20 answer.

21 Q. I want to withdraw that question
22 because it's a bad question. Are you aware of
23 any other instances where a diagnostic test was
24 scheduled but not ordered and it resulted in harm
25 to a patient?

1 MR. GOLDSTEIN: Objection.

2 A. I'm aware that there were occasions
3 when there were questions about tests that were
4 scheduled and they did not get done, as in just
5 the human err in things. And I was aware that
6 there was follow up and checking and check
7 systems to make sure those didn't happen. I'm
8 not aware that there was harm done from a test
9 not being done.

10 Q. Do you know in this particular
11 instance why this test never was completed as
12 ordered?

13 A. I don't. I have no idea.

14 Q. Do you know whether or not this test
15 was written on Mr. Hayes' kardex?

16 A. Oh, I have no idea.

17 Q. Do you know whether the night shift
18 ever did a follow-up check to determine that this
19 order for a deep vein thrombosis study was
20 actually scheduled as it was ordered?

21 A. I have no recall about that.

22 Q. Do you know whether Nurse Thill ever
23 attempted to consult with the nursing supervisor,
24 the clinical specialist, or the nurse manager in
25 regard to the complaints that Mr. Hayes had about

1 his pain in his calf and her conversation with
2 Dr. Ahmed regarding the DVT study?

3 A. I don't recall.

4 Q. Do you have any explanation as to how
5 it could happen that Mr. Hayes' DVT study was
6 never completed?

7 A. No.

8 Q. And in Mr. Hayes' case, did anyone
9 ever receive a reprimand for failing to
10 appropriately schedule his DVT study?

11 A. I don't recall. It's possible, but I
12 just don't recall.

13 MR. GOLDSTEIN: Objection.

14 Q. After Mr. Hayes' death, were there any
15 changes in policies or procedures instituted at
16 Judson to prevent the type of error that occurred
17 in Mr. Hayes' case in which a test was not
18 scheduled as it was ordered?

19 MR. GOLDSTEIN: Objection.

20 A. I don't remember specifics on it.

21 Q. I think you have answered this
22 question before, but you did not have any
23 conversations with Dr. Atkinson or Dr. O'Toole
24 aside from that meeting that we discussed about
25 Mr. Hayes' death; is that correct?

1 A. I don't remember any conversations
2 with either, aside from any kind of little joint
3 meeting we would have had.

4 Q. At the time that you met with Nurse
5 Thill in regard to her addendum note, did you
6 have any concerns that the nursing staff might be
7 blamed for not arranging for his DVT study?

8 A. I don't recall anything about the DVT
9 study -- I don't think so. I just don't
10 remember. All I remember from that meeting was --

11 MR. GOLDSTEIN: Just answer her
12 question.

13 THE WITNESS: I'm sorry.

14 MR. GOLDSTEIN: That's okay.

15 A. No.

16 Q. Tell me what else you recall of that
17 meeting.

18 A. The same thing I told you before. I
19 had seen the note -- I remember seeing the note
20 and whatever she said differed from what -- there
21 was more that she said than was in the note, and
22 I said, Laurie, you need to make sure that you do
23 an addendum note, writing down anything else that
24 you've remembered about that shift.

25 Q. And you don't remember what prompted

1 you to have that meeting with her?

2 A. I do not.

3 Q. Do you have any criticisms of the
4 nursing staff or the unit coordinator in the way
5 in which Mr. Hayes' DVT study order was handled?

6 MR. GOLDSTEIN: Objection.

7 A. If the order was not made -- if the
8 order was not carried out, somebody -- if that's
9 what happened, then there was a problem about the
10 order. But I don't know that that's what
11 happened. I don't know that --

12 I'm sorry, I am only supposed to
13 answer the question.

14 Q. Go ahead. Finish what you were
15 saying.

16 MR. GOLDSTEIN: Objection to the
17 extent it's not responsive to the question.

18 Q. You were going to say what you --

19 A. I was going to say that it's possible
20 that the appointment was made and that the clinic
21 messed up where it was going to be done and
22 didn't have it on the schedule. I don't know. I
23 mean, I don't know the specifics of this case.

24 Q. Now, you saw, I believe, previously a
25 scheduled appointment sheet that defense counsel

1 produced today indicating that a test was
2 scheduled in December for this patient; correct?

3 A. I didn't look at an appointment
4 sheet.

5 MR. GOLDSTEIN: She did not.

6 Q. When you gave me the group of papers?

7 A. I only looked at these two things.

8 MR. GOLDSTEIN: She referenced
9 Exhibits 1 and 2 just now. That's what the
10 witness saw.

11 Q. Do you have any criticisms of any of
12 the physicians that were involved in Mr. Hayes'
13 care?

14 A. No.

15 Q. Do you have any criticisms or lay any
16 blame to Mr. Hayes in any way for what happened?

17 A. I can't answer that. I don't know the
18 case to be able to say that.

19 MS. TOSTI: Just give me one minute
20 here and I may be just about done.

21 Q. Do you recall ever receiving any type
22 of a -- you had mentioned previously that you
23 don't get an individual report on every patient,
24 but when there is some unusual occurrence, the
25 nurses would give a report to you.

1 Do you recall receiving any type of a
2 report on William Hayes when he was a patient at
3 Judson Retirement Community?

4 A. I don't remember.

5 MS. TOSTI: I don't think I have any
6 further questions.

7 EXAMINATION OF DONNA JOSEPH, R.N.

8 BY MS. ROLLER:

9 Q. I have some additional questions for
10 you, some of which hopefully will help clarify
11 some things for me.

12 When is the last time you have seen
13 Pat Redwood?

14 A. At my going away party, the last one
15 or two days that I worked there.

16 Q. Which would be when?

17 A. October 1, 1999 was the last day I
18 worked -- I believe that was a Friday -- and they
19 had a good-bye party on Thursday, and I think
20 that's the last time I saw her.

21 Q. And where was she working at the time,
22 if you know?

23 A. She was working at Judson.

24 Q. She was working there at that time,
25 okay. Do you know if she is still working there?

1 A. She is not working there. I'm aware
2 that she is not working there.

3 Q. Do you have any understanding as to
4 where she is working now?

5 A. You know, I heard where she was
6 working, but I don't remember. She had gotten a
7 job the last I heard, but I don't remember where.

8 Q. Do you know what kind of job?

9 A. Yes. It was staffing, doing
10 staffing. I mean, like being a staffing person
11 somewhere.

12 Q. At a medical facility?

13 A. I don't recall.

14 Q. What do you mean by doing staffing,
15 what does that mean?

16 A. That means that she would be the
17 person that called the agency when they had a
18 call off. Sort of like a secretary staffer
19 person. But I don't know where, so I don't know
20 exactly what she was doing.

21 Q. Does she have a family?

22 A. I know she has children.

23 Q. I ask you that to know whether you
24 heard that she moved from the area?

25 A. I didn't hear that she moved.

1 Q. Do you know anyone who is a good
2 friend of hers?

3 A. No, not really.

4 Q. What do you understand her education
5 is?

6 A. I don't know.

7 MR. GOLDSTEIN: If you know.

8 A. I don't know what it is.

9 Q. Do you know if she is a college
10 graduate?

11 A. I doubt it. I don't know.

12 Q. Did you hire her?

13 A. I did not.

14 Q. Was she working there at Judson when
15 you came?

16 A. No, she was not.

17 Q. How is it then that you did not hire
18 her?

19 A. Actually what happened is, shortly
20 after I came and Diane came at the same time, she
21 had been working through an agency on the 6th
22 floor as a unit coordinator, temporary staff.

23 Q. She meaning Pat Redwood?

24 A. Yes. And she seemed to be doing a
25 very good job and Diane hired her for that job.

1 Q. So Diane Soukup hired her. How do you
2 spell that?

3 A. S-O-U-K-U-P.

4 Q. Did you authorize the hire of Pat
5 Redwood?

6 A. I was responsible for anybody hired,
7 along with HR. I wouldn't have said yes or no.
8 I mean, that wasn't my role to say yes or no when
9 Diane was doing the hiring. She was responsible
10 to me for who she hired, but I didn't approve all
11 her hires.

12 Q. So Pat Redwood was hired while you
13 were director of nursing?

14 A. Correct.

15 Q. You indicated you were hired, first,
16 as director of nursing for the Brunning facility;
17 is that right?

18 A. Brunning Health Center, correct.

19 Q. Where Mr. Hayes was a resident, that
20 was not the Brunning Center or was it?

21 A. Yes, it was.

22 Q. Now, with respect to the staffing
23 November 23rd through 27th of 1997 for the 6th
24 floor, I just want to make sure that I understand
25 who the personnel were.

1 We understand now, or I guess I should
2 ask you, is it your understanding that the
3 individual who Laurel Thill asked to order the
4 DVT was, indeed, Pat Redwood?

5 A. That's what I imagine, yes.

6 Q. Mr. Hayes was a patient of Laurel
7 Thill's on November 23rd when the order from
8 Hillcrest was taken off for the DVT study. Do
9 you understand that to be the case?

10 A. I don't know. I know that the
11 admission date was 11-23.

12 Q. And if Laurel Thill was a nurse that
13 day --

14 A. If she was there that day and if this
15 is the day the order -- I don't know what day Dr.
16 Ahmed gave the order.

17 Q. I want you to assume that Mr. Hayes
18 was transferred to Judson on November 23rd.

19 A. Right.

20 Q. And if Laurel Thill was the person who
21 took the orders from Hillcrest and filled out --
22 I know my sheet is cut off here. I don't know
23 what the top of this sheet is called.

24 MS. TOSTI: It says admission order.
25 Let me see if I can find one for you here.

1 (Thereupon, a discussion was had off
2 the record.)

3 Q. And if Laurel Thill is the person who
4 filled out the admission physician's orders on
5 November 23rd for Mr. Hayes, is it fair to
6 conclude then that Mr. Hayes was her patient that
7 day?

8 A. Actually, there could be three nurses
9 on the unit, and the way that the floor is split,
10 it could be that all the admissions were coming
11 to one nurse.

12 Q. Okay.

13 A. So it's possible that the person could
14 do an admission, quote, unquote. The paperwork,
15 the process, getting all the information from the
16 resident, she could do that, although she was not
17 the person who was going to be caring for that
18 resident for the rest of the day.

19 Q. All right. But --

20 A. Or shift.

21 Q. But, for instance, by the addendum
22 note, we know that Nurse Thill spoke with Dr.
23 Ahmed about this patient?

24 A. She was actually involved.

25 Q. And so, is it fair for us to

1 understand then that on November 23rd that Mr.
2 Hayes was her patient?

3 A. It appears that way from the note.

4 Q. Okay. Now, with respect to the other
5 personnel, you have named a number of other
6 positions and I want to make sure that I have
7 individuals identified for those positions.

8 A. Okay.

9 Q. The 6th floor resident care manager
10 was Diane Soukup; correct?

11 A. Correct.

12 Q. And that is one of the positions that
13 you said reported to you, the floor manager?

14 A. Correct.

15 Q. And I am sorry if this question was
16 asked before by Attorney Tosti, but I want to
17 make sure I understand.

18 When would Diane Soukup work? When
19 would she be physically present?

20 A. Diane's schedule was much more
21 variable. She would work whenever -- she would
22 work day shifts, sometimes she would work
23 afternoon shifts, sometimes she would work night
24 shifts, and sometimes she would do 10:00 to
25 8:00. It really was a flex schedule.

1 Q. Did she carry a beeper?

2 A. She did.

3 Q. So she was available to the nurses on
4 the 6th floor at all times?

5 A. 24 hours a day.

6 Q. Seven days a week?

7 A. Right.

8 Q. Now, the other positions you referred
9 to that reported to you were the supervisors;
10 correct?

11 A. Correct.

12 Q. Was there a supervisor for the 6th
13 floor?

14 A. No. There was a supervisor for
15 Brunning Health Center.

16 Q. Okay.

17 A. That person did rounds to the various
18 units, checked to see on the annual admissions,
19 any problems on the units, any employee concerns,
20 you know, just meeting with family members.

21 Q. I see.

22 A. They were available throughout the
23 shift. One person at a time. I mean, one
24 supervisor at a time on off shifts.

25 Q. I see. Now, how many people held that

1 position of supervisor for Brunning Health
2 Center? How many different people held that
3 position?

4 A. At that time?

5 Q. In November of '97.

6 A. I would have to guess who was the
7 supervisor.

8 Q. No, that's not my question. My
9 question is, how many different -- you said there
10 were different --

11 A. Was there consistency?

12 Q. Well, no. That is a position at
13 Judson for the Brunning Health Center --

14 A. Right.

15 Q. -- of that of supervisor; correct?

16 A. Correct.

17 Q. How many different individuals held
18 that position? Or did just one person hold that
19 position?

20 A. Well, when we had a position for
21 afternoon supervisor, for instance, it's like 1.4
22 FTE that covers seven days a week on afternoon
23 shift. You could have a person that worked five
24 days a week as a full-time person and a person
25 that worked two days a week, or you could have,

1 you know, any variable in there.

2 Q. I see.

3 A. So in the afternoon shifts, most
4 likely there were two people on as afternoon
5 supervisors, and most likely there were two night
6 supervisors to cover those hours.

7 Q. I see. And morning?

8 A. Oh, and we had a supervisor there on
9 the weekend for the day shift, because normally
10 the managers, their regular schedule is Monday
11 through Friday, although they would flex.

12 Q. But in any event, at all times, there
13 was a supervisor?

14 A. At all times.

15 Q. At all times. And did that person
16 carry a beeper?

17 A. Yes.

18 Q. And then they gave the beeper to that
19 person taking over the shift that left?

20 A. As we did it, yes, the supervisor
21 beeper was a special supervisor beeper and
22 whoever was supervising would carry that pager.
23 The managers had their own pager.

24 Q. Can you recall in 1997 who the
25 supervisor was? I mean, can you give me some

1 names?

2 A. I'm going to -- I think Lola Henley
3 was our supervisor in '97.

4 Q. That was the name that Nurse Thill had
5 indicated.

6 A. I mean, she was our supervisor a long
7 time and it was much closer to the time I left
8 that changed.

9 Q. And then the clinical nurse specialist
10 in 1987, who was that?

11 A. '87?

12 Q. Excuse me, I said '87. '97.

13 A. I believe it was Kathy Ondus at the
14 time. O-N-D-U-S.

15 Q. And again, did more than one person
16 have that position at different shifts?

17 A. No, there was one clinical nurse
18 specialist, only one person, one full time.

19 Q. Unlike the supervisor?

20 A. Right. Because it was a different
21 kind of position.

22 Q. Similar to the floor manager. Diane
23 Soukup was the only floor manager?

24 A. Correct.

25 Q. And again, did Kathy Ondus have a

1 pager or beeper?

2 A. Yes.

3 Q. 24 hours a day, seven days a week?

4 A. Yes.

5 Q. Now, help me understand one other
6 thing: This kardex system. You said the kardex
7 is made part of the chart once the chart is
8 compiled after the patient has left the facility;
9 correct?

10 A. Yes. They come together at that
11 point, because the kardex is kept -- a kardex is
12 like, it's a working tool for the nurse, where
13 she has to chart off every single time, every
14 med, every treatment, et cetera, so it's a
15 working tool. This is a working tool, but it's a
16 document off --

17 Q. When you say "this"?

18 A. This chart.

19 Q. The chart that I have. If I hand you
20 the chart, can you show me the kardex in it?

21 I am just going to give you a copy of
22 Mr. Hayes' chart that I have, and show me if
23 there is any part of that kardex system, because
24 I am not quite sure I understand what you are
25 referring to. You can see how it's organized

1 there.

2 A. I am just going to page through it a
3 minute here.

4 Q. For instance, looking under orders or
5 medication.

6 A. Yeah, if it's there. You want me to
7 find out if it's in there?

8 Q. Yes, I want to know.

9 A. Okay, this is a kardex.

10 Q. Okay.

11 MR. GOLDSTEIN: Now go ahead and
12 identify it somehow.

13 Q. First, let me ask you a few more
14 questions about it and then we will identify it
15 on the record.

16 When you say this is the kardex, I am
17 looking at the chart I have organized for Mr.
18 Hayes and it's under the tab of medical record?

19 A. Medication record.

20 (Thereupon, a discussion was had off
21 the record.)

22

23 - - -

24 (Thereupon, JOSEPH Deposition

25 Exhibit 3 was marked for

1 purposes of identification.)

2 - - - -

3 Q. **Ms.** Joseph, what's put in front of you
4 is a document that's been marked as Exhibit 3.
5 Can you describe for me what it is?

6 A. It's a medication kardex.

7 Q. And is this the only type of kardex
8 there or that was used at Judson in '97?

9 A. That's very difficult to answer. We
10 redid the documentation on the unit, and to the
11 best of my ability to recall, I believe we also
12 had a treatment kardex.

13 Q. Treatment as opposed to medication?

14 A. Right.

15 Q. And an example of treatment that would
16 be in a different type of kardex would be what?

17 A. Well, let me just look at this for a
18 minute.

19 Well, see, say the resident had a
20 pressure ulcer and there was wound care and that
21 sort of thing.

22 Q. So treatment that was being done other
23 than giving medication?

24 A. Correct.

25 Q. It would be on a separate document you

1 believe may have been used in '97, but you are
2 not sure?

3 A. It may have.

4 Q. But in any event, Exhibit 3, you have
5 three pieces of paper as part of Exhibit 3; is
6 that correct?

7 A. Right.

8 MS. ROLLER: Just one second.

9 (Pause.)

10 Q. What's a nursing admission data base?

11 A. Nursing admission data base is when
12 the resident is admitted, there is like a whole
13 head to toe information gathering process, and
14 that's all documented on that data base.

15 Q. And what does that look like?

16 A. I'm not sure what it looks like in
17 that chart.

18 Q. A piece of paper is generated?

19 A. Yes.

20 MS. TOSTI: I believe it has a picture
21 of a human form, front and back, on the front
22 page of it.

23 (Pause.)

24 Q. On November 23rd, 1997, if Nurse Thill
25 had requested the unit coordinator to schedule

1 William Hayes for a DVT study on November 25th,
2 1997, according to the procedures used at Judson,
3 what should have been written on the kardex?

4 A. To my best recall, on this kardex
5 form, the order for the test would have been
6 entered in this block on the left on Exhibit 3.

7 Q. All right.

8 A. And there would be a date that you
9 wanted that scheduled.

10 Q. All right. **So** looking at Exhibit 3,
11 the first page, we see here what is written on
12 the top left corner, it says 11-23-97, Cardizem
13 CD 300 milligrams, POQD.

14 And then it says hour and there is an
15 8A and then there are numbers across the top of
16 the page going to the right. Are those days of
17 the month?

18 A. Correct.

19 Q. And for this Cardizem order, what is
20 filled in with respect to the 24th, 25th, 26th
21 and 27th? Those are initials?

22 A. Correct.

23 Q. Of nurses who have indicated that they
24 are giving him the Cardizem?

25 A. Correct.

1 Q. And you are saying a similar entry
2 should have been made on November 23rd regarding
3 what? Tell me what you would have expected to
4 see.

5 A. I would have written DVT study ordered
6 for and put the date here and I would have also
7 put it here.

8 Q. When you say here, going to the right,
9 would you have put something on the 25th?

10 A. If that's the date that we are
11 ordering it, so that then I, as the nurse coming
12 in on the 25th, would know to check, did this
13 happen.

14 Q. A subsequent nurse would look at the
15 25th --

16 A. Uh-huh.

17 Q. -- under that first block or wherever
18 the block is for the order of the DVT and would
19 see that it had been ordered for the 25th?

20 A. Correct.

21 Q. Okay.

22 A. I mean, actually, we are asking them
23 to be -- this is asking people to sometimes be a
24 little bit more creative. There are things that
25 happen that aren't daily, so when those nondaily

1 things happen, we ask that it be logged here and
2 then you can highlight the date that it occurs,
3 so that when the nurse is scanning what needs to
4 happen that shift, if I come in and I haven't
5 been here in two weeks, I can look at this and
6 see that this is the day and this is what I
7 should be checking for.

8 Q. If Nurse Thill requested the unit
9 coordinator Pat Redwood to schedule the DVT, then
10 the responsibility for filling out the kardex
11 would have been the unit coordinator, Pat
12 Redwood?

13 A. Would have been the nurse.

14 Q. She still would have the
15 responsibility to fill out the kardex?

16 A. Right. Because really, she is giving
17 the kardex, putting the same information on the
18 kardex as she is giving to the secretary. She is
19 saying this is a to-be-done.

20 Q. And then the secretary is just to
21 physically make the call?

22 A. Right.

23 Q. Do unit secretaries -- and by the way,
24 it's the same as the unit coordinator; correct?

25 A. Yes.

1 Q. Do they ever fill out an entry form on
2 a kardex?

3 A. At Judson?

4 Q. Yes.

5 A. Sometimes. We were in the process of
6 having the unit coordinators do as much support
7 to the staff as they could, but that depends on
8 the time availability, so it's not cut and dry
9 this person does it and this person does it.
10 It's not that clear.

11 Q. Okay. I just want to make sure I
12 understand the system.

13 If Nurse Thill had requested the unit
14 coordinator to make the call, she would
15 presumably write something in the left-hand
16 column there or the block, the left block,
17 ordered DVT for 11-25-97?

18 A. Correct.

19 Q. That was the order from Hillcrest
20 Hospital that that was to be done; correct?

21 A. Right.

22 Q. Why wouldn't she put an X or her
23 initials in the number 23 block for the month as
24 if to show that's the date she made the order?

25 A. That's not the way the procedure

1 worked.

2 Q. The procedure is --

3 A. The procedure is write what is going
4 to happen.

5 Q. I want to make sure. Let me complete
6 the question, okay?

7 The procedure used at Judson is that
8 the kardex is used for activity that is to be
9 done; correct?

10 A. Yes.

11 Q. And so the purpose of the kardex
12 system is a means of documentation to give to
13 other personnel for their use to know what is to
14 be done; correct?

15 A. To be done, and done, signed off when
16 it's done, when it occurs.

17 Q. So then when the 25th comes around,
18 two days later, after the activity is first
19 recorded, what is written on the kardex?

20 A. Completed. You just write completed.
21 And actually once something is completed, it's
22 done and discontinued and yellowed out.

23 Q. Okay. The procedure was that they
24 were to write the word completed?

25 A. Actually the procedure -- my best

1 recall, we have changed documentation a lot at
2 Judson, especially on 6th. It was that it would
3 be yellowed out once completed. Actually, it's
4 like a discontinued item.

5 If the med, if this Cardizem is being
6 given and then the doctor comes on the 26th and
7 discontinues it, we yellow it out. That means we
8 don't need to act on it anymore. It's no longer
9 active anymore.

10 Q. Yellow it out?

11 A. With a yellow marker.

12 Q. You would only be able to tell that on
13 the original? A yellow marker does not Xerox?

14 A. Yeah. Sometimes it makes a little
15 blur.

16 Q. In other words, if someone would come
17 by and note that something was to be done on the
18 25th but there wasn't a yellow cross out or a
19 yellow check, then the person reading the
20 document would understand that that activity had
21 not yet been done?

22 A. Correct.

23 Q. You can see on Exhibit 3 that there is
24 no reference at all to a DVT study, though,
25 correct?

1 A. Correct.

2 MR. GOLDSTEIN: Objection. That's a
3 medication kardex.

4 Q. Well, let me ask you this. Am I to
5 understand that the procedure at Judson is that
6 for a nurse to order a DVT study, that they are
7 to record it on the kardex system?

8 A. Correct.

9 MR. GOLDSTEIN: There is more than one
10 kardex.

11 Q. All right. Your attorney has just
12 stated that there is more than one kardex.

13 A. To my best recollection, in '97, we
14 had both a medication and a treatment kardex. I
15 don't see a treatment kardex here. Whether there
16 was one, I don't have any idea.

17 Q. And in any event, when Judson would
18 put together the chart for an individual, a
19 treatment, the treatment kardex should have been
20 made part of the chart, just as the medication
21 kardex is made part of the chart?

22 A. You mean on admission?

23 Q. No. When a patient leaves Judson.
24 When a patient leaves Judson or is deceased, as
25 in this case, and a chart is put together for the

1 patient, in that case, is it your understanding
2 that if they existed, the treatment and the
3 medication kardex is to be made part of the
4 chart?

5 A. Yes.

6 Q. And have you studied or looked through
7 the entire chart of Mr. Hayes?

8 A. No.

9 MR. GOLDSTEIN: Objection. Asked and
10 answered.

11 Q. No. Well then, I will ask you to do
12 it at this time and tell me if there is a
13 treatment kardex made part of the chart that I
14 have been provided.

15 A. Okay.

16 (Pause.)

17 A. This is what I believe they have used
18 as a treatment kardex.

19 Q. Let me just look here. It's under
20 nursing notes in the way I have organized my
21 file.

22 In the documents as they were given to
23 me -- and they are bates stamped, 58, 59, 60 and
24 61 that looks similar here -- let me ask you, are
25 58 and 59 a front and back of a document?

1 A. No.

2 Q. No. Are they separate documents?

3 A. Yes.

4 Q. And are 58 and 60 both what you would
5 use at Judson for treatment records or is it just
6 58?

7 A. I'm sorry, this is 60.

8 Q. Yes, it is.

9 A. 60 looks to me like it was part of the
10 care plan.

11 MS. TOSTI: Could I ask you, are we
12 discussing the ones that we just Xeroxed before?

13 MS. ROLLER: No, we are not.

14 MS. TOSTI: Because mine are not bates
15 stamped.

16 (Thereupon, a discussion was had off
17 the record.)

18

19 - - -

20 (Thereupon, JOSEPH Deposition
21 Exhibit 4 was marked for
22 purposes of identification.)

23 - - - -

24 Q. Ms. Joseph, what's been marked as
25 Defendant's Deposition Exhibit 4 is another sheet

1 from Mr. Hayes' chart, and you have indicated
2 that it is the type of form used as the treatment
3 kardex at Judson in 1997?

4 A. Correct.

5 Q. And we do see that this particular
6 piece of paper does indicate a date November
7 23rd, 1997 for -- what do you read that word to
8 say?

9 A. Braden scale. That's a scale to
10 measure wounds.

11 Q. And it does appear, looking back at
12 Exhibit 3, which is in front of you, if you
13 would, the third entry down, can you read that
14 for me under November 24th?

15 A. Sputum for gram stain, CNS, document
16 when obtained.

17 Q. Would you agree that that is more of a
18 treatment activity than a medication activity?

19 A. Yes.

20 Q. Does it appear then that the Exhibit 3
21 documents are being used for Mr. Hayes as both a
22 treatment and medication kardex?

23 A. Yes.

24 Q. Okay. There was also a blackboard
25 that was used at times at Judson for activity

1 that would occur for a particular patient; is
2 that true?

3 A. It sounds familiar.

4 Q. Okay. Let me see if I can refresh
5 your recollection on that.

6 Do you remember such a blackboard?

7 A. I vaguely remember them using a
8 blackboard for a while. I don't know whether
9 that was for a long period. I mean, I just don't
10 recall it too well.

11 Q. Where was it located?

12 A. I don't remember.

13 Q. And what, to your knowledge, was it
14 used for?

15 A. I don't remember. I remember a
16 blackboard for activities that was trialed -- not
17 activities for rehab -- to keep the process
18 going, and I am trying to remember whether Pat
19 and Diane trialed a blackboard for working with
20 appointments. It sounds familiar, but I just
21 don't, I really don't remember. It didn't work
22 long term.

23 Q. And do you know when it was in effect?

24 A. No, I don't.

25 Q. Looking then at Exhibits 3 and 4, and

1 knowing that you have looked through the
2 documents which I have as William Hayes' chart,
3 would you agree that it does not appear that
4 there is any written documentation for the DVT
5 study being ordered for Mr. Hayes?

6 A. Well, I have to admit when I looked in
7 the full chart, I was looking for this kardex; I
8 wasn't looking for appointment information. So I
9 don't know whether there is other appointment
10 information. I don't see it in this document 3.

11 Q. Or 4?

12 A. And which was 4? No, I don't see it
13 in 4.

14 Q. And if an order, if the DVT study had
15 been scheduled, that's where a nurse --

16 A. As I understand.

17 Q. If I can just finish. The reason I
18 say that, I want to make sure we don't talk over
19 each other and the record is accurate, so let me
20 finish before you start talking.

21 If the DVT study had been scheduled by
22 the nursing staff, you would expect to find it on
23 either Exhibit 3 or 4?

24 A. To my best recall in '97, yes.

25 Q. Now, do you have any memory of a Dr.

1 Ahmed, the one specifically referred to in the
2 addendum note?

3 A. Yes.

4 Q. You do. What do you remember about
5 Dr. Ahmed?

6 A. I remember that he was not a physician
7 routinely called.

8 Q. What is your memory as to what kind of
9 physician he was?

10 A. That's all I remember.

11 Q. And when is the last time you would
12 have seen him?

13 A. I have never seen him.

14 Q. Now, you described for Attorney Tosti
15 the system established at Judson for nurses for
16 the scheduling of diagnostic tests; correct?

17 A. Yes.

18 Q. That system does not rely on anyone
19 other than the Judson nursing staff to ensure
20 that a diagnostic test is indeed scheduled as
21 ordered?

22 A. Correct.

23 Q. All right. And likewise, that system
24 does not rely on anyone other than the Judson
25 nursing staff to make sure that a scheduled

1 diagnostic test is completed?

2 A. Correct.

3 Q. In other words, that system does not
4 even rely on the attending physician to be sure
5 that a diagnostic test scheduled by the nursing
6 staff was scheduled and completed?

7 A. Correct.

8 Q. The system used by Judson is designed
9 to catch a situation where a diagnostic test is
10 ordered, but not done, even if a physician
11 doesn't realize that the test was not completed?

12 A. Could you repeat that one more time?

13 Q. Sure. Judson Retirement Center uses,
14 used a kardex system; correct?

15 A. Yes.

16 Q. And it also has in its chart the
17 admission physician's orders from the
18 transferring physicians, such in this case, Dr.
19 Hissa?

20 A. It routinely does, yes. I didn't see
21 it in that chart, but --

22 Q. So the system that Judson Retirement
23 Center created for having in the chart the orders
24 from the referring physician, then having a
25 kardex system for ordering the diagnostic test

1 that was ordered by the referring physician, that
2 system is designed to catch situations where
3 diagnostic tests aren't ordered even if other
4 than the nurses didn't realize it?

5 A. The system is designed to catch -- I
6 have to say it this way, because I got lost in
7 that question. The system is designed to catch
8 any order as we have gotten the resident with,
9 those orders, or orders made after the resident
10 is with us.

11 Q. And when you use the term resident,
12 you mean the patient?

13 A. Yes. We call them residents in the
14 nursing home.

15 Q. All right. And just one other point.
16 You indicated that -- and I just want to clarify
17 and make sure I understood your previous
18 testimony.

19 You would agree that a nurse who was
20 unable to schedule a physician's order as ordered
21 has a duty to alert the patient's physician of
22 that problem?

23 A. Yes.

24 MR. GOLDSTEIN: Objection. Asked and
25 answered. Go ahead.

1 Q. I just want to make sure.

2 A. Yes.

3 Q. And in this case, I want you to assume
4 that it was Nurse Thill who was unable to
5 schedule the DVT study as ordered. She would
6 have had, as designed by Judson, the floor
7 manager, Diane Soukup, to explain that problem
8 to; correct?

9 MR. GOLDSTEIN: Objection.

10 Q. She could have called her?

11 MR. GOLDSTEIN: My objection goes to,
12 I think you are assuming a fact not in evidence.
13 Go ahead.

14 A. I'm sorry, could you say it again?

15 Q. Sure. With respect to if -- let's
16 take it one step further.

17 If Nurse Thill asked the unit
18 coordinator Pat Redwood to schedule this DVT
19 study and the unit coordinator, Pat Redwood, was
20 unable to schedule it as ordered, what was Pat
21 Redwood to do?

22 A. She was to report back to the nurse.

23 Q. Okay. Was there anyone else under the
24 procedures as devised by Judson, was there anyone
25 else that she could've reported that to?

1 A. Yes. Because **of** the shift change,
2 because of the shift differences in when they
3 worked, if the nurse was not available, Pat could
4 report to the resident care manager, Diane,
5 because Diane would always be over and covering
6 those systems for the nurses.

7 Q. And to your knowledge, did Pat Redwood
8 report an inability to schedule this DVT study as
9 ordered to anyone?

10 A. I don't know.

11 MS. ROLLER: I don't have any other
12 questions. Thanks.

13 EXAMINATION OF DONNA JOSEPH, R.N.

14 BY MS. TOSTI:

15 Q. I just have one or two follow up.

16 The resident care manager, is that the
17 person that you previously identified that had
18 duties in regard to some of the statutory
19 requirements, as far as documentation, or was
20 that a different person?

21 A. I think that was the documentation
22 coordinator.

23 Q. In regard to the resident care
24 manager, what are his or her duties and
25 responsibilities?

1 A. Her responsibilities are to manage the
2 care provided on that particular unit 24 hours a
3 day. She supervises the staff, as well.

4 Q. And did we previously discuss that?
5 Is she something like a head nurse for the floor
6 in charge for the 24 hour period in regard to
7 staffing problems or things that may come up that
8 need attention from some type of supervisor?

9 A. We did discuss it earlier. That is
10 more like a head nurse. She actually doesn't
11 need to manage staffing problems because there is
12 other people to do that.

13 Q. In this particular instance, in regard
14 to the DVT study, I just want to clarify the
15 process here.

16 Assuming that Nurse Thill was the one
17 that received the orders and was the one that
18 transcribed them, she had a duty then to either
19 schedule the test herself or to give it to the
20 unit coordinator to schedule; correct?

21 A. Correct.

22 Q. And then the unit coordinator had a
23 duty to schedule that test, and if she was unable
24 to do that, to report back to either Nurse Thill
25 or the unit resident care manager?

1 A. Correct.

2 Q. And Nurse Thill had a duty to make
3 sure that that test was recorded on the kardex?
4 Whether she did it herself or whether the unit
5 coordinator did it, she was responsible for
6 making sure that it was done correctly; correct?

7 A. Correct.

8 MS. TOSTI: I don't have any further
9 questions.

10 MS. ROLLER: Nothing further.

11 MR. GOLDSTEIN: We will read.

12 - - - -

13 (Deposition concluded at 3:35
14 p.m.; signature not waived.)

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1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 97 and note the following
4 corrections:

5 PAGE LINE REQUESTED CHANGE

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Donna Joseph, R.N.

18

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

21

22

23 Notary Public

24

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 DONNA JOSEPH, 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 4th day of August, 2000.


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

My commission expires June 8, 2004.

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1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 97 and note the following
4 corrections:

5	PAGE	LINE	REQUESTED CHANGE
6	72	18	omit "to see on the annual"
7	85	A-	omit "th" after 6
8	89	15	C"and"s; not CVS

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Donna E Joseph RN
Donna Joseph, R.N.

18

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

21

22

23

Bruce S. Goldstein
Notary Public

24

25 My commission expires

BRUCE S. GOLDSTEIN, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 O.R.C.