SHELTERING *IN* DANGER

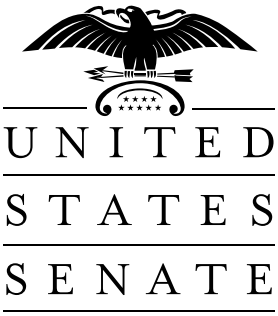
AN INVESTIGATIVE REPORT BY THE MINORITY STAFF
OF THE U.S. SENATE COMMITTEE ON FINANCE

APPENDIX VOLUME 3

(Appendices E, F, and G)

UNITED STATES SENATE

NOVEMBER 2018


UNITED
STATES
SENATE

Appendix E

Exhibit 1

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STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.: 17-005769

AGENCY FOR HEALTH CARE ADMINISTRATION,

PLAINTIFF,

V

REHABILITATION CENTER AT HOLLYWOOD HILLS,

DEFENDANT.

_____/

DAY 3

The above-styled case came on for hearing before the Honorable Judge Mary Li Creasy, Presiding Judge at the Broward County Courthouse, 201 Southeast 6th Street, Fort Lauderdale, Broward County, Florida on the 31st day of January, 2018 and commencing at 9:00 a.m.

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Thereupon, the hearing commenced:

THE COURT: We're here on day three for the Case of 17-5769, Agency for Health Care Administration versus Rehabilitation Center for Hollywood Hills. Mr. Smith, you indicated you have a matter to bring up before we begin with the first witness today?

MR. SMITH: Yes, Your Honor. You had asked us to go take a look at the Amended Complaint, which I did last evening as well as your order as to the scope of this hearing. We anticipate, based on depositions that the witnesses being presented today; that this issue is going to come up. And rather than continually interrupt a witness in the middle of their testimony, I'm wondering do we want to go ahead and address the issue?

Because I think there's going to be an effort to talk about EMS Run Reports for patients other than residents one through twelve. The very ones that were excluded were now going to want to get into the specifics of -- well, what did you find; this is the EMS Run Report; what did you find?

What was the temperature? What were the

vitals? And we think those are the very things -- was you know, the patient dehydrated? Did they have signs of heat exhaustion?

All the things that you said in your Order, you know, this is not what we're going to do because it will require, and it will require us to have all of our witnesses, our experts look at the medical records, the EMS Run Report, you know and -- decipher, and form opinions and I have to go back and ask other witnesses about them. So, you know, we just need some guidance because we need to know where we're going or else I can bring them up as they had.

The second thing is much more minor, but there's been some testimony already and I anticipate through perhaps these witnesses or other witnesses; I know I've heard it, it's sort of the drum beat of there was a small of urine and feces.

There's nothing in this complaint, not a single allegation, not a single word about unsanitary condition; the patients were not being properly changed or anything like that. And now I've heard it from a couple of witnesses.

I just don't want the record to reflect

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that I was trying by consent, because I'm not standing here making a big, noisy fuss, so this morning I thought I'd make a big, noisy fuss and say, we don't consent to it and it puts me in the position again of having -- now I've got to have witnesses say, okay, let's address this allegation that's not in the Complaint. I think it's just irrelevant.

THE COURT: Mr. Menton, your response?

MR. MENTON: Thank you. I'll take the second point first. We specifically allege in Paragraph 6 of the Amended Administrative Complaint that they failed to provide a safe and comfortable environment so that's right in the Administrative Complaint.

What does a safe and comfortable Environm5ent mean? I think that's for you to decide. I think it is potentially relevant to that factor.

And at the end of the day, it's up to you to figure out whether the testimony fits within the scope of both the regulatory and statutory framework which are alleged in the Complaint. I don't know that you have to detail everything that constitutes a comfortable environment or a

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safe environment in the Administrative Complaint; you'd be there forever. You let the evidence go to the allegations that are in the complaint and I think that evidence goes to that; it's up to you award that.

On the first point that Mr. Smith raised, I think Your Honor's ruling yesterday was exactly as we interpreted your ruling earlier. We have tried very hard in the presentation of our case to not get into the details or the specifics of patients who were not explicitly set forth in the Amended Administrative Complaint consistent with your order.

There are several provisions in the Administrative Complaint that specifically alleged that the facility failed to recognize the potential health risk of rising internal facility temperatures and humidity affecting vulnerable, elderly residents residing in the facility. That's in Paragraph 7 of the Amended Administrative Complaint. It was not stricken from the Complaint in Your Honor's ruling. There are several other paragraphs, Paragraph 8.

The power outage resulted in the lack of

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adequate central air-conditioning which exposed the facility residents, not just the 12, to increasingly excessive heat. Paragraph 6, the Agency's review of medical records of the facility's residents show that 42 of 51 residents reviewed on the second floor of the facility were diagnosed with heat exposure or dehydration.

In addition, 31 of 71 residents reviewed on the first floor were diagnosed with heat exposure or dehydration. So those paragraphs were also not stricken. So there's a number of paragraphs similar to that that we can go through.

I think Paragraph 11 was general in the sense that it says, "The facility's failure to provide the necessary actions to maintain a safe and comfortable environment resulted in a situation that had caused or likely caused serious injury, harm, impairment or death to the facility residents and required immediate corrective action. There's references in the Administrative Complaint to the mass casualty and evacuation of the facility, which is what a lot of this testimony goes to.

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We understood Your Honor's ruling not to exclude any reference to the fact that there were other residents; that there were other residents that were impacted by the conditions, but given the timeframes and their insistence on going to Hearing on an expedited basis, that it was too much to try to get into all of the details, all of the medical records of all 140 residents in the facility.

So based upon that, we have tried to restrict the testimony as it relates to particular individual patient conditions to the 12 that are identified in the Administrative Complaint, but to try to take your ruling and say that's all that can be talked about as it relates to the condition of the facility, I think is just intent to take advantage of their efforts to force an expedited Hearing and limit Discovery and then try to keep out evidence that's relevant to the general allegations that are in there.

MR. SMITH: May I reply, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: First of all, as to forcing an expedited hearing; I think you addressed this

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in your order, it's the Agency's duty when you take away a license without any due process in advance to provide a prompt hearing. We're well beyond that already.

But going more to the merits, your Order wasn't just that these paragraphs were stricken, it says that the Motion was granted in part as to the additional allegations regarding deceased residents nine through twelve and denied as to the residents identified in the Complaint, Paragraphs 283 through 418.

Those residents that are identified in those paragraphs are the ones that you know that said, this patient, minimal allegation, dehydration, this patient, this is this, and it listed them all out. So to say, well now we can kind of tally them up or we can look at some of those EMS Run Reports, to me is very contrary and I think it's prejudicial.

THE COURT: Do you have a copy of my order?

MR. SMITH: I do.

THE COURT: May I take a look at it for a minute please?

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MR. SMITH: In fairness, there's no handwritten notes but there's yellow highlighting on it.

MR. MENTON: I have a clean copy of it, Your Honor.

THE COURT: Thank you.

MR. MENTON: This may be my only copy but at least it's clean.

THE COURT: Let me address these issues. First of all with regard to the assertion that Hollywood Hills is somehow inappropriately forcing an expedited Hearing, I made very clear in my prior rulings that it's agreed, they have a right to a Hearing. As Counselors well know although I normally set Hearings within 30 to 70 days after receipt of the Administrative Complaint.

The Administrative Complaint in this Proceeding, I believe, was filed in mid-October. and we are well beyond the 90 days during which we would normally set the Administrative Hearing.

Both parties requested a delay in the Hearing for the extensive Discovery that was required. So I disagree that Hollywood Hills has done anything inappropriate with regard to insisting that we go ahead and go to Hearing as scheduled after one delay that was already necessitated by both parties after -- efforts at Discovery as well as the lack of control the parties have over the records relevant in this case, and the fact that they were disclosed relatively late in the game. Talking about the allegations as to specific patients, I think so far the Agency has done its best to keep the witnesses to describing the generalized conditions.

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I think we've heard with regard to only two patients so far or two specified patients by number. I think it is inevitable, as I indicated yesterday, that there will be some additional testimony with regard to what was seen and observed on the date in question, September 13th. That does not mean though that we are going to delve in the specifics with regard to any of the patients other than those 12 people who are deceased and we'll keep it to that. Although a suggestion that folks generally appear to be suffering from the effects of heat, it is what it is. And I don't think there's any disagreement with that.

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Whether anybody who did not know, I was specifically diagnosed with dehydration or heat stroke or heat exhaustion is not relevant to me in this proceeding. We are talking about the 12 patients. That doesn't mean that AHCA can't go into whether or not that it was a safe and comfortable environment provided by Hollywood Hills and -- that burden.

With regard to the repeated references to a smell of urine and feces, that was not specifically identified in the Administrative Complaint or the Amended Administrative Complaint, but again, there's not a Pleading requirement that each and every detail needs to be specified.

I think the allegation that there was a lack of safe and comfortable environment probably encompasses that. Although quite frankly we're talking about the deaths of 12 patients. I don't want to say that I'm not concerned about perhaps other unsanitary conditions going on, but we are focused on the deaths of these 12 patients and what caused it. And whether somebody was changed or not on the

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morning of the evacuation, does not play in my mind into that determination.
So I would keep that in mind as we go. I don't think you need to continuously. I'm sure Mr. Menton will carefully -- his questions so that the witnesses don't go into that level of detail with conditions that really weren't particular relevant to the death of the exposed, with the understanding that the overall obligation and what needs to be proven is whether or not the conditions were safe for the residents in that building.
Mr. Smith, that doesn't mean you can't raise your objections and preserve your record as you need to do so.
MR. SMITH: I understand, Your Honor.
THE COURT: And it may come to a point where I'll say, let's just go ahead and have continued objection noted. I don't want to try to pre-guess what any of the questions or the responses might be, to the extent that you're asking witnesses general questions, Mr. Menton with regard to the number of patients who were evacuated, the number of were yellow, green, red, et cetera, that's fine. But I don't want

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to hear much detail about anybody other than the 12 that are really at issue in this case.
MR. MENTON: And we understand we're going to try to follow those guidelines. I would say a couple of things. First of all, in Paragraph 3 we do raise sanitary conditions as well so that is in the Amended Complaint.
THE COURT: Can you read that paragraph for me, sir?
MR. MENTON: It says, under Florida law, every licensed facility shall apply with all applicable standards and rules of the Agency and shall maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner.
THE COURT: There were no specific counts directed to that. The counts are really directed towards the 12 who are deceased. It's background information. I don't know that it has a lot of relevance. I understand that you've prepared your witnesses prior to today so they may be expecting some questions in that regard. I will just tell you that a certain point it's going to become cumulative and it's not really going to be relevant to the

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determination of were these 12 harmed by the conditions in the hospital?
MR. MENTON: And the one thing I will tell you, as we have seven Fire Rescue personnel here today; they're on different crews and they're going to testify about what they did and what they saw. Some of them did transport patients who are not in the Amended Administrative Complaint and I'm sure that's what prompted them to want to bring that to your attention now.
It would be my intention to not go into any of the specifics of those patients except as it relates to how it influenced some of the decisions that were made in terms of moving patients off the second floor and those sorts of things. We recognize that not every one of them made it into the Amended Administrative Complaint.
The other thing I just wanted to say, I wasn't trying to suggest that it was inappropriate for them to exercise their right to a Hearing, it's just I don't think it's right for them to exercise that right and then try to artificially narrow the scope of the

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evidence. They have a right to a Hearing and we're doing the best we can to operate within those parameters and we'll continue to do so.
THE COURT: Thank you. And here's the Order. The reason why I asked to see a copy of the Order, I did not specifically strike particular paragraphs. I was using the indication of the paragraphs to identify those additional patients, but Mr. Smith correctly points out that the Order was very specific with regard to -- we're not going to get into the allegations with regard to these 67 other folks who may have suffered affects from the heat in the facility but who did not expire.
I know it's a difficult line for everybody to try and abide; we'll all do the best that we can and raise your objections as you need to in order to preserve your record and try to be consistent so that everybody knows what that line is.
MR. SMITH: Thank you, Your Honor.
MR. MENTON: Thanks, Your Honor. And as I said, they'll be some of the Run Reports today that we're going to talk about that may reference other patients. We'll try to keep it

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so we don't get into the specifics of the patients that aren't in the Administrative Complaint, several of them are. I suspect that this issue is going to come up again with respect to the AHCA surveyors. That's going to be later in this process because they did go through all of the medical records of all the patients that were evacuated from the facility.

But based upon your ruling, we made them available for supplemental deposition; they only asked questions about those that were added to the Administrative Complaint and we'll deal with that issue when we get to those surveyors.

THE COURT: Thank you very much. Let's go off the record just for a moment.

(Thereupon, an off the record discussion was held.)

MR. MENTON: Judge, I think preliminary to calling our first witness, we're going to give you a notebook that has the Agency's exhibits in them because we'll be referring to those throughout the course of the testimony this morning. This notebook has all of the separately identified Agency exhibits. Some of those were deposition exhibits, and some of

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those were not.

The Run Reports, for example, that we'll be talking about extensively today, they're actually going to be in the record in a couple of different places. They're in the Medical Examiner's records and the Medical Examiners will be here to talk about that. So you're going to see the Medical Examiner's reports; they will include the EMS records that we're talking about today. They were also deposition exhibits.

So what we did by stipulation with Counsel, we kept a continuing run of deposition exhibits just to not duplicate things, so I can give you the exhibit numbers that we'll be talking about today that are in the notebook. We did this because we thought it would be easier for you and easier for everyone to follow. We're going to be talking about patient number 11, which is AHCA Exhibit Number 5, the Fire Rescue record and it was deposition Exhibit Number 114. We'll be talking about AHCA Exhibit Number 13 in the notebook, which relates to patient number one, or resident number one, I think is the way they're

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referred to in the Administrative Complaint and that was deposition Exhibit Number 115. We'll be speaking about AHCA Exhibit Number 7, which relates to resident number two and that's deposition Exhibit Number 116.

We'll also be speaking about AHCA Exhibit Number 15 which relates to resident number four and it's deposition Exhibit Number 117. We'll be speaking about AHCA Exhibit Number 16 which relates to resident number eight, deposition Exhibit 18.

So all of those runs relate to patients who were specifically referenced in the Amended Administrative Complaint. In addition, we'll be speaking to AHCA Exhibit Number 3 which was deposition Exhibit Number 119, AHCA Exhibit Number 2 which is deposition Exhibit 120. Those are EMS Run Records that do not relate to patients expressly named in the Amended Administrative Complaint.

As you'll hear, those are records from the same crew that did all the previous ones and we're just going to have those identified. All of those exhibits were presented by the Fire

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Rescue Department in response to a Subpoena and they've been produced to both parties for some time now. Those exhibits I just mentioned will cover the first Fire Rescue crew that we'll be calling. There's going to be some other exhibits for some of the other crews; one will be AHCA Exhibit 19 and AHCA Exhibit 11. Those both relates to patients who are not in the Administrative Complaint. And then AHCA Exhibit Number 9 which relates to resident number six and AHCA Exhibit Number 17 which relates to resident number five.

I believe all of those were deposition exhibits but we don't have that deposition back yet so I don't have a number on those. And then the last one would be AHCA Exhibit Number 12, which relates to resident number seven in the Administrative Complaint.

MR. SMITH: Mr. Menton, can I ask you, the last exhibit you mentioned; you said it was part of a recent depo, can you just tell me which deposition?

MR. MENTON: I think Ettinger (phonetic).

MR. SMITH: Okay, thank you.

MR. MENTON: I think Ettinger and Sullivan

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(phonetic).
MR. SMITH: Okay. Thank you.
MR. MENTON: We'll probably be following them in that order so it might make it easier to just go along.
THE COURT: And all your documents are Bates labeled as well?
MR. MENTON: Are they Bates? Oh, they're not Bates?
THE COURT: All right. We'll stick with exhibit numbers.
MR. MENTON: I think they have page numbers on them because the Run Reports are numbered pages.
THE COURT: All right. Thank you.
MS. SMITH: But they are separate exhibits.
THE COURT: All right. Are you ready to call your first witness?
MR. MENTON: Yes, Your Honor. The Agency would call Lieutenant Amy Parrinello.
THEREUPON:
AMY PARRINELLO
a witness, having been first duly sworn, testifies as follows:

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DIRECT EXAMINATION
BY MR. MENTON:
Q Can you please state your name?
A Amy Parrinello.
Q And Lieutenant Parrinello, where are you employed?
A The City of Hollywood Fire Rescue.
Q And in what capacity?
A I'm a Lieutenant Paramedic.
Q How long have you been with Hollywood Fire Rescue?
A Since November 21, 2005.
Q And can you describe for the Judge what your job responsibilities are with Hollywood Fire Rescue?
A I'm a Lieutenant primarily on a rescue unit so I'm in charge of ALS response to medical emergencies, fire response, car accidents, also a member of the HazMat team so I respond to gas leaks, extrications, basically any kind of emergencies in the city.
Q Can you explain for the Judge the training that you undertook to be qualified for your position?
A I went to the State Fire Academy, to EMT

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school, Paramedic School, also I have 368 HazMat course and continuing education.
THE COURT: Lieutenant, if you wouldn't mind moving a little bit closer to the mic or moving the mic closer to you. Thank you.
BY MR. MENTON:
Q And can you briefly summarize your educational background?
A I have a Bachelor's of Science Degree from Florida State University in Food and Nutrition Science.
Q And can you explain for the Judge, what is a paramedic?
A A paramedic is a state-licensed person to treat medical emergencies -- interventions, administer medications, maintain the airways, interpret EKG rhythms.
Q Okay. And I think you said you are a licensed paramedic, is that right?
A Yes, sir.
Q And can you explain for the Judge then -- what units do you use or how do you provide the services that you provide?
A I'm primarily assigned to a rescue unit, rescue truck; occasionally the officers in our

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department ride the engine as well.
Q And you use the term rescue truck, is that what you were downstairs trying to park earlier this morning?
A Yes, sir.
Q And just describe for the Judge then what a rescue truck is and compare that to what an engine unit is; are they considered separate within the fire department?
A Yes, sir. A rescue truck is a vehicle you can transport patients in. In Hollywood, we're staffed with three people, primarily paramedics and we carry 30 plus medications; we carry interventions for airway, we carry any kind of medical intervention but we also respond to fires. In Hollywood, our engines are primarily fire trucks; they respond to fire emergencies. They will respond to medical emergencies but aren't equipped with anything to treat, you know, basic life support, no interventions; they are usually also staffed with three people who may or may not be paramedic or EMT.
Q And we're going to get into the specifics of some of the runs that you made with your rescue crew to the Hollywood Rehabilitation Center on September 12th and 13th. Before we get into those

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specifics, can you just describe generally for the Judge, do you keep reports of the runs that you do to a specific scene?

A Yes, sir. Any time that we're dispatched to any call regardless if we respond or not we're required to make a rescue report or a run report; it's all done on the computer and its documentation of the address of the call and the times of dispatch and our arrival. If we do have the patient -- any kind of patient information, medications, allergies, any kinds of interventions we did, their vital signs in the narrative.

Q And who is responsible for preparing the reports on a run?

A In the City of Hollywood it's usually the Lieutenant on the rescue truck.

Q I'm sorry?

A The Lieutenant on the rescue truck; the officer in charge of the rescue unit.

Q And so that would be you as it relates to the rescue crew?

A Yes, sir.

Q And are you assigned generally to a particular rescue unit?

A Typically I'm Rescue 31; it's our HazMat

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station in the city so I'm usually there. We do have rotations, primarily on the rescue shift.

Q All right. And can you just summarize for the Judge, how many runs do you do in a typical shift and how many have you done since September 13th?

A I couldn't tell you how many since September 13th but we average anywhere from 12 to 23 runs in a 24-hour period; we're a very busy city.

Q All right. Let's move to the events at Hollywood Hills Rehabilitation Center and I would ask you to refer to Exhibit Number 5. There's a notebook there for you and behind Tab 5 -- And Lieutenant, just so you know, because of patient confidentiality, we have not been using the patient names, or trying not to use the patient names but instead referring to them by numbers that are in the Amended Administrative Complaint. This first Run Report, AHCA Exhibit Number 5 relates to resident number 11 in the Administrative Complaint, so if we could use that terminology I think it would be helpful.

A Yes, sir.

Q Can you identify this exhibit? What is it and what was your involvement with it?

A This is a Hollywood Fire Rescue ambulance

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Record, or run report we call them and I am the author of this report.

Q And based on this report, can you tell the Judge where you went and when and why?

A We responded to the Hollywood Hills Nursing Facility. I think the address on here -- it says 1201 North 37th Avenue, and sometimes that's transposed with the North 35th Avenue address, the Hollywood Hills Home. We were dispatched there to respond based on a breathing problem on September 12th.

Q Okay. And what time did you arrive on the scene at the facility on September 12th?

A 12:53.

Q And where on the document can the Judge find that?

A It's on the front page in the top -- it says am on the block, which is ambulance on the patient. I believe it's also on the event screen, which is the third page and that's got a sequence chart.

Q And I want to have you walk through with the Judge what you found with respect to this patient and as you do, if you can refer to the report and help the Judge find some of the

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information as we discuss it. On that third line then on the first page; what does that show as it relates to your rescue unit and the timing of when you got to the scene, et cetera?

A We had a three-minute response time from when were dispatched to when we were on location; that's on the first page. As far as what we found, page four, which has the narrative; has the description that we found a 93 year old man seated upright in his bed at the nursing facility, AAO times 0 which means he wasn't alert to person, place or time of events and -- also is letting me know that he was altered; he was able to open his eyes spontaneously but his response verbally was incomprehensible and he was able to withdraw from pain.

Q And did your crew measure the patient's temperature?

A Yes, sir, we did.

Q And how do you measure the temperature?

A We had a thermometer that measures tympanic temperature; it's placed in the ear canal and measures it from the tympanic membrane.

Q And are you familiar with other methods of measuring temperature?

A Yes, sir. Temperature can be taken orally

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or rectally; sometimes people have forehead strips. The tympanic one is kind of the least invasive but most accurate one that we use.

Q Okay. And when you saw the patient, what was his condition?

A [redacted] --

Q And I want to come back to the patient's condition in a minute, but when you entered the facility, was there anything you noticed about the facility and what the conditions were like there?

A We noticed that the facility was hot; the temperature was warm in the facility. And we asked the staff, what's going on with the air-conditioning; what's going on with the power, and they said the air-conditioning is being worked on right now because of the hurricane, that it had been knocked out.

Q Did you say the facility had power?

A It seemed to have power. It had lights, we were able to use the elevators; the doors are automatically opened. So, yes it did seem to have power other than the air-conditioning.

Q After the staff told you that they were

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working on the air-conditioning, did you make any further inquiry as to what was going on or you know, how -- why their air-conditioning wasn't working?

A No. They said it was because of the hurricane and we didn't question them further on it. They said it was being worked on. We just attended to the patient; he was pretty sick.

Q And how long were you actually at the facility that early afternoon?

A It says that we departed the location at 13:09. We don't have definitively how long we're in the building versus how long we're treating patient inside of our rescue unit, but roughly maybe -- ten minutes.

Q So if we look on that first page on the third line again, can you identify when you first made contact with the patient and then when you departed the location?

A So the PT contact would be patient contact 12:55 and depart loc was departing location at 13:09. It doesn't specify how long we were in the building versus treating patient in the rescue truck.

Q Okay. So in any event, it was 15 minutes or so?

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A Yes, sir.

Q That you were in the building roughly? Is that fair?

A Yes, sir.

Q Okay. Now you talked about transporting the patient, explain where you went and then what you did, and then I'm going to come back and ask you a few more questions about the patient's condition.

A We provided the [redacted]

Q And when you went to Memorial Hospital, did you convey to them anything about the conditions within the facility?

A I do not recall that, I just recall telling them that the patient -- the staff had told us that the [redacted]

Q Okay. There's a reference in the narrative about a [redacted]. Can you explain for the Judge what a [redacted] is?

A Sure. -- that is -- [redacted] oughout

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[redacted] s

Q And is that an actual diagnosis that you're rendering when a patient is made a [redacted] by --

A No, it's a protocol that we follow. It's just identifying vital signs that fall within a criteria to -- the hospital.

Q And going back to the patient's condition; what was his skin temperature like do you remember

that?
A [redacted].
Q Yeah, I think on page three, there's a reference there.
A Yes, sir. In the patient assessment, the [redacted].
Q And then going back to the narrative, who did you turn the care of the patient over to when you got to the emergency department?
A The patient care was transferred to Dr. Katz.
Q And do you recall whether you told Dr. Katz about what the condition of the air-conditioning was at the facility, or?
A I don't recall when I spoke to him.
Q After you delivered this patient to Dr. Katz at Memorial, did you have occasion to go back to that facility at all on September 12th?
A No, sir we didn't return to that facility on September 12th.
Q Did you have any information in terms of what their status was at it relates to the air-conditioning or the conditions of the patients, or anything like that?

A No, sir.
Q Did you have occasion to return back to the facility some time in the morning of September 13th?
A Yes, sir.
Q Let me ask you to move to -- 13 in that notebook.
THE COURT: Mr. Menton, before we do that, do you want to move Exhibit 5 into evidence?
MR. MENTON: Yes, Your Honor, we would.
THE COURT: Any objection?
MS. SMITH: No, Your Honor, no objection.
THE COURT: All right. AHCA's Exhibit 5 is admitted into evidence.
(Thereupon, AHCA's Exhibit 5 is admitted into evidence).
MR. MENTON: Thank you, Your Honor.
BY MR. MENTON:
Q And we're now moving to Tab 13 which relates to resident number one in the Amended Administrative Complaint. And Lieutenant Parrinello, do you recognize that document and can you tell the Judge what that is?
A Yes, sir. This is an ambulance record. It's a run report of the call that we responded to.

Q And I'd like to go through a similar approach as we did with the prior patient. Can you tell the Judge when you were called to the scene, when you got there, how long you were there and then we'll go through some of the specifics?
A Yes, sir. We were called to the scene, we were dispatched at 0301, again that's on page one and it's also found on the sequence chart on page three. We were en route at 0302 and we were on the -- 0305 and; we had patient contact at 0307. We departed at 0319 and we arrived at Memorial Regional at 0320.
Q Okay. So roughly how long were you on the scene then at 3:00 in the morning on September 13th?
A Roughly 14 minutes, but again I can't tell how much time I was in the building versus in the rescue.
Q And when you arrived at the scene, can you describe for the Judge, what was the condition of the facility, did you notice anything about it?
A We noticed that the facility was hot. We again asked them about the air-conditioning and they said they still didn't have the air-conditioning from the hurricane, that they were working on it.
Q And let's talk a little bit about the

condition of this patient when you found them. And I think again think this would be reflected on the narrative, which is page four of that report?
A Yes, sir.
Q Can you describe for the Judge the condition of the patient and some of the vitals that you found related to this patient?
A Yes, sir. We were dispatched to a cardiac arrest, which would be a person not breathing, without a pulse. When we got there, [redacted].
-- That's a question that we usually ask because some patients aren't normally that altered; [redacted].
Q And you mentioned a [redacted].
A Yes, sir.
Q Is that a normal temperature in your experience?
A No, sir. Till that day, it was the highest one I had seen.
Q In your career?

A In my career. Yes, sir.
Q Did you have some discussions then about -- I think you mentioned about the air-conditioning unit and what was going on in the building?
A Yes, sir. The staff there said they were still trying to fix the air-conditioning in the building; that they didn't have the air-conditioning because of the hurricane.
Q Okay. And I think on page six of this report there's a form that talks about -- well, explain for the Judge what that form is.
A This is the form with [redacted] It's the protocol I was referring to previously which has the criteria for making someone a [redacted], to call into the hospital. -- system through the hospital. It walks you through the criteria that they want the patient to meet, so I documented that she might have actually all three -- it said that she had two. [redacted]

Q Is this the form that you filled out around the time of your treatment of patient number one?
A Yes, sir.
Q And I think you're going through that quickly; just so we go through yours, there's three or there's two different criteria for determining a patient meets the sepsis alert protocol; is that right?
A Yes, sorry I wanted to come back to this. So the very first box is just that we are going to document a [redacted]x. Then we move down to the second section which is [redacted] -- criteria are [redacted]n [redacted]
Q And are those handwritten notes that are on this form; are those yours?
A Yes, sir.
Q So the notation of the temperature of [redacted] something that you put on based upon what you saw the patient on the scene and in the truck?
A Yes, sir.

Q And then the heart rate was?
A [redacted].
Q Okay. And then in terms of the second box there, [redacted] --
A Yes, sir.
Q -- under symptoms?
A Yes, sir.
Q And then for the [redacted], you checked that and it looks like you also checked next to the [redacted], is that --
A Yes, sir [redacted].
Q And I'd like to have you take a look at -- in your narrative I think you did make reference to the lack of air-conditioning, is that right?
A I believe so. Yes, sir.
Q And why would you note that in the narrative?
A I noted it because it was unusual and it was ongoing; it was hot in the facility. I wanted to document that they didn't have air-conditioning.
Q And did you take some steps to try to address the high temperature that this patient had

and specifically I'm asking you to refer to page three of the report at 3:14 a.m., and explain what you did and why you did it?
A Yes, sir. We treated the patient as [redacted]. So we administered [redacted].
Q Where did you take this patient?
A Memorial Regional Hospital ER.
Q Okay. And then you turned that patient over at the hospital at what time?
A We arrived at the hospital at 0320 and we were in service at 0326. Some time between 3:20 and then is when we transferred care.
Q And after you transferred care to Memorial Regional, what was the next opportunity you had to go back to Hollywood Hills Rehab Center?
A We responded back there sometime, I believe at 4:00 a.m.
Q Okay, and let's -- yeah, let's --
THE COURT: Do you want to move Number 13 into evidence?
MR. MENTON: Thank you, Your Honor, we

would move.
THE COURT: Any objection?
MS. SMITH: No, Your Honor, no objection.
THE COURT: AHCA's Exhibit 13 is so admitted.
(Thereupon, AHCA's Exhibit 13 is admitted into evidence.
BY MR. MENTON:
Q And we're now going to move to AHCA Exhibit 7 behind Tab 7 of your notebook. And this relates to resident number two in the Amended Administrative Complaint. It was also deposition Exhibit Number 116. Can you identify AHCA Exhibit Number 7?
A It's an ambulance record from Hollywood Fire Rescue -- we also refer to it as a run report.
Q Okay. And did you prepare this document?
A Yes, sir.
Q And was this prepared in the ordinary course of your business as part of your duties to document the runs that you did with your crew?
A Yes, sir.
Q Explain to me then, the circumstances that led to you going back to the facility and what you observed when you went back?

Q We'll come back to talk a little bit more, but I just would like you to explain for the Judge then what you did when you transported this patient and then the steps that you took based upon what you found?
A We also administered some [redacted] unit -- which is a -- essentially and we also [redacted] transported to Memorial, transported over there.
Q Okay. So when you got to Memorial, did you have some discussions then with staff about, this is the second patient coming from this facility with high temperatures?
A Yes, at that point we said, this is the second patient today we've had from Hollywood Hills Nursing Home and these are temperatures that are really high and we haven't seen before, and they're saying that the air-conditioning is not working. They said that they were working on it but it was still hot in the building, and it was at that point that I called DCF to try and report the conditions of the facility.

P[redacted] breathing [redacted]nt [redacted]. The air-conditioning was still not functioning. That[redacted].
Q Okay. So this was less than 30 minutes after you had left the hospital with patient number one; is that right?
A Yes, sir.
Q And again, if we look at the narrative, does that provide you with some details as to the condition in which you found this patient?
A Yes, sir. It states that there was a 70 year old female found in a hospital-style bed. [redacted]l [redacted]
Q You mentioned the tympanic temperature. Have you ever in your career seen two patients in the same facility within such a brief period of time with temperatures at this level?
A No, sir, never.

Q And when you say you called DCF, explain what that means and what the purpose of that call is?
A The staff at Regional advised that that was the best course of action to get interventions into the facility, so I called the Department of Children and Families and said -- patients -- that we had multiple critical patients from the same facility; that they didn't have a functioning air-conditioning, [redacted]
Q Okay. Why did you not call earlier; did you have a basis to call earlier did you feel?
A On the 12th I trusted the staff when they told us they were working on the air-conditioning and it was post-hurricane. Most of the places we went to were having problems with power. That [redacted] --[redacted]. When we returned back at 3:00 and they still said they were working on it, when we went immediately back at 4:00 and it was still that [redacted] that's where it triggered that we needed an intervention.
Q And during this time with the second patient, were you also communicating with the

Memorial staff about the condition of the patients and temperatures that they were registering?

A Yes, sir. We were turning these patients over to the staff and saying, this is [redacted], which was -- like I indicated earlier, this was the highest I've seen in my career; it was definitely the highest to have two in a row with that temperature. So Regional said that they were going to try and make calls as well.

Q Now how would you describe the patient's skin temperature when you were treating them?

A Hot, it definitely was hot. On page five --

Q Yeah, I think it's also on page five, is that right?

A Yes, sir.

Q Now what did the staff at the facility tell you about the patient; what her normal condition was and what the events had been immediately preceding the call to you?

A [redacted].

Q [redacted]

A [redacted]

Q Did the staff advise you about whether

there were any signs such as vomiting or any other signs that the patient was in distress?

A They actually [redacted] But we did know that she [redacted]

Q And what time then did you leave the hospital after leaving this patient in the care of the hospital?

A I documented that we were in service at 05:34.

Q Okay. And while you were in the emergency department, while you were there, did you hear another patient in distress at Memorial Regional?

A At Hollywood Hills Nursing Home?

Q Nursing home, yeah, I'm sorry.

A While I was in the EMS room at Memorial, while I was on the phone with DCF, one member of my crew -- had been standing at the nurse's station came back into the EMS room and said that he overheard a call where two police officers -- to respond to Hollywood Hills Nursing Home for a [redacted] -- I don't know the exact words they used, and so I asked my crew member, did

they dispatch -- and he -- ask our dispatch if there was a call, an active call. So he asked our dispatch if there was a call at Hollywood Hills and they indicated that there was.

So I said, we will clear the hospital and respond there for this call because we were by far the closest unit. And I told the woman on the phone with DCF we were responding back to that same facility that I just called you on for another [redacted]. And she said, okay. I said, do you want me to call back and give you that patient's information and she just said, no, just go handle that call and that was it.

Q Now during this point did you alert any of your shift's supervisors as to what was going on?

A After we responded to that call, I called my Battalion Chief and let him know that we had had several critical patients at this facility and that I had notified DCF of the conditions.

Q And who was the Battalion Chief?

A Chief Al Wasserman (phonetic).

Q So you said that you learned that there was another patient and you went back to the Rehabilitation Center?

A Yes, sir.

MR. MENTON: Your Honor, we'll go ahead and move Exhibit 7.

MS. SMITH: No objection, Your Honor.

THE COURT: Thank you. Exhibit 7 of AHCA is admitted without objection.

(Thereupon, AHCA's Exhibit 7 was admitted into evidence.)

BY MR. MENTON:

Q Let's move next to Exhibit Number 15, which references resident number four and this is deposition Exhibit 117. Can you identify for the Judge what this document is?

A -- the Fire Rescue, ambulance -- what we refer to as a -- report --

Q And is this a document that you prepared in your usual course of business to document the events that transpired as you went back to the Hollywood Hills facility that morning?

A Yes, sir.

Q Can you tell the Judge based on this report when you got back to the scene and then we'll go through exactly what you found.

A When we responded to the scene -- I documented that it was [redacted]. I think that was an error, but we were actually

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dispatched to as a [redacted]. And when we got there we found that that patient was already [redacted]

Q Okay. And if you would refer to the narrative on page three of that report?

A Yes, sir.

Q Does this provide some information as to what the condition of the patient was and the information that you learned on the scene there?

A The narrative states that we found a 96 year old male [redacted]. I also documented that [redacted] and --

Q I want to ask you a couple things that are in the narrative. First of all you said, the patient and [redacted]; what does that mean and does that have any significance in terms of when the [redacted]?

A [redacted]

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[redacted], our protocols Dictate that we are to continue -- that person if they're deceased at that point --

THE COURT: What is the acronym here, LKWT?

THE WITNESS: Last known well time.

BY MR. MENTON:

Q Just to follow up then, you said the evidence of [redacted] having set in, what does that indicate generally in terms of how long a patient had been dead?

A I believe it's several hours. At least two hours, I believe.

Q Okay. And then with respect to the acronym that the Judge just asked you about, the LKWT, where did you get that information and what were you told as it relates to that patient?

A The staff at the facility stated that the last time that that patient was awake or alert and in a normal capacity was over an hour prior to dispatching EMS.

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Q Did they have any other information in terms of when the patient went into distress or when the patient had passed away?

A None that are documented in here, sir.

Q And again, you reference in your narrative that there was no functioning air-conditioning unit or fan in the facility; why would you note that in your notes?

A I wanted to document that it was hot in that facility. I was concerned that it was the [redacted] that we had responded to.

Q There's a term that's been used here and I think it's been referenced on page two, a, "Signal 7." What's a signal 7?

A A signal 7 is a deceased person. We announce that on -- document a time; it's also part of the police reports I believe. So that's when -- if the patient was a signal 7, that they had been deceased and continuing treatment wasn't going to happen.

Q And when you call a signal 7, are there other steps that need to be taken as it relates to other agencies?

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A Yes, sir the police respond. The Hollywood Hills police department responded.

Q Is that something that you or your crew does is notify them of a signal 7 to the police department?

A We notify our dispatch and then the police is usually dispatched when we request police to be dispatched if the dispatcher doesn't initiate it.

Q And why do you do that? What's the police role then?

A They can do investigations if they believe there is any suspicious reasons for the death and documentation of the death, and then they contact the Medical Examiner. They deal with the body. That's outside of our scope.

Q And I think that's referenced in the last sentence of your narrative on page three, is that right?

A Yes, sir the patient's body remains -- which is Hollywood Police Department.

Q So did you or your crew then stay with the body until the police get there or how does that --

A Yes, sir we'll stay until the police Arrive, and then --

Q So you notify the police and they sent somebody to address the situation?

A Yes, sir.
MR. MENTON: We would go ahead and move Exhibit 15, Your Honor.
THE COURT: Any objection?
MS. SMITH: No, Your Honor.
THE COURT: AHCA's 15 is admitted without objection.
(Thereupon, AHCA's Exhibit 15 was admitted into evidence.)
BY MR. MENTON:
Q And let's move to Exhibit Number 16, which deals with resident number eight and it's deposition Exhibit Number 118.
THE COURT: Mr. Menton, did you say 16?
MR. MENTON: Yes, Your Honor.
THE COURT: Thank you.
BY MR. MENTON:
Q Lieutenant, can you identify that document?
A Hollywood Fire Rescue ambulance record. We also refer to it as a run record or report.
Q And is this a run record that you prepared as part of your ordinary course of your responsibilities?
A Yes, sir.

Q And does this relate to another patient within the Hollywood Hills Rehabilitation Center?
A Yes, sir.
Q Can you explain for the Judge the circumstances that led to you transporting this patient?
A We were dispatched to a [redacted] and [redacted].
Q And what time did you come in contact with the patient?
A We had patient contact at 0623 hours; we were dispatched at 0618 and on the scene at 0621.
Q Okay. I want you to refer again to the narrative as it relates in this patient and that is on page four of 17.
A Yes, sir.
Q Can you describe for the Judge the condition of this patient and the vitals that you found as it relates to that patient?
A This was a 70 year old female [redacted]

[redacted]
Q Okay. You said a [redacted] that registered high?
A Yes, sir.
Q Have you and your crew ever seen that happen before?
A No, sir.
Q And did you know what that meant based on your returning?
A Greater than [redacted]
Q And just so the record is clear, what is the thermometer that you use?
A The Braun 4000.
Q Is it basically off the charts then in terms of what the thermometer can report?
A It's higher than that thermometer can register, yes, sir. The highest that I've ever seen before that incident.
Q Have you seen anything like that since?
A No, sir.
Q Now again you noted that the facility had limited air circulation; why did you note that in the narrative?
A I believe that it could be a [redacted]

[redacted] It was hot in the facility and we had responded back there several times.
Q Your narrative indicates that you had some interaction with the staff?
A Yes, sir.
Q Did they give you any indication as to when or how this patient got into distress?
A No, sir.
Q Did the staff during their interactions with them, indicate that they had any plan or any approach that they were going to take as it related to other patients in the facility?
A At that time, they didn't. That patient, like I said went into [redacted] so our interactions with them were limited. As soon we moved that patient, they went into [redacted] then.
Q You mentioned this earlier with respect to resident number two who also went into [redacted] and for those of us who don't have to deal with these situations on a regular basis, can you explain for the Judge what that means to you as a paramedic and what you have to do in a situation like that?
A Yes, sir. [redacted]

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[redacted] -- [redacted]. I believe with both patients, we were just our regular crew of three people in general were dispatched -- we have another -- so we have six people -- and in these situations we only had limited people to do CPR, to do drug therapy and to put them on an EKG monitor -- word hectic because you were trying to treat some immediately -- whatever conditions you can.

Q As you were working on this patient, did you have any interactions with the staff regarding the other patients in the facility and what their conditions might be?

A While we were with this patient, someone from the staff let us know that there was another patient that was [redacted] and at that point we had this patient who was serious, so we called for additional resources to respond to the scene.

Q Do you remember whether any of your staff members or your crew members had volunteered to go check on some of the other patients?

A So we had the HazMat unit that responded to that call with us and we sent that person to go

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check on that patient while we continued to work the [redacted] -- here.

Q Okay. But do you recall whether any of your crew members had indicated to the staff of the facility that they wanted to go check on other patients in the hospital in addition to the one that was identified as being in distress?

A We had done that on the previous call. On this call we were on the [redacted]. On the [redacted] call was when we had tried to initiate checking on other patients in the facility, and the staff actually stopped us. The one nurse, like almost laughed, that this is their normal status and they came and told us that this person normally doesn't talk. We said there was one particular female, this person doesn't look good and they said, no, that's their normal status. "We just finished our rounds," that they had gone from one side of the building from the other and that's when they had noted the patient that they had call us for, the [redacted]; he was the last room that they had gone into. So that patient was when my crew and I had tried to go in the rooms and were essentially stopped. This patient -- we didn't do into any other room except when they said there was another

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patient in distress. I personally didn't go -- because this [redacted].

Q Let me back up because I probably confused the timeline here a little bit; let's put this back in perspective. When you were talking about the run that you did for patient number four, which was the signal 7 where you were on location at 5:44 a.m. and you departed the location at 5:59 a.m., is that during the timeframe where you and your crew interacted with the staff of the Hollywood Hills Rehabilitation Center?

A Yes, sir that's the time that --

Q And then during that timeframe, what exactly were you suggesting to the staff needed to be done and what was their response?

A We said we wanted to check on the other patients because we had just had so many critical patients from that facility. I told the staff that I had already notified DCF of the condition and that we wanted to check on the other patients. And as we started attempting to enter rooms and look at patients they told us that all the patient's vital signs had just been checked; they had just finished their rounds and everybody was within normal limits; that the patient that we had pointed out that seemed

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altered, that that was her normal mental status. It was around 5:00 or so in the morning, that they were sleeping and -- after that.

Q So that was before you were called back to the scene at 6:18 to address the condition of resident number eight with the tympanic temperatures that registered high?

MS. SMITH: Your Honor, I was trying not to interrupt either of them but just note the hearsay on that.

THE COURT: It's okay, thank you.

MS. SMITH: Thank you.

BY MR. MENTON:

Q Now at this point, I think that you were discussing the care that you were providing to resident number eight, as reflected in Exhibit 16. I think you mentioned that there was another patient that was identified; can you explain to the Judge then what happened and -- were there other Fire Rescue crews then that were called?

A Yes, but at that point I had radioed into dispatch and asked them to send us an additional rescue unit -- they heard that we were there asking for other units and I don't know if they were officially dispatched or dispatched themselves to

come and assist us because of the additional patients and we had the critical patient.

Q So then explain what your role was and what you did and then how that was interfacing with the other activity that was taking place on the floor?

A We transported that patient. I didn't have interaction at that point because we were aggressively trying to [redacted]t. We did have a firefighter/paramedic from our HazMat truck that had responded to that scene with us. We sent him to go check on the other patient that the staff had identified, but we were rapidly transporting this patient over to Memorial Regional at that time.

Q Were you involved in any decision as to what to do with respect to other patients that were on the second floor at that point in time?

A Not at that point, no, sir.

Q And that was why, because --

A Because we were rapidly transporting this patient; they were in[redacted]us.

THE COURT: Mr. Menton, let me interrupt you.

MR. MENTON: Okay.

THE COURT: Mr. Menton just mentioned patients on the second floor; was that the only floor that you were responding to up until this point with regard to the patients?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

BY MR. MENTON:

Q And just so we can complete some of the incidents related to patient number eight; what did you find regarding her skin temperature?

A Hot.

Q You talked a little bit about her condition -- describe for the Judge some of the steps that you had to take -- you tried to take to save this patient?

A We established an [redacted]

MR. MENTON: Your Honor, we would move Exhibit Number 16.

THE COURT: Any objection?

MS. SMITH: No objection, Your Honor.

THE COURT: AHCA's 16 is submitted.

(Thereupon, AHCA's Exhibit 16 was admitted into evidence.)

BY MR. MENTON:

Q Now Lieutenant Parrinello, after you turned over care for patient number eight to Memorial Regional Emergency Department, did you have occasion to go back to the scene and can you describe to the Judge how that occurred?

A Yes, while we were at the hospital, after we had transferred care, we had heard that they were declaring an MCI at the facility and we were again a very close unit so when we cleared with that patient and responded back to the assistance for the scene. We went upstairs to see if -- patients needed care. That was another point where we said we were going to assess every patient in every room at the scene who was critical and needed care and the staff told us that they had already done that.

At that point I said to him -- it was an African-American male, and I said, well, you told me that before and now we have multiple deceased patients so with all due respect I don't trust your judgment and we're going to check everyone ourselves. And then as we started going into the rooms, we were part of the team that stood by to transport some of the more serious and what we tagged as red in our MCI patients.

Q Now you mentioned the signal 7 that you and your crew were originally called for; did you subsequently learn that there were additional signal 7s or additional deceased patients on the floor?

A Yes, sir. I didn't personally see them or interact with them, but I heard them call on the radio.

Q Okay. And was that something that the staff had brought to your attention?

A No, that was part of the crews that were going room to room to check on the vital signs.

Q And I will ask you to refer to AHCA Exhibits 2 and 3.

MR. MENTON: Your Honor, these are two that are not in the Amended Administrative Complaint so I'm not going to go into the specifics of those in view of the Order that Your Honor has entered.

THE COURT: Then Mr. Menton, what's the purpose of the testimony?

MR. MENTON: The testimony is to demonstrate that part of the ongoing conditions at the facility in the evacuation and the demonstration, that it was not a safe environment as requested by -- of the --

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throughout that morning as the facility was evacuated.
BY MR. MENTON:
Q Lieutenant Parrinello, if you would look at Exhibits 2 and 3 and can you identify what those documents are and whether the run report is similar to the ones we've discussed earlier?
A Yes.
THE COURT: Hold on a second, before we go there, I'm not sure if Ms. Smith is -- or appealing this --
MS. SMITH: Yes, Your Honor.
THE COURT: Have you seen these run reports previously?
MS. SMITH: Yes, Your Honor.
THE COURT: Go ahead, sir.
THE WITNESS: These are the Fire Rescue/ambulance records, run reports similar to the previous ones.
BY MR. MENTON:
Q And can you describe then for the Judge what these are and how they reflected the activities that were taking place at the facility on the morning of September 13th?
A They were additional patients that were

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transported on the 13th by my crew.
Q And were there other crews that were also transporting patients during this process?
A Yes, sir.
Q And what patients were they transporting and where were they transporting them to?
A There were several facilities that patients were transported to. My interaction was that all patients I transported to went to Memorial Regional.
Q And do you know whether there was a triage process that was used to identify the patients that were most critical and where they went?
A Yes, sir there was a triage set up. I believe there was three red, the most critical patients and two of them I transported.
Q And at some point -- I think you indicated earlier that there was a mass casualty incident called; do you know exactly how that happened or who called that?
A I don't know who actually said the words to initiate it being called a mass casualty incident.
Q Was there a Fire Rescue Battalion Chief who assumed command of the scene, who was that and

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what was his role?
A Yes, sir, Chief Ladwick was the Battalion Chief that assumed command and he was in charge of operations and command of the scene I believe until other Chiefs arrived.
Q Explain for the Judge then how your role as a Lieutenant, in charge of a crew, what happens in a mass casualty incident like this; how do you take instructions and directions?
A It depends on the incident but we fall into like a command structure. So at that point we were assigned to be part of the transport and the standby team to transport other patients so other Lieutenants could function in their roles; my role was as a transporter; just as a transport unit. I wasn't part of the command system command center.
Q And as you were going through that process -- I think you've already referenced it to some degree with respect to Exhibits 2 and 3, but did you identify that there were other patients in distress and needed to be taken for acute care services right away?
A Yes, some of those patients were deemed to be in distress and needed transport.
Q From your involvement in what you saw, did

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the patients need to be evacuated from the facility?
A I believe so. I believe that they had more critical patients than I've ever seen at one facility at one time and that the conditions in the facility were contributing to the seriousness of the patients.
Q One of the Hollywood Hills' witnesses in deposition suggested that the Fire Rescue Department panicked during this event; do you think that's an accurate description of what took place?
A I believe it's inaccurate. I believe that they were panicked, that they were overwhelmed by the amount of patients that we were deeming critical. And I can say that everyone I work with was professional and calm; this what we deal with -- these emergencies. If any emotion came out maybe it was just shock at the sheer number of patients that were critical at one place at one time that were supposed to be taken care of by staff.
Q And while you were on the scene, did anybody from the facility ever indicate any objection to the decision to evacuate the patients from the facility?
A Only when I said we were going to check their vitals, and they tried to stop us essentially

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and say, that had already been done, but once it was deemed that people were getting moved nobody stood in our way for that; nobody objected to that.

Q As you look back over the events, do you have any second guessing about how things were handled or any concerns that it wasn't handled in the most professional manner possible?

A No, sir -- professionally.

Q Now you referenced the temperature that was in the facility -- did you ever stop to measure what the actual temperature in the building was?

A No, sir. I wouldn't have a method to do that.

Q And how would you describe the temperature in the building compared to the external temperature?

A It was noticeably hotter. We noted that it was hot in the building coming from the outside in.

MR. MENTON: Your Honor, give me just a second to look through -- I'm just about done. We would move Exhibits 2 and 3.

MS. SMITH: Objection, Your Honor. I think it goes into the specific details of the patients and she's gotten the testimony in that

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I think is consistent with what you've ruled and I don't see any reason that they're relevant.

THE COURT: Mr. Menton, your response?

MR. MENTON: Your Honor, we're not going to ask you to make specific findings with respect to the patients that were transported as reflected in these reports. But we do think that these reports are evidence of the conditions that existed within the facility and the decisions that were made by the first responders on the scene.

So we think that it's important to provide context for the decisions that were made, including the decision that was made by the Agency in terms of the licensure steps that it's taking as part of this proceeding.

THE COURT: I don't see Lieutenant's narrative with regard to these -- am I just missing them?

THE WITNESS: Yes, page two in Exhibit 2; it's very brief -- incident --

MR. MENTON: In that regard, Your Honor, I would note that it specifically mentions that the Unit 31, which is Rescue 31 was responding

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to MCI.

THE COURT: I'm going to sustain the objection. I don't think those particular records add anything; the narrative of these, unlike the narratives of the prior patients that you saw don't describe the lack of air-conditioning and the additional information contained in the narratives are patient specific. And so the objection is sustained.

MR. MENTON: And for the record, Your Honor, we would just go ahead and proffer those because again, in both instances the narratives refer to the MCI and we think that that MCI is part of what the allegations in the Amended Administrative Complaint address and is a relevant factor; we'll just proffer them for the record. That's all the questions I have, Your Honor.

THE COURT: -- Ms. Smith?

MS. SMITH: Yes, Your Honor, thank you.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MS. SMITH:

Q Lieutenant Parrinello, my name is Ms. Smith; we met at both of your depositions taken in

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this proceeding. I am, as you know, the attorney for the Rehab Center at Hollywood Hills and I have a few follow-up questions for you.

A Yes, ma'am.

Q Your deposition was taken for the first time on December 5, 2017, correct?

A I believe so.

Q And at the time of that deposition you did not bring any of your run reports with you, did you?

A I was not given any of them --

Q And you didn't have any of there, correct?

A No, ma'am.

Q And at the time of that deposition there were many facts and details about the cases that you could not remember based upon not having your run reports present, correct?

A That's correct.

Q For example, you could not remember whether the patient that you went to see on the 12th of September was on the first or second floor, correct?

A That is correct.

MR. MENTON: I'm going to object at this point. She's asking about a first deposition where she didn't have the run records and

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that's why we went through a second deposition so she could have the run records and she could have information about it. So to try to go through cross examination, based upon the fact that she didn't have the run records at the time, that's exactly why we had the second deposition.

MS. SMITH: Your Honor, I'm testing her memory and how much she actually recalls and how much she's relying on the reports.

THE COURT: The objection is overruled, go ahead.

MS. SMITH: Thank you, Your Honor.

BY MS. SMITH:

Q At the time of your first deposition on December 5th, you could not recall whether on September 12th you deemed that the patients were unsafe or not?

A I don't recall what the deposition says; if that's what it says.

Q You couldn't recall the temperature of the patient that you had seen on the 12th at the Hollywood Rehab Center, could you?

A I -- if I can interject one thing, I know that I didn't want to speak to that patient

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condition as far as temperature and vital signs without records because I didn't want to misspeak, so I didn't want to say in the deposition, a sworn statement, a number that I didn't know for sure.

Q And what you told me was that you couldn't recall, correct?

A That's correct.

Q You couldn't recall whether or not you had seen any patients in the hallway when you went to the facility on the 12th, correct?

A On the 12th, no I could not recall.

Q You could not recall whether or not there were any spot coolers in the facility on the 12th, correct?

A I do not recall, no.

Q I'm sorry, I couldn't hear your answer.

A I do not recall.

Q You could not recall whether the temperature in the facility on December 5th was exceedingly hot at that time, could you?

THE COURT: Wait a minute, on what date?

MS. SMITH: On December 5th.

THE COURT: The date of her deposition?

MS. SMITH: Excuse me; you're right, Your Honor, that was a poorly worded question.

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BY MS. SMITH:

Q On December 5th you could not recall whether the temperature in the facility when you went there on December 12th at approximately 1:00 p.m. was exceedingly hot; you didn't remember, correct?

THE COURT: I think you mean September 12th.

MS. SMITH: Oh, sorry, September 12th. Thank you, Your Honor.

BY MS. SMITH:

Q You couldn't recall at that time whether or not it was exceedingly hot on the day when you went there on September 12th?

A -- not knowing -- I don't recall if it was exceedingly hot.

Q You couldn't recall how long you were in the facility on September 12th, correct?

A Again, I didn't want to reference numbers without my report, so, no I did not recall the exact numbers without having the time date-stamped on the report.

Q And when I asked to approximate, you couldn't approximate how long you were in the facility either, could you?

A I didn't want to misspeak, so, no I didn't

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approximate because I didn't want to contradict what my report said.

Q And you couldn't give us any information about the temperature in the facility on September 12th, correct?

A Similar to the follow-up question, I didn't have a thermometer or a way to measure the temperature in the facility at that point, no -- or any point.

Q And you said you couldn't recall or give an approximation of what the temperature was on September 12th, correct?

A I didn't want to assume or approximate anything, so yes, that's correct.

Q And on December 5th you were also asked questions about your recollection of September 13th and returning to the facility, correct?

A Yes, I was.

Q And you could not recall the specifics about your transfers from the facility on September 13th at your December 5th deposition either, could you?

A Specifics regarding what -- I had transferred patients that were in cardiac arrest and that we had a deceased patient. I just wasn't sure of the time

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or the order.
Q Right, you couldn't remember the time the specific patients were transferred or approximate them --
A That's true, I could not tell you the time.
Q And you couldn't tell us which patients you were transferring, or anything about what their condition was or why they were being transferred at that time?
A I think I told you all the patients that we had were serious -- I know that every patient except for the deceased patient that I came in contact with was transported.
Q You couldn't tell us whether the patient that you went to see -- the first patient you went to see after midnight on September 13th was male or female, could you?
A That's correct.
Q And you couldn't tell me if that patient was heavy or skinny, could you?
A In fact, if you asked that question, I couldn't recall that either.
Q You couldn't even tell me if the first patient that you saw after midnight on September

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13th was dead or alive, could you?
A Again, I didn't want to misspeak on the times based on the -- importance of the patients.
Q You couldn't tell me whether or not the first patient that you saw on September 13th after midnight was even transported, could you?
A Again, because I said I transported everyone but the deceased patient and I just didn't want to misspeak on the time of when I responded to this patient without the reports.
Q You couldn't recall at your first deposition on December 5th whether you made any comments to Memorial Regional Hospital staff about whether the temperature at Hollywood Hills was hot?
A I didn't recall at what time we made a comment to it, but it was commented. It was documented in my reports.
Q On December 5th, were you able to tell me whether you noted anything to Memorial Regional Hospital about the facility being hot?
A -- I'm sorry?
Q Right, you weren't able to answer that question; your answer was I don't know, right? You didn't recall whether you told the Memorial staff that it was hot or not; you couldn't recall?

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A I documented in my reports and those reports go to -- of the staff, so I did tell them.
Q Well, when you looked back at your report you recalled that but when we took your deposition on the 5th without your reports, you had no independent recollection of it; that's the point.
A Okay.
Q Is that accurate?
A If that's what it said in the depositions.
Q Could you turn to Exhibit 5, please?
A On this same book?
Q Yes. Your Honor, I'm going to try and go through the same order of the questions I have as AHCA did and I'll try and tell you when I go from one patient to the other to keep it as orderly as I can. The questions here are relating to resident 11 and just to orient us, Lieutenant, is this the patient that you transferred on September 11, 2017?
A It was September 12th.
Q Are we looking at the same number? I'm looking at Tab 5?
A Yes, ma'am, I wasn't on duty September 11th, the only patients I came in contact with were on the 12th.

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Q You're right, I have the wrong date. I mixed them up in my head, so September 12th. Thank you, I apologize. And that was approximately 1:00 in the afternoon?
A I was dispatched at 12:50, on location at 12:53 on the scene.
Q I didn't see your sepsis alert for his patient; is it in here?
A I don't see it as part of this record. I just documented that it was a sepsis alert just not that page.
Q Was this patient categorized as a severe sepsis alert?
A I documented sepsis alert -- probably severe sepsis because of the altered mental status, but it's not documented.
Q Your narrative would include your key findings, correct, about this patient?
A Yes --
Q And you did not include in your narrative any reference to the AC loss at Hollywood Hills, correct?
A No, it's not in my narrative.
Q And you did not include any reference that the facility was warm or hot, did you?

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A Not in this narrative, no.
Q You did not issue any report to DCF about the conditions at the facility based upon being in the facility on September 12th, did you?
A No, ma'am.
Q And you did not consider the conditions of the facility on September 12th a danger to residents at that time?
A I did not.
Q You did not believe it was an unsafe environment, did you?
A I did not document that, no, ma'am.
Q I'm sorry, you said you did not believe it was an unsafe environment?
A I didn't document anything about the environment being an unsafe environment, no.
Q And not only did you not document it, it was your opinion at that time that it was not an unsafe environment, correct?
A I believe due to the staff saying they were working on the conditions of the air-conditioning, so we believe that that problem --
Q And you didn't take any actions to try to evacuate the patients on September 12th, correct?
A No, ma'am.

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Q And you didn't take any actions to follow up on the condition of resident 11 who is referenced in this transfer report, did you?
A We don't follow up on any patients in general after we transfer care; that becomes -- of the hospital physicians. So now I believe that that wouldn't be unusual.
Q And as far as on September 12th, you made no efforts to go back to the Hollywood Hills facility to see if there had been any changes in the conditions at the facility?
A No, I did not -- as dispatched -- emergency crews -- that the call was being --
Q Resident 11, which is the Run Report contained under AHCA Exhibit 5 was categorized as a sepsis alert patient, correct?
A Yes, ma'am.
Q And that's because that patient met the protocols that were established for declaring that the patient was a sepsis alert, patient?
A That's correct.
Q And you also have protocols to determine whether a patient is a hyperthermia patient, correct.
A Yes, there are protocols for that.

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Q And this patient did not meet the criteria to issue a hyperthermia alert, did they?
A There's no such thing as a hyperthermia alert, but at that time this patient met the sepsis alert criteria.
Q And you did not provide any treatment to this patient based upon them being a hyperthermia patient and meeting those criteria, correct?
A That's correct.
Q So they did not meet the criteria to be determined to be a hyperthermia patient, correct.
A In my assessment at that time, they met the criteria for sepsis alert. I did document that they met the criteria for hyperthermia treatment.
Q And it's not unusual for patients of this age, coming from a nursing home to have a temperature of that magnitude and be a sepsis alert patient, is it?
A As the patient on September 12th, that's correct, 102 being a not unusual temperature for a sepsis alert patient --
Q And you feel like you made the appropriate decisions in that case given the circumstances and that you handled that case appropriately, don't you?
A I feel like I did.

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Q I'm sorry?
A I feel like I did, yes.
Q And as far as the facility staff knew, the patient left alive and it was a typical standard transfer from a nursing home, correct?
A I can't speak to the facility's staff, ma'am.
Q You didn't tell them anything otherwise, did you?
A I wouldn't have reason to speak to them.
Q So you didn't speak to the facility staff on the 12th?
A Do you mean, did I return to the facility to tell them something after I had transferred care?
Q No, I meant when you were there transferring the patient.
A I spoke to them about that patient but I wouldn't come back and say they were alive or deceased; I think I'm confused to what you're asking.
Q Right. So you know that they were aware that the patient was alive and you didn't indicate to them that there was anything unusual or atypical about the transfer of that patient at that time, did you?

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A At that time, we notified them that we thought this patient was septic; that they were in distress.

Q In your report, if your turn to page two there's an initial patient assessment. And I'm looking at skin moisture and it says normal, correct?

A Yes, ma'am.

Q And the skin temperature at that time was warm, correct?

A That's what we document, yes.

Q And that's when you initially assessed the patient, right?

A Yes, ma'am.

Q And if we go a couple of pages over or one page over to page three, patient assessment at destination; that's when they get to the hospital, right?

A Correct.

Q And there it says the skin moisture was normal, correct?

A Yes, ma'am.

Q And it also says the skin temperature had become hot, correct?

A Yes.

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Q Is that correct?

A Yes.

Q And that's an accurate statement?

A That the skin temperature was hot because that's what I documented.

Q And the facility staff had told you about this patient; that they had had a rapid decline, correct?

A They had stated rapid decline in mental status and oxygen saturation.

Q And you administered Tylenol to this patient?

A No, ma'am, the staff administered Tylenol. We don't carry Tylenol as a rescue unit.

Q Okay. You mentioned that you spoke with someone on staff and they told you that they were having problems with their AC; was the person that you spoke with male or female?

A I believe my depo reflects I don't remember the sex, color, race, religion, anything about the person just that they were a staff member of Hollywood Hills. I don't know who they were but when they said something about the air-conditioning, they said they were having problems and were working on it.

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Q So you can't remember any details about the person who told you this; would it be fair to say that you don't have a very clear memory on the exact words that they might have used when they were talking to you about the AC issues at the facility?

A I know the words "working on it" were used; beyond that I couldn't specifically quote them.

Q So it could have been that it was the power outage and they were working on getting the power back on to the chiller?

A Maybe to the chiller; they were working on the air-conditioning.

Q And that's all you can tell us about that, right?

A Yes, ma'am.

Q I'd like to turn to the next resident, which is AHCA Exhibit 13 and it's resident one. Can you turn to Tab 13 for me?

A Yes, I --

Q When you were picking up this resident -- first of all, this resident was located in the hallway, correct?

A I believe so, yes.

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Q Do you recall if the patient was sitting right next to a spot cooler with cold air blowing on them?

A I don't recall a spot cooler with cold air on the patient.

Q You don't recall one way or the other or it just isn't true?

A That's correct, I don't recall the cold air. I do recall the patient in the hallway.

Q So if we bring up pictures or video of the patient in the hallway near this time near a spot cooler you're not saying that's wrong or altered you're just saying you don't recall?

A That's correct.

Q At the time of your second deposition, you couldn't recall if this patient was obese, could you?

A I believe I said heavy, I didn't quantify it obese. You asked me about weight that I don't remember or see documented anywhere; maybe that's a hospital record weight.

Q And in fact, if you look at your run report, the patient's weight is in fact listed as 100 kg, correct?

A I don't know where.

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Q Under date of birth it has weight 100 kg?
A Well, you're right, it is approximately 100 kg, yes.
Q And if we do the math that's about 220 pounds?
A Approximately, yes.
Q This patient had multiple co-morbidities, did they not?
A They had a significant amount of medical history.
Q They had documented A-fib, asthma, cardiac history, diabetes, emphysema and hypertension, correct?
A That's correct.
Q And the patient was 84 years old?
A That's correct.
Q When you were transferring this patient or before you transferred this patient, is that when you talked to staff members about the AC not working still in the facility or was it the next patient?
A It was mentioned at this patient.
Q And you say it was mentioned; mentioned by whom to whom?
A Our crew was saying the air is still warm

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in here; the facility is still hot. I can't give you the names of the staff there.
Q Right, and so I'm asking, did you personally talk to anyone at the facility directly and discuss the AC issues that were going on at Hollywood Hills facility at 3:00 a.m. or approximately when you were there to transfer this patient?
A Some member of the staff -- it was either the African-American male or one of the other staff members that was there; it was mentioned that the air-conditioning still wasn't functioning; that they were still working on the air-conditioning.
Q And that's sort of my question, you can't remember if it was the African-American male or it might have been someone else?
A That's correct.
Q I'm sorry, I couldn't hear.
A That's correct, it was just that the facility said --
Q Could you mind repeating your answer, I'm sorry?
A Just facility staff; I don't recall if it was specifically the gentleman or one of the other people that were there.

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Q And that's kind of the point of my question; you don't recall, same thing, whether it's male, female, tall, short, white, black; you can't tell me anything about the person?
A I don't recall the specifics --
Q So your memory is not very clear on that discussion, is it?
MR. MENTON: Objection, Your Honor. That's starting to get argumentative at this point.
THE COURT: Sustained.
BY MS. SMITH:
Q And if we look at your -- you know what, I've got to go back one; I'm sorry to jump around. I forgot one on the other resident. I've got to go back to resident 11, Tab 5 for just a moment. I just want to document this in the record. I know that the record is in here, but in your narrative and your key findings, you found that that patient had a temperature of 102, correct?
A I documented a tympanic temperature of 102.
Q And you did say that that patient and all the patients that you discussed were all on the second floor?

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A Yes, ma'am.
Q So now I'm jumping back to Tab 13, resident one. When you left the facility with the patient, she was alive, correct?
A When we left the facility, the patient was alive, yes.
Q And you didn't call DCF about this patient, correct?
A I did but not at that time.
Q Right, you didn't call until you had another patient and you saw a trend in patients, correct?
A Correct.
Q So at this time, just the facility conditions alone weren't enough to trigger in your mind that it was an unsafe environment, right?
A I believe it triggered something in my mind but I didn't call the facility until we returned back; it was immediately after transfer of the other patient and that's when I had the time to call.
Q Well you say that, but you went back in service at 3:36, right?
A That's correct.
Q After the transfer of the first patient,

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correct?
A That's correct.
Q And you weren't called on the next patient until 4:01, right?
A That's correct.
Q So you had almost half an hour in between going back in service and when you were called on the next patient, right?
A It is possible that I stated in-service at 3:36 but I could have still been at Memorial at that time. I don't remember that we had returned anywhere or I had made any calls at that moment. To be honest, I've never had a situation like this occur so it wasn't an immediate thing that I knew who to call; Regional advised me who to call.
Q Well you carry a radio on you so you have immediate contact --
A With my supervisor.
Q -- with your supervisor and you can also contact your 911 dispatch, right?
A I can --
Q Yeah, so if you knew that the facility was unsafe and needed to be immediately evacuated as of 3:00 or 3:30 a.m. on September 13th, you had the capability to do that even while you were

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transporting the patient and certainly after you went back in service, right?
A While I was transporting the patient I did not have the capability; after I went back in service, you're correct.
Q And you chose not to do that at that time, correct?
A I did not at that time.
Q You said in your direct testimony, we asked again about the AC issues; do you know who specifically asked who about AC issues?
A Our crew in general was in conversation with the staff, but the specific person; like I said before, I can't tell you their name or who it was specifically just that it was staff at the facility.
Q Right. And can you tell us which member of your crew?
A All of us, myself, Firefighter Wohlitka and Firefighter Santana all made comments as to the air-conditioning in the facility.
Q Right, I know you made comments to each other, but did you --
A No, to the staff.
Q You made comments to the staff, but you can't tell us who anybody specifically talked to?

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A I can't speak for the others.
MR. MENTON: Judge, this has been asked about five times; asked and answered.
BY MS. SMITH:
Q I'm just trying to clarify, you can't tell us who you talked to?
A I can't say -- I can just tell you that it was staff at the facility. To be honest, we run thousands of calls and the staff kind of blends together.
Q And you asked the black male, who you deemed to be the Nursing Supervisor, when you were picking up this patient, whether or not he had had to do any compressions on the patient, correct?
A I did ask him.
Q And he said he had not, correct?
A That's correct.
Q And so that means that the patient had never quit breathing, correct?
A According to him, yes, that patient hadn't gone into arrest. You're speaking about the patient at 3:00 in the morning, correct?
Q Yes, I am. Would you have any reason to doubt what he told you was accurate?
A No, I don't have any reason to doubt what

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he told me at that time, except that they had called it in as a cardiac arrest -- misspeak again -- was because it was called into 911 as a cardiac arrest, which would lead me to believe they did initiate chest compressions.
Q But he told you that he did not, correct?
A That's correct.
Q And if the video were to show that he did not, then you would have no reason to doubt that, right?
A No, I would have no reason to doubt.
Q Okay. Now your protocols for sepsis alert are established by a group of medical doctors, correct?
A Yes, ma'am.
Q And they're done in a way to use clinical indicators that are highly indicative of a patient that has sepsis, correct?
A That's correct.
Q And you never followed up with anyone at the hospital about resident number one after you transferred her to Memorial Regional Hospital, correct?
A The report that we're on right now?
Q Yes.

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A That's resident number one?
Q Yes.
A I believe when we came back from the patient at 4:00 a.m., the hospital told us that the patient from 3:00 a.m. had been intubated.
Q And did you bother to convey that information to anyone at the Hollywood Hills staff?
A I didn't return there to give them patient updated information; I did return there to the subsequent patient.
Q Right. And when you went back to the subsequent patient, you didn't tell them that the first patient had been intubated, did you?
A I don't know if I specifically said that. I can't recall.
Q And you didn't make a special call to the facility to tell them that the patient had had to be intubated, did you?
A I did not; that's not something I would normally do.
Q So as far as the staff knew, all they knew is the condition of the patient when the patient left the facility, right?
A As far as I knew -- which was respiratory distress with a tympanic temperature of 107.5.

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Q And when you transferred that patient at approximately 3:00 a.m. on the 13th, you didn't say to the staff, hey, you should start getting the patients out of their rooms and start evacuating them; you didn't say that to them, did you?
A No, I didn't.
Q And you didn't advise them that they needed to go check all the patients and make sure that they were safe, did you?
A I did not tell them to do their job.
Q So you did not tell them to go check on all the patients, did you?
A No, I assumed that the staff at the nursing facility -- check all of their patients.
Q If you could, let's turn to AHCA Exhibit 7 in the notebook and that is resident number two. If we look at page two there's a skin moisture under initial patient assessment; what does that say -- I'm going to keep myself from pronouncing it wrong.
A --
Q And what does that mean?
A It means sweaty.
Q It means profusely sweating, doesn't it?
A Yes.
Q And if we turn to page five, patient assessment at destination, correct?
A Yes, ma'am.
Q It notes that the skin moisture is moist, correct?
A That's correct.
Q You mentioned that the staff had denied that the patient had vomited but I noticed in one of the other run reports, it said that the staff had denied witnessing the patient vomit; do you ask the same questions of each person when you're taking these reports?
A Typically I do. If someone's not able to speak to me then I'll ask the caretakers or staff, depending on what the call is. Did this person fall? Did they have trauma? Have they been throwing up? Have they had diarrhea? Have they had fever; they're called pertinent negatives and it's just questions that we ask if a patient can't answer them for us.
Q Sure. So it could be the staff said that she didn't vomit; they weren't denying that she had vomited, they were denying whether they had actually seen her vomit, correct?
A I believe that I said that they said that she hadn't vomited.

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Q But you asked a different question in one of the other run reports when you asked them if they had seen the patient vomit?
A The wording might sound that way but I'll say, has thee patient vomited? Had they had diarrhea and things like that; so if they deny it to me, then I document that they say that that hasn't happened. I don't think that the semantics of it -- they're not trying to dance around it, it's just something that I ask normally. Did you see this person throw up? Did they have a seizure?
Q And I'm not trying to trap you or Anything, if we could look at Exhibit 15 and it's page three. It says staff denied witnessing any seizure, vomiting or trauma to patient.
A Okay.
Q And I'm just saying, you said staff denied, "Witnessing," is that how you typically ask the question, is did they witness it?
A Typically I would say, have you seen this -- did you see this person throw up; have they thrown up? It doesn't matter specifically if they saw him throw up; it's whether or not they know that they vomited.
Q Is it fair to say that you might have

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asked it either way in regard to resident number two?
A Yes, I could have said, did they throw up or did you see them throw up, that's fair. Generally, the reason I went with a witness in there would be for trauma or seizure; did they actually see a person having a seizure? Did they actually see a person have a traumatic injury; that's generally the witness part is important to note; or did they witness like a change in mental status because it's important for other protocols.
Q Today you testified that it means it's at least two hours typically if a person has rigor mortis and lividity, but at the time of your deposition you didn't have any knowledge about how long it could be for a person to develop rigor mortis or lividity. Did you learn that since the time of your deposition?
A Again, yes. Once you asked me and I didn't want to misspeak on the time, that's why I told you to refer to the Medical Examiner at that time after you asked me that; then I went back and researched it so that I could have a better answer, a more accurate description for you. I was just following the protocol; part of it was it that was present that that person would be deemed deceased.

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Q And so that wasn't part of your training or something that you --
A It was.
Q I'm sorry, I have to finish the question. That wasn't part of your training prior to September 13, 2017, correct?
A It was part of my training, I just didn't want to misspeak on it. The question caught me off guard -- that it caught me off guard and I didn't want to speak incorrectly about it.
Q Did you study anything about how having an amputation might affect the onset of rigor mortis or lividity, and it could because if a person isn't very mobile because they've had their leg amputated it might be different for that type of patient, huh?
A I can't speak to that. I don't have -- knowledge of that.
Q At the time that you filled out your run report for this patient -- actually I might have changed patient on you, I'm sorry; I've got to move ahead. I'm moving up to Exhibit 4 which is resident four, the signal 7. At the time that you were doing your report on this, you estimated the time of death to be about an hour before you saw the patient, correct?

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A I did list that, yes.
Q And today here at Trial, you've testified it had to be about two hours, correct?
A Per the research, yeah, for the lividity to set in, two hours.
Q But your best estimate at the time that you wrote the report and when you were evaluating the patient was one hour, correct?
A I documented that because the staff at the facility stated the last known well time was over an hour before, so it's a screen that has to be completed but ultimately I can't determine the time of death.
Q You don't typically make determinations about time of death, do you?
A It's an estimation, no. That's a Medical Examiner's job.
Q It's a complex science, isn't it?
A Yes, ma'am.
Q With regard to resident number four, you did meet with the police before you left the building, correct?
A That's correct.
Q So the police had to be there by at least 5:59 when you went back in service?

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A That's correct.
Q Do you know what was going on in the facility when you left the facility at 5:59?
A In reference to?
Q The status of the patient or what anyone was doing with regard to the patients?
A That was the time we were told that they had completed their rounds for the patients at that time.
Q And between you and the police officer who came to the facility at that time, who would know more about what the staff was doing after 5:59?
MR. MENTON: Object, calls for speculation as to what the police would know; comparing what they might know to what she knows.
MS. SMITH: That's fair; I'll strike it, no problem.
BY MS. SMITH:
Q You don't know what happened after you left at 5:59, do you?
A No, ma'am.
Q If you could, turn to Tab 16; this is resident eight. I notice if we go almost to the back, five pages from the back, there's another run report for the same patient on 09/07/2010?

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A It's under the same tab?
Q Yes.
A Yes.
Q And this is another transfer where this patient had been transferred to the hospital, correct?
A Yes, ma'am.
Q And the patient had been transferred because they had a stroke?
A Again, this wasn't noted in the report itself. I don't see this person --
MR. MENTON: Your Honor, if I could, at this point I would object that it's beyond the scope of direct and to the extent that there was an earlier report, it may have been in error because I haven't seen or noticed that before and it certainly wasn't addressed in her deposition back in 20 -- the transfer in 2010.
MS. SMITH: They put it in evidence, Your Honor.
THE COURT: This whole Exhibit was put in evidence by AHCA, so AHCA needs to be familiar with the documentation it's providing. I don't know that it has any particular relevance, but you may ask your questions.

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MS. SMITH: I'm not going to linger long.
THE WITNESS: This was transported because of the stroke, it was transported because of the seizure; that she had a previous stroke it says.
BY MS. SMITH:
Q Okay.
MR. MENTON: And I would also note that this witness was not listed on that report and there's no foundation for her to testify to that.
THE COURT: You put it in, it was admitted, it's my packet.
MR. MENTON: Okay.
BY MS. SMITH:
Q If we look at the skin moisture, it lists that her skin was dry and warm, correct?
MR. MENTON: Lack of foundation, objection.
THE COURT: She can read the report and she's testified that she's familiar with these run reports; they don't appear to materially deviate in the seven years between reports, so I'm allow this line of questioning, go ahead.
THE WITNESS: Yes, I documented that her

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skin moisture was dry and temp. was warm.
BY MS. SMITH:
Q I gotta go back on you because Counsel went back on you, so we've got to go back to resident number four. I'll try to get you to the right exhibit; give me one second. So this is resident number four, it's Tab Number 15. You discussed having discussion with staff about they had already checked on all the residents; do you recall what staff you spoke with?
A The main person, who's the African-American male; I don't recall his name. The other staff there also got up when we were in discussion and walked physically in front of us while we were walking to one of the patient's rooms.
Q And did you not believe them that they had actually checked on the patients; did you think they were lying?
A No, I believed them at that point because their explanation was that the patient that we found; what they called us for was the last room on that floor so they had gone from one side of the building to the other and he was -- that they found in distress and that's when they called us.
Q And you don't know anything contrary to

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that, do you?
A Subsequently I do, but at that time I didn't.
Q And you say subsequently you do, that's based upon other patients that were later determined to have critical conditions at a later point in time, right?
A That were found to be deceased, yes.
Q And the patients that were found to be deceased, you have no idea what time those patients deceased, do you?
A That's correct.
Q And those patients could have deceased very quickly close in proximity to the time that they discovered resident number four, couldn't they?
A I don't know what time they were deceased; that's a Medical Examiner thing and I didn't interact with them.
Q And those could have happened very quickly, correct?
A For us to call them deceased on the scene, it would have had signs that were presumptive inconclusive of death. So, -- the onset of -- rigor mortis would -- concepts were.
Q Well you don't know which EMS personnel

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determined that the other patients were signal 7, do you?
A I do not; it would be in their reports.
Q Right, and the only report that we have is about 7:30, several hours later, correct?
A I actually don't know what time we -- to come, I'm sorry.
Q All right. Well, we'll handle that with another witness. But as far as the time of the other deaths; you don't really know when those occurred, do you?
A No, I don't know.
Q You also talked about a patient that said looked like she might be in altered status and that the staff told you that was her normal status; did you believe that they were giving you accurate information or did you think they were lying to you?
A I believed that at the time that they were giving me accurate information.
Q You said, with regard to resident 8 and that's under Tab 16, that a lot of the patients started having issues during that time period; you had to send a HazMat firefighter to go check on another patient?
A I believe at that time is when we were

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notified that there was an additional patient that was having some kind of issue.
Q And are you aware that there were actually multiple patients that sort of went into distress all at the same time?
A I'm aware now; at that point I only knew of the one.
Q And who was the HazMat firefighter that you sent to go check on the other patient that was in distress?
A Driver/engineer, Derek Flaischner (phonetic).
Q You don't know whether or not Rehab Center at Hollywood Hills co-locates its sickest patients, do you?
A No, I don't know.
Q They could or they could not; you don't know one way or the other?
A I don't actually know the definition of co-locate; do you mean move to another facility?
Q No, I mean they're close by; they put them in close proximity to each other or they don't.
A No, I don't know.
Q You said that the MCI -- you heard it called on the radio while you were still at the

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hospital with resident number eight?
A While we were at the hospital, yes.
Q So it was somewhere between 6:35 and 6:50?
A Yes, ma'am.
Q And you also said that the EMS crews started checking vitals, but you weren't actually at the facility at that time, correct?
A When we began, no, but we did return for it, yes.
Q And if the video showed it was actually the Hollywood Hills Rehab staff that's going room to room and checking vitals and discovered the S-7's, you wouldn't have anything to contradict that because you weren't there, right?
A No, I was there. Our crews were going into rooms that the staff had started prior to our crews. I don't have any evidence to contradict that, no. I just know that when our crews arrived they began going with staff into rooms.
Q And the S-7's were discovered before you went back to the facility, correct?
A I don't know. I'm not sure about that. I think I was there when they called one of them at least. I think my crew was there -- I wasn't with that patient but I was on site. I don't know the

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exact time that they called it, but I believe that I was on site when they said --
Q Okay. So you were on site or you heard it on the radio or both?
A I wasn't in the room, but I heard it on the radio. I don't know if I was at the hospital or at the facility, but I heard them say signal 7.
Q And you don't know if that was prior to you transferring resident 8 or during your transfer or resident 8 or after your transfer of resident 8?
A Resident 8 is the one that's in 16?
Q Yes.
A When they started -- I can't say the time that they called it, no.
Q Do you know whether or not the Hollywood Hills staff helped to effectuate the evacuation effort?
A I do know that the African-American gentleman was getting us patient records as he was able to. He was providing us with -- that I remember.
Q But you weren't inside the facility to see whether or not it was Hollywood Hills' staff that was actually bringing the patient to other room or someone else, were you?

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A I was in the facility. I think it was a combination of efforts between Memorial, our crews and Hollywood Hills.

Q And the initial taking of patients out of the room, you weren't in the facility when they were initially taking patients off of the second floor, were you?

A At the very first start I was still at Memorial Regional but when I returned within an hour timeframe, patients were being assessed while I was there.

Q And the video of the second floor is going to be the best evidence of who was actually moving those patients out of the room, correct?

A Yes.

MS. SMITH: Thank you, Lieutenant, I appreciate your time.

THE COURT: Redirect?

MR. MENTON: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MR. MENTON:

Q Lieutenant, I just want to back up for a little bit. You were asked a number of questions about your deposition on December 5th. Did you make it clear at that deposition that you wanted to have

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the records in front of you to be able to recall what was going on?

A Yes, sir I did, several times.

Q Okay. And how many patients roughly had you seen between the time of that instance and the time of your deposition?

A A lot, because we average 12 to 23 a day and that call was in September and the depo was in December.

Q And when you were presented with the records, were you then re-deposed and did you answer all the questions fully based upon your review of the records?

A Yes, sir.

Q And were you able to recall things as you went through the records that you didn't recall without the records?

A That's correct, yes, sir.

Q Now you were asked a few questions about the sepsis protocol. Is there a separate protocol for hyperthermia?

A There is, yes, sir.

Q And are there a lot of over-lapping conditions or criteria in the two protocols?

A Yes, sir there are.

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Q And for example, can you give the Judge what's some of them?

A Sure. Some of the thing that could overlap would be the rapid heart rate or the respirations and low blood pressure and body temperature -- typically -- for a heat stroke it's over 105; sepsis is a little bit lower temperature to -- by, but there is over-lapping things. There's no alert for hyperthermia.

Q Okay. And with respect to patient number 11, the one that you transported on September 12th, I think that you were asked questions about the temperature that you and your crew recorded. Do you know whether the emergency department at Memorial took core temperatures and found the patient's temperature to be higher?

MS. SMITH: Your Honor, I object to beyond the scope. I don't think I asked her anything about Memorial on that patient.

THE COURT: Sustained.

BY MR. MENTON:

Q As it relates to the hyperthermia protocol that you talked about; I think you said that the temperature range was 105, is that --

A Typically for it to be deemed heat stroke

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it's over 105 as mentioned in the protocol.

Q Okay. And at least from the temperature reading that you took of patient number 11, it had not reached that level from a tympanic standpoint, is that right?

A Correct. At the time that we took it, it was 102 Fahrenheit. It was also post -- for the staff at the facility.

Q Okay. And is the core temperature typically considered more accurate than the tympanic?

A Typically the core temperature is, yes.

Q Now Ms. Smith asked you a number of questions about whether you had any reason to disbelieve what the staff had told you -- and other things like the air-conditioning and condition of the patients. And you said, not at the time is I think the way you responded to it. What did you mean by that and did you come to later doubt some of the information that you had been provided by the staff at the facility?

A Yeah, at the time the gentleman -- competent; he had appropriate patient information. We trusted the information that he had given to us. Later, having so many serious patients is when we

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started to doubt the validity of what he was telling us and then subsequently this turn into what it turned into, I doubt the accuracy of all the information he gave us.

Q And what is some of the things that led you to that conclusion and the things that you doubt in retrospect?

A I doubt that he had -- taken the vital signs of the patients as he had told us that he did. I doubt that the air-conditioning was being worked on. I doubt the competency that I had previously assigned to him was -- I think now that hindsight 20/20 I don't believe that he is as competent as I thought he was then.

Q And what about with respect to the facility rounding on patients?

A I don't believe that they had accurately done rounds based on how severe some of the patients that they found were -- that we returned back.

Q And explain what you mean by that; what caused you to say that?

A Just the temperatures of the patients. I don't believe that they can elevate that rapidly without having been noticed on regular, routine rounds; the heart rates and the conditions that the

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patients were in just doesn't seem something that could happen from one round to the next; that it happened with maybe the rounds being missed --

Q Does the number of patients that were involved; does that impact upon your view retrospectively?

A Sure, I've never had that many critical patients at one facility at one time in my career.

THE COURT: Lieutenant, how long have you been an EMT?

THE WITNESS: A little over 12 years.

BY MR. MENTON:

Q Now at the time that you were addressing resident number four, which is AHCA Exhibit 15, did the staff alert you or bring to your attention any problems or the condition of the other patient in that room?

A That, no, they did not. That was a signal 7 and that was the time when we asked about the other patients and they told us that they all were within normal limits; their records had been checked.

Q And did you have an opportunity at that time then to check on the other patient in that room?

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A We attempted to check on patients, not specifically in that room, but a female that I recall. As we started trying to walk into the room is when the staff said, no, no, no, we checked them; we just did our rounds; this is her normal mental status. And we said to them, she doesn't look right or she looks altered or something like that. And they said, no, that's normal mental status for her. We didn't have a reason to disbelieve them at that facility. A lot of the patients are sick people that -- stroke or nonverbal, so when they told us they had checked their vitals; that was normal and we believed them.

Q Did the staff ever provide you with any documentation of the rounds that they claimed that they had conducted of the patients or the vital signs that they had taken of any of the patients in the facility?

MS. SMITH: Your Honor, beyond the scope.

THE COURT: Sustained.

BY MR. MENTON:

Q In response to one of Ms. Smith's questions about the signal 7's, you mentioned to call a signal 7 on the scene you needed to have signs. I think you eluded to this a little bit in

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your direct testimony; can you explain to the Judge what you as a paramedic and what your crews need to have in order to call a signal 7 on a scene?

MS. SMITH: Your Honor, objection, cumulative; she did cover all this on direct.

THE COURT: I'm not sure that she did and it would be helpful to me so I'm going to overrule the objection to the line of this question.

THE WITNESS: The presumptive signs of death include apnea, which is not breathing, pulselessness, unresponsiveness and fixed and dilated pupils; conclusive sign of lividity; the pulling of the venous blood and rigor mortis with stiffening of the muscles -- compatible with --

BY MR. MENTON:

Q And just explain for the Judge then what you as a paramedic or your crews have to do in order to actually call a signal 7?

A We have to observe those signs on the patient; that they're not breathing, that they're not responsive; that they have some stiffening or some pooling of blood; things that are evident in a deceased person that's beyond resuscitation.

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Q And Ms. Smith asked you some questions then, in terms of your involvement, there was one signal 7, which was patient number four, but after you came back after patient number eight -- or during that process you learned that there were other signal 7's as well.

A Correct.

Q Were you involved in the direct care of those patients?

A I was not.

Q But was that information conveyed to you as part of the Fire Rescue staff on the scene as to what was going on and did that influence then how you were approaching things?

A Yes, we were aware of other deceased people in the building that hadn't been recognized by the staff and we realized that there could be more severe patients that hadn't been -- or checked on by staff.

Q And by this time, was there somebody from Fire Rescue who was coordinating efforts on the second floor, do you know?

A We had multiple people from rescue there, yes, sir.

Q And we're going to hear from Captain

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Holfretter a little bit later today.

A Yes, sir.

Q Do you know what his role was and did you interact with him during this process?

A He was the Captain of the Engine Company that responded to assist us with manpower and they began evaluating the patients or triaging them to determine the severity of their symptoms and they were there.

Q As you mentioned, Captain Holfretter; again, he's going to be here later. Did he accompany you with respect to the 3:00 a.m. call that you had regarding patient number one?

A He was dispatched to that call because it was dispatched as a cardiac arrest call, and when we arrived the patient was deemed breathing so we canceled -- already on the scene.

Q And when you say you canceled that; why is that, just explain for the Judge why?

A Sure. So typically if it comes in as cardiac arrest -- kind of like I mentioned before, we need extra hands; we need extra personnel so they were dispatched alongside us as it came in as a cardiac arrest. When we determined it was not a cardiac arrest, we can release the extra unit

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because it's typically a situation we can handle with three paramedics.

Q And going back to patient number four, which is Exhibit Number 15, I just want to make sure that I understood your response to Ms. Smith's questions -- who provided you information regarding the LKWT -- you say it was over one hour prior.

A Yes, sir. I said, staff at facility. The African-American male accompanied us on those situations.

Q Okay. And Ms. Smith asked you, I guess, referring to page two, the estimated time of arrest; is that something that you were relying upon the information provided to you -- or how did the information that you got from staff relate to that?

A Partially -- it's just an estimated time -- the Medical Examiner's usually is who determines the time of arrest; it's an estimation based on when they said they had seen him --

MR. MENTON: Give me one second, Your Honor. I think I'm just about done.

THE COURT: I have a question for clarification. Lieutenant, the narrative in some of your reports reference a GCS --

THE WITNESS: Yes, ma'am.

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THE COURT: -- figure. Can you tell me what GCS stands for and what the relevance is of the number that correlates with that?

THE WITNESS: Sure. The GCS is Glasgow Coma Scale; it's a way to assess a patient's neurological status. The maximum score that someone can get is a 15 and the lowest that they can get is a 3, which is essentially deceased or completely unresponsive. It's based on how they respond with their eyes opening – spontaneously -- they can be opened by pain or stimulation or by verbal stimulation, the numbers go down.

The verbal response -- completely oriented, disoriented, inappropriate words and incomprehensible or even no response at all -- normally -- responds to pain – area – So then the -- normal, talking to -- and then somebody's -- very responsive.

THE COURT: Thank you.

MR. MENTON: I have no further questions, Your Honor.

THE COURT: Ms. Smith, as a result of my initial question -- do you have any follow-up?

MS. SMITH: I hate the opening opportunity

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to ask questions, but I can't think of any good ones, so thank you, Your Honor.
THE COURT: Lieutenant, the parties have invoked what's known as the Rule of Sequestration. That means, we are instructing the witnesses who come in and testify not to leave this room and discuss their testimony with anyone else.
Meaning, please don't go out and share with your colleagues either the questions asked or the answers given. It is our hope that folks will come in and testify to the best of their ability without trying to anticipate what the questions might be or what the answers should be in order to match with other folks -- would observe that until the proceeding is over, we appreciate it, thank you.
THE WITNESS: Yes, Your Honor.
THE COURT: Thank you.
THE WITNESS: Thank you.
MR. MENTON: Thank you, Your Honor. Your Honor, we have two other members of Lieutenant Parrinello's crew. She's covered a lot; we're going to try not to be redundant. There's a few little nuances that we wanted to have them

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-- I don't know if we can take a minute and check. I know we have several crews out of service and I know this Fire Department --
THE COURT: Let's go off the record for five minutes.
(Thereupon, a short break was had.)
THEREUPON:
CRAIG WOHLITKA
a witness, having been first duly sworn, testifies as follows:
THE COURT: Could you spell your last name for me, sir?
THE WITNESS: W-O-H-L-I-T-K-A.
THE COURT: Thank you.
DIRECT EXAMINATION
BY MR. MENTON:
Q Good morning. Can you please state your name for the record?
A Craig Wohlitka.
Q And Mr. Wohlitka, where are you currently employed and in what capacity?
A I work for the City of Hollywood Fire Rescue and Beach Safety. I'm a certified Firefighter/Paramedic/HazMat Technician.
Q And how long have you been in that

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position?
A Five years.
Q And we've heard testimony from Lieutenant Parrinello already about what a paramedic is. But just can you describe for the Judge from your perspective what it is that you do?
A Sure. Paramedic is an advanced life support provider. My responsibilities consist of patient care, administering medication and providing life-saving techniques.
Q Okay. And are you assigned to a particular unit on a regular basis and what unit is that?
A Rescue 31 out of Station 31, a HazMat team.
Q And who is on that crew and explain the hierarchy of that works.
A Each crew is made up of three members; on the rescue truck it would be two firefighters; in this case it would be myself and my partner and then we have a Lieutenant that handles the report writing and is basically in charge of the truck.
Q And who is the Lieutenant for Rescue 31?
A Lieutenant Parrinello.
Q Let's move ahead to your involvement with

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the incidences at the Hollywood Hills Rehabilitation Center on September 12th and September 13th. Were you part of the crew with Lieutenant Parrinello during the runs that were done on those days?
A Yes, I was.
Q And were you on all of the runs then that Lieutenant Parrinello made with Rescue 31 that date?
A Yes, I was.
Q On the 12th and the 13th?
A Yes.
Q I want to ask you a few of your recollections as it relates to the calls that were made. And I'm going to ask you to refer to the notebook -- there's a notebook there if you need it.
A Okay.
Q And behind Tab 5 --
A Am I allowed to put this down in front of me?
THE COURT: Yes, sir.
THE WITNESS: I'm sorry, behind what tab?
BY MR. MENTON:
Q Tab 5. And we've already had a lot of testimony about that, but can you just tell the Judge what you recall about that run that took place on September 12th and the patient who's identified

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as patient number 11 in the Amended Administrative Complaint?

A As I stated in my depo, I didn't have much recollection of this call without reviewing the rescue report, but I do remember here that (name stricken).

Q Patient 11.

A Oh, I'm sorry, patient 11 --

MR. MENTON: If we could move to strike the name reference, Your Honor.

MS. SMITH: No objection.

THE WITNESS: I remember that we took him to the hospital earlier in the day, around 1:00. He was a sepsis alert; he was sick.

BY MR. MENTON:

Q Other than that, you don't have any recollections of the patient or his condition?

A No, I do not.

Q And how many patients again do you see typically as part of your --

A Rescue 31, unfortunately is one of our most busiest rescues and we run anywhere of upwards of 20 calls a shift in a 24 hour period so it's very hard to remember what you had for lunch, much less --

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Q So let's move ahead to some of the later calls. Did you have occasion to go back to the Rehabilitation Center -- before we get into the specific patients, let me just ask you a couple questions. Are you responsible for preparing the reports?

A No, I'm not.

Q Do you have any role in reviewing or editing or commenting on the reports when they're prepared?

A Other than providing information to my Officer who writes the report, no.

Q Okay. And in terms of -- and we'll get into this a little bit later, but there was some indication that at some point on the evening of September the 13th that somebody from your crew ordered the evacuation of the Hollywood Hills facility. Is that something that would have been within your authority for the Fire Rescue Department?

A Absolutely not. As a firefighter our responsibilities are quite limited; that would be well above my authority, absolutely.

Q And do you recall whether any member of Rescue 31 or your crew was responsible for order the evacuation of the facility?

A No.

Q There has been some testimony from Hollywood Hills; and we're going to go through some of the specifics, but we're going to go through them fairly quickly. There's been some testimony from Hollywood Hills' representatives --

MR. SMITH: Your Honor, I'm going to just object. There has not been any testimony of Hollywood Hills and this is becoming a pattern or referring -- something that may or may not come into evidence, and I just don't think it's proper use to say there's been some testimony when there hasn't.

THE COURT: Mr. Menton?

MR. MENTON: Your Honor, there's deposition testimony. We can pull you a deposition and we can show you where the representatives of Hollywood Hills made these specific statements. At this point, you know, we have to be somewhat preemptive.

In order to get these Fire Rescue people here to begin with, it was really an ordeal to get the Subpoenas, et cetera. I'm not going to be in a position to have them recalled to

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address things.

If they don't want to put on the testimony that their witnesses said in deposition, that's fine with me and you can disregard it, but I have to respond to what was presented in the deposition and this is my only opportunity to deal with this witness.

THE COURT: Mr. Menton, I think you can ask these questions without making a representation that somebody from Hollywood Hills stated X, Y or Z, I think. Just ask the direct question.

MR. MENTON: Okay.

THE COURT: Did you see anything chaotic? Did you notice temperatures in excess of whatever, but refrain from -- in your questioning, referencing testimony that I've not heard yet.

MR. MENTON: Fair enough, Your Honor.

BY MR. MENTON:

Q Is it proper to be called Officer Wohlitka; is that the right way to refer to a paramedic, I'm not even sure.

A Firefighter is good.

Q Firefighter?

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A Yes.
Q Okay. Firefighter Wohlitka, based upon your involvement in the events of September 12th and September 13th, which we're going to go through in more detail. Did you see any, or did you panic during this timeframe?
A Panic, absolutely not. We don't panic as firefighters/paramedics. We do train for extremely stressful situations and panic, no. Frustrated with what was going on, a lack of what was going on; that would be my more accurate depiction but panicking, absolutely not.
Q And did you see signs of any member of the Fire Rescue crews from Hollywood that panicked in any way during the events of September 12th and 13th?
A Absolutely not.
Q Now you indicated that you were frustrated, was a more apt description. Explain to the Judge what you meant by that and then we'll go through some of the particulars that led you to that.
A Well, Your Honor, we ran multiple calls that day. Unfortunately we have a rapport with Hollywood Hills; we do run quite a few runs over

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there. The frustration that day was just over -- you try to separate yourselves from your patients and not see them as your family member, but the lack of care that these people were experiencing and just the conditions that they were experiencing -- in all honesty, this call still very much haunts me. Fourteen people had to die to see the lack of care these people were receiving and just frustration over trying to do as much as we could for as many as we could.
Q Okay. Let's go back then through some of the individual situations. If you would refer to Tab Number 13, related to resident number one. And if you don't need to refer to a particular exhibit, that's fine. I just want to ask you about the next time that you went to the facility after the September 12th and what you recall about that --
THE COURT: Just as a reminder, we're trying to not use the patient names as much as possible and refer to them number and this would be resident 1.
THE WITNESS: Yes, ma'am, resident 1. We were dispatched to a sick person, resident 1. We entered the facility, upon entering it was noticeably hot. As soon as you walked through

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the door -- "ungodly hot" I think was the term that I used, we went upstairs and we found resident 1 in the hallway. She was in very poor condition.
BY MR. MENTON:
Q First of all, was it hotter inside the building or inside?
A Inside.
Q And can you quantify that or describe how much?
A From walking in the door, getting in the elevator and going upstairs, me and my crew were visible sweating because it was so much warmer inside than outside.
Q Okay. Now at the time, did you have any discussions with the staff of the facility about the temperature within the building?
MR. SMITH: Object and note the hearsay, Your Honor.
THE COURT: Can you ask the question again?
BY MR. MENTON:
Q I think the question was, did he have any discussion; he's part of the discussion.
THE COURT: I didn't hear the question,

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that's why, I'm sorry.
MR. MENTON: I just asked whether he had discussions with any staff regarding the conditions within the building.
THE COURT: Hearsay is noted -- go ahead.
THE WITNESS: I did not.
BY MR. MENTON:
Q Okay. Describe then the patient that you were taking care of; did you take her temperature and can you describe what her condition was?
A I don't recall exactly if it was myself or my partner that took the temperature but I did have physical contact with resident number one. Her skin temperature was very hot to the touch. Her tympanic temperature was 107.5. Like I said, she was in very poor condition. We needed to care for her as quick as possible.
Q In your career as a paramedic, had you ever seen a patient with a temperature that high before?
A Absolutely not.
Q And did that lead you to any concerns then as to what was going on there?
A We made comments to each other as a crew that it was very hot in there. Other than that --

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Q So what did you do with that patient and then when did you next go back to the facility?
A Well, when there is someone with a temperature that high, you would be thinking about brain cells -- I'm not a doctor so I couldn't tell you exactly the temperature, but at 107.5, it's safe to say that we're worried about internal temperatures so we placed cold packs on the patient to try and get her core body temperature down. I believe she was also septic.
Q I think on page three there's a reference that sepsis alert -- what does that mean to you as a paramedic?
A Well, a sepsis alert is a criteria that we use to determine if someone is in severe infection. There's benchmarks that we have to hit; one of them being a tympanic temperature over 100.4, pulse rate greater than 90, and she hit -- it's actually attached on the exhibits as a usual -- of our sepsis alert criteria.
Q Okay. And Lieutenant Parrinello has already described some of the circumstances with this patient and we'll try not to be redundant. I'd like to move ahead then, did you have occasion shortly thereafter to return to the facility and

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explain to the Judge what led to that and I think that's behind Tab Number 7.
THE COURT: In which patient please?
MR. MENTON: It's patient number two.
THE COURT: Thank you.
THE WITNESS: Yes, we went back again a short time later for patient -- I'm sorry, this would be resident number two.
BY MR. MENTON:
Q Resident number two, yeah. And can you describe for the Judge again what you found in regard to the condition of this patient or temperature and those sorts of things?
A Resident number two was again in very poor condition. Resident number two actually was breathing when we first arrived on scene and actually went into cardiac arrest on us in the elevator in transit to the truck to try and get her to the hospital. Again, it was very hot in the facility; she was very hot.
Q I know you were talking about the patient went into cardiac arrest and your dealing with the patients; at some point during this timeframe, did you actually have a discussion with the African-American man that was in the building?

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A Yes, the R.N. -- his tag said R.N.; he said his name was Sergio; was the one that he identified that he was taking care of these patients.
Q And did you have discussions with him regarding the conditions within the building?
A I believe that was on this call, yes. We asked him, what's going on with the air-conditioning? Why is it so hot in here? He was profusely sweating. He just told us that they were working on it and they were trying to get a hold of somebody I guess to work on the AC
Q Okay.
A We trusted in him -- he said that they were working on it, so I had no other inclination not to believe him.
Q Do you know, after this patient was delivered to Memorial Hospital, whether there were efforts taken to alert authorities about the conditions within the facility and to report the high temperatures that were observed in the patients?
A Yes, this is where we were at the hospital for a little over an hour due to because Lieutenant was contacting DCF after talking with the hospital

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staff.
Q And while you were at the hospital, can you describe for the Judge, did you learn that there were other patients in distress?
A Yes.
Q And describe what happened and then what'd you do?
A Yes, in the process of trying to figure out what actions to while Lieutenant Parrinello was on the phone with DCF, I happened to be standing next to a Hollywood police officer who then informed me that they were sending police units to the Hollywood Hills Nursing Home for an unconscious, not breathing patient.
I then went back inside and grabbed Lieutenant Parrinello. I explained to her that the police officer had instructed me that they were going over there for an unconscious, not breathing patient.
She then instructed me to go outside to get on the radio and ask dispatch if that was true. Dispatch confirmed, after I got on the radio that, yes they were in the process of dispatching it out. I told Lieutenant Parrinello, we made the call to take it.

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Q Then what did you do and can you describe for the Judge what you found when you went back to the facility?
A We went back over to Hollywood Hills Nursing Home -- that was a gentleman; I forgot what was his name --
Q Is this patient number four; you can review Exhibit 15, the tab behind there, patient number.
A Patient number four?
THE COURT: It's Exhibit 15.
BY MR. MENTON:
Q Exhibit 15 --
A So upon arriving back at the Hollywood Hills Nursing Facility, we found the R.N., Sergio doing CPR on this gentleman. I just happened to be the first in the room. What struck me as odd is while he was doing CPR, the patient's entire body was moving, and what I mean by that is, basically if you took a piece of wood and laid it down on top of a bed and pushed up on it up and down -- the patient seemed very stiff from the doorway. I instructed him to stop doing CPR. I checked the patient for a pulse; he didn't have one. I tried to move one of his extremities -- I believe it was his left arm. I couldn't move it and we pronounced him a signal 7

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which is dead on arrival.
Q And we've had a little bit of discussion about what a signal 7 is, but just from your perspective, what is a signal 7 and what do you have to see in order to make a call if it's a signal 7?
A Our protocol for a signal 7 is you have to have four conclusive signs of death; in this case would have been pulseless and apneic, which he didn't have a pulse and wasn't breathing, fixed and dilated pupils. When you shine a light in their eyes they're pupils aren't going to move, they're very large; rigidity or rigor mortis which would be the stiffening of his extremities, body, whatnot and lividity which is blood pooling in the skin.
Q And did you absorb lividity as it relates to this particular patient as well?
A Yes.
Q And based upon your experience and role -- I know you're not a medical doctor, but just based upon your training, what does the existence of rigor mortis and lividity indicate?
A Rigor mortis usually indicates an extended period of death.
Q When you say extended period of death, what do you mean by that?

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A A couple hours.
Q Okay. And was does lividity mean?
A Lividity is blood pooling in the skin; it's from when the body sits for so long, the blood has nowhere to go and it creates almost like a bruising on the -- in this case on the back of the patient.
Q And did you personally observe those conditions and report them to Lieutenant Parrinello for her report?
A Yes, I did.
Q Can you describe for the Judge what your next activities were as it relates to the Hollywood Hills Rehabilitation Center on the morning of September 13th and you can refer to Exhibit 16, which is patient number eight?
A So after a signal 7, we -- who was then taken off -- and whatnot. Then we were called back again for a patient with breathing problems.
Q With respect to that patient, do you recall taking her temperature and what was registered on that?
A Yes, resident number eight was -- a new record -- the highest temperature that I had ever heard of -- her temperature read HI, which I now know means

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above 108 degrees Fahrenheit or per the manual, not within human limits.
Q And can you describe for the Judge generally what the condition was of this patient and then what you did with her? Did you transport her to Memorial Regional Hospital and then did you have occasion to go back to the facility?
A Yes. She was in cardiac arrest. We did CPR, we transported her to Memorial Regional. We went back again -- so in the process of transporting resident number eight, we heard over the radio that they were pronouncing Hollywood Hills as an MCI, which is a mass casualty incident. So upon dropping resident number eight off to the hospital, we decided to go back and help as much as possible.
Q And when you went back, did you find other patients in distress and did you help with those patients and move them to the emergency department?
A Yes, I believe we performed a few more transports.
MR. MENTON: And, Your Honor, I'm just going to proffer -- I understand your ruling earlier regarding the other patients, but again I would just proffer that we would ask him about those patients as we believe part of the

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overall condition.
THE COURT: Are you talking about with reference to Exhibits 2 and 3?
MR. MENTON: Yes, Your Honor.
THE COURT: Same ruling on the objection, but proffer is noted.
MR. MENTON: Okay, thank you.
BY MR. MENTON:
Q During the time that you were there, did you ever hear anyone from the facility object to the decision to evacuate all the patients from the building?
A No, the only interaction in room -- close to that was I believe after the signal 7 -- I'm sorry, I don't know what resident number that was.
Q Resident four.
A Number four -- we did try and evaluate more residents and we were told by other staff that they had just done rounds and that the rest of the patients were fine and that we need not worry about them.
Q Explain that for the Judge. Were you involved in any of that and who were you told by, and were you able do rounds on other patients after you discovered resident number four as a signal 7?

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A What sticks out in my mind was -- I can remember specifically a woman that looked unwell for lack of a better term. I attempted to enter the room and evaluate her, and I was stopped by a Hollywood Hills staff member, who basically told me they had just done rounds and everybody was fine. I asked her, I said, are you sure, that woman doesn't look good.
And she said, oh, no, she just looks like that. I just felt bad for that woman. You can beat yourself up and maybe I should have tried to tell that facility member no, but an R.N. is higher than a firefighter/paramedic so we had no reason to doubt her.
Q Okay. During the time that you were there, did the staff of the Hollywood Hills Rehabilitation Center ever indicate to you that they had a plan for how to deal with these patients in the conditions in which they were in?
A No, there was very limited staff there.
THE COURT: -- patient, staff members you can, not the patients.
THE WITNESS: Oh, okay. Mr. Sergio, he seemed to be the one in charge. He was running around, you know, like trying to do everything.

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Other than him communicating that they were working on it and they were trying, how would I say no.
BY MR. MENTON:
Q From your involvement while you were there, did there seem to be a methodical effort to deal with the conditions that these patients were faced with?
A No.
Q Did there seem to be anybody who was directing the staff as to how to handle the patients as they were emerging?
A From Hollywood Hills?
Q Yeah, from Hollywood Hills.
A No.
Q From what you saw there as the process was going on, did you believe that the evacuation of all the patients in the facility was necessary?
A Yes.
Q And from your observations and involvement there, would it have been a safe place to leave patients for any longer?
A Absolutely not.
Q And explain for the Judge.
A As I stated earlier, the uncomfortable

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heat alone was unbearable for myself. I won't speak for anybody else to that. I know I was very uncomfortable inside the facility. I can only imagine for somebody who wasn't able to go outside or get out, what was dealing with. I think it's pretty eminent getting all of these people -- it just wasn't safe.
MR. MENTON: That's all the questions I have, Your Honor.
THE COURT: Cross examine --
MR. SMITH: Yes.
CROSS EXAMINATION
BY MR. SMITH:
Q Firefighter Wohlitka, I'm going to try and get through this pretty quickly. You had the opportunity that you were actually inside Hollywood Hills' facility both on September 11th and September 12th, is that --
THE COURT: No, sir, September 12th and 13th I believe is what his testimony is, not the 11th.
BY MR. SMITH:
Q Okay. Were you in there the 11th?
A Yes.
Q And you were also in there on the 12th?

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A Yes.
Q And I'll just have you assume there was no power -- did you observe there was no AC on the 11th or 12th?
A I don't recall.
Q You did not report any unsafe conditions on September 11th or September 12th, correct?
A Correct.
Q You discussed resident number 11 that you responded to and you don't recall if there were any conditions you observed at that time that would have placed any other residents in danger, correct?
A I don't know which --
Q Yeah, it's around noon to 1:00 on September the 12th. I think it's the only run you made on September 12th.
THE COURT: Can you direct him to the patient for the Court?
MR. SMITH: Yeah, I'm sorry, I think it's Tab 5.
THE COURT: Thank you.
THE WITNESS: I'm sorry, what was your question about it?
BY MR. SMITH:
Q My question was, you did not recall any

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conditions at that time that caused to either make a report, up your chain of command or to anyone else that there was unsafe conditions in the facility?
A I don't recall the call --
Q But you -- you didn't make any kind of report that there were unsafe conditions; whether you recall the call -- do you recall whether you made a report?
A No, I didn't make a report.
Q And by all appearances -- did you testify on direct you thought this was a sepsis patient or you just didn't recall the patient at all?
A Referring to the rescue report, it was a sepsis patient.
Q But without referring to that rescue report, you really don't have any current memory of that patient at all?
A No, I don't.
Q And you don't specifically recall as to whether it was hotter or colder on the 11th or 12th?
A No, I don't.
Q And you don't recall whether it was hotter inside the building or outside the building on the 11th or 12th?
A No, I don't.

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Q And you'd agree that you can't say one way or the other whether it got hotter from 12:50 in the afternoon on the 12th until 3:00 a.m. in the morning on the 13th, is that right, you cannot say that?
A I cannot say that.
Q You mentioned in direct -- you used the term "14 people had to die", and would it be a fact that you did not see 14 people who died on September 13th?
A Are you asking me if I saw 14 people die?
Q Did you respond to 14 calls that ended with deaths of residents?
A No.
Q So the 14 people you were referring to is something that you've learned from talking with other people or reading the newspaper; I'm wondering where you go the number?
A Yes.
Q Was it reading the newspaper?
A No.
Q It was talking around?
A Honestly, I don't know exactly where I --
Q It's a precise number, is the reason I'm asking you, sir. You know, "14 people had to die". I'm just wondering, where did you get that

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information that 14 people -- I'm assuming you believed that 14 people died?
A Yes.
Q And you believe that 14 people died as a result of the conditions in the building?
A I can't make that determination; that's way above my education.
Q As far as what you observed, it's what you told Mr. Menton on direct in terms of anybody that died?
A Yes.
Q And basically it was the one patient that was a signal 7 in the facility?
A I'm sorry, I'm confused what you're asking me now.
Q Did you follow up on any of the patients that you transported; did you follow up to determine what happened with any of those patients after you took them to the hospital?
A No.
Q And the only other patient that you're aware of that was deceased would be the one that you saw that you described that Sergio was doing CPR when you came in?
A Yes. To be frank, sir. We did do CPR on

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multiple other people. In this situation, we didn't have time to wait around and find out if the hospital was able to get pulses back, which happens a lot, unfortunately with the volume of calls that we run. So you're right, other than the signal 7 that we pronounced, I don't know if any of my other patients died, but I can only assume a high likelihood.

MR. SMITH: Your Honor, I'm not going to move to strike the answer because it was nonresponsive to my question, but I just don't want that to be an open door for redirect on something that was nonresponse.

THE COURT: I understand, thank you.

BY MR. SMITH:

Q You talked about the resident that Sergio was doing CPR when you entered the room, do you recall that?

A Yes.

Q And you offered that the person would have been dead for a couple of hours, do you recall that?

A Yes.

Q And, in fact, your job and qualifications as a paramedic, which I respect, do not determine back-dating when somebody died; when was the time of

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death; that's the Medical Examiner's job?

A Yes.

Q Okay. And you're not a forensic pathologist or an expert in time of death?

A No, I'm not.

Q Nor some expert in rigor mortis associated with a patient that may have many complications and many co-morbidities?

A No, I'm not.

Q You've said that when you were on your way to Memorial and that was transferring number eight, which would be the -- I'll give you the run number -- hold on, the Exhibit is Tab --

THE COURT: 16.

BY MR. SMITH:

Q -- 16. So my question was, you were on your way to Memorial transporting that patient when you heard that there was an MCI called on the radio?

A Yes.

Q And in your direct testimony you said they called -- they called an MCI?

A Yes.

Q And I just want to know, they who had called an MCI, who was the they?

A I couldn't tell you specifically who the

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person was.

Q Do you know -- even outside of just an individual, was it between -- was it EMS that had called the MCI?

A Our radios are only Fire Rescue, so I can only assume that yes, it would have been Fire Rescue personnel.

Q And what time of day was that? It said that you had arrived at the hospital at 6:36.

A 6:35.

Q Or 6:35. And then you talked about going back -- and I was unclear on the timeline; what timeline was it where you were in the hospital where you testified that a staff member said, "oh, no, she just looks like that" and she wouldn't let you go to the patient?

A That was in the nursing home not the hospital.

Q In the nursing home, what time of day was that; in association with which call was that?

A After resident number -- the signal 7.

THE COURT: Four.

THE WITNESS: Four.

BY MR. SMITH:

Q And that is resident number --

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THE COURT: Four.

MR. SMITH: Four, thank you, I'm sorry.

BY MR. SMITH:

Q So as far as getting a time on that, that would have occurred somewhere between 5:45 and 5:59 a.m., correct; that's how long you were in the building?

A What tab is that so I can pull it up and tell you the timeline.

Q It's Tab 15. I just want to be clear. You arrived on scene, correct?

THE COURT: Why don't you let the witness to get to that?

MR. SMITH: I'm sorry.

THE WITNESS: Okay.

BY MR. SMITH:

Q You arrived on location at 5:44?

A Yes.

Q You made your first patient contact at 5:45?

A Yes.

Q That's when you saw Sergio doing CPR?

A Yes.

Q How long did you spend talking or discussing or assessing with Sergio?

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A I couldn't tell you specific amount of time. Our movements are very rapid, especially when somebody is doing CPR on somebody. My job is to quickly and as safely as possible evaluate a patient and take over.

Q And the woman that -- you said that you went to check on other residents and there was a woman that stopped you?

A Yes.

Q Did she physically put hands on you?

A No.

Q Did she like step in front of your path and stare you in the face or something? Tell me, how did she stop you?

A She met me at the doorway, I was walking one way, she was walking the other way; just met me face to face. I pointed to the patient and asked about her condition and she said, she always looks like that and they had just done rounds.

Q So that encounter that you're describing, somewhere between 5:45 and 5:59 would be captured on any security video of hallway that might have been in the building, right? I don't know if you know that, but if there's video up and down the hallway, did this occur in a hallway?

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MR. MENTON: Object, in terms of video, lack of foundation, calls for speculation.

MR. SMITH: I'll withdraw the video; I'll withdraw the video.

BY MR. SMITH:

Q Were you standing in the hallway when you had this encounter?

A I believe so, yes.

Q And do you know the name of the person with which you had that encounter?

A No, I don't.

Q And can you give me a physical description of her; old, young?

A African-American female.

Q Do you recall what she was wearing?

A Scrubs.

Q Color?

A I couldn't recall that much detail of that.

Q And do you know how long that encounter was; was it a couple minutes?

A No, I couldn't tell you how long that conversation was.

Q And you said that you didn't have any reason to doubt her?

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A Yes, because in the medical field hierarchy, R.N.s or a registered nurse would be higher than a paramedic education-wise.

Q When you were in the room where you first went where Sergio was working CPR on one resident, you were concerned about the safety of the other residents in the building, correct?

A Yes.

Q Did you check on the residents in that room at that time? Did you look to see -- were the residents in that room appear to you to be in safe condition or not in distress?

A I don't recall any other residents in the room.

Q It was your recollection there were no other residents in the room?

A I don't recall if there were or were not.

Q So if there were, you didn't assess the safety of the people that were right there in that room?

MR. MENTON: Objection, Your Honor. He just said he doesn't know if there was, so could he have done that?

THE COURT: Sustained.

BY MR. SMITH:

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Q Well let me ask you it this way; if there would have been a dead body in that room, do you think you would have noticed it? Are you trained to make observations?

A Yes.

Q So if there was a dead body in the room, you likely would have noticed it, right?

MR. MENTON: Object to form, calls for speculation, likely.

THE COURT: Answer if you can, if you can't --

THE WITNESS: I guess so. There's different degrees of dead bodies. We're talking about 6:00 in the morning. If somebody's sleeping -- I don't know, I can't tell you if there was a dead body in there if I would have noticed it or not.

BY MR. SMITH:

Q The woman that you said that you observed where the employee told you that was her normal state, you don't know what her room number was, do you?

A No.

Q And you don't have any way to identify that particular resident?

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A No.
Q And you don't know what her ultimate outcome was after evacuation?
A No.
MR. SMITH: Thank you.
THE COURT: Any redirect?
MR. MENTON: Just a couple questions.
REDIRECT EXAMINATION
BY MR. MENTON:
Q Firefighter, as a paramedic when you receive a dispatch, are you assigned to a particular patient or are you assigned to a facility to look at the facility?
A No, we're assigned to a particular patient.
Q And do you have the authority to by yourself without permission to begin assessing other patients whether they're in the same room or down the hall or anyone else without permission of the operator of the facility?
A No, as far as I understand, that would probably be a HIPPA violation to just start talking to other people.
Q And when Mr. Smith asked you some questions about your visit to the facility on

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September 12th, and that's Exhibit Number 5 again; can you tell the Judge how long you were in the building and whether you had an opportunity to assess the condition of any other residents in the building on September 12th?
A Well it says we were on location at 12:53 and departed location at 1:09; that's pretty quick.
Q Okay.
A In my opinion, no, I wouldn't have had time to be evaluating other people.
Q And in that timeframe -- and there's been some discussion about this already, what were you dealing with and what kind of focus and attention does that require?
A Again, specifically I don't remember a lot of details about the call. I do see here a sepsis alert; so we alert somebody. We tend to move a little bit quicker because there are time limits on things like that.
Q Okay. Is that what you're focused on there, responding to a call like that?
A Yes.
Q And with respect to the patients, Ms. Smith asked you a number of questions about how many deceased there were, and you responded about the

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cardiac arrest that you were dealing with, did you also hear during the course of your involvement about other signal 7's that were found on the scene?
A Yes, we do communicate with dispatch on the radio when there's a signal 7 because they time-stamp them. I did hear at least one more over the radio.
MR. MENTON: That's all the questions I have, Your Honor.
THE COURT: Firefighter Wohlitka, the parties have invoked what's known as the Rule of Sequestration.
That means we're asking all the witnesses who come in and testify that when they leave this room they do not discuss the questions asked or the answers given, in order to allow the other witnesses the opportunity to come in and testify to the best of their own recollection without trying to anticipate what the questions might be or what they think that answers should be. All right, sir?
THE WITNESS: Yes, sir.
MR. MENTON: Your Honor, if it's all right with you, we would go ahead and call Firefighter Santana.

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MR. MENTON: Your Honor, the agency will call our next witness, we would call our next witness, Luis Santana.
THE COURT: Thank you.
Sir, could you spell your last name.
THE WITNESS: S-A-N-T-A-N-A.
THE COURT: Thank you.
THEREUPON:
LUIS SANTANA
a witness, having first been duly sworn testifies as follows:
DIRECT EXAMINATION
BY MR. MENTON:
Q Can you please state your name?
A Luis Santana.
Q And can you please tell the Judge where you are employed and in what capacity?
A I work for the Hollywood Fire Rescue and fire --
Q And Fire Fighter Santana, can you tell the Judge how long you have been with Hollywood Fire Rescue?
A Five years.
Q And can you explain for the Judge some of the background and training that you had to qualify you

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for that position?
A You have to take a certified --
THE COURT: Sir, you will need to speak up.
THE WITNESS: Oh, sorry.
THE COURT: Could you move your chair, or move the microphone to facilitate that?
THE WITNESS: So as a fire fighter, we have to receive fire fighter training -- we also have to get certified for that -- also have to do paramedic training -- which was -- between everything else, almost two years of -- training.
BY MR. MENTON:
Q Okay. And we have had some other witnesses who were fire fighters describe their job. Just from your own perspective, what are your job responsibilities, what do you do as a professional fire fighter?
A It varies a lot on who responds any time any body calls 911 for -- emergency -- either being in a car accident or --
Q Okay. And is there a particular unit to which you are typically assigned?
A I am usually at Station 31, which is our HazMat station, Special Ops, so all the special

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operations stuff as well as -- fire.
MR. MENTON: And, Your Honor, I am going to try to speed through this. I might lead a little bit.
THE COURT: You do not need to speed up, just take your time.
MR. MENTON: Okay.
THE COURT: -- if I think that I can't and let you know and excuse myself and you just go ahead and do what you need to do to protect your client.
MR. MENTON: Thank you, Your Honor, I will try not to be redundant.
BY MR. MENTON:
Q Can you describe for the Judge what you are typically assigned to and who else, that crew is?
A So I'm usually at Station 31, whether it be the engine crew or the rescue crew and so -- Lieutenant Parrinello --
Q Okay. Let's move ahead then to your involvement with the incidents at the Hollywood Hills Rehabilitation Center on September 12th and 13th. Were on the crew with Lieutenant Parrinello and Fire Fighter Wilitka on those days?

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A Yes.
Q And did you accompany them to the scene of the Hollywood Hills Rehabilitation Center on several calls that day?
A Yes.
Q And I think that we heard that Lieutenant Parrinello is the one responsible for preparing the reports as it relates to those calls?
A Yes.
Q I want to just ask you some of your own personal observations in what you remember and saw on that day?
A Okay.
Q Let me ask you first that on September 12th you were called to the facility and it was for patient number 11, which is a run report behind Tap 5 and there is a notebook in front of you if want to take a look at that.
A Okay.
THE COURT: And sir, we are -- refer to patients by resident number or patient number rather than patient name.
THE WITNESS: Okay.
BY MR. MENTON:
Q And Fire Fighter Santana, do you recall

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being on that call that day with Rescue Crew 31?
A Yes, I do.
Q And we have had a lot of description about the patient's condition and the transport to the hospital. Do you recall taking the patient to Hollywood Memorial Emergency Department?
A Yes.
Q And during your transfer here to the patient, did you convey to or did you have an conversations with the hospital staff about what you saw at the facility and what was going on?
A Yes, normally when I walk in I will give a report on the patient's condition or anything pertinent to the call.
Q And do you recall what, you know, what information you might have conveyed to --
A Yeah, I remember -- and so I went ahead and told him where the patient was, we talked about -- she had mentioned, the nurse had mentioned that they already had two prior sepsis' the day before coming from there. There was a lot of -- we spoke about you know, it was hot -- how their AC had been broken, and basically just transported -- transported --
Q And we have had some testimony about, do

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you recall how long you were on the scene at the facility that day, and whether you had an opportunity to review or assess any other patients while you were there?

A Well, on that 12:00 call, that was just -- I had was that one patient and we went in and assessed him and he was in somewhat serious condition so I had him transported --

Q And so you did not have any -- do you recall whether you had any discussions with the staff at the facility at that time?

A At that time, no. At that time, at 12:00, I believe Lieutenant Parrinello inquired about the AC, and if they were working on it and they said, yeah, it has been down.

Q Let's move ahead then to the next time that you had occasion to go back to the facility, which would have been in the early morning of September 13th, which is resident number one, Exhibit 13, Tab 13 in your notebook there. Do you recall -- part of the rescue crew that responded to the call at 3 something a.m.? And can you describe for the Judge what you recall about the facility and the temperature of the facility when you went inside the building?

A Yes, when we went in at that time, it was –

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it was a lot hotter than it was during the day when we went -- I just figured it would be cooler since it was nighttime now, but it was quite hot. They had her completely undressed, she was not wearing any clothes whatsoever and I think they had a fan blowing on her; she was very severe.

Q All right. And you recall whether there were any discussions with staff then regarding the conditions within the facility?

A Yes, and at that time, you know, we talked about it and it had been hotter and they assured us that everything was being handled. That they had called and let their superior know and they had seemed quite flustered with the situation as well.

Q Okay. And who was it that you were interacting with at the facility; do you recall?

A Yes. The person I was interacting with was a black male nurse, a registered nurse -- I looked at his tag.

Q Can you show how you entered the building? Which doors were you coming in and where the patients were that you were seeing?

A We always used the south side entrance right there in the middle.

THE COURT: Mr. Smith or Ms. Smith, if you want to move around to see.

MR. SMITH: Thank you, Judge, if I hear something that I really feel like I need to get up there and take a look, I will. I think I know it.

THE WITNESS: So the south side entrance is right here around the center, right in there.

BY MR. MENTON:

Q And you went up, do you recall where the patients were located --

A Yes, they were on the second floor, so there is an elevator that we can take right there as you walk to the right and you go straight upstairs from there.

Q Okay. And do you recall whether the temperature was the same or different on the first floor or the second floor?

A It was significantly hotter upstairs.

Q Now we have had testimony regarding patient number one and her condition; do you recall the temperature that was taken of patient number one?

A Of the first patient, the one at 3:00 in the morning?

Q Yes.

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A Yeah, that was over 107.

Q And was that -- in your experience, have you seen any temperature like that before?

A Never have seen it that high.

Q Okay. And if you would move to the next Exhibit which is 7 in the notebook, and this is regarding patient number two?

A Okay.

Q Are you familiar with that patient and the transport that your crew did with that patient to the Memorial Regional Hospital.

A Yes, she was in cardiac arrest and we have the whole protocol of the things that we need to do, obviously CPR and certain drugs and -- I did all that and she was quite hot as well so we tried cooling her off.

Q Okay. And do you recall what the temperature really was for that patient?

A Yes, I think it was the one that read high when we look at the thermometer.

Q Actually, I think that is patient number eight --

MR. SMITH: Objection, Your Honor. That is leading.

THE COURT: We need to let the witness

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refresh his own recollection.
BY MR. MENTON:
Q I was trying to speed things along, but if you will refer to the narrative behind Tab 13 -- or 7, I'm sorry.
A 7?
Q 7, right. If you look at the narrative, does that have a recording of the temperature and does that refresh your recollection as to what you found with respect to that patient?
A Let's see, 107.5 it says here --
Q Okay. And after you found the second patient with a temperature that high, do you recall whether you or your crew took any steps as it relates to --
A Yes, at that point we were at the hospital, and we talked about it in the hospital and what was going on there. We all decided to call DCF, the hospital was calling -- we were calling as well. We went ahead and took that step to report it to the State.
Q So you were discussing this then with Memorial --
A Yes, I was having a conversation.
Q And then did you have occasion to return

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back to the facility later that morning? And if you will refer to Exhibit 15?
A So as I can remember, as we were -- Lieutenant Parrinello was on the phone with DCF, another call had Come in to PD and we overheard it and found out there was another call-in. I think -- talked to dispatch and they said, yeah, there is a cardiac arrest happening at the facility right now. So we dropped what we were doing and, you know, on the phone with DCF and headed over to it -- you know, since the hospital was just directly next to it, so.
Q And so can you describe for the Judge then what you found when you got there on this next call?
A So as we walked in, they were performing CPR in the room. I believe it was Craig that told them to go ahead and stop and just looking at the person who was obviously deceased.
Q Okay. And at this point, do you recall whether there were any discussions about assessing other patients within the facility and --
A So as we were walking out, I remember just looking -- there was a person in the room and they did not look well, which is typical in this kind of facility because there are a lot of sick patients there. And the nurse assured me, "No, he is normally like that.

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That's normal for him." I went over and touched him and he was cool -- he or she, I don't even remember if it was a woman or a man. But they assured me, "No they're all okay. Everybody is fine." And we went ahead -- reassured -- "You guys checked all locations? Everybody else is fine?" And they continuously reassured us, "Yeah, everybody's fine here." Lieutenant Parrinello attempted to go back between these double doors that were there, where there's more patients in the back. And they had stopped us and were like, "No, everybody back there is fine. We've checked everybody." So we went ahead and turned this thing over to PD and went back to the station.
Q Okay. And did you have occasion to go back to the facility shortly thereafter?
A Yeah, we were in the station for a few minutes, it seemed, and we were sitting at the table speaking with -- engineer Fleischman, Eric and we had to converse to him, you know, "Hey, if there is anything else there, we are going to need help because all of the patients there are pretty serious." So, shortly after we got another call in and headed back and he came with us.
Q Okay. And based upon the involvement that you had, had at the facility earlier that day, and

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then even subsequent as the morning progressed, did you ever learn whether the facility had any plan to deal with the conditions in the facility and the patients over there?
A Yeah, I mean, they have these -- and I communicated to the nurse that was in charge there that day that, you know, I was concerned about whether these AC's were working properly or not and whether they were connected right because it was a lot hotter than it was during the day and it had been running all day and it was just, it was very uncomfortable in there. And he communicated to me that yeah, everything is being done, they had spoken about it. You know, he seemed to have frustration himself. Obviously working in that environment and having gone through that. So he assured me that, yeah, that you know -- everybody knows, and they're doing something about it. They were trying to get it fixed.
Q Did they have any plans as to what to do with the patients that were under their care?
A Yeah, I didn't --
Q According to them all the patients --
MR. SMITH: Object to -- object to -- lack predicate, did they any plans, and --
A Yeah, I don't know --

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THE COURT: Sustained.
A -- about --
THE COURT: Sustained. Hold on. Hold on.
A I'm sorry.
THE COURT: When I say -- sustain an objection, don't answer. That's okay.
THE WITNESS: I am sorry.
THE COURT: That is okay. Go ahead. Can you ask him a question.
BY MR. MENTON:
Q Did anybody from the facility ever communicate to you that they had a plan as to how to deal with the patients that were in their care given the conditions that existed in the facility?
A They did not.
Q And that would extend, both, from the time that you were there for the Signal 7 throughout the rest of your time there?
A Correct.
Q Now, you were talking about being called back to the facility, and I think that, that is resident number eight, which is behind Tab 16. Can you describe for the Judge what happened when you went back?

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A I am sorry, which resident number is this?
Q Number eight, Exhibit 16.
THE COURT: It is under Tab 16, patient's initials are GN --
THE WITNESS: Under Tab 16.
THE COURT: Yes.
THE WITNESS: This was another cardiac arrest. This is the one whose temperature read high.
BY MR. MENTON:
Q Okay. And we have had a little bit of testimony about that but based upon your experience, have you ever seen a digital thermometer such as the one you used register high before?
A I have not.
Q And what did you take that to mean?
A That it was definitely hotter than hotter than 107.5 because I knew it went up to that from the last patient that had a high temperature. But I had never seen, "High," before so -- I figured it's obviously more than that. I didn't know what the limits were.
Q And then did you transport that patient to Memorial Regional, and then can you describe for the Judge what happened after that?

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A So once we went ahead and transferred that patient, I was hearing over the radio that it has escalated and they had started to check all the rooms and they had found several other Signal 7s, deceased patients in there and there was other serious patients that needed to be transported, so we went back. I believe we picked up another patient, and brought him back.
MR. SMITH: Your Honor, I just note, hearsay.
THE COURT: So noted.
BY MR. MENTON:
Q Let me go back for a minute to patient number four, which is Exhibit 15. Do you have that one?
A Yes.
Q This is the Signal 7 patient.
A Okay.
Q Do you recall having any discussions with -- well, first of all, did you see whether the patient was in a condition where rigor mortis had set in?
A Yeah, it was obvious because we walked into the room as they were performing CPR -- you know, when a person has been dead for a while, they stiffen up and it was obvious that this person -- as they were

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pressing down and they were on him, stiff.
Q Okay. And then did you have any discussions with the staff as to when they had last checked on the patient?
A Yeah, that is kind of the first thing that we always ask and it is basically first -- of protocol -- very important for us to know, when was the last time they seemed normal; when was the last time you saw this person? And also to determine, you know, the time of death because, you know, this case of the person and they said -- they had just -- before, had check on him.
Q And did any of the staff indicate that they were aware that the patient was in distress of any kind or unconscious?
A No, no. They said that they just found him like that and could not specify as to when -- checked, or.
Q And then you mentioned that after you dropped off patient number eight, which is Exhibit 16, that would have been around 6:50 -- is when you --
A Back in service.
Q -- went back in service. Okay. And do you remember at that point in time what the situation was at the facility and, you know, what was going on?

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A Yeah, at that point they were performing Triage basically. Going room to room checking all the patients, taking vital signs.

Q Okay. And did you then go back to the facility and participate in that process of taking --

A Yes, for a very short while I walked into a couple rooms to check their vital signs and then -- patient to transport.

Q Okay. And we have had some discussion about that, I won't get into, you know, the specific conditions of those patients, but did you have other code red or red-banded patients that needed -- care, that you were involved with that morning?

A I think that most of the -- by that time, the patient that we brought back was somewhat stable. I think that also a lot of patients had already been taken care of. We had already previously gone back for a bunch --

Q Okay.

A This one was more stable, but they were just, it was just cruelty for just leading people out and moving patients and things.

Q And based upon your observations and what you saw were the more critical patients, how were they being handled?

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A Well, the critical patients always go first and that's a point of triage because -- being in -- basically it says that there's more patients than resources. So at that point we're going to classify, you know, "Okay, they go first, they go second and -- " And that was -- we was all being very --

Q And at any point in time during this situation, did you panic?

A No, no.

Q And from your observations and what you saw of the other fire rescue crew members that were there, including Rescue 31 and others, did anybody panic?

A No, I think everything was being handled well, and we had so much help from the hospital and from everybody else around there that we were even over our capacity -- I think it was handled excellently.

Q During the course of this, did you hear anybody from the staff or anyone else ever express any objections to the evacuation at the facility?

A No, definitely not.

Q And based upon what you saw in your involvement there, was there a need to evacuate the facility?

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A Yes, there definitely was a need. There was so many -- I mean, the fact that you start finding so many people so critically ill and some that had been deceased already, which I know that they had already found a couple of deceased patients over there after we had left to the hospital with the last critical patient. So yeah, at that point, honestly, if you see that many people in that dire need and based on the conditions, there is no question about it.

Q And from what you saw in your presence in the building, was it a safe environment for elderly patients to remain?

A So, it was definitely hot in there and as soon as we walked in, you know, it was uncomfortable. But what would dictate to me whether or not it was safe for those to be there or not, it's their condition -- checking their vital signs and you see how they are doing. So from all the information that we had earlier and them telling us that they checked everybody, obviously, at that point I said, well, it feels hot to me in here, but everybody is doing okay so there is no need. But definitely at the point where you see this many sick patients and this much, you know -- they are obviously being affected by it because it is not normal for that many people to,

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you know, pass away in one day and be so critical at the same time. So at that point definitely --

Q If the facility had not been evacuated, do you know whether the staff had any plan to deal with those conditions?

A It was pretty apparent to us that, you know, that the staff was not doing their job because if they had been, this would not have escalated to this scale. So if they did have a plan, they didn't put it through. I don't think they were aware of whether they needed to or not because they were apparently -- to us, they were not checking their patients.

Q Based upon again, what you saw in patients -- if the facility had not been evacuated when it was, do you -- did you have concerns whether other patients might --

MR. SMITH: Hold -- objection, beyond this witness' expertise to make a conjecture of would additional people dying, or be harmed, or --

THE COURT: Sustained.

BY MR. MENTON:

Q If the facility had not been evacuated when it was and everybody remained there, were you anticipating that you were going to get called back

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to that facility again?
A -- I figured there was a trend that was established at that time and I'm sure it would have continued. Yes.
MR. MENTON: That is all the questions that I have.
THE COURT: Cross examination?
CROSS EXAMINATION
BY MR. SMITH:
Q Fire Fighter Santana, the last statement as to you are sure that it would have continued and, you know, I do not want to quibble with you but you do not have any medical training, correct? You are a paramedic, you are not a doctor?
A I'm not a doctor, no.
Q And your job as a paramedic does not include forecasting how patients are going to, you know, whether they are going to develop future conditions or not, that is just not something that you typically do. You respond to a patient who has a condition.
A I respond to a patient that has a condition but at the same time, you know, we know trends and we know things that are going on and basically, if something is on fire, if you don't put

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it out, it is going to keep burning. That is basically what I thought was going --
Q And that is what your opinion is based on. It is not based on, for example, looking at whether the most critical patients might expire and then the rest of the people, not to use a crass term, but you then heard the critical patients had died and the rest of them are going to be healthy and they are not going to die? You don't know if that is going to happen, right?
A I do not know if that is going to happen, but based on the fact that there are a lot of critical patients in there, I think that it is safe to assume that it would continue to happen.
MR. MENTON: Judge, I just stood up because I think that Mr. Smith, and I am sure he did not do it on purpose, but he cutoff the witness' answer as he was completing. I think that he was winding down but I would just ask that he be allowed to complete his response.
BY MR. SMITH:
Q Fine. Fire Fighter, bottom line, you are not really qualified to make medical diagnosis, are you?
A We do not make diagnosis.
Q On your first call to the facility on

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Tuesday, September 12th, did you observe portable AC units were up everywhere?
A So when we were in there earlier, I am not sure how many there were, I know there was at least one in the entrance.
Q And do you happen -- maybe counsel can help you out, do you recall that we had taken your deposition on January 22nd, page ten, you informed me that there were portable AC units up everywhere?
A There were -- by the end of the night for sure there were several in there. I don't know when they got there, or if they were there earlier. I know there was at least one when we walked in the door by the nurse's station. As far as to how many there were, I am not sure.
MR. SMITH: May I approach, Your Honor?
THE COURT: You may.
BY MR. SMITH:
Q I am just going to show you a copy of your deposition --
THE COURT: Would you cite page and line, please?
MR. SMITH: Page ten, line five.
BY MR. SMITH:
Q Didn't you tell me that portable AC units

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were up everywhere?
MR. MENTON: Your Honor, I think that is an improper use. That is not even consistent with what he just said.
THE COURT: He just now testified that he recalls seeing one --
THE WITNESS: No, they had some portable units up everywhere.
THE COURT: Objection overruled.
MR. SMITH: Thank you.
BY MR. SMITH:
Q And on that Tuesday, September 12th, when you went between 12 noon and 1 p.m., you did not consider at that point that there was a danger or unsafe condition?
A Based on the amount of patients that we had, no.
Q And you did not make any kind of report to DCF about it?
A Not at that time.
Q Your next call at 3 a.m., you testified that it was hotter than about the 14 hours earlier that you had been there, correct?
A Yes.
Q And who was it that you spoke to that

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said that they had checked the patients, or did they tell you at that time that they had checked patients, the staff?
A Yes.
Q And who did you speak to?
A The black male nurse that was there.
Q Do you know his name?
A I think it was Sergio, maybe.
Q Sergio?
A Yeah.
Q Okay. Well, did Nurse Sergio inform you that he had checked all the patients?
A Yeah, he said that -- he didn't specify himself, it was just that -- he said that all the patients had been checked.
Q And you found him, based on your observation at the time, that you thought he was very competent?
A Yeah, he seemed competent because when we walk in for a serious patient there and you know, we normally need a lot of paperwork, we need a lot of their history, and he had all of that in hand, which was --
Q He knew his patients?
A Yeah, he knew the patient that we were

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dealing with at that point. He had all the medical history and the paperwork, and he was ready for us when we got there with unlimited information on that patient, yeah.
Q And at that time, you did not find the condition to be sufficiently unsafe that you felt that you should make a report to DCF?
A Well, what made me think that the condition was unsafe was the condition of the patients. Based on that we had that one patient and he was telling me all the other patients were fine, I concluded that it wasn't.
Q But you didn't report anything to DCF, right?
A No, not at that time. It was after a hurricane and there was a lot of people with their AC down -- and it was not completely out of the norm that some people were -- going to go through some hardship. So based on the fact that we didn't have any -- patients at that time, I did not think that there was a need -- I just figured we were handling it.
Q You were next called back around 4:00 in the morning and that is when --
A About 3 a.m.
Q And I thought the first call was 3 a.m.

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Am I wrong?
A 3 a.m. was when -- well, the first call was the day before at 4:00.
Q Okay. And then the next one after that was 3 a.m.?
A Yes.
Q And that patient left the building, you were able to get her out of the building alive and to the hospital?
A Yes.
Q And as far as what the staff at the hospital knew, she had left the building alive in good hands?
A As far as they knew -- we're talking about the first patient at 3:00?
Q 3:00.
A Yeah, as far as they knew, I guess. I mean, she was in serious respiratory distress and I would say she was very critical. I wouldn't say that she was okay.
Q Understood. That what they knew --
A What they knew or not -- I couldn't tell you what they knew or not, but she was definitely in dire straits at that point.
Q You did not follow back up with anybody at

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the nursing home to say, this was the condition of that patient, either during the transport or upon arrival at the emergency room?
A No, I would never report back to them.
Q The next call that you received was around 4:00 in the morning?
A Yeah, it was right after getting back to the station.
Q And it was after that call that you went back and made the call to DCF?
A Yeah, because at this point we had our second very critical patient which was honestly a lot worse. This one was the cardiac arrest. So yeah, at that point, we were seeing that there's a trend establishing these patients with very high temperatures and we were definitely concerned at that point.
Q And do you recall the portable AC -- air conditioning units that you saw, did you actually check to see if cool air was blowing out of them?
A Yes, I did. I inquired about if they were hooked on right or not. Because these are heat exchange units and they kind of blow out hot air somewhere, and so I asked the nurse, and I told him, "Hey, these obviously are not working because we were here earlier and it is a lot hotter now." And --

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Q But when you felt the air, it was cool?
MR. MENTON: Judge --
THE COURT: You need to let him finish his answer.
BY MR. SMITH:
Q I'm sorry.
A Yes, there was some cold air coming out of where it is supposed to come out of, but it was -- it wasn't even putting a dent, how hot it was in there.
Q And you thought that you mentioned to the nurse supervisor, Sergio, that you thought that maybe they should check to see if the ACs were hooked up right?
A Yeah.
Q And he said that they were looking into it?
A Yes.
Q And he seemed to you to be competent and on top of it?
A Yeah, he seemed competent and on top of it, but he was, you know, his demeanor was that he was frustrated over the situation that he was working in, it seemed to me. He didn't seem happy about it, he was kind of like, "Yeah, we called them and told them," and you know, he was a victim of the heat himself,

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so.
Q You never suggested to -- let me back up. The next call that you would have had would have been the Signal 7 call?
A Yes.
Q Is that correct?
A Yes.
Q And you never suggested to any of the staff, hey, this is a dangerous situation and you ought to get these residents out of here?
A No, my concern was whether they checked the rest of the patients and the rest of the patients are holding up, and they assured me they were.
Q Would it be fair to say that basically what you knew was that it was hot, but you did not know to what degree it was affecting patients?
A It was hot and I assumed that it was not affecting any more patients because this is what they are telling me, and I have to take their word for it. Even though at that point, you know, we were already calling DCF because we knew something had to be done about the facility because you know, these patients were being critically ill and they were saying that they checked on them and they obviously weren't.

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Q Are you disagreeing with the statement, basically you knew it was hot, but you did not know to what degree it was affecting patients?
A No -- I'm not --
Q Do you agree with that?
A Oh, yeah.
Q And you can't tell us how fast a person can decompensate from exposure to moderate heat over a period of time?
A No.
Q And bottom line, you don't know whether the facility staff had been checking on patients or not, you were not there?
A I was not there.
Q Hold on. I am looking for something. Would you agree that it is not uncommon to receive more than one call from the same skilled nursing facility in one shift?
A No, we responded sometimes, two to three times during a shift.
Q To the same facility?
A To the same facility.
Q And do you believe that Sergio was definitely engaged in the patient care at that facility?

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A I believe he was engaged with the patient at the time as there was a call for.
Q Do you agree that the Hollywood Hills staff that was there seemed, on the whole, cooperative?
A They seemed cooperative up to the point where we wanted to go back and check the locations and they stopped us and assured us that, "No, everybody that is back there is fine. We checked on them already," and we took their word for it and walked out. Basically his license is higher than ours and he supersedes us, and so, we just have to take their word for it.
Q So when you went into the room where you saw Sergio giving CPR to the patient that became a Signal 7 --
A Uh-huh.
Q -- or was a Signal 7, did you tell Sergio to stop the CPR?
A I don't remember if it was me, personally, I don't think so. I think that it was Craig, but somebody told him to stop. That is typical when we walk into a room and we're going to assess the patient. Especially if he's obviously dead, we are going to tell him, go ahead, and stop. You know, there is a certain

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amount of things that we need to go back on and --
Q Did his demeanor seem appropriate to you at that time? Did he seem like somebody who was doing his best?
A Yeah, he was very --
MR. MENTON: --
THE COURT: I'm sorry, I didn't hear your objection.
MR. MENTON: Objection. Vague.
THE COURT: Can you rephrase your question?
BY MR. SMITH:
Q I think that he answered it, but did his demeanor seem like he was concerned and doing his best to work on that patient?
A Yeah, he seemed like he was very overwhelmed. I mean, the fact that he is the nurse in charge and he is the one that is doing CPR, it is somewhat concerning because, you know, that is -- his job. He -- onto another nurse or somebody, that is the person --
Q With all due respect --
MR. MENTON: Did I interrupt him, I am sorry.
THE COURT: I think you did.
MR. MENTON: Were you done? I want to

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give you the opportunity to say anything else.
THE WITNESS: So, yeah, I was just explaining that the fact that he is the one that knows CPR, and the fact that he is completely and totally held -- one patient, you know. They are overwhelmed because, you know, him being the person in charge is just like with us, if there is a certain situation going on, our chief cannot be holding a firehouse putting out a fire because he needs to be in charge of the entire scene, you know, what is going on and make sure for everybody's safety.
So if he is completely involved in some -- there is a ball being dropped somewhere.
BY MR. SMITH:
Q In fairness, have you ever run a nursing home?
A Have I ever run into a nursing home?
Q Have you ever run a nursing home.
A I have not.
Q Have you ever been a nurse supervisor in a nursing home?
A No, I have not.
Q Have you ever been a paramedic in a nursing home?

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A No.
Q Would it be fair to say that Sergio seemed like he was fully engaged with the patients when you saw him?
A With the patients that were -- yes.
Q Now, you were in that room with Sergio, you said that you had some concerns that it might not be a safe condition in the building, did you check the other residents in that room?
A In the specific room with the Signal 7s, you are asking?
Q Correct.
A I might have glanced over -- I remember at that point with the Signal 7, that is where we looked into another room and saw a patient that looked like he was very serious and the nurse assured me that no, that is his normal condition, he is normally like that, which is typical there because they have a lot of people recovering from stroke, so that was it. So as far as that particular room -- somebody else --
Q As far as anybody else in the room, do you think that you would have noticed if there was a dead body in there?
MR. MENTON: Objection, calls for

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speculation. He already said what he observed and --
THE COURT: Overruled.
THE WITNESS: So when we walked into these rooms, there was normally, very sick patients, normally unresponsive sometimes depending on their condition.
So if I walk into the room and saw that there was another patient that was obviously dead, I think I would have noticed, but as far as a person sitting there incapacitated, no, it would be normal, probably wouldn't raise any concern.
MR. SMITH: Thank you very much.
MR. MENTON: Just a couple of follow-ups, Your Honor.
THE COURT: It is okay. Go ahead.
REDIRECT EXAMINATION
BY MR. MENTON:
Q Just a couple questions, Fire Fighter. Do you recall whether there were screens in the room or were there separations sometimes between --
A Yeah, sometimes the curtains, often and I think that always there is a curtain in between the beds.

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Q And so you would not necessarily have had an opportunity to observe even --
MR. SMITH: Objection, leading.
THE COURT: Sustained.
BY MR. MENTON:
Q Let me see if I can rephrase it. Do you recall whether you had an opportunity to observe anybody else in the room?
A I did not observe anybody else. To be honest, you know, because I was focused on that one patient.
Q And did you, can you, as a paramedic, you have the authority to begin assessing other patients automatically without the consent of the operator or of the patient himself?
A It is definitely not a person's authority for me to check, for me to check them, no, I can't check them. They would have to request that or at least allow me to -- it would not be typical for us to look at them.
Q Okay. You were asked by Mr. Smith whether it was common to get more than one patient from a facility during a particular shift, is it common to get more than one patient with a temperature in excess of 105 degrees in one shift?

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A I have never seen that before, so definitely not.
Q You were asked about the role of the head nurse, do you go to nursing homes often?
A Every day.
Q And have you been going to nursing homes for a long time?
A Yes, I have.
Q And do you interact with staff of the nursing homes on a regular basis?
A Every time I go.
Q And do you have an understanding from that in terms of the roles that different staff people play within the facility?
A Most definitely. The typical role would be how it was on the first call where he had the paperwork, he is giving us the information and telling us what is going on. The typical role would not be for the head nurse to be performing CPR, so.
Q So that was something that stuck you as out of the ordinary?
A Yeah.
Q Now you were asked a number of questions about whether the nurse that was in charge seemed competent to you at the time based upon the events as they unfolded. Did you come to doubt some of the information that you were being provided?

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A Most definitely because it was obviously not accurate.
Q Explain that to the Judge; what do you mean by that?
A Yeah, so -- yeah, basically, I am asking you, is everybody else okay, did you check all of the other patients and they are telling me yes. And then we get a call right back for a very serious patient -- and -- Signal 7 that had obviously been dead for a while, it is obvious that you are not being truthful, or you are telling me yeah, all the patients and everybody is fine, we checked everybody and that, obviously, was not true.
Q Now Mr. Smith asked you some questions about patient number one and whether you reported back to the facility staff with what that patient's condition was?
A -- four or five in the afternoon.
MR. SMITH: Patient --
BY MR. MENTON:
Q Patient number one, I am sorry, from the Complaint which would be the one at 3:00 in the morning?

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A So the one at 3:00 in the morning. What was the question again, I am sorry.
Q Basically, what I was asking you is, is it typical for you to report back to the staff after you transport a patient?
A To the staff at the nursing home?
Q Yes?
A Definitely, no. Usually, they never ask about it, sometimes I never go back.
Q Okay. Now you mentioned a couple of things about the spot coolers and I just want to follow up on that a little bit. Did you convey to staff members that you were talking to that the spot coolers did not seem to be functioning?
A Yes.
Q And did you convey to them that you had some questions as to whether or not they were hooked up right?
A Yes, I did. It was obviously a lot hotter in there. It felt like being up there, something was making it worse. I feel like if there was nothing being done at all and there was just windows open, it would be cooler, it would not have been as hot as it was in there.
Q And other than being told that they were

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working on it, did you get any other information as to what they were doing about that situation?
A No details. They said that they had informed their superior, whoever that might be, but they were on top of that.
Q Now, you were asked some questions about the number of spot coolers and you saw them around. How did that, did that have any impact on your reaction to the comments that they were taking care of it? I mean, did you know whether or not those things were working properly or not?
A I mean, as far as, at what point --
Q Well, for example, when you were there on the 12th?
A Okay.
Q In the early afternoon, I think that Mr. Smith asked you, you saw some spot coolers and --
A Yeah, there was definitely a spot cooler when we walked in at the nurses station and, you know, obviously their AC was broken. It still was not that -- it seemed like they were.
Q Okay. And so, did you know how long those spot coolers had been there or how long they had been operating?
A No?

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Q And then when you came back at 3:00, you know, the next morning, you saw some spot coolers and that is why you raised some questions?
A Yeah, because at that point, being so much hotter than it was during the day, it was abnormal -- and it made it obvious that they were not working.
Q And just, finally, I know that Mr. Smith asked you whether you are a doctor or whether you have training. You have -- I mean, do you have more medical training than the average lawyer or average clerk?
A As far as it comes to emergency medicine --
MR. SMITH: Objection.
THE COURT: Sustained.
THE WITNESS: As far as it comes to Emergency Medicine --
THE COURT: Sustained.
BY MR. MENTON:
Q Explain for the Judge what your background is in reference to medicine --
MR. SMITH: Objection, Your Honor. His background was covered right up front.
THE COURT: It was not part of cross, so it is improper --
MR. MENTON: Your Honor, what I was trying to do is explore whether he felt competent in drawing some conclusions in terms of the conditions of the patients but --
MR. SMITH: With all due respect, Your Honor, that is your job.
MR. MENTON: That is all the questions that I have.
THE COURT: Thank you. Sir, the parties have invoked the Rule of Sequestration which means that we are asking the witnesses not to leave this room and go and discuss the questions that you were asked or the answers that you gave. We are hoping that the other witnesses that are coming in to testify to the best of their own recollection without trying to assume what those questions might be or trying to match anybody else's answers. So if you will refrain from doing that until the end of the proceedings, I would appreciate it.
THE WITNESS: Okay.
THE COURT: Thank you, sir. Let's go off the record.
(Thereupon, an off the record discussion was held.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, DANNY HODGSON, A COURT REPORTER IN THE STATE OF FLORIDA, DO HEREBY STATE THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT AS TRANSCRIBED BY ME AT THE TIME, PLACE AND THE DATE HEREIN BEFORE FORTH.

I DO FURTHER STATE THAT I AM NEITHER A RELATIVE NOR EMPLOYEE NOR ATTORNEY NOR COUNSEL OF ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL, AND THAT I AM NOT FINANCIALLY INTERESTED IN THIS ACTION.

WITNESS MY HAND IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, STATE OF FLORIDA, ON THIS 21ST DAY OF FEBRUARY, 2018.

BY: Danny Hodgson
DANNY HODGSON, COURT REPORTER

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Exhibit 2

Page 1

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.: 17-005769

AGENCY FOR HEALTH CARE ADMINISTRATION

PLAINTIFF,

V

REHABILITATION CENTER AT HOLLYWOOD HILLS,

DEFENDANT.

_____/

DAY 1

The above-styled case came on for hearing before the Honorable Judge Mary Li Creasy, Presiding Judge at the Broward County Courthouse, 201 Southeast 6th Street, Fort Lauderdale, Broward County, Florida on the 29th day of January, 2018 and commencing at 9:00 a.m.

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E X H I B I T S
(NONE)

Thereupon, the hearing commenced:

THE COURT: The Court will now be in order. We are here at 9:00 a.m. on January 29, 2018 in Fort Lauderdale for the Final Hearing before the Division of Administrative Hearings in the case of Agency for Health Care Administration versus Rehabilitation Center of Hollywood Hills, Case Number 17-5769.

My name is Mary Lee Creasy and I'm the Administrative Law Judge presiding. The purpose of this Hearing is to determine whether if during a power outage caused by Hurricane Irma, Respondent engaged in the violations alleged in the Amended Administrative Complaint, resulting in the deaths of 12 patients and if so, what is the appropriate remedy?

As to the Procedural Rules of the Hearing, we will be governed by the Division of Administrative Hearings Rules of Procedures, Chapter 28-106, Florida Administrative Code in Chapter 120 of the Florida Statutes. During this Hearing, we will not be bound by strict and technical rules relating to evidence and witnesses.

While irrelevant, immaterial or unduly repetitious evidence will be excluded, all other relevant evidence, including hearsay, which is substantial probative effects will be admitted if it is of the type of evidence commonly relied upon reasonable proof of persons in the conduct of their affairs whether or not such evidence would be admissible in the Courts of Florida. Hearsay evidence may be used to supplement or explain other evidence, but it will not be sufficient in or of itself to support a finding unless it would be admissible over objection in civil actions. Would the parties please identify themselves for the record, beginning with the Petitioner?

MR. MENTON: Good morning, Your Honor. Steve Menton with Law Firm of Rutledge, Ecenia and with me is my partner Gabe Warren and Amanda Hessein from the same firm. Kris Olden (phonetic) from the Agency for Health Care Administration is here as well; we're here on behalf of the Agency.

THE COURT: I'm sorry. Could you repeat your names, Mr. Menton, Mr. Warren --

MR. MENTON: Steve Menton, Gabe Warren,

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Amanda Hessein --
THE COURT: How do you spell your last name?
MS. HESSEIN: H-E-S-S-E-I-N.
THE COURT: Thank you.
MR. MENTON: Kris Olden from the agency.
THE COURT: Okay. And on behalf of Respondent?
MR. SMITH: Your Honor, on behalf of Rehabilitation Center at Hollywood Hills, my name is Geoffrey Smith. I'm with Smith & Associates. Also you'll see in and out of the courtroom and hopefully more than in than out, my law partner, Susan Smith and also Co-Counsel who has entered in appearance Julie Allison (phonetic), and I believe her firm is just Allison, P.A.
THE COURT: Thank you, Mr. Smith.
MR. SMITH: Thank you.
THE COURT: All right. Will a transcript of the proceedings be ordered?
MR. MENTON: Yes, Your Honor.
THE COURT: Let's talk about the exhibits that the parties have submitted. I received your Joint Pre-hearing Stipulation on Friday;

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thank you for that. I notice that there is a set of documents referred to as deposition exhibits; are these joint exhibits in accordance with opposing?
MR. MENTON: Your Honor, I don't think Mr. Smith was prepared to call them joint exhibits because there are going to be some objections to them. These were exhibits that we kept sequentially as we went through the deposition process just because it was easier because we were referring back and forth. I think I can speak for Mr. Smith and say there's no objection on authenticity of those documents but because there's some relevancy objections we couldn't make them joint exhibits.
MR. SMITH: I think that's a fair summary. I think we may have objections other than authenticity on some of the documents.
THE COURT: And then for AHCA's Exhibit List, I have exhibits essentially 1 through 42 at this time, is that correct?
MR. MENTON: Yes, Your Honor.
THE COURT: At this time is Respondent prepared to agree to the admissibility of any of AHCA's Exhibits 1 through 42?

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MR. SMITH: Your Honor, I think we'd like to reserve whatever objections as they're offered, you know, we will have objection to some exhibits.
THE COURT: That's fine. With regard to Hollywood Hills' Exhibit List, it looks like I have 1 through 258. At this time, is AHCA prepared to the stipulate to the admissibility of Hollywood Hills' proposed exhibits?
MR. MENTON: Your Honor, I think we're in the same position as Mr. Smith. We're going to have objections as we go along. We're going to try to work out authenticity issues but there's going to be relevancy objections.
THE COURT: Understood, thank you. All right. Do we have witnesses present in the courtroom?
MR. SMITH: Your Honor, we do not have witnesses present in the courtroom at this time. What we've tried to do -- this first week of the Hearing is going to be essentially witnesses called by the Agency. We have them subpoenaed to come in at set times to try to keep an even flow going; none of them are Agency employees. We will try to keep them out

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of the courtroom as they show up.
THE COURT: Do the parties wish to invoke the Rule of Sequestration?
MR. MENTON: Yes, Your Honor.
THE COURT: Any witnesses that are present need to be aware that if they are not testifying they should be remaining outside the courtroom until they are called. The witnesses are reminded that they are not to discuss either the questions asked or the answers given.
It is our intention that the parties -- they are responses to the best of their recollection without interference from anything else that they might hear in here. I will ask Counsel to keep an eye on who comes in and out of the courtroom to make sure that if we have witnesses entering the courtroom that they also are instructed with regard to the Rule of Sequestration.
(Thereupon, an off the record discussion was held.)
THE COURT: All right. As the party with the initial burden of proof, the Petitioner will present its case first. All witnesses will testify under oath. All parties may cross

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examine all witnesses, and a cross examination may be followed by a redirect or more questions from the party who offered the witness.

I generally do not permit recross, so it will be direct, cross, redirect and that's it. All parties may object to the opposing parties' questions or documentary evidence but there must be a reason stated for the objection. My role is to listen to the evidence. I am an impartial fact finder.

I cannot provide legal advice although I can answer questions regarding the procedure but not the merits of the case. I will rule on the admissibility of the evidence and will ultimately issue a recommended Order with findings of facts and conclusions of law and a disposition of the case. I will not be ruling on the case today. Would the parties like to make a brief Opening Statement at this time?

MR. MENTON: Your Honor, we would like to make an Opening Statement. Before we get into that, it might be useful to discuss for a minute what we're going to do about some of the patient names and records that involved in this proceeding.

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THE COURT: Yes, sir.

MR. MENTON: Just so you know, what we tried to do through the course of this proceeding is we've identified any of the depositions where a patient name was specifically mentioned as confidential in order to preserve the confidentiality of medical records, et cetera.

As we go through this proceeding, obviously the Administrative Complaint refers to a number of patients by numbers, and that can get a little bit confusing and there may be some inadvertent steps. I don't know what your preference is as to how we handle that, but there are some potential confidentiality issues.

We have the 12 patients' names and we've got them numbered in the Administrative Complaint and we can try to use those numbers if you would prefer, but some of the documents that you're going to get; the medical records and some of that will have patients' names on them.

THE COURT: We certainly don't want the broadcasting of patient names, so to that

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extent I would ask that the parties refer to the patients either by designated number 1 through 12 or by the patient's initials as long as I can match up the patient numbers to the patient initials.

MR. MENTON: And Your Honor, we can give you a breakdown if you would like that has the patients' names with the numbers as listed in the Complaint. May I approach, Your Honor?

THE COURT: Yes. Does that work for everybody; trying to refer the patients by number or initial?

MR. SMITH: We'll do our best, Your Honor. I know that a lot of -- there's a lot of documentation that has the patients' names in it, but we'll do our best to try and do that. As we go forward, if we want to say it's confidential or sealed exhibit Number such and such because it has the patient medical record and name --

THE COURT: That's what we're going to do.

MR. MENTON: Just as a practical matter, Your Honor, as Mr. Smith eluded to, there's thousands of pages of documents with medical records that have names on them; it was just

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impossible to try to redact all of that.

THE COURT: Understood.

MR. MENTON: I'm sure there's going to be slippage as we go through here but we'll try our best to use the numbers as best we can.

THE COURT: Thank you. And Mr. Smith, I see that you are joined by Co-Counsel, Susan Smith --

MS. SMITH: Yes, Your Honor.

THE COURT: And Julie Allison?

MS. ALLISON: Yes, Your Honor.

THE COURT: Thank you. All right. Mr. Menton, on behalf of the Agency do you want to go ahead and make an Opening Statement?

MR. MENTON: Thank you, Your Honor. Is it okay if I remain seated?

THE COURT: Absolutely.

MR. MENTON: Good morning, Your Honor. Over the course of this week and in the weeks ahead, Your Honor is going to be hearing a lot of contested issues in this case.

The one thing that is not contested, and I think that everybody here and everybody who is going to testify recognizes, is that the underlying events that are the subject of this

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proceeding were a tragedy. Nobody in this room, and I think it's safe to say that none of the witnesses who will be coming here in the days ahead want to be here. Everybody wishes that the 12 residents from the Rehabilitation Center of Hollywood Hills who passed away on September 13th and the ensuing days were still with us and we didn't have to go through this proceeding, but sadly they're not. And so we're here because the Agency believes it's important that the tragedy that occurred at Hollywood Hills Rehabilitation Center never occurs again.

Ideally, we would have come to you this morning with a much more detailed stipulated set of facts. Typically that is a useful way to shortcut a Hearing. Unfortunately, in this case it doesn't appear that there's any way to shortcut the process.

Hollywood Hills Rehabilitation Center, as is their right, is challenging the revocation of its license to operate as a nursing home. As a result, we have no choice but to lay out in detail the horrific specifics of what happened at that facility on September 13th.

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This case is different than the typical -- proceeding or -- licensure case where the investigation is initiated and directed entirely by the Agency.

Here, as you will hear from the Agency staff, who will not be testifying this week but will testify when the proceeding reconvenes later on. The Agency learned through the media and third parties on the morning of September 13th of the evacuation of the Hollywood Hills Rehabilitation Facility.

By the time the Agency surveyors got to the scene to investigate the situation, the police had cornered off the facility with yellow tape and declared it a potential crime scene. The Agency surveyors who rushed to the scene were allowed to interview some of the facility staff but they were denied access to the building. Their ability to investigate the facility and to independently conduct an investigation was unavoidably limited because of the ongoing criminal investigation. The Agency immediately proceeded with obtaining as much information as it could to understand what was going on. It obtained the medical record

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for the eight patients who passed away on that day.

This was an unprecedented situation. To have eight residents at a single nursing facility pass away in such a short of period of time, obviously generated a huge amount of concern. The Agency proceeded, as Your Honor knows, with issuing an Emergency Suspension Order which was challenged by Hollywood Hills in the First District Court of Appeals. The Court denied the media challenge to that.

The Agency then proceeded with filing the Administrative Complaint, which was subsequently amended as Your Honor knows as more information became available as yet the investigation proceeded. As you have already probably gleaned from the Discovery process, many of the Agency witnesses are going to be some of the first responders, including Fire Rescue staff and Memorial Hospital professionals. We can't call all of the people that were there that morning. If we did, we would be here for months.

So as it is, those professionals who we are going to call this week are likely to fill

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the entire week. You'll be hearing from the hospital staff, from police, from Fire Rescue and from the Medical Examiners and most of those witnesses or a good bit of those witnesses will be testifying this week.

Later, when we reconvene, you'll hear from the agency staff and some of the expert witnesses who have reviewed some of the materials. As Your Honor knows, the Amended Administrative Complaint includes specific allegations regarding 12 patients who passed away on September 13th or shortly thereafter as a result of the conditions in the facility. The evidence as it relates to these patients is disturbing and overwhelming.

As I indicated earlier, later this week, on Thursday and on Friday, we will hear from the Medical Examiners who have classified all 12 of the cases listed in the Amended Administrative Complaint as homicides. What that means is, that the patients' cause of death has been attributed by the Medical Examiners to be the result of actions or inactions of a third party.

In each of the instances, the Medical

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Examiners concluded that the patients were harmed as a result of their exposure to environmental conditions within the Hollywood Hills Rehabilitation Facility. I want to show you, Your Honor, a diagram that we have, and I apologize, we did not know the technology that this courtroom has, which is pretty amazing as we were preparing, so we went to the old school which is a little more comfortable for me, poster boards.

This is a diagram of the second floor of the Hollywood Hills Facility. The red dots that are indicated on here are rooms that were occupied by 11 of the 12 residents who are named in the Amended Complaint and who have passed away. The 12th patient was on the first floor. So, 11 of the 12 patients were on the second floor of the facility and you're going to hear testimony over the course of this week from the Fire Rescue personnel and from the Medical Examiners regarding all 12 of the residents that are named in the Administrative Complaint.

Your Honor, the first patient that was taken from the facility and that is named in

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the Administrative Complaint is actually patient number 11 in the Amended Complaint. He did not pass away on September 13th so he was not one of the ones named in the initial Complaint because we did not get his records until later.

Patient number 11 resided in Room 226, which is right over here towards the center of the building. And that room number will become important as you hear about the events that continued on during the day. Patient number 11 was seen by the Hollywood Fire Rescue Department sometime in the early afternoon of September 12th, so this was somewhere around noon or shortly thereafter, Fire Rescue was called to come and check on the condition of patient number 11. He was in critical condition, he was having severe respiratory problems and the Fire Rescue staff recorded his temperature at 103.2 degrees.

You will hear testimony from the Fire Rescue crew that was there that at the time they entered the facility they thought it was hot and they asked the staff about the conditions within the facility. They were told

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that the air-conditioning was out but that it was being taken care of.

It's important to recognize that the facility never actually lost power. They lost power to their chiller, which is the A.C., so the Fire Rescue personnel who had come on the scene, they see the lights on, they see the refrigerator is running, they don't know what's going on; they don't know why it's too hot; they're told by the staff that it's being taken care of so their focus is on the patient that they're seeing. They took that patient; they were on the scene for 10 minutes maybe, took that patient immediately to the emergency department where the patient's temperature was recorded rectally at 106 degrees.

Now the EMS records that record a temperature of 103.2 was taken tympanically. You're going to hear some testimony about what the difference is. Tympanic is where you shoot in the ear and it takes the temperature. I think most of the experts will agree that the core temperatures are more accurate and more dependable than those that are taken rectally and in this instance the patient's temperature

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was 106 degrees. One of the witnesses that you will hear from early on is Dr. Randy Katz, who is the Director of the Memorial Regional Emergency Department. He saw that patient in the afternoon of September 12th and he will describe the patient's condition. At that point, he had been identified, based upon his conditions as a sepsis alert.

You'll hear some testimony about sepsis, sepsis alert, et cetera. Sepsis alert, as the Fire Rescue personnel will explain is a protocol that they follow for patients who exhibit certain types of conditions; high temperature or it could be low temperature, increased respiratory breathing efforts and heart rate -- there's a number of different criteria that they assess.

If a patient has a certain number of those they call them a sepsis alert, which is simply to alert the emergency department to be ready to deal with the conditions that they are going to encounter. So Dr. Katz and others will explain that as we go along.

Dr. Katz was told that the patient had come from the facility and that the

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air-conditioning was out. He was aware of that and explained to the nursing staff there that they should look into it and the Memorial staff actually did at that time. But the patient was left with the emergency department, patient number 11 on the afternoon of September 12th. Fire Rescue went back to its business and assumed that Hollywood Hills facility had it under control as they said and there was no reason for any further concern. The same Fire Rescue crew was called back to the facility early the next morning, approximately 3:00 a.m. The patient that they were called for is identified in the Complaint as number 1; so it's patient number 1 in the Amended Administrative Complaint. That patient was in Room 208, which is a little further down the hall, right down here, Your Honor; so that's number 1 in the Amended Administrative Complaint. The patient was critically ill.

Fire Rescue again asked the staff about the temperature in the facility and was told by the staff that they were working on it. The patient was immediately -- there's a term that Fire Rescue used, packaged for transport and

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taken to the emergency department. The patient's temperature was recorded by Fire Rescue at an astonishing 107.5 degrees. And that patient was then turned over to the Memorial Hospital emergency department staff who began rendering treatment in that patient who subsequently expired later that day.

Very shortly after turning the patient over to the Memorial Hospital ED, the same Fire Rescue crew was called back to the facility; this was at approximately 4:00 a.m.

The next patient that they saw was patient number 2 in the Administrative Complaint. She was in the same room as patient number 1, Room 208 down there. Patient number 2 had her temperature recorded by the Fire Rescue department, again at 107.5 degrees. After the second patient was transported to the emergency department with such a high temperature, it became clear that something needed to be done. The Fire Rescue team proceeded to call the DCF Abuse Hotline and advise the Department of Community Affairs about the conditions of the patients that they had just seen and the lack of air-conditioning within the facility. They

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reported that they had found two patients with temperatures in excess of 107 degrees.

I think you'll hear testimony from many of these health professionals, they had never seen temperatures recorded that high. The Fire Rescue supervisors also called their supervisors to advise them of what they had found on the two calls from 3:00 to 4:00 a.m. on that morning and while they were in the hospital, one of the Fire Rescue crew members heard that there was yet another call being received about a patient at the Hollywood Hills Facility. The rescue crew immediately confirmed that there was indeed another call and they returned to the facility at that time.

Upon arrival, they saw one of the facility's staff administer CPR to a patient. This patient was in Room 226, which is the same room that the patient from the afternoon before, patient number 11 was in, 226. The emergency rescue crew at that point immediately determined that the patient was already deceased; in fact, the rigor mortis had set in, indicating that the patient had likely been dead for a while.

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THE COURT: Which patient number is this?

MR. MENTON: This is patient number 4.

THE COURT: Thank you.

MR. MENTON: The Hollywood Hills staff was advised that CPR was too late and at that point the Fire Rescue crew said that they wanted to begin checking on the other patients in the facility. They were told by staff that they had just completed rounds and everyone was okay. Sometime while that patient was being assessed, it was determined that there was another patient in the same room, Room 226, who had also passed away.

This is patient number 5 in the Amended Administrative Complaint. And again, that's the same room where patient number 11 was seen on the 12th in the afternoon.

At this point, because there was a deceased body, the police were called. As soon as there is a dead person on the scene the police have to be called. In addition, additional Fire Rescue crews were dispatched to the scene to assist with those patients.

You will hear from several of the additional crews as well as from the original

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Fire Rescue crew as to the events as they begin transpiring in the early morning on September 13th. As the other crews arrived, beginning around 6:20, 6:30 timeframe, they started working on the patients that were deceased and others that were need in care and they heard cries from down the hall. One of the staff members even cried out, “they’re falling like flies”.

At that point, Fire Rescue crews determined that there was another patient who had passed away. This one was in Room 229, patient number 6 in the Amended Administrative Complaint; 229 is essentially just across the hallway from where 226 is.

The patient was immediately determined by Fire Rescue to have passed away. You will hear that later that patient’s wife, who was also in the same room, 229 also passed away several days later and she is patient number 12 in the Amended Administrative Complaint. The exact time of death for the three who passed away in the facility is unclear; there are some times associated with the Fire Rescue report but those patients had passed by the time Fire

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Rescue got there and there’s no way to actively assess exactly when they passed.

What is extremely revealing is that the Medical Examiner’s investigator, who you will hear from later this week on Friday; his name is Orlando Fortillo (phonetic), he came to the scene on the late morning of September 13th.

While he was there, he took the core body temperatures of the three deceased residents in the facility who had not been moved; they were left in place at the facility in their beds by the police as they initiated a criminal investigation. While he was there, the Medical Examiner’s temperature readings for all three of the deceased patients was over 104 degrees and one of them was over 105 degrees. This was at least five to six hours after they had passed and you’ll hear some testimony about the implications and significance of that.

Going back to the facility – at this time is still around 6:30, 6:45 a.m.; at this point Captain Holfretter (phonetic) of the Hollywood Fire Rescue Department who will testify on Wednesday, assumed control of the site.

Additional Fire Rescue were called in and

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while the Fire Rescue crews were coming in and dealing with patients that they found, they found another patient in Room 218. This patient is number 8 in the Amended Administrative Complaint.

So Room 218 is down here more towards the middle of the hall, right here. That patient, Fire Rescue Department attempted to get a temperature reading on her. Her temperature didn’t even register on the digital thermometer, all it came back with was hi; it just said hi, H-I. I think you’ll hear that what that means, from the manufacturer’s spec. sheets is that the temperature was in excess of 108 degrees. As that patient number 8 was transported by the first Fire Rescue crew and you’re going to hear from all three members of that crew regarding the patients that they saw during the course of these events as they unfolded.

But as the Fire Rescue crews were arriving, around this same time between 6:30 and 6:45 a.m., the administrators at the command center at Memorial Regional Hospital were simultaneously and independently

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recognizing that they were dealing with a very bad situation across the street.

And so one thing to realize, Your Honor, is that the Hollywood Hills Rehabilitation Center is literally across the street from Memorial Regional Hospital. It’s a two minute walk as you’ll hear from some of these representatives. So the first witness that you’ll hear from today -- and I apologize because it’s going to be a little bit out of chronological order just because we have to deal with the schedules of these health professionals and their responsibilities; we try to schedule them that work best on theirs -- so the first witness that you’ll hear from today will be Judy Frum and Judy Frum is the Chief Nursing Officer for the Memorial Regional Health Care System. She has extensive experience in the health care arena and she will explain what happened and what transpired to capture her attention.

You’ll also hear tomorrow morning from Tracy Meltzer. Tracy is another Nurse Administrator at Memorial Regional Hospital. Both Judy and Tracy were Administrators at the

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command center in the early morning hours of September 13th. They were advised by the emergency department early that morning that two patients had presented from the Hollywood Hills Rehabilitation Center with unheard of high temperatures and that there was no air-conditioning at that facility.

As a result, as soon as they were able, Ms. Frum and Ms. Meltzer decided to walk over to see what was going on and to see if they could offer help. You'll hear from both Judy and Tracy that they proceeded to the second floor of the facility and Ms. Meltzer will describe the situation as she came off the elevator on the second floor; "it was like opening your car door on a hot summer day"; the blast of heat that hit her. They immediately began assessing patients on the second floor. They began coordinating with the Fire Rescue staff that was on the scene and they -- in collaboration with the health professionals that were there recognized that steps needed to be taken immediately to evacuate patients from the very unsafe conditions in which they were found.

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At that point, a mass casualty incident was called and you'll hear testimony from the Fire Rescue personnel about what that means. From the hospital's perspective it's called a green alert and that means that they're going to begin mobilizing resources to handle a number of expected injured people.

You'll hear from the various witnesses who were there on the scene; they were estimating that they were probably going to be dealing with 30, 50 or more patients that were in need of acute care services based upon the initial assessments of what was going on on the second floor.

And in fact, as Your Honor knows, there were a number of patients that ended up having to be admitted; those were issues we tried to include within the Amended Complaint and we understand your ruling and we're likely to have some debate during the course of this proceeding as to what testimony can come in as it relates to those witnesses.

What we're going to attempt to do, Your Honor, is we respect your ruling and the Agency has in fact has already drafted another

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Administrative Complaint related to those patients and we'll deal with that in the ordinary course. We are not going to ask you to make specific findings as it relates to any of the patients other than the 12 that are listed in the Amended Administrative Complaint, but there will be testimony regarding some of those other patients just to put into context what was happening and to help explain what the emergency personnel, including the Memorial Staff and the Fire Rescue crews were seeing, what they were dealing with and how that may have impacted upon the approach that they took in the decision to evacuate the facility. I think, based upon what has happened in the depositions, we're going to get objections that it's beyond the scope of this proceeding, et cetera and we'll deal with those as they come along.

But I did want to let you know, we will try our best to respect the ruling that you made and not get into specific medical assessments of patients who are not named in the Complaint but there will be references to those patients as we go through the

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proceedings.

Now as Judy and Tracy were on the second floor, Captain Holfretter was the representative for Fire Rescue on the second floor; his crews coordinated with the Memorial Regional crews to begin assessing all of the patients in the facility. Memorial Regional called over -- through the green alert -- called over numerous additional staff to assist in the process. And I don't even think we have an exact tally of how many people from the hospital came over to help in this process.

We will present testimony from one of those staff members who came, Doug LaMendola, who is the Pediatric Nursing Director for the Children's Hospital. When he heard code green called by the hospital, he immediately volunteered his help to come over and assist. Mr. LaMendola has recently just moved to Fort Lauderdale from Corpus Christi, Texas and literally had been there when Hurricane Harvey went through Corpus Christi and had been through a similar incident. So he came and immediately went to the scene somewhere around 7:00 in the morning. Mr. LaMendola only saw

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patients on the second floor but he will describe the process that was employed by him and by other members in assessing patients on the first floor and you'll hear about the triage process that was utilized.

So at some point after the mass casualty event was called, they began using a triage process that resulted in color-coding for the patient, wristbands. So blacks were for patients that had passed away, reds were for patients that needed critical care; were in the immediate need of critical care, yellows were for patients who needed care but were not as acutely in need of it as the reds and then the greens are the ones that were walking wounded, I think Dr. Katz would describe it. The triage process that was set up -- and you'll have several witnesses who will talk about that.

Mr. LaMendola, for example, triaged 20 patients on the first floor. He found approximately 25% of the patients on the floor were reds and needed immediate acute care. There were patients that were already being transported because of their condition even before the coding process started. So there

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were a number of patients who were in need of critical care, transported immediately and those who were not in need of immediate critical care were triaged, assessed and moved out of the facility. Dr. Katz will describe that process for you.

They were moved out, initially just outside the building and ultimately moved to the garage; the ones that did not have to go to the emergency department and then the remaining green patients that were in the garage were then transported by bus to other facilities. So there were a number of patients who were transported who were not admitted to the hospital but there were a number of patients that were.

And you'll hear from a number of the people that were involved in that process. You'll hear tomorrow morning from Battalion Chief, Robert Ladwick (phonetic) from the Hollywood Fire Rescue Department. Chief Ladwick arrived at the scene sometime in the vicinity of 6:30 in the morning. He immediately assumed charge based upon his rank and he coordinated the efforts from the command

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center that was set up outside the building and worked with Captain Holfretter, who was his eyes and ears on the second floor and then Chief Ladwick also coordinated with the evacuation process in getting patients moved to their appropriate places as they were taken out. Just to give you a roadmap of where we're going.

Today we're going to have testimony from Judy From, the Chief Nursing Officer from Memorial Regional. We're also going to hear from Dr. Randy Katz who was the Emergency Department Director at Memorial who saw patient number 11 on the afternoon on September 12th and also arrived to the scene somewhere after 7:00 a.m. on September 13th. He was called back to help in the efforts and he oversaw the evacuation process and we'll talk about that as well. Those are the two witnesses we have lined up today to try to cover.

Tomorrow we're going to start with Chief Ladwick who was the Battalion Commander who was outside at the command center coordinating with those inside and then the other two witnesses tomorrow will be Tracy Meltzer, who was the

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Nursing Administrator from Memorial who went over with Judy From to assessed the conditions on the second floor somewhere in the early morning hours of September 13th. And then after that, you'll hear from Doug LaMendola, who I mentioned, who assisted in the evacuation process. Wednesday we have, I believe, seven Fire Rescue personnel lined up to come. We'll try to keep it as non-repetitive as we can. Some of them were on the same crew, some were on different crews so we wanted to have members of several of the different crews who were there.

Again, this is not going to be everybody that was there but we wanted to have members of the crews that actually dealt with the deceased patients or transported the patients who are listed in the Amended Administrative Complaint. After Wednesday, after the testimony of the Fire Rescue crew, on Thursday morning we are going to call -- the first witness will be one of the Medical Examiners. So there were two different physicians that are employees of the Medical Examiner's office who were assigned to review the multiple patients who passed away

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from the facility.
You will hear from one on Thursday and you will hear from one on Friday. Between the two of them they will address all 12 of the patients who are in the Amended Administrative Complaint, explain their findings and explain their conclusions that all 12 of those patients suffered from the conditions that they were exposed to within the facility.
Also on Thursday afternoon, we have subpoenaed the testimony of two police officers, one is Xavier Pistrana (phonetic) who was with the Hollywood P.D., who was one of the Hollywood P.D. officers that got to the scene originally when they found the deceased bodies on the second floor. He stayed on the second floor; he'll describe his role and what he saw on the second floor that morning in the early hours. The second police officer that we'll call on Thursday is Lieutenant Jeff Devlin. And Lieutenant Devlin, as you may have seen from some of the Discovery records is the police official that is overseeing the ongoing criminal investigation.
And through the course of this proceeding

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we have attempted to get information, a lot of which has been seized by the police as part of their investigation which still has not been completed. Ultimately, as we went through the process, we recognize that a lot of the information that the police were accumulating was not necessarily relevant to what we needed to prove in this licensure proceeding. But there were certain facts that we did think were potentially relevant and that we did Subpoena. And we were able to work out an arrangement with the Hollywood Hills Police Department for the production of certain information.
So some of that information, Your Honor, that you will be seeing is temperature readings that the police took within the facility. This is one of the photographs that's been blown up of the police recording temperatures in the building on the morning of September 13th. And you'll hear from Lieutenant Devlin that they took multiple readings; dozens of temperature readings, both on the first and the second floor in the morning of September 13th. The temperatures were taken, I think between 11:00 a.m. and noon and the temperatures that they

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recorded were high to say the least. The temperatures that were recorded by the police at 11:15 a.m. included this one on the second floor, 101.7 degrees. And I'm sure we're going to get some questioning or attempts by Hollywood Hills to try to downplay -- oh well, it was 11:00 a.m., the sun was up, it might have been hotter. I think you're going to have to draw conclusions yourself from the totality of the evidence.
One of the other things I think you'll hear from Jeff Devlin is that at the time the temperatures were taken at 11:00 a.m., in his opinion, the facility was actually cooler than when he first got there earlier that morning at 7:00 a.m.
So you're going to hear from Lieutenant Devlin about the conditions that they found, all of which we believe are relevant to you to understanding whether or not these patients were being kept in a safe environment as they were obligated to do.
One of the issues I think that's going to come up, Your Honor is, how did we get here? How did this happen? And I think, again the

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police are still looking into this; I don't know what their conclusions are. I can just tell you that as we've gone through this, some of the information that we've been able to discern -- and one of the things that you're going to hear about are these spot coolers. The Hollywood Hills Rehabilitation Center had, at different times as many as seven, what they call spot coolers that they put in place in the facility to try to deal with the lack of air-conditioning.
In fact, I think you're going to hear testimony that the facility decided that they needed to close all of the windows in the facility in order to -- I guess keep the air-conditioning from these spot coolers to make it more effective; I don't quite understand the rationale there, but in any event, Sergio Collin, (phonetic) who was the nurse in charge that night, testified in his deposition that he was told to keep all the windows closed. And they kept the windows closed during the course of this event and they had these spot coolers. And you're going to hear testimony about these spot coolers. You

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won't hear about them this week or a whole lot of specifics other than that they were there.

We have an HVAC expert who will come in and explain to you there were three spot coolers on the second floor; each of them was approximately 13,200 BTUs, you know, operating in full capacity. There were four spot coolers on the second floor, three of those were 13,200 BTUs like the ones on the first floor and apparently one was a little bit larger at 16,800 BTUs. Here's a picture of one of the spot coolers.

As you see, the spot coolers -- these two are arms that blow out the cold air and I think you'll hear testimony later in this proceeding that these spot coolers that generate the cold air that comes out of these two arms also generate a lot of hot air and the hot air is exhausted through this larger device here. And there's two different photographs here of this exhaustion of where the spot coolers are hooked up, in which you'll hear from Mr. James Williams who was the Facility Manager, who's solely responsible for getting the spot coolers, hooking them up and putting them in

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place. He took down one of the ceiling tiles and stuck the exhaust up into the ceiling. He didn't exhaust them to the outside through the windows. He didn't exhaust them through the ventilation system, he just exhausted them into the ceiling. And you combine that with closing all of the windows and I think you kind of get a sense of what happened.

Your Honor, one of the things that I think is important as we head into this proceeding is to keep in mind what this case is about. You're going to be invited down a lot of rabbit trails, a lot of rabbit trails. You're going to hear a lot of finger-pointing from Hollywood Hills, who unfortunately is still in denial about what happened and continues its effort to point fingers at everybody else. They want to point fingers at FP&L. They want to point fingers at whoever was fielding the Governor's cell phone calls.

Shockingly, they even seem to imply that part of the responsibility is the health care professionals that were involved in evacuating the facility. There have been suggestions by some of their witnesses that the evacuation was

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precipitous and that it wasn't necessary. And I think it will be important for you to hear from all of the independent first responders and medical professionals who came in here whether they agree with that assessment or not and I think that will help you formulate how much weight to cord to the testimony of the Hollywood Hills employees who continued to be employed by Larkin Medical System which is one of the parent corporations.

At the end of the day, Your Honor, it's not up to you to assign criminal culpability to anybody as part of this proceeding and it's not up to you to apportion responsibility between utilities or whoever else Hollywood Hills wants to try to blame. What you have to do -- and your role is to determine whether or not The Hollywood Hills Rehabilitation Facility provided a safe environment for its residents.

I think that the evidence that you're going to hear about, when you realize the unprecedentedly high temperatures that were exhibited by the residents of that facility; when you realize that there were three patients found dead in their beds that morning and

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patients were being transported out; when you hear the descriptions from the first responders as to the conditions that existed within that facility, it's hard to come to any other conclusion but that the facility failed in its obligation to maintain a safe environment for its residents. Hollywood Hills is the one that chose to get a license. They chose to be in this business. They chose to take care of the frail and elderly. As part of that responsibility, it's their obligation to insure that their residents are protected, irrespective of what may be beyond the control of the residents.

The people on the second floor of the Hollywood Hills Facility were the most frail patients that they had. The facility had two floors. The first floor was -- as is typical with many nursing homes, was a rehabilitation unit so patients who were short term patients who were discharged from an Acute Care Hospital needed some rehab before they could go back to their regular living environment where on the first floor they were mobile, they were more alert; they were able to communicate. They

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could express when they were hot or when they needed water, those types of things. The patients that were on the second floor were the most frail and elderly inhabitants of the facility. They were long term residents and many of those patients did have co-morbidities and many of those patients were not able to fully communicate, but that means that the responsibility for the licensed organization is even higher. If you're going to take on the responsibility to care for these patients, you need to do it, understanding what the condition of those patients are and understanding the environment in which you have placed them.

They have failed to do that here, Your Honor. They have failed to do that and as a consequence they have forfeited their right to continue operating as a nursing home. Thank you.

THE COURT: Thank you, Mr. Menton. Mr. Smith, does the Respondent choose to make an Opening Statement at this time or do you wish to reserve or do you need a break before you making an opening?

MR. SMITH: No, we don't need a break

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unless Your Honor needs a break. Yes, we'd like to make our opening now.

THE COURT: All right.

MR. SMITH: I'll proceed, and I tend to be more comfortable by standing if that's okay.

THE COURT: Fine.

MR. SMITH: And do you have a screen because we have some --

THE COURT: I do have a screen.

MR. SMITH: -- slides that we're going to be referring to. May I proceed?

THE COURT: And that should make it -- I don't know –

MR. SMITH: It's up over here.

THE COURT: Is it showing? All right. Thank you, sir.

MR. SMITH: May I proceed?

THE COURT: Go ahead.

MR. SMITH: Thank you, Your Honor.

We've heard the very passionate Opening Statement by Mr. Menton and AHCA this morning. But like most situations, Your Honor, there are least two sides to every story and I want to tell you this morning and take some time and go through what we think the evidence is going to

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show.

We think the evidence is going to paint a picture that's far different from the one that AHCA just suggested. I want to start by just giving you a quick overview of Hollywood Hills. Hollywood Hills was a licensed 152 skilled nursing facility located in Hollywood, Florida. They've been a good nursing home provider. They've employed about 140 people. They share that building there with Larkin Behavioral Hospital, which is on one end of the building and then the nursing home is on the other; by all accounts a good nursing home provider.

They treat treated their residents like family. They formed the bonds that caregivers form when they're caring for patients long term, but not only did they form those types of family bonds among the staff and the administration, you'll hear testimony about how the staff had their own actual family, many of them, in the building. So you'll hear from the Administrator -- had both, at one point, his mother and his father-in-law in the building. The father-in-law was in the building through these events.

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There is a close family friend who they refer to as Abuela, for grandma who was also in the building and the Human Resource Director also had family in the building. When you hear the testimony from AHCA's surveyors and the AHCA Field Officer Manager, Arlene Mayo-Davis (phonetic), you're not going to hear anything that this was a problem provider. What you're going to hear is that this story really comes down to one night and really a few hours in one night, and before that time there really was no concern about the facility. Can you go to the next slide? These are just some photographs to give you a sense; we'll be introducing these into evidence. It will give you a sense of what the facility was. Can you go the next?

You're going to be hearing from a Dr. David Dosa (phonetic) in our case. Dr. Dosa is a gerontologist. He has specific experience in serving as a Medical Director in skilled nursing facilities. He's also an author of a New York Times best-selling book called Rounding with Oscar; he may tell you a little bit about that book. But what he's really going to talk to you about -- that are coupled

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-- both his research and he's also going to talk to you about who are these patients that you treat in a skilled nursing facility? What are their typical conditions? He's going to talk about the growing complexity of patients that are found in nursing homes. And he's going to talk to you about the expectations of people who may be unfamiliar with that patient population and who can be shocked when they see some of the patients that -- you know, they're not used to seeing someone who may be in an adult diaper, who may be suffering from dementia, who may be suffering from rare conditions.

We'll hear about one patient who had a condition called failure to thrive and is an adult patient who weighs all of 80 pounds. But these are the things that people who are in this caregiving business, they know; they deal with every day. Mr. Menton has spelled out a story -- it's a very simplistic, almost like a Hallmark movie. It's heros and villains, the good guys and the bad guys, the white cats and the black cats.

The heroes, as he's eluded to, are very

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easy to spot; it's the EMS first responders and he will parade, I think eight, nine of them this week. And nobody is going to quarrel with EMS first responders that we don't appreciate the good things that they do. They are heroes. He eludes the other heroes are the Memorial Regional staff who came and selflessly assisted in evacuating patients.

Again, nobody's going to argue that these were not heroic things to do in the circumstances. They may not have done it perfectly but they were certainly intended to be well intentioned in trying to help people. The villains in this case are going to be a little less easy to spot. They're kind of lumped under this nameless, faceless -- the facility. The facility failed to do this. The facility failed to do that. But there's no names of who actually did what and how was it deficient as a provider when you look at what reasonable providers do. It's an ipso-facto analysis, Your Honor. It's basically, 12 people died, you were supposed to keep them safe, therefore you didn't keep them safe. That's the entire case. But in the end of the

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AHCA version of events, the heroes arrive, the villains are vanquished and now we're here to lock them away forever and insure that things are kept safe for the future.

There is a villain in our story, one that has been overlooked in the opening by the State but it's a monster storm named Irma, a Category 5 hurricane that had ravaged the Caribbean as it took aim for Florida that meandered an erratic path and caused unprecedented impacts in the state of Florida with 6.7 million people being without power. And that is the backdrop.

If you look -- you're going to I think hear from Ms. McCenstry (phonetic); we intend to subpoena her; I don't know if the State intends to call her but she's a Deputy Secretary at the Agency. She will tell you, Irma caused unprecedented disruption in power outages; over 6 million people lost power, hundreds of nursing homes and ALS could not comply with their comprehensive emergency management plans and one of the things that they found is as this storm approached, some nursing homes would evacuate only to find they evacuated into the now changed path of the

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coming storm or they evacuated only to find that the facility to which others were supposed to evacuate was now being occupied by them and there was no room for people to evacuate to their assigned facility. It was an unprecedented event and that is the backdrop against which people took actions.

And I think at the end of the day, what you're going to find from the evidence is, well-intentioned, good people across the board sought to do their very best in keeping people very safe in the face of that monster storm. Real life isn't like the movies. It's not just good and evil and black and white. Evidence in real life is more complex, it's more nuanced. It's not black/white, it's many shades of gray.

And that is so important as you're judging the evidence because what you're going to find is that the claims of AHCA that the staff at Hollywood Hills are villains who deserve to be forever vanished from operating in a nursing home do not hold up against the actual testimony, documentation and expert testimony of what occurred and what actions were taken. AHCA has two counts in its Complaint; two

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categories of alleged deficiencies.
First, there's a category that they failed to provide a safe, comfortable, sanitary and home-like environment. Now the Complaint alleges no issues regarding sanitary or home-like environment and the focus of this proceeding will be on the words safe and comfortable. Again, the ipso-facto analysis is offered, if people died it wasn't safe.
The second allegation is that there were intentional or negligent acts that caused harm or death to residents. There will be no evidence presented in this proceeding of anyone intentionally causing harm or death to any resident.
As to negligence, negligence requires showing that there is a duty and a standard of care that was violated. Of course, it's every facility's duty to do your best to keep residents safe. But as to a standard of care, there are no specific standards and specific policies and protocols to be followed in this natural diaster situation. There is no specified standard of care in how a facility responds.

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For example, there was not a generator rule that said you should have emergency generator as backup. That had been considered by the Agency and by the legislature but that was something that at that point had not been adopted as a standard of care. There's no specific policy on contacting some entity that's designated to insure priority power restoration occurs for health care providers. If that had been the case, then you can say the standard is, you need to contact this number, they will come and restore your power. If you didn't do that you would have violated your standard of care. That was not the complaint. And there was no specific policies or protocols on specific actions that any provider was to take if they lost electrical power or lost air-conditioning.
You're going to hear testimony from Dr. Dennis Moletti (phonetic), who's one of the nation's leading experts on disaster preparedness. He'll address the fact that he's reviewed the Florida system and he's found that these standards that I've been discussing were lacking. And so why that's important -- you

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could say, well, that's blaming, that's blaming, that doesn't matter. It's not just blaming, Your Honor, it's trying to understand what's the standard of care you're going to judge people by as to whether they're negligent.
And what Dr. Moletti will explain, when you don't have those kinds of policies and standards in place, what you do is you leave the professionals to make ad hoc decisions or what he jokingly referred to as "flying by your seat of your pants". You make the best decision you can in the real moment in real life as to how you keep people safe. It's not ideal to do that from a disaster planning perspective and Dr. Moletti will talk about that because disaster planning should be about decisions that are clear and outlined in advanced and that are drilled.
An example, in elementary school, the fire alarm sounds. As children, we all know what to do. You don't say, hey, let's discuss what do you think we should do? Teacher, should we do something different? Everybody stands up, they get into a single file line, they march out the

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door. They march out calmly, and they drill that. Same thing with our military, when they're training our troops. How do you respond to a POW situation? They have found that when you train and you drill, you know exactly what to do. And the same thing applies here.
If there was a playbook that says when you lose power after 24 hours you have to do this, after 48 hours you have to do that and so forth; there's not. And so you have to say -- the standard comes down to this, what would a reasonable prudent person do under these circumstances and that's the standard that you apply here. And it's not a standard that you apply with the beauty of perfect 20/20 hindsight and say, oh, well now I know everything and I can tell you I would do X, Y and Z differently because what you did failed. That's not the standard.
The standard that you judge is didn't people take reasonable, prudent actions under the circumstances? And we believe that the evidence is going to show you clearly that Hollywood Hills, through its professional

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staff, acted as reasonable, prudent professionals in the face of a natural disaster, both in the preparation for this storm and in their subsequent response. The evidence is going to show you that this was a staff of dedicated, caring, compassionate individuals and I don't think you'll hear any contrary evidence.

As to the experts who have looked at -- was that standard of care of a reasonable, prudent person violated? Dr. Moletti who's spent his entire professional career dealing with emergency management, believes that the deaths in this case are a systematic failure attributable to lack of clear regulation on how a facility should respond under given circumstances.

Dr. Dosa will testify that despite vast experiences as a gerontologist and as a Medical Director of skilled nursing facilities, he cannot say he would have done anything differently if he had been in charge of Hollywood Hills Nursing Home in the aftermath of Hurricane Irma. I want to kind of break this down and walk through reasonable, prudent

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actions and what the evidence is going to show. In advance of the storm, we will present testimony showing that the facility took all reasonable, prudent actions, even went above and beyond what would be required in established standards. They had an approved comprehensive emergency management plan.

AHCA and the Department of Health had the chance and opportunity to review that comprehensive emergency management plan in advance to offer any comments, any suggestions, any criticisms. It was approved by the Broward County Division of Emergency Management as meeting all requirements. In the face of the oncoming storm, you'll hear testimony that the staff got together, they met, the Directors discussed what they needed to do. They stock-piled water. They stock-piled supplies. They went down their checklist. They made sure that they would have sufficient staff on hand.

That's been a problem for facilities historically in Florida and I think you'll hear from Ms. McCenstry that AHCA has actually in hurricane situations recognized it's very difficult to staff and they've kind of taken a

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policy of not rigorously enforcing staffing ratios. Despite that, all staffing ratios at Hollywood Hills all required normal staffing ratios were met and they employed an approach that's used by some of the best institutions in our state and in our country of what's often referred to as an Alpha Bravo approach to staffing.

You assign an Alpha team; they come in advance of the storm and they stay with the residents until there's an all-clear, the storm has passed and the immediate emergency is over. Then they're replaced by a Bravo team that comes and deals with response actions. And eventually you hope you get back to normal where you're back on normal shifts. Some of the testimony -- that approach not only was employed by Hollywood Hills but it's an approach that was employed by Memorial Regional Hospital across the street.

And in fact, at the time that events unfolded at Hollywood Hills, they were winding down their emergency situation; they had closed one of their command centers and they were getting back to regular shifts because the

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threat had passed. Going back to the preparation and testimony you'll hear -- the staff, the people involved that would be on that Alpha team monitored the storm track, they monitored evacuation warnings and orders, they were never ordered to evacuate.

They attended conference calls that were sponsored by the Governor and AHCA and the industry in general among nursing home providers and they were given important information. The Governor distributed at those conference calls very clearly, "this is my personal cell phone number. If anybody has a problem, you can call my number and I will come to your aid; I will make sure that we get that problem solved".

The facility Administrators took that information, they took it to heart, they felt assured that at the highest level of state government that there would be support and help should it be required.

Also in advance of the storm, they secured what we've seen some pictures of, the spot coolers and fans that are not required by any rule or regulation or policy, but it was just

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simple foresight to say, if we lose our power what will we do? Because everybody knows you might lose power in a hurricane. So they have a generator that can run life safety, run the lights and electricity and refrigerators and things in the building. And they said, "we'll get spot coolers and fans that can help be supplemental cooling for our residents should there be a loss of power".

They also had the foresight to say, turn the temperature way down in advance of the storm on the A.C.; try to get the building as cool as they could. They checked their generator to make sure it was operating, and essentially they did all the things that you would expect one to do in preparing for the storm. They acted as reasonable, prudent professionals act. During the storm, again they followed the uniformed advice of experts in the field for how you prepare for and weather a storm.

And this is important, Your Honor, because it's not just something you're going to hear from this side of the table, it's something you'll hear from that side of the table as well

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and it is universally accepted; the best strategy shelter in place. You're going to hear from Dr. Dosa, who I mentioned earlier but also from the State's expert, Dr. Katherine Hire (phonetic); she's not a medical doctor but she's a researcher and her and Dr. Dosa have co-authored a number of articles that they will discuss on the strategy of shelter in place as long as you possibly can. Why, because analysis and research and data show that when you move frail, elderly people in an evacuation, they die. Not all of them die but people die from evacuation. So it's a very big decision to say, we're going to evacuate people because you've got risks of evacuation. And the data showing deaths is very clear, and Dr. Dosa and Dr. Hire will both present that in every hurricane event you can correlate an increase in mortality among elderly with the occurrence of a hurricane.

In fact, the most recent example of that is Hurricane Maria in Puerto Rico where originally it was reported that there may have been 60 deaths on the island and as people pushed to get the real data out and get the

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death certificate data out and analyze this, what they found was that the actual number of deaths wasn't 60, it wasn't 70 or 100 or 200, it was over a thousand. When initially it was reported, oh, there were only 60 deaths, we did really well. Dr. Dosa will tell you unequivocally that when the data comes out in Florida for Hurricane Irma, there will be increased mortality. There will be increased mortality especially among elders and there will be increased mortality among those in nursing homes. There was nothing different about this storm that it would make it any different than what's been studied and researched in the past.

Going to back to, what did they do during the storm, the Alpha team came in, they hunkered down, they tried to -- you'll hear the testimony, make the residents comfortable, try to soothe the anxiety and fears. Despite some testimony that might portray nursing home residents as uncommunicative and nonresponsive and maybe not whole people; they're whole people and they sit and they watch television just like you and I do, and they saw that

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monster coming down and there was anxiety as there would be among people who are younger. The staff dealt with that. They dealt with the anxieties. They tried to have a little fun and show movies and have popcorn and just tried to keep people's mind off of this threat. I think it's important, and you'll hear the testimony that, these teams that came to be with these patients; these aren't some uncaring villains who were the evil, bad people, these are people that left their own families to come and weather the storm and take care of other people. They don't deserve to be called villains. They're every bit as heroic as the people who came across the street to help with an evacuation, every bit. They made it through the storm; the evidence will show everyone was safe. There was no significant damage to property; no significant damage to persons.

Then, the evidence will show you that on Sunday, September 10th after the hurricane winds had already subsided, there was a loss of the A.C. chiller power; there was a loud bang. Mr. James Williams, who has been mentioned, he'll tell you he thought, okay, I think I know

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what it is; he went out and he looked at the light pole and he saw that a fuse had come loose. He knew what it was and said, okay, first thing I'm going to do is call FP&L; I'm going to see can they get out here and get that back on? Reasonable, prudent action. What do you do; I called the people who are in charge of restoring the power. And I think it's really important to focus in on that call. It wasn't just oh, I'm one of six million people in the state of Florida without power, please help me. It was very clear and we're going to play it for you because we have the actual recording.

In that recording, Mr. Williams tells FP&L at that time, we are a nursing home caring for frail, elderly people, our A.C. chiller has gone out. It looks like an easy fix; I can see it hanging there and said, by the way, we're also a hospital in the same building; I know we're entitled to priority restoration, please get out here. He actually gets cut off on the first call, he calls back, continues the call and says, let's just call it what it is, this is an emergency, you know, get people, get

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help; reasonable, prudent action. Then, Mr. Williams says, well, they probably won't be here immediately but let's be proactive and put out all our spot coolers. He installs all the spot coolers, distributes them throughout the facility. He distributes fans throughout the facility. And it's important to note that when he had that call with FP&L you'll hear, not only his voice, but you'll hear FP&L telling him; providing the assurance, yes, sir, we recognize your situation, you're entitled to priority and we'll be out there. So that was late in the day on Sunday, September 10th.

Now, did they believe that -- they hoped that FP&L would be out there but did they believe that it was going to happen immediately? Probably not, given the fact that 6.7 million people -- so they prepared, and as I said, they put out their coolers and you have some photographs that show the coolers and various fans that were eventually distributed throughout the entire facility. The Director of Nursing gathers the staff and says, make sure you hydrate, make sure you monitor patients, make sure you check on your patients

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and that they're comfortable. Mr. Williams begins taking temperature readings and the Facility Administrator -- on those spot coolers, he'll testify there's a temperature gauge and it gives you two temperatures, one is what are you setting at and one is what's the temperature in the area that that temperature gauge is reading, the spot? And the areas that were checked never got above 80 degrees as he checked them.

Mr. Williams will testify that his temperature gun readings, which actually measure surface temperature never got above 80 degrees.

As I said, this shows that the staff was acting in a reasonable, prudent manner, dealing with the situation that confronted them and tried to get the power restored and then do what you can to keep people comfortable. On September 11th, they continued their efforts for power restoration. They made numerous phone calls and contacts with FP&L. There was a total of 14 calls and contacts with FP&L. They contacted the Governor's cell phone when FP&L didn't come. They contacted the

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Governor's cell phone, not once or twice, but they contacted the Governor's cell phone five times, numerous telephone calls. They actually contacted an electrician to try and see could an independent person -- maybe don't wait for FP&L, like can I get somebody to go up the pole and fix the fuse? They were told no, you can't do that.

They contacted the generator manufacturer to see, could their generator be altered maybe to power the A.C.? No, they were told, you're not allowed to do that. They actually at one point walked and drove around the neighborhood because they had information that there was an FP&L truck in the neighborhood and they're out trying to flag them down.

The bottom line is -- they also made local calls; they made at least two calls to the local emergency operation center. They called the County Commissioner. They made numerous efforts to say, hey, we've been out now for -- it's not even 24 hours but we need to get our power back up. Unfortunately there's going to be a dispute in the testimony over what those calls to the Governor stated.

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The Governor had deleted those voice mails, so they tried to reconstruct what those calls were. Now you're going to hear testimony from Natasha Anderson and from others that those calls were very clear. They weren't calling to chit-chat. They didn't call the Governor's personal cell phone because they wanted to find out how he had done in the storm. They were calling, as he had said, because they had a problem and they were seeking to have that problem fixed. The reconstruction of this is, the Governor issued some press releases and says, well, every one of those calls was answered. Really what the testimony is going to show you is those calls really weren't answered.

What happened was, the system -- and there wasn't really a system in place for how this was going to get done, and it was just basically a list of emails was sent to AHCA and said, hey, we got calls from people and then AHCA would hand those out to staff as what they called call downs and said, we've got a list of call downs and so the people who called back weren't calling to say, okay, I know you left

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an urgent message for the Governor that you've been without power, you've got frail, elderly people; let's talk about how we can help.

They got calls that were saying, I'm calling from AHCA, we just wanted to check and see, can you help us update the Florida Health Stat System and then they'd go back into the whole story and say, no, here's what we need. We've already talked to FP&L, we've talked to the Governor, we're trying to get somebody out here to help. There's some suggestion that nobody ever conveyed that there could be a risk to the residents and that's just complete and utter nonsense and it's going to be shown. AHCA was clearly aware of the situation. You're going to receive a situation report in the evidence that says that Hollywood Hills is running on a generator power, which is not exactly accurate -- without air-conditioning, and reports this is adversely affecting patients, and they put in a ticket to FP&L and AHCA is aware.

So the suggestion that this was some sort of casual calling; it was very clear that the calls were held to get power restored were very

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specific in saying, we want somebody to come out here and restore power before the temperatures rise not after the temperatures rise. By 10:00 p.m. on the evening of the 11th, they finally got information back that at AHCA and the Emergency Operations Center that their request had been heard and that their request was being escalated to the highest priority. And you'll receive that document in evidence that says that they had been escalated to the highest priority and that the status of that was that they were mobilizing.

I think it's important in trying to go back to that analysis of what do reasonable, prudent people do? They use every possible effort to say, contact the right people, let's get the power to the chiller back on. They're getting the assurance from FP&L we're coming. They're getting the assurance from the Emergency Operations Center, we're coming; you're escalated to the highest priority, the calvary is coming. It creates, as you'll hear, an optimism, maybe a false hope that exactly what people are telling you is that's going to happen; that they're going to get there. That

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is the situation up to September 12th.

You mentioned in your comments to us initially about hearsay evidence. We will present a hearsay piece of evidence but we think it's important. And it's an A.P. story that kind of analyzed those calls to the Governor's cell phone because he put it out there and said, call me if you have a problem. He had, I think it was 129, 130 calls from nursing homes. Of the people that were contacted for that story, I think a third of them had sort of the same reaction as Hollywood Hills. We were instilled with false hope and it affected what we did. It affected how we responded because we felt that we had made the contact with the people that were at the highest levels who could help us.

So as far as reasonable actions, I think that what you're going to hear in the testimony is they were doing every possible thing; they've distributed the coolers; they've contacted everybody; they get to the morning of the 12th, they're still monitoring residents, hydrating residents and the temperatures in the building still are not going above 80 and they

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don't have any significant problem. It is important that one patient on the 11th actually went to the hospital by 911. EMS came, they were in the building, they did not say that this was a problem in the building at that time. They just simply transported the patient without event. It's not one of the 12 that's alleged in the Complaint and it's not considered to be a heat-related incident.

But the importance of it is that they were there on the 11th. EMS was there. They have a duty -- and this comes up in their testimony and you'll probably hear them concede to point that when they went there on the 11th -- and then we're going to talk in a minute about the 12th, but in both cases they were in the building and nobody was pressing a panic button. Nobody was saying this is a dangerous condition; you've got to do something. I'm going to report this to the authorities, to DCF; that wasn't the situation.

So let's move forward to the 12th. They've been told help is on the way. And what do they do, they get up in the morning, they continue to pressure for – hey, they call the

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Governor, they call FP&L, they call AHCA and say, hey, that help hasn't come here, when are you guys going to be here? They continue those efforts. They continue to monitor their patients and actually they sent out for more fans and spot coolers and say, okay, the temperature has been rising; it went from the low 70,s it's up to the mid, up to the high 70s; we're getting to that 80-degree mark, what do we do? They went out, they bought -- the undisputed testimony will show you they bought additional fans, they retained additional spot coolers; actually got them from Memorial Regional that said we'll loan you some spot coolers.

Incidentally, there will be some testimony -- you know, when you sequence all this out, September 10th without power at the facility, Memorial Regional called and said we had four discharges that day. We don't have any power or A.C.; we're trying to get it back on but you need to be aware -- that's okay, we understand, everybody is without power. And Memorial Regional didn't find it to be the alarming situation that, oh my gosh, we're not going to

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discharge our patients over to your facility because we're concerned about the safety of residents. The same thing throughout the 11th into the 12th.

This is really, I think critical evidence because it's not just going to be testimony you hear from Hollywood Hills or its staff but the testimony of the people, third-party professionals, clinicians who were independent of Hollywood Hills who were in that building on September 12th, the day before these events that Mr. Menton described in his opening. And those people include: Starting with EMS, EMS was there, they picked up a patient, it's patient number 11, and there was no suggestion at that time that patient number 11 was anything other than a patient who had pneumonia, who was a sepsis alert, who was the kind of patient you typically will see in a nursing home that needs hospitalization. They called 911 and the patient was transferred alive to the hospital. They never heard anything back, oh my gosh, this patient's fever could only be explained because he's been exposed to high heat. There was no suggestion

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at all about high heat.

Lieutenant Parrinello who will come in here and testify, will tell you point blank she knows she has a duty as do the other EMS providers. If they felt that any residents were in danger when they went in that building, they have a duty to call, report it, take action, they didn't because it wasn't that kind of situation.

The same thing with Dr. Wayne Evoncha (phonetic). Dr. Wayne Evoncha was the doctor to, I think four of the residents in the Complaint. He was there in the building on September 12th, saw all his patients, he assessed the situation; he had one of the patients, it's patient number 3, that at that time he was acting in his capacity as a palliative care and Hospice doctor, he evaluated the patient and said she's terminal; we've known she's on Hospice care and he places her on what's called crisis care. Crisis care, if you're unfamiliar with Hospice, Dr. Evoncho and Vitas nurses in this proceeding will tell you, crisis care is when symptoms are either out of control or very commonly very end of

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life. When people are actively dying, they put the crisis care, continuous care nurse there.

So Dr. Evoncho orders continuous care, death will be imminent for this patient otherwise he doesn't think his patients are in danger. He's been interviewed, was it hot -- no, it was warm, it wasn't unbearably hot; I did not find my patients to be in danger. I did not think I needed to move anybody. Well, if that's not enough, if EMS did not report it and Dr. Evoncho not reporting it, you're going to hear testimony from Dr. Francis Cadogin (phonetic). Dr. Francis Cadogin was also in the building on September 12th. She saw her patients. She did not see the need to move any patients; did not consider it to be a dangerous situation.

Again, said, yes, it's warm but it's not unbearably hot in this building; it's not a danger to my patients. Finally, you're going to hear testimony about the Medical Director's Physician Assistant. The Physician Assistant rounded on all patients in the building that were assigned to the Medical Director and again came to the same conclusion. This is not a

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dangerous situation; we're not worried that people are going to start decompensating. There were two Vitas nurses in the building that night, throughout the night. The two Vitas nurses, each assigned to a different Hospice patient.

They never said, oh, this is a situation where there's such a danger that I'm going to exercise my duty as a licensed health care professional to call and say this is a problem in the facility, we need to evacuate; it just didn't happen, Your Honor. The staff did what was reasonable, what was prudent. They brought in additional eyes. They continued to monitor.

MR. MENTON: I'm sorry to interrupt, Your Honor, but I would just ask he not share this information --

MR. SMITH: The patient's names are not being -- we can move onto a different slide. It's really about timing and I'm going to get into it, but this isn't a record that's being made; I'm not going to say the names for our record. And by the way, I do respect the patient confidentiality thing but the police department released every name in press

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releases.

At this point, it's not a confidential fact as to who was in the building and who died. Those are facts that are well known, but I won't mention any of the patient names as I discussed.

THE COURT: Mr. Menton, you want to be heard?

MR. MENTON: I was just going to say, even if the police released the names that doesn't mean they released the medical information relating to them, so to the extent we're talking about medical information --

MR. SMITH: I'm not talking about medical information, I'm going to talk about a timeline, a sequence.

THE COURT: Okay.

MR. SMITH: So I've kind of got us up to the evening of September 12th and I want to point out that the testimony you're going to hear is, the evening of September 12th, that the Administrator was in that facility until about 10:00 p.m.

Also, Mr. James, the Physician Assistant was in that facility until about 10:00 p.m.

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You'll actually see some video tape of the Administrator going around, checking on things, checking on the spot coolers, making sure they're real. You'll see him put his hand; are they blowing? He empties a bucket of one of the coolers.

Again, doing the things that you do in a crisis, natural disaster situation to say, let's make sure we're keeping people comfortable. As of that evening, there were no problems. People were checked. They were found, as the evening approached 10:00 p.m.; they're resting comfortably in bed. Nobody's crying out in pain, nobody's showing signs of distress. You're going to hear testimony from Mr. Sergio Collin who was the Nurse Supervisor who arrived that evening around 7:00 p.m. to work the evening shift.

Mr. Collin is a seasoned R.N., more than 12 years; he is currently working on his Master's level, Advanced Registered Nurse Practitioner. He's also a certified paramedic. He previously worked with the Hollywood Hills Director of Nursing at Mercy Nursing Home.

The day before he came to work at

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Hollywood Hills, he was working as a paramedic at a local hurricane shelter for special needs patients.

There was no power there, no A.C. there, and he was managing complex patients within that county evacuation shelter in the situation, not of their own making but of Irma's making where they were responding to a situation of, we've got to deal with complex needs, patients with complex needs without A.C. We try to do our best to keep people comfortable. He'll make it absolutely clear that if he ever felt there was a danger to residents, his testimony will be, I would report it myself. I would pick up the phone myself and call DCF if I thought that anybody was in danger. You'll hear, not only self-serving testimony from Mr. Collin saying, well, I did everything and I'm a good guy, you're going to hear from the EMS professionals; some of them at least, and you'll also hear from Officer Pastrana (phonetic), whose observations of Sergio Collin were, "that guy was working his tail off to make sure that people were being tended to".

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It wasn't a situation of somebody being indifferent, and I think that's an important fact that's going to really come to light is, this is not a situation where people abandoned their post, walked off the job and said, I'm out of here, it's too hot, I'm not going to care for these residents; not at all. They were with these residents throughout. I got us up until about 10:00 p.m., 11:00 p.m. when the Administrator went home. They felt everybody's down for the evening and in the early morning hours, around 1:00 a.m. the evidence is going to show you that patient number 3, the Hospice patient, she's 99 years old and as expected, she expired that night and the Hospice nurse then left for the evening. She did what she needed to do to make arrangements and then she left. It was 3:00 in the morning and that's where this kind of timeline becomes important. Because up til now, at 3:00 in the morning, nobody, nobody, not EMS, not the doctors, not the P.A., not -- all the professionals in the building, nobody called AHCA. AHCA gets complaints all the time. Nobody called AHCA, nobody called DCF, nobody made a complaint

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anywhere.

And then what happened is, at 3:00 a.m. in the morning they got a call on patient number 1 and EMS responded. They came, they administered to the patient. I think the description by Mr. Menton is probably accurate that she was a patient that was having significant distress. They had been monitoring the patient. You'll actually probably see the patient, and I don't know if we'll have to seal it, but they actually had her by a spot cooler at one point saying, let's make sure she's staying comfortable and cool. But when she went into distress what did they do? They did what reasonable, prudent health care professionals are told to do. They picked up the phone, they called 911 and said, hey, we need some help over here with a patient in distress. EMS came, they rendered aid and they took the patient to Memorial. They didn't say to Mr. Collin, oh my God, it's so hot in here, you need to get everybody out. They didn't say, I'm going to call DCF, this is terrible. They said, nothing other than we've got her and we're taking her. They were acting as good

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professionals.

I don't mean to cast any kind of dispersion on the first responders; they did a great job. They took her, she left the building alive and that's the last Mr. Collin knows of anything. He's there. Memorial Emergency Room didn't call and say, oh, you need to do something; we've got a dangerous situation. So then at 4:00 a.m., they find that resident number 2 was also having difficulties, in distress.

Again, what do they do; they call 911. If there's an emergency you call 911. They called 911, EMS came back. And this is really where things, I think kind of diverge in how the events are accounted. From Mr. Collins' view point, EMS came back and he'll tell you, they were mad. They were mad that they were back and they were upset and at that point said, that's it, I'm going to call DCF. This is the second patient today, and by the way we had one yesterday but that had never been a problem until that moment. It was like, okay, by the way, we had this other patient. And so he did -- what do you do in that situation?

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Do you race around and say, push everybody out the door? No, he said, let's check on all the residents. Let's make sure people are okay. This is -- you know, we've had two people with problems, let's assess the situation. And that's what they did; they assessed the situation and they went around -- somewhere between 4:30 and 5:00 they call, and what transpires a little different than what Mr. Menton told you, it wasn't, oh my gosh, we discovered a deceased patient here in this room and then we heard some commotion and discovered another one; that's not what the evidence is going to show.

What the evidence is going to show you is this almost simultaneous, rapid sequence of events. Mr. Collin is in the room working on patient number 4 doing CPR. EMS responds, they come in, he said, one of them puts his hand on his shoulder and says, stop, you know, he's gone, don't. And about the same time, they look at the roommate, and one of the nurses says patient number 5 is not responding and EMS goes over, they begin to administer aid and they say, is this patient a full code, meaning

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should we start CPR? And they were told this patient has a DNR. And EMS decides no resuscitative effort; there's a DNR, we're not going to resuscitate that patient. Immediately across the hall a nurse says, somebody is coding over here; resident number 6 is coding across the hall. They go across the hall, Mr. Collin with them and try to render aid to resident number 6 and it's unsuccessful. The series of events that there were -- the suggestion and the testimony that there were just dead bodies lying around the facility is just false. And it won't be borne out in the evidence. What happened is a very rapid series of 1, 2, 3 altogether.

Now, was Mr. Collin at that point concerned? You bet he was concerned. Was EMS -- he says EMS was "panicked" was his word, but was everybody concerned? Yes, everybody was concerned. And at that point, people worked together -- and this is what the real evidence is going to show you; that people good, well-intentioned people, caregivers came together and worked and said, let's make decisions about what to do; let's starting

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getting people out of their rooms at least to say, let's gather people near the spot cooler and eventually the decision is made and it's very -- the decision on who made the real-time decision; it's like life, Your Honor.

It's not a movie, it wasn't the heroic -- you know, the Captain came in and said I'm in charge. It was a group of people who came together, including Mr. Collin and the staff at Hollywood Hills and said, okay, let's start moving people and that evolved into let's just get everybody off the floor and out of the building and that's what happened.

That process -- you're going to hear a lot of testimony about the evacuation process and there will be people that testify, and it's not just people from the Hollywood Hills side. These are people, the EMS people, law enforcement people, a word that kind of became common in the vernacular without coaching, without leading of how would you describe it -- the word is "chaotic"; that's the description of what transpired, that there was a chaotic scene.

You'll hear from Ms. Frum. Does she have

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any experience in evacuating a nursing home? No. Did she consult about what are the various patients' conditions? Who can walk, who can't walk? No. It was just sort of like, in the moment, let's get everybody out. And that's what transpired.

People were woken up out of bed. They were told, hey, you're being evacuated and you'll hear testimony, there was people who were confused. They were like what, where am I going, what? And there were people -- I'd say across the board, they didn't get their normal morning medication.

Again, I'm not saying this to cast dispersion, I'm just saying that's what happened and they got lined up in front of the building in the outdoors and the sun is coming up and their lined up on the sidewalk and that's where the triage actually took place they have Mr. Menton describe. They were triaging people on the sidewalk and deciding who goes where. And there's different accounts of what those people looked like. You'll hear from some of the Memorial staff that people were in distress.

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You're going to hear other people testify, there were residents talking to one another and some of them –- it's just different perceptions of what occurred subsequent. I want to move forward because I know we're getting long. I just have a short bit more. But what followed that was a media circus that really resulted in a politicization of events.

You hear the scene, there were helicopters in the air, there were reporters everywhere. The police declare it to be a crime scene and limit access to the building.

By the early afternoon Senator Nelson is on the air saying, we're going to take the strongest possible action against this. The Governor is on the air saying -- the message is, heads will roll. AHCA surveyors come and as Mr. Menton has eluded to, they will tell you we couldn't follow the normal process. The situation did not allow us to follow a normal investigation process.

You'll hear from the Field Office Manager who will tell you, we didn't get to do the things that we would normally do. We believe, and we'll put on expert testimony, there was a

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rush to judgment and the day ends. And this is somewhat unprecedented; it may have occurred somewhere in the past, I'm unaware of it, but the day ends with not AHCA making a decision about here's what our investigation results are and what to do, but the Governor's own press release will tell you the Governor directed AHCA to impose a moratorium. The next day, the Governor issues a press release. The Governor directed AHCA to suspend the license. And that's how this case has gone.

And you're going to hear that expert testimony from Connie Charrin (phonetic) an R.N. who's been a Regulator at AHCA, was in the position of supervising the Field Office Operations, who has served in many skilled nursing facilities and is both an Operator, a Clinician, has been Supervisor as well as a Consultant to nursing homes. And she'll tell you, never seen anything like this. The tainting of the process kind of seems to have driven everything afterwards. They didn't get to do what they would normally do. If they did, Ms. Charrin would say -- you'd ask these questions.

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You'd say, did the staff adequately prepare and take reasonable measures? Check, yes they did. Did they ensure adequate staff would be available? Yes. Were measures taken to try to keep the residents cool and comfortable when the A.C. was lost? Yes. Did you monitor your residents? Yes. Did anyone abandon patients or leave them to fend for themselves? No. Did staff take measures to try to get the A.C. restored promptly? Yes. How did other facilities in similar situations fair? Is this unique or is this different?

And you'll hear Deputy McCenstry describe the problem of facilities without A.C. as being pervasive throughout the state. And then you'll hear from Ms. Mayo-Davis that she had 50 cases under investigation regarding heat. But the bottom line is, we don't know the answer to that question because nobody yet has allowed us to look at the death certificate data to say, how many residents of nursing homes died? We don't know that; it won't be a fact in this case. So to the extent that you're saying that this is something that only happened in this facility, we do not know that and I don't think

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we can lead to that conclusion because Dr. Dosa will tell you, when the data comes in, it's going to show increased mortality.

Continuing with Ms. Charrin to say, did you call 911 if you thought a patient was in distress? Yes. Did your staff cooperate with other authorities, EMS? Yes. And so she tries to take a normal objective investigative regulatory view of what in real time did people do? How did they respond? Did they respond in a way that you deem to be inappropriate? And if so, then you need to identify what it is what that they did, not just say the facility failed to keep people safe; people died. The facility failed to keep them safe. I want to talk for just a moment about the ME findings. The ME findings in this case were eluded to -- and again, I'm just going to refer to numbers not names.

But I believe when you hear the testimony of our expert pathologist, that you will agree that the ME seemed to have a pre-determined result. There was enormous pressure in the press that somebody needed to be held accountable; there's an ongoing criminal

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investigation. So we end up with this uniform binding that everything looks like a homicide, everything is environmental heat exposure. And some of them are just so obviously not credible that I don't think that's the conclusion that anybody rationally looking at the evidence would come to.

So resident number 9, this is a patient with a long history documented of cardiac problems.

MR. MENTON: Judge, this is getting pretty specific at this point.

THE COURT: We're linking patient names with specific information about their medical records.

MR. SMITH: Take the slide down. I need to look at it because it's my information.

THE COURT: That's fine --

MR. SMITH: Okay. So I was talking about patient number 9, Your Honor, and the patient arrives at Memorial at 7:56 a.m. on September 13th. Normal body temperature, normal troponin levels, which is important because this woman eventually dies of a heart attack.

Troponin is a way to say -- your Troponin

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level; are you suffering any kind of cardiac event? What the records show is a failure to control blood pressure during a long hospital stay. She doesn't die that day, the next day, the day after that, the day after that. She dies September 20th of an acute MI, myocardial infarction, yet the Medical Examiner finding is homicide, environmental heat exposure; that's the uniform finding on 12 of 13. They did say one Hospice patient was -- Although this one in particular is interesting because the Medical Examiner did concede, well, it looks like stress of transfer may have been an issue here also, which is an important concession because our expert will tell you, trying to separate out what's heat and what's the stress of a transfer is going to be a very difficult web to try and untangle.

The next patient is number 10. This is a patient with -- I referenced that failure to thrive syndrome; is a quadriplegic; she had outlived what would be the normal life expectancy for this type of a patient with a very rare condition.

Her temperature was normal, 98.6 when she

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arrived at Memorial. She developed, during her hospital stay, a blood infection; a hospital-acquired infection. She died September 19th after being placed on Hospice care. The Medical Examiner finding, homicide; environmental heat exposure. It doesn't hold. The next one. We talked about this resident, it's resident number 3. She was the 99 year old Hospice patient who had seen Dr. Evancho the day before who had a Vitas Hospice nurse sitting by her bedside when she expired that everybody knew that she was going to do because her death was eminent. And she expired as anticipated; Medical Examiner finding, homicide, environmental heat exposure. The next one is number 12. This is a patient who arrived at Memorial at 7:54 a.m. on September 13th. Her temperature was low-grade fever, 99 to 100, certainly not consistent with having heat stroke after a long hospital stay. She had hospital-acquired infections while in the hospital. She was discharged to Hospice September 26th, about two weeks later. She died subsequently.

Again, the ME finding, homicide,

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environmental heat exposure. And I go through this and take the time in opening because I think it's important as we hear the evidence in the medical testimony to kind of put things into the perspective of what has gone on around this event. It has been a zoo, a circus, whatever you want to call it. It has been a media-driven event from the beginning and AHCA's own people will tell you, the normal process was not followed.

I've talked about some of our experts, Dr. Dosa and his research on mortality. When we get a chance to put on our case, we'll present Dr. Dosa. We're also going to present Dr. Grunstein (phonetic); he'll not only tell you about Hurricane Irma and its impacts as a climatologist, but he worked with Dr. Casa (phonetic) who's a renowned expert in hyperthermia.

Dr. Casa is important because he can describe for you what hyperthermia is, how it develops, whether it can develop in temperatures, exposure to moderate or low heat; say 80 degrees over a period of time. Can it develop and can it come on very rapidly without

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prior warning? And to those questions you'll hear his testimony, yes, that can and does occur and that it's not something that's well-known, and it's not something frankly that is well-studied but it's known that this happens. And they would recommend, just as they've done for exertional heat stroke in athletes, that the similar types of data need to be gathered. And he'll tell you about -- you're always managing risks and there's this balance, whether you're dealing with athletes or you're dealing with frail, elderly people in nursing homes. You've got a risk of moving people; we know that results in death. You've also got a risk that people can develop hyperthermia.

There probably ought to be some kind of guidelines that help professionals when they're making those ad hoc decisions; what can I do; how can I best manage my situation; we should try to help. I've already told you about Connie Charrin.

So in conclusion, Your Honor, I think at the end of the day the evidence is not going to be clear nor convincing that Hollywood Hills or

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its staff acted inappropriately, certainly with any intent to harm anybody or even any negligence when viewed against the standard of what would reasonable, prudent people do? Did they act as normal, reasonable, prudent people would act in a post-disaster situation? I think the evidence will show you affirmatively that everyone involved in this situation acted reasonable. They did the best they could in the context of responding to an unprecedented natural disaster. The evidence will not show that Hollywood Hills is to blame for these deaths and has forfeited forever the right to operate a nursing home. It was Hurricane Irma and acts of God and patient's complex medical conditions that came together in a tragic series of events.

But when you break it down and hear what did they do and when, I don't think you can come to the conclusion that they acted inappropriately. There's been a suggestion, oh, we're going to point fingers. We're not here to point fingers. We're getting the finger pointed squarely at Hollywood Hills and we will simply invite you -- we're not going to

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run down rabbit trails, but if you want to play the blame game, do you blame the legislature and AHCA because they didn't have clear rules on what to do in this kind of situation? Do you blame the Governor for creating false hope by giving out his cell phone? Do you blame the Emergency Operations Center because they told Hollywood Hills you're the highest priority? Do you blame FP&L because they were told on day one that this is an emergency situation and they never got out there to fix it? When they finally got out there to fix it, the evidence is going to show you; you know how long it took, it took about 20 minutes. All they had to do was climb up a light pole, push back in the thing that James Williams saw on day one and the situation could have been averted. Do you blame the EMS people who were in the building the day before didn't push the panic button, didn't report anything? Do you blame Dr. Evancho or Dr. Cadogin or the Vitas nurses, all in the building; Mr. James -- they were all in the building, all professionals were working in the building.

At the end of the day, I don't say that to

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say, oh, I want to point fingers. They're not villains, none of them, nor is my client and its staff villains in this situation. I think they all did what they could and deserve -- they took heroic efforts to try and keep people safe.

Final point, it's so tempting to do Monday morning quarter-backing; to say, gee, I wish I didn't throw that pass at the end of the game, it got intercepted and run back the other way, and you know, I can see very clearly now that was stupid way to go. It's very easy in hindsight.

Somebody can come in and say, I can build a better mousetrap. I would have just moved everybody to one location and put all the spot coolers there because that would have been a better situation. We don't know that. There's no way to know, would that have resulted in better outcome? But that's not the standard of care.

The standard of care is, did they act as a reasonable, prudent person would act and I believe that the evidence overwhelming is going to show that they did; that they acted in

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accordance with their duty of care. They acted as dedicated, passionate health care professionals. Thank you, Your Honor, I'm sorry I was a little long.

THE COURT: Thank you, Mr. Smith. Why don't we take a 10 minute break before we start with our first witness? Is there anything else that we need to address prior to break?

MR. MENTON: No.

THE COURT: Thank you.

THEREUPON:

JUDY FRUM

a witness, having been first duly sworn, testifies as follows:

THE COURT: Go ahead, Mr. Menton.

MR. MENTON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MENTON:

Q Can you please state your name?

A Judy Frum.

Q And Ms. Frum, where are you currently employed?

A Memorial Regional Health Care System.

Q And what is your position at Memorial Regional?

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A I'm the Chief Nursing Officer.

Q And how long have you been in that position?

A I've been a Chief Nursing Officer for five and a half years.

Q And just describe generally for the Judge what your responsibilities are as Chief Nursing Officer?

A I'm responsible for the overall coordination of care for people that come into your hospital seeking care. I'm also responsible for maintaining the competency of the staff that delivers that care. I'm responsible for compliance with all regulatory bodies. I'm a physician liaison; that's pretty much all.

Q Okay. Can you briefly summarize for the Judge your education and professional background?

A Yes, I have an Associate's Degree in Respiratory Therapy, I'm a Bachelor's prepared R.N. and I also have my Master's in Business Administration.

Q All right. You indicated earlier that you've been the Chief Nursing Officer for I guess pushing four years now at Memorial?

A Almost five years now.

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Q Okay. And can you describe for the Judge some of your prior professional experience before taking on that position?

A Yes, I've been with the Memorial Health Care System for 13 years in March. Prior to becoming the Chief Nursing Officer I was an Associate Administrator at Memorial Hospital, Pembroke. I oversaw a very large Urgent Care Center as well as a lot of outpatient services such as wound healing, radiology, laboratory and physical therapy. Prior to that, when I came to Memorial Health Care System I was the Director of Nursing for the Urgent Care Center and prior to coming to Memorial, I was the Director of the Emergency Room at Mount Sinai Medical Center.

Q Okay. And are you a registered nurse?

A I am.

Q And how long have you been a registered nurse?

A For over 25 years.

Q And do you have some background with respect to long-term care?

A I have minimal. I did work in a unit at one point in my career that managed children and adults who were in between acute care and skilled

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care. The goal of the unit -- most of these patients were on respirators with tracheostomies and our goal was to wean them off the respirator and then get them to the next level of care.

Q Can you explain for the Judge a little bit about how you fit into the hierarchy at the Memorial System; who do you report to?

A I report to the Executive Vice President, Zeph Ross (phonetic).

Q Okay. And do you have any people that report to you and who would that be? Are there any product lines or --

A Yes, all the Directors of Nursing report to me throughout the various products lines. I also have the Director of Pharmacy that reports to me, the Director of the Transport Team, Director of Infection Control; all of the Directors of Nursing throughout the hospital and the Administrator of Transplant Services reports to me.

Q And how many total direct reports do you have?

A I have 14.

Q All right. And what is your role as it relates to the Emergency Department in particular?

A The Director of Nursing reports to me; is

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one of my direct reports.
Q Okay. And are you familiar with Dr. Randy Katz?
A I am.
Q And who is he?
A He's the Medical Director of our emergency room.
Q Okay. And do you interact with him on a regular basis --
A I do.
Q -- as part of your professional responsibilities?
A Correct.
Q Dr. Katz is going to be here this afternoon, I believe; does he work directly for Memorial Hospital?
A He does not, he works for Team Health.
Q But he is the Emergency Medical Director at the hospital?
A Correct.
Q Can you explain for the Judge your role in hurricane preparedness at the hospital in advance of Hurricane Irma?
A Yes, my overall role is the coordination of care prior to a storm approaching which involves

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a wide variety of job responsibilities; one being the coordination of patients in the hospital. We do take that opportunity to evaluate our census and decide which patients are safe for discharge because during a storm we normally get a large influx of patients. So we also start meeting with our vendors. We start prepping our staff.

We let the staff know that it's their time to go home and prepare their families. We start looking at sleeping arrangements for our staff. We look at the food supply. We look at what our generators have on board. We start to get delivery of oxygen if need it. So there's multiple things going on all at the same time.
Q And as it relates to your role at the hospital while you're there, can you explain for the Judge; are you actually there at the hospital and when and for how long?
A I am. I'm usually during -- the during team which means I'm there throughout the storm, overseeing the coordination of care throughout the hospital.
Q Okay. And can you explain for the Judge what the command center is and what your role is at it relates to the command center?

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A So within a health care system or within a hospital, as a storm approaches, of course we're all watching the news stations and watching for our timeline of when a storm approaches, one thing that we do at Memorial is open up our command centers ahead of time. And what happens when we open up a command center, knowing that we have an impending store coming, it gives us an opportunity to deal with logistics throughout all of our hospitals in order to prepare for the storm as it approaches. And it's a very systematic approach that we follow in order to prepare for a storm.
Q Okay. And then I think you mentioned that you were part of the during team which meant you were there during the storm?
A Yes.
Q And can you explain then for the Judge after the storm passed, what was your role and when did you come back to the facility?
A Once the storm had passed and everything was stabilized within the organization, we have what's called an A and a B team. The A is the during, the B team comes in after, which also included Administrators that would take over from my role. So once the storm had passed, I was able to

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go home once things were stabilized, it was safe to travel and then I went home.
Q And when did you go home after riding out the storm?
A I recall the storm I think ended on Sunday night; we were able to safely travel home so it was nighttime on the Sunday after the storm.
Q Okay. And did you have occasion to come back to the facility then on September 12th in the early morning hours of September 13th?
A Yes, I was at work that morning.
Q Can you explain for the Judge what your role was when you came back to the hospital and particularly as it related to your command center?
A Pretty much during the day I was just assessing what was going on at the hospital. We were extraordinarily busy. The emergency room was very, very busy that day. We had decided -- Memorial Regional, in our building, the command center for the health care system was also located within our building; it was in the Trauma Center, so we had decided on that particular day that all of our campuses were stable; that we would move the Memorial Regional Health Care System command center to the Memorial Regional command center, and at that

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time, everybody would go home but we needed an Administrator to stay that night, so I had offered to stay that particular night to man both the Memorial Regional command center as well as the Health Care System command center.

Q And when you say man the command center, what specifically was your role then in the command center?

A It was to be available for anything that came up; if any of our campuses needed anything, just to direct anything that I could direct or provide service if need be.

Q Okay. And did there come a time that evening and early morning when you became aware of patients being transported from the Rehabilitation Center of Hollywood Hills to Memorial Regional?

A Yes, I was in the command center with another colleague, Tracy Meltzer and she had answered the phone; it was ringing in the command center. There was an Administrative Officer in the emergency room who told her that three patients arrived from Hollywood Hills Nursing Home with very high temperatures and one had expired. So Tracy relayed that information to me at that time.

Q Okay. And based upon the information that

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was given to you, did you have concerns about what might be happening at the Rehabilitation Center?

A Yes, and in part of the conversation, Tracy did relay to me that because there were three patients, that the ER was notifying DCF as well as the police which is something we routinely do if something of this nature would happen where we had concern. So at that time Tracy notified me and I was extremely worried. It just didn't make sense to me that three patients came in with very high temperatures from a nursing home and one had expired. It was a red flag for me; it was a significant amount of concern for me.

Q Okay. I know you didn't actually assess the patient, but when you say high temperatures, was it like 101 or 102; did you get an idea of what that was?

A What was relayed to me, and Tracy was giving me information that she received on the phone; it was like 103 and 105 were two of the numbers that were relayed to me.

Q Okay. And is it unusual to get patients simultaneously from the same facility with temperatures in that range?

A It's very unusual.

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Q And what is the significance of temperature levels being that high; what does that indicate about --

A Truthfully --

MR. SMITH: Your Honor, I'm going to object at this point. This witness -- we were told very specifically was not going to offer an expert opinion in any way and we did not ask for that expert opinion. This sounds like an expert opinion as to what's the significance of a high temperature and this is getting into -- it's not facts, it's I want interpretation and opinion about that.

THE COURT: Mr. Menton, your response?

MR. MENTON: Your Honor, I'll rephrase the question. I'm just simply trying to ask what was the basis for her concern; she's already talked about that.

BY MR. MENTON:

Q What was the basis for your concern about what was reported to you?

A Three patients arriving with high temperatures and one had expired; it caused me concern.

Q Okay. Do you know whether the hospital

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staff had discussed these matters with the Fire Rescue and the first responders who brought the patients to the hospital?

A I don't know.

Q Now did you discuss the situation with others at the hospital?

A The only other person that I had a conversation with was Tracy.

Q And what did you and Tracy decide to do?

A As the command center where we were working, it was relatively quiet. I had a conversation with Tracy and I said -- I think -- why don't we just take a walk over and see if we can offer some support; something must be going on at the facility and maybe we could offer some support. Things were relatively stable at the hospital so that was our intent.

Q And can you tell the Judge approximately what time this was?

A It was after 5:00 in the morning, maybe closer to 6:00, but it was definitely after 5:00 in the morning. I really didn't pay attention to the time.

Q Okay. And did there come occasion then for you and Tracy to go over to the facility?

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A We did. We made the determination to walk over to the facility.

Q And can you describe for the Judge then what happened, like what did you do when you went to the facility?

A So when we arrived at the facility, there was a Fire Rescue crew already there and one was pulling up as we walked over. So we met the Fire Rescue crew and they said they had received another call about a patient in distress. So we went to make entry into the building and initially we tried the front door which was locked, so we walked around to the side and it was like a double glass door, who Fire Rescue was able to make entry into that door.

Q Okay. And it was you and Tracy and then you said there was a Fire Rescue crew that arrived at the same time?

A Yes, that's correct.

Q Did you go with them into the building?

A That's correct.

Q Did you ultimately get into the building?

A Yes. As soon as the Fire Rescue unit gentleman was able to open the door, we went into the building and I just remember an extraordinary amount of heat hitting my face when we walked in

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past the threshold. At that time, I could see a nurse's station in front of me with a number of employees from the nursing home.

Q Okay. And how would you describe the employees --

A As we walked closer to the desk it was somewhat a frantic scene. It appeared there were multiple staff trying to move patients behind the nurse's station. At that time, I asked one of the staff members, who's in charge and they pointed to an African-American gentleman that was at the nurse's station. And I remember walking up to him and the thing that struck me about him was that his scrubs were soaking wet. And I was very concerned, being a Chief Nursing Officer for also the employees, it was very hot in there.

And at that time, I peered around the nurse's station and there was a room behind the nurse's station where I could see they were placing patients and there were fans in that particular room.

Q Okay. Now I assume you didn't have a thermometer with you so you couldn't take the temperature within the facility?

A No.

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Q Was it hotter inside the building or outside?

A I remember crossing the threshold of the door and I remember the heat hitting me in the face; it was definitely hotter in the building than it was outside.

Q Okay. Now as you entered the building and went into the facility, did you observe any patients in distress?

A My first initial assessment of seeing any patients was in a room behind the nurse's station; they were all lined up in wheelchairs. I didn't necessarily go up and look at anybody at that time because we were being directed to go up to the second floor. What I did see were patients that were loosely dressed in gowns, sitting in wheelchairs with these fans blowing on them.

Q Okay. And did you then go up to the second floor and who went up to the second floor with you?

A We did. Tracy, myself and the Fire Rescue crew went up to the second floor. We took the elevator up to the second floor and when we got off the elevator, there again we saw a number of staff that were around right as we exited the elevator,

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and we noticed that the temperature definitely was hotter upstairs than it was downstairs.

Q Okay. And did you then observe some patients then on the second floor who appeared to be in need of immediate medical attention?

A So at that time what happened is, we approached the first Fire Rescue crew that was on scene and they were dealing with a patient who was apparently having a stroke; that's what they told us. They called it a stroke alert. At that time, they also stated to me that we have signal 7s on the floor, and at the time I was not aware of what a signal 7 was and I asked, I said, what does that mean and they said there are people that have expired up here.

At that time, my concern was definitely elevated, so Tracy and I decided to split up at that point. I took the left side of the hall, she took the right side of the hall to start evaluating what was going on in the building and to see if we could offer any assistance to any of the patients.

Q Okay. And in that process, did you determine whether there were patients on the second floor there who needed immediate medical attention?

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A There were definitely patients on the second floor that needed immediate medical attention.

Q Can you describe -- you said you went down one side and Tracy went down the other; what happened after you each went down the hallway evaluating the situation?

A We went door to door. I had never been in the facility before; I was unfamiliar with it, so we went door to door, opened every door to see what type of patient was in each room, how many patients were in each room; whether the patients were in need of immediate medical care or what was going on. So basically it was just a quick assessment up and down both sides of the hallway.

Q Okay. And in that process, did you actually touch some of the patients?

A I did touch a few, more out of just showing them that I was there; that we were going to help them, out of comfort, you know to provide some sense of comfort to these patients.

Q Okay. And were there Fire Rescue personnel also on the second floor at this time?

A There was.

Q That you were interacting with?

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A Yes.

Q And can you describe for the Judge then what happened; what your interactions were with Fire Rescue?

A So at that time we came together; it was a collaboration between myself, Tracy, Fire Rescue and we felt because there was a high temperature in that building as well as we had people that had expired, that it would be to the best interest of the patients in that building to evacuate them from that facility.

Q Okay. And going back to the patients; some of the ones you touched, how would you describe their body temperature?

A They were moist to the touch. You know, like I stated before, a lot of them were very loosely dressed but when I touched them they were moist to the touch, you know, pale, kind of fatigued-looking; that would probably be the best way to describe them.

Q Was their skin hot to the touch?

A It was warm to the touch.

Q Okay. And did you observe any patients who you felt were suffering from the heat-related conditions in the building?

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A I can't answer that.

Q All right. Were you sweating when you were in the facility?

A Yeah, it was very warm in that building.

Q Okay. I think you indicated that there was some discussions amongst you -- who was involved in the discussions about evacuating the facility?

A It was the Fire Rescue crew, myself and Tracy.

Q Okay. At that point, prior to then, had there been any decision to evacuate the building that you know of?

A Not that I'm aware of.

Q Okay. Was there anybody who disagreed with the decision that the patients needed to be taken out of the facility?

A No.

Q Were there others that expressed concerns in this process about the safety of the patients that were in the facility?

A I mean I think everybody was thinking about the safety of the patients in the building at that time.

Q Okay. Are you familiar with the term mass casualty event?

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A I am.

Q And what does that mean; can you explain it for the Judge?

A A mass casualty event is any event where there's immediate threat to; it's harm or threat to human life. There's several levels of mass casualty events but it's when there's harm -- some type of situation that's going to cause harm to a group of people.

Q And is there a term for that at the hospital when a mass casualty event is being called?

A We call it a green alert at our hospital.

Q Okay. And before I go into that, how long were you in the building before a determination was made that it needed to be evacuated?

A I would estimate I was in the building maybe 20, 25 minutes.

Q Okay. And did there then come a time when you actually called a green alert for the hospital?

A So once we made a determination that we were going to evacuate the building, Tracy came back over -- we needed help, so we knew that Memorial Regional was right across, basically a couple of sidewalks -- that we had resources available, that we would help. So Tracy went back to the hospital

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and initiated what's called a green alert. And at that time we had multiple people coming from the hospital over to help us and assist in the evacuation of the patients.

Q Okay. And what was your role then during that process?

A At that time, I was outside of the building coordinating with our sister facilities. I was calling CEOs, the CNOs at the other facilities to see how many patients that they could take to help us -- once we got the patients out we needed to have them go someplace, which our Health Care System was more than capable of helping all of these patients.

Q I may have touched on this earlier, but as you were going through this process, did you reach a conclusion as to whether there patients at risk of physical harm if they remained in the building?

A It was our belief --

MR. SMITH: Your Honor, again this is an opinion, not a fact. It's her opinion and testimony; professional opinion as to whether the patients were at risk.

MR. MENTON: I'm just asking for her mental impressions and what led to her

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decision. I think they're trying to draw a fine line here. I'm not asking her --

THE COURT: She's not been qualified as an expert witness. But I think certainly in her role, which was instrumental in the transfer of these patients that it's all right to inquire what were the basis for that decision so I'll overrule the objection. Go ahead.

MR. MENTON: Thank you.

BY MR. MENTON:

Q Do you remember the question?

A Could you ask the question again please?

MR. MENTON: May we have the Court Reporter read it back because I don't know.

BY MR. MENTON:

Q I'm sorry, I'll go ahead and reframe it -- I think it's going to me more difficult to do that then. Based upon what you had seen and observed on the second floor there, did you believe that there patients that were at risk of physical harm if they remained within the facility any longer?

MR. SMITH: Your Honor, I'm just going to object as to leading; suggestive of the answer -- yes.

THE COURT: Sustained.

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BY MR. MENTON:

Q Could you explain for the Judge what it was that influenced your decision to support the idea of evacuating the facility?

A Knowing what we had come into the emergency room and also the patients that had deceased, it caused us some significant amount of concern that it would be safer to get the patients away from the harm, which was the temperature in the building.

Q Okay. Were you concerned about the patients who were still alive at that point?

A Of course.

Q And we talked a little bit about the mass casualty declaration. Does a hospital have policies and procedures that are applicable in the event of a mass casualty?

A Yes we do.

Q And did you have the authority to call a green alert on behalf of the hospital at that point in time?

A Yes.

Q And you talked a little bit about the implications of that. Can you describe for the Judge -- you talked about the hospital staff coming

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over; what happened then as part of this mass casualty event?

A So the determination was made that the second floor should be evacuated first because it was definitely warner or hotter up on the second floor. So at that time we brought over -- there were paramedics from Fire Rescue; there were paramedics from our emergency room. They went upstairs to start bringing the patients down and initially what we did, our emergency room -- we had several nurses from the emergency room come over and do a triage on each patient as they came out.

We would bring down several patients and there was a sidewalk that runs the length of the building on the side and we would line the patients up there and do a quick triage which is part of our mass casualty event. Any patient that was a red or a yellow went right over to our emergency room to receive care.

The greens, we had set up a parking garage across -- there was like an access road. We had set up a place with fans and water and we took the patients over there so it was very sequential in what we did. We'd bring a group down, triage them and then put the greens into the parking garage and

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that process continued until the building was evacuated.

Q Okay. And I want to come back and just have you elaborate on a couple of points. First of all, you used the terms red and yellows, and I know for you that's a familiar term. The Judge has heard a little bit about it, but she needs to hear about it from a witness. Can you explain to her what that means?

A Yes. So during a mass casualty event, initially what happens is you triage every single patient. Red is immediate; they are critical, they need to have access to care immediately, they are a life-threatening condition. Yellows do need to seek medical care as quickly as possible. They are not -- it's not life imminent at the moment, and the greens are like the walking wounded. They might require some kind of minimal care but usually they can sustain themselves. Black is a dead person.

Q Okay. Now I think you indicated that you brought emergency department staff from the hospital over?

A That's correct.

Q Is it your understanding that all patients in the facility were triaged?

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A That's correct.

Q And based upon that, were there a number of patients that were identified as red and needed immediate care?

A I don't know the number but there were patients that were identified as red.

Q Okay. Were all the reds and yellows immediately transported to the emergency department?

A Yes they were.

Q So they weren't left out on the street in the sun or anything like that?

A No.

Q Okay. First of all, how many Memorial Hospital personnel came over, do you know?

A There were hundreds, there were hundreds.

Q And as a result of that, do you believe that the evacuation process was conducted in an effective manger that protected the safety of the patients?

A Yes.

MR. SMITH: Your Honor, again it's an opinion question and we were told she wasn't going to be offering expert opinions.

THE COURT: Overruled, but watch your leading.

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MR. MENTON: Okay.

BY MR. MENTON:

Q There has been some insinuation that the evacuation process was chaotic. Can you explain for the Judge from your perspective how the evacuation process proceeded and what it resulted in?

A It was a very systematic approach. We dealt with the second floor first; we brought all of those patients down. Then we started to look at the patients on the first floor and bring them out. So it was a very systematic approach on how we were managing that number of patients. You know, they went from the building to being triaged to being given the proper level of care from that point.

Q Okay. And you testified to this earlier, but I think you said you started with the second floor and why was that?

A Because the temperature on the second floor -- it was definitely hotter on the second floor.

Q Okay. And you mentioned that in the garage -- can you explain for the Judge a little bit more what was going on in the garage as it related to the patients after they were triaged and moved to that area?

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A So during this time, several of our hospitals were stepping up to let us know how many patients they could take. We were working on a transportation system with the Emergency Operations Center.

So we took the patients that were greens and put them in the garage across the street where he had fans to cool them as well as cold water. And then from that point, the transportation would pull up and the patients would then go to our sister facilities.

Q During this process, did you consider other options besides evacuation of the entire facility?

A No.

Q And were there any options that you could think of, given the conditions that you were facing?

A No.

Q Now you mentioned earlier that you had learned that there were signal 7s on the second floor. What was the significance of that to you and how did that influence your approach to this whole situation?

A I didn't even know what to think. It was very overwhelming to know that we already had a

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patient that had expired in the emergency room and then we walked into a building and had more people that expired; it was just beyond comprehension. It was beyond comprehension for somebody, a medical professional like myself.

Q And based upon what you saw when you got the facility, were the conditions there part of the thought making process that you had in terms of what needed to be done?

A That was our opinion.

Q And how did that correlate or inter-relate to your knowledge about the patient who did pass away in the hospital and then to the signal 7s in the building?

MR. SMITH: Objection, leading.

THE COURT: Overruled, go ahead.

THE WITNESS: Can you ask me that question again please?

BY MR. MENTON:

Q Yeah, I was just asking how the -- did you draw a correlation or was there a correlation from your view in terms of what you knew about the patients in the emergency department and the signal 7s and what you saw in the building?

A Yes, we were making a correlation.

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Q And what was that?

A That the heat in the building was impacting these people in a negative way.

Q We talked a little bit about you coming over. I don't think the Judge has been to the location, so can you just describe for the Judge the proximity in where the hospital is versus where the nursing home is and how long it took you to walk over there?

A It's next door; it took me maybe two or three minutes to walk over.

MR. MENTON: Give me just a second, Your Honor, I think I'm just about finished. That's all the questions I have, Your Honor.

THE COURT: All right. Cross exam?

MR. SMITH: Yes, Your Honor.

CROSS EXAMINATION

BY MR. SMITH:

Q I'm going to ask you about -- you said that you had received a call from the Administrative Officer. To be precise, you didn't receive the call did you?

A No, Tracy received the call.

Q So you weren't on the call with whoever the Administrative Officer was?

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A That is correct.

Q And you don't know who that Administrative Officer was?

A I didn't ask the name at that time.

Q And you did not review any of the medical records of the three patients that were relayed to Tracy as part of that phone call?

A That is correct.

Q And I think you said you could recall that Tracy told you -- she mentioned 103 degree temperature and 105 degree temperature?

A Yes.

Q And is it your testimony that Memorial Regional Hospital Trauma Center, a very busy ER is unaccustomed to having patients with temperatures of 103 degrees? Is that an unusual occurrence?

A When it all comes from the same facility it would be unusual.

Q Is it -- in and of itself, is a patient with a 103 degree temperature unusual in your ER?

A I'm sure we have patients who come in with 103 degree temperatures in the emergency room.

Q And while I'm on that topic, how much -- I know that people report to you but do you do any hands-on nursing in the emergency department?

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A No I do not.

Q Okay. So over the past year, as far as exposure to the daily operations of an emergency department, you're not somebody who has that kind of first-hand knowledge of what's going on with patients?

A I wouldn't say that's true. I'm in the emergency room pretty much every day. I am still a clinical person; I've done nursing for a number of years.

Q Between yourself and EMS, if there are EMS people that testify it's not unusual to transport two or three patients from the same nursing home facility to a hospital in an evening, who would have more experience with that --

MR. MENTON: I'm going to object, lack of predicate. He's asking her to speculate about EMS.

THE COURT: Overruled, go ahead.

BY MR. SMITH:

Q I'm just asking, between your experience and an EMS first responder's, if EMS first responder say it's not unusual to transport two or three patients from the same nursing home facility to the hospital on a shift, is that -- do you think you

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have a better handle on that or EMS would?
A I think we all have our expertise. I don't know how to answer a question like that.
Q Well do you think that's highly unusual that two or three transports would come from the same nursing facility of an evening?
A Yes, I do.
Q Do you know what the underlying medical condition of any of the three patients that were referenced in the phone call from the Administrative Officer to Tracy Meltzer -- do you know what their underlying medical condition was?
A No, I do not.
Q Do you know what the diagnosis in the ER was?
A No, I do not.
Q So you really don't know anything about those patients other than that they were reported to have temperatures of 103 or 105?
A Yes.
Q And you didn't coordinate with anybody from the facility's staff as to the specific medical history of any of the residents?
A No.
Q Did you consult with the residents'

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medical charts to determine their medical histories or conditions?
A No.
Q You said that patients that you touched, their skin was very moist?
A Some of them, yes.
Q Do you know if a patient that is showing signs of heat stroke -- is their skin typically moist or dry to touch?
A It depends on, it could be either, depending on a situation.
Q Am I right that in when you arrived on scene you were directed to the African-American gentleman who you said his scrubs were soaked; you did not spend any significant time discussing the condition of residents with him did you?
A No, at that time he appeared to be somewhat frantic and all I did is I showed him that we were there to help him.
Q Did you ask him, what do you want to do and how can I help you or did you say, here's what we're going to do?
A All I assured him is, I said we are here to help you.
Q And did he say, well, can you help me do

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X, Y or Z or did he just wander off?
A He actually showed some signs of relief that there was somebody there to help them.
Q You spent about five to ten minutes upstairs looking in patient rooms when you were doing your assessment of the patients, correct?
A Correct.
Q Was it your observation that the facility staff, including the African-American gentleman you talked about was in charge were not assisting in getting patients out of their rooms, it was just you and the Memorial Staff and EMS?
A No, I felt like the employees actually -- they cared about those patients. They were trying to do whatever they could to help.
Q And I apologize, I misunderstood. I thought you were suggesting otherwise and you didn't mean to suggest that?
A No.
Q Do you know if the African-American gentleman that was in charge participated in your discussions about evacuating residents?
A He did not.
Q Am I correct you did not take a census of how many residents were to be evacuated?

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A No.
Q And you did not make the determination if any of those residents had morning medications that they needed to take before being evacuated?
A No.
Q And you did not make any particular arrangements for people that may have needed some kind of morning meal that was important to their routine; you didn't determine that either?
A No.
Q And I understand, your motive was I just want to get people out of the building, right?
A We just wanted to remove them from the immediate harm.
Q And in doing that, you didn't gather that kind of information; the patient's medical record?
A No.
Q And then would you agree in an orderly evacuation you might match a person with their medical record or find out if they need any meds before you took them out of the building?
A In most mass casualty situations, the goal is to remove the immediate harm and then start matching and figuring out what the people need.
Q And so that determination of the mass

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casualty incident kind of drove your decision not to get medical charts and make those kinds of decisions?

MR. MENTON: Objection, lack of predicate. That's not consistent with the prior testimony.

THE COURT: What's your response, Mr. Smith?

MR. SMITH: I thought it was very consistent with what she just said. I thought she just said that in a mass casualty event you don't do this, and so I'm asking -- so did the determination of a mass casualty event what drove those decisions not to get a medical record, not to get morning meds; that's all I'm trying to find out.

MR. MENTON: Judge, I think the testimony was that in a mass casualty event, there's no affirmative decision not to do it. The decision is to get the people out of there but it's not an affirmative decision to get medical records; that's done later. There's other witnesses that are going testify about some of that. But the way that he framed the question seemed to imply an affirmative decision not to do something.

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THE COURT: I'm going to overrule; I think the witness can explain. Go ahead, sir.

BY MR. SMITH:

Q I just was asking -- I understand there was -- in your mind, an urgency to move the patients out of the building, is that correct?

A That's correct.

Q And the determination that it was a mass casualty incident and you were going to follow a mass casualty procedure would have drove the decisions that you weren't going to take time to get a medical chart, make sure the morning meds – had, make sure that people who might have needed some kind of morning nourishment; that's what drove those decisions?

A That is correct.

Q And you didn't consider any other option other than a mass casualty incident, is that right?

A The group of us determined that because of the heat in the building, the best option was to remove the residents from the facility --

Q I'm just trying to build a timeline. I wanted to know -- it was before sunrise?

A It was.

Q And you don't remember from the time you were in the building whether windows were open or closed at the facility?

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A I don't recall.

Q You said the side door when you went there was not open because the EMS opened?

A Yes, first was the front door; the front door of the building was locked and then we approached around the side. It's the side of the building where it has the glass doors and that's where Fire Rescue was to be able to go through the door.

Q And when you say that, it leaves an impression; did they take an axe and smash through or did they just pull those doors open?

A I believe there were like breakaway doors; most of those doors are designed that way. They were able to pull the door and open it.

Q But when you say breakaway, did they like pull it off its hinges?

A I'm thinking back -- all I know is they were able to open the door; I can't exactly tell you how they did it.

Q And that side door stayed open once the evacuation process began?

A Yes.

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Q When you were talking and describing what is a mass casualty event, is that based on the Memorial Regional's internal policies and procedures or is that based on like the Fire Rescue protocols for mass casualty?

A It's based on our policy for mass casualty events.

Q And our being?

A Memorial Health Care System.

Q You said -- Mr. Menton asked you some questions about -- knowing what I knew about the other patients that you had reported -- I just want to be clear what you knew about the patients that were coming to Memorial before you walked over there was that there had been three patients you don't know exactly what their medical condition was. Tracy told you had they high temps and that you don't even know which day they arrived in your ER?

A I do know they arrived during that night in our emergency room.

Q So all three had already been transported that night, meaning -- when you describe night; is that after 7:00 p.m. until 7:00 a.m.?

A I can't tell you what time they arrived but it would have been sometime between the 12th and

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the 13th.
Q And that's what I'm getting at. Could it have been included in that three patients had arrived and that one of them was from midday on the 12th and the other two were in the early morning hours on the 13th?
A I don't know the exact time the patients arrived.
Q And it gets into a day thing; you don't know whether it was the 12th or 13th?
A I'm sorry, you'll have to clarify.
Q You don't know whether the patients arrived in the ER on September the 12th or September the 13th?
A I don't know if it was before or after midnight.
Q You said that patients -- in response to a couple of Mr. Menton's questions, you said that the patients who were identified and triaged as being red were immediately transported, is that fair?
A Yes.
Q And you said that you were maybe in the building for 30 minutes; can you tell me what time it was when they were being immediately transported?
A I did not pay attention to the time; there

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were too many other things going on.
Q Would it have been by 7:30 -- had all those patients been already transported?
A I can't answer that.
Q Am I correct that you do not recall how long residents were outside in front of the building along the sidewalk until the decision was made to move them to the parking garage?
A Can you say that question again please?
Q You do not recall how long residents were outside in front of the building along the sidewalk until the decision was made to move them to the parking garage?
A I don't know the exact time.
Q And you can't estimate that either?
A No.
MR. SMITH: Thank you.
THE COURT: Any redirect?
MR. MENTON: Yes, Your Honor, just a few questions.

REDIRECT EXAMINATION

BY MR. MENTON:
Q Ms. Frum, let me ask you first of all, Mr. Smith asked you a couple questions about the facility's comprehensive emergency management plan.

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Given the situation that you were facing, did you feel that you had time to go consult with the facility's comprehensive emergency management panel?
A No.
Q And why not?
A It was an extreme situation; I didn't have time to stop and ask for a plan.
Q Okay. Now as it relates to the medical records, you were asked a number of questions about the medical records. Do you know whether in fact medical records were transferred over to the hospital as part of the evacuation process?
MR. SMITH: Object to the form, leading and there's a good meaning for that objection because it's leading.
THE COURT: I don't know how that's leading. Were they transferred doesn't suggest an answer. Overruled, go ahead.
MR. SMITH: Well, the leading part, Your Honor is, were they transferred as part of the evacuation process? I don't get -- to the hospital as part of the evacuation. I don't get to recross on that an it's accurate that's why it can be leading.
MR. MENTON: Well, you opened the door

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with the questions with regard to, did you or did you not bring medical records and medications that these patients may need or may need nutrition, so overruled.
THE COURT: Go ahead.
THE WITNESS: The medical records were obtained from the facility and brought over to Memorial Regional Hospital.
BY MR. MENTON:
Q Do you know when that occurred?
A It was during the time that we were evacuating patients from the building.
Q Okay. And as part of that process, were there efforts to match up the records with patients?
A Yes there were.
Q Now you were asked several questions about the African-American nurse who, I think Mr. Smith characterized as being in charge. What was your perception of the leadership within the facility when you got there?
MR. SMITH: Your Honor, again this is an opinion question. It's asking your opinion as to the leadership.
THE COURT: That doesn't require any expertise. Overruled, go ahead.

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THE WITNESS: The person that I was directed to who was in charge was the gentleman in the blue scrubs; he was an African-American gentleman, that was the only leadership that I saw or spoke to at that particular time.

BY MR. MENTON:

Q And did you perceive that there was a plan that the facility had to deal with the situation that you encountered?

MR. SMITH: Object to lack of predicate for any -- how would she whether there's a plan?

THE COURT: Sustained.

BY MR. MENTON:

Q Did the nurse in charge or anybody from the facility that you talked to indicate to you that they had a plan to deal with the situation and the extreme circumstances that you encountered?

A No.

Q Did the African-American man that Mr. Smith asked you about -- did he ever indicate to you in any way that patients were fine and that they didn't need to be moved out?

A No he did not.

Q Was it your impression that you agreed

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with that decision?

A After that point I didn't talk to him again.

Q Now Mr. Smith also asked you a number of questions about the discussion that you had with Tracy that led to the two of you going over there in the early morning hours of September 13th.

Had you in your professional experience ever been alerted before about a situation where there were multiple patients that came from the same facility with temperatures in excess of 103 degrees in the scope of one shift like that?

A No.

Q And was that something that you discussed with Tracy, the significance of that?

A Yes, as I stated before, it was a red flag for me.

Q Mr. Smith asked you about whether you considered any options other than the evacuation of the facility. Have you ever second guessed the decision that you made or do you believe there's any reason to second guess the decision you made?

A I do not.

MR. SMITH: Objection, leading.

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THE WITNESS: I believe it was the right decision.

MR. MENTON: I'm sorry, I didn't hear your objection.

MR. SMITH: I'll withdrawal the objection as leading.

BY MR. MENTON:

Q And why would you say that?

A When we saw what was going on in that building and I knew there were people that had died, there was no other option for us. We needed to get the residents out of there and get them to a place where we could take care of them.

MR. MENTON: That's all the questions I have, Your Honor. Thank you.

THE COURT: Ms. Frum, the Court has invoked the Rule of Sequestration which means we were asking the witnesses who testify not to go out and discuss your testimony or the questions asked with other folks that are on the witness list that are intended to come in and testify later. We're hoping to get their honest impression and their best recollection without them trying to anticipate what the questions might be or what they think the

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answers should be, all right.

THE WITNESS: Understood.

THE COURT: Thank you.

MR. MENTON: Your Honor, our next witness is to be here for 2:00 so we have a little bit of gap there. I suggest that we would take a lunch break and we will call the proper cast.

THE COURT: That's fine. We'll be in recess until 2:00.

(Thereupon, the Court was in recess.)

THEREUPON:

RANDY KATZ, M.D.

a witness, having been first duly sworn, testifies as follows:

THE COURT: Dr. Katz, how do you spell your last name?

THE WITNESS: K-A-T-Z.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. MENTON:

Q Good afternoon. Can you please state your name?

A Randy Katz.

Q And Dr. Katz, can you please tell the Judge what your profession is and where you work?

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A I'm a board-certified emergency room physician and I currently work at Memorial Regional Hospital.

Q And what is your role at Memorial Regional Hospital?

A I'm the Chairman of Emergency Medicine.

Q And how long have you been the Chairman of Emergency Medicine at Memorial Hospital.

A Approximately eight years.

Q And do you also have a role with the Hollywood Fire Rescue Department?

A I do.

Q And what is that role?

A I'm the Medical Director for the City of Hollywood Fire Rescue.

Q Can you summarize for the Judge what your job responsibilities are as a Medical Director for Memorial ED?

A Basically supervise physician activity in the ER, develop protocols, coordinate care with nursing and manage Human Resources with our physician group.

Q And what is your role with Hollywood Fire Rescue?

A My role essentially is to supervise the

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medical care and medical protocols with the agency.

Q Can you summarize for the Judge what your educational background is, specifically your medical training?

A Well, I went to the University of Florida for four years and received a Bachelor's Degree in Psychology and then I attended Nova Southeaster and received a degree in medicine. And then I did a five year residency program in New York City, a one year internship at Maimonides in Brooklyn and I did a four year at Miami (phonetic) internal medicine and emergency medicine program where I received training in both specialities and I'm board-certified in both specialties as well.

Q And what were those specialties?

A Internal medicine and emergency medicine.

Q And I know you talked about your experience with Memorial Hospital; can you summarize for the Judge your professional experience outside of Memorial Hospital?

A As far as?

Q Just after you graduated from medical school and how you ended up at Memorial.

A So I graduated residency in 2003, 2004 and started working immediately with -- of South Broward

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as an ER physician at Memorial Regional Hospital and I've been there in that capacity both as an ER physician and now as a Chairman of the department the past 14 years.

Q Okay. Dr. Katz, I want to turn your attention to the events after Hurricane Irma passed through this area. And I want to start first with a patient that we have been referring to in this proceeding as patient number 11. Just to preserve confidentiality, we're using patient numbers. This is a patient that presented at the emergency department on the early afternoon of September 12th from the Hollywood Hills Rehabilitation Center. Do you recall that patient and do you have involvement in the treatment of that patient?

A I do recall the patient and I was involved in the care of that patient.

Q Do you remember why the patient was brought to the hospital?

A I believe he was brought to the hospital for respiratory distress and altered mental status.

Q All right. And do you recall whether the patient was running a temperature when he presented?

A He had an elevated temperature of I believe of 104 degrees.

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Q As part of your treatment process, what was the patient's condition?

A He was in respiratory distress, not really responding to verbal stimuli. He was tachycardic; his heart rate was elevated and on presentation that's essentially the picture that I would --

Q And do you recall how the patient came to the hospital?

A He came by Fire Rescue.

Q And as part of your involvement with the patient, were there any concerns expressed about the conditions of the facility from which he came?

A So the Fire Rescue Agency of Hollywood, Fire Rescue brought the patient and transported him to our ER. There was a discussion with the Fire Rescue crew about the lack of air-conditioning in the facility.

MS. SMITH: Your Honor, I would just note that hearsay made per the statement, I know -- would you like us to mark the ones -- move out?

THE COURT: Yes, please. You need to do whatever you need to do to preserve your record. Obviously, as I indicated in the beginning of the proceeding, in a Division of Administrative Hearings Proceeding, hearsay is

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inadmissible but it will not stand for a finding of fact without corroboration, but obviously we don't know if or when that corroboration is going to come in, so it will common -- and I'm sure in the course of this Hearing for hearsay to be allowed but it may be of -- or a later date than what other testimony is provided.

MS. SMITH: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. MENTON:

Q Dr. Katz, I think you were talking about some interactions you had with the paramedics that brought the patient into the facility, and I don't know if you've completed your answer.

A There was some concern about the lack of air-conditioning in the facility and --

Q And based upon your review of the patient, do you recall; was he verbal or nonverbal, or were you given any information about that?

A From my recollection, he was not able to give me much information. There was really no conversation between myself and the patient.

Q What did your evaluation of the patient include?

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A Physical exam, diagnostic studies, treatment and I believe I spoke with one of his family members who lived out of state; I believe it was his daughter. After I evaluated him and ran some diagnostic tests I spoke with her over the phone.

Q And what were your findings based upon your evaluation?

A Other than that the patient was critically ill; clearly had pneumonia on his chest x-ray. He was dehydrated. He had kidney failure, if I remember correctly and had a couple pictures suspicious or suggestive of severe sepsis.

Q And what is sepsis; can you explain for the Judge what that is?

A Sepsis is a severe infection that involves bacteria or other organisms in the bloodstream disseminated throughout the body.

Q Do you remember what the patient's temperature was when he was in the ED?

A I believe it was 104.

Q Do you remember any of the vitals or blood work that were taken of the patient?

A I do. He was tachycardic; his heart rate was elevated, I believe between 130 and 150,

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somewhere in that range. He had an elevated lactic acid of 6-point something, which was highly suggestive of severe infection or other disease -- for that matter. And he also had kidney failure. His BUN and creatinine level was suggestive of kidney failure.

Q Okay. Now as part of your practice, do you have occasion to see patients who have suffered heat stroke?

A I have.

Q And how often does that occur?

A Depending on the time of year, sometimes it can happen on a weekly basis but typically it occurs around the summer months; people that work outside.

Q And based upon your review of patient number 11, did you rule out whether heat stroke was involved as part of the cause of his condition?

A I did not rule it out based on his presentation.

Q And why is that?

A Because some of the signs and symptoms, as far as a clinical picture and a history from the paramedics, that condition potentially could be a differential diagnosis of the patient and

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contributing to his condition.

Q Were you able -- based upon the information that you had available, to draw a conclusive diagnosis as it relates to heat stroke or not?

A No, I think my primary diagnosis was severe sepsis.

Q And what is a differential diagnosis; you used that term earlier.

A Without any definitive diagnosis you typically develop a list of potential diagnoses with a priority -- usually the most likely at the top of the list and then the least likely at the bottom of the list. Many times, you can have five or six different things in a differential diagnosis and sometimes there's multiple diagnoses in a primary secondary -- diagnosis as well.

Q And can you describe some of the treatments that you ordered for the patients?

A Yeah, I believe we ordered IV fluids, some ice packs for the elevated temperature, IV antibiotics and oxygen.

Q And why did you order ice packs?

A His temperature was elevated, extremely elevated at 104 degrees.

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Q What about Tylenol. I think you said that you ordered Tylenol. Does Tylenol; in your experience, is that something that can assist with patients who have elevated temperatures?

A Sure, it does lower it down.

Q And is that true with patients who may have been exposed to heat in their environmental conditions?

A Sure.

MS. SMITH: Your Honor, I object to this. In the doctor's deposition, he said that he didn't know what the effect of Tylenol was.

MR. MENTON: That's cross examination, Judge, if she thinks he said that because I don't think that's an accurate statement.

THE COURT: Overruled, go ahead.

BY MR. MENTON:

Q Dr. Katz, did you --

A Tylenol does lower temperature.

Q Okay. We talked about the differential diagnosis; why was heat stroke part of the differential diagnosis for this patient?

A Because there's an overlap and in it's in the clinical findings and taking the history into consideration, there's an overlap between some of

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those findings and the diagnosis of stroke or exhaustion.

Q And when you say history, what do you mean by that?

A The fact that the temperatures were extremely elevated outside and the facility didn't have an air-conditioner at the time, and apparently there's more concern because the temperatures inside the facility were elevated; that would set up the environment potentially for heat exhaustion or heat stroke in a patient with defined --

Q Now we talked a little bit about heat stroke and heat exhaustion; can you describe for the Judge what some of the signs are and symptoms are of patients that are suffering heat exhaustion or heat stroke?

A Sure. Initially with mild heat stroke or heat exhaustion, you may -- muscle cramps.

MS. SMITH: And, Your Honor, at this point I'm going to object. I know he's a doctor, but this is another witness that we were -- he was only going to be a fact witness to talk about what he observed at the scene and what he physically observed, not to talk about expert opinions on what heat stroke is and what it

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looks like and symptoms and all those types of things -- expert opinions, not observations. Like -- said twice to me, at the beginning and at the end of the deposition and I shortened my questions in the deposition based upon that representation.

THE COURT: Mr. Menton?

MR. MENTON: Your Honor, he was asked a lot of questions about the patient's condition. He's already testified, and he did in his deposition very clearly, that that was one of the concerns that he had. My question is simply asking him, what was the basis for those concerns? This is not somebody who's a hired expert that was being brought in for expert opinions. I think we're getting into a very fine line about what's fact and what's opinion.

We haven't hired Dr. Katz to come in and give expert opinions. We brought him through a Subpoena to have him testify to what he saw and the conditions that he saw that led him to the differential diagnosis that he's already talked about.

THE COURT: Then I think that the doctor should give me his testimony to what he

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observed. If you want to ask follow-up questions based on those observations; what did you conclude, that's fine, but a general explanation with regard to how do you identify heat stroke, how do you identify sepsis, how do you identify X, Y and Z is probably not appropriate with this witness.

MR. MENTON: Thank you, Your Honor.

BY MR. MENTON:

Q Dr. Katz, based on your evaluation and treatment of patient number 11, was he demonstrating signs that were consistent with heat stroke, heat exhaustion or exposure to heat conditions?

A So some of his signs and symptoms could be suggestive of heat stroke or heat exhaustion, yes.

Q And I think you talked about earlier that the patient had pneumonia. Because he had pneumonia, did you rule out that he could also have been exposed to conditions that the heat exhaustion contributed to that?

A They're not mutually exclusive diagnoses; they both can exist at the same time.

Q Now you testified earlier that when the Fire Rescue brought this patient in, they reported that the facility had no air-conditioning and that

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the conditions in the facility were hot. What did you doing after being told that?

A My primary concern was managing the patient in addition to the other patients I was taking care of. Once we had a conversation with family and stabilized them as best we could, we did speak with my Charge Nurse, Cindy (phonetic), spoke with our Social Worker who was in the department at the time and asked her to reach out to the nursing home to find out if there were any issues with the air-conditioning and if there were any other patients that potentially had any issues. We did have a command center set up in the hospital.

MS. SMITH: Your Honor, at this point -- I was trying not to interrupt, but I will note the hearsay. I was waiting for him to stop but that's what someone else told someone else told someone.

THE COURT: It's okay. Go ahead.

THE WITNESS: So we discussed the issue with our Social Worker and asked her to reach out to the nursing home and to essentially inform the command center of the situation, which I'm not sure if that information was brought anywhere. I assume it was but I cannot

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verify that.

BY MR. MENTON:

Q And do you know what ultimately happened with this patient?

A I believe he passed away a week or two after the initial treatment that he got.

Q Okay. Let me move next to the events of September 13th. Can you describe for the Judge your work schedule during this immediate timeframe after the storm and when you were scheduled to work at Memorial on September 13th?

A So I actually spent the weekend at the City of Hollywood Command Center which was approximately half a mile from the hospital. I slept there for two days and immediately on Monday morning responded to the hospital at 7:00 a.m. and then once there was an all-clear -- administratively and also saw patients on Monday.

I wasn't scheduled to work clinically but I was there all day to the late hours of the evening. I was scheduled for a clinical shift on Tuesday which I showed up to. It was that day I treated Mr. Pinau (phonetic) and again --

Q Excuse me just a second, if we can just -- patient number 11 --

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A I'm sorry, patient number 11.

Q Sorry.

A And essentially worked the clinical shift that day for most of the day, went home, probably 6:00 or 7:00 that night and was supposed to be off of work on Wednesday, took the day off. I had been there since Friday so I essentially was out of my home for four days working, and Monday morning I received a call --

Q You mean Wednesday morning?

A Wednesday morning, sorry.

Q Wednesday the 13th?

A So I went home Tuesday night; I slept a good part of the night and received a call early morning at approximately 6:30 from my Nursing Director, who informed me that there was a green alert that had been activated and that they were evacuating the nursing home next door to the hospital and that he thought it would be a good idea if I came in even though I wasn't scheduled to work that day.

Q Okay. Were you told anything about whether there were patients from the facility in the emergency department at that time?

A At the time I didn't get much information

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other than knowing my duty that if my Nursing Director called me at 6:30 to let me know that -- I knew I had to get to the hospital so I immediately got dressed and jumped in my car and basically came to the hospital immediately. I was there sometime between 7:15 and 7:30 I arrived.

Q And Dr. Katz, you mentioned a minute ago a green alert, that you were advised by your Emergency Room Director -- Judy Frum has already been here and talked a little bit about a green alert so you don't have to go into a great deal of detail. But what is a green alert from your perspective?

A It's a mass casualty incident. It allows us to mobilize resources around the hospital or in the local area to respond to a mass casualty incident and have enough resources to manage the issue.

Q So at the time that you received the call in the early morning, you were advised that a green alert had been called?

A That's correct.

Q And what did you do when you arrived at the hospital?

A I typically parked in the physician's parking garage right across from the back entrance

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of the hospital, which is the EMS ramp and to the back door that goes into the hospital. So I parked my car, I ran into the back of the emergency department, which is the EMS entrance and saw a number of my physicians managing patients. I vividly remember watching them zip up a body bag and then I saw a couple of my physicians who were very busy taking care of patients, and my Nursing Director looked up to me and said, it's really bad, you know, we have a lot of patients here. Instinctually, I knew that if things were bad in the E.R. -- I didn't know how bad things were down the street at the nursing home. I had been there for 14 years; I know where the nursing home is, so I immediately ran down the street to the nursing home to see if there were more critical patients or if my services were necessary over there.

Q And based upon that, when you first came into the emergency department, did you understand that a lot of the patients that were being taken care of there were from the facility?

MRS. SMITH: Your Honor, two objections, one leading and number two lack of predicate. I think the witness is trying to establish a predicate and define that he doesn't know where

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those patients came from. He didn't review the records. He was only in the ED about one to two minutes and he never treated -- the patients, he was just guessing -- come.

BY MR. MENTON:

Q Let me see if I can reframe the question. Why did you decide to walk over to the Hollywood Hills Rehabilitation Center from the emergency department?

A Because I was informed that there was a green alert and when I walked into the emergency department there were a number of patients being care for simultaneously that I assumed were from the nursing home and based on that assumption, I didn't know how many critical patients there were at the nursing home and whether or not my services were needed there so my instincts took me over to the nursing home.

Q Okay. And can you describe for the Judge then what you saw when you went over to the nursing home?

A When I got over there, there were a number of people; a lot of hospital staff, a number of EMS units there on scene. There were anywhere from five to ten patients in wheelchairs right outside the

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entrance that were actively being evacuated and a handful of staff members from the nursing home outside helping their patients.

Q And how long did it take you to get from the emergency department at Memorial over to the Hollywood Hills Rehabilitation Center?

A Less than a minute.

Q And can you describe for the Judge then what you did and what your role was?

A So, in any of these incidents, usually you need a command center and somebody has to coordinate logistics and patient care.

So I immediately asked who's running the MCI and that's when I ran into Judy Frum and one of our Battalion Chiefs for the City of Hollywood, Chief Ladwick was on scene with her. They had already starting banding patients with color bands and had a running list of patients with numbers so we knew how many patients were currently being evacuated.

And as I was there, patients continued to -- we had a number of people inside the nursing home evacuating -- actually removing the patients from the nursing home and as I was reviewing the logistics of the evacuation of where

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we were going to put people, things were already moving.

Q And you mentioned Judy Frum, who has already testified in this proceeding; do you know Judy and have you worked with her in the past?

A Yes, I know Judy Frum. I have worked with her for a number of years at the hospital.

Q And were you interacting with her then on that morning during this process?

A Yes.

Q And you mentioned Chief Ladwick was also going to testify in this proceeding; are you familiar with Chief Ladwick?

A I am.

Q And were you interacting with him during the course of these events?

A I was.

Q At any point during the course of your involvement, did anybody ever indicate to you that there wasn't a need to evacuate the facility?

A No.

Q And based upon what you saw in your involvement, did you think that there needed to be an evacuation of the facility?

MS. SMITH: And, Your Honor, I object to

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that. It's one thing if he wants to ask him if anyone told him or if he told anyone that that's an observation or something that he did, but to ask him, does he have an opinion as to whether or not he thinks the evacuation was necessary, that's an expert opinion.

MR. MENTON: Again, I'm just asking what his involvement was and maybe I can reframe it and can we can streamline this.

BY MR. MENTON:

Q Dr. Katz, did you ever express any concerns that the evacuation needed to stop and it was being done precipitously or unnecessarily?

A I mean based on the information that I was given when I arrived, at that time there was a fair amount of information that existed that in my mind warranted an evacuation.

Q Okay. And what was some of that information --

MS. SMITH: And, Your Honor, he answered a different question. I move to strike. He just gave the opinion and then again he asked, did you ever express any concerns that the evacuation needed to be stopped and he basically answered the question instead of

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saying yes or no whether or not he had expressed the concerns -- he said, in his opinion.

THE COURT: Overruled.

BY MR. MENTON:

Q And Dr. Katz, I think you said in your answer a minute ago, based upon the information, and the next question I had was, you know, what was that information? What was it that was communicated to you as the Medical Director of the Emergency Department on the scene at that time?

MS. SMITH: And I'll just the hearsay.

THE WITNESS: I was told that there were two signal 7s on the second floor which are essentially deceased patients. The Battalion Chief was actively communicating with units in the building who clearly mentioned that the temperatures were clearly elevated upstairs. There were a number of patients coming out of the nursing home.

Unfortunately, a lot of the patients have dementia or Alzheimer's so on the surface it's very hard to tell who's sick, who has altered mental status, so really it came down to going through all of these patients to decide who to

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evacuate immediately to the emergency department and really trying to color -- the patients so that we knew who needed to be evacuated and cared for immediately and who had gone to be re-triaged and assessed and evacuated --

BY MR. MENTON:

Q And I want to go back and unpack that a little bit because there's a lot of information that you put in there. First of all, by the time that you go there and from the information that you were given, had patients already been transported from the facility to the Memorial Regional Emergency Department?

A Yes, patients --

MS. SMITH: And, Your Honor, this is an objection to hearsay because it was before he got there --

MR. MENTON: We're going to bring on the witnesses that were there.

THE COURT: That's fine. You can have a continued objection to hearsay.

MS. SMITH: Okay, I'm sorry; that's why I asked.

THE COURT: That's okay.

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MS. SMITH: Thank you.

THE WITNESS: Yeah, there were a number of patients and that information was given to me when I arrived -- that there were a number of patients that were brought over that were in critical condition to the emergency department. That was given to me both by Judy and by Battalion Chief Ladwick.

BY MR. MENTON:

Q And you mentioned the color coding and Judy has already talked about that a little bit, but just from your perspective, what do you understand that color-coding process to be and the triage process; what was your involvement as it relates to that?

A So I didn't actually place bands on patients and run through from room to room but essentially the patients are banded with either a black band, a red band, a green band or a yellow band. And based on that color, we decide what to do with the patient.

Typically the black band was put on a deceased patient who has no chance of survival. A red band means that the patient needs to go for immediate attention of health care. A yellow band

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is for an intermediate and a green band means that the patient is stable and can wait for reassessment.

Q And when you got to the scene -- when did you get to the scene roughly?

A 7:30.

Q And at that point in time, was the banding process and the triage process underway?

A Correct, it was already underway.

Q And who was doing the triage? We've talked about triage -- what does that mean in the context of a green alert?

A Basically assessing for mental status, depending on the type of scenario and if it's a mass casualty involving let's say firearms, you would look for patients that are hemorrhaging. In this scenario, we've got a heat issue, an environmental issue and trying to decide who's been affected by it and basically assess them both physical exam, mental status exam and just do a very quick cursory assessment to decide who's sick and who's not.

Q You said that the heat conditions -- did you actually go into the building at some point?

A I was in the very entrance of the lobby; a few feet in and that's about as far as I went.

Q And can you describe for the Judge what it

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was like in the building and particularly as it compared to outside?

A Yeah, I think the inside of the building was definitely warmer than the outside. This was 7:30 in the morning and it happened to be a very warm day to begin with.

Q Okay.

A So there was definitely a temperature difference; I can't quantify it, but it was definitely warmer outside.

Q And based upon -- I know you only went in to that limited degree, but when you went into the building, how did that impact upon your view of what was going on at the scene and what was happening?

A I think it supported the decision to evacuate the patients.

Q And why is that?

A Because it was a facility with elderly patients who have multiple medical problems and it was extremely hot outside and it was hotter inside the facility and there were a number of patients that were critically area, including two patients that are deceased upstairs and the patient that I took care of the day before -- that information.

Q Now you talked about the triage and the

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evacuation process; explain for the Judge what your role was as that process continued?

A So a lot of the banding and evacuation of the banded critical patients had already taken place. At that point, the sheer number of patients became an issue and our first goal was to accept the patients so we immediately established an area to -- our patients which was under the parking garage in a shaded area where they wouldn't receive any further sun exposure. So we moved them all across the street.

We put all of your equipment there to check vital signs, blood pressure cuffs, glucometers. We put a team of nurses from the hospital in the parking garage where we'd meet those patients as they came out. If they were green or yellow, we would move them across the street. Any red patient, I instructed them that the patient's banded red are to be immediately taken to the emergency department for a physician to evaluate them.

Q And based upon your involvement that morning, were there patients that were banded red and take to the emergency department?

A There were.

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Q And do you have a tally of that; do you have a number?

A I don't know off the top of my head but I could guess about 20.

Q And that's during the time that you were there, is that right?

A Probably a combination of the time I was there and the time before I got there as well.

Q And what happened with the greens and the yellows; I think you said that as they were triaged?

A Yes, so we moved all of them across the street. I became very involved with logistics and trying to get a lot of these patients to a safe environment. One of the issues that we had at the time was that our hospital was over capacity because of the hurricane. Our emergency has 62 beds and we had over 100 patients in our emergency department. So I knew there were some capacity constraints and I knew we had a number of hospitals in the area, and my thought was, take the patients that are stable and try to get them to -- essentially break them down into smaller groups and remove them safely to another facility or if they were going to keep them there and in the end -- we had a number a number of patients that we ended up taking to the auditorium

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in order to keep them safe and find a place for them to go.

Q So were you involved in helping to find other hospitals to treat some of the patients that were being moved in?

A Yes.

Q And just generally, how many patients were taken from the facility to other hospitals, do you know?

A I would say roughly 70 patients, we evacuated to other hospitals; that would be a guess.

Q Okay. And then the patients that did not have to go to an acute care hospital; what happened with them?

A Any patient that was green, we tried to evacuate either to another hospital and in the end we were left with a number of patients that were still green that we had made a decision to put in the auditorium. That was the only space we had really to fit that many patients and I believe we moved somewhat along the lines of 30 patients over to our auditorium where they were given food, water and reassessed and from there a lot of family members were arriving and some of them were reunited with their families and then either taken home with

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their family if there were well enough to go home or moved to another facility.

Q Okay. We heard earlier today -- I know that you weren't here, but there was a reference to that process as being chaotic. Is that an accurate description from the involvement that you saw?

A I wouldn't say chaos I'd say maybe controlled chaos. Anytime you have 150 people they're trying to rapidly remove from a building, it does get stressful.

I would say that the people that were there before I got there did a great job of activating the MCI the way it should be activated and started the triage process the way it's supposed to be started, and I think within a few hours we had all those patients and taken to a safe place, an air-conditioned facility with food and water and over the course of the day they were either reunited with their families or they found another facility to move them to.

Q Okay. What about with respect to the medical records; let's talk about that. Can you explain for the Judge how the medical records were handled and how that relates to the MCI protocol code?

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A The initial triage is really just -- patients -- we would look at the medical records in the initial triage phase and then we move to secondary triage; we assess patients. While they were in the parking garage, we asked the staff to bring the charts or paper charts that are on these rolling cards; so we asked them to move those charts and bring them across the street so that as we moved patients to different facilities we can marry the charts to patients.

Q Okay. And during this process, can you describe for the Judge what the patient's reactions were from when you saw them?

A Again, a lot of the patients were either demented or had Alzheimer's; clearly a lot of them were dehydrated. None of them were overly stressed or anxious, but I would say the opposite; they were more lethargic and drowsy and I know a few times I had to -- people had their heads down and I had to go and just make sure that they were awake and still breathing but a lot of times they were just exhausted, dehydrated and altered. It was more of that than just screaming and yelling and stressed.

Q As you look back on this process, was there anything that you've identified that was done

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improperly or there was any threat or risk to the patients that you saw in the evacuation process?

A I think the MCI was appropriate; I think it was very well organized.

Q Now throughout this process, were you interacting with the Fire Rescue and the Memorial Health Care staff?

A Yes.

Q And based upon your involvement, were they providing appropriate care and assistance as needed given the circumstances?

MS. SMITH: Your Honor, these are all expert opinions.

THE COURT: Sustained.

BY MR. MENTON:

Q Based upon your involvement in the evacuation process, was there anything that you saw that gave you concern about how the evacuation process was being handled by your Fire Rescue or by the Memorial Hospital staff?

A No.

Q During the evacuation process -- I think you mentioned this earlier, as the patients went to the garage, were they provided with anything?

A Yes.

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Q And describe for the Judge what that was.
A They were basically given water. Some of them -- I do know that there were two patients through the secondary triage process that were identified initially -- I don't know if they were green or yellow patients but they became red patients, so a lot of reassessment was done at the time and that was a brief period of time of about 30 or 40 minutes while they were in the parking garage before we evacuated everybody.

So there was one patient who had a slightly low blood sugar that was moved to the ER and another patient who had oxygen saturations that were low -- I don't remember exactly how low but I asked them to upgrade the patient to a red and move the patient to the ER.

Q And we talked a little bit about the green patients and the triaging of that. Why were the green patients evacuated from the facility?
A Because anytime a harmful environment is identified, the goal is really to remove everybody from the environment. Without knowing the issue, really the goal is to remove everybody and get them to safety.

Q Was it surprising to you to have green

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patients during an MCI?
A No, not at all.
Q And why is that?
A It's very common to have a lot of green patients. It depends on the size of the crowd, it depends on the MCI but it's not uncommon to have a number of green patients in an MCI.
Q And you talked a little bit about patients in the garage -- how many of the patients in the garage were red patients?
A Initially none.
Q Except for the one that you mentioned?
A Correct.
Q So there were no other red patients in the garage?
A That's correct.
Q And as the patients that were in the garage, you talked about kind of a re-triaging; can you explain for the Judge what that was and what the purpose of that was?
A Yeah, so once you label all the patients and remove them from the environment, the next goal is to perform a secondary triage, which essentially includes vital signs, glucometer, blood sugar, checking oxygen saturation; a more thorough triage

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than the primary triage was performed with the color assessment. And that's what we did. We had a number of nurses and staff from the hospital in the garage with us to perform those duties.

Q And then you mentioned that there were some patients that were moved to the hospital auditorium at some point; who were those patients and what happened with them then and why were they moved to the auditorium?
A So we were about 30 minutes in the parking garage where when we had basically city buses and some EMS vehicles pulling up to basically count patients, keep track of who's going where and place them with a nurse in the bus, so we had a nurse go with each group of patients.

Once we got about three or four vehicles filled and transported and now we're 45 minutes, 50 minutes to the period of time in the parking garage, I'm very familiar with the hospital and the capacity and what was going on, and I knew that we could probably fit the rest of the patients in the auditorium and then from there figure out where we need to send them.

My goal was to get them out of the parking garage as quick as possible and once we got

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down to a small number, which was 20 to 30 patients, I made the decision to move all those patients to the auditorium, in the air-conditioning, get them refreshments, figure out what was going on with them and then basically either reunite them with the family or get the patients to another -- facility or find a bed in our hospital to place them.

Q While the patients were in the garage, were there fans brought down into that area, do you remember?
A I don't remember.
Q Were the patients prioritized as part of this transportation process; you were involved in that, is that right?
A That's correct.
Q And were they prioritized in terms of those that needed to be transported sooner?
A Correct. So yellow patients were prioritized ahead of green patients and once we were left with all green patients, we divided the green patients into patients that could actually stand and walk and patients that were wheelchair bound; some of them were wheelchair bound and couldn't walk. It really depended upon the type of vehicle we had available and which group of those green patients we

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would put.
So, for instance, the city bus, you'd actually have to climb up steps to get on the bus; they didn't have a way to get a wheelchair up through the bus, so we put the ambulatory patients that were greens on the bus with the nurse and then some other vehicles that were able to carry, you know, there were smaller vans that had wheelchair access; we were able to put those patients on the transportation vehicles in their wheelchairs with a nurse.
Q You may have answered this already, but you talked about the greens and the yellows and that transport process, but what happened to the reds; how were they handled?
A All those patients were brought to Memorial Regional Hospital's Emergency Room for assessment.
Q And how quickly would that occur?
MS. SMITH: Your Honor, object to lack of predicate. That happened before he arrived on the scene.
THE COURT: Sustained.
BY MR. MENTON:
Q Were there some red patients transported

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while you were on the scene?
A The two that I upgraded to red. Of the rest, I can't really say for sure how many or exactly when they went over.
Q Okay.
A That was my instruction for the crews that basically were assessing the patients.
Q Just to be clear then, what were your instructions to the crews that were doing the assessments?
A Any patient that's labeled red should be immediately brought to the emergency department in the Memorial Regional Hospital.
Q Just a couple of final questions, Dr. Katz. Based upon your involvement in your professional practice, have you ever seen a situation like this before?
A I've seen mass casualty incidents but not this type.
Q And when you say this type, have you seen a mass casualty incident involving a nursing home before?
A I have not.
Q And as it relates to the medical records -- I know that you talked about having those sent

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over, were the medical records necessary in order to triage the patients?
A No.
Q And why?
A Because the initial triage phase does not involve review of medical records.
Q As it relates to medications, is medicine reconciliation part of the mass casualty evacuation?
A No it's not.
Q And why is that?
A The initial phase of the MCI is really to do a cursory assessment to label patient black, red, yellow or green.
Q Explain then what happens?
A Then there's a secondary triage where vital signs are taken and then at that point, obviously a med reconciliation, past medical history -- trying to get as much past medical history information as possible -- at that point or somewhere in that, you know, following hours.
MR. MENTON: Give me a second, Your Honor, I think I'm just about finished.
BY MR. MENTON:
Q Dr. Katz, in your patient, have you ever seen a patient with an internal temperature as high

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as 108 degrees?
A I have not.
Q Would you expect to see a temperature that high as a result of an infection?
A I would not.
Q Would those internal temperatures correspond with heat stroke?
MS. SMITH: Your Honor, again these are expert opinions. Would a temperature of 108 degrees correspond with heat stroke is the question?
THE COURT: Mr. Menton?
MR. MENTON: Your Honor, we'll address it through -- we have other witnesses that will talk about that.
THE COURT: Okay.
BY MR. MENTON:
Q Based upon the patients that you saw on September 12th and what you observed on September 13th, did the conditions in the Hollywood Hills facility have harmful impact on patients?
A I would say that the conditions in that nursing home were a contributing factor to their medical issues that I encountered.
MR. MENTON: That's all the questions I

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have, Your Honor.
THE COURT: Cross exam?
MS. SMITH: Yes, Your Honor.
CROSS EXAMINATION
BY MS. SMITH:
Q Good afternoon, Dr. Katz. We met at your deposition. I'm Susan Smith. I'm representing the Rehab Center; good to see you again. I just want to follow up and clarify a few things that you talked about on direct and make sure that we have an accurate record. You stated that the patient had a temperature of 104, but in fact when the EMS took the temperature of patient 11 and when he was transported on the 12th it was 102, correct?
A Without looking at the medical records I wouldn't be able to answer that.
Q If I showed you a copy of the EMS Run Report would that refresh your recollection?
A Sure.
MS. SMITH: Your Honor, may I approach the witness?
THE COURT: Yes.
MS. SMITH: Thank you.
MR. MENTON: Can you tell us what you're looking at?

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MS. SMITH: Sure. It's the EMS Run Report for patient 11, and I'm looking at Page 4 of 6.
THE COURT: Do you have exhibit number?
MS. SMITH: I do. Can I have my Co-counsel find it and come back for the exhibit number, Your Honor, is that okay?
THE COURT: That's fine.
MS. SMITH: I'm just refreshing his recollection right now anyway.
BY MS. SMITH:
Q I'll represent to you, this is the Run Report record for patient 11, and you see right there it says, the patient had a tympanic temperature of 102 degrees Fahrenheit? Does that refresh your recollection --
MR. MENTON: Judge, I'm not sure that's the appropriate his recollection.
THE WITNESS: Well, I would say that I typically don't have the Run Report when I evaluate a patient.
BY MS. SMITH:
Q I've just got to ask you the question and you can answer it --
A I have not seen the report; it's the first time I've ever seen it though --

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THE COURT: Ms. Smith, if you want to refresh his recollection with that document, you need to let him review it, give him a chance to take a look at it and then ask your questions about whether or not that refreshes his recollection.
MS. SMITH: Absolutely, Your Honor. I wasn't trying to be unfair, I was just trying to expedite. Please take your time, sir.
THE WITNESS: Your Honor, I would say, this is the first time I've seen the EMS record.
THE COURT: So then it would not refresh your recollection of with regard to what you did or did not know on that date?
THE WITNESS: Correct.
MS. SMITH: Your Honor, actually that's not the standard -- I don't mean to be controversial, but I could show him a bowl of spaghetti and if that somehow refreshed his recollection to what the temperature was, then it doesn't matter whether he's seen it before or not.
THE COURT: No, you're wanting him to verify that that's what the Run Report says.

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He doesn't know where that document came from, who prepared that document, when it was prepared; so I'm not sure what relevance that has and how that in any way refreshes his recollection. He's already told us, to his knowledge, the patient's temperature was 104 degrees.
MS. SMITH: I'll deal with EMS, Your Honor.
BY MS. SMITH:
Q Does it refresh your recollection, doctor?
A My recollection of what?
Q Of what his temperature was when EMS took his temperature?
A I don't have any recollection of what EMS told me. All I know is the temperature when I evaluated the patient -- what I remember, was 104. I will say that that's a tympanic temperature, it's not a core body temperature and sometimes at extreme temperatures, tympanic temperatures can also be -- inaccurate.
Q Okay. Did you review the Medical Examiner's Report on patient 11?
A I don't think I did, not that I remember.
Q So you didn't review any records before

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the patient arrived at Memorial Regional to determine what the patient's temperature was prior to arriving at the hospital?

A No, typically when EMS transports a patient, we're given a verbal report. I takes anywhere from two hours to three or four days to actually get the physical Run Report available for review. So it's not something we have available to us immediately when the patient arrives.

Q I want you to assume for me that the EMS report said that the patient had a temperature of 102 and that the Medical Examiner determined that they had a temperature of 103 when arriving at Memorial Regional Hospital and you just told us that they had a temperature of 104. Do you know what time your 104 temperature was taken?

MR. MENTON: There's a lot of loaded assumptions in there and calls for speculation. If she wants to ask him just what he knows about what happened with the patient that he saw but to load it up with two different temperatures --

BY MS. SMITH:

Q I'll rephrase it. Do you know what time your temperature of 104 was taken?

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A I don't know what time. That was based on prior review of the medical record from the Emergency Department that my nursing staff generated.

Q And you would agree that there could be earlier temperatures that were taken that were lower than that, correct?

A It's definitely possible.

Q In fact, what we know about this patient in reviewing medical records is that the patient's temperature was actually decreased to normal to 98.2 by 4:30 p.m. on the 12th, isn't that correct?

A I don't -- I haven't looked at the notes recently but if that's the temperature that is listed then it's probably accurate.

Q From your own recollection, do you believe the patient's temperature went back to normal?

A I believe it did.

Q And in fact in patient 11, you did not believe that the patient warranted contacting DCF, correct?

A My responsibility for that patient is really to let the authorities that exist know that there is a potential issue, and at the time what I did was contact my Social Worker and my Charge Nurse, between the three of us had a conversation and decided that we would call over there to find out what the situation was. I didn't think at that point that there was any indication that the patients were being directly abused or any reason to call DCF to call myself, but enough that I thought it needed further investigation to find out what was going on.

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Q So you didn't contact DCF when you had the information on the patient's temperature in that instance, correct?

A Personally I did not.

Q Do you know whether or not EMS -- if the protocol for hyperthermia was activated for this patient or not?

A I don't believe it was.

Q The patient was 90 years old, correct?

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

Q Can you look at the medical record in front of you and tell me if he was 90 years old?

A Sure.

Q Well, you don't need to do that; it will take too much time, we'll do that -- was he approximately 90 years?

A It sounds about right.

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Q Is that in the ballpark?

A Yeah, it does.

Q And he had chronic kidney disease, correct?

A I believe he did.

Q Chronic renal failure, correct?

A Correct.

Q And end-stage dementia, correct?

A I believe he had dementia; whether it was end-stage or not I don't know.

Q But at the time you saw him, you determined that he had severe pneumonia, correct?

A He had left lower lobe pneumonia if I remember correctly.

Q And you determined that it was severe pneumonia, correct?

A I'm not sure severe normally is the diagnosis; severe sepsis maybe.

Q The patient did have severe sepsis, correct?

A Correct.

Q And do you agree that you would say that the patient had severe pneumonia because he was in respiratory failure and needed to be intubated?

MR. MENTON: Objection, Your Honor. He

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just said that severe pneumonia is a diagnosis.
MS. SMITH: I'm asking him if that's an accurate statement.
THE COURT: Overruled, go ahead.
THE WITNESS: I felt the patient was in respiratory distress. With my clinical judgment, I felt the patient would go into respiratory failure and stop breathing at some point in the next 12 to 24 hours if he was not put a ventilator, which we typically would do in a situation like that.
I did note that the patient had a DNR, which is a do not resuscitate order and that's when I spoke to his Power of Attorney or his, basically next of kin, which I believe was his daughter, and I want to say she lived in California but I don't remember exactly what state she was in.
I called her and spoke with her and asked her if she wanted him to be intubated and she was very clear that she did not want that done and that his wishes were to be a DNR, not to be intubated if he's in respiratory failure or any type of heroic efforts to restore his heart or that type of thing.

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BY MS. SMITH:
Q Right. And in a patient who did not have a DNR, you would say that the patient in that condition, who presented in that condition had severe pneumonia because it was respiratory failure and needed to be intubated, isn't that true?
A I would so, yes.
Q It's fairly common for patients of that age with multiple medical problems to have severe sepsis, isn't it?
A Yes, it's a fairly common diagnosis, correct.
Q There's a reasonable likelihood that this patient would have been critically ill regardless of Hurricane Irma or a power failure at the Hollywood Hills Rehab Facility, correct?
A That would be speculation.
THE COURT: That sounds to me like you're asking for his medical opinion.
MR. MENTON: I was just going to say that, Your Honor, I'm going to object.
THE COURT: You've been consistently precluding him from giving a medical opinion.
MS. SMITH: I thought it was about his patient, but that's okay. If you want me move on I will.

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BY MS. SMITH:
Q You've received patients from Rehab Center at Hollywood Hills for a number of years, correct?
A That's correct.
Q And you've never noted anything wrong with the care provided to those patients prior to September 12, 2017, correct?
A That's correct.
Q All of patient 11's symptoms were consistent with the diagnosis of pneumonia, correct?
A That's correct.
Q His initial presentation was that of a patient that was typical of a patient at that age with pneumonia, correct?
MR. MENTON: Again, I would object, calling for opinions that she objected when I tried to ask him.
THE COURT: Sustained. My concern was when she was asking whether or not this patient would have suffered similarly without the after effects of Hurricane Irma and whatever was going on at Hollywood Hills. I think it's something different to ask about the presentation of this particular patient. Can you repeat your question Ms. Smith?

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BY MS. SMITH:
Q Sure. The initial presentation of patient 11 was typical of a patient of that age with pneumonia, correct?
THE COURT: Overruled.
THE WITNESS: Do you want me to answer the question?
THE COURT: Yes, please.
THE WITNESS: I would say that it's a fairly typical picture of a patient with severe sepsis and pneumonia, correct.
BY MS. SMITH:
Q You discussed that you do have some familiarity with heat stroke patients, you said you could have one weekly in the summer months but in fact you only see about three to four patients a year with heat stroke, correct?
A I'm going to guess that you're asking that question based on information I gave in deposition?
Q I just want you to tell me the truth.
A Again, I'm estimating, so -- how many do I see in a year; I think four or five, six, I don't know, somewhere in that range; depending on how hot it is. If it's extremely hot during the day in the

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summer months, you know, can you sit on the beach -- I also review a lot of cases so I may not physically myself take care of a patient but I would say that in the summer it's probably common to have at least one patient a week that's treated for heat exhaustion type symptoms.

Q And would it help you to refresh your recollection if you looked at your deposition where I ask you the question about how many you see a year and you told me three or four?

A That's probably accurate.

MR. MENTON: Judge, that's not the proper way to use the deposition.

MS. SMITH: I'm just asking him –

THE COURT: One at a time.

MR. MENTON: If she wants do it, she needs to show him the deposition and ask him that way. You can't try to impeach a witness the way she just did.

MS. SMITH: I'm not trying to impeach the witness, Your Honor. I'm just trying to refresh his recollection, if it refreshes his recollection, that's fine. If he says it's accurate, then we'll move on.

THE WITNESS: I would say it's accurate

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that I see three or four a year, but I do think that we probably treat a patient a week in our emergency department that has heat exhaustion in the summer months.

MR. MENTON: I would just object. That's an improper way to use the deposition.

THE COURT: We don't quote out of the deposition and say, does that refresh your recollection? We say, if I showed you your deposition of testimony, do you think it would refresh your recollection with regard to this issue but not stating what he already has said in there. Let him look at it and say, yes, it does refresh my recollection or no, it doesn't reflect my recollection.

MS. SMITH: I understand what you're saying but I didn't quote anything out of the deposition. I just said, if I took you to that part of the deposition when we talk about that issue --

THE COURT: That's not what you said so let's move on.

MS. SMITH: Okay, yes, Judge.

BY MS. SMITH:

Q Did you receive a call from David Stearns

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(phonetic) advising you that the green alert had been activated and that they were evacuating Hollywood Hills Rehab Center at around 6:30 on the 12th?

A That would be correct.

Q And it was your impression from that discussion that the evacuation had already begun at that time, correct?

A That it had been initiated.

Q Well it's your experience that the emergency department at Memorial Regional Hospital gets busier during a hurricane, correct?

A Usually after the hurricane.

Q And morbidity and mortality go up due to hurricanes, correct, in your experience?

A That would be correct.

Q And in fact, in this particular hurricane, you saw over 100 patients more on Monday the 11th than you would typically see in your ED, correct?

A Roughly, yeah.

Q So you saw about 400 patients when you'd usually see about 300 patients, correct?

A Correct.

THE COURT: Does that include or exclude patients from Hollywood Hills?

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THE WITNESS: That excludes patients from Hollywood Hills.

MS. SMITH: Your Honor, just for clarity that was on Monday, not Wednesday.

THE COURT: Okay.

BY MS. SMITH:

Q The decision to evacuate was made before you got involved in the evacuation or the process of triaging the patients at the Rehab Center of Hollywood Hills, is that correct?

A That's correct.

Q I'd like to go back to your definitions of the colors for evacuation and find out if I have understood what the colors are, because it seems different and it might just be a word selection. A green patient means they have no acute medical issues, correct?

A Correct. They would mean the least prioritizations out of all of the colors.

Q And yellow is intermediate, correct?

A Correct.

Q And what you observed, you estimate that about two thirds of the patients that you saw being evacuated from Hollywood Hills were green patients, correct?

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A That would be roughly the number of -- yes.
Q And essentially there were a handful of yellow patients that you saw, correct.
A Correct.
Q You talked about two patients that were taken to the parking garage that turned to red; I am correct that they were green patients when they went to the garage, correct? They only took green patients there?
A I believe so, yes.
Q And the green patients that turned red, one of them was because of low blood sugar, correct?
A Correct.
Q And that's not really a sign of hyperthermia, is it?
A Correct.
Q And the other one was low blood oxygen level, correct?
A Correct.
Q And that can be caused by a multitude of causes, correct?
A Correct.
Q On Tuesday the 12th at Memorial Regional Hospital, you saw a ton of nursing home patients

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come into the emergency department that day, didn't you?
A There were a number of patients from nursing homes being transported to the ER, correct?
Q And the only one that you're aware from Rehab Center of Hollywood Hills was the one patient that we've have already discussed, patient 11, correct?
A That would be correct.
Q You were talking about -- on the 13th, you had slept in the hospital for two days -- you used the term -- I don't want to mess up the timelines to get to it, but you used the term all- clear; do you recall using that term in your direct testimony?
A Yes, essentially after the hurricane Monday morning, once the authorities allowed me to drive, I drove my car to the hospital; that was around 7:00 a.m.
Q What does all-clear mean; does that just mean the roads are all clear or did it mean --
A Roads are open, which means that patients will be coming to the hospital.
Q When you first arrived at the hospital on the morning of the 13th at Memorial Regional Hospital, you were only there approximately a minute

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or two, correct?
A Correct, maybe two minutes. I walked in, spoke to my Nursing Director, turned around and left.
Q Would you agree that the scene that you saw when you arrived at the Rehab Center of Hollywood Hills was chaotic, correct?
A I would say it was controlled chaos.
Q You mentioned that when you arrived on the scene, they told you that there were two S-7's which are deceased patients in the facility?
A Correct. I don't remember exactly when I was told that, that was within the first 15 to 20 minutes of me arriving. I got that information from the Battalion Chief.
Q And that was after 7:30?
A Correct.
Q What I'm wondering is, if there were three S-7's in the facility and they only told you about two, and someone who had a DNR, would they not be considered an S-7?
A I mean a signal 7 is a signal 7. So if the patient is deceased, they're deceased whether it's DNR, from practical terms it wouldn't matter.
Q You talked about the temperature in the

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facility, and you would agree that your own observation about the facility is that it was only a little hotter inside than it was outside of the facility when you went in to the first floor, correct?
A I'd say that's correct.
Q And you'd estimate it was in the mid 80's at that time of the morning, correct?
A It felt like it was -- mid 80's, lower mid, I don't know. It was pretty hot outside at that point.
Q Am I correct that resident 11 went on Hospice and deceased on September 19, 2017?
A Without reviewing the medical record, I couldn't agree with you; it sounds about right.
Q Right. And so it was over a week later, correct?
A Yeah, somewhere in that range.
Q Something about a week to two week's range, correct?
A Correct.
Q When you diagnosed the patient, you did not write heat stroke as part of your documented diagnosis on your examination and treatment of patient 11, did you?

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A I don't believe I did.
MS. SMITH: Thank you, Doctor, I appreciate your time.
THE COURT: Any redirect?
MR. MENTON: Yes, Your Honor, just a few.
REDIRECT EXAMINATION
BY MR. MENTON:
Q Dr. Katz, just a couple things to follow up on. Ms. Smith asked you about when you received the call from David Stearns, who I guess was the Administrator of the Emergency Department, is that right?
A He is the Nursing Director, correct.
Q Nursing Director. And you don't know exactly you received that call, do you?
A I couldn't tell you the exact -- I was guessing around that time.
Q Okay. And in fact do you recall in your deposition you said 6:45?
MS. SMITH: Your Honor, leading.
THE COURT: Sustained.
BY MR. MENTON:
Q She asked you specifically about 6:30; do you recall whether you might have said a later time?
A It's possible I said 6:45.

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Q So in terms of when you received the call and when the evacuation was ordered, you don't know exactly when that happened?
A I don't --
MS. SMITH: Leading, Your Honor.
THE COURT: That's what he already testified to; overruled.
THE WITNESS: I don't know exactly the timeframe.
THE COURT: On direct he was very clear he did not know.
BY MR. MENTON:
Q Now in terms of patient's temperature decreasing after he arrived in the emergency department, was that a result of some of the steps that were taken, or do you know why that happened?
A Well, we gave the patient Tylenol, ice packs, IV fluids, so all those things combined would probably have lowered his temperature.
Q And would the temperature lowering be consistent be consistent with the differential diagnosis of heat exhaustion or exposure to heat?
MS. SMITH: Your Honor, objection. You're going to hear a lot of expert testimony on whether Tylenol works on -- or not; it's really

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going to be an expert opinion in this case. And you're going to be hearing from a hyperthermia expert and Harvard studies and all kinds of things that talk about Tylenol -- and this witness isn't supposed to be here as an expert witness and he had candidly admitted he didn't know -- deposition besides that.
THE COURT: Mr. Menton, I didn't even hear the question; can you repeat it please?
MR. MENTON: Let me see if I can repeat it.
BY MR. MENTON:
Q Did the fact that the patient's temperature come down, did that rule out the differential diagnosis that you talked about in your direct testimony of heat exhaustion or heat stroke?
THE COURT: I think that question is probably a little bit different but overruled. Go ahead and answer the question.
THE WITNESS: Can you repeat the question one more time?
BY MR. MENTON:
Q You were asked about the patient's temperature coming down and you talked about how some of the steps that were taken to the fact that

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the patient's temperature came down, did that rule out the differential diagnosis that you talked about in your direct testimony?
A No, it did not.
Q You also were asked a number of questions about the patient's temperature and you mentioned that there's a difference between tympanic and core temperatures.
A Correct.
Q We'd just like to have you elaborate on that a little bit. What is the difference and which one is considered more accurate?
A Core body temperature would be the most accurate. There's different ways to get a core body temperature, but rectal temperature is better than axillary temperature and better than tympanic temperatures. If you put a Foley catheter into the bladder with a thermometer on it, that's probably the most accurate measure of the temperature.
Q Now you were asked a number of questions about the patient's temperature as you dealt with him in the emergency department at Memorial Hospital. If you reviewed the medical records, would that help refresh your recollection as to what the temperature was of the patient as you were

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dealing with him in the emergency department?
A It would and I believe from my recollection of recently reviewing ER records, the temperature was listed at 104 in the notes.
Q Okay. Actually maybe we can have you look; there's two different pages -- do you have medical records of the patients there in front of you?
THE COURT: Mr. Menton, why are you refreshing the witnesses' recollection when he just told you what his recollection is? There's no need to refresh his recollection.
MR. MENTON: I think it's actually higher than that, Your Honor, that's why I was just going to ask.
THE COURT: He hasn't said he has a need to have his recollection refreshed. He already gave you what his testimony is today with regard to the temperature.
MR. MENTON: Okay. And the records are going to come in and they'll speak for themselves.
BY MR. MENTON:
Q So based upon your recollection, you do recall the patient having a temperature of 104

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reading?
MS. SMITH: Leading.
THE COURT: Overruled.
THE WITNESS: I do.
BY MR. MENTON:
Q Okay. Do you remember if that temperature was rectal or axillary?
A I do not remember.
Q Would reviewing the medical records help you determine that?
A Sure, it's usually listed next to the temperature; how the temperature was taken.
MS. SMITH: Your Honor, I don't think it's appropriate to have -- the medical records that he didn't bring to the deposition. He was subpoenaed; asked to bring any documents that he was relying on and he did not have the medical records --
THE COURT: Haven't the parties exchanged these medical records to the Court for Discovery?
MS. SMITH: Yes.
THE COURT: So it's no surprise to Hollywood Hills what the records are going to say, correct?

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MS. SMITH: I think -- this witness, if they want to put the record in, you know, and have someone who has -- deposition to talk about it, that's fine but I haven't had a chance to go over with this witness anything else in the record and I don't know where they're going to be able to point to.
On direct, it was determined that he couldn't review the records. I didn't take him to the records during my cross examine. I tried to use the one EMS Run Record -- and to do it as a backdoor. Why don't you refresh his recollection of documents that he was allowed to talk on the record; I have no ability to cross examine and I didn't have the ability to oppose --
THE COURT: Did this witness have these records have these records at the time of his deposition?
MR. MENTON: Your Honor, I don't think he had them with him at the time of his deposition.
THE COURT: Were they subpoenaed?
MR. MENTON: No, not to my knowledge.
MS. SMITH: I believe they were, Your

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Honor.
THE COURT: Show me the Subpoena.
MS. SMITH: Can we have a little break to find them?
THE COURT: Sure, why don't we take a five minute break?
MS. SMITH: Thank you, Your Honor.
MR. MENTON: Judge, I would just say that, these medical records are part of the Medical Examiner's records. She opened the door to the questions about the temperatures and raising questions, which I think left an open end -- which can be helped by this witness reviewing the record, refreshing his recollection and just saying what the facts are.
THE COURT: Is this patient's temperature going to come into play with regard to any other witness; for example, somebody from the Medical Examiner's office?
MS. SMITH: I think they handled it through the Medical Examiner's office.
MR. MENTON: The Medical Examiners did not see the patient in the hospital so they have --
THE COURT: Didn't they review the records at the hospital?

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MR. MENTON: They have the records and whether they reviewed all of them or not, I don't know. Some of they did and they do reference one of the readings here. Just to let you know, there were two different recordings of the temperatures in the hospital medical records and they --

THE COURT: Can you all stipulate to what those temperatures were in the medical records?

MS. SMITH: Your Honor, honestly I don't mind talking about the records, but I think there's probably multiple instances when temperature records at different times -- and I don't know what any of them are right now, but I think taking this witness here and having him opine about it and talk about it is not appropriate.

THE COURT: Well, if the records were available at the deposition; if they were subpoenaed and not brought, I will exclude them. If, however, they were not subpoenaed and they were available at the time and they reflect his temperature readings or his staff that he directed to take the temperature and we don't allow it.

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MS. SMITH: Your Honor, I did find the Subpoena, and it's all documents used, considered and relied upon in preparing his or her -- excuse me, I started reading the wrong one. Any documents that form a basis or foundation of any opinion or fact testimony into the -- Hearing -- so they were specifically subpoenaed for this witness.

THE COURT: And did the witness bring them to the deposition?

MR. MENTON: This witness doesn't have control of the documents; these are hospital records. They are not in his control so he didn't have anything that he could bring, you know.

Again, the only thing that I'm asking him -- I'm not trying to get these in; they're going to come in otherwise, all I'm asking is, is this physician who treated this patient; they've raised a number of issues about what the patient's temperature was.

I've asked him whether he can refresh his recollection by reviewing the medical records that were contemporaneous with his treatment of that patient. They're right there. There's no

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debate about them. They want to play all these games to try to keep this stuff out; the medical records are right there. If it refreshes his recollection that's all I'm trying to do.

MS. SMITH: It's not anything, Your Honor -- the problem is, I haven't had a chance to prepare this witness on this issue. He didn't have the records at his deposition and I didn't plan on coming here today with the medical records.

THE COURT: This is the problem that we're having here is -- it seems that there seems to be some hide and go seek going on here because on the one hand we've got witnesses who come to depositions where documents are subpoenaed where nobody filed a Motion for Protective Order, nobody filed a Motion to Compel, so they show up the depo but don't recall; there's no way to refresh their recollection because for whatever reason they didn't bring the records and now here today somebody's trying to get those records in through that very same witness. That is not fair. And I'm not going to allow it.

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So this witness has clearly expressed his understanding that the patient's temperature during the relevant period -- as far as he knows was 104 degrees. Could it have been 108, maybe. Could it have been 96.7, maybe. But as far as this witness knows and what he was going off of his diagnosis, it was 104. At least that's what he knows sitting here today.

Whether you all can get those records in through another patient, that's fine. But I'm not going to allow refreshing this witnesses' recollection with documents that were not available or utilized at his deposition.

MR. MENTON: And Judge, I respect your ruling and we'll move forward. The only thing I would say is -- I didn't ask him this in direct, I'm only doing it because she opened the door on cross.

THE COURT: Understood.

MR. MENTON: If we want to get a complete record, we've got the witness here and we'll respect your overruling and move on.

THE COURT: She got the same answer you did; I don't remember other than 104.

MR. MENTON: Okay. That's fine, Judge.

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THE COURT: Let's move on.
MR. MENTON: That's all the questions I have for him.
THE COURT: Now the parties have invoked what's known as the Rule of Sequestration; that means that we're asking that witnesses who are testifying not leave this room and discuss their testimony with any other witnesses. We don't want you to either discuss the questions asked or the answers given. We would like the other witnesses to be able to come in here and testify to the best of their ability based on their own personal recollections. All right, sir?
THE WITNESS: You got it.
THE COURT: Thank you.
MR. MENTON: Thank you.
THE COURT: Why don't we take a 10 minute break?
MR. MENTON: Your Honor, I think this is the last witness we had subpoenaed for today; if we could just take a couple minutes. We have the issue with Chief Ladwick. We did confirm that Chief Ladwick tore his quadriceps muscle and will not be able to make it

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tomorrow.
We were working over the lunch break to try to find another witness that we could move over and then try to move the ones up -- Chief Ladwick was scheduled for 9:00, so we're trying to see if we can move him up, but if we could just take five minutes, we can check the status of that and let you know where we're going but this is the last witness for the day.
THE COURT: That's fine. Let's go off the record for five minutes. Thank you, Sir.
(Thereupon, the Court was in recess at 3:33 p.m.)

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CERTIFICATE

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, DANNY HODGSON, A COURT REPORTER IN THE STATE OF FLORIDA, DO HEREBY STATE THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT AS TRANSCRIBED BY ME AT THE TIME, PLACE AND THE DATE HEREIN BEFORE FORTH.
I DO FURTHER STATE THAT I AM NEITHER A RELATIVE NOR EMPLOYEE NOR ATTORNEY NOR COUNSEL OF ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL, AND THAT I AM NOT FINANCIALLY INTERESTED IN THIS ACTION.
WITNESS MY HAND IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, STATE OF FLORIDA, ON THIS 27TH DAY OF FEBRUARY, 2018.

BY: Danny Hodgson
DANNY HODGSON, COURT REPORTER

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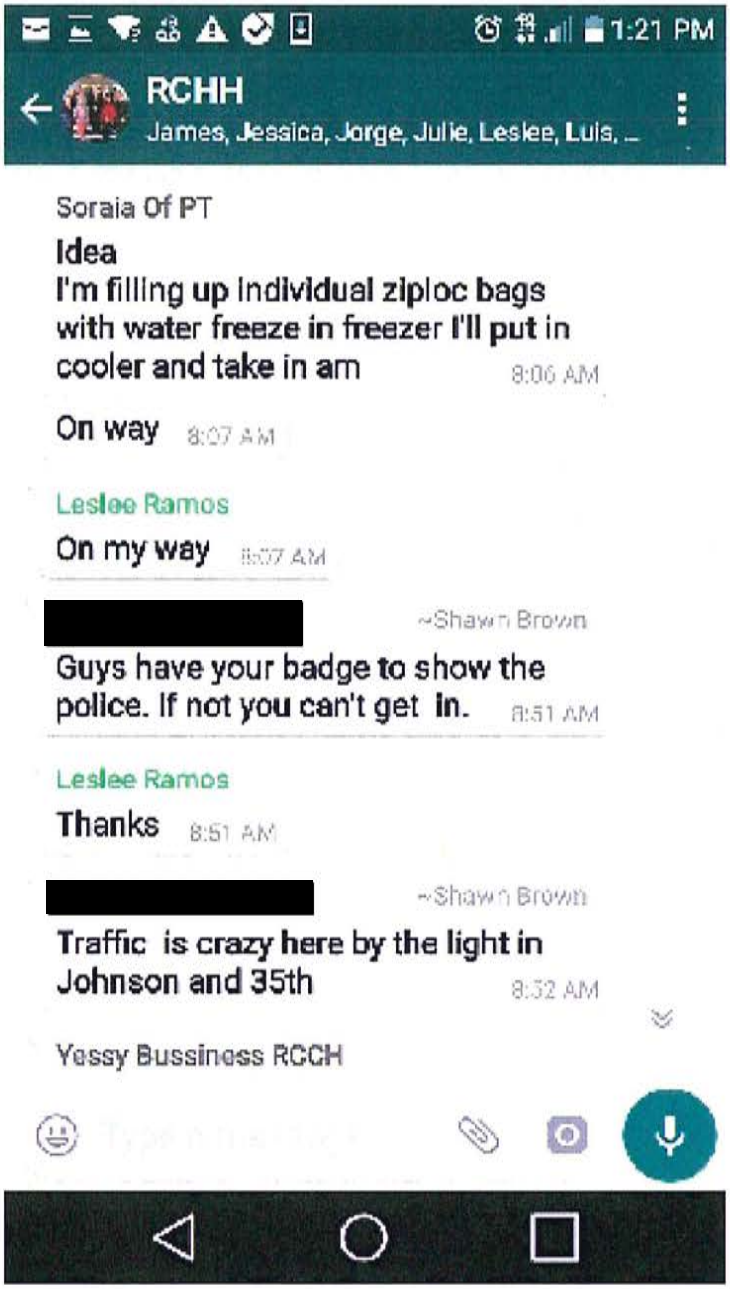
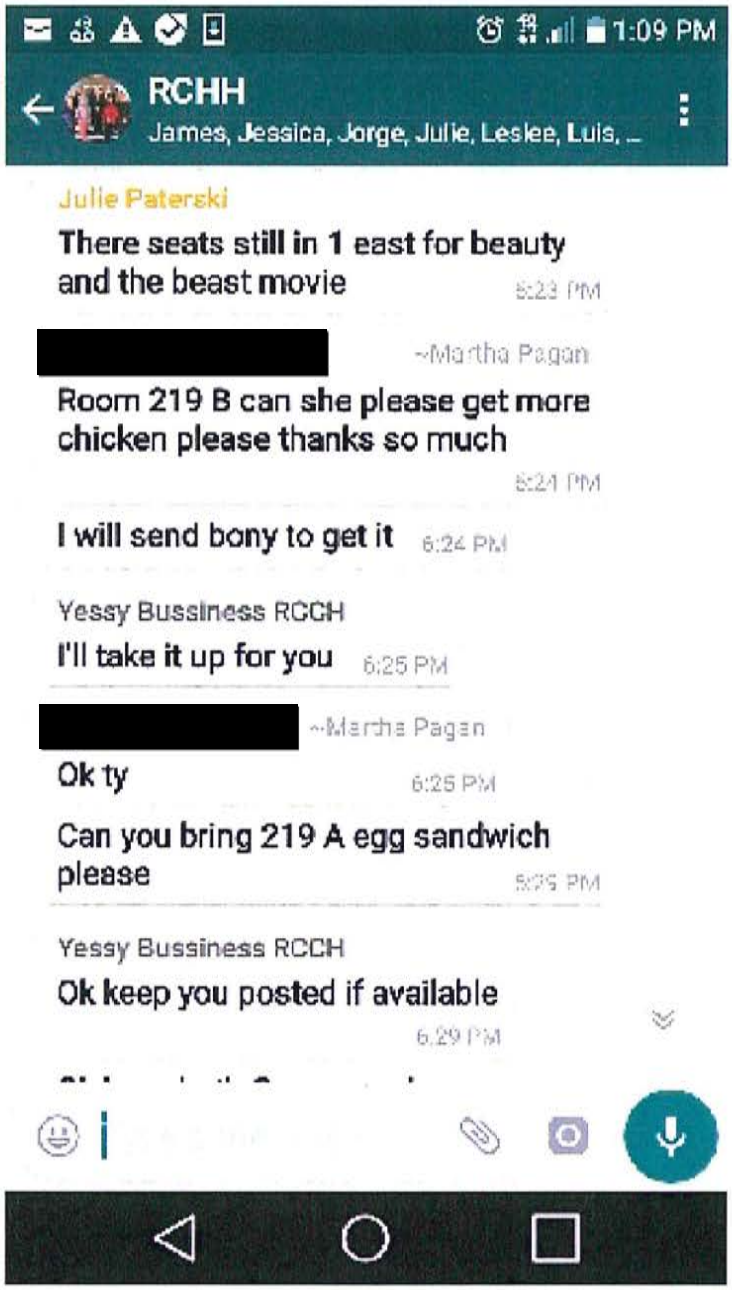
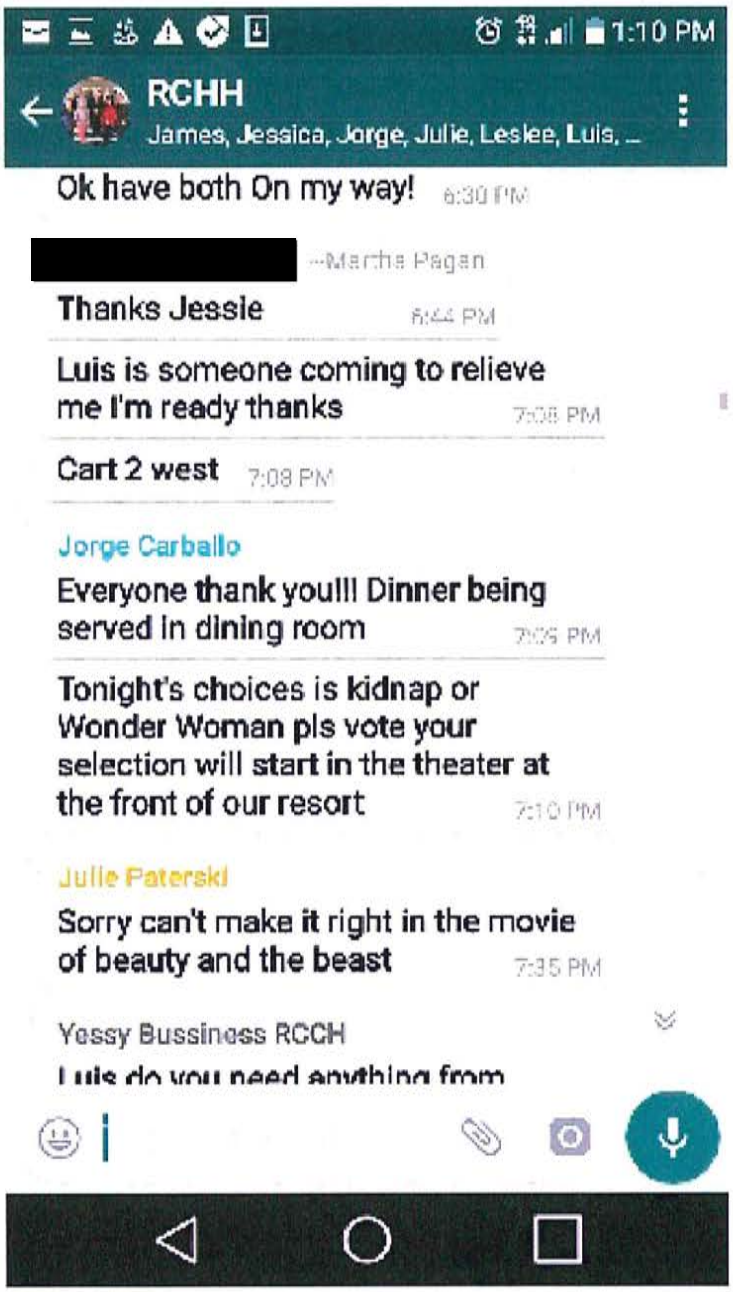
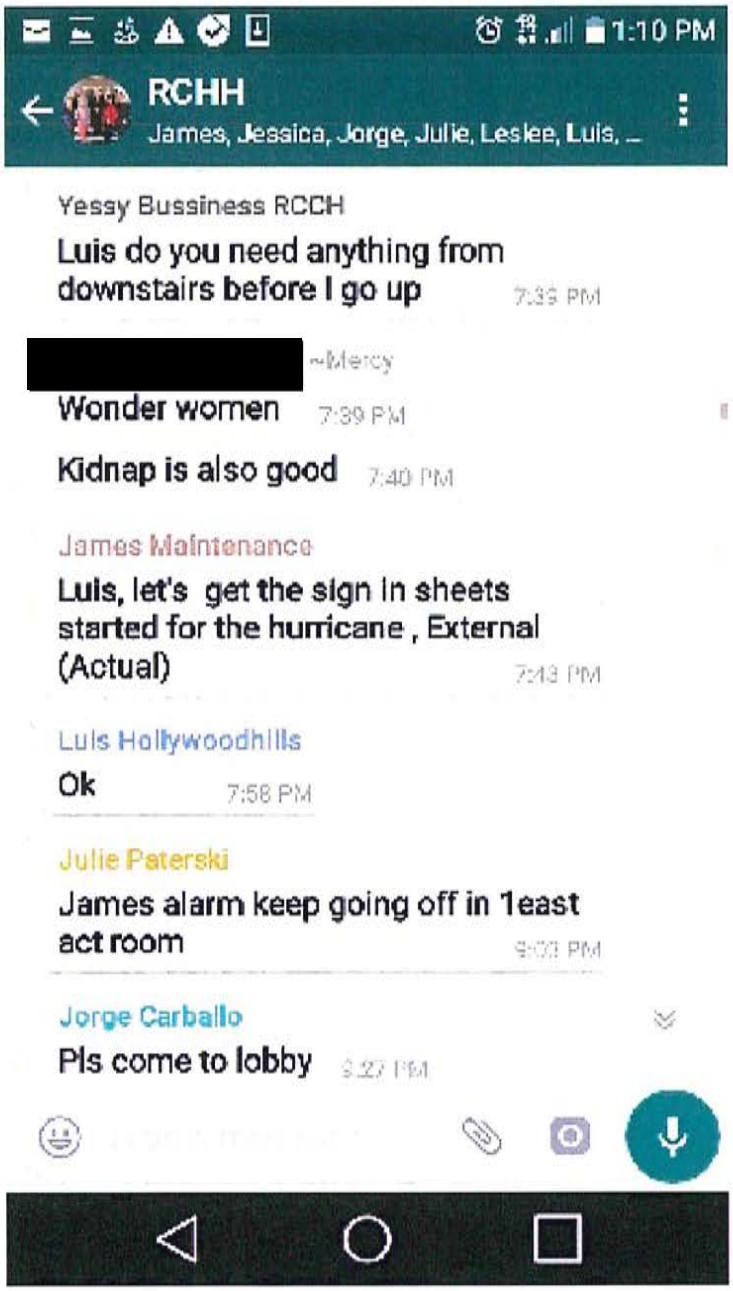
Exhibit 3

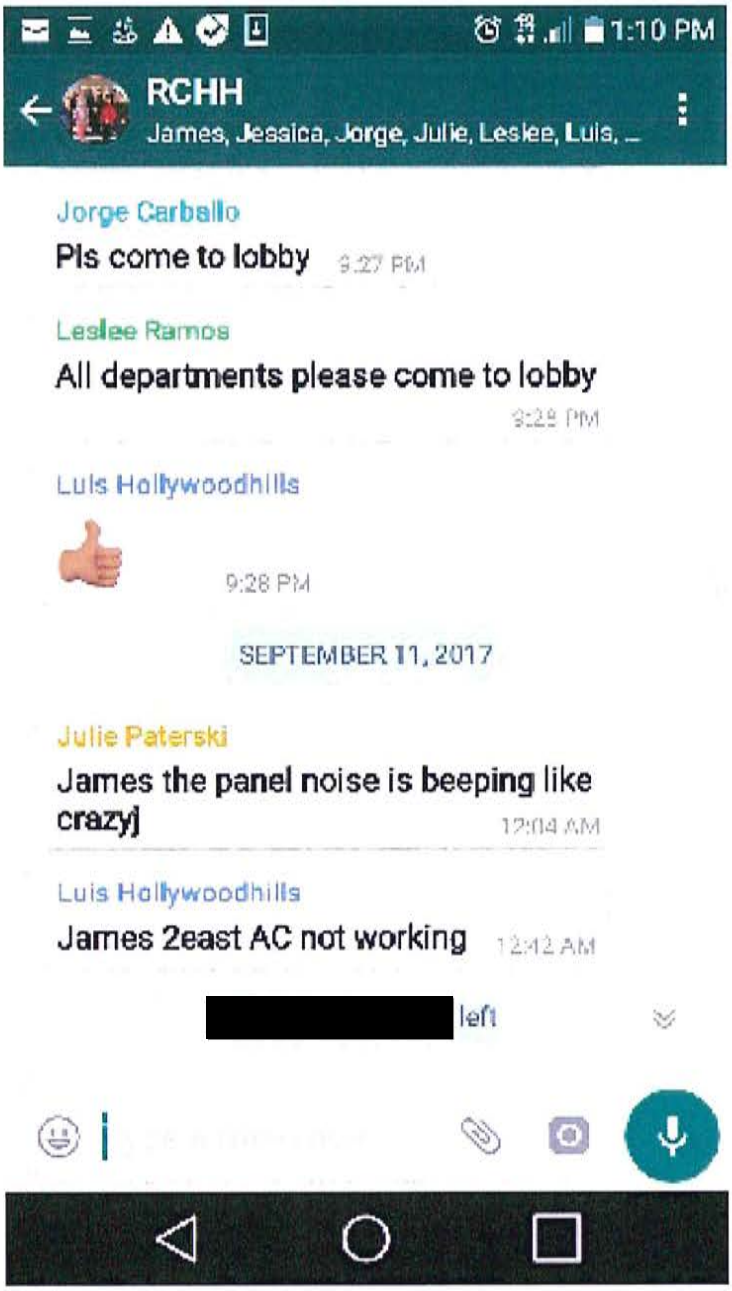


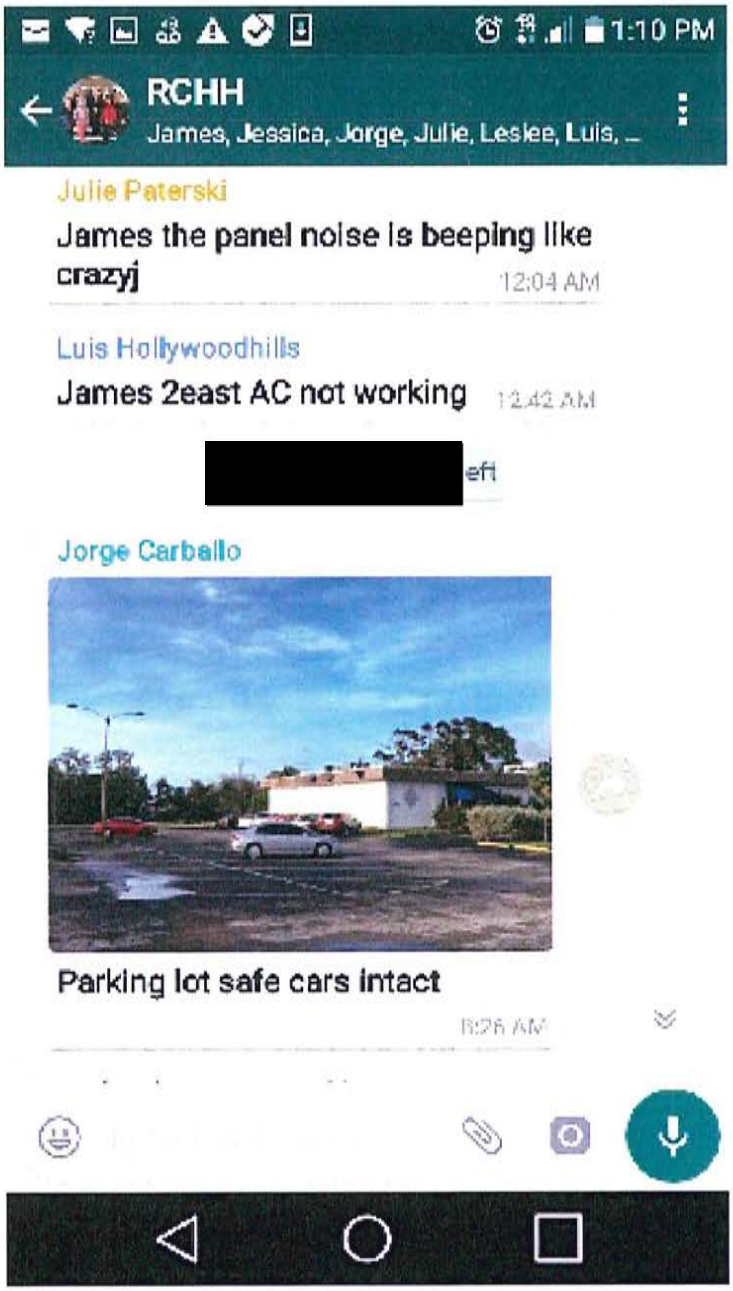
MLC 3/19/18 admitted

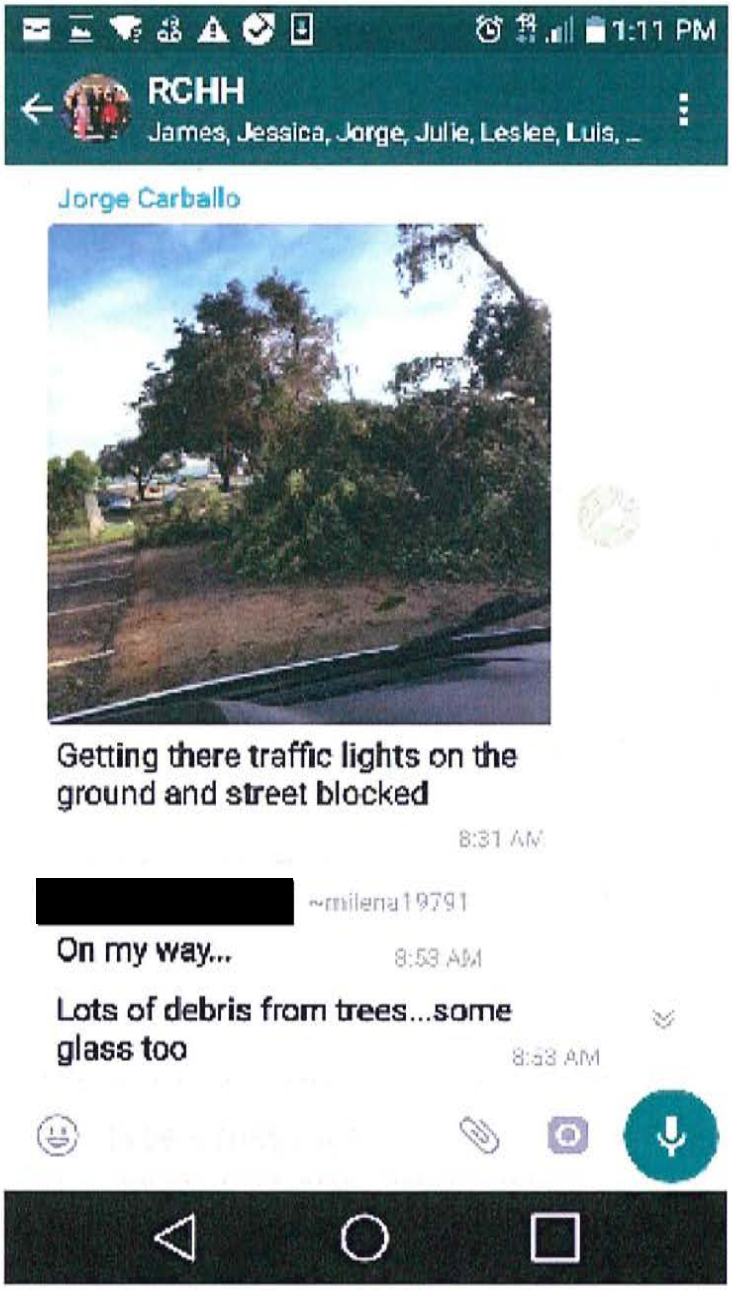

1:09 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Julie Paterski
There seats still in 1 east for beauty and the beast movie
8:23 PM
[redacted] ~Martha Pagan
Room 219 B can she please get more chicken please thanks so much
8:24 PM
I will send bony to get it 6:24 PM
Yessy Bussiness RCCH
I'll take it up for you 6:25 PM
[redacted] ~Martha Pagan
Ok ty 6:25 PM
Can you bring 219 A egg sandwich please
6:25 PM
Yessy Bussiness RCCH
Ok keep you posted if available
6:29 PM

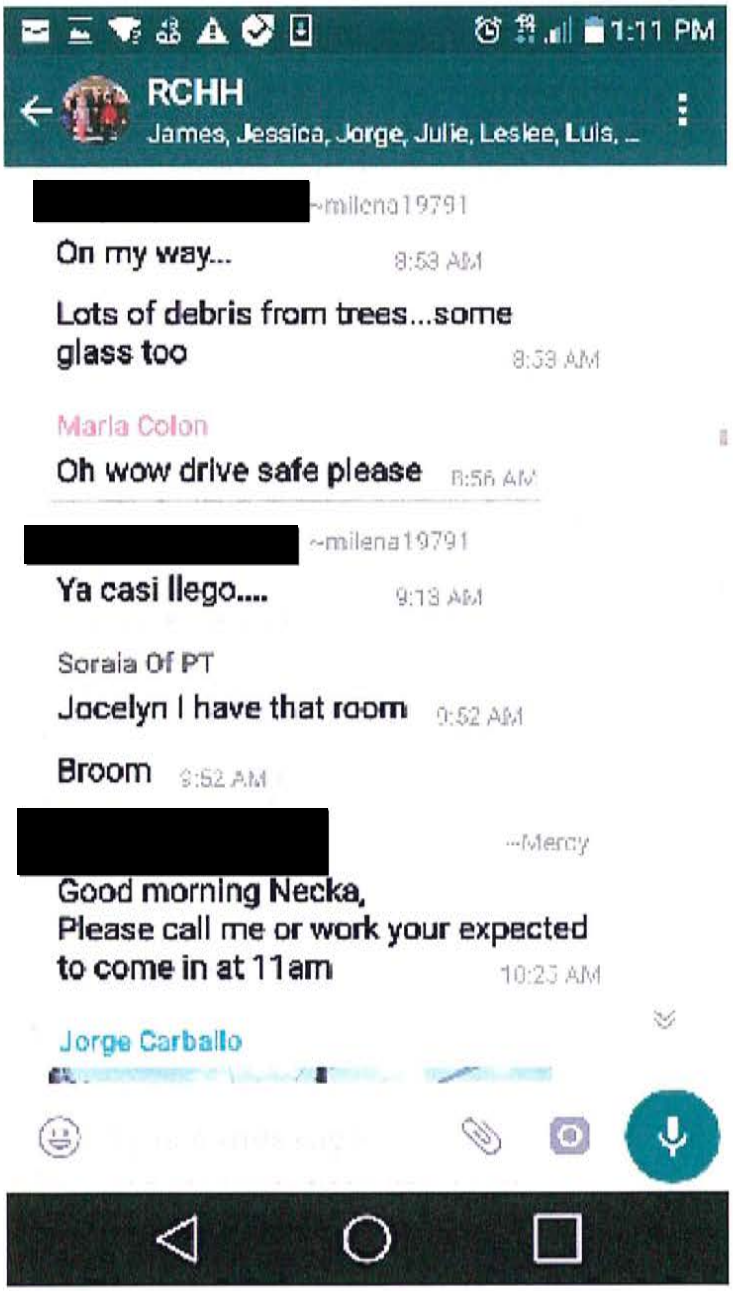

1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Ok have both On my way! 6:30 PM
[redacted] --Marcha Pagan
Thanks Jessie 6:44 PM
Luis is someone coming to relieve me I'm ready thanks 7:08 PM
Cart 2 west 7:08 PM
Jorge Carballo
Everyone thank you!!! Dinner being served in dining room 7:09 PM
Tonight's choices is kidnap or Wonder Woman pls vote your selection will start in the theater at the front of our resort 7:10 PM
Julie Paterski
Sorry can't make it right in the movie of beauty and the beast 7:35 PM
Yessy Bussiness RCCH

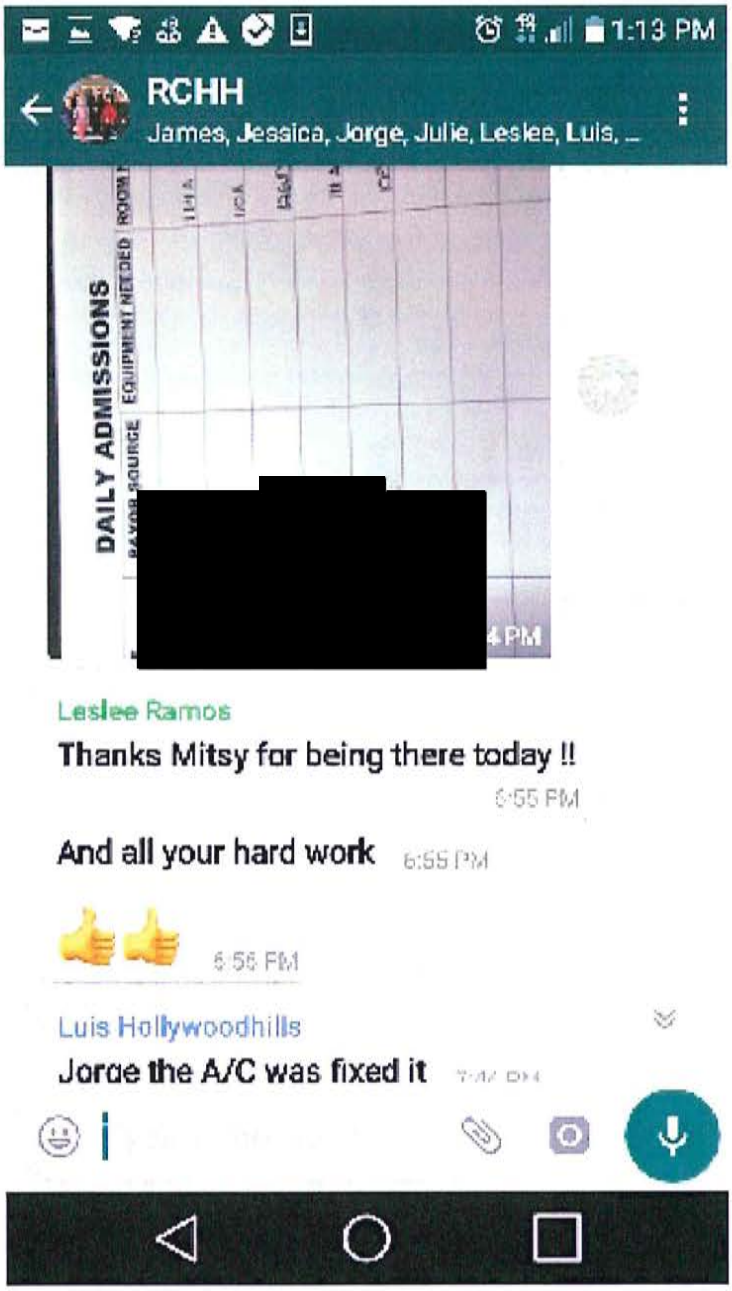

1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Yessy Bussiness RCCH
Luis do you need anything from downstairs before I go up
7:39 PM
[redacted] ~Mercy
Wonder women 7:39 PM
Kidnap is also good 7:40 PM
James Maintenance
Luis, let's get the sign in sheets started for the hurricane , External (Actual)
7:48 PM
Luis Hollywoodhills
Ok 7:58 PM
Julie Paterski
James alarm keep going off in 1east act room
8:03 PM
Jorge Carballo
Pls come to lobby 8:27 PM

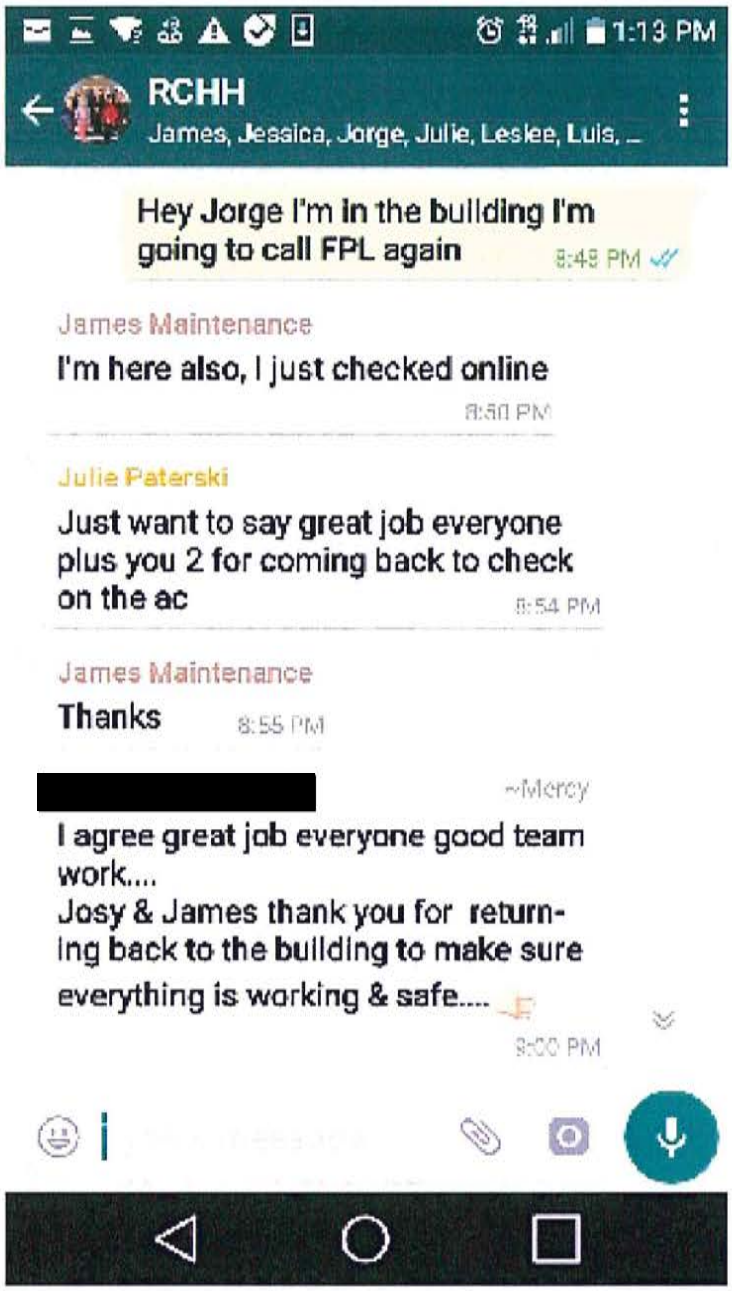

1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Jorge Carballo
Pls come to lobby 9:27 PM
Leslee Ramos
All departments please come to lobby
9:28 PM
Luis Hollywoodhills
9:28 PM
SEPTEMBER 11, 2017
Julie Paterski
James the panel noise is beeping like crazyj
12:04 AM
Luis Hollywoodhills
James 2east AC not working 12:42 AM
[redacted] left


1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Julie Paterski
James the panel noise is beeping like crazyj
12:04 AM
Luis Hollywoodhills
James 2east AC not working
12:42 AM
[redacted]eft
Jorge Carballo
Parking lot safe cars intact
8:26 AM

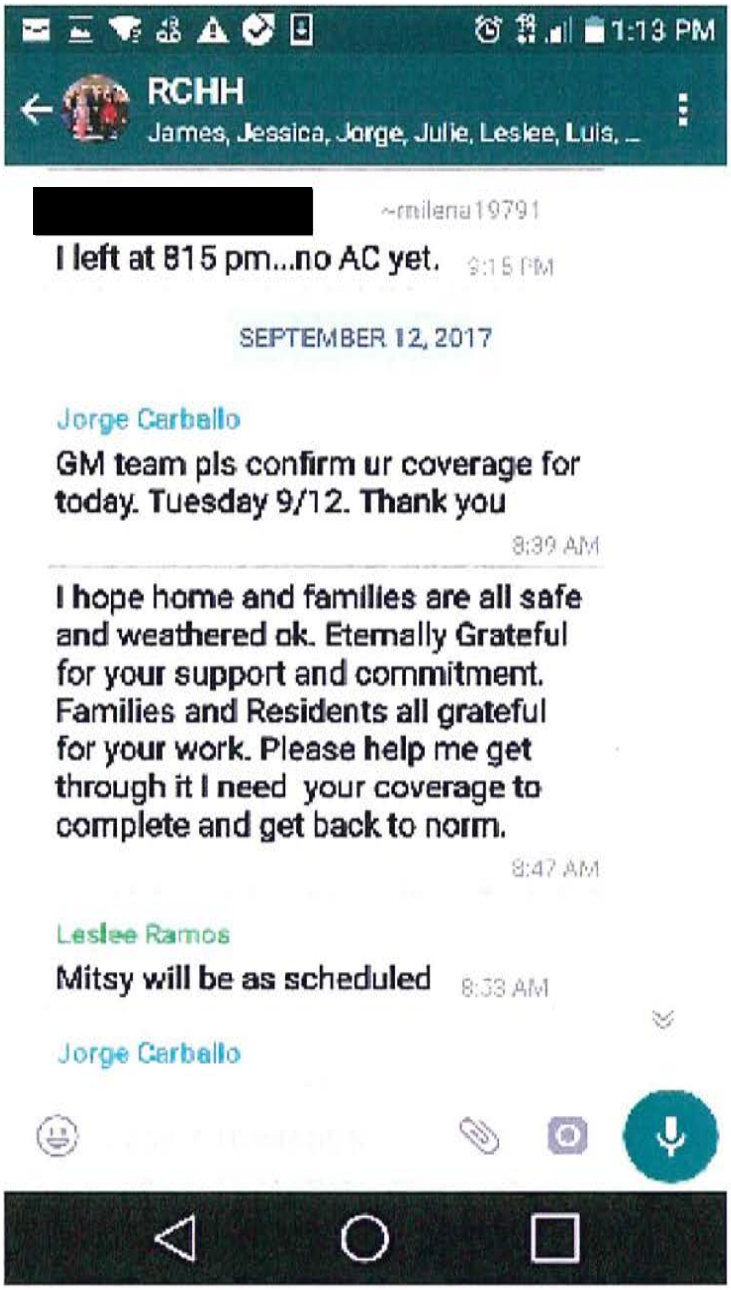

1:11 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
Jorge Carballo
Getting there traffic lights on the ground and street blocked
8:31 AM
[redacted] ~milena19791
On my way...
8:53 AM
Lots of debris from trees...some glass too
8:53 AM

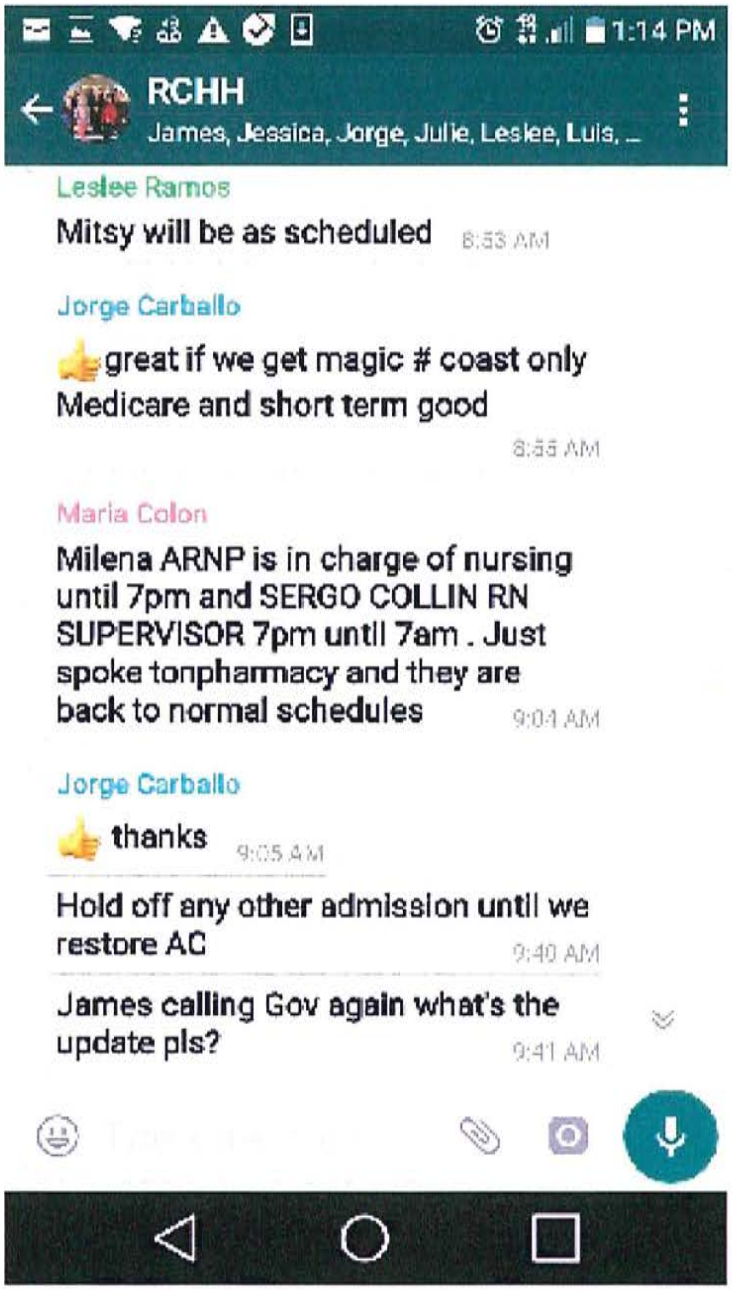

1:11 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
[redacted] ~milena19791
On my way... 8:53 AM
Lots of debris from trees...some glass too 8:53 AM
Maria Colon
Oh wow drive safe please 8:56 AM
[redacted] ~milena19791
Ya casi llego.... 9:13 AM
Soraia Of PT
Jocelyn I have that room 9:52 AM
Broom 9:52 AM
[redacted] ~Mercy
Good morning Necka,
Please call me or work your expected to come in at 11am 10:23 AM
Jorge Carballo

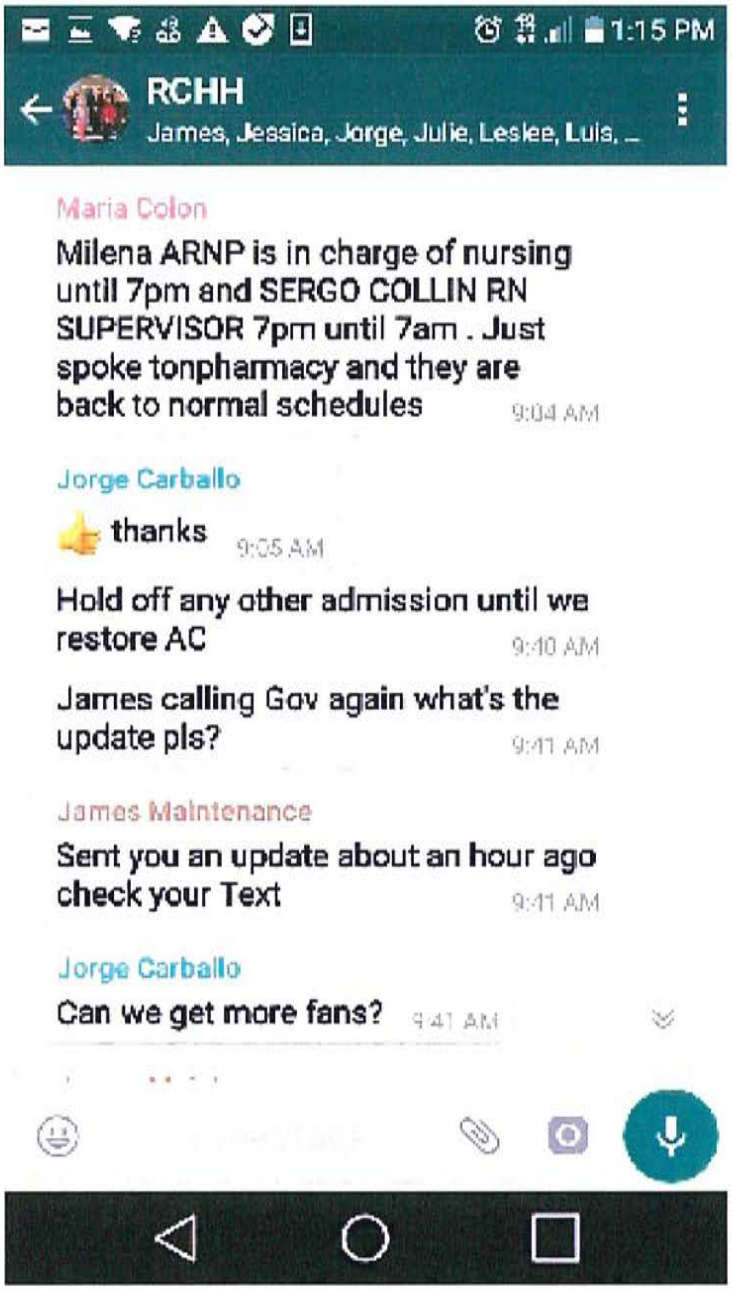

1:13 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
DAILY ADMISSIONS
EQUIPMENT NEEDED
4 PM
Leslee Ramos
Thanks Mitsy for being there today !!
6:55 PM
And all your hard work 6:55 PM
6:56 PM
Luis Hollywoodhills
Jorge the A/C was fixed it

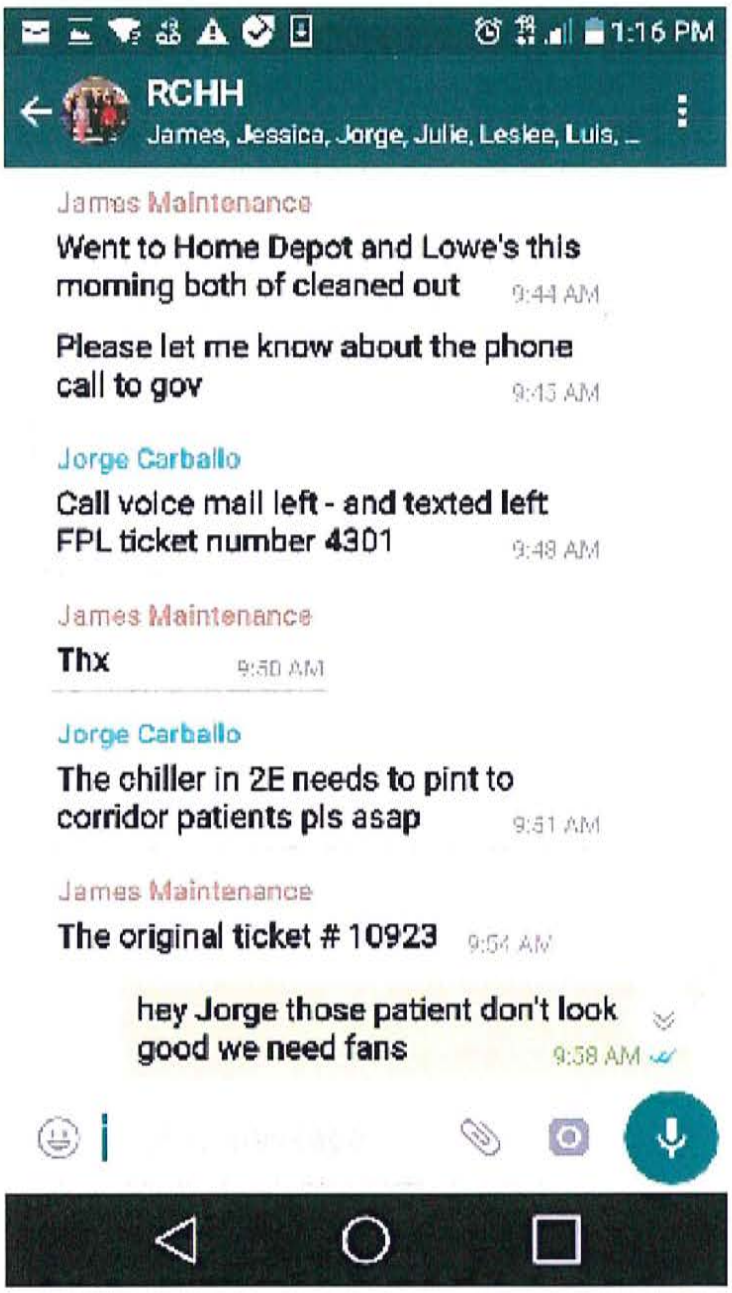

1:13 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
Hey Jorge I'm in the building I'm going to call FPL again
8:48 PM
James Maintenance
I'm here also, I just checked online
8:50 PM
Julie Paterski
Just want to say great job everyone plus you 2 for coming back to check on the ac
8:54 PM
James Maintenance
Thanks
8:55 PM
[redacted]
~Mercy
I agree great job everyone good team work....
Josy & James thank you for return-ing back to the building to make sure everything is working & safe....
9:00 PM

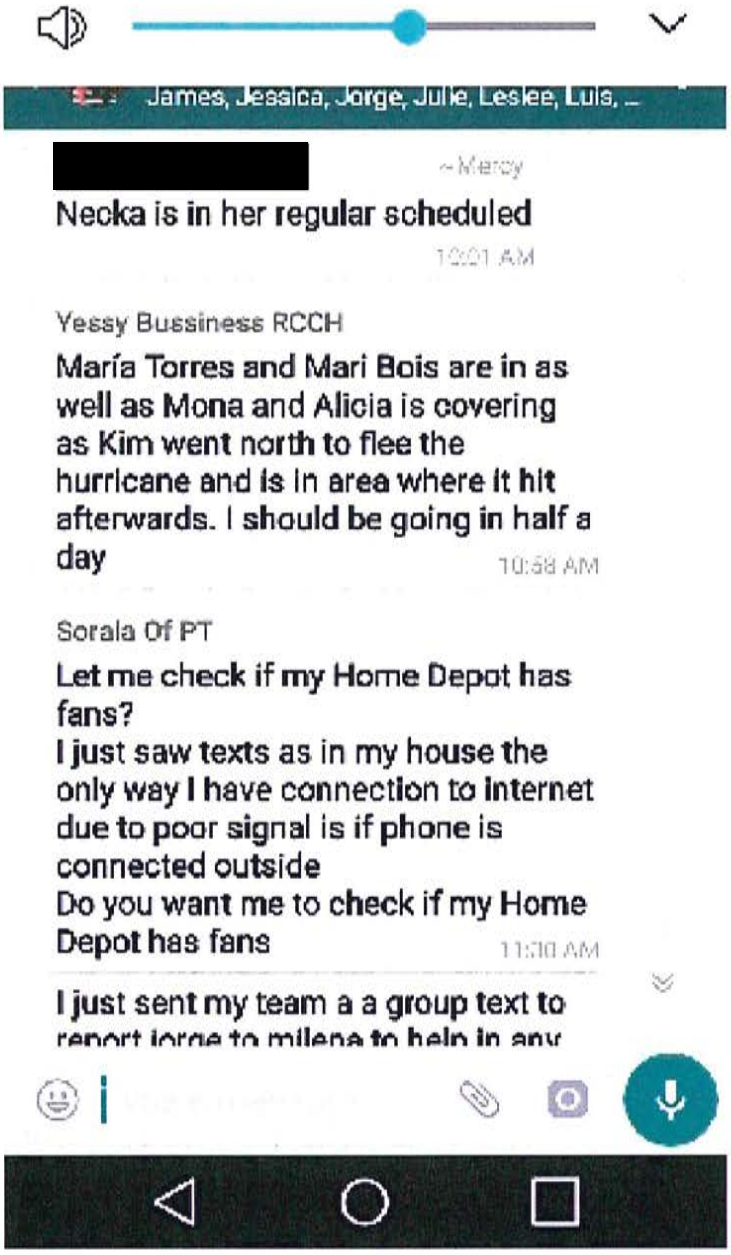
10


1:13 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
[redacted] ~milena19791
I left at 815 pm...no AC yet. 9:15 PM
SEPTEMBER 12, 2017
Jorge Carballo
GM team pls confirm ur coverage for today. Tuesday 9/12. Thank you
8:39 AM
I hope home and families are all safe and weathered ok. Eternally Grateful for your support and commitment. Families and Residents all grateful for your work. Please help me get through it I need your coverage to complete and get back to norm.
8:47 AM
Leslee Ramos
Mitsy will be as scheduled 8:53 AM
Jorge Carballo

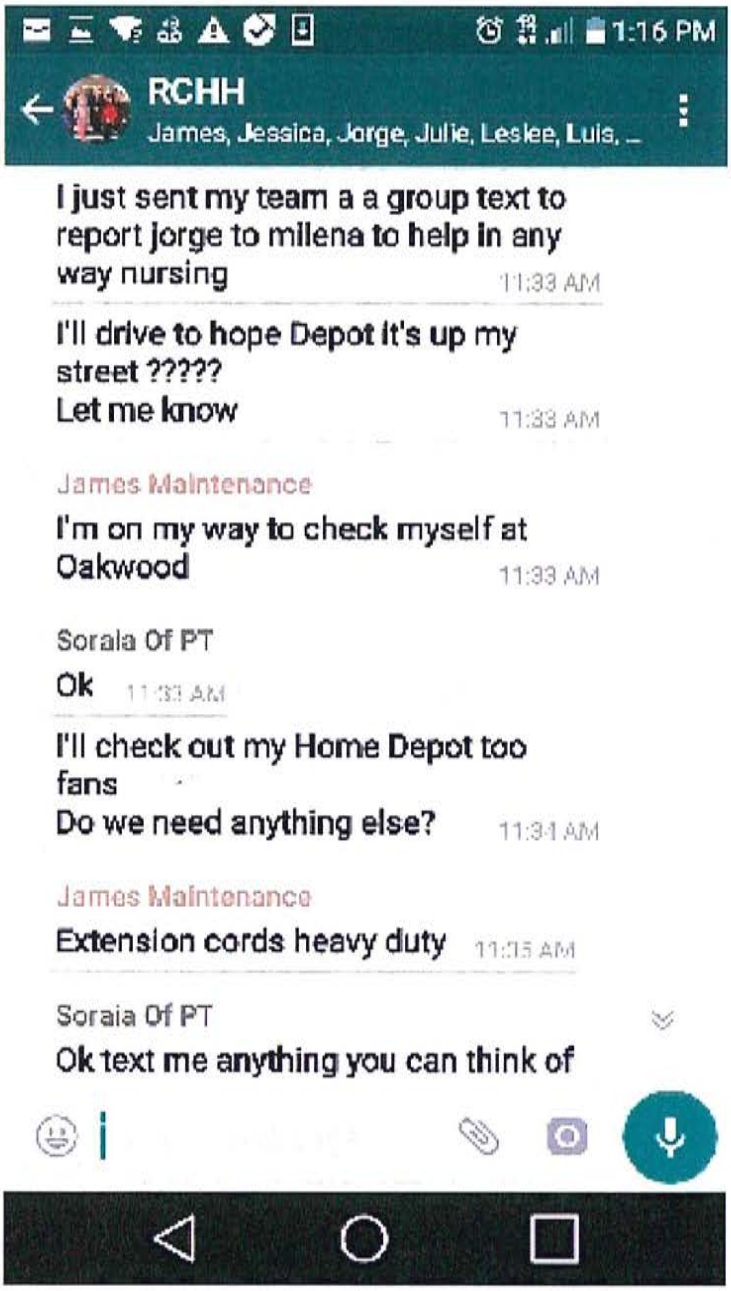

1:14 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
Leslee Ramos
Mitsy will be as scheduled 8:53 AM
Jorge Carballo
great if we get magic # coast only Medicare and short term good
8:55 AM
Maria Colon
Milena ARNP is in charge of nursing until 7pm and SERGO COLLIN RN SUPERVISOR 7pm until 7am . Just spoke tonpharmacy and they are back to normal schedules 9:04 AM
Jorge Carballo
thanks 9:05 AM
Hold off any other admission until we restore AC 9:40 AM
James calling Gov again what's the update pls? 9:41 AM

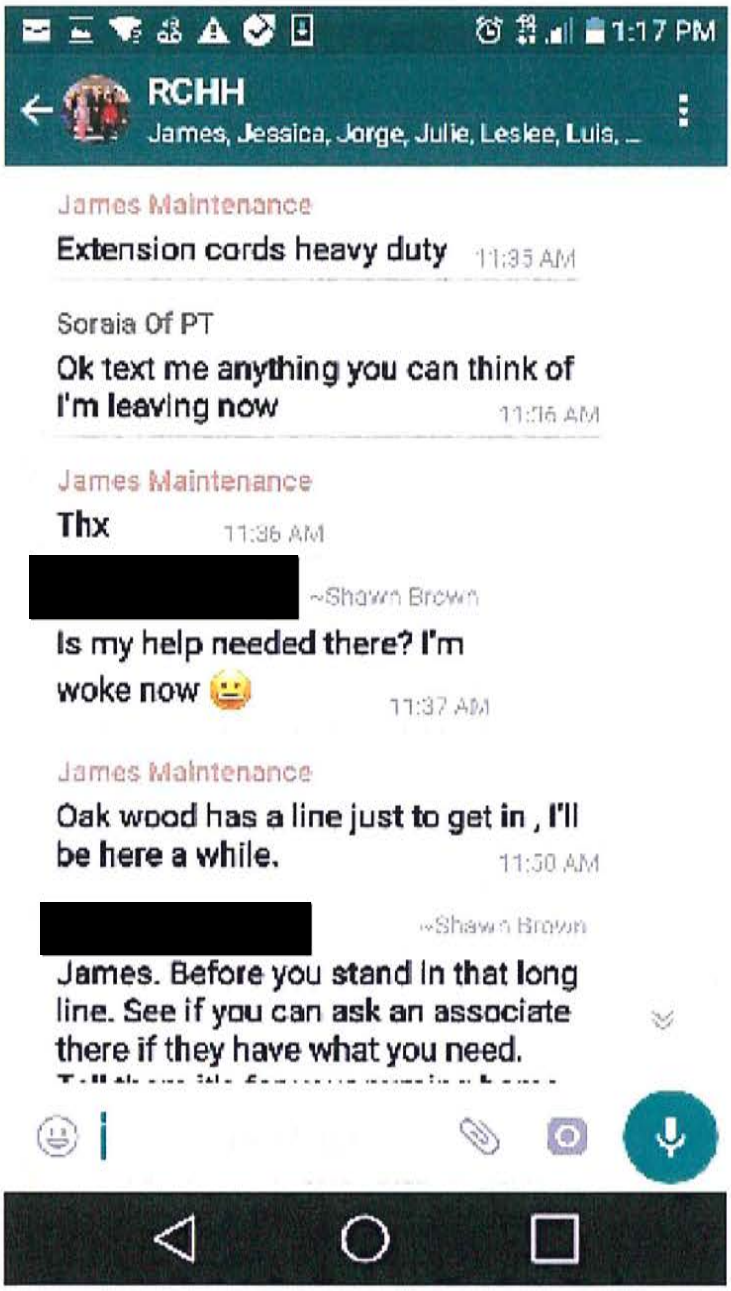

1:15 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
Maria Colon
Milena ARNP is in charge of nursing until 7pm and SERGO COLLIN RN SUPERVISOR 7pm until 7am . Just spoke tonpharmacy and they are back to normal schedules
9:04 AM
Jorge Carballo
thanks
9:05 AM
Hold off any other admission until we restore AC
9:40 AM
James calling Gov again what's the update pls?
9:41 AM
James Maintenance
Sent you an update about an hour ago check your Text
9:41 AM
Jorge Carballo
Can we get more fans?
9:41 AM


1:16 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
James Maintenance
Went to Home Depot and Lowe's this morning both of cleaned out 9:44 AM
Please let me know about the phone call to gov 9:45 AM
Jorge Carballo
Call voice mail left - and texted left FPL ticket number 4301 9:48 AM
James Maintenance
Thx 9:50 AM
Jorge Carballo
The chiller in 2E needs to pint to corridor patients pls asap 9:51 AM
James Maintenance
The original ticket # 10923 9:54 AM
hey Jorge those patient don't look good we need fans 9:58 AM

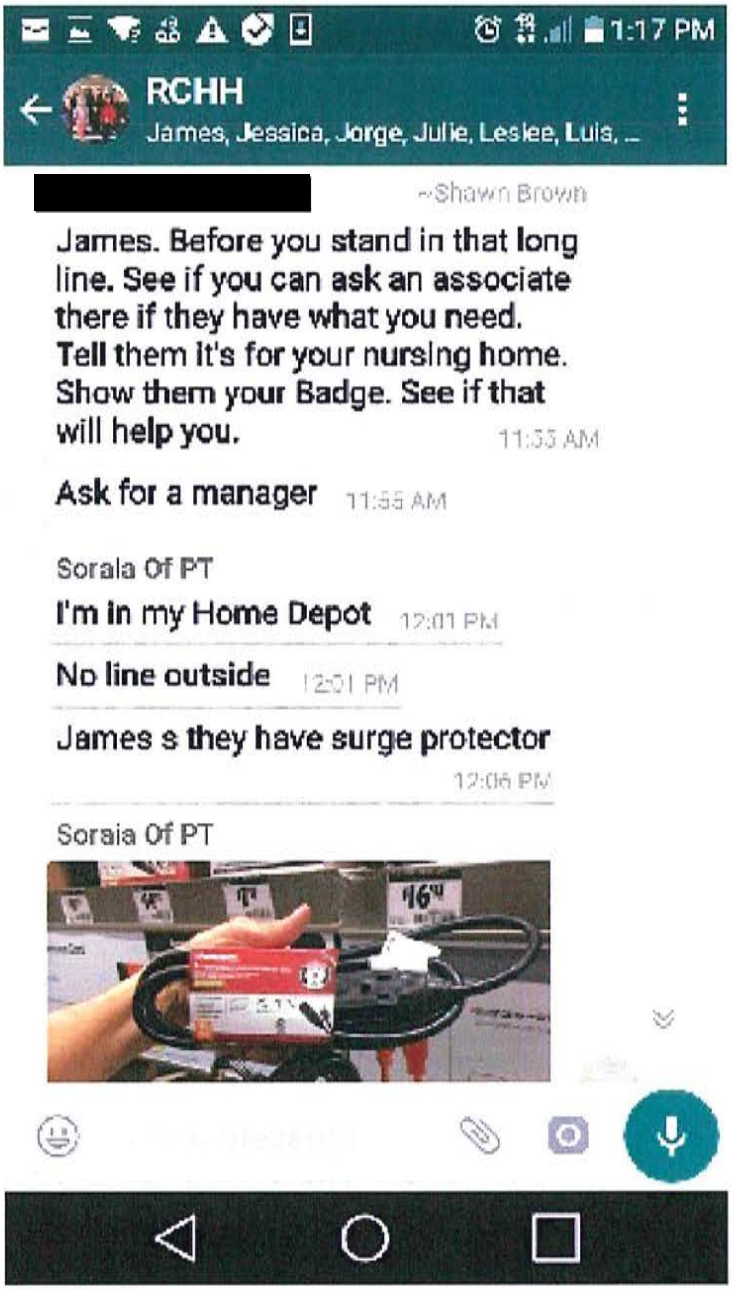

James, Jessica, Jorge, Julie, Leslee, Luis, ...
[redacted]
~Mercy
Necka is in her regular scheduled
12:01 AM
Yessy Bussiness RCCH
María Torres and Mari Bois are in as well as Mona and Alicia is covering as Kim went north to flee the hurricane and is in area where it hit afterwards. I should be going in half a day
10:58 AM
Sorala Of PT
Let me check if my Home Depot has fans?
I just saw texts as in my house the only way I have connection to internet due to poor signal is if phone is connected outside
Do you want me to check if my Home Depot has fans
11:00 AM
I just sent my team a a group text to

15


1:16 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
I just sent my team a a group text to report jorge to milena to help in any way nursing
11:33 AM
I'll drive to hope Depot it's up my street ?????
Let me know
11:33 AM
James Maintenance
I'm on my way to check myself at Oakwood
11:33 AM
Soraia Of PT
Ok
11:33 AM
I'll check out my Home Depot too fans
Do we need anything else?
11:34 AM
James Maintenance
Extension cords heavy duty
11:35 AM
Soraia Of PT
Ok text me anything you can think of


1:17 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
James Maintenance
Extension cords heavy duty 11:35 AM
Soraia Of PT
Ok text me anything you can think of I'm leaving now 11:36 AM
James Maintenance
Thx 11:36 AM
[redacted] ~Shawn Brown
Is my help needed there? I'm woke now 11:37 AM
James Maintenance
Oak wood has a line just to get in , I'll be here a while. 11:38 AM
[redacted] ~Shawn Brown
James. Before you stand in that long line. See if you can ask an associate there if they have what you need.

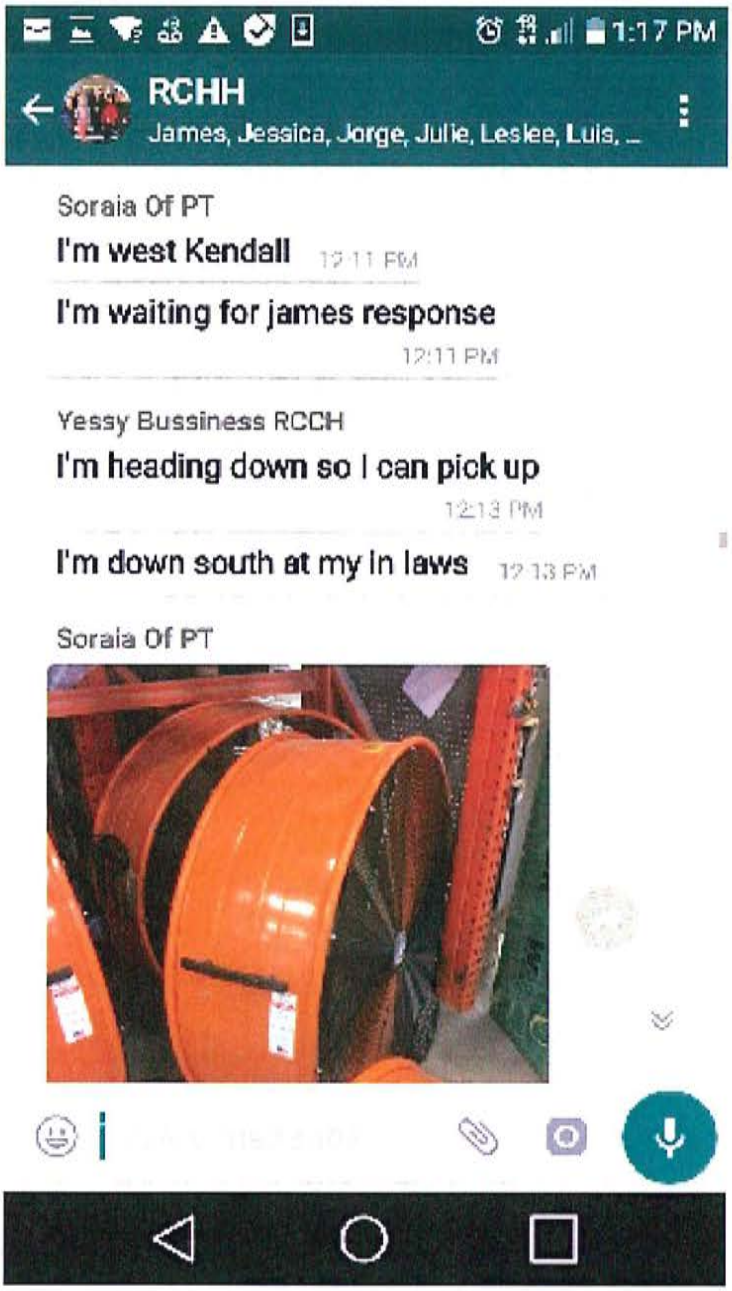
17

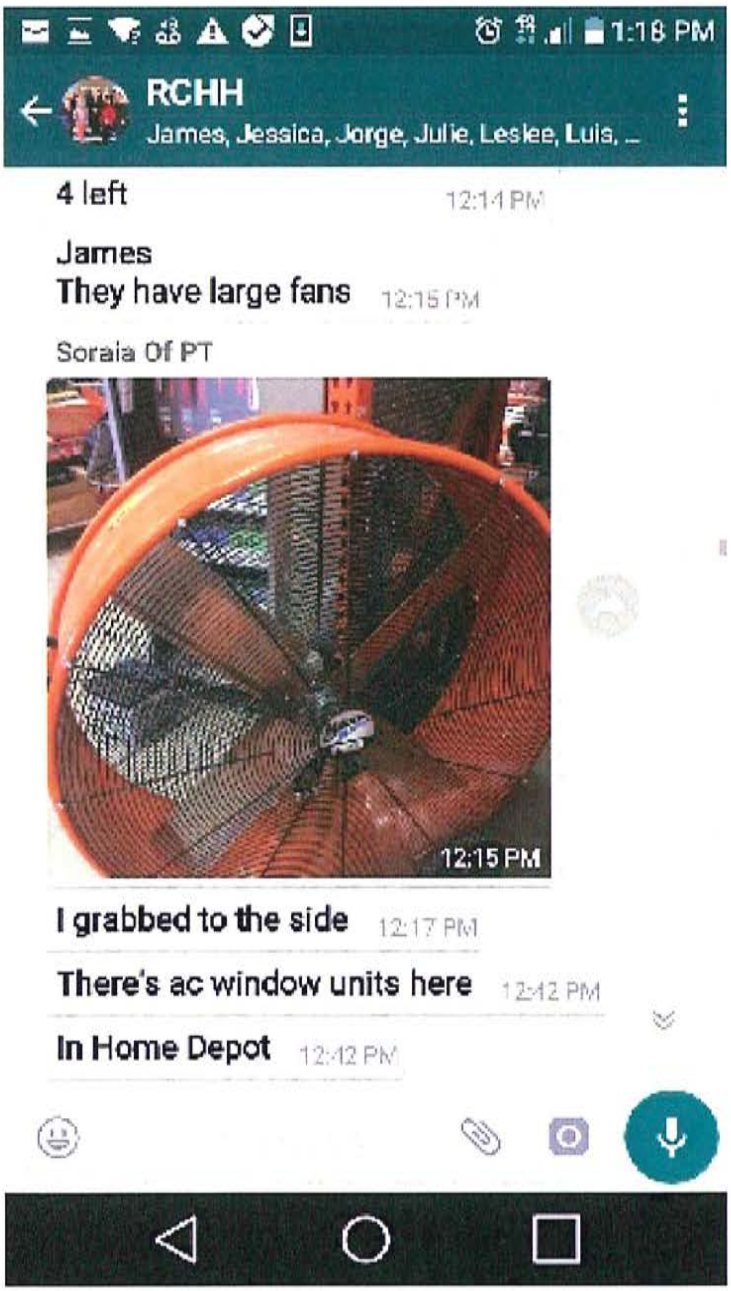

1:17 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
[redacted]
~Shawn Brown
James. Before you stand in that long line. See if you can ask an associate there if they have what you need. Tell them it's for your nursing home. Show them your Badge. See if that will help you.
11:33 AM
Ask for a manager 11:55 AM
Sorala Of PT
I'm in my Home Depot 12:01 PM
No line outside 12:01 PM
James s they have surge protector
12:06 PM
Soraia Of PT

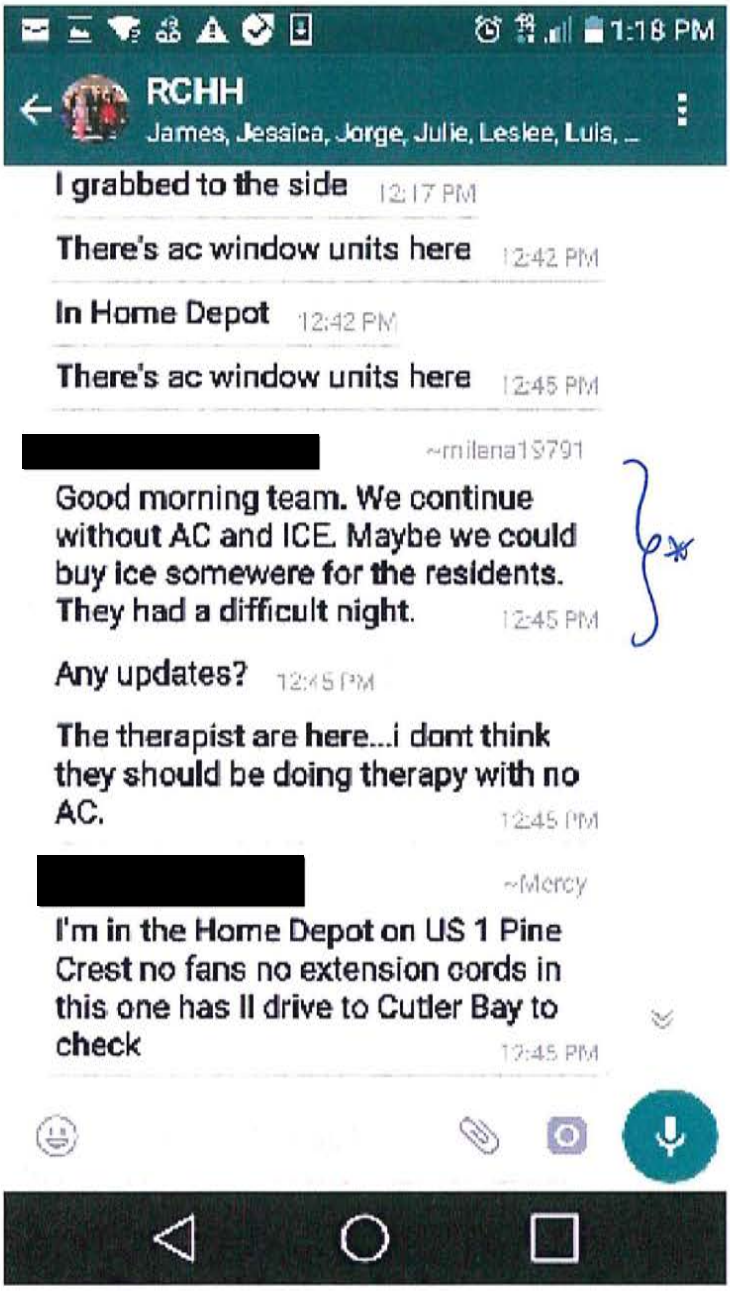
18

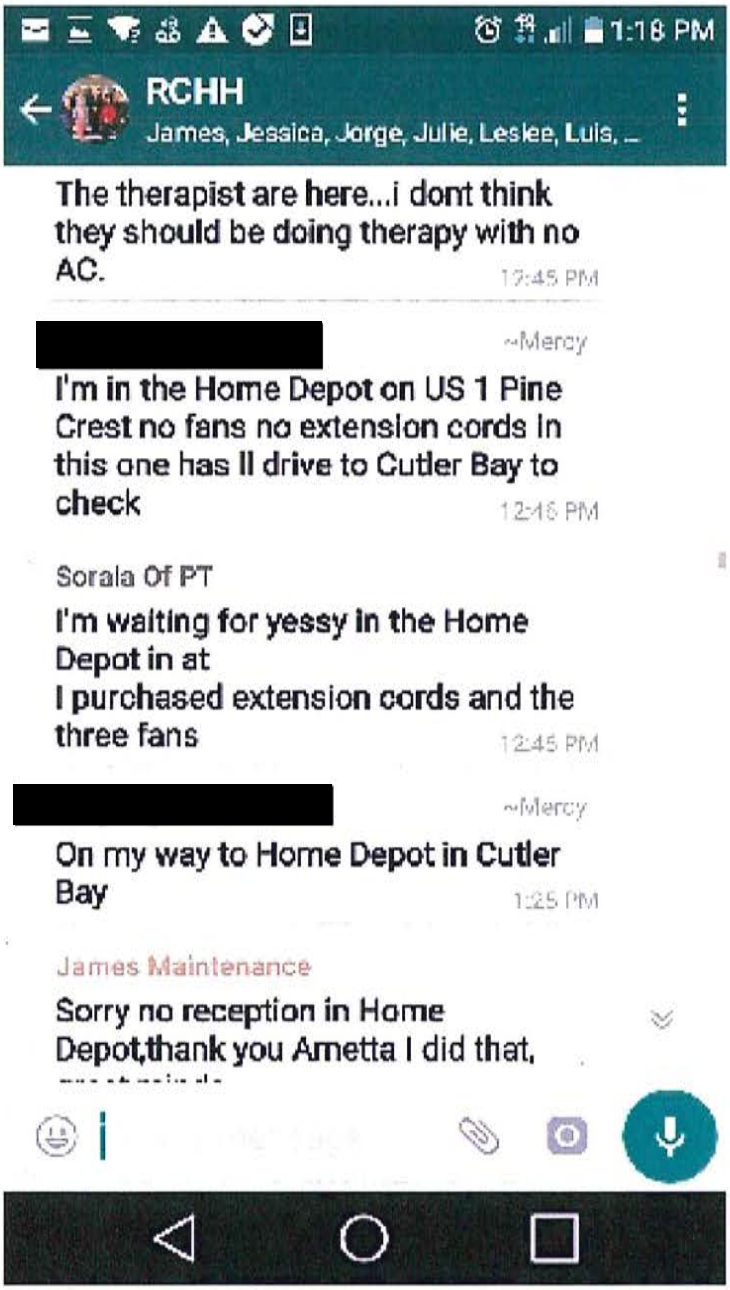

1:17 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Sorala Of PT
12:07 PM
Sorala Of PT


1:17 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
Soraia Of PT
12:07 PM
Yessy Bussiness RCCH
Zoraya which Home Depot? 12:10 PM
Soraia Of PT
I'm west Kendall 12:11 PM
I'm waiting for james response
12:11 PM

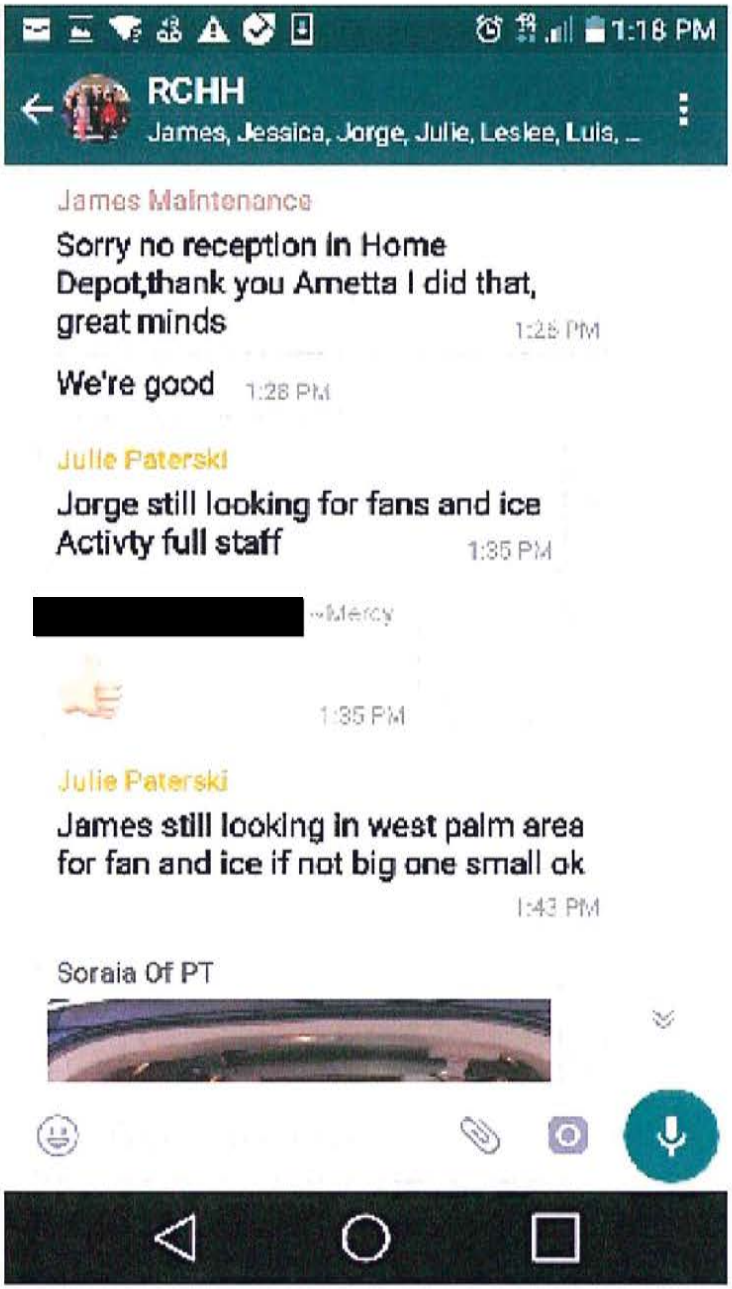

1:17 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Soraia Of PT
I'm west Kendall 12:11 PM
I'm waiting for james response
12:11 PM
Yessy Bussiness RCCH
I'm heading down so I can pick up
12:13 PM
I'm down south at my in laws 12:13 PM
Soraia Of PT

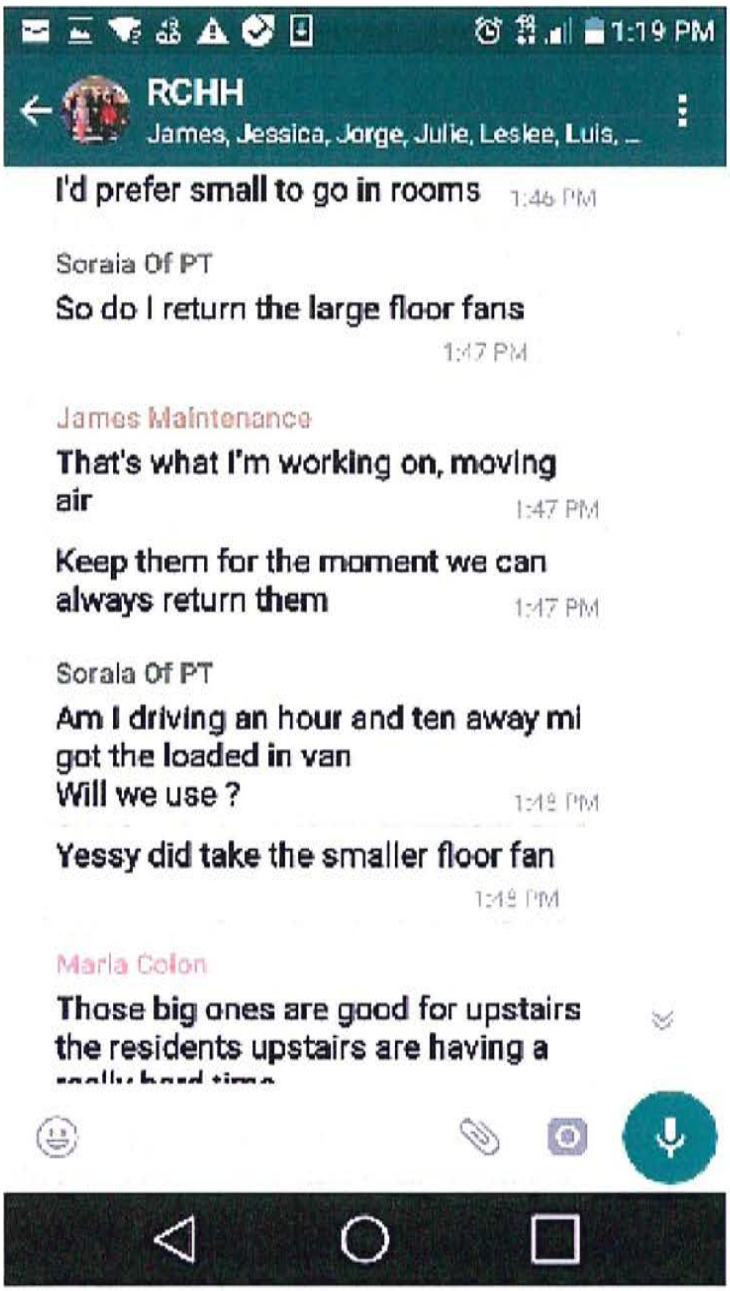

1:18 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
4 left
12:14 PM
James
They have large fans
12:15 PM
Soraia Of PT
12:15 PM
I grabbed to the side
12:17 PM
There's ac window units here
12:42 PM
In Home Depot
12:42 PM


1:18 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
I grabbed to the side 12:17 PM
There's ac window units here 12:42 PM
In Home Depot 12:42 PM
There's ac window units here 12:45 PM
[redacted] ~milena19791
Good morning team. We continue without AC and ICE. Maybe we could buy ice somewere for the residents. They had a difficult night. 12:45 PM
Any updates? 12:45 PM
The therapist are here...i dont think they should be doing therapy with no AC. 12:45 PM
[redacted] ~Mercy
I'm in the Home Depot on US 1 Pine Crest no fans no extension cords in this one has II drive to Cutler Bay to check 12:45 PM

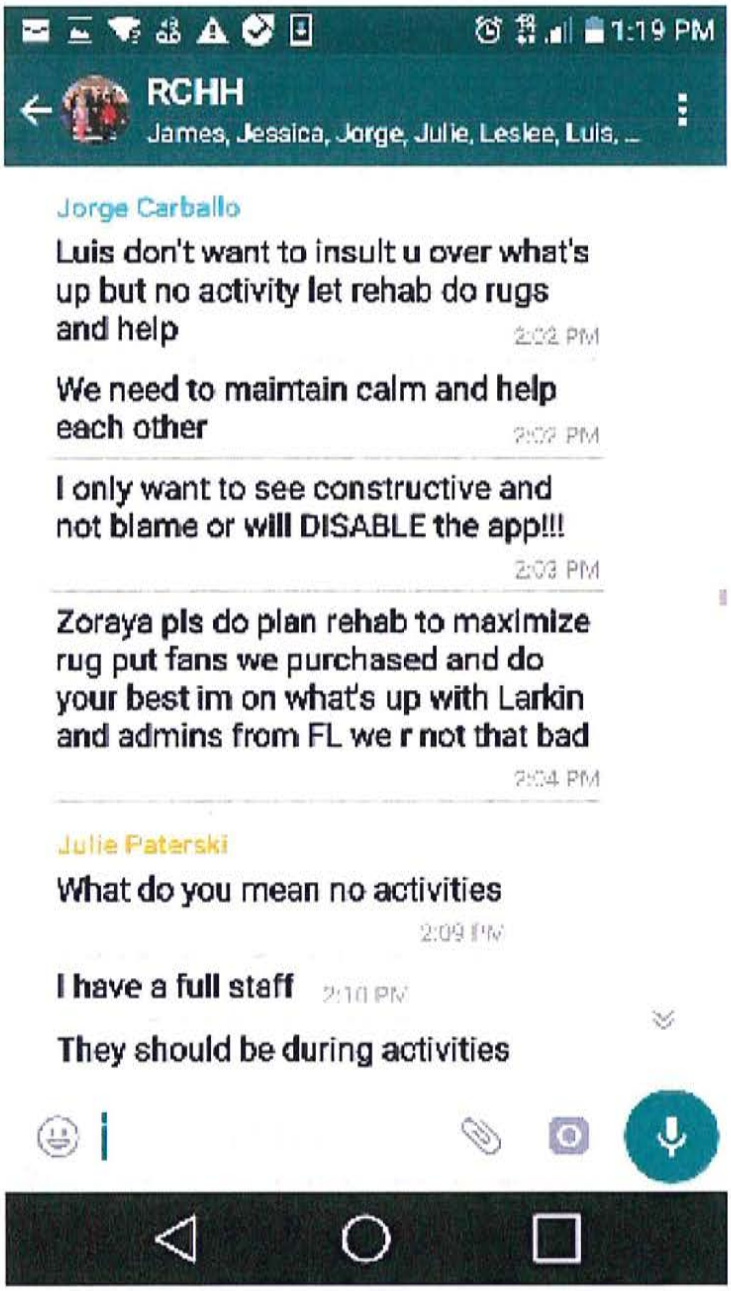

1:18 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
The therapist are here...i dont think they should be doing therapy with no AC.
12:45 PM
[redacted]
~Mercy
I'm in the Home Depot on US 1 Pine Crest no fans no extension cords In this one has II drive to Cutler Bay to check
12:46 PM
Sorala Of PT
I'm waiting for yessy in the Home Depot in at
I purchased extension cords and the three fans
12:45 PM
[redacted]
~Mercy
On my way to Home Depot in Cutler Bay
1:25 PM
James Maintenance
Sorry no reception in Home Depot,thank you Ametta I did that,

24

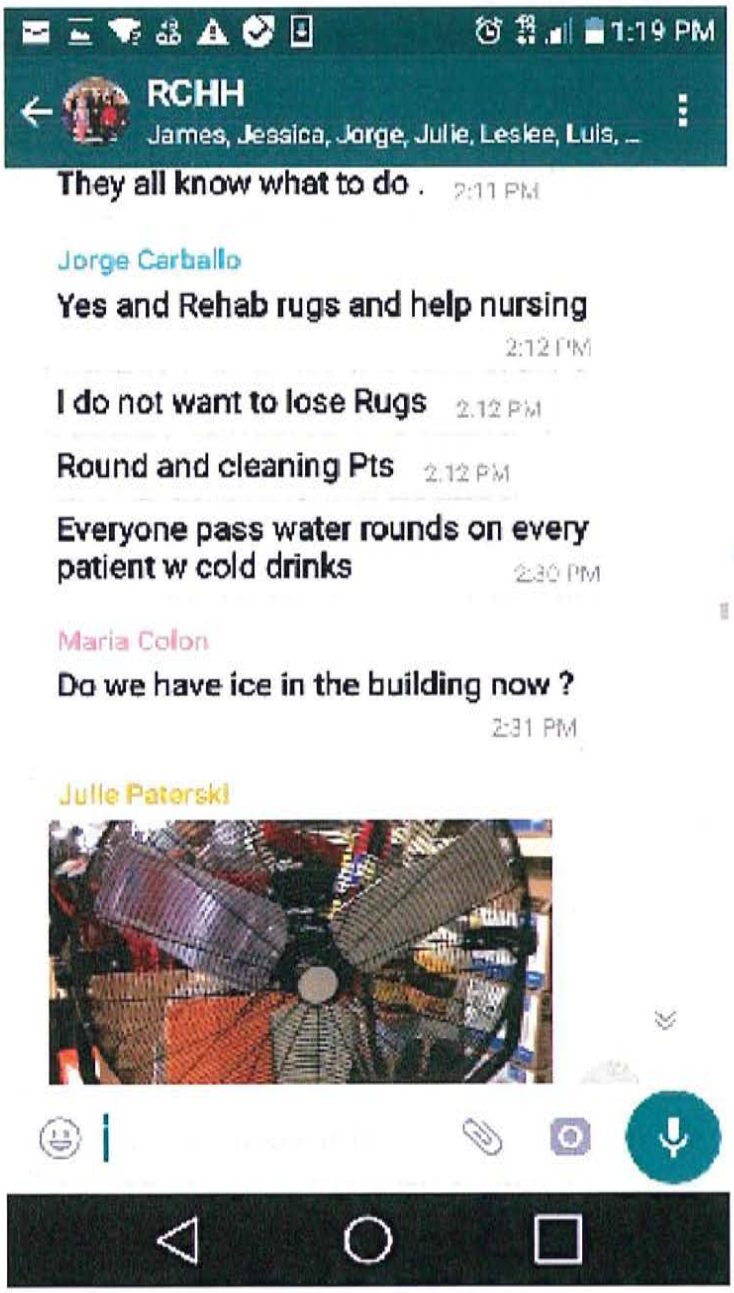

1:18 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
James Maintenance
Sorry no reception in Home Depot,thank you Ametta I did that, great minds
1:25 PM
We're good 1:28 PM
Julie Paterski
Jorge still looking for fans and ice Activty full staff
1:35 PM
[redacted]~Mercy
1:35 PM
Julie Paterski
James still looking in west palm area for fan and ice if not big one small ok
1:43 PM
Soraia Of PT


1:19 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
I'd prefer small to go in rooms 1:46 PM
Soraia Of PT
So do I return the large floor fans
1:47 PM
James Maintenance
That's what I'm working on, moving air 1:47 PM
Keep them for the moment we can always return them 1:47 PM
Soraia Of PT
Am I driving an hour and ten away mi got the loaded in van
Will we use ? 1:48 PM
Yessy did take the smaller floor fan
1:48 PM
Maria Colon
Those big ones are good for upstairs the residents upstairs are having a

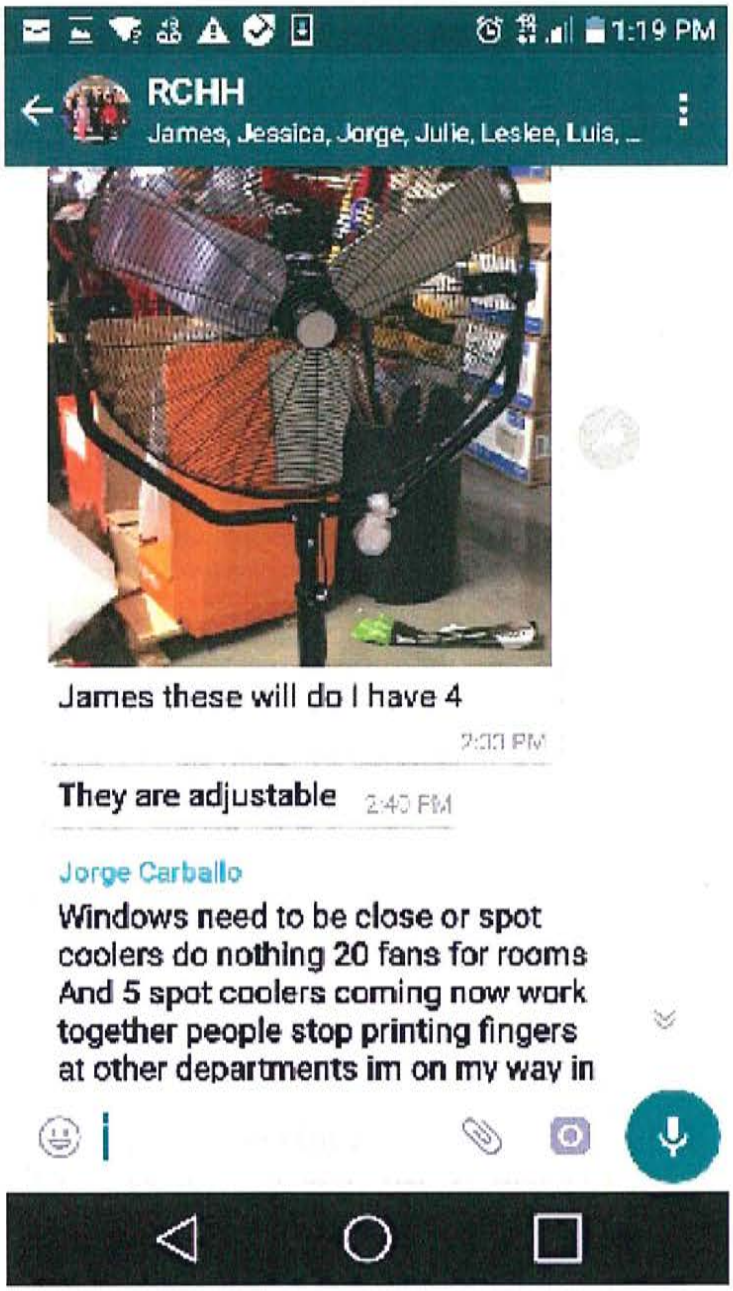

1:19 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
Maria Colon
Those big ones are good for upstairs the residents upstairs are having a really hard time
1:53 PM
For the halls
1:54 PM
Milena the therapist are there to help you out not to do therapy
1:54 PM
Luis Hollywoodhills
Therapist can take the difficult pte to rehab and do activities the same like we did or be in second floor with activities just to monitor [redacted] and [redacted]
1:58 PM
Jorge Carballo
Luis don't want to insult u over what's up but no activity let rehab do rugs and help
2:02 PM
We need to maintain calm and help each other
2:02 PM


1:19 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Jorge Carballo
Luis don't want to insult u over what's up but no activity let rehab do rugs and help
2:02 PM
We need to maintain calm and help each other
2:02 PM
I only want to see constructive and not blame or will DISABLE the app!!!
2:03 PM
Zoraya pls do plan rehab to maximize rug put fans we purchased and do your best im on what's up with Larkin and admins from FL we r not that bad
2:04 PM
Julie Paterski
What do you mean no activities
2:09 PM
I have a full staff
2:10 PM
They should be during activities

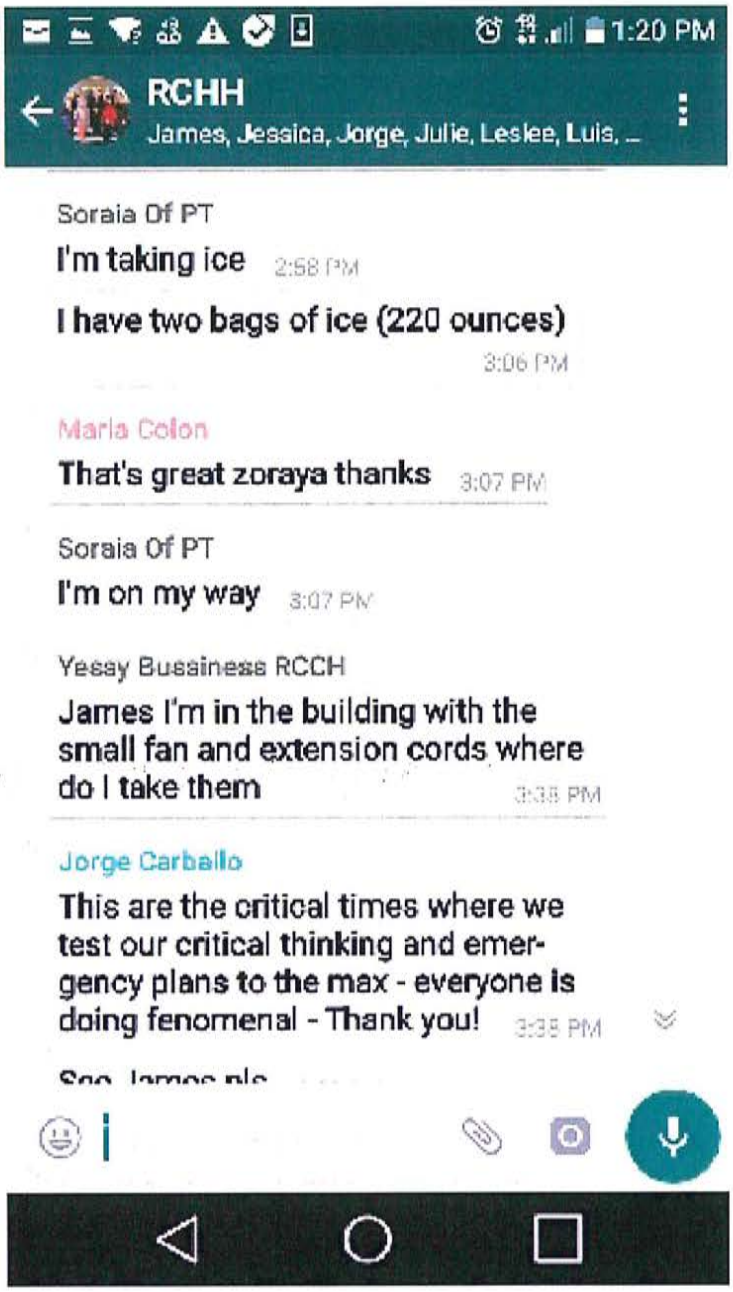
28


1:19 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
They all know what to do . 2:11 PM
Jorge Carballo
Yes and Rehab rugs and help nursing
2:12 PM
I do not want to lose Rugs 2:12 PM
Round and cleaning Pts 2:12 PM
Everyone pass water rounds on every patient w cold drinks 2:30 PM
Maria Colon
Do we have ice in the building now ?
2:31 PM
Julie Paterski

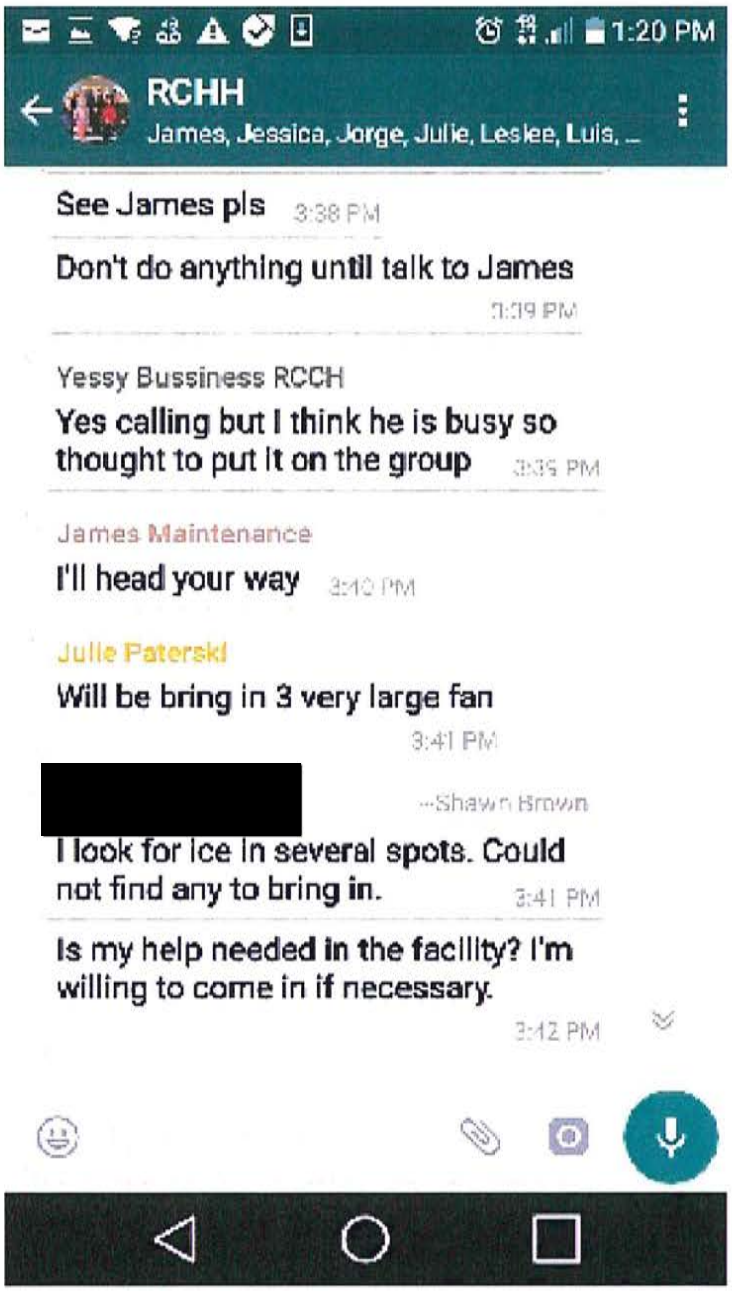
29


1:19 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
James these will do I have 4
2:33 PM
They are adjustable 2:40 PM
Jorge Carballo
Windows need to be close or spot coolers do nothing 20 fans for rooms And 5 spot coolers coming now work together people stop printing fingers at other departments im on my way in

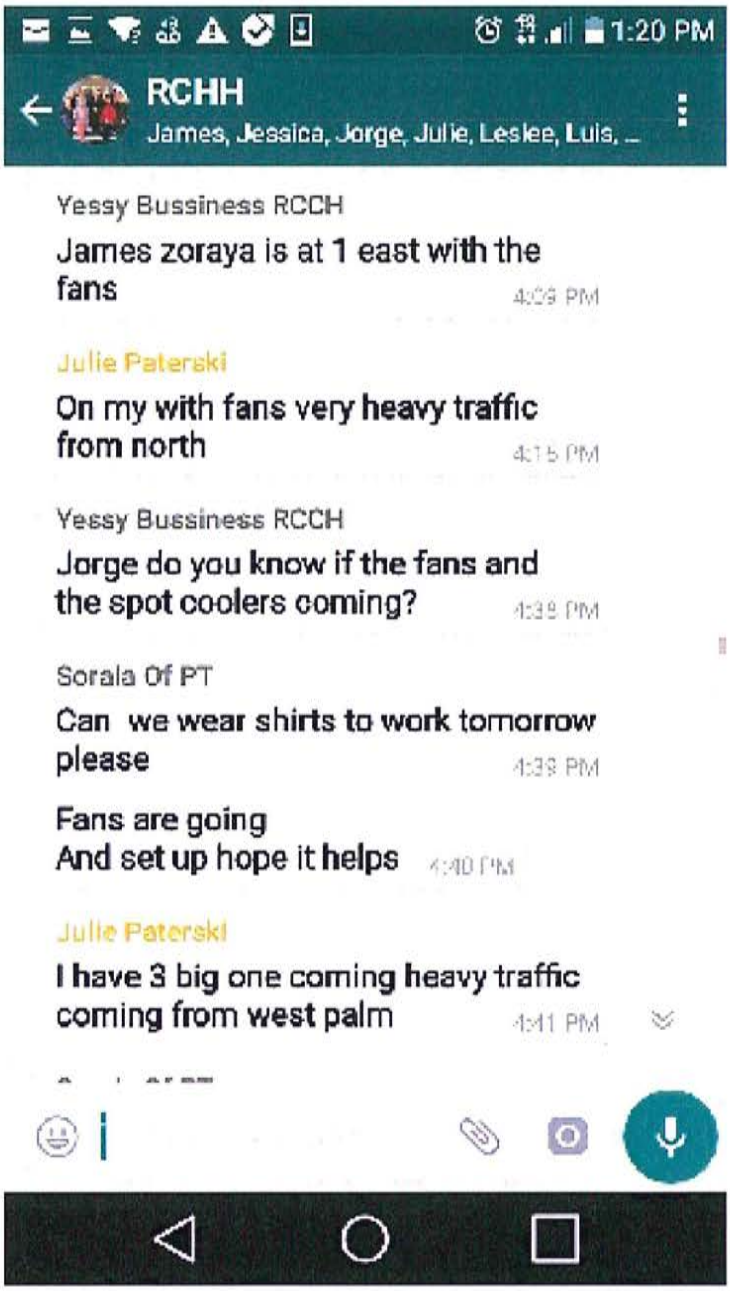
30


1:20 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Soraia Of PT
I'm taking ice 2:58 PM
I have two bags of ice (220 ounces)
3:06 PM
Maria Colon
That's great zoraya thanks 3:07 PM
Soraia Of PT
I'm on my way 3:07 PM
Yessy Bussiness RCCH
James I'm in the building with the small fan and extension cords where do I take them 3:35 PM
Jorge Carballo
This are the critical times where we test our critical thinking and emergency plans to the max - everyone is doing fenomenal - Thank you! 3:35 PM

31

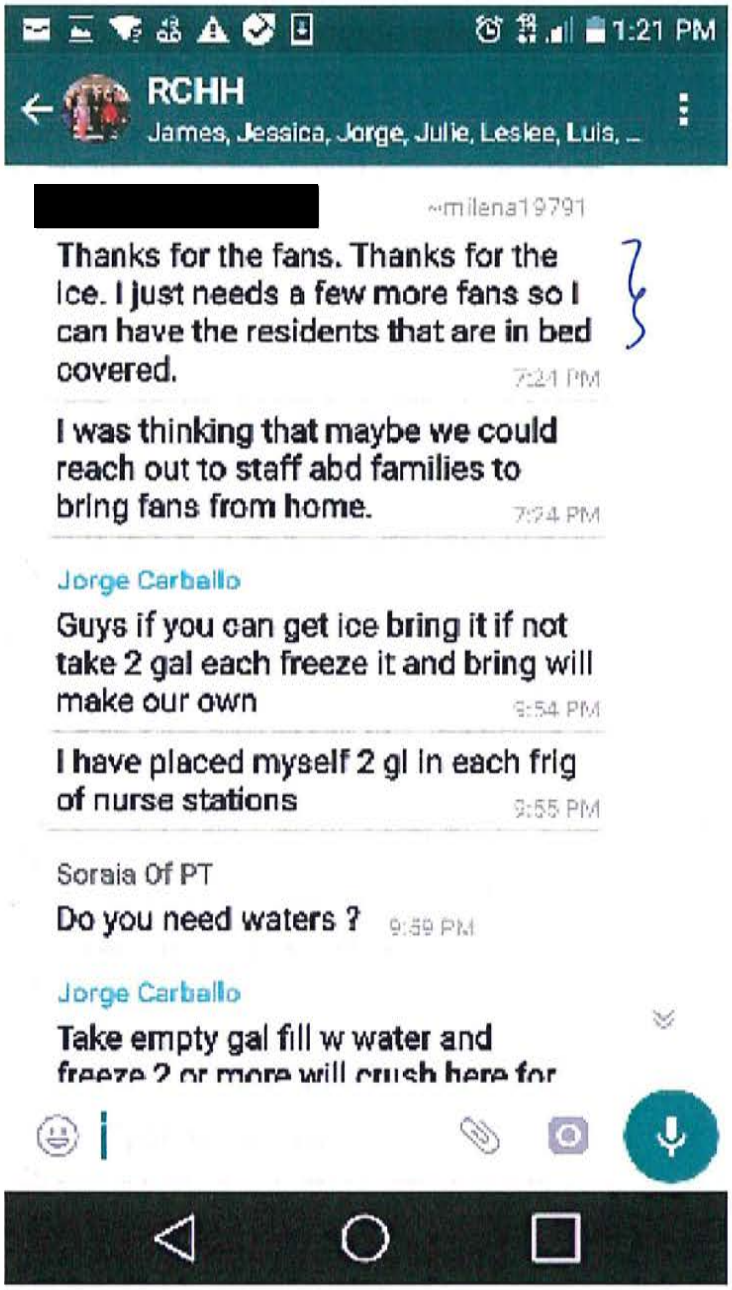

1:20 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
See James pls 3:38 PM
Don't do anything until talk to James
3:39 PM
Yessy Bussiness RCCH
Yes calling but I think he is busy so thought to put it on the group 3:39 PM
James Maintenance
I'll head your way 3:40 PM
Julie Paterski
Will be bring in 3 very large fan
3:41 PM
[redacted] --Shawn Brown
I look for ice in several spots. Could not find any to bring in. 3:41 PM
Is my help needed in the facility? I'm willing to come in if necessary.
3:42 PM

32

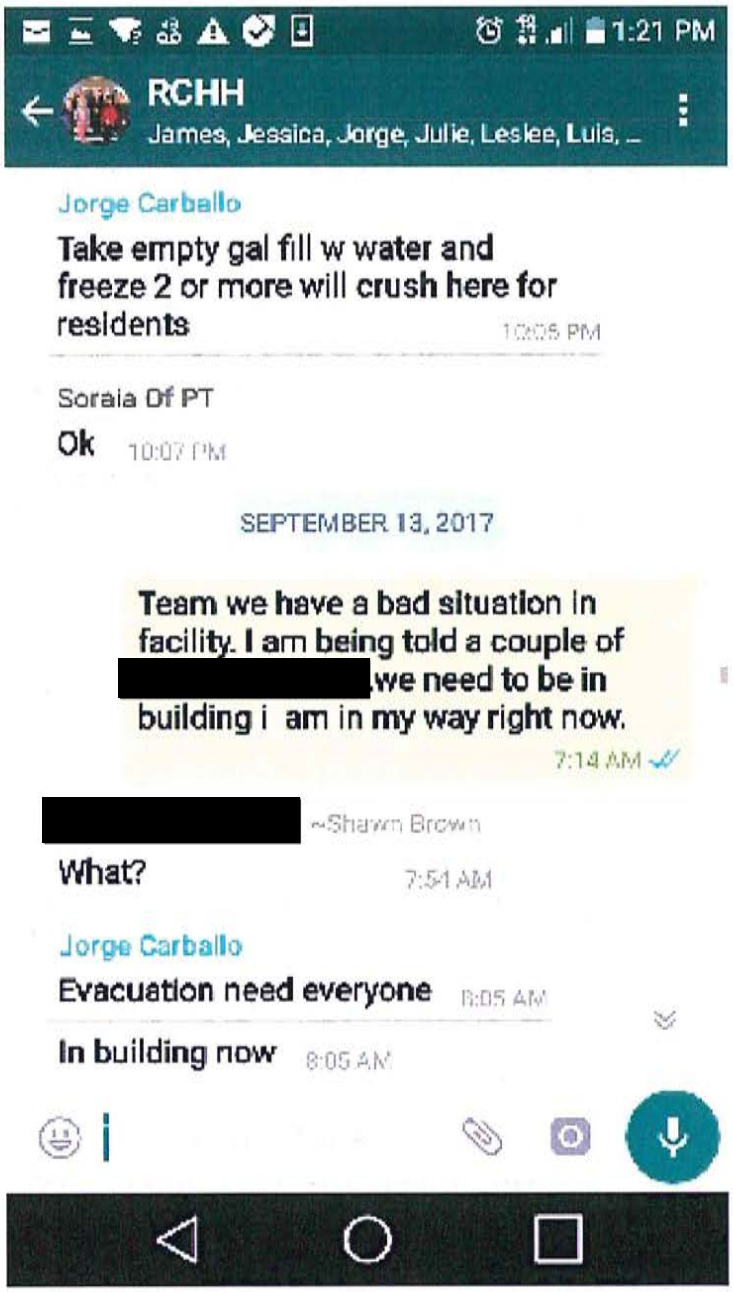

1:20 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Yessy Bussiness RCCH
James zoraya is at 1 east with the fans
4:09 PM
Julie Pateraki
On my with fans very heavy traffic from north
4:15 PM
Yessy Bussiness RCCH
Jorge do you know if the fans and the spot coolers coming?
4:39 PM
Sorala Of PT
Can we wear shirts to work tomorrow please
4:39 PM
Fans are going
And set up hope it helps
4:40 PM
Julie Pateraki
I have 3 big one coming heavy traffic coming from west palm
4:41 PM


1:20 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Soraia Of PT
I will grab the large last fan I saw in HÖME Depot on way home and bring in tomorrow
Fans did help
4:41 PM
James Maintenance
5:08 PM
Yessy Bussiness RCCH
James Jules is here 1 east with the fans
5:09 PM
James Maintenance
Ok
5:11 PM
Yessy Bussiness RCCH
They are heavy so not sure if u can bring a rolling cart
5:13 PM
[redacted]
~milena19791
Thanks for the fans. Thanks for the

34

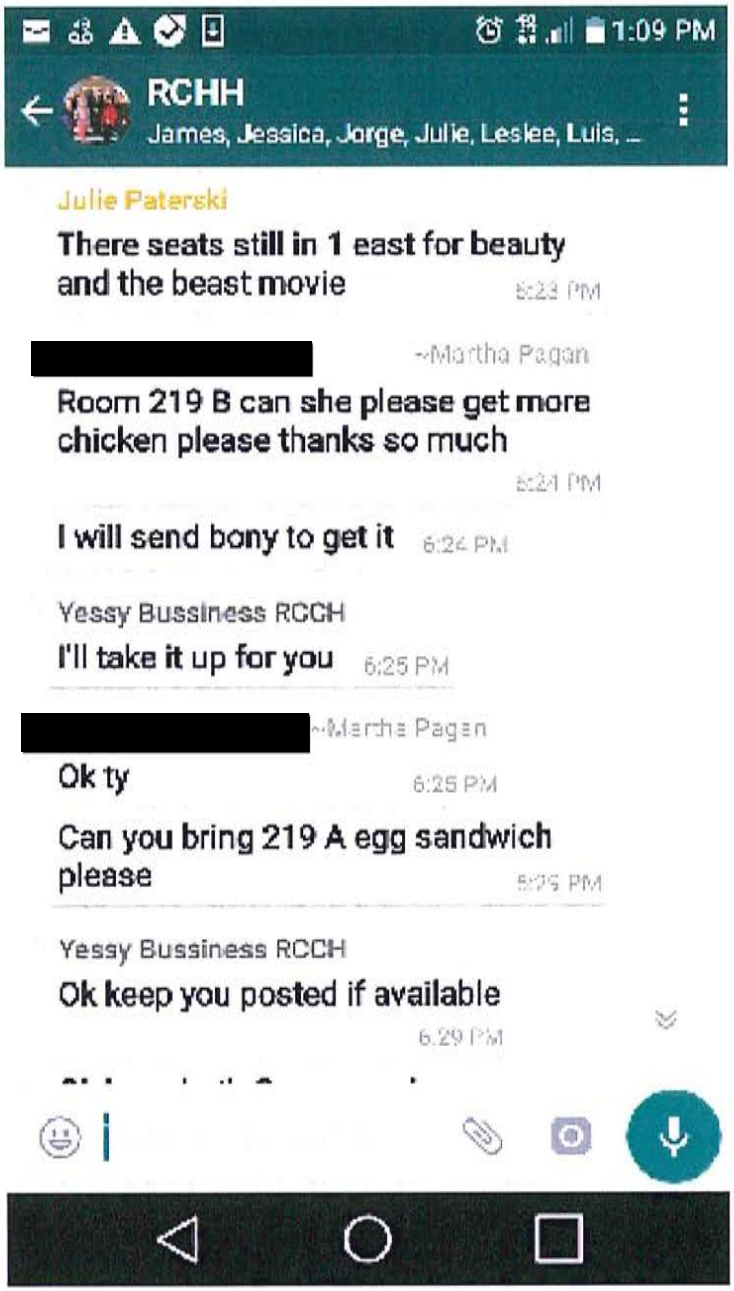

1:21 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
[redacted]
~milena19791
Thanks for the fans. Thanks for the ice. I just needs a few more fans so I can have the residents that are in bed covered.
7:24 PM
I was thinking that maybe we could reach out to staff abd families to bring fans from home.
7:24 PM
Jorge Carballo
Guys if you can get ice bring it if not take 2 gal each freeze it and bring will make our own
9:54 PM
I have placed myself 2 gl in each frig of nurse stations
9:55 PM
Soraia Of PT
Do you need waters ?
9:59 PM
Jorge Carballo
Take empty gal fill w water and
freeze 2 or more will crush here for

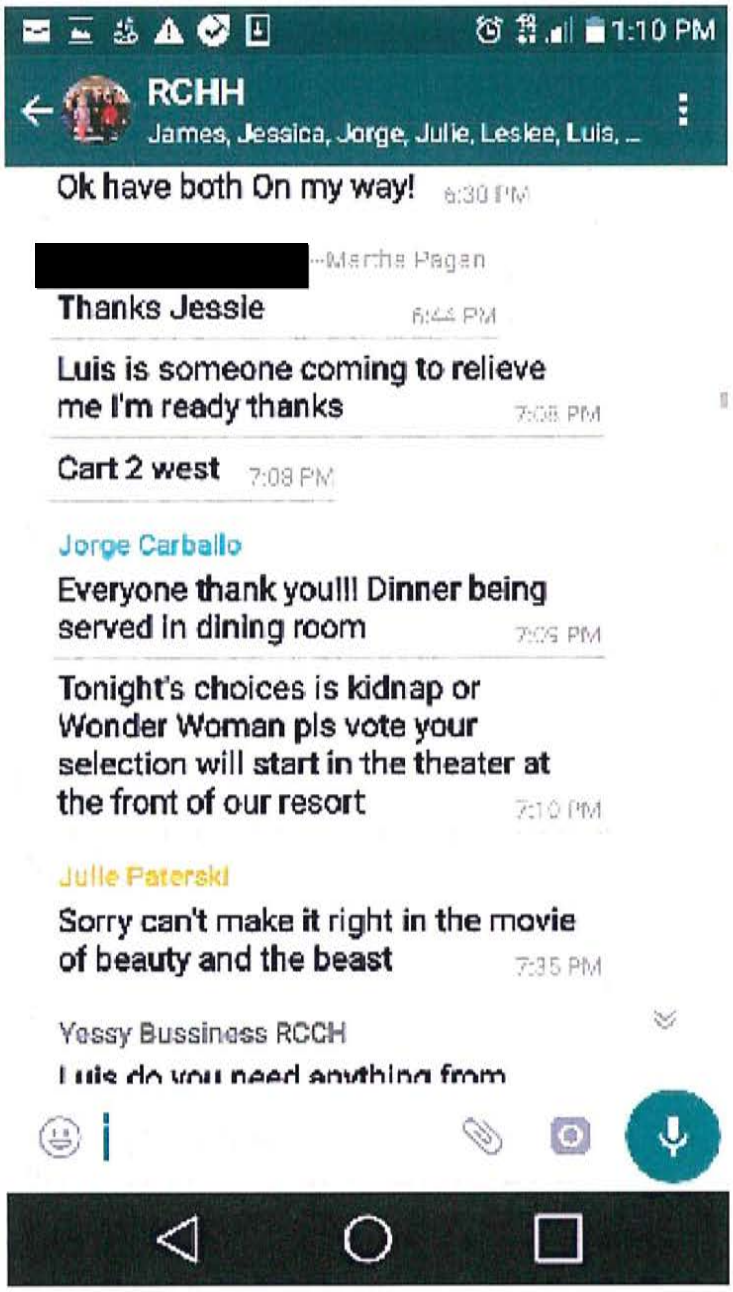
25


1:21 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, _
Jorge Carballo
Take empty gal fill w water and freeze 2 or more will crush here for residents
10:05 PM
Soraia Of PT
Ok 10:07 PM
SEPTEMBER 13, 2017
Team we have a bad situation in facility. I am being told a couple of [redacted] we need to be in building i am in my way right now.
7:14 AM
[redacted] ~Sharon Brown
What?
7:54 AM
Jorge Carballo
Evacuation need everyone 8:05 AM
In building now 8:05 AM

36


1:21 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
Soraia Of PT
Idea
I'm filling up individual ziploc bags with water freeze in freezer I'll put in cooler and take in am
8:06 AM
On way 8:07 AM
Leslee Ramos
On my way 8:07 AM
[redacted]
~Shawn Brown
Guys have your badge to show the police. If not you can't get in. 8:51 AM
Leslee Ramos
Thanks 8:51 AM
[redacted]
~Shawn Brown
Traffic is crazy here by the light in Johnson and 35th
8:32 AM
Yessy Bussiness RCCH


1:09 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Julie Paterski
There seats still in 1 east for beauty and the beast movie
[redacted] ~Martha Pagan
Room 219 B can she please get more chicken please thanks so much
I will send bony to get it 6:24 PM
Yessy Bussiness RCCH
I'll take it up for you 6:25 PM
[redacted] ~Martha Pagan
Ok ty 6:25 PM
Can you bring 219 A egg sandwich please
Yessy Bussiness RCCH
Ok keep you posted if available
6:29 PM


1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ...
Ok have both On my way! 6:30 PM
[redacted] Merche Pagan
Thanks Jessie 6:44 PM
Luis is someone coming to relieve me I'm ready thanks 7:08 PM
Cart 2 west 7:08 PM
Jorge Carballo
Everyone thank you!!! Dinner being served in dining room 7:09 PM
Tonight's choices is kidnap or Wonder Woman pls vote your selection will start in the theater at the front of our resort 7:10 PM
Julie Paterski
Sorry can't make it right in the movie of beauty and the beast 7:35 PM
Yessy Bussiness RCCH
Luis do you need anything from

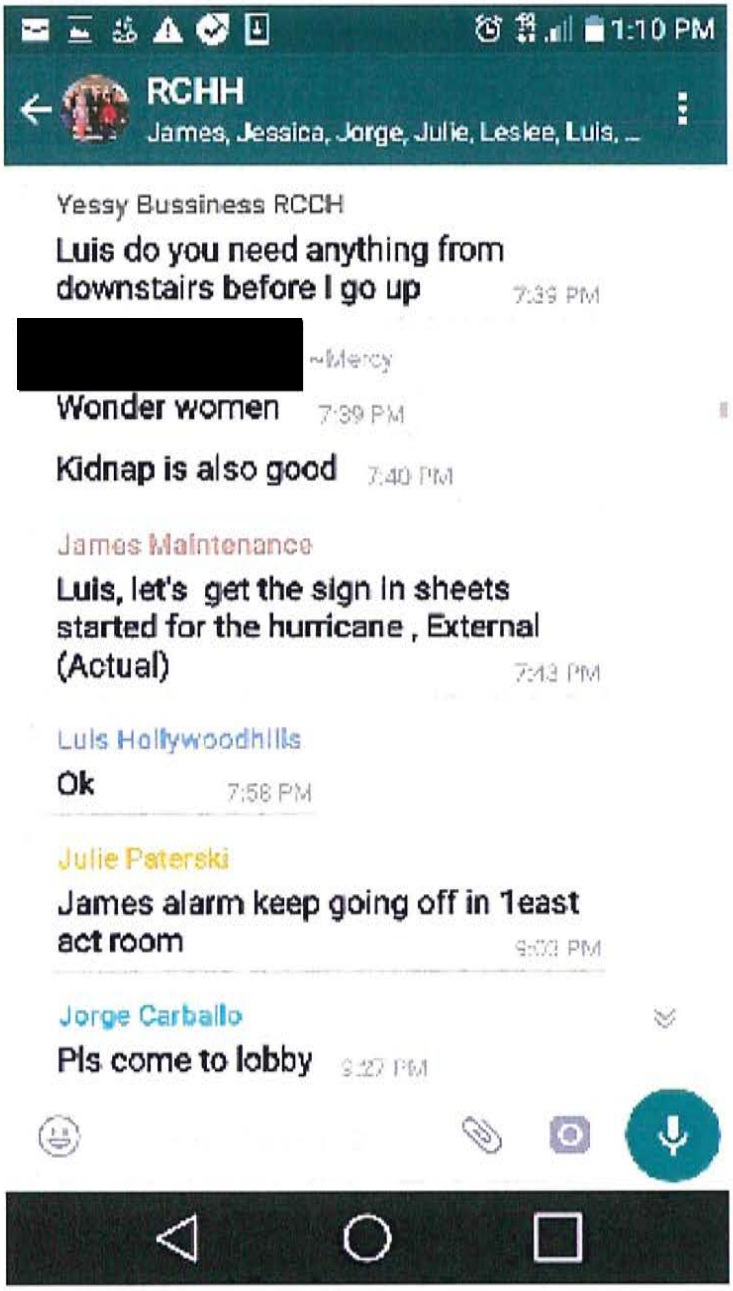

1:10 PM
RCHH
James, Jessica, Jorge, Julie, Leslee, Luis, ..
Yessy Bussiness RCCH
Luis do you need anything from downstairs before I go up
7:39 PM
[redacted]
~Mercy
Wonder women 7:39 PM
Kidnap is also good 7:40 PM
James Maintenance
Luis, let's get the sign in sheets started for the hurricane , External (Actual)
7:43 PM
Luis Hollywoodhills
Ok 7:58 PM
Julie Paterski
James alarm keep going off in 1east act room
8:03 PM
Jorge Carballo
Pls come to lobby 8:27 PM

Exhibit 4

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

vs. Case No. 17-5769

REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC,

Respondent.

_____/

PROCEEDINGS HAD AND HELD BEFORE

THE HONORABLE

JUDGE MARY LI CREASY

MARCH 7, 2018

REPORTED BY:

LINDSAY YOCUM, COURT REPORTER

NOTARY PUBLIC, STATE OF FLORIDA

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Direct Examination by Mr. Warren	1787
Cross Examination by Mr. Smith	1850
Redirect Examination by Mr. Warren	1866

THE COURT: Good morning, everyone. Today is March 7, 2018. We are here for the continued hearing in case number 17-5769, Agency for Health Care Administration versus Rehabilitation Center at Hollywood Hills, LLC. My name is Mary Li Creasy, I'm the Administrative Law Judge presiding. Mr. Menton, are you ready with the next witness?

MR. MENTON: Yes, Your Honor, we are. The Agency would call Dr. Hoffman.

THE COURT: Good morning, Doctor.

THE WITNESS: Good morning.

NANNETTE HOFFMAN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEPHEN MENTON, ESQ.:

Q Good morning.

A Good morning.

Q Can you please state your name and your profession?

A Nannette Hoffman and I am a medical doctor in the State of Florida.

Q Dr. Hoffman, can you take a few minutes and give the Judge a little bit of background on your education and training that you've had?

A I graduated with a combined Bachelor's Medical

Doctorate Degree from Rensselaer Polytechnic Institute where I majored in biology and my Medical Degree from Albany Medical College, Albany, New York, its combined bachelors MD degree 1981. From there I did my internal medicine and residency training at the Shands University of Florida Hospital and subsequently in 1984 became board certified in internal medicine. Do you want me to keep going?

Q Sure.

A Okay. And from there I worked full time at the Malcom Randall VA Medical Center. It was not called that back then, but that's what it's called now, in various departments. And then in 1986, I became a medical director of the nursing home there. In 1988, I became board certified in geriatrics, that was the year where you were grandfathered in without having to do a fellowship. And I think I mentioned I became board certified in internal medicine in 1984 and I've continuously maintained my certification ever since every ten years with the American Board of Internal Medicine. So I remained at the VA for approximately 31 years and retired from geriatric work there, as the chief of geriatrics there from about 2000 until the time I retired. And then I worked for about nine months for a visiting physicians association company, visiting

Page 1700

patients in their homes through North Central Florida. And then most recently in December of 2016, I was hired by Hospital Corporation of America in conjunction with University of Central Florida to mentor geriatric, well basically mentor internal medicine and family practice residents in geriatrics. Seeing geriatrics patients and that pretty much sums up my career. To date.

Q Okay, let me backup and have you elaborate on a couple of things. First of all, you talked about your career with the VA, 31 years I think you said?

A Approximately, yes.

Q And can you describe for the Judge what that institution was? How many beds, that sort of thing?

A I was the medical director of their nursing home originally when they had 120 beds in Gainesville for, I don't know, but I think it was about 15 years and they gradually downsized to about 30 beds. But I still remained medical director and I treated long term residents, subacute type residents that were there for rehabilitation, end of life residents. I use residents and patients interchangeably. And I was also the chief of geriatrics, so I was involved in homecare, outpatient geriatric care. I continued to see geriatric outpatients all through my career at the VA. So my focus was the elderly.

Page 1701

Q Okay. And during your professional career, you mentioned the University of Central Florida, have you had other academic positions as well?

A I had a courtesy position with the University of Florida in their department of aging for many years and its similar to my courtesy appointment with the University of Central Florida. There's no direct remuneration, but I have a, like a clinical associate professor level courtesy appointment, something like that.

Q And you touched a little bit on your current role in mentoring internal medicine and what was the other area?

A Family practice.

Q Family practice. Explain for the Judge, what are you doing in that role.

A Well when we worked together in the outpatient clinic, we see patients. Typically the family practice or internal medicine resident because they're already doctors and are used to seeing patients semi independently. They'll see the patient, evaluate them and then come and discuss the patient with me and then we go in together to verify the findings, formulate the plan, educate the patient, and discuss the clinical and scientific aspects of the case, where it's appropriate

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so that the resident learns. They're not there with me every day that I work, so it's some days I see the patients on my own.

Q Hold on just one second. And so Doctor, I think you just mentioned that you continue to see patients today? Well not today, but currently?

A Yes, I do work four days out of the week and I take night call as well.

Q Okay. And you mentioned the board certification that you had in internal medicine and also a certification. Can you explain for the Judge a little bit further what that is and in particular I think we all have a general idea of geriatrics, but what's the certification in geriatrics?

A Well with geriatrics, now you have to do a one year fellowship of additional training. Seeing primarily geriatrics patients in various clinical venues, such as nursing homes, homecare, outpatient. When I got my original certification, I just had to demonstrate to the American Board of Medicine that I had that kind of clinical experience and pass an exam. So with both original certifications, I passed an exam and actually I'm grandfathered in for internal medicine, but I choose to recertify every ten years to keep up with my competency and in geriatrics I'm required to recertify.

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And in fact, in my current position in my teaching role, its required that I maintain this certification. I'm not allowed per the ACGME, they're the graduate medical education governing body, to mentor, train residents if I don't have my geriatrics certification. So I just took my exam in November and passed it.

Q And what does the exam cover? What are the areas that -- subject areas that fall within geriatrics that --

A General aging changes, physiologic changes with aging, disease entities in aging, the common syndromes that we see such as dementia, urine incontinence, falls, problems with gait, and walking and mobility. Rehabilitation, medications, that's a big area of focus in the elderly. Different disease states and their typical presentations in the elderly. So that's a general overview.

Q And you mentioned that your current position with Hospital Corporation of America as a program director. What is your current position?

A Well I also am a -- we just got our geriatric fellowship program approved, so I'm the program director for that, but we don't have any fellows yet. I'm hoping maybe next academic year. And I'm a HCA hired physician with a courtesy, I think its clinical assistant or

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associate professor with University of Central Florida in geriatrics.

Q And explain what your role is as you're trying to establish the fellowship program?

A Well I collaborate with other clinicians in the community to have an experience for the geriatrics fellows that meet the training requirements. Nursing homes, in homecare, outpatient geriatric care, end of life, hospice and palliative care. And I would be directly responsible for ensuring those fellows get the training that is required. They're prepared for their board exam and mentor them.

Q You mentioned earlier in your testimony, that you were the medical director for a nursing home in Gainesville. Explain for the Judge, what the role of a medical director at a nursing home was and what your professional responsibilities were?

A I had direct patient care responsibilities, but I also worked with physician assistants and nurse practitioners in delivering the medical bedside care to the residents that lived there. I was also on various committees in the nursing home. Reviewing incident reports, reviewing policies, procedures, working closely with the director of nursing on issues that would come up or any planning issues that we had. We were

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certified by the joint commission and had to prepare for those survey visits. We also subsequently had another survey process and implemented the last four to five years. I can't remember the name of the accrediting body, but it's similar to when the State comes in and inspects nursing homes about every, I think in Florida it's about every eighteen months to two years or more frequently if needed. So we were also subject to annual inspections by another governing body for certification and I would work with the director of nursing to ensure that we were meeting whatever applicable standards were required.

Q And in that regard, can you explain in the positions that you've held, how you have interacted with nursing home administrators and directors of nursing for nursing homes?

A In VA we didn't have nursing home administrators. Our director of nursing served somewhat in that capacity, but we would collaborate regularly on resident issues. If residents were wandering, if residents were combative, if there were nursing issues of concern, if we thought a resident was unsafe for some reason, we would discuss the manner and figure out the best approach. If a resident was deteriorating clinically and needed transfer and we were having

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difficulties with that. So it was just administrative clinical issues that we would troubleshoot and we had a performance improvement committee, where we would look at falls and pressure ulcers and hydration, you know, the typical quality things that one monitors in a nursing home to ensure the residents are getting safe and appropriate medical and nursing care.

Q And were you involved in those activities on a regular basis during the course of your career?

A As medical director, yes.

Q Do you have any publications in the area of geriatrics of nursing home care?

A I do have several geriatric publications, I don't have my CV in front of me, so I can't remember them all, but over the years I've published quite a bit in the area of geriatrics.

Q And have you written any papers as it relates to dehydration and the elderly?

A Yes. I think that was one of my very first review papers a long time ago.

Q Okay, when you said review papers, what do you mean by that?

A That it wasn't an actual study of patients, but describing how dehydration impacts the elderly. That it can be difficult to recognize because they don't express

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thirst or perceive thirst, so you have to offer them fluids. The physiologic and hormonal changes that predispose the elderly to dehydration because their kidneys cannot often retain water the way a younger persons kidneys can.

Q And we're going to talk about a few of those issues in a minute, but have you previously testified in court and at administrative proceedings?

A I've previously testified in civil cases and depositions and a few trials. I've had I believe one administrative hearing related to my other area that I work with the State in reviewing charts for coding and medical necessity for AHCA. So I had one administrative hearing before an administrative judge several years ago related to that. All my other testimony and depositions were related to civil cases typically involving nursing homes.

Q And have you been accepted as an expert in any of those civil cases in which you were involved?

A Yes.

Q In what areas?

A Geriatrics and general nursing home care as it pertains to elderly residents.

MR. MENTON: Your Honor, at this time we will proffer Dr. Hoffman as an expert in geriatrics and

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nursing home care as it relates to the elderly.
THE COURT: Any objection?
MS. SMITH: No, Your Honor.
THE COURT: All right. Dr. Hoffman is accepted as an expert in the fields in which she is tendered.
Q (MR. MENTON) Dr. Hoffman, I'd like to move now to the Hollywood Hills Rehabilitation Center, and can you explain for the Judge, how you came to get involved in this case and what you have done?
A I think it was you or your assistant Jen, I can't remember her last name, who contacted me sometime last November of 2017 and asked if I would be willing to be an expert witness in reviewing the patients and -- or patients or residents who died at Hollywood Hills or died shortly thereafter in the emergency room resulting from the heat that occurred in the facility following the hurricane in September of 2017.
Q Okay. I'm going to ask you about some of the specific cases that you reviewed, but before we get into that, can you just explain generally for the Judge, the materials that you looked at and the work that you've done in this case?
A I've looked at the available records that were provided for Hollywood Hills, the nursing home. I looked at the hospital records and the medical examiner

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reports. I also read the depositions of the medical examiner and Dr. Dosa and I read my own deposition that I gave not too long ago. And I also, if there were hospice records available, I looked at those records. And if there were any EMS records included, I would've looked at those. I don't think there were too many.
Q Okay. Before we get into the individual cases, let me ask you some more general questions. Can you describe for the Judge, you alluded to this earlier, the effects of heat on the elderly, are there differences with the younger population?
A Yes. The elderly cannot tolerate or manage heat in the same manner as a younger individual. As the temperature rises in the environment, our hearts try to pump more blood and we try to get more blood to the extremities and to sweat. And elderly individuals do not have the same amount of cardiac, we call it reserve, or the heart cannot pump enough blood if it gets too stressed as temperatures rise and the blood vessels don't dilate enough in the elderly because they're not as compliant as younger individuals. So the skin cannot dissipate the heat from the skin if you cannot dilate your blood vessels near the skin effectively. And also, the elderly don't sweat as much or as vigorously to try to decrease the internal body temperatures. So as a

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result, the elderly are more prone to go into heart failure, organ failure, drop their blood pressures, go into kidney failure. And with very high temperatures, the proteins in the body start to break down and the elderly will get confused as the proteins in the brain start to break down as well and as the blood pressure drops.
Q Okay. I'm a little afraid to ask this question, but how are you using the term elderly in this context?
A Well the definition and there's no science. I know it only knows where the consensus is, but the definition is considered 65 or older. However, in geriatric circles, we think of it more like 75 and older just because the 65 to 75 year old cohort tend to be a little bit healthier.
Q And you talked about the physiological issues that are different with elderly. Are there implications then for health care and particularly care within nursing homes?
A Yes, the elderly have to -- staff need to be aware that the elderly are at risk for certain conditions for dehydration and issues related to heat because they can't compensate like a younger individual can.

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Q And you touched on this a little bit earlier, but can you describe for the Judge, how exposure to heat can or can it be stabilized in an elderly person?
A It can when it stresses the heart and the elderly individuals heart cannot pump enough blood to get blood to the skin and vasodilate and the kidneys don't get enough blood as well and they start to deteriorate. And the elderly individuals, they're usually -- their mental status will also deteriorate and they'll become confused and develop what we call a delirium as their temperatures rise and as their body organs start to decompensate and or fail.
Q Can you explain for the Judge, how the human body thermoregulates itself generally and how that changes in the elderly and as it relates to exposure to heat?
A Well the human body increases the cardiac, what we call the cardiac output, the amount that the heart is pumping and response to heat. The heart rate would typically go up and there will be an attempt to shift blood to the extremities and to the skin and the blood vessels will vasodilate to try and dissipate the increased heat that we would be experiencing. As I mentioned earlier, that an elderly individual cannot use these compensatory mechanisms as robustly as a younger

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individual because they generally don't have as good as a cardiac output. Their kidneys don't typically work as well, so they're more prone to have problems with their kidneys as they don't get blood flow to the kidneys. They can't vasodilate and get that blood to the skin and they don't sweat as much. So these are all problems that the elderly have with increasing heat and heat exposure, that a younger individual may also experience, but not to the same degree. And a younger individual can compensate better physiologically.

Q Does every elderly person respond to heat the same way?

A No, some elderly are more debilitated and have less reserve than other elderly individuals. It depends somewhat on the underlying health status of the elderly patient or resident.

Q And what are some of the factors that impact how an individual elder person might respond to heat?

A Well if they already have impaired heart function or they have dementia or confusion, they can't ask for fluids, and if they have physical problems, like strokes where they can't access fluids to help bring, you know, water does help to bring down the temperatures, that will put them at risk. Often they're on medications that can dehydrate them and make the

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situation worse. They also tend to have poor circulation. Many elderly individuals in nursing homes tend to have poor circulation worse than the healthier elderly younger individual. And so they even have more difficulty getting blood to the extremities and trying to dissipate the heat. So the underlying health conditions that we see in nursing home residents typically make them quite vulnerable to excessive heat and the detrimental effects from that.

Q And are those things that you as a medical director were aware of in your professional career as you were treating patients?

A Yes.

Q Is it something that from your involvement in this industry, that the nursing home should generally be familiar with?

A Yes, the nursing home staff, this is something they should be familiar with, particularly in Florida.

Q Okay. How do medications factor into this?

A Well elderly individuals are often on what we call water pills that can dehydrate them, so that they already may be in a mild state of dehydration. So when they're exposed to excessive heat, they're dehydration becomes even worse and there are some medications that can make it more difficult for the elderly to tolerate

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heat. Like antipsychotic medications, but I think the biggest is often the diuretics.

Q Okay. Now we touched on this just a minute ago, but from your involvement as a medical director for nursing homes and your career in geriatrics, when a nursing home is faced with a situation that is going to cause heat or potential heat, are there steps that need to be taken by a nursing home?

A Yes, there should be a plan in place to be implemented if there's going to be excessive or potential for excessive ambient heat exposure to remove the residents from that environment.

Q And can you explain generally how those steps should -- or what the individual conditions of the patients, how that should be factored into?

A Well, typically, the frailest patients are the ones that are the most immobile and have the greatest number of health conditions and impairments, would be the ones you'd prioritize to remove from any potentially unsafe environment. Those residents who are maybe more ambulatory, have fewer health conditions and can take fluids, those you might not prioritize as high up on the list because it's hard to get everybody out of the facility all at once. I think as I mentioned in my deposition, what also you would do in the face of a

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pending -- as you implement a disaster plan or an emergency plan, is you would call the residents families and ask the families, if possible, to take those residents home. The fewer residents you have in the facility the better it is. If that is a feasible option, if not -- it isn't always a feasible option, but many instances families are willing to take the residents home.

Q And for a nursing home that's faced with a loss of air conditioning for example, are there any additional steps beyond the normal that a nursing home should be looking to implement?

A Well they should look at their backup and I'm not a physical plant person, but a backup generator if they have one. How they would keep the air conditioning going and if that was not possible then they also would -- because the generator could fail too. They have to have a plan to be able to remove the resident to a safer environment and implement that plan.

Q And what would some of those steps be and would there be anything related to how -- should they do anything different as it relates to monitoring the patients?

A Well they would want to offer fluids frequently, fans if possible, better ventilation in the

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facility. If you could open up windows when that would be appropriate to ventilate. And I think this facility had some chillers or portable chilling or cooling units that they used.

Q What about in terms of monitoring patients?

A At least -- your most vulnerable residents have to be monitored usually every two hours because you're turning and repositioning them and you'd want to be offering them fluids where appropriate and checking their -- as you're turning and repositioning and checking their -- you'd be checking their skin to see if you notice any temperature changes, overall changes and conditions. Is the resident responsive than they usually are, do they seem more confused than their usual baseline. Those are the things you'd be looking for.

Q Now is there a temperature range where the risk to the elderly begins to increase?

A The range has been looked at in the literature that it starts to increase after an ambient temperature of about 81 degrees, that's a general rule. I know humidity factors in, but that's what has been looked at or described in the literature.

Q Does the risk to an elderly person increase the longer they are exposed to temperatures in that range and above?

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A Yes.

Q Can you explain to me what that is?

A The longer you're exposed and you're not able to dissipate the heat, you're going to become more dehydrated or become dehydrated if you weren't. Especially if you have difficulty talking in fluids. Your heart is going to continue to be stressed by trying to dissipate that excessive heat. By trying to increase the cardiac output and trying to profuse the kidneys, so the blood pressures may drop. The kidneys may not get enough blood flow, so those are -- and the patient may become more confused. So those are the ensuing changes that can occur.

Q If you have an elderly person in an environment without air conditioning and they're experiencing adverse effects, what should you do?

A Well you'd want to evacuate them if they're temperatures going up, you have to get them out.

Q And let me shift a little bit. You're familiar with Tylenol and how it works?

A Yes.

Q And does -- why don't you explain for the Judge how Tylenol works and how it relates to heat in elderly patients.

A Well Tylenol is what we call an antipyretic and it acts in the central nervous system to bring down temperatures. Typically we give it to residents when they have what we call fair well illnesses and infections to bring down the temperature because the elderly don't always tolerate these elevated temperatures very well. Their heart rates go up and they start to get in trouble by not being able to pump enough blood. So we try to bring down the temperature with Tylenol, but once the temperature gets very high, we're talking about 103 to 104, the effects are not as great. So you might give a resident Tylenol, but you're not going to get the temperature down to 98.6. If they're very high, you might get it down a few degrees. And if the temperatures very very high, it doesn't really have any clinical affect that I'm aware of.

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Q Now are you familiar with the term heatstroke?

A Yes.

Q And what do you understand heatstroke to be?

A That is where the core temperature is typically above 104 or its at 105 or higher and the patient is having cardio respiratory or we call it they're going into heart failure. They're unable to adequately compensate for such a high heat and their heart fails, their block pressure drops, they don't profuse their kidneys, they go into kidney failure, they have trouble

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breathing and ultimately they die. Most of the times. Sometimes you can recover them, but in the elderly it's pretty difficult.

Q Okay. So would that be true then, essentially with any elderly person with a temperature of 105 or above?

A Well if you don't get them very prompt treatment and even in the face of prompt treatment, the mortality is pretty high with heatstroke in an elderly individual. That's not to say that one or two, you might be able to resuscitate a few of them and they will survive, but they typically don't return to their base level of function when they had a significant incident like that.

Q Is heatstroke preventable?

A Yes.

Q And explain for the Judge.

A Well you would not expose the elderly individual to an environment where there was excessive heat. So that's how its preventable. Plus you can also use things like cooling blankets and ice, but that's sort of after the fact. You really want to not expose an elderly individual at all.

Q Now based upon your career and your involvement with nursing homes, can you describe for the Judge what

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a nursing homes obligation is for its residents?
A A nursing home staff, they are obligated to provide a safe environment, appropriate health and rehabilitative services. Appropriate nursing services to maintain the health and wellbeing of their residents to the best of the residents ability because these residents obviously have underlining conditions and many of them will deteriorate overtime.
Q And is that requirement for a safe environment limited to only those patients who are healthy?
A No, no, that's for everybody. Everybody.
Q And are you just generally familiar then with the statutes and regulations as it relates to a nursing homes responsibilities for its patients?
A In general, yes.
Q In a nursing home, who is ultimately responsible for ensuring that the facility premises and operations are conducted in a safe and sanitary manner?
A Its typically the leadership team, which would be the director of nursing, the administrator and the medical director as a team are responsible for ensuring that.
Q Are you familiar with any statutory rule requirements that relate to a nursing homes obligation to ensure the residents receive adequate and appropriate

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health care services?
A That is in the Florida statutes.
Q And just describe what you understand that requirement to be.
A That requirement is such that the leadership team in conjunction with their staff are required to monitor the residents, assess the residents, ensure that they get the appropriate medical and nursing care services and rehabilitative services, as well as social services and rehabilitative services that are required based upon their medical conditions. Maintain their turn and reposition. Make sure they don't get skin break down, make sure they get adequate nutrition, adequate hydration. That activities are provided, that they are able to get out of the bed to be mobile.
Q And what is a nursing homes obligation or responsibility when faced with an emergency or natural disaster?
A The nursing home should have a plan that they have already run through at least in some type of drill is ideal, but have a plan in place. And that all the staff are familiar with it and know what their responsibilities are in order to keep their residents safe. They should have a plan for evacuation. Plans for emergency backup power when needed, but also with

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the provision that sometimes even your backup plan doesn't always go as planned. So they should have plans to evacuate and have contingency plans. Make sure that they can get food and water for their residents.
Q Is it just having a written plan and not --
A It's not enough if the staff are not educated, can't follow through on it. And it's ideal to be able to run through the drill of the plan to be sure that staff know what the responsibilities are and what they need to do.
Q And let's get a little more specific to the situation we're talking about here. The case of the loss of air conditioning to a facility, what's the nursing homes responsibilities?
A Well they have to make sure these residents in an environment such as summer, early fall in Florida, that they need to be aware that heat is going to be a problem without air conditioning and they need to evacuate the residents or find some way to be able to provide the appropriate air conditioning, but often that's impractical if you don't have power or your generator breaks down. So evacuation is the ideal way to approach this, is to get the residents out.
Q And we're going to get in to the individual patients in a minute, but just from a general overall

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standpoint based upon what you have reviewed here, did Hollywood Hills meet that standard from what you can tell?
A No.
Q And can you explain for the Judge why?
A Because the residents remained in an environment where there was excessive heat exposure and not removed from the facility early on and they suffered the consequences of that.
Q Let's move then to some of the individual medical records that you have reviewed. And Doctor, what we have done in this case is we have been referring to patients by numbers rather than by patients names and I know it gets a little hard at times. I don't know if there's a list there, but I can provide you this list.
A That would help. Thank you.
Q Doctor, let's start with resident number 1. Can you describe for the Judge what records you reviewed with respect to resident number 1?
A I reviewed -- and may I refer to my notes?
Q Would that help assist you in recalling the work that you've done in connection with this case?
A Yes, I want to be accurate.
THE COURT: Any objection?
MS. SMITH: No, Your Honor.

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THE WITNESS: So can you repeat your question for resident 1, please?

Q (MR. MENTON) The question was what records have you reviewed with respect to resident number 1?

A I reviewed the nursing home records and hospital records.

Q Okay, and can you just describe briefly for the Judge, based upon your review, what you ascertained to be the residents usual state of health prior to September 13th?

A The resident was 84, she had diagnosis of chronic lung disease, chronic heart arrhythmia, she had significant obesity, morbid obesity, she had high blood pressure, diabetes, baseline heart failure. Those were her baseline medical conditions. She was quite debilitated.

Q Was she from your review of the records prior to September 12, 2017, was she in acute decline phase?

A Not based upon my review of the record.

Q Can you then summarize for the Judge, what you found and with respect to this patient, in the early morning of September 13th?

A She presented to the hospital with an altered mental status. Her temperature was 105 degrees. Her heart rate was 150. Her respiratory rate was elevated.

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Her blood pressure was low and continued to drop. Other studies showed that her blood was becoming very acidotic because of the low blood pressure and not perfusing her tissues. And she subsequently died and her medical examiner, there was a recorded temp as high as 107.5 by the EMS and so she died from heatstroke.

Q Based upon this residents condition, should she have been evacuated from the facility prior to the time the EMS came?

A Yes.

Q And why do you say that?

A Because this was a resident who was not going to tolerate high ambient temperatures very well. She would get into problems considering that she had baseline heart issues, heart failure, diabetes and was very debilitated.

Q And from what you have seen, were the steps that Hollywood Hills Rehabilitation Center took with respect to this patient, adequate to protect her health care state?

A No.

Q And I guess you touched on that a little bit, but can you explain for the Judge your basis?

A She should have been evacuated much earlier in the course of this disaster or hurricane situation as

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soon as the power went out. Plans should have been implemented to remove her and I'll probably talk about the other residents, but just repeating what I've stated previously.

Q And Doctor, based upon your career and involvement, are there physiologic natural causes for a temperature of 107.5?

A Other than heatstroke, which I don't consider physiologic, no.

Q Okay. Let's move to resident number 2.

A Resident number 2 was 78 and she was very debilitated, had a feeding tube and I don't have a lot of background records on her. If I may refer to the medical examiner report for some additional history, if that'd be all right?

THE COURT: Sure.

THE WITNESS: Basically she was bedbound and she had underlying lung disease and as I mentioned was getting a tube feeding. So she likely had some underlying vascular disease as well. She arrived in the emergency room approximately 4:33 a.m. She was in cardiac arrest, her temperature was 107 on the scene and it was as high as 108. She -- as I said, total assist prior for all of her activities for daily living and she died from heatstroke.

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Q In your view, was this preventable?

A Yes.

Q Explain for the Judge how?

A If she had been evacuated much earlier in the course, she would have not been exposed to the excessive high ambient temperatures in the facility and would have not suffered the heatstroke and death.

Q I wanted to follow up on a couple of things you mentioned with this patient. She had a temperature recorded in the ED of 108.3. Have you in your professional career seen a temperature that high?

A Not in any of my patients, no.

Q And you mentioned that with this patient she was a total assist. What did you mean by that?

A She was reliant upon nursing care to handle her bodily functions. Likely she was probably incontinent. She had to be turned and repositioned every two hours. She had a tube feeding to maintain her health and wellbeing or what degree of health she had required a lot of nursing care.

Q And with respect with both this patient, number 2 and patient number 1, from the records that you were able to review, were they in a position to be communicating to staff about whether they were hot or whether they needed water or anything like that?

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A Not adequately or consistently.
Q And so what then are the implications of that from a nursing home standpoint?
A They need to be evaluating residents for additional fluids. Resident 1 was on a fluid restriction probably because of her heart failure. And the physician could have been called to perhaps liberalize that if the patient was being exposed to excessive heat, but again I think the main issue was the heat was so much that even if you gave her extra fluid, I think she would have succumb because of the heat.
Q Based upon your review of the records, did the Hollywood Hills facility take the appropriate steps necessary to provide this resident with a safe environment?
A No.
Q Let's move to patient number 7. Can you describe for the Judge what records you have reviewed with respect to patient number 7?
A I reviewed her nursing home and hospital records. She was a 71 year old female and she had underlying stroke, dementia, coronary artery disease. She arrived in the emergency room at approximately 7:03 a.m. She was not responsive. Had a cardiac arrest. She had a temperature recorded of 108.5 and she had a

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blood pressure of 50 over 23. Both of those are incompatible with life and she died.
Q Did this patient have a heatstroke?
A Yes, she did.
Q And based upon your review, was this preventable?
A Yes, if they would have removed her from the environment early on.
Q Okay. Did you see whether there were any signs of infection as it relates to this patient?
A No, I did not see any signs per the records provided.
Q Okay. With respect to this patient, what was her condition as it relates to her daily living requirements?
A She was fairly dependent on the nurses. Had to be turned and repositioned every two hours. Required a lot of nursing care to maintain her skin and care for her basic needs.
Q And based upon your review, did the Hollywood Hills nursing facility take adequate steps to provide this patient with a safe environment?
A No, because she was not evacuated timely to prevent the exposure to the excessive heat.
Q And based upon your review, did Hollywood Hills

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facility provide the appropriate and necessary health care for this resident?
A No, they did not with respect to not evacuating her to prevent the heat exposure.
Q Let's move to patient number 8. Can you describe for the Judge, the records you reviewed with respect to this resident?
A That would be the nursing home and hospital records. Just to clarify, I did review the medical examiner records for all of the ones we are discussing.
Q Did you read what the medical examiner found with respect to both patients 1, 2, and 6?
A Yes.
THE COURT: We talked about 1, 2, and 7.
Q (MR. MENTON) 1, 2 and 7, I'm sorry. Okay, patient number 8.
A So we're on patient number 8?
Q Yes.
A Okay. So I reviewed the nursing home records as I mentioned, for all the ones we're going to discuss, I did look at the medical examiner reports. And also for resident 8, I looked at the hospital records. She was a 70 year old female. She had a history of stroke, history of seizures in the past, high blood pressure and an abnormal heart rhythm problem. She was transferred

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to the hospital at approximately 6:42 a.m. She, per the notes had a cardiac arrest in the nursing home. Her temperature was 109.9. And she died from heatstroke.
Q Have you ever heard of a patient with a temperature of 109.9?
A No, I've never heard of a patient with a temperature that high.
Q Just from your professional experience, what would be the reason for a temperature that high?
A Heat. That would be the only thing. Would be heat would cause that.
Q Based upon your review of the records, did the Hollywood Hills Rehabilitation Center take the appropriate steps to provide this patient with a safe environment?
A No, because she was not removed from the facility before she was exposed to excessive heat.
Q And based upon your review of the records, did Hollywood Hills provide this patient with appropriate health care given the circumstances?
A No, they did not by not evacuating her sooner.
Q One second. Let's move to patient number 11.
MS. SMITH: Can I just get initials so I'm on the right one? I think our 11 is one patient and her 11 on her sheet may be a different number.

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THE COURT: CC.
MR. MENTON: CC.
MS. SMITH: So that's resident 9 on her notes?
MR. MENTON: Just off the record.
(Off the record.)
(Hearing resumed.)
Q (MR. MENTON) Doctor, can you describe for the Judge, what records you reviewed as it relates to patient number 11?
A I reviewed nursing home and emergency room records. This patient had a history of dementia described as Alzheimer's type and a history of pneumonia. And he presented to the emergency room 9/12/2017, which was a day earlier than the other residents we've been discussing. His temperature was 103.2. The original working diagnosis in the emergency room was a sepsis or infection problem that may have been occurring. It should be noted there was one temperature as high as 106 recorded following the arrival, which would be more consistent with heat exposure as to opposed to sepsis alone. It's not to say he wasn't septic, but there was some component of heat exposure as well for this resident. He died later on. Several days later on 9/19/2017.
Q You mentioned a couple of things. Sepsis or --

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does heat have any effect on patients who have infections or sepsis?
A Well heat would make it more difficult to recover from sepsis and based upon everything I've stated before, the increased stress on the heart, the increased stress on the kidneys, with sepsis in of itself, patients will have problems with stress on the heart and can get into respiratory and kidney failure from sepsis. From bacteria that are releasing or causing the body to release what we call inflammatory markers or inflammatory molecules that adversely affect the heart and the kidneys and the lungs. In ways we don't fully understand.
Q Okay. What does the temperature of 106.5 in the emergency department, what does that indicate to you to this patients exposure to heat?
A That he had some excessive exposure to heat because that's unusually high for sepsis.
Q And based upon that, do you believe that Hollywood Hills provided this patient with a safe environment?
A No, they should have removed him, evacuated him sooner as well.
Q And did they provide him with appropriate health care?

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A No, not in that regard. By not evacuating him.
Q I want to move next to -- there are -- let me ask you. Are you aware of any patients who were found to be deceased within the facility?
A Yes.
Q And explain for the Judge then, what records were available to you as it related to the patients that were found deceased within the facility?
A Medical examiner reports and the nursing home records.
Q And as part of your review, did you become aware of the core body temperatures that were taken by the medical examiners investigator?
A Yes.
Q Can you describe for the Judge what those temperatures were and what that indicated to you?
A Which resident?
Q We'll start with number 4.
A Resident number 4, had a post mortem rectal temperature of 104.6 that would -- since the resident appeared, best from what I can tell from the records, medically stable prior, and that temperature is high enough in the range to be heat exposure and or stroke, I believe this resident was exposed to excessive heat in the facility.

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Q And based on that information, do you believe that this patient was provided a safe environment by the Hollywood Hills Rehabilitation Center?
A No, he should have been evacuated sooner.
Q And based upon your reviews, was this patient provided with the appropriate health care?
A No, because he was not evacuated sooner.
Q Let's move to patient number 5.
A So for this patient I had the medical examiner report and the nursing home records. He was 83. He had diagnosis of strokes, high blood pressure and dementia. He had a feeding tube. He was total care by the nursing staff. He appeared to be stable. He was pronounced at about 7 a.m., 9/13/2017, which I believe the other resident we were just speaking of --
Q Number 4.
A He was pronounced at 5:46 a.m. on 9/13.
Q Okay, so --
A We're back to resident number 5?
Q Yes.
A Okay, he was pronounced at approximately 7:00 a.m. on 9/13/2017. His on the scene post mortem temperature was 104.1, which was remarkably elevated. It appeared he had been stable clinically prior to that time. So I think he was exposed to excessive heat based

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upon him being found in the room and several hours post mortem he had a significantly high temperature.

Q Okay. You mentioned what his condition was prior. Just explain to the Judge what the significance of that is in terms of your analysis?

A This patient would be more prone to suffer ill effects from excessive heat in the facility or higher temperatures. And also this patient required nursing care to be turned and repositioned every two hours to be checked upon. So this resident was frail and debilitated and was at high risk for problems or deterioration related to exposure to excessive heat.

Q Was there anything that indicated prior to September 12th or 13th that this patient was in a decline towards death?

A Not specifically. Clearly this was a debilitated patient and he was not initially going to survive for years, but there was no acute decline that I could see in the nursing home records.

Q In terms of when this patient was pronounced, I just want to be clear. What are you relying upon for the determination as to when he was pronounced?

A I believe that was from the medical examiner record.

Q You don't have any independent knowledge as to

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when he passed away?

A No.

Q Okay. With respect to patient number 5, based upon your review of the records, did the Hollywood Hills Rehabilitation Center provide him with a safe environment?

A No.

Q And based upon --

A For the same reason because he was not removed from the facility timely.

Q Okay. And likewise, based upon your review of the records, did Hollywood Hills provide him with appropriate health care?

A No, with respect to not removing him from the facility sooner.

Q And do you know what room this patient was in?

A He was in the same room as resident number 4 and resident -- this is per your list and resident number 11 per your list.

Q And again, from your standpoint, is there any significance to three patients, number 4, number 5, and number 11 being in the same room?

A That they all -- that they all had effects from the heat. So there was too much heat in that room.

Q Based upon your experience in the nursing home

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industry for over 30 years, have you ever seen three patients pass away from natural causes in the same room like this before?

A I have not. I just want to be sure that -- can we just say the number for the three because I want to be sure I'm stating this correctly.

Q I think it's around 226 and its patients number 4, 5, and 11.

A 4, 5, and 11. No, but I remember resident CC was admitted to the hospital, so resident CC was not found in the room deceased. I just wanted to make sure we had that clarified.

THE COURT: Mr. Menton, let's take a five minute break.

MR. MENTON: Sure.

(Thereupon, a short break was taken.)

(Hearing resumed.)

THE COURT: Are we ready to proceed?

MR. MENTON: Yes, Your Honor.

Q (MR. MENTON) Dr. Hoffman, I apologize, but I think I asked you whether or not with respect to patient number 5 or resident number 5, Hollywood Hills had provided him a safe environment?

A My answer to that is no because he was not removed from the environment in a timely fashion to

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prevent the heat exposure.

Q And likewise, from your review, did Hollywood Hills provide him with adequate and appropriate health care services?

A No, because he was not removed from the facility in a timely fashion to prevent the heat exposure.

Q Let me ask you then to move to patient number 6.

A This resident was found deceased in the facility, so I had the medical examiner records and the nursing home records. He was 92. He had a history of being bedbound with high blood pressure and a chronic lung disease. Overall general decline. He required a lot of assistance with respect to activities of daily living from the nurses. As I said, he's bedbound and he was pronounced I believe on 9/13/2017 at approximately 7:00 a.m. and his temperature on the scene, the rectal temperature was recorded as 105.9, which would be consistent with excessive heat exposure. And for him prior, the best I could tell from the records, he was not exhibiting an acute decline in his medical condition.

Q And based upon what you reviewed, did the Hollywood Hills Rehabilitation Center provide this

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resident with a safe environment?
A No, because he was not removed from the environment prior to heat exposure.
Q And with respect with this patient, did Hollywood Hills provide him with adequate and appropriate health care services?
A No, with respect to not moving him from the facility prior to the excessive heat exposure.
Q Let me ask you to refer to patient number 12.
THE COURT: Its initial CF.
THE WITNESS: Thank you. So patient CF, I had hospital and nursing home and medical examiner records.
Q (MR. MENTON) And just a couple of quick questions with regard to this patient. Do you know what the chief complaint was when she was admitted into the hospital?
A She had some dehydration when she was admitted, that was a compliant. Her baseline status was she had dementia, she had a feeding tube, nonverbal, required a lot of nursing care in the facility and she -- her temperatures ranged orally 99.3 to 100.2.
Q So what about her mental status?
A Well she was baseline -- had difficulties with speech and nonverbal. So she had impaired ability to communicate.

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Q Okay. Was there any change in her mental status that you recall from the medical records that you reviewed?
A I don't recall specifically because she had baseline problems with her -- because she was demented. I think the main thing was she was dehydrated.
Q Okay, and could that have been a sign of exposure to excess heat within the environment?
A Yes.
MR. MENTON: That's all the questions I have, Your Honor.
THE COURT: Cross?

CROSS EXAMINATION

BY MS. SUSAN SMITH, ESQ.:
Q Hi, Dr. Hoffman. I'm Susan Smith, we met at your deposition, how are you today?
A Good, thank you.
Q I just have some follow up questions for you. In total you spent about three hours reviewing the patient's medical records and the medical examiner reports we discussed here today, correct?
A I don't remember what I said, but that sounds about right.
Q You have never authored any articles on hyperthermia, have you?

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A No, I have not.
Q And you have never authored any articles on transfer trauma have you?
A No.
Q Your real clinical exposure to hyperthermia patients from environmental heat exposure occurred over 30 years ago when you were working in an emergency department, correct?
A Correct.
Q And that was really elderly patients who had attended a football game and had got overheated in that environment, correct?
A Yes.
Q It's your opinion that the Rehab Center at Hollywood Hills should have immediately evacuated all patients on September 10, 2017, as soon as their AC chiller went out, right?
A Yes.
Q And you have held that opinion regardless of their immediate ability to maintain the temperatures in the building, correct?
A Correct.
Q And you also hold that opinion for any nursing home that lost either its AC or its power, that they should immediately evacuate all patients, correct?

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A Correct.
Q But you are aware of a situation where the VA, where you were the medical director, was without AC for one week and was able to maintain temperatures using two or three spot coolers for a sixty bed patient area and was able to keep the patients comfortable?
A Yes. And that was not as I mentioned, during hotter parts of the year.
Q You would agree that nursing homes should not evacuate to hospitals with non-acute patients, correct?
A Correct, in general.
Q And that's because you can't overwhelm or fill up hospitals with non-acute patients, right?
A Correct.
Q And in a proper evacuation, there are certain things you are going to want to do to try and minimize the trauma to patients, such as maintain the routine as much as you can, right?
A Correct.
Q And make sure that patients receive their medications before they're transferred, correct?
A Correct.
Q Make sure the patient's medical records are transferred with the patients, correct?
A Correct.

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Q And if at all possible, try to keep them with their caregivers that they're used to, to reduce the amount of interruption in their care?
A Correct.
Q I'm correct as of the time of your deposition, you were not aware of what the temperatures were in Hollywood Hills on any time period from September 9 through September 13, 2017?
A Correct. In terms of the ambient -- in terms of the weather.
Q Right, the weather outside. You have no idea what the temperature was?
A Correct.
Q And the same thing with regard to the building, let's say up until 7 o'clock in the morning on 9/13/2017. You can't tell us what any of the temperatures were inside the Rehab Center of Hollywood Hills, correct?
A Correct.
Q You don't know how hot the building got or when it got hot?
A Not with specific temperatures, no.
Q And you don't remember a number of EMS personnel and physicians in the Rehab Center at Hollywood Hills on 9/12, who did not determine the facility was an unsafe environment, correct?
A Correct.
Q And you're not second guessing the judgment of the clinical personnel are you?
A No.
Q And you're not here to tell the Judge that when Dr. Evancho didn't make a decision to evacuate any of his patients on September 12, that he made a mistake?
MR. MENTON: Object, beyond the scope of direct.
THE COURT: Sustained.
Q (MS. SMITH) You'd agree that transfer trauma is well known in the geriatrics fields and you always have to weigh the risk and benefits of transferring elderly patients?
A Correct.
Q And that's because it's a trade off because they can be confused and they're going to suffer delirium when they're moved out of their environment?
A Yes.
Q And I believe you said evacuation was the ideal, but in truth, sheltering in place, if you can, is what's really ideal, isn't it?
A The ideal is to evacuate them to a safe environment that you know that you're going to be able to keep the ambient temperatures. If you're going to try to shelter in place, you really need to have a plan to closely monitor your ambient temperatures and still -- I think you still need to continue with evacuation plans if you don't have air conditioning.
Q Do you recall having your deposition taken on February 14, 2018?
A Yes.
Q I'll provide you with a copy. Counsel, I'm looking at page 63. And I'm looking at page 63, line 16. "So you're pretty familiar with the recognized phenomenon that it's better to shelter in place than to transfer patients, if you can at all possible?" Mr. Menton objects to the form. The witness says, "If you can and weighing the risk and benefits. If it's better for them that's the ideal." That's what you told me in your deposition, right?
A Correct.
Q So at least at that time, you believed that sheltering in place is ideal if you can, right?
MR. MENTON: I'm going to object. That's an improper use of the deposition. It's not even consistent with what she said.
THE COURT: Correct. It's what she just testified to.
MS. SMITH: I believe that she said that evacuation was ideal.
THE COURT: She said -- evacuation is ideal weighing the risks and benefits of the transfer trauma. Evacuation to a safe environment is necessary if you can't maintain or you don't know that you're going to have AC, but sheltering in place is not appropriate, so.
MS. SMITH: Right. And the question was, is sheltering in place, if you can, ideal. And in her deposition she said, "Yes, if you can." And in the stand she said no.
THE COURT: I think she said --
Q (MS. SMITH) Well, let's ask her, maybe I heard her wrong. Is sheltering in place, is it ideal if you can?
A It is ideal if you can, weighing the risks and benefits. In this particular situation, the risk of the heat was such that it would be better for the residents to evacuate them and more appropriate. So it's the context of what's going on in a situation.
Q I noticed in your notes that you skipped over resident 10, MM. Is that because you do not believe that --
THE COURT: Resident 10 is DB.
MS. SMITH: Well on hers its resident MM.
THE COURT: That'll be 9.

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MS. SMITH: Okay. Thank you, Your Honor. So resident 9 --

MR. MENTON: I'm going to object. It's beyond the scope of direct. Witness wasn't asked any questions regarding that patient.

MS. SMITH: And that's what I'm kind of going to point out, Your Honor. Is why wasn't she, if she covered it in her deposition and now she skipped over it today. I just want to get her opinion that it wasn't related.

THE COURT: Sustained.

Q (MS. SMITH) You're not aware of any statute, rules, regulations or clinical literature that requires evacuation if facility temperatures exceed 81 degrees, are you?

A No.

Q And the only literature and guidance that you're familiar with, is the Florida Health Care Associations guidance document that provides certain steps that should be followed in the event that a facility be -- reaches 81 degree temperature, right?

A Correct.

Q And the things that they tell you to do, is maintain a temperature log?

A Correct.

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Q Activate large fans in patient care areas?

A Correct.

Q Notify the medical director or his clinical designee?

A Correct.

Q Notify the health department and AHCA?

A Correct.

Q Encourage fluids with alert patients and push fluids with vegetative patients?

A Correct.

Q Set up cooling areas for patients if possible? If they have a fever or that type heat issue going on?

A Correct.

Q And that high risk patients should have their body temperatures monitored every four hours?

A Correct.

Q You don't have any specific knowledge if the Rehab Center at Hollywood Hills followed any of these steps or all of these steps, do you?

A I don't have specific knowledge. Their high risk patients, which were some of the patients we spoke about earlier, I don't believe they all consistently had every four hour temperatures were documented as recorded. I didn't say they didn't take them, but I didn't see that on the record.

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Q Right. Nothing happened -- someone didn't take vitals, but not actually record them, right?

A Correct.

Q In fact, what usually happens in nursing homes is quite common for people to do late entries at the end of the shift and write down the vitals after the shifts over or written at the end of their shift, right?

A It happens. I don't know if I'd use the word common, but it certainly occurs.

Q You'd agree that late entries is not an uncommon phenomenon in the nursing home industry?

A Or in the healthcare industry, yes.

Q The Florida Health Care Association document does not say that anytime a facility reaches temperatures of 81 degrees, it should immediately evacuate, does it?

A Correct.

Q In fact you've never seen any document that says that a facility should immediately evacuate if its temperature goes over 81 degrees, have you?

A No.

Q You mentioned there was an increase of risk when temperatures exceed 81 degrees. You said there was some clinical literature on that?

A Yes.

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Q In fact, what the clinical literature shows is that there's an 18 percent increase not at 81 degrees, but between 86 degrees and 89 degrees, there's an 18 percent increase, correct?

A That was in one article, that is correct.

Q And in the next segment is between 6 percent between 89.6 degrees and 93.2 degrees fahrenheit, correct?

A Correct, per the article.

Q And then the real high percentage of mortality increasing, the 62 percent increase, is when you go over 93 degrees, correct?

A Correct.

Q You gave us some testimony on responsiveness of Tylenol to reducing heat in patients. You haven't reviewed any clinical literature on the effectiveness of Tylenol on hyperthermia patients have you?

A No.

Q And you were just sort of going on your own general clinical knowledge from when you treated hyperthermia patients in the past?

A Yes.

Q And so that's about 30 years ago?

A Correct.

Q But you do understand the way that Tylenol

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works, it's not going to change the hypothalamus ability to regulate temperature in the body, right?
A Correct.
Q And so that's why you say once the temperatures -- once the patient loses the ability to regulate their temperature, Tylenol really isn't probably going to have much effect on high temperatures?
A Correct.
Q You commented that you had reviewed Dr. Dosa's deposition as part of your preparation for this case?
A Yes.
Q And you agree with Dr. Dosa's opinions an documents in his deposition with regard to the hazards of moving elderly patients?
A Yes.
Q I'd like to talk to you a little bit about resident 1.
THE COURT: It's initials BH.
MS. SMITH: Yes, Your Honor. Just give me one second. I'd like to get it all together and do it all at one time.
Q (MS. SMITH) You mentioned that resident one was not in acute decline, correct?
A Correct.
Q But she was in fact in a slow decline?

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A Yes.
Q You said you reviewed her records from the nursing home, correct?
A Yes.
Q Do you know she was a patient of Dr. Ebrahim?
A Yes.
Q You know that Dr. Ebrahim's PA was in the facility late into the evening on the 12th?
A I did not have that particular part of the record available to me, but you pointed that out in the deposition.
Q Are you aware from reviewing the nursing home records, that on 9/10 at 12:40 a.m. she had a 97 degree temperature?
A I can check the vitals specifically, but what I recall is that her temperatures were stable at that time.
Q We have bate stamp records up there and I don't want you to guess at anything. We'll get the records for you to look at. Its bate stamp 0005971.
MR. MENTON: I'm sorry, what was the page numbers?
THE COURT: 5971.
THE WITNESS: Can you repeat the page number again?
Q (MS. SMITH) 5971.
A And your question about the vital signs again?

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Q Looking at her temperatures on the 10th at 12:40, she had 97 degree fahrenheit temperature, right?
A Correct.
Q And on the 11th at 1:03 a.m., she had 96.5 degrees fahrenheit, correct?
A Correct. On the 11th at 1:03 it was 96.5.
Q And also on the 11th at 11:53 p.m., she had a 97 degree fahrenheit degree temperature, correct?
A Correct.
Q And if you go to bates 5983. There's not a specific time for this temperature, but on 9/12/17 there's a documented temperature of 97 degrees taken in the nighttime, right?
A Correct.
Q And if you look at bates 0006002, you can see a number of interventions that were provided for this patient from giving her eye drops, giving her medications, giving her oxygen, giving her sugar free liquids, giving her more medicines. Checking her blood sugar readings.
A What page was that?
Q You can start at 0006002 and go through 6005.
A Yes, she was getting medications and other interventions.
Q And if you go to bate stamp 6007 and you look

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at the progress notes there. There's multiple instances of vital temperatures for this patient being recorded in her nursing notes, correct?
A Correct.
Q If we go to bate 6034. You there?
A Yes.
Q The patient was not exhibiting any pain between 3 p.m. and 11 p.m. on 9/12/17. It shows zero, meaning no pain, right?
A Correct.
Q Were you aware that this patient was moved out into the hallway to be near a spot cooler?
A No.
Q Assume for me that we have video evidence showing that when EMS arrived to pick up this patient, she was sitting in front of the nursing station with a nurse who had been sitting by her side all night and that they had constant attention on her and that she had a spot cooler blowing on her, isn't that the type of thing you would want to do for this type of patient?
A Yes.
MR. MENTON: I'm going to object to lack of foundation. I don't think she's established the predicate that it even exists.
MS. SMITH: I'm going to tie it up with this next

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question Your Honor.
THE COURT: That's fine. Overruled.
Q (MS. SMITH) You believed that this patient had coded at the nursing home prior to being taken to the hospital by EMS, correct?
A Yes.
Q And that's from some note that EMS had told the ED or something that you saw on the ED or where did you get that information?
A That was per the emergency department.
Q If in fact the care takers who were there provided details that this patient did not code, that's a different situation if the patient didn't code before they were transferred out, correct?
A Correct.
Q And I believe overall you've offered the opinion that this patient was not provided appropriate health care and a safe environment because they should have been transferred out sooner?
A Correct.
Q Prior to being exposed to -- let me get the right words here. I don't think I wrote it down exactly, but the concept was, you thought this patient should have been evacuated much earlier and should have never been exposed to the heat in the environment?

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A Correct.
Q But you can't tell us how hot the environment was?
A Correct.
Q You can't tell us when the patient started showing any signs of having heat related issues?
A Only at the time when 911 came and transported her or when they called.
Q Right, exactly, but prior to that you can't tell us if she exhibited any signs of stress related to heat, can you?
A Correct. If she did it wasn't documented, but there's nothing in the record to suggest that's documented.
Q Right. And what is documented is several normal temperatures, right?
A Correct.
Q And when you say she should have been moved out much earlier, should have been evacuated much earlier, you can't even tell us when it is she should have been evacuated, can you?
A I think all of the residents should have been evacuated in the fashion of prioritizing the high risk ones, starting when they lost their air conditioning, which I think was on or around 9, 10, 2017 in the

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afternoon. You're not going to get them all out at once, but you have a procedure in place to evacuate. Prioritizing the ones that are the frailest and sickest.
Q Right, and I think we already covered that in the beginning of cross examination. It's your opinion that any nursing home that loses AC or loses power should immediately start evacuating, regardless of their ability to maintain the temperatures within the building?
MR. MENTON: I think she just admitted she's already asked this question. We've gone through this already.
THE COURT: Asked and answered.
MS. SMITH: All right.
Q (MS. SMITH) I'd like to talk to you a little bit about resident 2. That's CE. Am I correct that on 9/12, the resident and I'll have to get you a book I think. You'll want to look at medical records on these, right?
A Yes, please.
Q Start at bate stamp 6767. I want to make sure I got the right book. Just look and make sure it's in there.
A I'm on the bate stamp 6767.
THE COURT: Resident 2?

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Q (MS. SMITH) Yes. At 7:11 p.m., she had a temperature of 99.8, correct?
A Yes.
Q And she had been given Tylenol?
A Yes.
Q And that temperature came down to 98.8 after taking the Tylenol, correct?
A Correct.
MR. MENTON: Judge, I'm sorry to interrupt. You said 6767?
MS. SMITH: Correct.
MR. MENTON: And you're referring to 9/11?
MS. SMITH: 9/12.
MR. MENTON: Okay.
THE COURT: 9:11 p.m.
MS. SMITH: No, 7 --
THE COURT: 7:11 p.m.
MR. MENTON: Okay, I'm sorry.
Q (MS. SMITH) If you can turn to 6765.
A Okay.
Q And there's a document that she had a temperature of 98.8?
A On that page?
Q Actually I think that's just another reference of the one from before. That's okay. On 9/13, if you

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go to 6765, there's a physician order prescribing Tylenol, correct?
A Yes.
Q Do you know what EMS reported this patients temperature at?
A Per the EG note, there was a notation of a temp of 107 or on the scene temp of 42.4 and then there was another temperature recorded, which may have been in the ED of 108.
Q Let me go back to resident 1 for just a minute. I'd be correct that resident 1 did not show any signs of dehydration?
A Correct.
Q And with resident 2, she did not show signs of dehydration?
A Correct.
Q The next one that you discussed was resident 7?
THE COURT: That would be EH.
Q (MS. SMITH) Correct. Before I go on to resident 7, resident 1, the facility called 911 when the patient started experiencing signs of distress, correct?
A Yes.
Q Resident 2, the facility called 911 when the resident starting exhibiting signs of distress?
A Yes.

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Q Resident 7, the facility called 911 when the patient starting exhibiting signs of distress?
A Yes.
Q Do you know if this is what AHCA told the facility to do?
A I don't know if that's what AHCA told them, but when the patients experience distress in a nursing home environment, that's standard procedure.
Q If we look at -- patient resident 7 and so Counsel can get on the same page and we'll go into the EMS run report first, which is 0008856.
MR. MENTON: I'm sorry, 7 did you say?
MS. SMITH: Yes.
MR. MENTON: Okay.
Q (MS. SMITH) Here you go. If you could turn to 8856.
A I'm on page 8856.
Q If you look, EMS recorded a temperature of 103.3 degrees, correct?
MR. MENTON: 8856?
MS. SMITH: Uh-huh.
THE WITNESS: Well I have that in my notes, but I'm looking for it on this particular page.
Q (MS. SMITH) Let me pull my book out and I'll just look at the page you're looking at. Actually it's

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on 8857, I apologize. Its 103.3. It's in the narrative, right?
A Correct.
Q And if you go back to the prior page, 8856, the run report shows -- or actually two pages back, excuse me. 8855, it shows what time the patient contact was, correct?
A Correct.
Q And that was at what?
A 6:55.
Q And they arrived at the hospital at what time?
A 7:06.
Q Okay, sometime between that 6:55 and 7:07, EMS recorded a temperature of 103.3 for this resident?
A It would be -- usually first thing you do is take the vital signs. So shortly after arrival.
Q So around 6:55?
A Yes.
Q And then there's a -- if you go to bate 0009194, which is the hospital records, correct?
A Can you say that number again, please?
Q Sure. 9194.
A I'm on that record or page.
Q There's a temperature recording done by the hospital, 42.5 degrees celsius.

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A Correct.
Q Which is equivalent to 108.5 degrees fahrenheit, right?
A Correct.
Q And that was taken at 7:50 on 9/13, correct?
A Correct.
Q So this patient's temperature went up 5.2 degrees in about an hour. Is that right?
A Correct.
Q And that can happen with hyperthermia patients, can't it?
A Yes.
Q Once the patient has lost the ability to regulate temperature, there temperatures can rapidly deteriorate, right?
A Correct.
Q They can go up from what is an apparent normal temperature, to an excess of 105 degrees. Sometimes in fifteen to thirty minutes.
A Their temperatures can elevate very quickly. I don't think there's much science or knowledge of the parameters, you know, that there normal and they go to 105 in fifteen minutes. I think it's going to vary from patient to patient. I don't think we really know science about that.

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Q Well you'd agree with this then. So literature shows once they lose their thermal control, temperatures can go up very quickly in as little as 15 minutes, it can rise extremely quickly.
A I would agree with that in general.
Q And here we have an instance where in this particular patient it rose over 5 degrees in an hour, right?
A Correct.
MR. MENTON: Objection, asked and answered.
THE COURT: Sustained.
Q (MS. SMITH) In fact, there's a lot of science and literature that says the temperature can rise very quickly?
A Well there's a lot of literature, I question the science.
Q With regard to resident 7, she did not have any dehydration, correct?
A Not that we could determine, but nothing to determine what was documented or in the records, correct.
Q And with regards to patients 4, 5 and 6, those are the patients that died within the facility, correct?
A Correct.
Q And none of those patients had dehydration,

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correct?
A Nothing that could be ascertained from what was documented in the medical records, correct.
Q You gave some testimony about -- I'm going to need the number for GN, sorry, Your Honor.
THE COURT: 8. Its resident 8, GN.
Q (MS. SMITH) Resident 8. And I'm going to bates 9549.
MR. MENTON: Sorry, what page?
Q (MS. SMITH) 9549. Actually let's go to another one first and then we'll come back to that one. Go to 9630 first, please.
A I'm on page 9630.
Q Okay. And if you look on 9/12/17 and its approximately 4:16 a.m., correct?
A Correct.
Q She had a temperature of 102, right?
A Correct.
Q And Tylenol was administered, correct?
A Correct.
Q And then another temperature was taken on 9/12/17 at around 2:18 p.m., correct?
A Correct.
Q And that temperature had resolved to 98.2 degrees fahrenheit, correct?

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A Correct.
Q And then if you go to bate stamp 9549.
A I'm on 9549.
Q On 9/13/17 at 3:31 a.m., she had a temperature of 101 degrees fahrenheit, correct?
A Correct.
Q And that's about an hour before she was transferred via EMS with the extremely high temperatures that you testified about in direct, right?
A Correct.
Q So this is a patient whose temperature exceeded very quickly, did it not?
A Yes.
Q And she's a patient who had previously exhibited signs that the 101 fever is the type of fever that could have been reduced with Tylenol, at least in the prior day it had done so, right?
A Correct.
Q This patient was not dehydrated, correct?
A Not per the documentation. There was no findings of that.
Q And the same thing with regard to really all of the residents that I asked you about. Resident 1. All the residents you testified that the Rehab Center did not provide a safe environment, did not provide health

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care because they should have evacuated sooner. You can't tell us for any of those patients, when the facility temperatures started to affect the patients to the point where they started to exhibit signs of distress, other than when EMS was called, correct?
A Correct.
Q And you can't tell us how hot it was in the building when that happened, correct?
MR. MENTON: That's been asked three times.
MS. SMITH: Its different patients, Your Honor.
THE COURT: You just said all of the patients.
MS. SMITH: Well I asked about resident 1, but I'm trying to do them all at once, so I don't have to ask about each one.
MR. MENTON: She's already asked it three times, Your Honor.
THE COURT: You have asked that question already and she's already said that with regard to all of them, she can't tell you what the temperatures were in the building at the time or at what point they needed to be evacuated.
MS. SMITH: Okay. If I covered it I apologize. I'm not trying to be cumulative, I promise.
Q (MS. SMITH) You were asked if you ever heard of a temperature of 109.9 and you said you had not heard

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of a patient with a temperature that high, correct?
A Correct, not in my experience.
Q I would be correct that there's no correlation between the core body temperature once the patient loses the inability to regulate temperature and the ambient air temperature, correct?
A I'm not aware of any.
Q So it could be 80 degrees in a facility and a patient could have 109 degree temperature due to heat exposure, right?
A Correct. If the patient lost their thermoregulatory ability then -- and they go up really high, which you get the temperature in the facility down to a lower temperature and that would be correct.
Q And with regards to the patients that died within the facility, you're only basis for concluding that their deaths had anything to do with environmental heat exposure, is the core body temperatures that were determined post mortem by the medical examiner's investigator, correct?
A In general, yes.
Q I'm sorry, did you finish?
A I was just going to say the totality of the circumstances of other residents being adversely affected by the excessive temperatures would support

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that, is the point I'm trying to make.
Q Right, but specifically with regard to those individual patients, the only evidence you have that there was any heat exposure for them, is the core body temperatures, right?
MR. MENTON: Your Honor, that's the same question she just asked. Asked and answered.
THE COURT: Sustained.
Q (MS. SMITH) Would I be correct that you are not able to give any opinions on the impact of body cooling several hours post mortem or heating up several hours post mortem, that's beyond your field of expertise, correct?
A Correct.
Q And so you can't tell us by having core body temperatures and 104 to 105 degree range, what those patients core body temperatures were at the time that they passed away, correct?
A Correct.
Q It could have been hotter or colder, you don't know?
A I do not know.
Q And you don't have any reasonable explanation why for residents 5 and 6, the EMS records said they were cold to the touch at 7 and 7:30 a.m. and the core

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body temperatures taken several hours later are registering 104 and 105?
A No, I would defer to someone with that expertise.
Q You did offer some testimony about resident 12, which is CF. Correct?
A Yes, I'm just trying to find it in my notes. Yes.
Q And this particular resident was actually a VITAS hospice patient as of July 2017, correct?
A Correct.
Q Which meant that one doctor at least had already certified that the patients prognosis was that she would die within six months of that date?
A Correct.
Q And when this resident reported to the hospital, they had apparently a fairly benign temperature 99.3, correct?
A Correct.
Q There was no diagnosis at the hospital of hyperthermia or heat stroke for that patient, correct?
A Correct.
Q And if it were up to you, you would not have concluded that heat was a significant contributing factor to cause this patients death, correct?

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A Correct.
Q And you said that she did exhibit signs of dehydration, but you agree that was not a significant cause of her death, correct?
A Correct.
Q And she died about a month after the evacuation?
A Approximately.
Q I'd like to talk a little bit about resident 11.
A Okay, that would be CC?
Q Correct.
A Okay.
Q The emergency department physician who treated the patient was Dr. Katz, correct?
A Yes.
Q And Dr. Katz did not make any diagnosis of hyperthermia or heat exposure in his assessment of the patient on 9/12/17, correct?
A Correct.
Q And his diagnosis was actually severe pneumonia and sepsis, correct?
A Correct.
Q And this patient actually was able to return to a normal temperature before being discharged to a sub-

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acute nursing home, correct?
A Yes.
Q And a week later the patient went on hospice, correct?
A Correct.
Q And then the patient died on hospice, correct?
A Yes.
Q And if it were up to you, you cannot say with any degree of medical certainty, that this patient died or death was substantially contributed to or because of heat exposure in the facility, correct?
A Correct.
Q I'd like to go back to resident 2 for just a moment. Do you still have the book up there?
A Yes.
Q Okay. Can you turn to bate stamp 6930?
A I'm on bate stamp 6930.
Q And is that a physician order written by Brian James?
A It's a doctor order and progress note and I really cannot read the signature.
Q Fair enough, but it's definitely a doctor's order, right?
A Or it could be a PA or a nurse practitioner. It's some provider note or provider ordering progress

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note.
Q Okay. And what it is, it's basically an order ordering Tylenol for the patient, correct?
A Yes.
MR. MENTON: Your Honor, she's not testifying as to what it is. I don't know if -- I don't think that that's appropriate.
MS. SMITH: It's not appropriate to lead on cross?
THE COURT: Its cross. Overruled.
Q (MS. SMITH) And it's also ordering blood cultures for the morning if the temperature persists, correct?
A I don't know exactly when they wanted it, but it just says -- it's hard to read. If the temperature persists will order blood cultures, whatever that means.
Q And that note was written on 9/12, correct?
A Correct.
Q And the fact that there ordering Tylenol and ordering blood cultures, is an indication that this doctor believed that the patients fever was due to an infection, correct?
A Correct.
Q And it also tells us that this provider was aware that this patient had a fever on 9/12, correct?
A Yes.

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Q And then --
MR. MENTON: I think this calls for speculation. She's asking what the document says in terms of having her speculate as to what was in the other physicians mind. I think is speculating.
THE COURT: I think she's an expert in geriatric care and that she can tell us what her interpretation of this doctors notes are, so overruled.
Q (MS. SMITH) And if you look at the first line it says -- it's a little bit hard to read, but I can decipher fever per RN staff, is that what you read there?
A Yes.
Q And what does that indicate to you? That the staff had advised the doctor that the patient had a fever?
A Correct.
Q Your Honor, you think I can have five minutes just to make sure I covered everything?
THE COURT: Sure.
MS. SMITH: I think I'm done. I just want to kind of go through everything. Thank you.
(Thereupon, a short break was taken.)
(Hearing resumed.)
Q (MS. SMITH) Just a couple more questions. I'm

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going to reference you to resident 6 and its bates 0008630. And I'm just going to share mine with you for ease since I have it open.
A I'm looking at the page you referenced.
Q And this is --
MR. MENTON: Your Honor, can you just give us a second.
THE COURT: Oh sure. Absolutely. Sorry.
MR. MENTON: I'm sorry.
THE COURT: Pages 8630.
Q (MS. SMITH) Everybody there. With regard to this resident, first of all this was a patient that was in room 229, correct? Do you recall?
A I didn't write down the number. I don't recall what room.
Q I think we have that somewhere else in the record, but according to this record at 8630, bate stamp 8630, on 9/13/17 at 1:42 a.m., the patient had a temperature of 97 degrees, correct?
A Correct.
Q And that's not a late entry, correct?
A Correct.
Q That's entered in the normal course where the blood pressure was taken, where the other monitoring temperatures and vitals were taken, and the routine

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course, correct?
A Correct.
Q And then I'm going to hand you one more. I'll take that one back. We're going to go to resident 4. And this is bates 7835, so 0007835. Resident 4. Let me know when you're there Counsel.
A All right, I'm on that page.
MR. MENTON: Okay.
Q (MS. SMITH) And what we see there is for resident 4, they had vitals taken at 1:28 on 9/13/17, correct?
A Correct.
Q And it was 97 degrees?
A Correct.
Q And they also had their other vitals taken, correct?
A Yes.
Q And tell us what was the blood pressure and all the other readings that you see there?
A The blood pressure was 128 over 74. The pulse was 74 and respirations were 18.
Q And those were taken between 1:28 and 1:29 on 9/13/17?
A Correct.
Q They weren't late entries, they were recorded

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timely just as they were taken, right?
A Correct.
Q So that indicates to you that someone had to be in that patients room at 1:28 or 1:29, right?
A Correct.
Q On the 9/13?
A Correct.
Q And with regard to resident CC, resident 11, you can't say with any degree of medical certainty that heat was a major factor in his death, right?
A Correct.
Q He died in a different time period than the other patients, correct?
A Correct.
Q He even exhibited signs of having acute issues in a different time period than the other patients, correct?
A Correct.
Q And he exhibited those signs when the other patients were all doing okay as far as you know?
A Correct.
Q You gave some testimony about facilities needing to have a plan in place for evacuation and for emergency management, right?
A Correct.

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Q You never reviewed the Rehab Center at Hollywood Hills emergency management plan have you?
A No.
Q Were you aware that they had a preapproved emergency management plan that had been approved by the county and AHCA had had an opportunity to review that plan if they had needed to in advance?
A No.
Q And so as far as whether or not they drilled on their plan, you wouldn't know whether or not they did that, right?
A Correct.
Q And whether or not they followed their plan, you wouldn't know if they did that or not, correct?
A Correct.
MS. SMITH: That's all the questions I have, Your Honor.
THE COURT: Redirect?
MR. MENTON: Thank you, Your Honor. Just a few.
REDIRECT EXAMINATION
BY MR. STEPHEN MENTON, ESQ.:
Q I have just a couple of questions to follow up. Let me start with -- Ms. Smith asked you some questions about the amount of time that you spent reviewing the records. Did you spend the time that you needed to

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reach the conclusions that you expressed today to the Judge?
A Yes.
Q Now you also were asked some questions about what happens when the AC goes out and evacuation at that point. Can you explain to the Judge what you mean by evacuation? Are you saying as soon as the AC goes out everybody needs to get out and go?
A Well that's just in a general sense. You would have in your plan an orderly fashion, such that your highest risk residents you would try to get out as soon as you could. Preferably within that subsequent hours and then your resident that are at less risk, you'd continue to evacuate them as time went on. So it's a process, but you need to start it right away.
Q Okay. Now you were asked multiple times whether you knew what the temperature was within the facility. Did you need to know the exact temperature in the facility at any particular time to draw the conclusions that you reached as to whether it was a safe environment?
A No.
Q Can you explain for the Judge why?
A Well the temperatures were extreme and consistent with heat exposure and or resulting in heat

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related illness or stroke. So that tells you the ambient temperature had to been excessive in the environment to result in that. Plus taking in totality the number of deaths and timing of deaths with -- is consistent with the conclusion that the temperatures were excessive, even though we don't know during those days the exact temperatures during exact times.

Q Okay. Let me ask you with respect to patient 11, CC. Ms. Smith asked you some questions as to whether you could draw a conclusion as to the extent heat contributed to the patients cause of death, do you remember that?

A Correct.

Q Let me ask you. This is the patient that had a recorded temperature of 106.5?

A Correct.

Q Whether or not it actually caused his death, would that temperature have some impact upon that patients health?

A Yes.

Q And can you explain for the Judge.

A It would make it more difficult for that patient to respond to and or recover from his other acute illness potentially.

Q Okay. And with respect to both patients 11 and

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12, were you aware of what the medical examiner has concluded with respect to those patients?

A Yes.

Q And did you find any basis to disagree with the medical examiner's conclusions?

A No.

Q You were asked a number of questions about how fast temperatures can rise with patients who suffered a heat stroke. How does that relate to your testimony or does that relate to your testimony about what you need to do when the air conditioning goes out?

A Well it relates in a sense that because they can rise quickly, that you would want to take preventive steps to keep your residents safe and not have them have that risk because they would develop heatstroke or heat related illness, something these residents did. So point is you want to remove them from a potential hazard as soon as you can.

Q You were asked a couple of questions regarding late entries into the facility records. Based upon your experience, if you're going to do a late entry with a specific vital sign reading, shouldn't there be some contemporaneous record of that?

A It should say that this is a late entry.

Q Okay, but can you go back three days later and

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say, you know, oh I forgot to put in -- say on Friday, you go back and say I forgot to put it on Tuesday, the temperature was 97 degrees. Can you do that without some sort of contemporaneous record?

A I'm not sure I'm understanding your question, can you rephrase that?

Q Let me see if I can ask it in a different way. You talked about late entries happen, even if they -- whatever occurrence they do. But if you're going to go back and do a late entry say on Friday and say oh I need to do a late entry for Tuesday, is it appropriate to go back and make a late entry in terms of a specific temperature reading at a specific time without some contemporaneous record of that?

MS. SMITH: Objection, leading.

THE COURT: Overruled.

THE WITNESS: Only if you have knowledge of what the temperature was. Maybe I can explain it such that if I took a temperature on a Tuesday and it was 97 and I forgot and I remember the time and I come back to work because I've been off shift. Come back to work two days later and I remember I took that temperature and I remember what time I took it, it would be perfectly acceptable to write a late entry specifically saying this is a late entry, but on this date I took this

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temperature and this is what it was. You can't falsify a record, but if that's the -- what one remembers then that's appropriate.

Q Okay. With respect to -- Ms. Smith asked you some questions about whether the facility called 911 as it relates to some of these patients. Just calling 911, is that providing adequate and appropriate health care in your opinion?

A Well not in isolation. I mean that's the appropriate thing to do, but in this situation these residents were at risk for heat related illness and debility and heatstroke and so they should have been removed from the facility as stated previously.

Q Okay. With respect to patient number 1, you were asked questions about whether or not your notation indicated from the hospital records that the patient was in code or not. Does that impact, whether the patient was in code or not, does that impact the conclusions that you've reached as it relates to that patient?

A It would not impact any conclusions.

Q You were asked some questions with respect to patient number 7 in the temperature reading of 103.3. Do you know how that temperature was taken by the EMS?

A Number 7 is EH?

Q Yes.

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A I don't recall how it was taken.
Q Well Doctor, if you would assume the temperature was taken tympanically, is there a difference between recording a temperature tympanically and rectally?
A Not specifically. Tympanics are considered pretty good core temperatures as are rectal temperatures in general.
Q So how is the temperature taken by the EMS in the hospital?
MS. SMITH: Excuse me. Objection to form. Vague. He said EMS in the hospital.
Q (MR. MENTON) I'm sorry. By the hospital staff in the emergency department.
A They take rectal temperature.
Q Okay. Now you were asked a number of questions about which patients suffered or showed signs of dehydration. If a patient didn't show signs of dehydration, does that mean they didn't have a heatstroke?
A No.
Q And can you explain?
A Well the heatstroke diagnosis is made by the extremely elevated core temperature accompanying signs of cardiovascular collapse, low blood pressure,

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increased heart rate, the respiratory failure. So that's how we would make that diagnosis. Presumably all these patients are dehydrated as well, but that's not the overwriting issue here.
Q With respect to patient number 12, you were asked some questions whether she showed signs of severe dehydration at the time she was admitted to the hospital, do you remember that?
A I remember those questions.
Q And I think you said -- Ms. Smith asked you whether or not the dehydration that she showed, whether you can conclude that was the cause of her death, which occurred several days later. You remember that?
A Yes.
Q Could the dehydration that was reflected upon her admission have caused her condition to deteriorate?
A It's possible, but they corrected it pretty quickly and it wasn't severe. I wouldn't characterize it as severe dehydration. I can't quantify the answer to that.
Q Okay. And then Doctor, lastly with respect to Dr. Katz, Ms. Smith asked you some questions regarding what Dr. Katz noted in the hospital records as it relates to patient number 11, do you remember that?
A Patient 11 is CC?

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Q Yes.
A And can you restate the question, please?
Q Ms. Smith asked you some questions regarding the hospital records for patient number 11 and in particular, Dr. Katz diagnosis?
A Correct.
Q Is the only information that you -- well let me put it this way. Do you know whether Dr. Katz has testified in this proceeding?
A I believe he has or will testify.
Q Do you know what his testimony was regarding his diagnosis of patient number 11 in part of this proceeding?
A No, I do not know what his testimony was.
Q What is the sole basis for the information that you have in terms of Dr. Katz's diagnosis?
A What's written in the medical record.
MR. MENTON: Okay. That's all the questions I have, Your Honor.
THE COURT: All right. Doctor, thank you very much for your testimony today. I want to let you know the parties have invoked what's called the rule of sequestration. That means that we are asking the witnesses not to leave here and discuss their testimony or the questions asked with any of the other witnesses

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during the pendency of this proceeding. It's our hope that the other witnesses will come in and testify to the best of their recollection and ability without trying to guess what the questions might be or try to match their testimony to another witness, all right.
THE WITNESS: Yes, Your Honor.
THE COURT: Thank you very much.
MR. MENTON: Oh Judge, one last thing. I forgot during her examination. I thought I did not have her CV at the depo, so I didn't think it was an exhibit, but I've been reminded that it actually was an exhibit. So its Deposition Exhibit 158 and I want to go ahead and move that into evidence.
MS. SMITH: No objection, Your Honor.
THE COURT: All right. Deposition -- AHCA's Composite Deposition Exhibit 158 is admitted.
MR. MENTON: Give me one second, Your Honor.
(Off the record.)
(Hearing resumed.)
THE COURT: All right. Call your next witness.
MR. WARREN: Yes, we'd call Doctor Katherine Hyer.

KATHERINE HYER,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GABE WARREN, ESQ:

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Q Good afternoon.
A Good afternoon.
Q Would you please state your name for the record?
A Katherine Hyer. H-Y-E-R.
Q And Dr. Hyer, where are you currently employed?
A I'm employed at the University of South Florida. I'm the director of the Florida Policy Exchange Center on Aging and I'm a professor of the School of Aging Studies.
Q And what are your job duties in those roles?
A My job duties are basically teaching research service. For teaching I routinely teach a class on healthcare operations on long term care settings. I teach classes on assisted living. I teach classes on theory or PHD students. A seminar on health and theory and then I teach usually a seminar every other year on policy.
Q And can you explain for the Judge, what is the USF School of Aging?
A School of Aging Studies.
Q And what is that?
A It is a school where we do interdisciplinary work. We have an undergraduate aging sciences BA. We have an undergraduate long term care administration

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degree. We have a masters student. We have a master's program in gerontology and we have certificate programs, as well as a PHD program, which is in Aging Studies. In addition to teaching, I do research and my research area is on quality of long term care, assisted living, nursing home care and I also have a contract to review the dementia curriculum to have the requirements for the state met. Basically the state has a contract -- has a rule that says every worker in assisted living, nursing homes, adult day care programs, hospice programs and health care should have a basic training in Alzheimer's disease and related disorders and we've had that contract since it was first initiated in 2003 for the Department of Elderly Affairs. So we review and credential curriculum to make sure they are meeting the rule that the state has and also that we review the credentials of all the people who do the training.
Q I got --
A And I do lots of service.
Q I got a copy of your CV here. It was marked as Deposition Exhibit 163.
A Thank you.
MR. WARREN: Judge, this is actually not in your books, so.
THE COURT: Has this been provided to opposing

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Counsel?
MR. WARREN: Yes. Jeff, you want a paper copy?
MR. SMITH: No, I have it. Thank you.
MR. WARREN: And Judge, we just didn't have the exhibits back in this deposition by the time --
THE COURT: Okay, thank you.
Q (MR. WARREN) Dr. Hyer, can you briefly explain for the Judge your educational experience?
A My experience, I have a BA in Economics and Sociology from Boston College. I have a Master's in Public Policy from Kennedy School at Harvard. I have a PHD in Public Administration from Arizona State University.
Q And can you walk us through your professional experience?
A Sure. I have worked in a variety of places. After -- I have worked for a governor. I worked at the State of Arizona for Governor Bruce Babbitt. I do work on education policy as well as health policy. When I also worked for the visiting nurse service of New York, where I ran mental health programs and was in charge of the home care business development and I worked for Mount Sinai medical center. I worked for Doctor Robert Butler, who was the founding director of the national institute of aging and won a Pelzer winning book called

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"Growing Old In America". While I was working at Mount Sinai, I completed by dissertation. My dissertation is on HMOs, capitation rates, and Medicare standard for capitation rates. After I left Mount Sinai, I went to work for the vising nurse service of New York, where I was vice president of business. Then after that I went to work for the John A Hartford foundation as a consultant program development person and developed a program on geriatric interdisciplinary team training. I then went to become the project director of that at New York University. Then after that I went down to the University of South Florida. Worked for a year then transitioned to NYU on that project, the grant from the Hartford Foundation. Then I was over a positon at the policy center and when I worked at the policy center, I became the director of the training academy. In 2003, I was offered a 10 year tract position and was brought in as an associate professor. And then in 2008, I became a temporary professor. And in 2014, I was promoted to be full professor.
Q I believe you touched on it, but do you hold any academic appointments? Academic appointments.
A I'm appointed in the College of Nursing and the College of Medicine and College of Public Health. They're adjunct courtesy appointments because I do

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contract work, not contract, I do work on the project director of the geriatric workforce enhancement program, which is a 2.4 million dollar grant from the Department of Health and Human services, which is about training health care professionals to meet the needs of geriatric growth in the country, but specifically in Florida because that's where we're working. Is that what you were asking?

Q I was, thank you. Do you currently serve on any editorial boards?

A Yes, I serve on -- I'm an associate for the Journal of what is called Post-Acute Long-Term Care. It's called Jamda, Journal of American Medical Directors Association, which is basically for nursing home and post-acute care. I also have been on the editorial board for the gerontologist, which is the -- I've been on that board for I don't know, eight years. And then I was on Emon, the board of the geriatrics and gerontology education. And I also reviewed for many other journals.

Q Are you a member of any professional associations?

A Yes, I'm a member of the Gerontological Society of America. I'm a member of the National Association for Geriatric and Geriatric and Gerontology education. In fact, I'm the past president of that association.

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I'm a member of the America's Society of Aging. I'm a member of the, let's see --

THE COURT: I don't know that it's necessary to go through them all. They're on her CV.

THE WITNESS: There are a lot.

Q (MR. MENTON) Have you --

A And one of the things that's not an appointment, but up north, it was not an appointment, as an editorial board, I'm on the Gold Seal, the Governors Excellence in long-term care. I was appointed by the Department of Elderly Affairs about two years ago.

Q Is that a committee?

A No, that is a group of -- a panel from the Governor that determines whether or not there's excellence in quality of long-term care. We actually go and visit nursing homes. We review materials provided by -- it's a statutory opportunity for nursing homes that have high quality to become Governor's Gold Seal.

Q How long have you been doing that?

A I was appointed in 2015 I believe.

Q Have you participated in any other federal, state or local committees regarding geriatrics?

A Yes. I was -- I actually was on the Homeland Security Task Force that I served on for -- that was funded by the federal government and was interested in

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how nursing homes and other places were restored after disasters. And that was in 2007 or 2008. And then I also was on a technical advisory group for the assistant secretary of planning evaluation, to assess training programs for professionals caring for persons with disability. And then I was also on another group, which was on residents that entered nursing home care for the Department of Health Services.

Q And your CV is lengthy, but I want to talk about some of your research now.

A Okay.

Q Can you briefly summarize for the Judge research you've done pertaining to geriatrics for the elderly?

A I've done a lot of different research pertaining to elders. I've written and worked with graduate students to look at quality of care in multiple different ways. I had funding from the Commonwealth Foundation to look at the effect of staffing levels on quality of care in nursing homes, specifically. I actually prepared the report for AHCA, for the Agency for Health Care Administration on changing and staffing statutes. But I think the most relevant for this work is going to be work we had funded by the National Institutes of Aging, which was looking at the effect of

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evacuation versus sheltering in place for nursing homes. For hurricanes.

Q In the course of your research and professional experience, are you familiar with the Florida and federal regulations regarding nursing homes?

A Yes. And I have many different articles talking about various aspects of regulations.

Q And are those reflected in your CV?

A I think they are.

Q Judge, at this time we'd offered Dr. Hyer as an expert in nursing home care and safety, emergency preparedness training, quality of care and state and federal nursing home regulations.

THE COURT: Any objections?

MR. SMITH: May I inquire?

THE COURT: Certainly.

Q (MR. SMITH) Dr. Hyer, am I correct you're not a medical doctor?

A That's correct.

Q And you don't hold any license as a health care practitioner of any kind?

A Correct.

Q And you wouldn't hold yourself out as an expert in the physiology of hyperthermia and heatstroke and things like how fast it developed, how it manifests.

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Whether the symptoms that occur, when did they occur, those types of things?

A Correct.

Q As far as your -- what was the tender? It was very wide.

MR. WARREN: Nursing home care and safety emergency preparedness, training, quality of care, state and federal nursing home regulations.

MR. SMITH: Nursing home care and safety. Quality of care --

MR. WARREN: Emergency preparedness, training, state and federal nursing home regulations.

Q (MR. SMITH) Dr. Hyer, do you have training in doing emergency preparedness?

A Many of the materials that were developed with Florida Health Care Association and with the State, were actually developed with my help. The Florida Health Care Association and the national nursing home evacuation plans as well as the assisted living plans, were developed in cooperation both with the University of South Florida and specifically Florida Health Care and with the Department of Health.

Q And as far as quality of care, is that, you don't have any clinical expertise in quality care?

A No, but the quality care that I would write

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about would be deficiencies and the inability of the nursing home to meet the standards of care that are required, not meeting the regulatory standards.

Q But on day to day clinical care that is provided in nursing homes, you don't have expertise in that?

A Well it depends on how you view that. I have written extensively about the value and importance of nurse staffing, CNAs and how more staff and better trained staff reduce deficiencies. And the deficiencies reflect quality of care. So do I -- can I appropriately recognize whether or not the bedsore and stage it? No, but I can write about the importance of not having bedsores and I can certainly write about whether or not training and work reduces the probability of people getting bedsores. And how.

Q Essentially what you're doing, is you're looking at the care from an academic standpoint and reviewing statistically how facilities perform?

A I'm not sure that I would say it that way. I think what I would think is a better characterization, is that we would carefully look at the kinds of deficiencies that are written, the inspections. What is noted in the deficiency reports during AHCA inspections, during the CMS inspections in other states. We also

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look at complaints. Looking at those, we relate those to administrative rules and we have also worked on the level and quality and type of training people have. The number of staff, the type of training. So we've done many different focus groups and work and I've done a lot of work on training people to provide care. So you're absolutely correct, I'm not a clinician, but that doesn't mean that I don't have, I think appropriate opinions about the quality of care that can be delivered in nursing homes.

Q And Doctor, I wasn't even asking about what your appropriate opinions may be at this point. I was just trying to focus on qualifications. As far as what you do normally, you're an academician, is that fair? You're in academics, academia?

A Yes.

Q You're not involved in operation or administration of any nursing homes anywhere, correct?

A I routinely work with Florida Health Care on their clinicians board. They have a monthly call and I am on that call a lot of times as an academic. I have for the past, more than 10 years, been on the Florida Health Care Administrations emergency operations committee, which has both nursing home administrators, some academics, although I'm usually the only one there.

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People from the emergency operation centers and counties and people from the Department of Health. And people from the Agency for Health Care Administration. So it's hard for me to --

Q I appreciate all --

MR. WARREN: Judge, Judge --

THE COURT: Let her finish please.

MR. SMITH: Okay, I' sorry. I've been down this road with this witness. Go on. I'm sorry. Thank you. Go ahead.

THE WITNESS: I'm just trying to make the point that -- sometimes when people say only academics, it's a way of saying that that person doesn't deal on a routine basis with people in the industry and I don't think that characterizes me correctly.

Q (MR. SMITH) Let's try this. Have you ever served as an administrator of any long-term care facility?

A No.

Q Have you ever served as an operator in any operations position in a long-term care facility?

A No.

MR. SMITH: Your Honor, my only objection to the tender would be to the extent it's going to clinical opinions or to the extent it's being offered as an

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opinion of what -- would be standard of care for an administrator or operator of a nursing home.

THE COURT: Your response?

MR. WARREN: Judge, first of all I think there is overlap between the clinical an academic sides here as Dr. Hyer has explained. And certainly she can speak to the standard of care as she understands it with her background and expertise. She may not be able to speak as a nursing home administrator, but she can speak to her understanding of what that standard of care is.

THE COURT: Well she can speak to what she knows to be the applicable state and federal regulations. I don't know that she can speak to the standard of care as a physician or a nurse or any other health care provider inside a facility because she's not licensed as such. But she apparently has studied that. I'm going to go ahead and allow and accept her as a witness as proffered. However that doesn't mean that Hollywood Hills can't object when they believe that she is providing an opinion outside the area that she's been accepted as a witness.

MR. SMITH: Okay. Thank you, Your Honor.

Q (MR. WARREN) Dr. Hyer, you mentioned during the -- was it the Florida Health Care Association?

A Yes.

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Q What is that?

A Florida Health Care Association is the -- basically the training association for most of the nursing homes in the state. I don't know exactly how many of the 689 independent nursing homes are members, but it's usually most of them. I would guess that it's at least 60 percent, but most of the time its closer to 80 percent. And then the other major group is Leading Age. And Leading Age I also work with as well.

Q And what role do you have in the Florida Health Care Association committee?

A Well as I said, I serve on both their senior clinicians group, which is a monthly call. Most of that is about leading standards and it can be very technical. Most of the people on that call are nurses. The second group that I've been very active in for at least 15 years, is the emergency operations group. That group meets probably quarterly. Many of the times it's on the phone, but they do have face to face meetings. And that group is a group that has worked to create training manuals and I helped create some of those training manuals. Software and I helped create that software book from contracts with the Department of Health as well as contracts with the John A Hartford Foundation with the Florida Health Care Association and USF joined

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together. We had multiple meeting about the needs of nursing homes and some of those are materials that are written up and that are a part of my CV in terms of articles that we've written up about them. For many years I have worked closely with the Florida Health Care Association. The class that I teach with the Health Care Operations, is a class that's designed to help students become long term care administrators. And in that class we're going over the regulations. It's not the only class we teach, they take.

THE COURT: Much more expansive answer than the question called for.

THE WITNESS: I'm sorry.

Q (MR. WARREN) Dr. Hyer, thank you. How did you come to be involved in this case?

A I don't remember exactly what day, but I was called by Kim Smoak and she asked me if I would consider being an expert witness in the Hollywood Hills Administrative hearing that was happening. She asked me if she could offer my name and that if I said yes, that the office would contact me and I said yes. And you contacted me.

Q And what were you asked to do in this case?

A I was asked to review materials and to understand or to read materials and to become familiar

Page 1803

with what was being -- what was being -- what happened during the event and try to form an expert opinion about whether or not or how things were operating and what transpired during that -- right after the storm and what resulted in the death of 12 residents.

Q And after your review, did you form opinions or conclusions?

A Yes, I did.

Q Can you generally describe what those were?

A My conclusion overall is that the nursing home of Hollywood Hills was unable to appropriately and continuously monitor the condition of the residents in the building. And as a result, despite the fact that they were recognizing the need to take temperatures every hour or two hours and often water on an ongoing basis, that there was not the ability for them to maintain those residents safely. And the end result was that eight residents died in one day and four more residents died shortly thereafter.

Q In the course of your work in this case, did you prepare a report?

A I did.

Q And let me direct you to, its page 33 of the documents in front of you. Deposition Exhibit 164.

THE COURT: Do I have that?

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MR. WARREN: Yes, Judge, it's in that stack in front you. It's on page 33.
THE COURT: Behind her CV?
THE WITNESS: Yes.
MR. WARREN: Yes, ma'am.
THE COURT: And this is obviously been previously provided to opposing Counsel?
MR. WARREN: Yes, Judge. And Jeff, I have a paper copy if you need it?
THE COURT: Before we move on to that, do you want to move into evidence --
MR. WARREN: CV.
THE COURT: The CV.
MR. WARREN: Yes, Judge.
THE COURT: Any objection? All right. AHCA Deposition Composite Exhibit 163 is admitted.
Q (MR. WARREN) Dr. Hyer, do you have deposition 161?
A Yes.
Q Is this the report you prepared in this case?
A Yes, it is.
Q I'd like to walk you through this report. Can you explain for us your conclusions that are encapsulated in this report?
THE COURT: Hold on a second. I'm not sure I have

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the right report here.
THE WITNESS: That's the report. You do have it.
THE COURT: Is this about Hollywood Hills. Because this says nursing home preparedness shelter in place and evacuation under hurricanes.
MR. MENTON: Exactly, Judge.
THE COURT: Okay.
THE WITNESS: So this report summarizes the background that I have and the work that we've done exclusively looking at nursing homes during hurricanes. And the reason why the title is "Preparedness Shelter In Place Evacuation Under Hurricanes", is because the work that I've done on a number of different studies that have looked at the effect of evacuation versus sheltering in place for nursing home residents. And the work that I had done was also with Dr. Dosa and others. Our conclusion is that on average, nursing homes are better suited or that residents are better taken care of if they are sheltered in place rather than evacuated. And part of what I talk about in here is the work that we have done from the National Institutes of Health. And our work has shown that as you go through this work and as you look at the studies and I don't know if you want me to go into detail about how we did the study?
Q Let's pause there.

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A Okay.
Q You mentioned shelter in place and we've heard that term before in this proceeding. Can you explain what shelter in place means?
A For us, shelter in place means that the nursing home residents and the nursing home chooses to remain in the building during a storm. Before the storm and during the storm. And shelter in place means that they do not leave or evacuate. So the choices are shelter in place or evacuate. So for us, shelter in place means that the nursing home is staying where they are normally placed and they are trying to ride out a storm before it hits. Whereas other homes and assisted livings, but this is limited to nursing homes. Are ordered to leave or choose to leave because they believe they cannot adequately care for residents assisting that storm. So they would leave and that's what we call the evacuation scenario. It's done prior to the storm.
Q Okay. And I'm going to point you to another exhibit. Have you done a number of studies and research involving shelter in place?
A Yes.
Q Judge, I believe its joint 37 to 72.
MR. SMITH: I'm sorry, joint?
MR. WARREN: These are Dr. Dosa's deposition

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exhibits. And we'll start with 57.
THE COURT: I don't have any marked joint exhibits. I don't have that binder.
MR. WARREN: It's the deposition exhibits.
THE COURT: Mr. Warren, can I mark this as my copy?
MR. WARREN: Yes, Judge.
MS. SMITH: What were the numbers again?
THE WITNESS: 3772.
MR. WARREN: 57 --
THE COURT: 37 --
THE WITNESS: 37 --
Q (MR. WARREN) The first one we'll start with is Deposition Exhibit 57. Dr. Hyer, if you'll turn to Exhibit 57 in that book. Are you there?
A Yes.
Q Have you had a chance to review this document?
A I'm looking at it now.
Q What are we looking at here?
A The title of this article is the Effects of Hurricane Katrina on Nursing Facility Resident Mortality, Hospitalization, and Functional Decline"
Q Were you an author on this?
A Yes, I am.
Q And I see David Dosa's name is also mentioned on here. I know David Dosa's been identified as a

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witness for Hollywood Hills. I assume you know Dr. Dosa?

A Yes.

Q And can you -- do you have a mutual respect with Dr. Dosa?

A Yes, I worked with Dr. Dosa for a number of years and we worked jointly on this kind of research. And we actually have a grant that's going to be resubmitted in the next month, so, yes, I have a great deal of respect for him as a researcher.

Q Okay. Can you explain what the subject of the article of Exhibit 57 is?

A Sure. What we are doing in this article, is trying to identify and look at the effect of hurricanes on residents and what we are looking at specifically in here is we look at the two years prior to hurricane Katrina and we look at what are called long stay residents. Long stay residents are the residents who are not there for rehabilitation and are there for at least 90 days. So we -- and we look at that because the studies are trying to figure out the effect of the storm on those residents. So looking at the prior two years, which is why when you look at the graphs in figure 1, you can look at 2003, 2004, and 2005 and what we were trying to show is that the residents in 2003, 2004 look

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just like the residents in 2005 for the same period of time. So that when the storm hits, what you're trying to parcel out is the effect of the hurricane on the residents rather than anything else. So the residents look similar to the residents for the two years before. And then the storm comes, what we see is that there are increased rates of mortality and hospitalization and functional decline for those residents.

Q And what were the conclusions of this study?

A Our conclusions were that during the storm, nursing home populations were at risk and that the frail and vulnerable people in nursing homes were more likely to suffer negative impacts as a result of the storms. And we show that the increased rates of hospitalization, functional decline and death for those residents.

Q Why are they at risk? Why are they more at risk?

A We're not exactly sure why, but it appears because that during a massive public health event, particularly something like Katrina, where in New Orleans there really was a complete breakdown of the infrastructure, you know, that there was massive flooding, there was an inability for hospitals to receive patients. There were many major issues with the police, there was great looting and all of those events

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-- quality of care that was being offered and allowed in the nursing homes that were taking care of residents was very bad. There were massive evacuations of nursing homes there. So this is the beginning of the work we did on the effect of the storm on residents.

Q Were the evacuations, the nursing home evacuations identified as part of this study pre or post Hurricane Katrina?

A In this study, we didn't actually differentiate post. We do that later in our other work. This is just on the overall effect.

Q Okay. Let me turn you to Exhibit 58. You recognize this document?

A Yes.

Q What are we looking at here?

A We're looking at an article that Dr. Dosa and other colleagues at Brown wrote and they titled the article, "To evacuate or not evacuate: lessons learned from Louisiana nursing home administrators following Hurricanes Katrina and Rita". And this study, Dr. Dosa and other individuals conducted focus groups and they asked nursing home administrators what was there experience after or during the hurricanes. And the overall results on those descriptions were that nursing homes felt isolated. They felt that they were not part

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of a larger system and that no one cared about them.

Q Okay. And piggy backing on that, let's turn to Exhibit 59. Is this another study you participated in?

A Yes, and this is a study that was part of our National Institute of Health grant. And this grant was the first time we started to parcel out the effects of those hospitalizations, functional decline and deaths. And we differentiated those events for those that evacuated versus those that sheltered in place. So this article is the article that most people end up talking about. We did more work. And this article ended up taking four storms --

Q Which four?

A This looks at the effect of Hurricane Katrina and Rita, which was 2005 and then we look at the effect of Ike and Gustav in 2008. So we look the same way I described earlier, we look at the two prior years -- we do this very carefully, so every nursing home that was in the path of the storm is included in these studies. And those homes were then -- we looked at every nursing home and then we aggregated at their past two years and then we aggregated that up carefully using statistics and we looked at the prior two years, created a baseline and looked at what would have been the predicted death rate for every one of those individual homes and

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aggregated that up and figured out what was the expected death rate and what we concluded was that the effect of the storm increased deaths. But then we further in this work differentiated those that had evacuated prior to the storm versus those that sheltered in place. And we concluded and have statistics that show exactly what we estimate as the number of unanticipated deaths, extra deaths that were a direct result of evacuation versus sheltering in place for each of those four storms.

Q When you say evacuation, do you mean evacuation pre-storm?

A Yes. We had never looked at the effect of evacuation after an event. So all of our work is done to look at the evacuation prior to the storm and if nursing homes evacuate because a tree falls on them, they don't have power, they're unsafe to maintain nursing home residents, those evacuations, if they occur after, would be in a group of nursing homes that are considered sheltering in place. In this study.

Q For the purposes of your studies, does sheltering in place include nursing homes that evacuated post-storm?

A Absolutely. And that also will include nursing homes that should have evacuated, like in Rita and the deaths there are included for those that sheltered in

Page 1813

place.

Q And you mentioned this was an important study, did we cover all your conclusions for this one?

A Well one of the other conclusions that I think is important that I brought up in my deposition, is that well it is absolutely true that overall there are more deaths that occur when you evacuate versus sheltering in place, these are averages and there is one storm, Ike, in Houston in 2008. And that storm there were many places that evacuated. And those nursing homes that evacuated, this is the one that both Dr. Dosa and I have been recorded as saying we think they got it right that in that storm there is not the same kind of difference between those that evacuated versus sheltering in place. By suggesting that evacuation is necessary at some points and that the death rates and the hospitalization rates are not as serious or not as strong than that effect as strong in Ike. And overall -- it's important to recognize that overall our conclusion is that sheltering in place is what we would recommend for hurricanes.

Q When you say you recommend it, do you mean pre-storm or post-storm.

A Pre-storm. And I have been quoted and Dr. Dosa and I have both written that testimony that I gave

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before the senate committee in September and in that testimony I say, and I assume he agrees, that you shelter in place until you can't.

Q Was that the US Senate?

A Yes, the US Senate. A special hearing on disasters and it was both on Harvey and on Ike.

Q Did you say Dr. Dosa helped you prepare that testimony?

A Yes. And our names are both on it and we have a series of recommendations in that testimony including the nursing home shouldn't be sued if staff are doing a good job.

Q And you mentioned a mantra shelter in place until you can, what does that mean?

A That means that the assumption is if you believe you can stay safely in a building, that that's the best place for the residents. And what we mean by that is the residents are comfortable, the staff know it. Presumably you have an emergency plan that has enough water and supplies and materials and that you drilled and prepared appropriately that you can keep the residents safe during that time. But we say until you can't because sometimes when storms happen, bad things can occur. There are many buildings that are breached during a hurricane. A roof gets breached, a tree falls,

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the generators go out or not the generator, the electricity and power supply goes out. There's unanticipated consequences and then the only safe course for those residents is for the nursing home to evacuate.

Q Okay. I just want to go back --

A I want to point out that in my written report, 20 nursing homes evacuated after Irma in Florida under the materials they showed that they -- in the emergency stat data they have 81 percent homes evacuating and 60 evacuated before the storm and apparently another 20 evacuated after.

Q And what data did you review?

A That's the data that is from Molly McKinstry, that she shared, which is part of the emergency stats health materials and I think she also repeated that at the Florida House meeting, the Florida meeting on long term care that I was also at.

Q That was the Florida House?

A Yes. The Florida House.

Q And I think its included in your report of what conclusions did you draw from that data?

A I concluded a number of different things. I concluded one, that nursing homes recognized they needed to leave. 20 nursing homes recognized they needed to leave after the storm and I don't know precisely why.

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We haven't had the ability to really look closely at that data, nor have we had the ability to do interviews, but Dr. Dosa and I are hoping to do interviews with many of those homes to find out why they evacuated. I also concluded that there were many places that did not have electricity.

Q And I just want to tie up your last study you were talking about, Exhibit 59. When you said you studied shelter in place deaths, what did you mean?

A In Katrina, there are homes in the study that sheltered in placed and one of those homes was St. Rita's and 32 residents died in that home and they were drowned. And they sheltered in place and they're included in this shelter in place date. And despite the fact they're included in this data, there still is an effect of an evacuation in place -- people that evacuated that increased death for those that were evacuated. But that's a very different kind of storm. That was the first time I think in this country that we had such a serious hurricane. It was really a massive breakdown of civil order. Nursing home residents were being left on tarmac supplies and records weren't being carried with the individuals because there was such an effort to get them out. I remember being in Nashville, Tennessee and there was a picture of a nursing home

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resident on the front page of the paper and they didn't know who she was because she had just been brought there from New Orleans.

Q This was hurricane Katrina?

A That was Katrina.

Q Are you familiar with Hurricane Irma?

A Yes.

Q And can you describe from your experience the differences between the impact of Hurricane Katrina on New Orleans and Hurricane Irma on South Florida?

A Right. Well Hurricane Irma was a massive, very difficult event. It was a very wide storm. I think two thirds of all the counties were declared disaster areas as any of us who were here in November, the projected path kept moving west and then moved back and I think for many many individuals, many people left the state. There were obviously massive fuel problems, but despite the fact when it did hit and there were tree damages and there were power outages, it was not the same kind of event as I believe Katrina was. I mean there were no lights in the street, there was no lootings. There was civil order. Many hospitals were still able to function. Some hospitals were evacuated, but many places were still operating. They weren't operating normally and they were obviously many events were trees

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were down, lights were not working, there was still major issues. There was fuel shortages, but it was not the same kind of event I believe that Katrina was, where there was basically no order and very little ability for anyone to get services that they needed.

Q Are you familiar with the impact of Hurricane Irma on the Hollywood Hills Rehabilitation Center?

A I am.

Q Are you aware of whether or not Hollywood Hills had any flooding from Hurricane Irma?

A Excuse me?

Q Whether Hollywood Hills had any flooding from Hurricane Irma?

A They did not from my understanding.

Q Are you aware whether Hollywood Hills completely lost power from Hurricane Irma?

A No, my understanding is that on Sunday afternoon, there was a fuse that broke and that as a result of that, the electricity that was lost was were the cooler and the generator was not sufficiently able to take care of that air conditioning unit. So everything other than the air conditioning was operating. So they had lights, they had the ability to use electronic records, they were able to have meals cooked, they were able to continue to do laundry. I've

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done a lot of interviews in other places, which when powers loss, the nurses are giving medication by flashlight and they're using paper for monitoring records. So this is very different event, but they did not have air conditioning.

Q And are you aware of whether the emergency manages systems in the City of Hollywood in Broward County continued to function in the days after Hurricane Irma?

A My understanding was that they were operating and that while there were shortages of fuel and there had been some curfews, they weren't necessary allowed to go out and drive where they wanted to, that there was still a basic sense of civil order. But I do believe that Hollywood Hills was under a water boil event.

Q Let's turn to Exhibit 60. Is this another study you participated in?

A Yes. This was headed by colleague Lisa Brown at Palo Alto University California.

Q And can you briefly describe the subject findings of this study?

A Right. This study is an interesting study because what we did with this study is to only look at the effect of Hurricane Gustav. Gustav was the 2008 storm that looked like Katrina, but was not Katrina. It

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was expected to be a major hurricane and it looked just like Katrina coming in. Unfortunately or fortunately for the people of Louisiana, it did not come in as a major storm, but because it looked very much like it was going to be a bad storm, 80 nursing homes evacuated. The important thing about our study is that with Katrina, most nursing homes did not evacuate. By the time we get to Gustav, 80 percent of the nursing homes evacuated.

Q Is that before the storm?

A Before the storm. And with Gustav, what we did in this study, was we looked at the differential effect of evacuation on residents with dementia and we found that for those who were cognitively impaired had the minimum that there were more deleterious effects of the evacuation than it was for other residents. So residents with dementia are at greater risk for evacuation than sheltering in place. And that's what this study shows.

Q Did this study make any conclusions about post-storm evacuations or did it consider post-storm evacuations initially?

A It has no conclusions at all about post-storm. In fact, one of the problems we had with Gustav was mainly the residents who were evacuated, evacuated from

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New Orleans that evacuated up to Baton Rouge, apparently the storm came into Baton Rouge so they were evacuated twice. But our studies do not look at multiple evacuations or the effect of the evacuation after the storm, which is not done yet.

Q Let's turn to Exhibit 61. Is this another study you participated in?

A Yes, and this is done by my former PHD student Kelly Thomas, who is now working at Brown. This is the same data set that I described with Doctor Brown. Except that what Doctor Thomas did, was to look at the effect of the evacuation on the functional levels and those who were most functionally impaired. And what she found or what we found was that those who are more or most functionally impaired, experience most hospitalizations, but not deaths.

Q Did this study make conclusions about pre-storm versus post-storm evacuation?

A No.

Q Were there any other conclusions in this one you'd like to highlight?

A No. I think what we were trying to do and what all of us had been trying to do is to help the industry of nursing homes recognize the importance of having adequate plans to try to keep people in the building

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safely. And then secondarily, nursing homes, and this has changed since Katrina, that nursing homes are incorporated into emergency management in the community, so they can receive resources and get help if they need to -- if they need help.

Q And you said this study highlights the importance of facilities having plans to keep people in the facility safely. What do you mean by that?

A Well facilities are supposed to have emergency management plans and they're supposed to be working on those plans and operationalize those plans, but the plan cannot be implemented only by the nursing -- their great responsibility of the nursing home to monitor residents and to know their plan and to operationalize their plan and implement their plan. But many nursing homes need additional help. They need additional support to transport residents if they have evacuations. A lot of times when -- before the storm comes, there is a limited number of assets. Some of our earliest work shows that the neutral agreements and the ambulance agreements and the transports agreements, that most nursing homes have, every other nursing home in the same area has it and there's a total of four. So that the ability to obtain those assets is quite limited if the emergency management operation at the county level or at the state

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level can't help manage to get additional assets and work. It's an issue of constrained assets and supply.

Q And who's responsibility is it to have a plan in place?

A Every nursing home is required to have an emergency management plan and it must be filed with the county. And that's -- as part of their certification as a licensed nursing home, it's part of the federal regulations. Those regulations have just recently changed, but the new regulations were not in effect during Irma.

Q And who's responsibility is it ultimately to ensure the safety of those residents?

A The nursing home is always responsible. The nursing home that accepts any resident, is in fact creating a contract and by virtue of billing the center for Medicare and Medicaid statistics and or the state for Medicaid dollars, they are saying that they can meet those residents needs and that they will provide a safe environment and that they will adequately care for those residents. In fact the standard is get the resident to the highest practical level and that's a very high standard.

Q Let's to turn to Exhibit 62.

THE COURT: Before we go on, why don't we take a

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five minute break.
(Thereupon, a short break was taken.)
(Hearing resumed.)
Q (MR. WARREN) Dr. Hyer, I think we were talking about Exhibit 62.
A Correct.
Q Are you familiar with this study and is it one you participated in?
A Yes.
Q What was the subject and briefly what were the conclusions of this study?
A This is another one of our studies where we talk about the controversy and the difficulty managing frail and complex nursing home residents during hurricanes. And this study, one of the things we are asking for and arguing for is you begin to think about risk for disaster, any disaster, but particularly nursing homes. As a personal risk, the resident risk can be different for each resident. A facility risk, which is both a functional, where the facility is located, the structure of the building and then also the event risk. So the example in here of if you're in the path of a hurricane level 5, it's very different than the event risk of a hurricane 1. And a facility risk is going to be different if you're in an area that's going

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to be flooded with lots of rainstorms, let alone a major storm. And that total aggregate risk needs to be brought about in those ways. And this is a theoretical construct that we had yet to really test or study other than to present it here. But it's our -- beginning to argue and we did this at the testimonies as well, that nursing homes and places need to be thinking about partial evacuations. That there may be residents who are more risk than others. And that a partial evacuation may be an appropriate -- that for nursing homes to deal with. It's not quite a shelter in place or evacuate completely.
Q Under what circumstances did you conclude that partial evacuations will be appropriate?
A We think that that's probably the function of both the resident needs and the facility needs. And one of the big examples that we used and in fact it's become a pretty, not completely standard, but lots of people would evacuate dialysis patients for example. If you think that there's going to be a major event, that those needing dialysis, would get dialysis before the storm, but if you really think that the storm is going to be a major event and you might not be able to have that person cared for appropriately, then you would transfer them to a hospital, you would transfer them to a

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different part of the state so they could get the dialysis care that they would need. That's an example there.
Q Let's turn to Exhibit 63.
A Okay.
Q I believe this might actually be a composite exhibit.
A It's the outcome section of the article that I wrote. Dr. Dosa is not on that, but Doctor Brown is on this as is LuMarie Polivka-West. It's an article in health care.
THE COURT: You may need to repeat that ma'am, for the Court Reporter.
THE WITNESS: I'm sorry. Doctor Brown, LuMarie P-O-L-I-V-K-A-West.
THE COURT: You said LuMarie?
THE WITNESS: Yes. And it's in public affairs. In the journal. And in that article, we talked about the progress that's been made since the original storms of 2004. In this article we talk about how there had been more training opportunities. Nursing homes are recognized by emergency management offices. In another study, we indicated that when nursing homes get power restoration offered that -- the name of the nursing home might be the Palms and they wouldn't know if that's a

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nail salon or a nursing home. And that there had been a lot of work done since 2004 to have nursing homes be recognized by the utility companies and that people understand that nursing homes are not just a place where vulnerable and disabled and elderly people reside and that they need additional assistance during disasters.
Q Does this article address sheltering in place at all?
A Not really. It was more of an assistance article and the importance of preparing for disasters and recognizing that nursing homes are part of the community.
MR. SMITH: Just a clarification. My Exhibit 63 includes about four different articles. Are we talking about the one that says Grant Watch in the upper left corner?
THE WITNESS: That's the one I'm talking about, but you are correct. There are additional -- thank you. There are additional studies included in this. So there's that one and there's the article that is on the relationship between emergency management. It's called improving relations between emergency management offices and nursing homes during hurricane related events. This is the article where we had done the survey and nursing home administrators after the 2004 hurricanes --

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MR. SMITH: Your Honor, I really wasn't asking --
THE WITNESS: Okay, I'm sorry.
MR. SMITH: -- to testify about the rest of the article. I'm just pointing out I got four and I wasn't sure which one we were talking about.
THE COURT: I think we're talking about the first one. Go ahead, Mr. Warren.
Q (MR. WARREN) And Dr. Hyer, I see Mr. Smith is correct. It looks like there are a couple in here.
A There are three other articles, but the last article, the effect of evacuation on nursing home residents with dementia has already been talked about earlier.
Q Okay.
A That's a repeat of Dr. Browns work.
Q And on the other two articles, did you also participate in those?
A Yes, I did.
Q And are there any conclusions that you'd like to share here today about those?
A The first one that I was talking about, the emergency management relations, there had been great improved relationships between nursing homes and the recognition of nursing homes within the emergency management operations. And then that other article is

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on the psychological first aid for nursing home residents and that's an article, which talks about training that can be done to help residents be more resilient and staff can help residents be more resilient during hurricanes.
Q Dr. Hyer, the studies and articles we just talked about, are any of these studies intended to create a standard for facilities to use after the storm passes?
A No.
Q Why is that?
A Because we've done no work on the effect of evacuation after its done. The standard that I think most people find is reasonable is to shelter in place, which is what I'd normally recommend until you can't. And then until you can't is when you are no longer able to appropriately care for the residents under your care and then you would need to evacuate or you would need to have a different plan.
Q And once the storm passes, should the facilities reevaluate the dangers and conditions that they face at that point?
A Absolutely. Once the storm passes, unless your completely -- and it missed you completely, many buildings are still in post-evacuation or post-storm for

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post-emergency status. And they are working and they need to have the ability to continue to monitor residents and prepare and make sure that the building gets back to normal.
Q And as far as those obligations to assess and to monitor, is the facilities ownership and staff responsible for those duties?
A Yes, like I said a little while ago, when a nursing home admits a resident, they are taking that resident and promising for payment, to care for that resident appropriately and safely and to meet all the needs of the resident and to do care planning, and all the things that are required under the federal regulations for nursing home care under both the Medicare and Medicaid regulations. As well as the state rules. The state rules are more -- are at a higher or at a different level.
Q Are you aware of state or federal regulations regarding a nursing homes obligations to maintain a certain temperature inside a facility?
A The standard is supposed to be between 70 and 81. That's the temperature that should be maintained.
THE COURT: Is that state or federal, to your knowledge?
THE WITNESS: It's a federal standard. It is a

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standard that -- I believe it's also in the state regulations as well. And the new emergency management requirement will be that you must have alternative energy to maintain that ambient temperature. But it does not require that it be a generator, just that you must have alternative sources and that standard did not go into effect until November 15, 2017.
Q Okay.
A But prior to that you were supposed to not get the building higher than 81.
Q And we just talked about the nursing homes obligations to its patients in regards to a certain temperature. When you're dealing with nursing home residents, do they generally have the ability to protect themselves against elevated temperatures?
A Well nursing home residents are in the nursing home because for most of them they're very vulnerable and they are very needy. There are requirements that can be put into a nursing home if they don't have a certain level of need. There are short stay. So there are many people who are competent, who are sound mind and are in the nursing home for rehabilitation services. Those were the residents that I believe that were mostly on the first floor of Hollywood Hills. Those are the residents who had been receiving rehabilitation services

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for stroke, or wounds or various kind of injuries. The residents on the second floor were what we call the long stay residents. Those residents tend to have higher levels of need. Many of them are bedbound or --

MR. SMITH: Your Honor, at this point, this style of just volunteering information, I -- I'm sitting here saying if he asked that question, I'd have an objection to predicate and so I'd like to back up and just say move to strike or can we have some predicate how she knows what kinds of patients are on the first floors. What kind of patients are on the second floor. Where did she get that --

THE COURT: That answer was not in response to the question asked. You gave a lot more explanation than what's necessary. So try to focus on the question asked and answer in response to that, rather than volunteer extra information.

Q (MR. WARREN) Dr. Hyer, have you reviewed some of the preparations that Hollywood Hills made for Hurricane Irma?

A Yes.

Q What's your understanding of those preparations?

A My understanding was prior to the storm, they brought in the supplies, extra supplies and fans, and

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equipment and materials that they needed to be in compliant with their emergency operations management plan.

Q Did Hollywood Hills have an obligation to maintain a safe environment for its residents?

A Yes.

Q Did you see any indication that they were aware of that obligation?

A Yes. They repeatedly talk about and Mr. Colin was the supervisor in charge on September 12th and the morning of September 13th. They talked about the importance of having the residents hydrated, body temperatures taken, at least every other hour, every two hours. And that there had been hydration given repeatedly to the residents. There are clear indications that with the number of requests for Florida Power and Light to restore the power, that they recognized that they needed to have air conditioning. They recognized that it was getting hotter. Exactly when it got too hot, I don't really know, but they had an obligation to continuously monitor those residents and it appears that they were not able to do that because the residents died in a very short period on September 13th.

Q What actions would you expect a facility to take, like the one at Hollywood Hills, when a storm passed and they lost air conditioning?

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A Well I would -- this building had everything but air conditioning. But I would expect that the building would monitor and continuously be ready to indicate whether or not residents were okay. And as we talked about a minute ago, there was a resident level and there's the facility level. And so if residents weren't doing well, you would expect them to think about whether or not they needed to evacuate and certainly if the building continued to be hot and they were not able to adequately care, you'd think that they'd implement their evacuation plan. And they had an evacuation plan and what I did see was the memo, memo of understanding with another nursing home. I know they had transportation and they had the elements that were there for them to evacuate.

Q And at what point following a storm should a nursing home evacuate, if at all?

A They need to evacuate if they can't keep their residents safe.

Q And based on your review in this case, did Hollywood Hills fail to keep their residents safe?

A Yes. They were unable to adequately monitor residents to know or to recognize that somewhere during

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the period of time, that residents were getting very hot and that there was something going on that the residents were suffering and that they were not able to adequately care for them because there were eight deaths in one day and then twelve deaths a few weeks after. All related to heat events. And heat events are preventable. Heat stroke is preventable.

MR. SMITH: Your Honor, I'm going to at this point object to the last comment about what's preventable. I think she's now wondering into clinical opinions.

MR. WARREN: Judge, I think that's again an overlap between clinical and academic.

THE COURT: I'm going to sustain the objection.

Q (MR. WARREN) Dr. Hyer, what's the basis for your opinion that the facility did not adequately monitor the conditions of the patients after they lost air conditioning?

A Because when you read the testimonies and when you look at the medical examiners conclusions that the residents died from homicide, which was not murder, but was heat related. And when you look at the fact that there wasn't air conditioning, they were trying desperately to have coolers and to have other things to keep people cool, but clearly that was not enough because if it were enough, you wouldn't have that many

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residents die at the same time. Well virtually at the same time.

Q And were the residents inside Hollywood Hills dependent on the facility to keep them safe?

A Absolutely. And those residents on the second floor were very vulnerable and many of them had multiple chronic conditions, which is not unusual --

MR. SMITH: Objection to the second half of the answer, Your Honor. Those residents on the second floor were particularly vulnerable. There needs to be some predicate. What does she know about, where did she learn about, what's the condition of residents on the second floor.

THE COURT: Sustained.

MR. WARREN: Judge, I do think that is more appropriate for cross examination. I'd be happy to expand --

THE COURT: She hasn't laid any predicate for her knowledge about the conditions on the second floor and their level of vulnerability. Their underlying morbidities or the fragility of those particular patients.

Q (MR. WARREN) Dr. Hyer what's the basis of your understanding of the conditions of those patients?

A Well when you read the materials and you look

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at the reports by both the surveyors and by the orders that came in and the materials that I have read indicate that the residents on the second floor were long stay residents.

THE COURT: What materials has she read?

THE WITNESS: I read materials both by Mr. Colin and the materials that were provided by the medical director or the medical examiner. And there was evidence that -- they talked about the first floor being for rehab patients. And the second floor being for long stay residents. And that's the basis for my statement. The profile of those residents in nursing homes is different.

Q (MR. WARREN) Okay. And going back to my other question then, did the facility have a duty to protect those verbal residents on the second floor?

A The facility had a duty to protect all residents. And certainly the residents on the second floor are less able, generally, to communicate because they are long stay and they are more likely to be in need of -- have higher functional needs.

MR. SMITH: Your Honor, now here we are again straying into the clinical conditions of the residents on the second floor.

THE COURT: Sustained. I think you've asked and

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answered your question. She's already opined that the nursing home had an obligation to take care of all its residents.

MR. WARREN: I can move on Judge.

Q (MR. WARREN) Dr. Hyer, I think we've talked about your opinions about whether or not Hollywood Hills adequately planned for -- well did you see indication that Hollywood Hills took any steps to plan for the eventual evacuation?

A No I did not see any plans that were implemented or that were discussed to evacuate. It seems that they did not think that evacuation was necessary.

Q What steps would a facility, should a facility take in preparing for a potential evacuation?

A Well until you're back to normal, you should be implementing your emergency plan, whatever that plan should be. Always understanding that you may need, that what's currently happening, you may need to change because you're not able to sustain people the way you need to. So if you didn't have enough staff, you might need to get more staff. If you were not able to adequately care for people, you might consider whether or not certain residents needed to be removed or whether you needed to do other things. But if you are

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monitoring people every two hours, the body temperatures and you're on an ongoing basis doing what they claimed that they wanted to be doing, then it's difficult to believe that you would get body temperatures of 106 in a short period of time.

MR. SMITH: Your Honor, again it's a clinical opinion as to how fast the temperature --

THE COURT: Sustained.

Q (MR. WARREN) And let's go back and talk just briefly about what steps Hollywood Hills should have taken in preparing for an eventual evacuation? Should they had been identifying verbal residents?

A I believe they should know what residents are more likely to be affected by a heat related event than those that would not be.

Q And should they have organized the medication and gathered other materials that those residents may --

MR. SMITH: Objection. Leading, Your Honor.

THE COURT: Sustained.

Q (MR. WARREN) What other steps should they have taken in an event of evacuation?

A If they believed that the residents were not able to be cared for or that they were finding that they were not adequately caring for residents, they should be implementing an evacuation plan. Part of that

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evacuation plan would be gathering residents materials, their records, the supplies they would need and having them ready to have residents go either to a hospital or to another facility they wanted to implement their agreement with via a nursing home not far away.

Q I think we touched on this, but is there an obligation for a nursing home to take special precautionary measures when dealing with dependent and vulnerable elderly populations?

A Yes. But they're obligated to take care of all residents. Most of the residents in nursing homes are very sick and those residents are very much in need of long-term care. If they weren't in need of 24-hour observation and nursing care, they would be in a different facility.

Q Do those obligations extend to the facility administrators, directors of nursing, other staff?

A Well the nursing home is a structure. And it's an organizational structure that has an administrator, a director of nursing, and other management required people. And those individuals, as a group, need to be working together. And that group then provides the care for the residents in the building. And that group also bills Medicare and Medicaid for the services they're providing.

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Q You mentioned a number of deaths in this case, did the number of deaths raise any concerns with you about the conditions of the facility?

A When you have eight people dying in one day and twelve people dying of heat related events, yes. Those are very concerning.

Q In terms of evaluating whether or not to evacuate the facility post-storm, what was the significance of Hollywood Hills having electrical power but not air conditioning?

A Well I think the fact that they had electrical power allows them to maintain, what would be, most normal operations. But the inability to have air conditioning is an inability to keep people at an ambient temperature, which is low enough that they don't suffer heat related events.

Q Is the decision process in determining whether to evacuate pre-storm versus post-storm different?

A Um probably. I think pre-storm you are looking at your ability to maintain operations and keep people safe for the event. Post-storm, what you're doing is assessing whether or not you can maintain to keep people safe, but you've already experienced the event. So it's why aren't you able to get back to normal. In the case at Hollywood Hills, it's that their air conditioning

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wasn't working. For most places, as I said earlier, losing electrical power is more than just air conditioning, it's also other parts of operations. And Hollywood Hills was fortunate enough to have everything but air conditioning. But because they didn't have air conditioning, they were not able to, it appears, to sustain the well-being of those residents. And the nursing staff should be on ongoing basis, taking temperatures, monitoring, reporting back to the administrator, to the directors of nursing. And that's part of the way of the structure. And that's part of what they're obligated to do when -- as part of their license.

Q Have you looked at any other circumstances where eight or more residents died in one day in a nursing home?

A No, I have not seen that. There were 32 that died in Katrina because they drowned because St. Rita did not evacuate.

Q Have you seen, I think you just mentioned those were drowning deaths, have you seen any heat related deaths?

A I have not. But I don't know that I have not seen a mass casualty event in one building other than the one in Katrina.

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Q Are you aware that Hollywood Hills employed spot coolers at the facility?

A Yes.

Q And have you formulated any opinions about their use of those spot coolers?

A Well it appears that they recognized that there was a need to keep the ambient temperature cooler than it was. So they had both spot coolers and fans, but it does not appear that they were adequate to keep the building at a temperature to keep people safe.

Q Do you know whether the facility opened any windows in order to cool the facility?

A I remember reading --

MR. SMITH: Objection. Predicate, Your Honor.

THE COURT: She can tell if she knows or not.

THE WITNESS: I remember reading Mr. Colins deposition, who's the nursing supervisor, that one of the family members was visiting on the second floor and that they had the window open because they were complaining about the heat. And that after that family member left, he closed the window. I also remember reading in one of the depositions that the hospice nurse said that the window was open and that she closed the window, I think later on that day.

Q And would it have been a reasonable step for

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the facility to open the windows?
MR. SMITH: Objection, leading. Wouldn't it have been a reasonable step to open the windows.
MR. WARREN: Would it. Would it have.
THE COURT: He said would it have, yeah.
MR. SMITH: I thought he said wouldn't it. And really, Your Honor, this is not an area, even as broadly as this witness is tendered, I don't think it encompasses the ventilation versus use of spot coolers, humidity versus outdoor air. It's just not within her realm.
THE COURT: Sustained.
MR. WARREN: Judge can you give me just a minute. Judge can we just take a five minute break?
THE COURT: Sure.
(Thereupon, a short break was taken.)
(Hearing resumed.)
THE COURT: Any further questions Mr. Warren?
MR WARREN: Just a few Judge.
Q (MR. WARREN) Dr. Hyer, just so the records clear, can you identify which documents you reviewed in preparation for this case?
A I reviewed a lot of different documents. I reviewed Molly McKinstry's documents. I reviewed the --
Q When you say "documents" what --

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A I mean her deposition, excuse me, I reviewed Dr. Dosa's deposition. I reviewed the medical examiners deposition, both medical examiners --
THE COURT: I'm going to ask you just to slow down just a little bit for the Court Reporter.
THE WITNESS: Excuse me. I reviewed the Governors statements about the timeline. I reviewed Hollywood Hills timeline. I reviewed Mr. Colin's deposition. I can't remember all of the other things that I listed in the materials. And I reviewed the management plan. I reviewed the Hollywood Hills materials that were presented on the administrative complaint.
Q (MR. WARREN) Did you review the medical examiners summary of findings?
A Yes. As well as the depositions.
THE COURT: Did you review any medical records? Either from Hollywood Hills or Memorial Regional Hospital medical records for specific patients?
THE WITNESS: I was offered access to them, but I'm not clinical, so I didn't feel comfortable looking at them closely and doing other than to understand the materials -- that they had records.
THE COURT: Thank you.
Q (MR. WARREN) You mentioned you read Dr. Dosa's deposition in this case, I know he's set to be deposed

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again next week, but do you agree or disagree with the conclusions in his first deposition?
A Well Dr. Dosa and I have jointly done a lot of research and we collaborate and I provide a lot of expertise on nursing home regulations and the structures of nursing homes. He's obviously a geriatrician and we both use statistician's and people who are experts in the analysis of data. I reached a different conclusion than Dr. Dosa did. My conclusion when I looked at the evidence from the medical examiners and other evidence, is that the nursing home was not adequately caring for the residents. I believe Dr. Dosa reached a different conclusion and I don't agree with him.
Q And why not?
A Because I think when you look at the mass casualty event and when you look at the way the nursing home was operating it was -- it is not obvious that the work that's supposed to be done on an ongoing basis, monitoring those residents every two hours, taking their body temperatures, offering them water on an ongoing basis, providing an adequate environment. The regulation is that the residents be safely maintained according to the regulations. I mean you have to provide an adequate environment and when you have a mass casualty event and your electricity is off for three

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days, it becomes difficult to believe that you have that mass casualty event. And medical examiners come back with that these deaths are related to heat related events and in addition to that in the administrative complaint you see 41 to 51 --
MR. SMITH: Your Honor, I'm going to stop her and move to strike, you know it's just --
THE WITNESS: Those are the facts in the materials.
MR. WARREN: Judge, she's answering the question and she's entitled to rely on any documents as an expert that may reasonably be referred to.
MR. SMITH: Your Honor, she's trying to -- what she's trying to do is talk about --
THE COURT: Hold on.
MR. SMITH: May I please?
THE COURT: Go ahead.
MR. SMITH: Your Honor, the reason I interrupted is because I don't want in the record that she wants to talk about 42 to 51 residents because she read it in the administrative complaint. The information that you did not allow in, but she wants to dump it into the record in this answer. It's inappropriate. It's not responsive to the question, its --
THE COURT: The question is why does she differ in her opinion to Dr. Dosa and she's explaining to us why.

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I certainly understand that the allegations in the administrative complaint are just that, they're allegations, they're not facts or not necessarily facts or not prudent facts until I say that they are. So I certainly read the administrative complaint and the amended administrative complaint and I understand what is and what is not a part of this case. So for that reason I'm going to overrule the objection and you can continue with your answer.

THE WITNESS: So those are the documents that I relied on to reach a different conclusion. Those documents and medical examiners report and the depositions, indicate that they concluded that the twelve people who died and the people who dead on the 12th died from heat related events. And that I believe clearly indicates that the nursing home was not adequately caring for their residents in a safe environment and meeting regulatory standards.

Q (MR. WARREN) And based on your review, did the decision to shelter in place after Hurricane Irma passed meet the requirements to provide a safe environment?

A Initially it probably did, but at some point during that period the staff were to be monitoring the residents on an ongoing basis and at some point during that period things obviously deteriorated to the point

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where you had a mass casualty event. So somewhere in there, exactly which minute, I don't -- I can't tell you, but the staff, if they were monitoring, I believe should had been able to alert the CNAs and the additional staff should had been able to alert other people that some residents were suffering or an issue or that a potential partial evacuation should had been ordered. Or that residents who are more at risk potentially because they were not doing as well as we would have expected. And there seems to be ongoing efforts to try to get more fans, get the coolers working. They recognized, they seemed to recognize that things were hot and that things weren't good. But they did not seem to come to the conclusion that they had a responsibility to then move the residents or have the residents cared for in a different environment. And that, I believe, is their responsibility. The entire staff and certainly the administrative staff. If you can't get the power back on and you constantly are complaining that it's hot and you're telling everybody to make sure you give lots of water and you take body temperatures every two hours, you're recognizing that there's a major problem. And that somewhere in that process when things don't get better and obviously they got much worse. And medical examiners report is how I

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to come to that conclusion.

Q Doctor, are you aware that Hollywood Fire Rescue evacuated Hollywood Hills on the morning of September 13th?

A Yes, I am.

Q Do you believe that the facility was a safe environment at that point?

A No, and there were multiple people found dead in the -- or around that -- between I guess, 3:30 and 7 or 8 a.m., there appeared to have been multiple deaths. And it was evacuated because multiple people were dying.

Q And based on your review from a regulatory perspective, were the residents that died provided adequate care?

A No, they were not.

MR. WARREN: Nothing further.

THE COURT: Cross?

MR. SMITH: Briefly Your Honor.

CROSS EXAMINATION

BY MR. GEOFF SMITH, ESQ:

Q Dr. Hyer, are you aware that Hollywood Hills had in place a Comprehensive Emergency Management Plan that had been reviewed and approved by Broward County?

A Yes, I am.

Q You had formed an opinion on a failure to

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monitor properly the residents as of the time of your deposition, which I believe was taken February the 15th, am I correct?

A Correct.

Q And you based that upon the following documents, I want to make sure. There is a Hollywood Hills timeline that had been identified as Exhibit 65, Deposition Exhibit 65, I think you have it in front of you?

A Yes.

Q And then you reviewed the amended administrative complaint in this proceeding?

A Correct.

Q And you reviewed a portion of the comprehensive emergency management plan?

A Correct.

Q And you reviewed Dr. Dosa's testimony deposition?

A Yes.

Q Deputy secretary McKinstry's deposition?

A Yes.

Q Mr. Osborne's, Dr. Osborne's deposition?

A Yes.

Q Dr. Sneed's deposition?

A Yes.

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Q Your notice of taking deposition?
A Yes.
Q The governors, Governors Scott's, press release with his timeline, correct?
A Correct.
Q And appendices to that?
A Correct.
Q And then the deposition of Sergo Colin?
A Correct.
Q And those are the documents from which you determined that the facility had failed to properly monitor its patients, correct?
A There was also additional information that Mr. Warren asked at the end of our discussion because I also had a discussion with the two surveyors, the ACHA surveyors, and looked at their report and talked with them about their findings.
Q So you talked with the surveyors about their findings?
A Correct.
Q And that's it? That's what you based your opinion on as far as a failure to monitor?
A And my understanding of what nursing home operations should be, yes.
Q And is --

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THE COURT: Wait a minute Mr. Smith. Did you previously tell me that you also reviewed the medical examiners reports?
THE WITNESS: Yes, but I thought he said that with the two depositions for those medical examiners.
Q (MR. SMITH) I think your correct, Your Honor. And I should say you also reviewed the autopsy summary report?
A Correct, thank you.
Q And those are the documents from which you formed your opinion, correct?
A Yes.
Q And that opinion, you say there was a failure to monitor, correct?
A Correct.
Q But you don't know, you haven't reviewed medical records to say when temperatures were taken, when patients were last seen by their treating physicians, what the treating physicians may have ordered or not ordered? You didn't review any of those circumstances, right?
A Other than the materials that were included in medical examiners reports, which did include some of the materials saying the last time where what had been the air temperatures on the emergency room and the

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materials. Yes, some of that material was included actually on the medical examiners reports and the depositions.
Q But other than that --
A And Dr. Dosa's deposition.
Q Okay, fair enough. But other than what's recited in those medical examiners reports, you have not independently looked at any of the records -- let me take it one piece at a time, to see when was the last time that the Hollywood Hills documented that it had taken vitals or other intervention actions with any of these residents? You didn't look for it, you didn't know it?
A Other than that what was in the materials that were provided. There were some materials about what body temperatures and respiratory events were in some of those other depositions. But no, I have not independently looked at medical records, is that what you wanted me to say?
Q I just want you to say --
A I'm just trying to understand the question, seriously. Okay. So, no, I have not independently looked at medical records.
Q And you have not determined independently from any other source, when was the last time each of these

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residents saw his or her treating physician?
A Correct.
Q And what did that treating physician ordered, you didn't look at that?
A No.
Q As to specific rules that you referenced in your direct testimony, you said that there was a federal requirement to maintain temperature between 71 and 81 degrees, do you recall that?
A Yes. I think it's 70 and 81, but, yes.
Q That federal rule, can you provide a citation to that federal rule?
A I think it's like 462, but I'm not exactly certain what it is.
Q Are you able to say whether that rule that you referenced is adopted and incorporated by reference in a state rule?
A My understanding is that it's adopted and incorporated into the state rule and it's in reference to a different year because the change had occurred, but I believe it is referenced back into the state regulations in chapter probably 400.
Q But you don't know specifically where?
A No. But I could find it out if you need me to.
Q And as to that reference to a temperature of 71

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to 81 that's incorporated, you think, in the state rule, right?

A Mm-hmm.

Q You don't -- is that a normal operating condition or is that an emergency planning rule, prior to Hurricane Irma?

A It is an emergency -- it's the operating rule for temperature at all times.

Q It's not specifically a disaster planning or emergency operations rule?

A No, the new rule under the new requirement --

THE COURT: I don't need to hear about the new rule.

THE WITNESS: Okay.

THE COURT: It's not applicable here.

THE WITNESS: The reason why I was asking -- was saying that was because the new rule requires that there be the ability to maintain that temperature because that's a federal standing.

THE COURT: I don't need to know that.

Q (MR. SMITH) And to the extent you've mentioned the new rule, that was not in place at the time of the event?

A Correct.

Q As to the prior rule that you referenced

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between the operating temperature between 71 and 81, do you know if that applies to the nursing homes that were first Medicare certified prior to 1990?

A I believe it is because I believe it is a rule that would be required for all nursing homes.

Q So if the language of it, when the Judge receives briefs and citations in the actual language, if the language actually says it doesn't apply to facilities first Medicare certified prior to 1990, you're just not aware of that?

A Correct.

Q I want to talk very briefly about your research. Would I be correct that your research asked a simple question, is it better to evacuate or shelter in place, is that a fair --

A That was one of the titles of the articles. That would be an over simplification of all of the work. But yes, that is one of the titles of our article.

Q And when you summarized to the United States Senate your years of research, would you have summarized it as, our research however does more than simply to evaluate what hurricanes do to nursing home residents we ask the simple question, is it better to evacuate or shelter in place?

A Yes.

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Q And using the data from four storms and some methodological techniques, that's described more fully in your research, you concluded that the very act of evacuation prior to the storm increased probability of death at 90 days by 2.7 to 5.3 percent and increased the risk of hospitalization from 1. -- between 1.8 and 8.3 percent?

A Correct.

Q So that's doubling the risk of mortality and looks like quadrupling the risk of hospitalization?

A Over four storms and there are variabilities within that as I indicated during our deposition. But yes, that is the conclusion from that one study.

Q Okay.

A And that is what I said.

Q When you look at the two groups of the groups that sheltered in place versus those that evacuated, you attributed the deaths from two highly publicized Katrina incidents as shelter in place deaths and those would be St. Rita's and Lafon?

A They were included in the shelter in place, correct.

Q And those were both very large incidents of what can be considered mass casualty incidents?

A Well one was certainly mass casualty, the 32

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drowning at St. Rita's. Lafon I think was fewer, but there were certainly a number of deaths there.

THE COURT: You said Lafond? L-A-F-O-N-D?

MR. SMITH: I think it's L-A-F-O-N.

THE COURT: Oh Lafon, thank you.

THE WITNESS: And there were 91, 101 people who died from nursing homes during Katrina.

Q (MR. SMITH) And would you agree with me that the evacuation of frail older adults, is a logistics nightmare and requires exquisite planning prior to the event?

A Yes. Those are -- that's my exact words.

Q And even under the best developed emergency plans, evacuations create anxiety for both residents and staff that appear to have serious adverse outcomes?

A Yes.

Q And overall, your research would show that hurricanes, that during a hurricane you would expect there to be increased morbidity, mortality for elderly nursing home residents?

A Yes.

Q And that the act of evacuation exasperates and increases that mortality and morbidity?

A On average, yes.

Q And as you said, so should your conclusion of

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all that is shelter in place is the best strategy?
A If they could fit -- if you could do it and you shelter in place until you can't. Those were the other parts of the testimony.
Q And you also gone on record about the problem of trying to Monday morning quarterback, correct?
A Correct.
Q And what you mean by that is that people are acting in good faith and they're caregivers and trying to do the best they can in difficult circumstances, they ought not to be punished for doing that?
A Yes.
Q They ought to have some protection from punishment for doing that?
A I think that there's a difference -- I think what we're trying to say there is that lawsuits create additional pressure and that nursing homes need to be -- we need to be thoughtful about lawsuits against staff in nursing homes during disasters.
Q And what you're suggesting is because it may have a chilling effect on people's willingness to participate and be caregivers in those types of events?
A There are a whole series of reasons.
Q Would that be one?
A That might be one of them, certainly.

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Q And you said that you don't know when at Hollywood Hills, the facility, they were no longer able to provide a safe environment, is that fair?
A I think the thing that we're losing sight of and how I would frame it is, the nursing home has an ongoing responsibility to adequately care for the residents in a safe environment and we've talked about that. When they are no longer safe, when the residents are being monitored in a way or not being monitored carefully enough that you can recognize that there is a heat related event happening, then they're not safe and then you need to evacuate. So that's my -- that's the framing within which. They're not meeting the standards that are required.
Q Okay and so --
THE COURT: The question was, can you or can you not pinpoint a time at which it became unsafe and there should had been an evacuation at Hollywood Hills?
THE WITNESS: No, I cannot.
Q (MR. SMITH) And just to follow up on the Judge's question, so it could have happened sometime after the evening hours of September 12th, you don't know?
A What I do know is that it was very hot and that the medical examiner said that there was a heat wave

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event. The staff and the nursing staff and others were constantly talking about the importance of taking ongoing body temperatures, giving hydration. They were recognizing the importance of monitoring the safety of the residents and it is difficult to believe that if you're on an ongoing basis monitoring them, that you spontaneously get eight people, twelve people to die within a short period of time and then have a medical examiner report that on their autopsies and their reviews, because they're clinical and I'm not, that they say that those events were heat related.
Q I'm not sure there was an answer to my question. I'll take another stab at it though, Doctor. Here's my question. Listen carefully if you would, please. My question is simply, you can't tell me if that point when it became no longer safe, occurred before or after, I'll pinpoint it. 8 p.m., September 12, 2017. You can't tell me whether that point was reached before or after that point in time, can you?
MR. WARREN: Judge, I think that is asked and answered.
THE COURT: Overruled. Go ahead.
THE WITNESS: I can't tell you precisely when it happened. I can tell you that when you have a mass casualty event, it does not appear that the staff were

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adequately monitoring the residents.
Q (MR. SMITH) And you've told me that many times. You can't tell me --
THE COURT: Asked and answered.
Q (MR. SMITH) I would be correct that you would not agree with the notion that as soon as a facility loses power to its air conditioning, it should immediately evacuate its residents?
A That was like a double negative. Can I try to answer that --
Q I'd rather you just let me rephrase it than give a question that wasn't really understood.
A Okay.
Q I'm simply saying, do you agree with the notion, that when a facility loses its power or its air conditioning, it should immediately begin evacuating all of its residents, yes or no? If you can say yes or no.
A I don't -- I believe that power is essential for safety. Many nursing homes would lose power and would have a generator that would be able to adequately take care of air conditioning and other events. But the mere effect of losing power, does not necessarily mean that they need to evacuate. But I do want to point out that six facilities that did lose power --
THE COURT: That's enough. You don't need to

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volunteer extra.
THE WITNESS: Okay.
THE COURT: Thank you.
Q (MR. SMITH) You mentioned generator. At the time of Hurricane Irma, there was no requirement, I'm talking about regulatory requirement for nursing homes to have generators that were capable of operating air conditioning?
A Correct.
MR. SMITH: That's all the questions I have. Thank you, Doctor.
THE COURT: Redirect.
MR. WARREN: Just a few, Judge.
THE COURT: Mr. Warren, I'll note that you did not move any exhibits into evidence, did you not intend to?
MR. WARREN: Yes. With the CV. We did get that far.
THE COURT: We got the CV, but not any of the articles.
MR. WARREN: Yes.
THE COURT: Do you want to do that at the end or do you want to do that now?
MR. WARREN: Can we do that now, Judge, just so I don't forget. I think its Deposition Exhibits 58 through 63.

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MS. SMITH: You didn't want 57?
MR. WARREN: I'm sorry?
MS. SMITH: You didn't want 57?
MR. WARREN: Oh 57, yes.
THE WITNESS: You want 57.
MR. WARREN: 57. Thank you. 57 through 63.
MR. SMITH: And no objection, Your Honor.
THE COURT: AHCA's Composite Deposition Exhibit 57 through 63 will be admitted and I need a moment to mark these.
MR. WARREN: Okay.
THE COURT: Because if I don't do it now I'll forget. All right. Mr. Warren, go ahead.
MR. WARREN: Judge, we'd also move in Deposition Exhibit 164, that was Dr. Hyer's written report.
THE COURT: I believe it was already -- 164, 165 came in.
MS. SMITH: It was 163 was the CV, Your Honor --
THE COURT: Oh, I'm sorry.
MS. SMITH: And I didn't have 164.
THE COURT: No, I don't have that. Any objection to 164?
MR. SMITH: No, Your Honor.
THE COURT: Thank you. AHCA's Deposition Composite Exhibit 164 is also admitted without objection. Go

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ahead, Mr. Warren.

REDIRECT EXAMINATION

BY MR. GABE WARREN, ESQ.:
Q Dr. Hyer, Mr. Smith asked you about your understanding of Hollywood Hills resident records. Did you speak to AHCA's surveyors Ann Sociak and Kathy Allen about their review including monitoring assessment of those patients with those Hollywood Hills medical records?
A Yes.
Q Did you yourself review any of the resident medical records?
A I think I looked at one record, but I did not review them systematically. At all. And I think I looked at one record.
Q Did you have any concerns about not reviewing those records in terms of forming your conclusions in this proceeding?
A No, because I think that I have reached a conclusion based upon the materials I have reviewed. And while looking at the medical records might give me some information about how frequently materials were entered, whether or not they were compliant with the regulations and rules that -- the orders that the nursing staff had said that they wanted to have. Those

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body temperatures taken every two hours and water being given, would have been helpful to look to see that actually was documented because their medical records were up and operating. So there were no paper records that happen with other places when they lose electricity. But no, I believe that independent of that, the fact that we had that ongoing heat and that they were unable or unwilling to recognize the increasing heat and that that many people could die at once, is evidence that they were not appropriately on an ongoing basis monitoring and that they were not adequately caring for the residents and providing a safe environment.
Q And Mr. Smith asked you about obligations of the treating physicians or obligations of the facility, how are requirements and obligations of a facility to the residents different from the obligations and requirements of the treating or rounding physicians in those facilities?
MR. SMITH: Your Honor, object to beyond the scope. I don't think I asked her about the obligations of treating physicians. I just asked her if she had reviewed whether there were treating physicians that had seen patients and issued orders.
MR. WARREN: I think it opens the door to this

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question Judge. He referenced the treating physicians and what they were doing.

THE COURT: Sustained.

Q (MR. WARREN) Mr. Smith also asked you about the temperature requirements for nursing homes in state and federal regulations. Your respective of those requirements, do those rules require that a facility provide a safe environment for its residents?

A The overall -- the overarching requirement for nursing homes that's licensed and billing for the services to the centers for Medicare and Medicaid statistics. The overarching requirement is that they be provided a safe environment. That they be meeting the resident needs, the care needs of those residents. And that they on an ongoing basis be provided by allowing services and in doing care that allows those residents to get to their highest practical level. That's the requirement. And if the temperature is too hot, clearly that's not a safe environment.

Q And Mr. Smith asked you some questions about which regulations were applicable to which facilities. Are the requirements and regulations you just mentioned applicable to all facilities --

A Yes, yes. They're requirement's for participation. And they would be the requirements that

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every nursing home has to meet. Exactly what temperature needs to be required, may be part of the state or the different rule. But the overall requirement for a safe environment and meeting the needs of the residents and having adequate staff to do that and providing the services that they need to do in order to bill for those services, that's the requirement regardless of the particular temperature.

Q You were also asked some questions about your U.S. Senate testimony. Did your testimony address post-storm evacuations?

A No.

Q Did you attempt to convey conclusions regarding when post-storm evacuations --

A Well my testimony included when Senator Colins asked me, my testimony included and explicitly I put it as saying you shelter in place until you can't. And you can't when you are no longer providing adequate care in a safe environment.

Q You were --

A And you have to implement a different plan, which is generally evacuation. Either partial or complete.

Q And regarding the implementation of a different plan that you just mentioned, when a facility loses air

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conditioning, is that an appropriate time to reevaluate their plan?

A You have to on an ongoing basis be looking at all the issues in your building. So air conditioning would be an important component. Having the ambient air temperature and being able to care for residents is -- air condition is essential. In an effort to do it on an ongoing basis. Exactly when you -- many many buildings will use fans and work to get their power back and they might be able to actively care for the residents, others can't. It depends on the place, but the obligation of the facility is to be monitoring and recognizing when they need to evacuate particular people or get those -- a small group of people or individuals to a different level of care versus an entire building, but you always have an obligation to care for the residents that you've taken in.

Q You were also asked some questions about potential protection from criminal or civil punishment --

A Yeah, it wasn't criminal. It was really more litigation.

Q And do you believe that protection from civil litigation should also extend to protection for revocation of licensure for facilities that fail to

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provide a safe environment for residents?

A No, and I think what I was trying to say is that individuals, there are some cases where there are efforts to encourage litigation. In Tampa, there are multiple signs for Morgan and Morgan, you know, to hurricane. And it's that kind of, you know, file a claim, you've been denied. And it's those kinds of litigations that I was specifically writing about, but I believe nursing homes and nursing home faculty and staff try very hard to do a good job. So I think most of the time they're working hard to do a good job and I don't want frivolous lawsuits filed against them.

MR. WARREN: All right, thank you, Doctor. Judge, that's all.

THE COURT: Dr. Hyer, the parties have invoked what is known as the rule of sequestration. That means that we are asking all the witnesses who come in and testify, when you leave here, not to go out and share either the questions you were asked or the testimony that you gave with other witnesses. We'd like those other folks who have not yet testified to come in and tell us what they know to the best of their own ability without trying to guess what the questions might be --

THE WITNESS: So I can't talk to Dr. Dosa then?

THE COURT: No, you cannot. Or coordinate their

answers.
THE WITNESS: Sure.
THE COURT: You certainly can talk to the attorney's and they'll let you know when the proceedings are over. Right now its scheduled to be in March, but if you are aware of someone else who's going to come in and testify, you would not share your testimony with them. We'd appreciate that.
THE WITNESS: Absolutely.
THE COURT: Thank you so much for being here.
THE WITNESS: Thank you.
THE COURT: Drive safe. All right. Counsel is there anything else we need to address today before we go off the record? Let's go ahead and go off the record.
(Hearing concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF BROWARD

I, LINDSAY YOCUM, do hereby certify that the foregoing pages 1698 through 1872 contain a true and correct record of the proceedings taken before me.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, Nor financially interested in the action.

Signed this 7th day of MARCH, 2018.

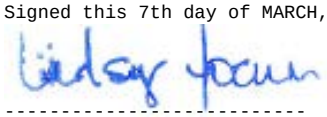

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Exhibit 5

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
BROWARD COUNTY

Case No. 17-5769

AGENCY FOR HEALTHCARE ADMINISTRATION,
Petitioner,

vs

REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC.,
Respondent.

_____/

March 1, 2018
9:00 a.m. to 1:00 p.m.
2:15 p.m. to 4:30 p.m.

CONTINUED DOAH HEARING

The above entitled case came on for hearing before the Honorable XXXX as ADMINISTRATIVE LAW JUDGE MARY LI CREASY pursuant to notice held at Broward County Courthouse, 201 Southeast 6th Street, Courtroom 15-150, Fort Lauderdale, Florida 33301.

APPEARANCES:

J. STEPHEN MENTON, ESQUIRE
GABRIEL F.V. WARREN, ESQUIRE
Rutledge Ecenia, P.A.
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Appearing on behalf of the Petitioner.

GEOFFREY D. SMITH, ESQUIRE
SUSAN SMITH, ESQUIRE
JULIE ALLISON, ESQUIRE
Smith & Associates
3301 Thomasville Road, Suite 201
Tallahassee, Florida 32308
Appearing on behalf of the Respondent.

Susan Suddarth, Court Reporter, Apex Reporting Group

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THEREUPON the following proceedings were had:

THE COURT: Good morning, today is March 1st, 2018. I'm Judge Mary Li Creasy, the Administrative Law Judge presiding. We are here for the continued hearing in Case No. 17-5769, Agency for Healthcare Administration versus Rehabilitation Center at Hollywood Hills, LLC.

Before we begin with the first witness today, I'd like the parties to go ahead and make their appearances. For the Agency for Healthcare Administration.

MR. MENTON: Good morning, your Honor. Steve Menton and Gabe Wallace is with me. He is still fetching boxes but he is with me representing the Agency for Healthcare Administration. There will be an in-house attorney from ACHA joining us at some point.

THE COURT: Thank you. On behalf of Hollywood Hills?

MR. MENTON: Geoffrey Smith and with me is co-counsel Susan Smith and at counsel table this morning Julie Allison of the Allison Law Firm is with us.

THE COURT: Does Allison have one "L" or two "Ls" in your name?

MR. SMITH: Two.

THE COURT: Before we begin with the first witness, I want to address there is a pending motion to extend the time of hearing. A motion that was filed by ACHA. There was a reply filed. I issued an order denying that motion and subsequent motion for reconsideration and a reply.

Based on the filings, my ruling stands. I am not going to cancel the hearing that is currently scheduled for the week of March 19th.

However, if the parties do need additional dates, I do have some further dates that are available. I have two dates in the month of April. It would be April 12th and 13th. I would do those by video conference. Probably the witnesses that need to appear in Fort Lauderdale have them go to the JCC office. Or I have the week of April 30th available as well.

Let's see how things go. I don't know necessarily those dates will be needed, but if you want me to reserve those on my calendar, let's talk at the end of today about whether we need to get those dates on the calendar.

Is there any other preliminary matters that we need to address before we take our first witness.

MR. MENTON: Your Honor, we certainly respect your

ruling and we are prepared to move forward. There are a couple of issues that I have to put into the record as it relates to both our initial motion and the motion to reconsider.

In particular, your Honor, there was a statement in the reply that was filed in the motion to reconsider on page 4, that ACHA relies on a improvably incorrect assertion that Hollywood Hills received a copy of Mr. Carballo's hard drive on December 18th. They go on to make what we consider to be inflammatory insinuations as it relates to us.

We feel compelled to make sure the record is clear on that. We will respect your ruling and we will move forward.

But, your Honor, the basis for the claims that were in our motion and in our motion to reconsider --

THE COURT: -- hold on, Mr. Menton, let me just say, there is no reply to a reply. I'm going to go ahead and allow you to preserve the record, but I'm not going to take into consideration, I've already ruled.

MR. MENTON: I understand, your Honor, but I do think that there is now insinuations and allegations in the record, specifically that we have made representations to your Honor that are provably incorrect and that's just wrong, that's just false.

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THE COURT: I think that's something you can take up the Florida Bar not with me. But if you want to put on the record.

MR. MENTON: We have a copy of an e-mail from Hollywood Police Department indicating the hard drive was picked up by counsel for Hollywood Hills on December 18th as we allege in our original motion and in our motion for reconsideration.

THE COURT: Have you shared it with opposing counsel?

MR. MENTON: I have shared it with opposing counsel. Your Honor, and I understand your ruling and we are going to go forward. But I just want it to be clear that there was a basis for the position that we put forth. We have contacted the Hollywood Police Department. They told us that they made no further productions of Hollywood Hills after December 18th.

If there is something that they have that shows differently, then that's fine. But the allegations that we make in our motion and our motion to reconsider were correct based upon the concrete evidence and e-mails that were produced to us.

THE COURT: Let me see that. Mr. Smith, any response?

MR. SMITH: Your Honor, I believe the response,

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and I'm asking co-counsel to pull it up, that counsel for Hollywood Hills did not receive a copy of the video on the hard drive that are at issue until January 19th, which is the God's honest absolute truth.

We were sitting in the Vitas nurse's deposition when I received a copy of that hard drive as I recall it. I think the lag time that is being discussed, I don't know if Ms. Allison can maybe address or confirm when her firm picked up the hard drive from the police department.

But from that point there was a process of having to make copies of that hard drive to get to me and to Mr. Menton. That process, because of the volume of information on the hard drive and the way the videos were encrypted, it wasn't like an old fashioned VHS video where you say all we need is a copy of this tape.

There was like individual files and there I don't know how many, hundreds of little individual files that had to be copies. So they had an IT person who recopied them all. Then gave us the hard drive and we provided that hard drive, copied it and provided it to Mr. Menton.

I think all of this is really to me irrelevant because two big picture points from day one if they wanted to get from the police department whatever was

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available from the police department, all they had to do was issue a subpoena which they finally did.

They could have done that September, October, November, December, any time or maybe picked up the phone and got cooperation. I don't know.

The second point would be at the time we made our response for production in December, we didn't have that, December we didn't have it. When it became available, we made it available.

MR. MENTON: Not to belabor that, but what Mr. Smith just said is not what they said in their response. What they said in their response is ACHA has relied on improvably incorrect assertion that Hollywood Hills received the copy of Mr. Carballo's hard drive, not videos, hard drive on December 18th. ACHA does not say who at HPD informed them of this, how that person is aware, or why that information wasn't included in the original motion. That's the information that we received in connection with the original motion.

The next paragraph they say, Hollywood Hills responded to ACHA's original motion, as indicated in the original response, a copy of Mr. Carballo's hard drive, not the video, was not received by counsel for Hollywood Hills until January 19th.

That is not consistent with what those records

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show. Just going back and again I respect your ruling, we are going to move forward, we are prepared to do that. But the Agency from the outset of this case, has made every effort to obtain the videos. We have no understanding or basis to know what Hollywood Hills has as it relates to videos.

THE COURT: I'm sure you can subpoena Hollywood Police Department knew they confiscated pretty much everything.

MR. MENTON: We didn't know that, your Honor, until December. So in October --

THE COURT: -- I think I got a motion to continue this case on the basis Hollywood Hills Police Department had everything.

MR. MENTON: We didn't know what the status was. Let me clarify. We did not know what the situation was with videos. We sent a request for production on October 20th to Hollywood Hills. We did not get a response until December 4th. At that point there were no videos produced.

We raised that issue and said, where are the videos. At that point a few days later on December 15th they produced for us some videos. I don't know where they got them. I don't know what the basis was, but they had some videos that they did produce to us on

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December 15th. Those videos are for incomplete time segments. There is gaps in them and you will hear some testimony about that as we go forward.

We tried to figure out where the rest was. We learned at some point that the police had seized a hard drive. How they had some videos and not others, how the hard drive related to what the videos were, we had no way to know. We knew they had some. We didn't know what the rest was.

We knew they had initiated a civil action against the police department to try to get the videos or the computer files and other records. We sent a discovery request in mid-December to make sure we got copies of anything they got from the Hollywood Police Department.

We got on January 5th, we got the production that they got from the Hollywood Police Department. It did not include any videos at that time. We tried to figure out were there additional videos.

Through the deposition of Lieutenant Devlin (phonetic) in communications, we learned there were other police videos that were on the computer files. We initiated action to try to get those videos from the police department. They told us that they are not going to give us anything that they are not going to give to Hollywood Hills.

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So we worked through, and contrary to what they say in their motion, we subpoenaed those from the police department January 20th I believe, not February 7th as they say in their response, it was January and that was after working through counsel for the police department to figure out what we had to do. We were told we had to subpoena them. We had to make sure they got a copy of them. We had those subpoenas issued. It wasn't February 7th, it was in January. We did not actually get the police videos until February 12th.

Now at that time I was down here. We didn't even actually access them until February 19th which is what kind of prompted all this.

So the insinuation that we have not been diligent in pursuing those videos is incorrect. We have done everything that we could. We don't know what they had, when they had it. We don't know why they had some and not others. We have issued a corporate notice to try to get that information. There are still a number of witnesses for Hollywood Hills that we have not yet had a chance to depose. We are going to have to do that next week. Part of that is I don't know to what extent they are going to rely on any of these videos as part of their testimony because I haven't had a chance to depose those witnesses. That's why we felt compelled

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to try to seek some additional time to let this all flush out. So it was not any lack of diligence on our part. Some of the statements that are in their response are demonstratively false.

THE COURT: Any other preliminary matters to discuss this morning?

MR. SMITH: No, your Honor.

MR. MENTON: No.

THE COURT: Is ACHA ready to call its first witness.

MR. MENTON: Yes, your Honor, the Agency would call Dr. Marlon Osborne.

THEREUPON,

MARLON OSBORNE, M.E.,

a witness of lawful age having been first duly sworn testified on his oath as follows:

DIRECT EXAMINATION

BY MR. MENTON:

Q. Dr. Osborne is having a little bit of trouble with his voice, so we're going to try to make sure the microphone is working. Good morning, can you please state your name.

A. Marlon Osborne.

Q. Dr. Osborne, where are you currently employed and in what capacity?

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A. The Broward County Medical Examiner's Office as an Associate Medical Examiner.

Q. Can you summarize for the Judge your educational background specifically your medical training.

A. Undergraduate education at Rutgers University a degree in biology, after which I attended New Jersey Medical School which is a New Jersey medical school, degree in medicine. After which I did a four year residency program in pathology at Drexell College of Medicine, Hahlemann University Hospital. After which I did a one year fellowship in forensic pathology at the Miami-Dade Medical Examiner's Office.

Q. Can you summarize for the Judge what forensic pathology is, what your fellowship was and then what you internship was at Miami-Dade Medical Examiner's Office?

A. Well, pathology is the study of diseases and how they affect the body in general. Forensic pathology deals with figuring out how and why an individual died as it relates to natural causes and unnatural causes.

Q. What specifically were you doing as part of your program at Miami-Dade?

A. I was a forensic pathology fellow.

Q. I know you know what that means, but for those of us who are not familiar with how that training works?

A. I performed over 250 autopsies as a fellow during

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that year.
Q. After you completed your fellowship, can you summarize for the Judge what your professional experience has been.
A. I was hired as an Assistant Medical Examiner at the Philadelphia Medical Examiner's Office following my fellowship from 2009 to 2014 until I took the position here in Broward County from 2014 until the present time.
Q. Can you summarize for the Judge what your responsibilities have been as Assistant Medical Examiner in the City of Philadelphia and Associate Medical Examiner for Broward County Medical Examiner's Office?
A. In both capacities I was, the duties of Associate Medical Examiner and Assistant basically are to review cases that are reported to your office to determine if they need to be brought into the office based upon the statute of said jurisdiction and if they are follow those statutes of the jurisdiction.
Once they are brought in to determine based upon the circumstances any information we have about the individuals, what kind of examinations need to happen at that point, whether give an external examination or if there is a need for a full autopsy with additional studies to determine the cause and manner of death.
Q. You mentioned some statutes are there statutes

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that govern the duties and responsibilities of medical examiners in Florida?
A. Yes.
Q. Do you know off the top of your head what those are?
A. All the things listed in the statute or what the statute is?
Q. The statute?
A. It is 406.11(g).
Q. You mentioned determination of some cases that you conduct autopsies and others you do an external examination. Can you explain to the Judge how that decision is made.
A. That decision is made by the doctor in charge of the case based upon the information collected from the investigations and what finding you having during external examination -- well, basically the majority of time it is based upon circumstances of the case to determine whether a full autopsy is done or a partial autopsy is done or an external examination is all that is warranted to determine the cause and manner of death.
Q. How many autopsies have you conducted in your career?
A. Over two thousand, over twenty-five hundred.
Q. How many times have you been involved in determining a cause and manner of death?

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A. More than that.
Q. Would that be a lot more than that? That's okay. Can you describe for the Judge the records that are kept after autopsies are performed?
A. In each case I generate a report of the cases that I do. In addition toxicology reports are produced, investigative reports are produced for all cases that are reported to and brought into the office.
Q. We are going to be looking at some of those reports, but can you just summarize generally for the Judge how you go about preparing your summary report after you have completed an autopsy.
A. I list my findings, describe the external findings and the internal findings. I have a section that lists additional studies like microscopic studies or biology or other tests are documented there as well, if qualification is done there is inference or direction to a report that is generated and/or part of that report is incorporated into my report and my autopsy findings and my opinion.
Q. Is there an internal review that is conducted at the Broward County Medical Examiner's before an autopsy report is released?
A. All homicides are QC'd by the Chief Medical Examiner and additionally every tenth autopsy is QC'd by the group.

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Q. When you say QC'd, what do you mean by that?
A. Quality Control so someone else reviews the autopsy findings to see if there is an typographical errors, if the demographical information matches, if toxicology has been interpreted correctly, the cause and manner makes sense for the circumstances that are provided.
Q. There has been a little bit of testimony already from Dr. Sneed on this, but can you just explain from your standpoint what cause of death is, what manner of death is, and how that relates to job responsibilities.
A. The cause of death is whatever medical condition, disease or injury approximately leads to the death of the decedent.
The manner of death is one of five pre-described manners that basically explain how the death came to be. So people can die of natural abuse and that would be natural. They die because of the actions of someone else which would be homicide. Their own actions would be suicide. An accident which would mean their death was due to an event that was not foreseeable or not attributable.
Q. In preparing your report after conducting an autopsy, do you obtain input or information from others that are then utilized as you reach your conclusions as to cause and manner of death?
A. The short answer is, yes, it depends on the case,

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but, yes.

Q. Explain what would be the circumstance in which you would be looking for other information and how that is used.

A. Again, it would depend upon the circumstances that I am given initially, what I find at autopsy, if there are any ancillary studies, or what my interpretations to the answers are, and thereafter if I would need assistance with coming up with the cause and manner of death. So it's all dependent upon each case.

Q. You touched on this earlier, but I just want to make sure it is clear to the Judge, how is it that you determine that an autopsy will be conducted?

A. The circumstances determine, well, there are some things based on statute and convention would always get an autopsy say for example a homicide, always gets an autopsy.

That may be determined by the circumstances because if someone else causes the death of someone else or someone's actions cause the death of someone else.

Q. Does each autopsy involve a determination as to the cause of death and the manner of death?

A. Everyone who dies has to have the cause and manner of death on their death certificate, you can't sign one without it.

Q. You talked about the classification system that if

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you as a medical examiner classify a death as a homicide, explain for the Judge what that means?

A. It means that the circumstances lead us to believe the death of the individual, whatever injury was sustained was the reason of someone else's actions.

Q. You mentioned this earlier, but all cases in which the manner of death is determined homicide go through an internal quality review process at the Broward County Medical Examiner's Office?

A. At the Broward County Medical Examiner's Office, yes, by the Chief Medical Examiner.

Q. You talked a little bit about the committee that would be reviewing these cases from a quality assurance standpoint. Who is involved in that and can you explain that process?

A. It's the other forensic pathologists. It's a random assignment of every tenth autopsy is assigned for someone else to review.

Q. Do you rely upon information from your own investigators and law enforcement in reaching your determination as to cause and manner of death?

A. Yes.

Q. Explain when and how that happens?

A. It happens in almost every single case. There is an investigation by our office in every case that is brought

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in, even the cases that aren't brought in an investigation is done and any additional information we request from law enforcement, and/or other sources, hospital medical records, family reports.

Q. Can you explain for the Judge the typical process by which you are assigned cases within the Broward County Medical Examiner's Office to conduct an autopsy?

A. I wouldn't classify it as assigned. There is a schedule and there is six medical examiners and the Chief Medical Examiner. We have a schedule of duty days where we are scheduled for call and a subsequent day on call. We receive calls about an individual who died over night from the investigators.

Sometimes we need to go to the scene if it's a homicide, sometimes call us about other factors about the case. The call is about whether the case should come in or not so that is what the call is for. Then the next day is your day in the morning. So whatever cases come in overnight are your cases for that day.

If there is a lot of cases, someone else jumps in and they voluntarily pick up a case or cases depending upon the volume.

Q. When a case is assigned to you for purposes of conducting an autopsy, I think you touched on this, but just explain what your role is as the physician conducting the

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autopsy and determining the cause and manner of death.

A. My role in every case is to review the information that we have from the investigator at the time. We have rounds, we have morning rounds as a group and discuss the investigator presents the case, the information that they have on the case, and we do rounds.

The way we do it in Broward is actually standing over the body and looking at the body at the same time. After that based upon the circumstances determine what kind of examination the individual is going to get, external examination, partial autopsy or full autopsy.

I conduct an external examination documenting any kind of signs of natural disease or injury on the external parts of the body and review the radiographs and then I conduct autopsies on the cases that are deemed to need an autopsy.

Q. What are the parameters and professional standards that you use in drawing both a determination as to the manner of death and cause of death?

A. It's based upon my training and experience. There are professional standards by the National Association of Medical Examiners there are guidelines. They are to be governed by Florida Statute 406.11(g) to determine which cases are ours and our jurisdiction. There is an overarching body the Medical Examiner's Commission of

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Florida. There is the Chief Medical Examiner and Deputy Chief. A majority of the time our determination of the cause and manner based upon the circumstances and the autopsy findings.

Q. Based upon your training and your experience, you believe you are qualified to make those determinations of cause and manner of death?

A. I would hope so I've been doing it for ten years.

Q. Let me switch to some more specific questions. Have you in your professional experience been involved in cases in which heat stroke or heat exhaustion was involved in a patient's death?

A. Yes.

Q. Can you just give a general overview of your involvement in those kinds of cases.

A. Again, everything is dependent upon the circumstances so. For example, there was some cases when I was in Philadelphia where a heat wave was determined facilitate the high temperatures of individuals who were found in their environment, in a certain environment where the windows were shut. There was no circulating air, there was no A/C. They had no immediate cause of death, other than being found no natural disease and the assessment of the heat, the environment, meaning that the temperature in the room if taken, which this was, was elevated and the heat

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exposure or some variation of heat exposure would be either the cause or contributory to cause of death. In cases of heat hypothermia, you would have a documented body temperature.

Q. Is there a certain specific physical manifestation that automatically leads to a conclusion of heat stroke as the cause of death?

A. Heat stroke typically is an elevated body temperature above 104 or 105. Additionally you could have signs or symptoms of being in a hot environment, but they may or may not be present depending upon the actual body temperature.

If there is sweating, there is tachycardia, you have regular blood pressure or lower blood pressure or high blood pressure. Depending upon again initially your underlying natural disease will also factor in, could be either. Could be sweating a lot or could be not sweating and skin is dry and hot it all depends on where they are found and how they are found.

Q. Can you explain for the Judge a little bit how body temperatures correlate to ambient air temperatures.

A. Well, everyone describes the normal body temperature is 98.6. How the interim number is they took a bunch of people, took their body temperatures at a certain time, they averaged it and that's the average.

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Every individual has their own core body temperature that they function optimally at. That changes and fluctuates based upon their activity, their medical condition, their body habitus. So we all think that normal body temperature is 98.6 and that is true the majority of our internal functions need to happen at or around that temperature. High extremes varying from that temperature will cause your internal organs not to function properly because everything is chemical reaction that needs to function at a certain temperature. Sorry, I lost track of what the question was.

Q. I was just asking if that's how body temperatures correlate to the ambient temperatures?

A. It depends, again, if you're sitting in a room and not doing anything and the temperature outside is hot or the temperature where you are is hot, your body will try to maintain it's normal body temperature by causing it to sweat or you pant heavily or you breathe faster, blow out more CO2. Your body tries to maintain its normal functioning body temperature. When it cannot do that, because at the point in which their internal regulators can't really control the body temperature and that is usually described around 104 or 105. Your body temperature will basically keep on rising until equivalent to the environment outside, or the ambient temperature.

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Q. We're going to talk about some of the specific cases in a minute. Are dead bodies always cold?

A. No, it depends on the environment they are found in.

Q. Can you explain what you mean by that and what is the relationship?

A. Well, usually a dead body can't thermo regulate so it's going to if sitting in a room that is cold, the body temperature will fall. If sitting in a room that is hot, the body temperature will rise to that temperature in the room, because there is nothing stopping it from going up. Your body is not fighting against the external ambient temperature to keep it in regulation with your normal functioning because the body is dead.

Q. Now let's move to the Hollywood Hills situation. I'm going to just use Hollywood Hills to refer to the Rehabilitation Center of Hollywood Hills and you are familiar with that facility, right?

A. Yes.

Q. Can you describe for the Judge the process by which you came to be assigned particular cases from residents of the Hollywood Hills Rehabilitation Center for autopsy?

A. Again, going back to our system, the primary doctor that day was Dr. Sneed and I was her backup. Meaning

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I was the doctor on call, and usually that doctor is the one that jumps in and helps take some of the load of the other cases off the primary doctor. We did rounds initially.

They explained to us at least one of the individuals that was there and two more individuals that were coming in that day were transported from Hollywood Hills, at least two had elevated body temperatures.

Q. Sorry to interrupt but maybe I can get you a glass of water. I know we are pushing your limits here. You are doing great.

A. So we discussed the cases. There were other cases there besides the Hollywood Hills cases. I elected to do the case that is essentially right there on its way in. Because our rule is that typically five autopsies and then the next person jumps in. Dr. Sneed had already had five including one of the Hollywood Hills cases or two of them, and the next one, the sixth one I guess is the next case that came in was mine.

Q. Who determines that these patients that are deceased from Hollywood Hills Rehabilitation Center were going to be autopsied?

A. That was a determination made by the group.

Q. Who is the group?

A. Myself, Dr. Sneed and the other five pathologists that we work with.

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Q. You mentioned as part of discussions among the group, you learned that there were patients that were brought or were taken from Hollywood Hills Rehabilitation Center with elevated temperatures. We are going to go through some of those. But just generally what was the range of temperatures that you were hearing about and how did that factor into your determination of whether or not to conduct autopsies?

A. The range that was initially reported was between 103 to 107 I believe.

Q. Did those temperatures and the number of patients have any relation to the determination to conduct autopsies?

A. Yes.

Q. Can you explain to the Judge how and why?

A. Well, I think there was one individual and you look at the individual circumstances to determine what is going on. Now we have more than one person that is coming from the same place at the same time, you think could be environmental that would be affecting all at the same time, whether it be, not just environmental heat, but you know other environmental things like if there were a gas exposure or gas leak. You think other things.

So in those instances where you suspect something unnatural led to their death, you're, I don't want to say required but, most people would do an autopsy to rule out

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that kind of aspect. Also to document whatever natural disease could have led to their deaths. Again, everyone is different.

I mean it's not common, not common, but could be instances where people would naturally die at around the same time. It's not likely given other factors when the entire story is flushed out, but it could possibly happen. But because most of the time it's not usually an individual person all subsequently dying at the exact same time, if probably one event affected them, you would do the autopsy on all of them.

Q. What are some of the factors that you as a medical examiner are looking at when there is multiple people who have passed away at a single site within a short time frame?

A. Well, an investigation of the site where they died needs to happen. We would want to know where they were found and how they were found. If it wasn't initially done we would like for it to be done. If police are not already involved let them know our suspicions and get them involved.

We would review whatever records we have at the time from the hospital, communicate with the doctor that treated them there, assessment of internal findings that may suggest an exposure, like if it was CO people think about the -- carbon monoxide poisoning.

We're talking about heat in this particular case.

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You would assess their skin to see if they are dehydrated, feel their skin. Depending on how proximate you are to when they were removed from the environment they were in. But if we are talking about heat and they were immediately removed or someone assessed them and immediately removed them when they were still alive, you would go by whatever their assessment was at that time, their vital signs. So their body temperature, their heart rate, how they feel to the individual, that their skin is hot or cold, skin turgor and other signs of dehydration.

Q. You kind of touched on this as part of your examination, explain whether you are looking for patterns or commonality and what types of things, are you looking for some pattern amongst patients there?

A. Well, initially you want to know, you assess all the patients to see what the range of temperatures are to see the signs if they do have any external signs of heat exposure at the time. But again you take into consideration how long it has been since they were removed from the environment and what had happened since they were removed from the environment. You would gather all the information from wherever they were removed from, whatever records you can find, in addition to doing an autopsy.

Q. We have been talking generally here. Let's go back to the events of September 13th. I don't know if you

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recall the time frame in which you first got involved and what the situation was as it relates to the Hollywood Hills patient when you first got involved?

A. Well, I first got involved during rounds that morning of the 13th, which our rounds usually occur at 8:30 in the morning investigator reporting the cases.

Hollywood Hills we had a discussion as to what we were going to do with the cases. Initially we discussed should the investigator go to the scene. We determined someone should go to the scene, especially since there were more reports coming in of other individuals that were found at the Hollywood Hills facility that were deceased at the site.

Q. I cut you off, sorry.

A. We started to do the autopsies in the cases that were present. Dr. Sneed started her autopsies, I started the one that I had. So another doctor accompanied the investigator to the scene to evaluate the individuals who were dead at the scene and then they were transported to the medical examiner's office.

Q. Okay. Let me have you elaborate a little bit on a couple of those issues. First of all, who was the investigator that was assigned by the Broward County Medical Examiner's Office who assisted in these cases?

A. Orlando Portillo, P-O-R-T-I-L-L-O, he was the

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investigator that was, who received the initial calls and was on that date to go to the scene.

Q. Did you speak with Investigator Portillo during the course of these cases?

A. He is the individual that did the initial report in the morning during rounds explaining the cases to us. So, yes, I inquired more questions from him about the cases, what information he had about the people in the hospital, and at the time once he got information about the individuals who were dead at the scene what information he had about those individuals. Then a determination to go to the scene and the Deputy Chief Dr. Robinson went to the scene with him.

Q. You mentioned well explain for me the first cases that came in, did they come in directly from the facility or did they come in from somewhere else?

A. The first cases were coming in from the hospital.

Q. You mentioned that there were some patients that were found deceased at the facility. We will talk about some of those cases and I know those are ones that you autopsied, but just at the outset here explain for the Judge what you heard about those and then how those cases were handled, whether there was a difference in how they were transported to the medical examiner's office?

A. Well, the first case presented that night I don't

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remember exactly who it was. It was reported that they were transported to Memorial Hospital with an elevated body temperature. Without referring to exactly who the individual was and my record, I can't tell you exactly what sequence of events happened. But they passed away, they were brought into the office.

As general practice, as cases are reported to the office, the investigator takes the information. They also understand 406.11(g) and they know what cases need to be brought in. So they don't always have to call and ask us which cases need to be brought in, they have their own education level of knowledge to know what cases need to be brought in. If they have a question, they can call us.

So the case was brought in so it would be there in the morning. Another case, he also got two other reports of individuals that went to the hospital, subsequent to that initial person, that also had elevated body temperatures. One was admitted and one died in the emergency room. So that second case also came in. The one that was admitted subsequently died later in the day and that person came in during the day.

So this was while he was on call I believe between the hours of 3:00 o'clock and like 7:00 o'clock in the morning. But our rounds are 8:00 o'clock or 8:30 and I think he was initially taking calls about individuals who

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were found dead at Hollywood Hills right before rounds. So he went back to get more information.

Q. Now, we are going to go through the individual cases in just a minute, but did there come a time when in addition to patients who passed away on September 13th, that there were additional residents from Hollywood Hills that were brought to the medical examiner's attention for autopsy?

A. Yes.

Q. Can you just explain the circumstances that led to that and why those patients were autopsied?

A. We subsequently as cases were reported to us we assessed whether or not the heat exposure would have been a factor in their death. We determined whether or not we were going to bring the case in and the case was brought in based upon what records we were able to obtain and information we were able to obtain.

Subsequent to the initial seven individuals, because there were three transported to the hospital that died on the 13th. There was three individuals that were dead at the facility. There was one individual that we got report early on I believe, I think on the 13th about an individual that was transported to a funeral home prior to the first person being transported to the emergency room. So we brought that case in as well.

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Then subsequent to that, individuals who died after that, they were each evaluated. The process was we looked at the records and the information we had to determine if heat was a factor and then we brought them in based on that. Of that I believe there were another five that were brought in. However, there were another three cases, three or four cases that we determined didn't meet the criteria that we had established just to see if the heat was a factor in their death, because it wasn't proximate to or related to whatever event that led to their death, or in the interim between the time they were removed from the environment and hospitalized or taken somewhere else they returned to their baseline.

Q. So there were a number of additional cases of patients who passed away after September 13th that were autopsied?

A. Yes, and some that were reviewed and not brought in.

Q. Was there even cases and we will talk about it later, where you did an autopsy and then reached a conclusion that you couldn't find a cause of death or manner of death related to the conditions of the facility?

MR. SMITH: Objection, just clarification saying did he or someone?

MR. MENTON: We will just try to move this along

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and get into the individual cases.

BY MR. MENTON:

Q. Now we talked about the report that you prepare on autopsies that you complete. Does the medical examiner's office keep files for all the patients that are autopsied?

A. Yes.

Q. Have those files been produced in this proceeding?

A. Yes.

Q. Did you have those files and make them available at the time of the investigation?

A. Yes.

THE COURT: Mr. Menton, let's take a break for a moment and go off the record.

(Discussion off the record.)

THE COURT: Back on the record.

BY MR. MENTON:

Q. Related to that, your Honor, is what we had done last time in terms of identifying patients not by name. This makes it a little bit hard for Dr. Osborne because he knows them more by name. But Dr. Osborne we have been referring to patient numbers that relates to the Administrative Complaint.

THE COURT: I have an extra list if that would be helpful.

MR. MENTON: Yeah, that would be great.

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THE COURT: Refer to the patient number.

BY MR. MENTON:

Q. Let me ask you just another couple general questions before getting into the specifics. How do you decide what tests or analysis to conduct during an autopsy to determine both physiological and lab tests those sorts of things?

A. Again, it would depend upon what the circumstances are and what my diagnosis is for determining what their cause of death before and during the autopsy. What I find in autopsy will drive me to either preserve specimens or -- well, routinely everyone gets a toxicology examination, collected on every case. Toxicology is not relevant in every single case. It could be natural, if there is no autopsy done but they will get toxicology.

There are cases where you routinely always do toxicology with drug death or homicide or car accident or accidents in general. Other studies are dependent upon what we find. If you take out a brain or you have a history of something being wrong with the brain, you may not cut the brain initially, you may save it for a pathologist to evaluate and do pathology later.

If you have suspicion of someone having an infection, if at all possible you try to collect blood and/or other fluids if infection is assumed to be. For

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example the other day someone was doing an autopsy and they got to the part where they are about to take the brain out. The removed the skull cap and they see exigent on the brain. So at that moment is when they decided it could be meningitis. So they took a swab and biological culture so during the process it's all depending on what the case is.

Q. You talked about some things that you do in pretty much all cases. As it relates to cases for the patients from Hollywood Hills, what were the types of things that you were looking for in addition to the kind of general analysis that you conduct in an autopsy?

A. Well, again, the question was in a lot of cases you have to assess whether the individuals died from their natural disease or did they die with the natural disease, and if there something else that caused their death. So in assessing that out, would do histology on diseased organs or organs that have some kind of changes due to disease. It's beneficial to do histology on organs that may or may not show areas of infection. Like lungs typically would be one where you do just to see if there is an infection.

Say a young person who drops dead and they had a cold a week before, could be thinking viral -- so you want to rule out something you may thinking of, sometimes you do it to document what natural disease is there, or you do it for both reasons.

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Q. Then specifically as it relates to what you knew about the patients from Hollywood Hills, what were the kinds of things that you were looking at with these patients in addition to the general things you look at?

A. Well, each individual had some degree of natural disease. Certain individuals had more specific natural disease. I had an individual who had a very specific neurological disease, so I wanted to make sure that I preserved their brain, had a pathologist look at the brain. Go through histology that figure out exactly how that related to her death. Just because someone has something, doesn't mean that it killed them. They could die with it instead of it.

Q. Let's move to some of the individual patients. The first one will be what we have been referring to as Resident Number Two or Patient Number Two. From that list can you identify the patient. You don't have to say her name, so we can get you on the same page.

A. Yes.

MR. MENTON: Your Honor, this is going to be a little bit cumbersome, I want to make sure we get everybody on the same page and appreciate what counsel for Hollywood Hills has done in Bates Stamping individual page numbers. Those are the entire medical records which I think were presented to the medical

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examiner's office. There is also the medical examiner's report. I don't remember if all that is Bates Stamped pages. It is?

MRS. SMITH: I think, I didn't do this myself, I think the things that are omitted are the autopsy photographs are omitted. Then I think on the medical examiner's backup documents, I don't know, I don't think all the history of the medical examiner's backup documents.

MR. MENTON: The reason I just want to make sure that we get everybody working off the same notebooks because there is different versions of these things around.

MRS. SMITH: The autopsy reports are in the front and I think everything you are going to want is in there.

MR. MENTON: Again, we appreciate what they have done and they gave us copies last week. I just haven't been able to correlate what the deposition exhibit number were to the Bates Stamp numbers, so if you will bear with us, we will try to get everybody with us. For purposes of Patient Number Two, the medical examiner's file was Deposition Exhibit No. 22.

MR. SMITH: Judge, can we go off the record for a moment to kind of get everybody.

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THE COURT: Yes.

(Discussion off the record.)

THE COURT: Back on the record.

BY MR. MENTON:

Q. Doctor, do you have those in front of you?

A. Yes.

Q. Can you first of all what is the autopsy number?

A. 17-3003.

THE COURT: Which document are we looking at now the investigator's report?

MR. MENTON: No, this would be the autopsy report itself beginning on page Bates stamped 6686 (phonetic).

THE COURT: Thank you, I have it. For these records were they previously admitted as deposition exhibits?

MR. MENTON: I don't believe they were, your Honor.

MR. SMITH: The deposition exhibits were not.

MR. MENTON: We're doing them individually as we went through them. There is a stipulation as to authenticity I believe.

THE COURT: So these binders don't have exhibit numbers, so I will just have to, we will just have to make sure we have the proper exhibit number for the record, so I can mark the exhibits. I have to be

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marking the exhibits as we go?

MRS. SMITH: I have an exhibit list. All the notebooks are going to be our exhibits, so I can give you the exhibit numbers.

THE COURT: Okay.

MR. MENTON: There will be duplicates because they are in a couple of different places.

MRS. SMITH: -- the ultimate number is going to be 193 for Hollywood Hills.

THE COURT: This is Dr. Osborne's medical examiner report or autopsy report?

MRS. SMITH: Right, the cases tabs A,B,C,D,E,F,G on the exhibit list for the actual autopsy reports.

MR. MENTON: Your Honor, to clarify, if I'm understanding correctly, I think what they have done is taken the entire file, not just the report, and made that 193.

THE COURT: Okay.

MRS. SMITH: The entire notebook is 193 and then the autopsy report is 193E.

MR. MENTON: It's probably going to be easier to refer to those, but it was also our Exhibit No. 22 and that was the deposition.

When we get to the end we will try to make sure you don't have duplicate copies, get the notebooks.

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THE COURT: Okay, thank you.
BY MR. MENTON:
Q. Dr. Osborne, you now have in front of you the autopsy report for Patient Number Two. Did you perform this autopsy?
A. Yes.
Q. When did you do that?
A. September 13th at 10:57 hours in the morning?
Q. And that is reflected on the first page there?
A. Yes.
Q. Can you describe for the Judge, how you went about the autopsy and what you found based upon the autopsy that you conducted and the other records and evidence you had?
A. An external examination of Resident Number Two had externally she had --
Q. -- maybe I can walk you through it a little bit. If you look at earlier in that exhibit on Bates stamp pages 6673 was there was an EMS run report related to this patient and what information did you gleam from that run report?
A. The run report I do not have that in front of me.
Q. I can get that for you, I apologize.
A. The run report indicates that September 13th at 4:24 in the morning Patient No. 2 had an arrest. Their arrival time was at 4:09 in the morning. The narrative reads that Patient No. 2 requested response because Patient

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No. 2 had a breathing problem at the ALF. They found Patient No. 2 in hospital style bed -- glascow scale a 6. She was not verbal -- initial temperature 107.5, initial assessment was that found hot to touch, skin during vitals and assessment -- no extremity fractures -- apparent vomit in her mouth and on the pillow. Lab report says the patient's normal mental status was awake and alert. They initiated treatment and assessment and the treatment initially was ALS protocol started for cardiac arrest, attempted to incubate.
Q. Doctor, did you also review the records from the Memorial Regional emergency department as it relates to this patient?
A. Yes.
Q. What information did you learn from your review of those emergency records? Did they have temperature readings from the emergency department?
A. It's documented in my summary opinion, they reported temperature at the hospital was, they did a rectal temperature which they have it recorded at 108.3.
Q. We've had some testimony already but based upon your professional experience, what is the difference between tympanic temperature and a rectal recorded temperate?
A. It's just that tympanic temperature is more peripheral, rectal is more is more core so it's more

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accurate the internal temperature of the body.
Q. From your professional experience, what does a core body temperature of 108.3 what does that indicate?
A. That's heat stroke.
Q. Then after your review of these records, how did you go about the autopsy and the conclusions you reached?
A. Patient No. 2 at her autopsy, heart disease, arthrosclerosis. She had arteriosclerosis of the vessels in her brain. She had changes of the brain consistent with aging. She had severe aortic arteriosclerosis. Her kidneys also affected by the arteriosclerosis. She also had signs of edema, histologically there was signs of inflammation although she did have signs of emphysema as well mucous. Inflammatory bronchial so more consistent with like an emphysema or bronchitis. Changes physiologically that go along with the arteriosclerosis found in her coronary vessels -- and in her brain changes associated with aging. Nothing acutely or immediately lethal identified as cause of death.
Q. Did you reach a conclusion as to her cause of death?
A. Yes, based upon the information that I reviewed and the temperatures recorded, and the assessment from EMS initially and approximate time of her death, I would say Patient No. 2 required full assistance for activities of

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daily living including adequate administration of foods.
THE COURT: The natural tendency is to read as fast as we read but for the court reporter's sake, know that when you are reading, you are reading very fast. So try to slow down and speak into the mike please.
THE WITNESS: Okay. Cause of death heat stroke due to environmental heat exposure. The summary reads as: Resident No. 2 required full assistance of activities of daily living including administration of food and through tubes -- to remove her from hazardous environment. Based on the circumstances the manner of death is homicide.
BY MR. MENTON:
Q. In reaching the cause of death, did you consider or evaluate other potential causes based upon the comorbidities this patient had?
A. Yes, however, she clearly had demonstrable hypothermia from by investigation and reports where in a hazardous environment over a period time. The records do not indicate that they were monitoring her temperature, other than she was given two tablets of Tylenol through her PEG tube around 7:00 o'clock when her temperature was 99.
THE COURT: Is that 7:00 p.m. on the 12th or 7:00 a.m. on the 13th?
THE WITNESS: I'm sorry 7:00 p.m. on the 12th.

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Subsequently reassessed and recorded dropped that it dropped at approximately -- subsequent to that there was no other indication there was any -- she was removed from the environment she was in.

BY MR. MENTON:

Q. Based upon your review did this patient have any other cause that would explain her death on the morning of the 13th?

A. There was no acute lethal injury or natural disease that would lead to her death. She did have some natural disease, but prior to being in this environment she was recorded to be in her usual state of health.

Q. You mentioned that as it relates to the manner of death, did you reach a conclusion, or what conclusion did you reach?

A. The manner of death was based upon my information concludes to be homicide. This was my determination based on my evaluation of the circumstances and the understanding of heat exposure as well as what would constitute or could constitute neglect on the part of the individuals taking care of an individual who is falling into a classification as being a vulnerable group, elderly or vulnerable group individual that needs care sometimes around the clock to do the basic things in life, including ambulating and being removed from an environment.

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Elderly individuals do not necessarily show the signs and symptoms that we would normally see in someone who is younger and more robust. They can't naturally get themselves out of whatever situations they are in. So other individuals who are their caretakers or responsible for them, being attuned to the changes that might happen to them, sometimes acutely, and make sure they do the bare minimum to make sure their conditions, natural diseases don't get worsened by whatever situation they are in.

So elderly people are sometimes non-verbal. So they can't tell you when they are hungry. You need to be attuned to when they need to eat and assess their level of hydration. If you don't, they can lay there and not say anything and dehydrate. So the caretakers are supposed to be responsible for them making sure that basic minimums of being healthy, safe and provided for are present for the individual.

And also when the situation is not ideal or normal, assessing whether the situation or environment they are in is safe for that person to remain there.

Q. Doctor, were there other lab results or conditions that you reviewed that included within the analysis that did and lead to your determination as to cause and manner of death?

A. Vitreous electrolytes were non-contributory and

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toxicology was negative.

Q. What about the liver enzymes and lactic acids?

A. Those hospital records they were elevated and that is something you can see with hypothermia and heat stroke.

Q. Why would you see that in hypothermia or heat stroke?

A. Because your body functions need to be, all internal body functions are chemical reactions. So if things don't work properly organs start to fail. If your outside of your normal range of body temperature your organs will fail.

Q. Now you mentioned vitreous electrolytes. Is that always an indication of heat stroke or is not a deficiency in vitreous electrolytes is that an indication did not suffer heat stroke?

A. Vitreous electrolytes are not specifically used to determine whether someone suffered heat stroke or not. Vitreous electrolytes are used to determine if there is an abnormality such as dehydration. A good indicator of someone's hydration status because it covers all the major electrolytes as well as BUN (phonetic) and troponin or go to or are interpreted or can be used to interpret your renal functions and issues of urine outlet. That she had no urine could be indicator she is dehydrated or maybe because elderly people don't always leak a lot urine for whatever

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reason, it doesn't say one way or the other. So there are soft signs and hard signs for heat stroke. When there are hard signs there is the actual temperature. Soft signs are you know if the skin is hot, like EMS said it was hot, skin turgor, you pull the skin and it tenses up soft sign they may be dehydrated. You can look at electrolytes to see if elevated, that's another sign of dehydrated. There could be other abnormalities that could point you to something else unrelated to dehydration.

Q. You mentioned the liver enzymes and the lactic acid were elevated. What does that indicate or could that he an indication of heat exposure?

A. It can be seen in individuals who have hypothermia or heat stroke. But it's a sign in general of organ failure -- some kind of injury to the heart, elevated liver enzymes mean the liver is failing.

Q. Did this patient manifest some kind of indication of what you saw on the autopsy?

A. Her death was, she was transported to the hospital and within a period of about an hour she was dead, so I would say, yes.

Q. Now you mentioned there was some indication from the facility records regarding the administration of Tylenol for a slightly elevated temperature earlier. Can you just explain for the Judge if a patient's temperature goes down

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after being administered Tylenol, does that mean the patient is not suffering from exposure to environmental heat conditions?

A. Tylenol like all drugs do what drugs do. They moderate the signs and symptoms you are experiencing from whatever condition is causing that sign or symptom. So in the case of elevated body temperature, Tylenol works to lower the body temperature. It's a specific mechanism. It does not treat the underlying reason why the body temperature is elevated.

So at the time the Tylenol stops working the temperature can still go up and usually does go up unless you treat the underlying reason why there is high temperature in the first place. If you're treating heart disease or high blood pressure with pills, you're not, you're just making sure their blood pressure is staying within a certain range while the drug is working. When the drug stops working, your blood pressure keeps going up. I have high blood pressure and I know that.

Q. Now does there come a point with heat stroke where the Tylenol would not be effective in lowering the body temperature?

A. Yes, at the point where your body can't, Tylenol only helps to assist your body in regulating internal temperature. When your body normal internal, we call

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homeostasis or processes to maintain only body temperature fails, the drug won't work, because it's still dependent on the body to lower the temperature. Tylenol works with the body to lower the temperature. But if the normal homeostasis processes are not there, it won't work.

Q. I think you mentioned earlier that this patient at some point went into cardiac arrest and EMS began administering CPR. Is that an indication that this patient's death was due to myocardial infarction as opposed to being heat related?

A. I would say, no. She went into cardiac arrest prior to elevated -- well -- found when she went to the hospital. Cardiac arrest preceded that. When you are in cardiac arrest, your heat stops beating so there is a period of time that you are not getting blood to your heart so damage can happen, so you can get elevated troponin level subsequent to the cardiac arrest.

THE COURT: The what level?

THE WITNESS: Troponin level. However, it's sort of like saying because she had cardiac arrest, it had to be an MI that caused her troponin to go up. But there could be reasons why she had a cardiac arrest and because her heart stopped, her troponins will go up.

BY MR. MENTON:

Q. Can heat be a contributory factor as to why her

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heart might have stopped?

A. In her case, yes, because she already has underlying severe coronary disease. So included the stress of being in a hot environment which there are conditions that heat really exacerbates, hypertension, heart disease, coronary disease, as well as she also has edema. So in a hot environment it is very difficult to breath. So those two things can put enough stress on her heart, because it's already damaged by her natural disease to be able to push her to cardiac arrest.

Q. Let's move to the next patient that you autopsied.

MR. MENTON: Judge, we would move I guess use the exhibit number now Bates stamped Hollywood Hills 193E into evidence.

THE COURT: Any objection?

MR. SMITH: No objection.

THE COURT: Give me a moment so I can mark these please.

(HH Exhibit No. 193 & ACHA Deposition Exhibit No. 22 received in evidence.)

MR. MENTON: Judge, I think we discussed earlier off the record but just to be clear there were a few things that were taken out including the autopsy photographs that were part of the original depositions, but I don't think they need to be part of the record.

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I think that's the only thing.

MR. SMITH: I don't believe the original deposition exhibits included anything other than the autopsy report.

MR. MENTON: These were given electronically, but the photographs electronically included.

MRS. SMITH: I think the older records that are not related to anything about this case.

MR. MENTON: Your Honor, before we get started it may be good time for a short break.

(A brief recess.)

THE COURT: Do you know what the Petitioner's number?

MRS. SMITH: Exhibit No. 192.

THE COURT: Is there a deposition exhibit number that corresponds?

MR. MENTON: Yes, your Honor, Exhibit No. 24.

THE COURT: Whenever you are ready, Mr. Menton.

MR. MENTON: Your Honor, there are two volumes with respect to Patient No. 1. Were are just going to be referring primarily to Volume No. 1. Binder No. 2 is the medical records and a lot more detail. I'm going to identify that he has reviewed them and considered them, but we are not going to go into them.

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THE COURT: Thank you.
MR. MENTON: Your Honor, as I went through here I see that these notebooks have like a CAD run reports, that's the only thing that may not have been part of the medical examiner's file. I don't have a problem with that.
THE COURT: What is a CAD report?
MR. MENTON: The first tab there that's a CAD report, that a printout from the Broward County Sheriff's Office regarding the 911 calls and I don't believe that was part of the medical examiner's records, but I may be wrong.
MRS. SMITH: It probably wasn't, but one source documents.
MR. MENTON: That's fine but I just want the record clear that we don't have a problem with this, but it wasn't part of what this witness reviewed.
THE COURT: Understood, thank you.
BY MR. MENTON:
Q. Dr. Osborne, I've given you the notebooks which include your autopsy report of Patient No. 2 on begins on Bates stamped page 5885 as well as medical investigative report begins on Bates stamped page 5894.
In front of that is the EMS run report Bates stamped 5876. Can you first of all identify the autopsy

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report and what your involvement is and what the autopsy report number is.
A. Yes, my report autopsy Case 17-3014 did autopsy September 14th at 9:01 hours.
Q. Can you explain for the Judge what records and other information that you reviewed and considered in preparation of the autopsy report which begins on Bates stamped page 5885.
A. As documented in my summary report I reviewed the medical records we received from Memorial Hospital as well that included records from Hollywood Hills. I also reviewed the EMS run sheet. I'm sorry, and the records we were able to recover from Hollywood Hills.
Q. With respect to the records from Memorial Regional Hospital, I believe those are in Volume 2 of the notebooks. Can I have you take a quick review of those and see if you can confirm those are part of what was in your file and part of what you considered? You don't need to go through every page?
A. Yes.
Q. Let's start with the run report which is in the first notebook. Can you tell us what information from the run report that you learned and how that was utilized for purposes of the report that you prepared.
A. The run report 3:01 a.m, commentation of patient

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3:07 a.m, initial assessments had her at Glasgow coma scale of 3. I forgot to mention what that is. That's basically their assessment of -- I'm sorry, motor response, verbal response and eye opening. It's basically each one is supposed to be 5 for the highest number, so 3 -- 5 highest awake, alert, functioning normal. A 3 is a minimum, it's a 1 across the board.
Q. Was there a temperature reading of that patient?
A. Yes, there was, the patient had tympanic temperature of 107.5.
Q. Again, we talked about that a little bit earlier, but what is a temperature of 107.5?
A. That's above the prescribed number for temperature for heat stroke or hypothermia.
Q. I don't think I asked you this earlier, but just in your professional experience how often have you encountered temperatures of this level 107.5?
A. In these extremes, I would have to say first time seen this high. I've seen temperatures of 103, 104, 105 range but this high the first time.
Q. In terms of the analysis that you conducted, what is the significance of temperatures of this high?
A. I don't really know what you mean by?
Q. How does that factor into your determination to have two patients now with temperatures of 107.5. What did

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that you as a medical examiner lead you looking for as it relates to what happened with patients?
A. As I said earlier, if you have more than one individual experiencing the same thing at the same time, you think it's more of where they are, if they are affected by the same thing at the same time, as opposed to being something individual for that individual that leads to that temperature.
Typically people who have normal regular infections don't generally get temperatures this high and even with the worsening infections that I remember or can't recall in my experience see temperatures this high for a regular infection.
Q. When you have two of this at a time, how does that impact?
A. Two see very acute both coming from the same place, would mean there is environmental heat as a significant factor as to why the temperatures are this high.
Q. Is that consistent with the other information you obtained from the medical investigators and elsewhere?
A. Yes.
Q. Was that factored in, we are going to have the medical investigator testify later, but I think it is reference in your report what they reported back to you, is that right?

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A. That's correct. Well, I don't have the investigative report here so.

Q. We can look at that, that's behind Tab Bates stamped 5894.

A. That looks like my report again.

Q. Yes, it is I think the investigator's report is later on.

A. Oh, it's after that.

THE COURT: What was the question, Mr. Menton?

BY MR. MENTON:

Q. About the medical investigator's report was that part of the information that he reviewed and considered in drafting his autopsy report. I believe it is Bates stamped page 5893.

A. This particular report doesn't reference the environment she was in. This report doesn't refer to the temperature when the investigator arrived to assess.

Q. That was done by Investigator Dellagloria is that right?

A. This was Investigator Dellagloria.

Q. Who is Investigator Dellagloria and what is his job responsibility with the Broward County Medical Examiner's Office?

A. He is another medical legal investigator. He's the one that received the call for this individual. But

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No. 1 was taken to the hospital around 3:07 in the morning. However, she didn't die until the morning of the 13th. She didn't die until 3:20 p.m. on the 13th.

Q. I'm going to back up for a second, because I should have done this with Patient No. 2. I will go back to the investigator report from Investigator Portillo was. Have you identify that in the record, this would be Exhibit No. 193.

MS. ALLISON: We have that labeled 193F, your Honor.

BY MR. MENTON:

Q. Bates stamped page 6721.

A. Resident No. 2 was pronounced dead at 5:00 a.m. on September 13th.

Q. Right, but is there information in there regarding the conditions the investigator found at the facility and was that information related to you?

A. It's not present in this report, because this individual was transported to the hospital. At the time of report which was at 5:12 a.m. in the morning the investigator had not gone to the scene yet.

Q. While you have that there, there is another document in the investigator's report tab called cause of death report. Can you identify what that is for Patient No. 2 and then also for Patient No. 1. Who prepared that

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and what is the purpose of that document?

MR. SMITH: Can you give us a page number please.

BY MR. MENTON

Q. Yes, for Patient No. 1 Bates stamped page 5930 and for Patient No. 2 Bates stamped page 6712.

A. What was your question.

Q. What is the cause of death report and who prepares them and what your role in relation?

A. That is the investigative report we call it.

Q. Does the cause of death report on the last page actually set forth your conclusions as to the cause and manner of death of the patient?

A. Yes.

Q. I think you already testified what that was, I just wanted to make sure we have the record identified from the ME file for that encapsulation.

A. For Resident No. 2 the cause of death is heat stroke due to environmental heat exposure. Manner of death homicide.

Q. The going back to Patient No. 1 for the cause of death report?

A. Again, cause of death for Patient No. 1 would be heat stroke due to environmental heat exposure. Manner of death homicide.

Q. And these are records that you prepare in ordinary

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course of your business in maintaining medical examiner's file?

A. That's correct. This is prepared by the investigator, but, yes, it is maintained in the file. The report also lists cause and manner of death on the first page.

MR. SMITH: Hearsay statement, objection hearsay statement.

THE COURT: Your response.

THE WITNESS: Your Honor, he is going to be testifying and there has been testimony from, but I'm not sure what, are you talking about the medical investigator's report or are you talking about some other part of the records?

MR. SMITH: Talking about the cause of death report that starts out, Cindy stated that on September 13th Resident arrived at Memorial Hospital and whatever Cindy said, I think those are hearsay statements if is exception, which I don't think they have established, even if there is an exception to the report they are public records document. I think still hearsay within hearsay, it's not admissible absent some corroboration.

MR. MENTON: It is admissible because this is relaxed evidentiary standard and it's an administrative proceeding. So it is admissible.

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Basing a finding of fact upon that is a different issue. So I think it clearly can come in. And we're not going to ask you to make a finding of fact as to what Cindy said to somebody.

We are going to ask you to make a finding of fact of fact as to what the medical examiner's conclusions are which are embodied within the official records of the medical examiner's office.

In terms of some of these communications and hearsay is admissible in this proceedings and it can be used to corroborate other evidence, such as what the EMS personnel said, such as what the police department investigators said, in terms of what Memorial Regional nurses said they saw.

MR. SMITH: We really don't need a long explanation. I'm just noting that there is hearsay. I agree with Mr. Menton if you make a finding of fact on it that it's corroborative fine. If not, I'm just noting it's hearsay.

THE COURT: Thank you.

BY MR. MENTON:

Q. Dr. Osborne, let's go back to Patient No. 1. Do you have that notebook in front of you. We were referencing EMS report and you were talking about some of the things you found on there and the patient's temperature. Did you also

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review the Memorial Regional records and what did you find in those records?

A. Yes, I did. As per the summary that is written in my autopsy report, if I may refer.

Q. This is back to Bates stamped page 5885.

A. I'm referring to what is written on page 5892. Once EMS arrived they assessed Resident No. 1's skin was pale, moist, hot, course and turgor, T-U-R-G-O-R. Start intravenous of infusion of chill -- cold packs are applied -- axillary temperature taken was 105.3. Labs revealed elevated troponin levels, lactic acidosis, elevated lactic acid. She was put on a ventilator and admitted to ICU for hypothermia and respiratory failure.

Q. Were protocols applied emergency?

A. They are prior to arrival and continue in emergency room. Once she was admitted it was later discovered she had a DNR by her surrogate requesting withdraw care. She was transferred a medical floor and placed on comfort measures.

Q. After you completed the autopsy and you completed your review of the records, did you make a determination as to the cause of death and manner of death for Patient No. 1?

A. Yes. The cause of death is heat stroke due to environmental heat exposure. Manner of death homicide.

Q. What was the basis for your opinion and

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conclusions in that regard?

A. It was based upon the review of her medical records, the documented elevated body temperature, indicating a level of hypothermia or heat stroke, the circumstances surrounding. In addition to the fact I did not find any immediate lethal injury at the time of her death.

Q. What do you mean you didn't find lethal injury?

A. She didn't have an acute stroke, she didn't a pulmonary embolism, she didn't have a rip roaring pneumonia she didn't have a acute myocardial infraction, she didn't have things that would be immediately lethal or lethal in and of themselves irrespective of the situation.

Q. You mentioned a DNR, did this patient after she was admitted to the hospital and placed on a ventilator, that she was transferred to another floor. How does the existence of a DNR, what is a DNR and how does the existence of a DNR impact upon your conclusions as it relates to cause and manner of death?

A. It doesn't particularly impact upon my conclusion of the cause and manner of death. It's just stating a fact that she from that point on when it was discovered she had that, there was no more significant medical treatment given at that point. Comfort measures and monitoring her and that's it until she dies which happened eight hours after

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hospitalization.

Q. So does the fact that there weren't further resuscitation actions taken after she was ventilated, does that mean she didn't die from exposure she had to environmental conditions?

A. I don't think I understand your question.

Q. I guess I'm getting a little bit into preemptive rebuttal here. Does the fact that she had a DNR, which meant that resuscitation activities at some point were not pursued any further in relation to this patient, does that mean that she didn't suffer as a result of her exposure to the conditions at the facility?

A. I guess my answer would be, no. The reason she was brought into the hospital and she was in this state was because of the exposure to the high temperatures. Anything subsequent to that would be medical professionals trying to save her life and if they do not continue to do that, that doesn't negate the fact that she was exposed to high temperatures which caused her to be in the situation in the first place.

Q. Now we talked a little bit about the high body temperatures that were recorded by this patient by EMS when they picked her up sometime after 3:00 a.m. in the morning. Is there any way to determine how long it takes for environmental conditions to cause a person to reach body

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temperatures of 107.5 degrees?
A. I can't extrapolate that based upon the body temperature and without a whole lot of other factors. I can't backwards extrapolate how much time it took to get to that temperature.
Q. Does the in ability to pinpoint an amount of time that you think it took for this patient to reach a body temperature of 107.5, does cause you to doubt the conclusions that you reached in terms of cause of death or manner of death?
A. Well, let me go back to the previous questions and qualify that. Although I can't tell you exactly how much time, I know that it had to be over a period of time. It didn't happen instantaneously in the moment.
Q. So the inability to assign a precise time, how that impact upon the conclusions that you reached as it relates to this patient to determine the cause and manner of death? Did you feel like you needed to have a precise time line as to how this patient's temperature reached 107.5 degrees in order to be able to draw the conclusions that you reached?
A. I would have to say not specifically, but it would knowing that could have influenced the cause and manner of death, it could have.
Q. If you had a record?

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A. If it was recorded.
Q. Did you see from the records that you had, which included the records from Memorial Regional as well as records from the facility, that temperatures were being recorded on a regular basis as it relates to this patient in the hours leading up to her distress and the call to 911?
A. No. Specifically this patient with my review of the records indicated was that temperatures recorded for her between the days of September 3rd and 11 were 96.5 to 97.8. A single temperature reading on September 12th was recorded 97 degrees Farenheit, but there is no time associated with it so I don't know when on the 12th that was done. There is nothing indicating in the records that I reviewed that there was additional temperatures taking during the evening of the 12th onto to the 13th.
Q. Doctor, the EMS report makes a reference to a septis alert. Can you explain what your understanding is of a septis alert?
A. I can't specifically to that. All I can indicate is that in their interpretation that's what it may have been proffered to them as or their primary impression was when they got there as to why the individual was having breathing problems.
Q. What were the factors that lead you classify this death as a homicide?

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A. Taking into consideration the totality of the information I received, review of the medical records, the understanding of how ill this individual was and how she was dependent upon her caregivers to acknowledge the environment was unsafe and remove her from said environment. How had that not been done, other measures to alleviate or moderate the acknowledged elevated temperature was not done until ultimately too late.
That's what made me decide to determine that the caregivers neglected to assess or accurately assess how severe the heat exposure was and moderate or alleviate the stress of the heat by removing the individual and/or doing other measures to moderate the heat based on the documentation provided.
Q. Upon your review of the records and the information that was available, did this patient have another cause that you believed would explain her death on September 13th?
A. No. She had natural underlying disease. She had extremely enlarged heart, signs consistent with hypertension as well as very bad coronary arteries. She had indications of old fibrosis in her heart, meaning she had an event that affected the heart before. I can't tell you how long ago because it was old. She had her arteriosclerosis affected also her coronary vessels. Her brain showed signs of her

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advanced age and/or associated with the arteriosclerosis in the -- vessels. She had signs of congestion in her liver. But there was nothing acutely lethal that would have lead to her death, short for the elevated temperature and documented diagnosis of hypothermia.
Q. Let's move to the next patient.
THE COURT: Did you want to move these records into evidence?
MR. MENTON: Yes, your Honor.
THE COURT: Any objection?
MR. SMITH: No objection.
THE COURT: Hollywood Hills Exhibit No. 192 and ACHA Deposition No. 24 are admitted into evidence without objection.
(HH Exhibit No. 192 & ACHA Deposition No. 24 received in evidence.)
MR. MENTON: Your Honor, the next patient is Resident No. 6.
THE COURT: Give me a moment to mark the exhibits. Ms. Smith, do you have a Hollywood Hills exhibit number for Resident No. 6?
MRS. SMITH: Yes, No. 197C.
THE COURT: And ACHA exhibit deposition number please?
MR. MENTON: It was Exhibit No. 23.

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BY MR. MENTON:

Q. Dr. Osborne, I would ask you to refer to the autopsy report which is Bates stamped 8526 in the notebook in front of you. Can you identify what that document is and what the autopsy report number is?

A. It's a copy of my autopsy report on Resident No. 6 and the autopsy Case Number is 17-3008?

Q. On what date did you perform this autopsy?

A. September 13th at 1515 hours.

Q. You talked a little bit about some of the information that you reviewed as it relates to other patients. Can you just summarize the information you reviewed and considered as it relates to Patient No. 6?

A. Patient No. 6 her circumstances were different. This individual was found deceased at the Hollywood Hills facility. The investigator went to the scene and took photographs and assessed the ambient temperature. Took a temperature of the decedent at the time of their arrival. The body was transported to the medical examiner's office for examination. I reviewed the medical records available from the rehab facility in addition to my own medical findings.

Q. Doctor, if you look at the tab behind the medical investigator tab in your notebook, I think it's Bates stamped 8561, does this reflect the information provided to

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you by the investigator regarding the patient's temperatures that were recorded for those who passed away within the facility?

A. This is handwritten notes, numbers associated with temperature readings that were taken.

THE COURT: Doctor, can you tell me which page you are looking at?

THE WITNESS: Page 8561.

BY MR. MENTON:

Q. What was the post mortem temperature recording that your investigator made as it relates to Patient No. 6?

A. 105.9 degrees Farenheit.

Q. Do you know what time that temperature was taken by your investigator? If you don't know, Doctor, he is going to be our next witness, so we will have him?

A. I don't see it clearly documented here. I couldn't tell you from what I put in my report. It was sometime after his arrival at the facility which was afternoon on the 13th.

Q. So this would have been several hours after the patients was found deceased in the facility?

A. Yes, this individual was found deceased in the facility at or around between 5:45 and 6:00 a.m. I'm sorry, one second. I'm sorry to interject but we have a more complete investigative report than what is in the binder. I

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don't know.

Q. Doctor, we have testimony from EMS personnel and we are going to have some of them on Monday to explain the circumstances. So I don't need you to go through that. I guess what I'm --

A. -- oh, no, I'm saying specifically for our investigative report has a narrative and the one that is here doesn't have a narrative. It just has basic information, or I don't see it.

THE COURT: That report is on page 8557 is that the narrative you are looking for?

THE WITNESS: Oh, it seems like there is a page missing, I have page 1 of 3 and page 3 of 3 but nothing in between. I guess this binder is missing a page.

THE COURT: I have page 2 of 3.

BY MR. MENTON:

Q. I think the investigation report starts on page 8549 and goes through 8551. I can give you that.

A. This binder doesn't have that.

Q. Let's put page 2 in your binder.

A. This individual was reportedly found at 6:59 a.m.

Q. You conducted an autopsy on this patient, what conclusions did you reach to determine cause of death and manner of death for Patient No. 6?

A. Cause of death environmental hear exposure.

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Manner of death was homicide. This was based upon my autopsy findings that included signs of age, eutrophic brain, he had emphysema and arteriosclerosis and hypertensive changes in his heart and kidneys.

The electrolytes were not contributory. The histology only showed to or revealed his natural disease without any indication of any lethal natural causes at the time of death or discovery.

Because there was no documented temperature, I can't say that he had a heat stroke or hypothermia, because there is no documented temperature when he was alive that elevated. However, given the totality of all the information regarding all of the individuals that I examined or all the individuals that came to our office, I can't remove the heat exposure. Because based upon the records, he was presumably fine before they discovered or identified heat exposure. The fact that he is found dead with an elevated body temperature in that environment leads me to believe that is what precipitated his death, irrespective of his natural disease.

Q. The post mortem body temperature of 105.9 that you talked about earlier, what does that suggest to you in terms of the environment and how does that factor into your analysis?

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A. As was stated earlier, the body when you are alive you use the internal processes to try to keep your body temperature within a narrow range for your organs to function. When you are dead, those processes don't work, they can't work. So the ambient temperature working on the body that can't counteract the ambient temperature. So if the body temperature is lower, it will rise to the level or temperature that the ambient temperature is as long as it stays in that environment or continues to rise to that level.

The indication is that if the body temperature at the time they arrived literally on that day was 105.9 that means that room was 105.9 or higher when the person died or shortly after the person died. Because the body temperature wouldn't continue to rise naturally other than the ambient temperature being that temperature or higher.

Q. What about natural decomposition, could that have caused the body temperature for Resident No. 6 to reach 105.9 degrees if the ambient environment was say 81 degrees?

A. The ambient environment, well, decomposition doesn't actually work that way. A lot of factors determine how fast you decompose, temperature is one of them. But it's a little of what you were doing when you died can accelerate decomposition. But also the ambient temperature can work on your body to cause decomposition to occur

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faster.

So you have to take into consideration what they were doing before they died. Their normal state, if they are not doing anything, no exercise, you would presume or go by what is documented as the last normal temperature that hadn't changed, unless there was an outside source changing that, short of there being some internal disease causing a temperature change, which was not evident.

So, the outside factors working on a dead body will it's law of basic fusion, anything that is lower will go to the higher, I mean anything that is higher will go to the lower and visa-a-versa, but with temperature it is a little opposite. The body is going to heat up because there is nothing stopping it from heating up when you are dead if the temperature outside where the body is high.

So say for example someone dies on the sidewalk an it's 98 degrees, I'm sorry 100 degrees, if they weren't 100 degrees when they died, and you find them and their body temperature is 99 or 100, that's because they were laying on the ground where outside it is 100 degrees.

Q. So if a dead boy is in the environment where the temperature is say 78 degrees for multiple hours, would you see body temperatures of 105.13?

A. No, because the body would cool to the temperature of the ambient environment, unless there is some other

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reason why it can't cool.

Q. In terms of the post mortem temperatures that were reported by the investigator, were those relevant factors to you to terms of the analysis you did as it relates to Patient No. 6?

A. Yes, because there was a reported internal ambient temperature and then the rectal body temperature which were different. So that means that, I mean there are different factors that could have changed the ambient temperature if you introduce circulating air.

MR. SMITH: Your Honor, at this point I would enter an objection unless there is some further grounds for qualifications to render opinions on how ambient air temperatures change under various factors. It's not a medical opinion, it's sort of an environmental, how the climate changes, an HVAC expert opinion on how climate changes, what's affected, were doors and windows shut, spot heaters on, spot heaters off.

THE COURT: I think he was just opining on what might change the dead body temperature. That's all I've heard so far so.

MR. SMITH: I think the specific question was as to the ambient temperature. We can have it read back.

THE COURT: I think we've had enough information. I don't think we need to go back and go over this

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again. I think we have enough information regarding the Doctor's feelings in regard to the rise in body temperature.

BY MR. MENTON:

Q. Dr. Osborne, did you reach a conclusion as to manner of death and what did you base that upon?

A. As I previously stated, yes, homicide. It is based upon the totality of the circumstances from the investigation, my review of the medical records, my autopsy findings.

Q. Did this patient based upon your autopsy and review of the records have any other cause that would explain the death that you were able to identify?

A. I was not able to identify an immediately lethal natural disease process for him, no.

Q. You talked earlier about, and it is set forth in your report, about reliance of this and other patients on the facility for purpose of care, did that come into play as it relates to this patient?

A. Yes, this individual was non-ambulatory, required total assistance for activities of daily living. The recorded temperatures were between September 1st and September 13th at approximately 1:42 a.m. indicated that temperatures were 97 to 98.2. So presumably based upon the records or the documentation there is no indication that he

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was not in his usual state of health and prior to discovery being dead with an elevated body temperature.

Q. What is the significance of that analysis in terms of the conclusions that you reached?

A. Well, I can't isolate him from the entirety of the situation. So my knowledge of the other prior two cases that I had done and were transported with elevated body temperatures in the range of heat stroke would indicate that the environment was a hazardous hot environment.

MR. MENTON: Your Honor, we would move exhibit numbers --

THE COURT: -- No. 197 is Hollywood Hills and ACHA Deposition Exhibit No. 23?

MR. MENTON: Yes, your Honor.

THE COURT: Any objection?

MR. SMITH: No objection.

THE COURT: So admitted without objection.

(HH Exhibit No. 197 and ACHA Deposition Exhibit No. 23 received in Evidence.)

BY MR. MENTON:

Q. Let's move to the next patient who is Resident No. 12 and I believe there is three volumes. I think the two volumes are the medical records of this patient after admission to the hospital. So I will just have you identify them. I'm not going to really ask you too many questions

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about those, but just have you identify whether those are part of the materials you reviewed in connection with this patient.

THE COURT: Before we move on let me get the Hollywood Hills and ACHA deposition numbers for the record.

MR. SMITH: Hollywood Hills No. 203 and the autopsy report is "C" tab.

THE COURT: And, Mr. Menton, do you know what the ACHA deposition exhibit number is?

MR. MENTON: Yes, your Honor, it's No. 28.

THE COURT: Thank you. Let the record reflect that Dr. Osborne is reviewing what has been handed to him as Hollywood Hills Exhibit No. 203 and ACHA Deposition Exhibit No. 28, three volumes of records.

MR. MENTON: In particular, your Honor, he is reviewing Volumes II and III which are a lot of the backup medical records and then later the hospice records for this patient.

BY MR. MENTON:

Q. Doctor, as it relates to the II and III Volumes of that exhibit, can you just identify for the Judge what those documents are and whether that was part of the information that you considered in reaching your conclusions?

A. They are medical records from her hospitalization subsequent to evacuation from Hollywood Hills.

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Q. So let's focus in on Volume I of that exhibit. Can you identify for the Judge your autopsy report that is in Volume I and what your involvement was with respect to that autopsy?

A. Starting on page 12351 the autopsy Case Number 17-3295 date of autopsy October 9th, time of autopsy 1318 hours.

Q. Did you perform this autopsy on this individual?

A. Yes, I did.

Q. Was this patient in the same room as Patient No. 6 do you know?

A. Yes, she was.

Q. When did you perform this autopsy and when did this patient pass away?

A. The autopsy was performed on October 9th. She was reported to our office on October 9th. Her actual time of death was 4:45 a.m. on October 9th.

Q. So this is one of the patients that we talked about earlier who did not pass away on September 13th, but passed away later and was brought to your attention; is that correct?

A. That's correct.

Q. Can you describe for the Judge the records you reviewed, we talked about some of those in Volumes II and

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III, but in terms of conducting your analysis and preparing your report?

A. I reviewed the medical records provided by Memorial Hospital as well what was available from the Hollywood Hills Rehab Facility for the decedent.

Q. Did you reach a conclusion as to her cause of death?

A. In her case, yes, I did.

Q. What was that conclusion?

A. Cause of death was hypertensive and arteriosclerosis cardiovascular disease complicated by environmental heat exposure.

Q. So the actual cause of death for this patient different then what you had done for Patients Nos. 1, 2 and 6 that we were talking about earlier; is that right?

A. That is correct.

Q. Explain for the Judge what the differences are and how you came to those conclusions?

A. In this case this individual was evacuated from and brought to Memorial Hospital at 7:54 a.m. on the 13th. They assessed her as having an elevated body temperature. Her skin was hot and dry and she had dry mucous membranes and a change of mental status. First reported blood pressure was extremely elevated 138/111. Her oral temperature was 99. A half hour after arrival, a second

temperature was taken of 100.2 rectally. Labs at the time indicated she had an elevated white count of neutrophilia which means, well, she had an elevated white count without signs of what we call a left shift, where you have more neutrophils paralleling the sign of an infection. She had elevated liver enzymes and elevated lactic acid.

She was admitted for treatment of dehydration, elevated body temperature, and a systemic inflammatory response syndrome. She was placed on antibiotics. They used cooling protocol and she was admitted to the hospital.

The family requested a DNR subsequent to her admission. She remained in the hospital her hospital stay was complicated by bacteria found in her blood. Two different bacteria found in her blood. Additionally, she was placed on palliative care on September 19th and on September 26 she was discharged from the hospital and transferred to hospice in Hialeah.

Q. What led you, you have hypertensive and arteriosclerosis cardiovascular disease listed as main cause of death. What do you mean by complicated by environmental heat exposures and what caused you to reach that conclusion?

A. Okay. When we assess cases, we want to know the cause of death, If you look at a death certificate it basically says, cause of death has to be what disease or process or injury immediately caused death. So in her case,

her death was sometime after the events at Hollywood Hills. However, in review of the medical records, it is clear the first time she was assessed after evacuation, she had signs of at least heat exhaustion or being in a hot environment, which they treated her for.

At the time, even though she had an elevated white blood cell count, neutrophilia, meaning that without neutrophilia, the white blood cell count could be for other reasons, not an infection. That's why they call it a systemic inflammatory response syndrome. That is the answer why white blood cells are up, we don't really know why.

But they did a blood culture, they did find bacteria in her blood, staphylococcus hominis is one that could be definitive. The staphylococcus capitis those are likely we call it when you have bacteria in your blood bacteremia. Just because there is bacteria in your blood doesn't necessarily mean that you will progress to something like pepsis or pneumonia or meningitis. It can happen, it doesn't necessarily mean it is going to happen.

Additionally, she had already received antibiotics prior to discovery of bacteria in her blood. The family subsequently took away the medical treatment and just wanted her to pass and that's why she eventually ended up in hospice. So there was no point in time where she returned to the point where she was before being removed from the

facility. Given the fact that she went to the hospital, with a presentation of being in heat, having heat exposure, that's why I said it was complicated. Her natural disease process maybe in the end is what killed her, because there was no evidence of pneumonia. I'm sorry, I misspoke, did show pneumonia, but that was weeks and weeks after the initial events.

So if someone staying in the hospital for a period of time can get pneumonia. That may not be the reason why they came out from the first place, it's just something that can happen when you stay in the hospital or in hospice and not getting the treatment for that pneumonia.

So, her natural disease typically, when we have situations like that, where someone has and I can use an example, say someone breaks their leg. They break their leg and they go in the hospital. They already have a bad heart. They lay around in the bed in the hospital with a broken leg that gets fixed, but they still laying around in the hospital. At some point they maybe get pneumonia and die from that pneumonia, but the real reason they came in the hospital in the first place was to fix their broken leg. Because they couldn't move, later on got pneumonia. So it's a complication of the fracture, not natural disease because that's probably what took them out in the end, the stress of that. The pneumonia is something we find in the

complication, but the ultimate reason why they went in the first place was because they had the fracture.

So, that's why I have to include it. So would put the natural disease and include or complicate the natural disease by what happened which is the fracture. So, similarly she was in whatever state of health she was prior to being in an hot environment. Subsequent to being in a hot environment, these things happened to her. It precipitated her natural disease to reach her death.

Q. Did you make a determination as to the manner of death?

A. Yes, homicide.

Q. You touched on this a little bit, but what led you to that conclusion as it relates to manner of death?

A. As in all previous cases described, similarly this individual was dependent upon her caregivers to be removed from the hazardous environments which had deleterious event on her and in all likelihood led to hasten her demise.

Q. Thank you, Doctor. Let's move to the next patient.

MR. MENTON: Do you wish to move to admit these records first?

MR. MENTON: Yes, your Honor.

THE COURT: Any objection to Hollywood Hills Exhibit No. 203 or ACHA Deposition Exhibit No. 28?

MR. SMITH: No objection.
THE COURT: So admitted.
(HH Exhibit No. 203 & ACHA Exhibit No. 28 received in evidence.)
BY MR. MENTON:
Q. Let's move to Patient No. 9.
THE COURT: What is the Hollywood Hills exhibit?
MRS. SMITH: Hollywood Hills Exhibit No. 200 and autopsy report "C" tab.
THE COURT: ACHA deposition number.
MR. MENTON: No. 26.
BY MR. MENTON:
Q. Dr. Osborne, let's start with the second volume and can you identify what that document is?
A. Medical records from Memorial Hospital.
Q. Are these records you reviewed and considered for purposes of the report you prepared as it relates to Resident No. 9?
A. Yes.
Q. Let's focus in on Volume I and could you identify for the Judge the autopsy report that you prepared, your autopsy report number and when it was prepared?
A. The Medical Examine Case Number 17-3103. The date of the autopsy is September 22nd, 2017 at 11:58 hours.
Q. So this is another patient who passed away of

September 13th, 2017?
A. Yes, date of death September 20th, 2017.
Q. Can you explain for the Judge what your review of the records revealed and what conclusions you reached as it relates to this patient's death?
A. In this particular case upon doing an autopsy, during the autopsy she had blood pooling around in the sac around her heart, which is called hemopericardium. On examination of her heart, she had significant coronary artery disease in one vessel and the wall of the left ventricle had a tear or had ruptured. There was a clot in that area. So it seems as though she had an acute myocardial infarction, that subsequently ruptured and bled into the sac around her heart causing hemopericardium cardiac tamponade.
So taking into consideration these findings, I reviewed the medical records. Resident No. 9 was transported to Memorial at 7:56 a.m. on the 13th. Initial assessment and vitals taken at 8:03 a.m At the time her temperature was reported to be 98.6 an hour later and her blood pressure was within normal range 113/74. About an hour after that, her blood pressure dropped and there were no other changes in her vitals.
At that time she was given acetaminophen and some saline. The initial clinical labs showed that she had

bacteria and yeast in her urine and elevated sodium level. They did do a troponin, T-R-O-P-O-N-I-N, which was a single reading and a blood sample was drawn at 8:07 in the morning. That was reported to be within normal limits.
She was admitted for treatment of tachycardia, suspected urinary tract infection and possible pneumonia. She went to the medical floor.
Q. She was admitted when, Doctor?
A. She was admitted that day, went to the medical floor.
Q. That day being September 13th?
A. September 13th. The next incident happened or in the medical records she had an incident where she was lethargic, non-verbal and her blood pressure spiked to 150/111 and that was around 12:56 a.m. so that would be the 14th now, at 12:56 a.m. on the 14th. Her blood pressure continued to be elevated until the afternoon of the 15th. Of note from September 14th through the 16th, she was described as suffering from acute delirium in which she was given medications to calm her down. On the 20th she was discharged to Seasons Hospice. At around 10:00 a.m. on the 20th, she again had another elevated blood pressure and continued to decline and subsequently went into cardiac arrest by the evening of the 20th.
So looking at the actual hosital course, she did

not have an initial elevated body temperature. However, shortly thereafter she had signs of what could be or what I had determined to be her initial cardiac events. Then later that evening she was still suffering from that cardiac event. She survived that initial cardiac event, went to hospice, had a second cardiac event.
So in order to have a ruptured myocardial infarction, you have to have an MI first. So the initial MI has to have happen and during the process of healing that MI, it can rupture again. That typically happens about seven to ten days later, because that's the most vulnerable time where there is the maximum amount of removing all the old dead tissue and new tissue hasn't formed yet. So that's the most sensitive time where you can have a rupture.
So in this case, the rupture of the event that happened on the 20th that lead to her death. The initial myocardial infarction happened on or after the 13th, likely that evening into the morning of the 14th. That would put it between the seven to ten day range.
So in this case, even though she did not suffer directly from the elevated temperatures itself, the fact that she was in the environment, caused stress to her, in addition to her being removed from that environment also caused stress to her, which likely precipitated the initial myocardial infarction that then subsequently ruptured days

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later and led to her death.
So in this case I called the cause and manner atherosclerotic heart disease complicated by environmental heat exposure resulting in a ruptured acute and healing myocardial infarctions. And the manner of death in this case is homicide.
Q. I want to come back to that last point. You made a couple points there. I think on page seven of your report, where you were looking at when you talked about cause of death being complicated by environmental heat exposure. If you look at the first page of your report which is Bates stamped page 10099, the way the cause of death is listed under contributory cause. What is the difference there or is there a difference?
A. For death certificate purposes there is. This is how it is listed on the death certificate. The cause of death goes on the part we call line one. That's the immediate injury or disease that causes death. Other things that can contribute to it will go in part two.
So in my report I wrote on the first page because that's how we write it for the death certificate part one is cause of death and part two is a contributory cause. But then in the sentence form I just put it together in the opinion section, but that is just for sentencing to make it make sense.

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Q. You kind of touched on this, but I don't know if we actually had you describe for the Judge what a contributory cause is as relates to the death certificate. When did you identify contributory cause and what would prompt you to identify in this case in particular that the contributory cause was environmental heat exposure?
A. Like in the example I gave of the individual who has a broken leg. If you go in and you have a broken leg and it gets fixed, but say a week, five days later you get a PD (phonetic), clot in your legs and your lungs and blockage, the immediate cause of death would be pulmonary embolism. The contributory cause would be the fracture, because that's what caused you to lay there and get a clot that went to your heart or your lungs and killed you.
So not everything is directly correlated, because the fracture doesn't cause the clot. The situation of having the fracture causes the clot to form and go to your lungs.
Q. Okay. As it relates to the manner of death, you indicated you reached a conclusion as to homicide. Can you describe for the Judge what factors led you to reach that conclusion?
A. What factors that led me to reach that conclusion were the fact that in her case she was per the medical records and reports, she was she was in the environment.

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She was removed from the environment during the evacuation. Her changes to her heart were proximate to that removal. After that fact, after having the initial myocardial infarction, she never returned to the state she was before she was removed from that hot environment.
THE COURT: Was this patient stable --
THE WITNESS: -- that I don't recall specifically. Oh, this individual was different. I think in her case she was stable upon admission on the 5th. There is a single note on the 12th that indicates she was in a stable condition at the time. What we got from the son when we talked to him was prior to her admission to rehab she was always awake, alert and able to hold conversations and could communicate.
Specifically with her, there was an issue with her son being able to care for her which is why he put her in the facility.
THE COURT: Was she ambulatory?
THE WITNESS: I can't remember specifically.
THE COURT: I just noted that you had remarked upon that in your prior reports and I did not see it in this report.
THE WITNESS: I don't know that I noted that specifically.
MR. MENTON: Your Honor, we would move these

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exhibits into evidence.
THE COURT: Any objection to Hollywood Hills Exhibit No. 200 or ACHA Deposition Exhibit No. 26?
MR. SMITH: No objection.
(HH Exhibit No. 200 & ACHA Deposition Exhibit No. 26 received in evidence.)
MR. MENTON: Your Honor, the next patient will be Resident No. 10 and again two volumes in this one.
THE COURT: Do you have the Hollywood Hills number for Resident No. 10 on the medical records?
MRS. SMITH: Hollywood Hills Exhibit No. 201 and the autopsy report is Tab C.
THE COURT: And the ACHA deposition number?
MR. MENTON: No. 27, your Honor.
BY MR. MENTON:
Q. Doctor, let's do the same approach, Volume II of this exhibit have you reviewed that and can you tell the Court what this is.
A. Memorial Hospital records that I reviewed.
Q. Was that part of the analysis that you conducted in reaching your conclusions as to the cause of death and manner of death for Resident No. 10?
A. Yes.
Q. In Volume I of those records, can you identify the autopsy report, the date of the autopsy and when it was

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conducted.

A. Medical Examiner Case Number 17-3182, autopsy was performed on September 29th, 2017 at 9:55 hours. Date of death September 28th, 2017.

Q. This is a patient that passed away after evacuation of the facility on September 13th?

A. That's correct.

Q. How did this case, why are you getting the ones after the fact, we've got a couple of them now, how does that come about?

A. That was a part of the, the initial individuals who were transported and died at the hospital and/or discovered at the facility, were also part of, well, go to after discovery at the facility the evacuation that occurred.

So it behooved us to monitor individuals who were removed from that situation to see if and when they died -- thinking because died in our county and reported to us, whether we should bring them in or not to evaluate whether or not their death may have been in some part or way related to the exposure to the hot environment.

Three of the individuals that I autopsied fell into the category that I felt where whatever subsequent injury or insult occurred was proximate to their removal from that environment and/or if they never returned to what

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was reported or described as their baseline based on the records prior to the events on September 12th and 13th. Then I felt it was necessary to at least bring them in and evaluate them and do an autopsy to determine, and review the medical records in totality to see, or what was available in totality, to see if exposure was related to that.

There were other individuals that were reported to our office that died and subsequently returned to their documented baseline. Those individuals were not brought in. So it was a case by case basis based upon a lot it was where they were in Hollywood Hills, what happened to them after they were evacuated, whether they returned to their baseline or not to determine whether they came in or not.

Once they came in, at least in one instance one case was determined not related whatsoever, not related to the exposure to the hot environment based on review of all the information in totality.

Q. Doctor, while you are on that point maybe this would be a good time to ask you. During your involvement in these cases, was there ever any political pressure brought to bare on you in terms of any of these conclusions or opinions that you reached as it relates to the patients of the Hollywood Hills facility?

A. No. I reviewed the medical records as I have done before in hundreds of incidences before, consulted with my

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colleagues, and ultimately came to that based upon my knowledge of the case, the findings that I had and my, I'm sorry, based on those things. I mean I did not, well, like I said we reviewed other cases that did not even make it into the office. So it wasn't like every case of every individual who died subsequent to being in the facility came in and got an autopsy and every one was put out as the exact same thing. That did not happen.

Q. What about just in terms of, well, was there anything that you are aware of that was done out of the ordinary in terms of how you and your colleagues at the medical examiner's office go about reviewing and evaluating a case?

A. The only thing I can think of is that because of the way the investigation was going, myself and Dr. Sneed had to go through the police to review medical records, because some of the records weren't electronic. So the charts were there in their office and we went there to review those records. That was done differently in this case since I've been here that I haven't done in any other case. I've done that in Philadelphia though, when the records weren't regularly transferrable or portable.

Q. Were the opinions and conclusions that you reached as it relates to the cases that you reviewed, influenced or direct by media attention or media coverage of this event?

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A. No. My opinions are based solely upon my review of the totality of the information, the medical record review and the autopsy findings.

THE COURT: I have a question. Doctor, did the medical examiner's office make a determination that you and Dr. Sneed would be two MEs to do those patients that were determined appropriate to come in that had been evacuated from Hollywood Hills based upon your knowledge of all the circumstances or did this fall outside your regular rotation, I guess is what I am asking?

THE WITNESS: It did and it didn't. Because we were the ones initially who were on that day and a majority, I don't want to say majority, but a lot of the cases were done on the 13th and 14th. She was on the 13th and I was on the 14th. Whatever came in those two days, we decided it would probably be best to not, or just for us to do them because we were so familiar and it would alleviate other individuals from having to go to court and trials and things like that because it just makes it more functional for the office. Because there is a limited number of us and when somebody is missing or two people are missing it makes a big difference as opposed to seventeen missing. Luckily, I don't want to bring up something other than what we are

talking about here, but in circumstances incident that happened a few weeks ago, the Chief would assign all of those, because then we would have every single doctor going back to back to back and the office wouldn't have staffing.

THE COURT: Is that a common practice for a mass casualty incident to your knowledge or something you experienced in Philadelphia?

THE WITNESS: I can't really say it is or isn't. I think what determined to be easier in that instance there. The incident we had last year, actually did the same thing, me and Dr. Sneed. We confined it to two or three medical examiners to do those cases and not include everybody.

THE COURT: Thank you, sir.

BY MR. MENTON:

Q. You used the term earlier and I think we intuitively know what you mean when you say, a patient from Hollywood Hills who passed after September 13th you would quote bring them in. What do you mean by bring them in?

A. Oh, if they died within Broward County they are reported to us, except for the one individual Resident No. 12 who died outside of our county. That was reported to their medical examiner's office, the neighboring Miami-Dade Medical Examiner's Office who called us to let us know and

then we had the case brought in based upon the review of the information.

Q. What do you mean by brought in?

A. Transported to the medical examiner's office.

Q. We started to talk about Patient or Resident No. 10. You indicated that the autopsy was done September 29, can you describe for the Judge what you did and what you found as a result of your autopsy review of the records and then what conclusions you reached as it relates to cause of death.

A. So Resident No. 10 was she was I would say different from the other individuals in that she was two or three decades younger than the individuals, she had an underlying natural medical condition, a neurodegenerative condition that basically put her in the state that she was in. She had, this is a long word, a long set of words, it's neuronal ceroid lipofuscinosis.

THE COURT: Can you spell that for the court reporter.

THE WITNESS: L-I-P-O-F-U-S-C-I-N-O-S-I-S.

BY MR. MENTON:

Q. What is that condition that you alluded to just for us non-medical people?

A. Simply put it's a genetic disorder, that doesn't always, it's one that occurs later, or usually in the teen

years but can at one point it can occur later on in life. Where the cells of the brain can't metabolize or break down the fatty acid. You need fatty acids to make nerve functions work. So when it can't break down that, the waste bucket for the cells lysosome.

So it doesn't get broken down, it gets filled up with lysosomes where they fill up the cells so the cells can't function. So it typically affects motor function, ambulated, speak, talk, walk, so it's a progressive kind of degenerative disease that is genetic. There are different forms. A diagnosis of that when she was admitted to Hollywood Hills. She also because of it had functional quadriplegic dysphasia and the coin a failure to thrive. Which essentially means the individuals have no impetus to eat, drink. You have to make sure you are feeding them, make sure you are giving them enough fluids, because their drive to do those things is inhibited. In her case because she has a neurodegenerative disease that is making her not able to do it for herself.

Q. What did that condition then means in terms of her reliance upon the facility and facility staff for her daily sure survival?

A. She would be completely dependent upon them.

Q. Now in terms of the review of the records and the autopsy you conducted, what did you conclude as it relates

to this patient cause of death?

A. This patient was transported during the evacuation to Memorial Hospital on the 13th. Medical assessment indicated she was dehydrated. The temperature that was taken orally was 98.6. Labs showed that she had elevated white counts, again, no neutrophilia. She was hyperkinemic, her potassium was up. She was admitted for treatment of dehydration, electrolyte imbalance and kakeksia which is just wasting away.

Q. Her hospital stay was complicated by a bacteria found in a blood culture. They were unable to regulate or correct her electrolyte imbalances. So she was discharged to hospice and placed on comfort care on September 19th and she expired on the 29th. At autopsy I found the was extremely kakeksia with contractures and had multiple viral pneumonia. Her lungs showed pneumonia, the kidneys have mild indication of inflammation. She had mucous material in her stomach. Toxicology shows the presence of morphine. Vitreous electrolytes were not contributory at that time to her death.

Of note it's reported in the records she had a standing order of Tylenol with codeine to be given three times a day. The last does that she was reportedly given was at 8:00 a.m. on the 13th.

So in my summary I discuss that even though she

died weeks after the event took place, her clinical signs at the time showed that she had at least some kind of physical changes associated with the exposure to the hot environment. It wasn't full blown heat exhaustion or heat stroke, but she did have dehydration. Her medical she never returned to what was determined to be her baseline. She was a hundred percent dependent on the staff for her removal from the hot environment. So I called her cause of death failure to thrive complications of well-known neuronal ceroid lipofuscinosis complicated by environmental heat exposure. The manner is homicide.

Q. Now with respect to this patient, you talked about the conditions that she had, the genetic condition that she had that required her to be in the facility in the first place. What is the typical life expectancy for that condition and how does this patient's age compare based on your understanding?

A. She specifically, and since I don't have her complete records, I don't know exactly when she was diagnosed with this condition. The majority of I believe are eight forms of this or eight different genetic mutation forms of this disease. So there is one that is late onset where you can get it in your 30s and you can live longer. The majority get it in their teens and don't really live past 40. So at the age of 57, I don't know exactly when if

she was late onset, or if she just happened to out live what the expected life expectancy is. Fifty-seven is not that more reported, so I don't know which is which.

Q. If she had out lived the normal life expectancy of somebody with this condition, would that cause you to rethink or question the conclusions that you reached in terms of contributory cause to her death of environmental heat exposure?

A. I would have to say, I don't think would make a difference per se.

Q. Why is that?

A. Even though there is a quote unquote life expectancy, every individual is an individual, so you know the body doesn't read books. So some people can out live what is known to be life expectancy for that condition. It doesn't mean that she is not deteriorating continuously because of her disease. Just that she happened to live longer than most people with that disease did. So anything that could be cause of death either from that disease or anything outside, acting on her kind of disease can happen at any time. Doesn't make a difference whether she lived passed the expectancy.

Q. What led you to attribute the contributory cause of death due to environmental heat exposure?

A. Because of the review of the records, review of

the medical records, the initial assessment of her being dehydrated, the fact that I can't say it didn't factor into her demise, because as you just alluded to, she did out live the expectancy when she was in normal conditions. So the only thing that changed from before the 13th to the 13th was being in the hot environment. From that time she never went back to being okay like she was before the 13th or being in her usual state of health before the 13th.

Q. What were the factors that lead you to determine manner of death is homicide with respect to this patient?

A. Like the majority of the individuals, she is definitely a hundred percent dependent upon any caregiver to remove her or provide her any kind of basic needs whatsoever, feeding her, giving her fluids, removing her from hazardous environments, all of those things she was dependent upon someone else to do that for her.

Q. Let's go to I think the last patient that you have.

THE COURT: Did you want to move those in first?

MR. MENTON: Yes, your Honor.

THE COURT: Any objection to the admission of the records related to Patient No. 10?

MR. SMITH: No objection.

THE COURT: This is Hollywood Hills Exhibit No. 201 and ACHA Deposition Exhibit No. 27.

(HH Exhibit No. 201 & ACHA Depo Exhibit No. 27 received in evidence.)

BY MR. MENTON:

Q. Your Honor, the next patient is Resident No. 3 just one volume.

THE COURT: The Hollywood Hills exhibit number for Resident No. 3?

MRS. SMITH: It's No. 194 and the autopsy report is Tab B.

THE COURT: Mr. Menton, the ACHA Deposition exhibit.

MR. MENTON: No. 25, your Honor.

BY MR. MENTON:

Q. Doctor, could you refer to the autopsy report which begins on Bates stamped page 7326 and can you identify that report and when it was done and autopsy number?

A. Autopsy Case Number 17-3016, date of autopsy is September 14th, time of autopsy is 9:50 hours, date of death is September 13th.

Q. So this is a patient that died on September 13th. But were there circumstances about this patient that were different than the other patients that you autopsied who passed away on September 13th?

A. Yes. This individual when it was pronounced dead, she was immediately taken to the funeral home. She found to

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be deceased at 2:55 a.m. on the 13th. She was directly transported to a funeral home. She essentially had underlying medical conditions of she was severally debilitated because of medical conditions which included hypertension, aortic valve stenosis -- congestive heart failure. She was determined to be terminally ill and there were assessments done for her. She had been presiding at Hollywood Hills for several months she was determined more than once to be terminally ill when they did the assessment. How frequently they did the assessments, she had two assessments where she was determined to be terminally ill in my review of the records.

On September 3rd to the 10th her body temperatures were recorded at 97 and 98.6 on the 12th at 12:00 a.m. a recorded body temperature 97 degrees Farenheit. Of note her last recorded vital signs only included blood pressure pulse rate and at that time her blood pressure was 151/78 which is elevated and out of her norm because in review of her records between the 9th and the 12th, 12 normally around the time she gets medication her ranges were between 118 and 131 systolic and --

Q. At the time the patient was brought to the medical examiner's office had she already been embalmed?

A. She was already embalmed, yes.

Q. What is the affect of that in terms of how you

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conduct an autopsy? What does embalming mean and how does that impact?

A. Embalming is the funeral home's way of preserving tissue so that they don't rapidly decompose so that the body can be preserved for viewings and funerals. What it requires is them essentially draining the body of blood and filling the body cavities, specifically the vessels that go to the head and the face with a formula that would cause fixation of the tissues to they do not keep on breaking down.

That complicates, well, that makes an autopsy not idyllic because there is no more blood to do toxicology testing on. So you have to rely on other organs and tissues. Well, that complicated because a lot of the standard levels and things that are known are in blood and urine which usually don't have when you have someone who has been embalmed. So you have to rely on other tissues like brain and liver, which are okay, but they may be affected by the formula.

You may not have vitreous fluid in the eyes to do electrolyte testing. That wasn't the case in this case there was vitreous fluids. The tissue is not in natural state, it's already fixed. So, things that are grossly abnormal would be obvious, but suttle things may or may not be. Say pneumonia it could be looking at the lungs you

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can't necessarily always tell if it's an anamniotic process happening or if it is part of being fixed lungs. There is no telling of that, because you can't assess out what is real and what's not because of form of fixation.

In her case the lungs did show signs of early bronchial pneumonia. I guess we should qualify as pneumonia it's, give me one moment, you can have pneumonia that is due to bacteria or viruses. Bacterial pneumonia is the one everyone thinks about where you get cuts and blood cells come in, they are heavy, firm and the whole lobe is involved.

Bronchial pneumonia is something more of a suttle process. You can see it a lot of times in like a viral process. You can see it due to some other reasons, usually people that are laying in the hospital, start off getting bronchial pneumonia that evolves to more of a rip roaring pneumonia. So bronchial pneumonia just indicates that something going on, you're laying around for a little bit, and you're getting a little pneumonia. It's not like you get the flu or you get strep pneumonia and that causes your lungs to --

So she had some of that. She also had -- in her heart and in her kidneys that showed the affects of her hypertension and arthrosclerosis. She also had strokes, remote strokes in her cerebral cortex and brain stem. She

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was an individual that was dependent upon the staff for removal from a hot environment.

She was already frail and terminally ill. So knowing that she died and how proximate it was to the discovery of individuals who had elevated temperatures and they went to the hospital, it's reasonable to believe she was in the hot environment at the same time. The only thing that changed because she was already living with her natural diseases, even though she was deemed terminally ill, she was still living with those diseases up until that point where she was in that hot environment and at that time she died.

So, I can't ignore that and say she only died because of her natural diseases. She had that the day before. What changed was the hot environment. Therefore the cause of death was environmental heat exposure, because I don't have a documented temperature, proximate to her death to say heat stroke or hypothermia or heat exhaustion and manner of death is homicide.

Q. You touched on this in your answer just a second ago, but did the fact she had a terminal illness why didn't you attribute the cause of death just to that terminal illness?

A. Well, you have to take the individual as you find them. In this case she was (a) already deemed to be terminally ill from her underlying medical conditions more

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than once and out lived what they projected to be the amount of time she was going to live for.

The only thing that was different about her or the environment she was in, proximate to when she was pronounced dead was the hot environment.

Q. From your review and your autopsy was there any specific acute natural cause that you could identify as a basis for her cause of death?

A. I'm sorry, I also forgot to mention that vitreous electrolytes did show she had elevated sodium level which as I said earlier could be a soft sign of dehydration.

Q. Based upon your autopsy and the review that you conducted, did you identify any other acute natural cause that you would attribute to being specific basis for this or cause of this patient's demise?

A. No.

Q. And you were aware that this patient was a hospice patient?

A. I am.

MR. MENTON: I would move exhibits Hollywood Hills No. 194, your Honor.

THE COURT: Hollywood Hills No. 194 and ACHA Deposition No. 25, any objection?

MR. SMITH: No objection.

THE COURT: So admitted.

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(HH Exhibit No. 194 & ACHA Depo Exhibit No. 25 received in evidence.)

BY MR. MENTON:

Q. Now, Doctor, in several of your reports you made reference to temperature readings and where you got those and whether that is the type of information upon which you typically would rely in formulating your opinions. Specifically I guess probably the easiest thing to do is to go back to Patient No. 1, if you have that. There is some language in your autopsy report and some of that also carried over into some of the other reports. I'm specifically looking at pages 6 an d7 there in the opinion section of your report. Can you tell me what that information is, where it came from and then how you utilized that for the opinions for this patient as well as the other patients and is that information of the type you typically rely upon in reaching your conclusions?

THE COURT: Mr. Menton, what is the Bates stamped number?

MR. MENTON: 5891.

BY MR. MENTON:

Q. Resident No. 1.

A. The information provided here is what we gleam from the investigating officers and discussions with them and what was reported from them, as well as part of our

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investigator going to the scene as well.

It indicates, well, it starts off by discussing the situation that the facility was experiencing between the 12th and 13th, well, the 11th, 12th and 13th with their air conditioning unit and how they proceeded to deal with the loss of the air conditioning unit function.

It also documents where the decedent was. It talks about, it describes what we know to be other means of getting a motion, air into the area. It talks about the nature of the individuals on that unit and how again it functions. It also documents what reported as the ambient temperature when they arrived or took it on September 13th at 11:25 a.m. or about that time which was 99 degrees the ambient temperature inside.

The next paragraph basically draws a timeline as to what happened as reported to us by the police in the facility through the notations from EMS when they were identified and call, who was transported when and the temperatures of the individuals that were transported and the discovery of residents who were dead at the scene and when that happened. And when approximately law enforcement intervened and proceeded to issue evacuation of the facility?

Q. Why was that information included within your autopsy report and is that type of information typically

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included in your reports that you prepare?

A. Well, to answer that question, in my reports when there is detailed significant circumstantial information that helps us decide the cause and manner of death, I usually incorporate that into my opinion. Not everyone does that.

However, given the amount of individual or multiple different pieces of information that would factor into the situation that created the hot environment, I felt it necessary to as best I could create a summary that details chronologically my understanding as to how things progressed from the time the incident started until the individual came into the facility, or came into be in our care or examined by us.

Q. Obviously some of this information comes from other people like your investigators or from EMS reports, etcetera. Is that information that you would typically look to in reaching the opinions and conclusions that you formulate as a medical examiner?

A. Our investigators in conjunction with police and/or other medical staff when necessary also collect information that we need to make a determination. No cause or manner should or usually is done in isolation of the circumstances surrounding the death. Most people we are taught we learn, the autopsy is 20 percent and circumstances

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are 80 percent. So you can't, if someone is shot and I can see that they didn't shoot themselves, that's all I know. I don't know who shot them.

But if you think of someone that is hit by a train. I don't know if they were on drugs and they wandered on there and fell asleep and got hit by the train, or if they meant to get hit by the train. It's knowing who that person is and why they were there in the first place to determine what the manner is. That tells you the story as to how they got to be where they are and what happened to them. The injuries are you documented and you can see those, but why they were there to get hit by the train is the information.

Q. Doctor, can you just summarize for the Judge or estimate for the Judge the amount of time and effort you extended in conducting the reviews and autopsies that you have testified about here today?

A. It would be a guess over the course of two and a half months, I mean I can't say, 72 hour, 38 hour two or three weeks. Each autopsy was done when the autopsy was done. I did histology at the time of autopsy. Some cases came in a week or two weeks later, so I did the autopsies then.

We spoke to the police. We allowed them to do their investigation. We spoke to the police again. We went

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there to review the records they collected. We went through our records. It's a process. So I would say over the course of two months, but I can't tell you exactly how many hours I spent, especially on each individual case now.

Q. So a lot of time?

A. I'd say a lot.

Q. I know you testified that you're an Associate Medical Examiner. This is part of the job responsibility that you have as an Associate Medical Examiner for Broward County; is that right?

A. Yes.

Q. Is there any outside compensation or anything that you get?

A. No, no.

Q. Give me a second I think I'm about done. Has anybody since the time you prepared the reports back in November, all the reports we've talked about today, has anybody brought forward to your attention any information that would cause you to second guess or change your opinions or conclusions that you gave?

A. I haven't received any additional information, no.

MR. MENTON: That's all the questions I have, your Honor, thank you.

THE COURT: Why don't we go off the record.

(Discussion off the record.)

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THE COURT: Back on the record.

CROSS EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Dr. Osborne.

A. Good afternoon.

Q. I want to start by asking you if I got this right, you make a cause of death, manner of death determination for every death in Florida?

A. No, I don't make it for every death in Florida.

Q. Not you but everybody will have a cause of death and manner of death on their death certificate?

A. Yes, it's required to fill out a death certificate.

Q. And the cause of death you described as being medical condition, disease or injury that was the immediate cause of their death?

A. Yes.

Q. And heat stroke would be a clinical diagnoses that would be a cause of death for example, correct?

A. Yes.

Q. And it's a clinical diagnoses because you can say that if there is a temperature over a 105 and there is evidence that the person had been exposed to a hot environment, then that would meet the definition of a heat stroke, correct?

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A. Yes.

Q. What is the definition, what is the temperature range -- well, let me back up -- is environmental heat exposure a clinical diagnosis?

A. In what sense do you mean?

Q. Is there a clinical diagnoses that is known as environmental heat exposure apart from heat stroke?

A. It is a diagnosis, yes, apart from heat stroke, yes.

Q. What are the symptoms of environmental heat exposure? What would be temperature range?

A. It would be taking into account the knowledge that the individual was in a hot environment. The symptoms that fall short of what we see in heat stroke, it's a continuum. If there is heat exposure or extremes, hot or cold, it doesn't start off at 100, I mean it's a continuum.

So, I would say basically what is considered say a heat wave, anything over 90 degrees for one to three days. In those conditions the environment inside if not properly cooled can approximate or go above that condition outside. That's not sustainable for a long period of time for any human being. That's why people don't stay outside for hour on end in 100 degree weather.

Q. Is there a specific temperature range for this clinical diagnosis known as environmental heat exposure? Is

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there a temperature range of 80 to 100 degrees, 90 to 100 degrees, 95 to 100 degrees or some range of temperature? Or is it a sort of more generic, it depends on the conditions and circumstances and the individual patient what they might be able to withstand? Does it vary?

A. To answer your question, typically we think about including that or contributing as a factor when we know the environment to be above 90 degrees for a sustained period of time. Factually that elevated temperature cannot really be sustained for a long period of time, at 90 degree ambient temperature.

Q. Do you know or are you aware that people can develop heat stroke in temperatures less than 90 degrees? They can develop heat stroke in temperatures between 80 and 90 degrees? Are you aware of that?

A. I don't believe they will go to heat stroke at those temperatures.

Q. Have you done any kind of literature review, published any articles, done anything?

A. No, I have not.

Q. But just your sense is that you cannot develop heat stroke, I just want to be clear on the record on this, that your sense and your opinion is, you can't develop heat stroke at temperatures less than 90 degrees? That's your opinion?

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A. Based on what I understand, yes, that's what I believe. I don't think if someone is going to get to a temperature of 105 being in an environment less than 90 degrees. It can be possible, but I haven't experienced that.

Q. But that's your opinion, it's not possible, it doesn't occur?

MR. MENTON: Objection, asked and answered.

THE COURT: Sustained.

MR. SMITH: I'll move on.

BY MR. SMITH:

Q. I thought I heard you say that once a person loses the ability to thermo regulate, that their temperature will continue to rise to the ambient outside air temperature? Did I get that right?

A. Yes.

Q. Now human beings, unlike lizards or snakes, have an internal ability to thermo regulate and maintain a temperature somewhere around 98.6 degrees; is that right?

A. Give or take, yes.

Q. When that ability to thermo regulate is lost in a heat stroke, is it your opinion that there is a correlation then between how hot the temperature is and how high a fever will go to you could only get 105 degrees or 106 degree fever if the outdoor air temperature is 105 or 106 when you

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develop heat stroke? Is that your opinion?

A. You would have to sustain, or your body perceiving the elevated temperature and then go beyond the body's ability to thermo regulate. At that point your body temperature will rise and you can no longer thermo regulate and you may have elevated temperatures up to the level of heat stroke.

Q. I understand that. But I heard you say earlier that your body temperature would continue to rise to the ambient temperature that you're in. I just want to make sure that is your opinion?

THE COURT: No, that's not what he testified to. He said it will rise or go higher than the ambient temperature.

MR. SMITH: Well, I appreciate it, your Honor. I have my notes of what was said, but I appreciate it.

BY MR. SMITH:

Q. So I just want to understand what the testimony is. Is it your testimony then as the Judge has phrased it for me, that your temperature is going to, once you lose the ability to thermo regulate, it's going to go as high or higher than the outdoor temperature?

A. That's what I said, yes.

Q. Then would it stand to reason that if somebody developed heat stroke say at a 90 degree temperature,

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ambient temperature, then if they develop heat stroke by definition their temperature, core body temperature will be more than 105 degrees, right?

A. Correct.

Q. And you agree that can happen, don't you?

A. Yes.

Q. So if by definition it's 105, does that mean everybody that was exposed to the highest temperature they could ever have if you were exposed to 90 degree temperature is 105? It couldn't go 106 or 107 or it can go higher?

A. Depends it could go higher, it all depends on the individual.

Q. And you told me, I think you said on direct, that the temperatures of 107 were beyond anything you had ever seen. Did I get that right?

A. That's correct.

Q. And you realize that heat stroke by definition is above 105, 105 and over, right?

A. Depending, 104 or 105.

Q. I thought you had said in your direct that you had been involved in ten or more heat stroke situations. Were they all temperatures that never got above 106 or 107? Do you think that's unusual for a heat stroke case?

A. I have not seen 107 until these cases.

Q. So you believe that a temperature, a core body

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temperature of 107 is unique in the world of heat stroke cases?

A. I did not say that. I just said I have never personally seen a case of 107 or above that until this case.

Q. Do you think the higher the temperature, the higher it must have been in the environment in order to produce the temperature? Or could somebody in a 90 degree environment have a 107, 108 degree temperature?

A. And still be alive?

Q. No, they die of heat stroke, could that happen? They never experienced temperatures of 104, 105 degrees, they just experienced temperatures of 90. Could their temperature go as high 107, 108 core body temperature?

A. I've never experienced that. I don't know how to answer the question because I don't think. You're asking if an individual had only been at 90 degree temperature, could elevate to the point of beyond heat stroke of 105. I don't know. I think I would think the temperature would have to be higher than 90 degrees for them to experience temperatures more than ten degrees, fifteen degrees of where you are starting.

Q. Do you know that to a reasonable degree of medical certainty or are you speculating right now?

A. I can't say that I know that to a reasonable degree of medical certainty.

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Q. In fairness you're not really an expert in hypothermia and heat stroke; is that fair?

A. I would not say I'm an expert, no. I have dealt with cases of that, yes.

Q. You have never, for example, as a physician treated a case of heat stroke or heat exhaustion?

A. I'm not that type of physician, so I don't patients in the hospital.

Q. And in your experience in dealing with autopsies and heat stroke is limited to somewhere around ten cases?

A. If that's what I said in the deposition, then that's a fact. I didn't quantify or count specifically. I don't keep a log of each individual type of case and how many I have done. I don't know.

Q. Would it be a good approximation as you sit here now?

A. Ten sounds good.

Q. You testified early on about the manner in which the cases were assigned at the medical examiner's office for this Hollywood Hills incident. I thought you said that by the time of your morning meeting, you had been advised that there were more than one dead body at the Hollywood Hills? I think you said several; is that correct?

A. At that time we were advised there was one case in the office. In discussion of that case, the investigator

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told us he received two additional calls from the hospital. At least one additional individual transported from the hospital. Then subsequently we found out from that investigator that three additional individuals were dead at the scene.

Q. And you found that out by the time of your morning meeting at 8:00 o'clock or 8:30?

A. At 8:30.

Q. Do you know what time you first found out about the medical examiner's office, first found out about those deaths?

A. They were reported after 5:00 in the morning. The investigator took the first report.

Q. So sometime between 5:00 a.m. and 8:30 in the morning, he had that knowledge, correct?

A. Yes.

Q. When I say he, Orlando Portillo, the medical examiner investigator was aware of that, correct?

A. Of the initial two that were transported and the three that were found deceased at the scene, yes.

Q. Now, I'm going to get to your analysis of the individuals but before I do, I want to make sure, you were asked about selection of tests to perform during the course of your autopsy. Am I correct that there are no histological, pathological or laboratory tests for

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identifying heat stroke or heat exhaustion?

A. There is no specific tests that I can say, only a diagnosis for heat stroke. You take the information along with the circumstances, clinical presentation and you make a determination.

Q. So there would not be in this case you have no histological findings that indicate heat stroke in any individual?

A. In some reports there are things people say that are associated with that, but they are not definitive nor are they diagnostic for heat stroke. So I wouldn't use those to proffer those as histological findings, which means other conditions that have nothing to do with heat.

Q. When you were deciding what tests to run in this Hollywood Hills situation, based on the circumstances dealing with heat exposure, you wanted to possibly look at documenting patterns of dehydration, correct?

A. Yes.

Q. So what you ran was electrolytes on all the cases, oncology which is routine and histology, correct?

A. I don't think oncology is a test.

Do you recall when I deposed you and asked you about --

A. -- toxicology.

Q. The court reporter could have misquoted it. So

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the three that you would have looked at would have been toxicology, histology and electrolytes, correct?

A. Correct.

Q. And it is correct that vitreous electrolytes are a test that you would do to determine dehydration, correct?

A. It can show a pattern. It can indicate dehydration based upon elevation certain electrolytes, yes.

Q. And you used some phrase, I'm trying to remember it, that is in all the reports is a layman's view of this what you did you looked at the electrolytes and you determined based on the electrolytes they didn't indicate dehydration?

A. I said the majority of them was non-contributory.

Q. The vitreous electrolytes that is the word I was looking for, were non-contributory to the death, right?

A. For the most of them, yes.

Q. And that means in my layman's perspective, the vitreous electrolytes did not indicate dehydration in this patient; is that right?

A. That's true.

Q. Now, as far as the autopsies that you did and the research that you did, you described 80 percent of a normal autopsy would be sort of the investigative information and 20 percent would be the I guess the pathological findings; is that fair is that what you said?

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A. In determining manner.

Q. In determining manner of death. How about in determining cause of death?

A. Cause of death is somewhat usually the evidence and also we find in ancillary studies.

Q. So that 80/20 break wouldn't apply to the cause of death analysis?

A. It depends on the situation. If you find that t there is a cause then it doesn't. If you don't find a cause you have to rely on other information. So it all depends. So in the instance where there is no acute lethal disease or injury, you have to rely on the information you get to figure out why the person is dead. If you have enough information to make a determination and what that information tells you about why they ended up dying at that time.

Q. You explained on direct that as far as the manner of death, the determination of homicide it means you found that the death was due to somebody else's hand or actions, correct?

A. Yes.

Q. And it doesn't have any significance as to whether somebody was negligent or somebody was intending to cause harm?

A. I wouldn't put it that way, negligent and intent

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are two different things. It can just happen whether you intend it or not.

Q. Understood. But the finding of homicide is not a finding that anybody was negligent. Somebody could unintentionally crash their car into somebody, thought they were obeying all traffic laws that they were in an accident and somebody in the other car dies at fault. You could still say that's a vehicular homicide, couldn't you?

A. Legally you could, yes.

Q. You gave the example of somebody in determining manner of death, that you gave a broken leg example. They broke their leg and they were in the hospital. Then they had to lay around and not move and they developed pneumonia. That when you got to the cause of death, you still go back to the broken leg, if they died in the hospital of pneumonia with the broken leg that put them there. Do you recall that testimony?

A. Recall that, yes.

Q. So to extrapolate that if, I like football, put it into a football terminology, somebody big game and they hit somebody out of bounds, late hit, there is a flag for it, breaks somebody's leg. That person is put in the hospital. You're saying that if later in the hospital they develop a hospital acquired infection, that you would still attribute the reason they died, if they died of some staff infection

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that they got in the hospital, the reason they died would still be the broken leg, right, that's your opinion?

A. Well, if you're saying the person went into the hospital and never walked out like they were fine before they broke their leg, then, yes, the fracture contributes to their death.

Q. Would it be the primary cause of the death in that or it would be a contributor?

A. Depends on what their complications were. If you're saying pneumonia, that it probably wouldn't be. It all depends. Some people say complications of like fractures, some people would say pneumonia in part one and put fracture in part two. They are both equivalent, I'm not saying anything different, the complications of the fracture could be because you are laying around and getting pneumonia. So I'm not saying two different, you're saying the same thing different ways.

Q. Would it be homicide for manner of death because the person, it was a late hit, out of bounds, they hit him, that cause was another person at another person's hands, would that qualify as a homicide?

A. Not in that case because the person didn't intend to use their body to cause harm to the other individual. The accident could not be foreseen. No one knew they were going to collide at that moment and therefore it's an

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accident.
Q. Just a nuance, he foresaw it, he's a line backer and said, there he goes, I'm going to go get him and I hit him, I deliberately went and tackled him. I didn't know his leg was going to break.
A. No one could foresee the fracture happening?
Q. He didn't intend to do the fracture is what you're saying and that's important, right?
A. No. I'm saying couldn't foresee the fracture would have occurred because of that impact?
Q. In fact there are national guidelines that are distributed to medical examiners like yourself. And a look at that intent element, did somebody intend to cause harm, did somebody intend to kill, when you're making a manner of death determination as homicide, don't they?
A. There are examples given in the guidelines you are referring to that do deal with discussing the cases talking about intent. Intent is not necessary for anyone to determine a homicide.
For example, when a police officer happens upon someone who is robbing a bank and they shoot them to stop them from robbing the bank and they end up killing them, we call that a homicide still. It doesn't mean they were intending to kill them with that shot.
Q. Did you use the guide the National Association

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Medical Examiner's Guide for manner of death classification in this case?
MR. MENTON: I'm just going to object. I'm not sure what he means by use.
BY MR. SMITH:
Q. Did you observe the guidelines?
A. I reviewed it. When I was reviewing it and deciding on what manner I was going to assign the case. But that is only a guide as it is stated in that packet. It's not a mandate, it's not a directive.
Q. But the guide from the National Association of Medical Examiner's says that death due to environmental hypothermia can be classified as accident, if there is no intent to kill or harm the victim via the act of placing or leaving the person in such environment with an apparent intent to do harm. Right, that's what the guidelines says, correct?
A. That's what that guideline says.
Q. Similarly as to things like a child being left in a tub of water or in a locked car, again, those are instances where there may have been an adverse outcome and the child died from those things, but the national association recommends that those can be classified as accidents.
MR. MENTON: Objection --

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THE COURT: Hold on.
MR. MENTON: He is not using the actual language from the guidelines. If he wants to use that, I think he needs to show it to the witness and use the language that is actually in there.
MR. SMITH: I actually intended to introduce this with another witness, but I'm more than happy to show him. I thought I quoted it accurately but I could have gotten it wrong, it's paragraph 38, 39 that I was referring to.
THE WITNESS: Reading what referring to it states, child died because of placement in potential hostile environment such as a bath tub water or being left in a hot car maybe classified as an accident. Maybe classified as an accident. If there is no evidence of intent or to harm a child. Reads due to environment of high -- can be classified as accident if there is no intent to kill or harm the harm the victim in the act of placing (unintelligible) -- leaving a person in such environment with apparent intent to do harm.
BY MR. SMITH:
Q. I understand that guidelines are guidelines, you can choose to follow them or not, right?
A. That is correct. There are other things that govern our decision making like Florida Statutes that deal

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with neglect of elderly and other factors upon us and working in Florida like the ME Commission and their guidelines. So there is more than one level of guidelines. They are guidelines for you to look to see if it fits your situation. But each case is it's own case. The circumstances of the case have to be weighed in order to make a determination. You make a determination to the best of your medical ability and it's an opinion as such. And here in the guidelines on page five it reads, general principles (a) there are exceptions to every rule, but every rule holds true most of the time.
Q. So most of the time your intent is to follow the guidelines.
A. It also depends upon the circumstances in which you find the individuals, you make a determination and it's an opinion based on those circumstances and your autopsy findings.
Q. Now going back to what you relied on in getting to cause of death and manner of death determination, in the autopsies that you performed would it be fair to say that there is none of them where I'm going to find a histological, pathological, laboratory, microscopic test that will tell me this patient died of heat stroke or this patient died of environmental heat exposure? There is nothing that is determinative like that, correct?

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A. I would say the temperatures documented for individuals who did not die immediately would be definitive for heat stroke. That is a test or vital signs once you say they died of heat stroke.

Q. I'm going to segment that out for you. I want to talk about what you did in your autopsy that you performed. You didn't take any body temperatures, right?

A. No. But in order to determine manner of death, I have to consider all the information gathered. I can't isolate the autopsy separate from the information concerning that individual and how they came to get or be brought into our office.

Q. I just want to create two buckets if you will. The bucket here is the histological, microscopic, laboratory testing, tissue testing, things that you would do as a forensic pathologist, the testing that you do, there is none of that that you did in this case to find manner or cause of death in any of these cases? There is not a test that you ran, correct?

A. Going to get to the other thing. Well, to answer your question, I would say, no, but that information is partly because there was no definitive lethal injury from those tests that I could point to and say that is the cause of death for those individuals.

Q. We will get to some of that later. But my other

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bucket is information is what you described as the investigation and one of the sources you reviewed relying on is information provided to you by the police, correct, law enforcement?

A. Yes.

Q. And that typically comes to you in the form of a written report, doesn't it?

A. Not always, some information is reported to us verbally.

Q. Is it a typical routine that you have a written law enforcement report?

A. Before I make my determination in every case, no, it is not always typical. Some information is discussed at the scene, after the scene. I may have the investigator call the officer back and get more information. I might speak to the officer myself directly. Information is gathered in multiple ways. Not always a report for every single interaction or conversation.

Q. I understand that you may ask for additional information that comes verbally. I understand that not in every case will you have a written report. Not my question.

I'm just saying normally, routinely, more often than not, wouldn't you have a written police report?

A. More often than not the majority of the information is through the investigator communicating with

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the police officers and they write up the circumstances. A lot of that information is gathered directly that way.

Q. Let me flip it, more often than not, you don't have a written police report; is that correct, you do not, typically more often than not, you do not get a written police report; is that your testimony?

A. As I just said more often than not information we get from police is through either the investigator talking to them and documenting in their report, the investigator communicating with the police officer and communicating it to us or us communicating directly with the police officer.

Q. In writing? Do you more often have?

A. Verbally most of the time, in writing, yes, sometimes things are written down.

Q. So in this case, you didn't have any written reports from the police department, correct?

A. No, I did not have a written report from the police.

Q. And you relied on the police department sharing information with you, correct?

A. Correct.

Q. And one of the pieces of information that you referred to, I think you referred to it as an ambient air temperature reading of about 99 degrees taken at around 11:25 a.m. on September 13th, that was reported in

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Mr. Portillo's investigative report, correct?

A. Correct.

Q. And you don't know who took that temperature reading, correct?

A. No, I don't.

Q. And you don't know what instrument they used to take that temperature reading?

A. I would presume a thermometer of some sort.

Q. Would you presume that or your assumption was that was an ambient air temperature, right, because you referred to it in your report as ambient temperature?

A. That's how it was related to me.

Q. Are you aware that there is a difference between an ambient air temperature that is measuring what the air temperature and what is called a service temperature, where somebody takes an infrared gun and they point it at a wall or they point it a ceiling or a window and they say or a vent and they say, what's the temperature and they get a temperature reading of the surface that they are pointing at? Are you aware of that, the difference?

A. Yes.

Q. Do you know if the reading that you are referring to 99 degrees was that a surface reading or an ambient air reading?

A. I have to assume as I was told it's an ambient

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reading. I do not know exactly how that information was collected.

Q. And as far as temperature readings, you don't have any temperature readings for any of the residents in the ambient air temperature to know what the temperature was at the time any of those residents experienced distress and 911 was called to send them to the hospital; is that fair? You don't know what the temperature was at that time in the building?

A. I can't know that, exactly what that was, no, I don't.

Q. You don't have any way scientifically to say within some reasonable degree of certainty, here is what the temperature was?

A. I can't give you a specific number, no, I cannot. I can infer from the individuals that were in those environments, three of which had elevated body temperatures in the range of heat stroke, that the temperature was at least that or more.

Q. And that goes back to your testimony earlier that it is your opinion that it had to be at least 90 degrees, correct? Or are you saying it had to be at least 100, if they had a temperature of a 105, it had to be at least 105; is that your testimony?

A. For the individuals that were found dead at the

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facility, yes. At some point it had to be 105 to get to that level, only if they are dead already.

Q. I'll get to the dead body and the temperatures of dead bodies. But I want to stay on the temperature of the people that were experiencing distress and 911 was called and they went to the hospital.

For those patients are you saying that the temperature, if their core body temperature when they got to the hospital was 107 or 108, then it must have been 107 or 108 in the building; is that what you are saying?

MR. MENTON: Objection, your Honor, he covered this earlier it's repetitive at this time.

THE COURT: I'm going to allow it, he can answer.

THE WITNESS: I can't definitively say that's the case because someone may have, it could have been 103, but that individual couldn't thermo regulate anymore and because of their underlying natural diseases, their temperature kept on rising past the 104 and got up higher, that's possible. Or the building was 110 and their body temperature was approximating towards 110, that is also possible at one point in time.

BY MR. SMITH:

Q. Is it possible that frail, elderly residents that have particular medical comorbidities and are on particular medications, that may inhibit their ability to off load

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heat, dissipate the heat? That they can develop heat stroke at much lower temperatures than 90 degrees; is that possible in your view?

A. I would not say much lower than 90 degrees, I would not say that.

Q. Would you grant me that those things would be individual factors that might make somebody more susceptible to heat stroke, the comorbidities of chronic medical conditions and specifics medications they are on?

A. Yes.

Q. As to the post mortem temperatures, we will from Investigator Portillo, but if he learned before 8:00 a.m. that there were dead bodies, do you know was there a reason he didn't go out and collect the evidence and collect the core body temperatures earlier? Why not go out there at 6:00 a.m. and get a sense of what the scene is at 6:00 a.m.?

A. I can't speak to why he did not go to the scene earlier than he did. I can only proffer that all of us are not connected initially until around time of our rounding on the decedents. I can offer that he would not have been able to go into the scene if police were involved at that point in time. I do not know at what point they went in there to do their investigation and after the evacuation was occurring around those times. So I don't know if he would have been able to get in there anyway at that time.

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Q. As far as the temperature of the body and whether it will increase or decrease, I understand your testimony is that the temperature of the body will approximate the ambient air temperature; is that correct?

A. A dead body, yes.

Q. So at 11:25 when the temperature readings were taken by Mr. Portillo, I'm sorry, these were later I think afternoon time, the closest point in time we have to temperature readings was those temperature readings referred to as 99 degrees. So shouldn't the bodies that have been at 99 degrees if your theory is right, they would have cooled down to the ambient air temperature?

A. If you're saying at 11:25 the temperature is taken at 99 degrees, (a) how long would it take the ambient temperature to go 99 and (b) how long the body was exposed to that 99 degree temperature to get to that point, I can't tell you how fast a body will cool once temperatures drop. All I can tell you is that they documented the rectal temperature of those individuals, one of which is my case at 105.9. So at that time when they were in there on that body, the temperature of that body was 105.9. So at one point in time that room had to be 105.9.

Q. And that's because if somebody, it goes back to your testimony, you couldn't get a 105.9 or is it because the dead body would have risen, you're saying they died

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sometime before?
A. He died at 5:15 something in the morning.
Q. So sometime before that, you're saying it had to be 105?
A. Yes. I don't know how fast the room got to 99. I don't know how fast the body that is that hot will go down to 99. I can't tell you that because I don't know when the room got to be 99. Was it over the course of two or three hours and the body was 99 and then the body started to cool or maybe the body was laying there was higher than 105 before that and was cooled down to 105. I don't know to where it started to tell you what 105 means other than at that the time the room had to be at least 105.9. It could have been higher and that is the cooling at that point because ambient temperature being 99 degrees, because it's stepping downward together from where they were before.
Q. And that cooling would have occurred that you are describing the cooling down would have been would have gone from the overnight hours and as the sun came up the building started to cool down; is that essentially what you're saying?
A. Well, I don't know exactly when the cooling happened. Again, well, inside and outside environments are two different things. The inside environment at any point in time could be could be higher, lower than or equal to the

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ambient temperature outside. But as the sun comes up, temperature is going to rise.
That could change the inside environment and there are things to keep that environment cooler. So when the building opens up, different as it was overnight, I can't tell you how long it took to get to 99. I don't know, all I can tell you is that when the temperature was taken at the time it was, it was 105.9 and that means to me at some point in time that room had to be 105.9 with that body in it. After he is dead his body temperature is going to continue to rise to ambient temperatures. Did he die at 105.9 possibly. Did he die of a temperature higher than that, sure. Did he die of a temperature lower than that and then it went up to 105 sure.
Q. Isn't the real answer, we don't know? Isn't that a fair, honest answer, we don't know?
A. The environment was hot, extremely hot.
Q. We don't know what the temperature in the building was?
A. I can't give you a specific number, but we know it was hot.
Q. And we don't know, we will get to each individual patient but as to the patients that died in the building you don't know what their temperature was when they died, you don't know?

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A. I can't tell you what it was when they died, no.
Q. And you don't know how much it rose or fell over what period of time?
A. Well, the period of time is documented by the time of their discovery, at the time they were examined by the medical examiner. So there a definitive time there. Over that period of time I don't know exactly what happened. I know when they got to that body it was 105.9 and again, the room had to have been at least that for the body to get to that temperature.
Q. Let's look at Resident No. 3 and your report. Now Resident No. 3 was a terminal hospice patient, correct?
A. Correct.
Q. She was 99 years old, correct?
A. Correct.
Q. Were you aware that her treating physician was Dr. Wayne Evancho, E-V-A-N-C-H-O.
A. I don't recall the specific name of the treating physician.
Q. Were you aware that Dr. Evancho saw Resident No. 3 at Hollywood Hills on the morning of September 12th?
A. I did not know that.
Q. Were you aware that at the time he assessed that resident, he determined that her death was very proximate and he placed on what is called hospice crisis care, were

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you aware of that?
A. Not until the deposition when you gave that information to me.
Q. Were you aware that he ordered a round-the-clock hospice nurse to be with Resident No. 3 in the building?
A. Again, not until you let me know that at deposition.
Q. This 99 year old patient on hospice care expired at I believe it was --
A. -- 2:55 in the morning.
Q. At 2:55 in the morning, were you aware there was a hospice nurse at the bedside?
A. You made me aware of that at deposition.
Q. I noticed in your report, you used language that, I'm trying to find that deposition. What's the deposition exhibit number, I apologize.
THE COURT: It's 25. Do you have that in front of you? Do you have a Bates stamp can refer to?
BY MR. SMITH:
Q. If you look at the front page it's on page 7327. The first sentence under circumstances of death, it says this female with multiple medical conditions was found deceased at a nursing home. What did you mean by she was found? Was it your understanding that she had died and somebody came in and found her deceased?

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A. Someone observed she was no longer breathing and assessed that she was deceased. That's how I used found in every circumstance in every way. Someone always finds somebody deceased. It doesn't matter who they are, someone finds them deceased.

Q. So the person who found her in this instance might be the crisis care hospice nurse from Vitas Hospice Care that was sitting there holding her hand at the time, she might be the one that found her?

A. Yes.

Q. Now in the cause of death we go to your findings, actually I'm looking for your report where you list cause of death and manner of death.

A. Page seven, 7333.

Q. Correct. Where is your cause of death report?

A. It's in the medical investigator the tab over page --

Q. -- I'm just looking for I guess maybe, I'm looking for where you had listed the cause of death on a line that says what is the cause of death for the patient?

A. That would be the very first page of the autopsy where it says cause of death 7327.

Q. I'm sorry, that's what I was looking for, I apologize. The cause of death in this instance was environmental heat exposure, correct?

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A. Correct.

Q. And there were no other contributory causes, right?

A. I didn't list contributory causes, no.

Q. So in this instance a 99 year old hospice patient, who had terminal conditions, who her physician had just seen her the day before, put her on hospice care, said death is very proximate, her terminal illness didn't even make it to your cause of death line items of what was the cause, wasn't even a contributory cause; is that right?

A. Well, that is correct. At the time I did this case I knew she was terminally ill. The initial information I did not know death proximate or imminent or how you put it, or how the doctor put it?

Q. Very proximate I think was his term.

A. That being said, he can't predict when she was going to die.

Q. Can anybody predict when someone is going to die?

A. Most people can give you an idea of how much longer you have to live based on your conditions. Again, this is a 99 year old woman had already been assessed twice before per the records even in the same state and lived past that point.

Q. Doctor, you just said something and I want to know, do you know that she was on crisis care and had a physician that assessed where her death was imminent. That had happened twice before is what you're testimony is?

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A. Being terminally ill twice before is what I'm saying.

Q. Okay, she had been diagnosed with a prognosis that she had six months or less to live two times before, correct?

A. Correct.

Q. That's a lot different than a physician coming in the day before death and saying death is proximate and ordering I want a nurse 24 hours by the bedside, isn't it, those are different circumstances?

A. They are different, yes.

Q. I'd like to go Resident No. 10. Before I go there, I would like to ask one more question on the last resident. Going back to Resident No. 3 the hospice patient -- if you need a minute just tell me?

A. Okay.

Q. The Resident No. 3 you can't say with any degree of medical certainty whether Resident No. 3 would have expired with or without heat exposure when she expired? You can't say one way or the other; isn't that fair?

A. I would say that I cannot not factor in the heat exposure.

Q. I understand you say you cannot factor in. I'm just saying, my questions is this: Can you say within a reasonable degree of medical certainty, that this patient would have lived longer, would not have died when she died but for exposure to warm conditions in the building? You can't say that with any degree of medical certainty; isn't that true?

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A. It's possible that she could have lived. I can't say either way.

Q. Thank you. Let's go now to Resident No. 10. This is the individual that had unique terminal condition what is listed out here?

A. It's called a neurodegenerative disease.

Q. This also was a patient that she was terminal, the neurodegenerative disease was a disease that ultimately she was going to die from?

A. I would say a disease that she likely would die from. It doesn't mean that she definitely would have. I've had cases where as I said earlier, you have to take the situation and circumstances because people can have diseases, even terminal ones, and die with them instead of from them. We find cancer people that die from car crashes or gunshot wounds. You can die with a terminal disease or from it.

Q. This patient was 57 years old, correct?

A. Correct.

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Q. And she weighed all of 54 pounds; is that correct?
A. That is correct.
Q. Once she went to hospital, she was evacuated as part of the mass casualty incident; is that right?
A. That is correct.
Q. She was taken to the hospital and they recorded her temperature, core body temperature was 98.6 I believe; is that right?
A. That is correct.
Q. She stayed at the hospital for I guess until September 19th. So she was in the hospital for about six days, correct?
A. Yes.
Q. During that time she had a staphylococcus bacteria that developed at the hospital; is that correct?
A. A blood culture indicated bacteria in her blood, yes. I don't know where she contracted bacteria. I can't say at the hospital. She got it only in the hospital or she was already with it. It was found when she was in the hospital.
Q. When she came to the hospital, in addition to having a normal temperature, would I be correct that she had normal breath sounds and no respiratory distress; is that right?
A. It wasn't documented she had distress or

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respiratory 15 which is around normal, and pulse rate was 86.
Q. And it was also documented that as to her mental state, she has a normal mood and effect, her behavior is normal?
A. If that is written on the day she was admitted, then that is correct.
Q. I will refer you to Bates number 0010985. It is part of the Memorial Regional Hospital emergency department records. If you don't have it I can share mine? 0010985 binder II?
A. I don't have that binder.
Q. I'll let counsel catch up, but if it is okay can I approach with mine. I just want you to conform that according to the documentation from the hospital her respiratory was normal and her psychiatric condition was normal?
A. This also says he had a normal mood and effect and behavior normal. So I don't know if this is correctly documenting her.
Q. Read me the initials of the patient's name?
A. At the top provider notes by --
Q. Who is the patient, Doctor, initials?
A. D.B. (phonetic). I'm reading what is written.
Q. That's part of her records, correct, is that

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right?
A. That is correct.
Q. So this patient Resident No. 10 gets to the hospital and by all the documentation I've seen has basically normal conditions, except for her underlying chronic neurodegenerative disease. She had a course of staying in the hospital and then was discharged to hospice; is that right?
A. Correct.
Q. Can you affirm for me this is another one of Dr. Evancho's patients that he saw the day on September 12th, are you aware of that?
A. I can't verify that. I wasn't aware of that, I did not know, no records or notes of that.
Q. I'm going to show you a record, Bates 0010723 that also was in the medical examiner documents and ask you if you can see that Dr. Evancho was the treating physician?
A. I see Dr. Evancho was the treating physician, yes.
Q. And you weren't aware that he had seen her the day before, correct?
A. I don't have records of that I reviewed.
Q. After being discharged to hospice she was at the hospice, do you know did she go to another facility or did she go to a hospice house?
A. It says she was discharged to Seasons Hospice,

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that is what I know.
Q. She was at Seasons Hospice for another nine days?
A. Correct.
Q. So all and all it was more than two weeks after she left normal from Hollywood Hills that she expired; is that correct?
A. Well, if you read above in my assessment going through her records she was on a standing order Tylenol with codeine given orally three times a day. The last dosage according to my records she was given it at 8:00 a.m. in the morning. She was transported and taken to Memorial at 8:24 in the morning. So I don't know that I can trust that temperature wasn't affected by the dose of Tylenol that she just received?
Q. You don't know that you can trust that her temperature wasn't affected by the Tylenol? The opposite could be true also, Doctor, right? You don't know that the Tylenol had any affect one way or the other on her temperature? You don't know?
A. What's documented as her temperature, is a temperature that I guess, was within range of temperature, that's how Tylenol is supposed to work, it's not in the heat stroke range. So she wasn't at the point where she couldn't thermo regulate. But her temperature could have been elevated and then moderated by the Tylenol she was given.

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The numbers that we see in her first reading in the hospital is lowered by the Tylenol and not -- how she was experiencing or how high her temperature was in the facility.

Q. Doctor, anything could have been. I mean she could have had a temperature below 98.6, right, she could have? You don't know. What you know is she got to the hospital and it was normal; isn't that true.

A. What I know is she was given Tylenol before going to the hospital and her temperature appeared normal.

Q. And you don't know that she had a temperature any time before then, you are just speculating?

A. Before I know was in a facility that was a hot environment, that's what I know.

Q. Okay, but you don't know whether she had an elevated temperature or not, do you, Doctor?

A. I know she was given a medication that would lower her temperature. And the temperature reading after that was within normal range.

Q. I'll move on. You mentioned baseline and you said the patient never returned to baseline. Can you tell me specifically what are the fundamental factors in activities of daily living, some other measure that you say, this is what this resident could previously do, that she could no longer do based upon environmental heat exposure. Can you

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list those out for me, Doctor?

A. Well, each individual is different. In this case she was in a nursing home, she was not on hospice care. Hospice care is end stage care, meaning that there is no more medical treatment for you, there is nothing we can do, we keep you comfortable until you die.

So that's not returning to where she was when she was in the nursing home facility being cared for. That is different in my opinion. So in my opinion she did not return to baseline subsequent to being in this environment.

Q. So if somebody went into a hospital with a normal, they had a terminal illness, they go into the hospital, all their vitals are normal. They have a course of a hospital stay, that terminal illness is progressing, and they get discharged, that means they didn't get back to baseline because they went into hospice, that disqualifies you from returning to baseline?

A. Yeah, because that is not your baseline. Your baseline is how you were before you went in the hospital, which is not on hospice.

Q. Other than being on hospice, that's one, can you give me anything else that her activities of daily living, her ability to do anything had declined? Can you give me specifics, Doctor? You're just saying, oh, she didn't return to baseline. She went into hospice and she died.

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Somebody who had a terminal illness died.

A. Well, she couldn't have gone back to baseline, she had multi -- pneumonia and a mild infection in her kidneys. So she couldn't have gone back to baseline if she wanted to. She went into the hospital without those things, because as you said, physically she was normal when she went in the hospital. She developed along the course afterwards and then she declined and went to hospice. So there is no return to baseline at any point in time.

Q. And, again, you can't say with any reasonable degree of medical certainty or probability that this patient would have lived longer if she hadn't been exposed to whatever the temperature was in Hollywood Hills or not. You just can't say that one way or the other, can you?

A. I believe that the exposure to the hot environment and not being removed affected her and led to her death.

Q. I don't think you answered my question. I just want to know, yes or no, can you say with a reasonable degree of medical certainty, that this patient would have lived longer but for the fact that she was in Hollywood Hills and ended up being evacuated to the hospital with normal vitals?

A. She may have.

Q. She may have died, she may not have died, you don't know, true?

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A. She may have.

Q. She may have what?

A. She may have died or she may not have.

Q. You don't know, correct? Doctor, correct?

A. Correct.

Q. Let's go to Resident No. 9. Now this is a resident that was evacuated to the hospital on September 13th, correct?

A. That's correct.

Q. She had a long standing, chronic, cardiac problem and was hypertensive; is that correct?

A. That's correct.

Q. Do you know what her medications were that she was on to control her hypertension?

A. I don't know specifically what medications she was on.

Q. Do you know if she received her morning medications on the day of the evacuation?

A. I don't specifically recall knowing that. I'd have to look at the records again.

Q. And this patient ultimately -- do we know the deposition number?

THE COURT: It is No. 26.

MR. SMITH: Judge, I got a little discombobulated here.

THE COURT: Why don't we take a five minute break.
MR. SMITH: That would be great.
(A brief recess.)
THE COURT: We are back on the record.
BY MR. SMITH:
Q. I think we were talking about Resident No. 9. And am I correct this was a 96 year old resident?
A. My records have her as 94.
Q. Give or take, 94 or 96?
A. 94 or 96.
Q. I think where we were, she had chronic hypertension and chronic cardiac; is that fair?
A. Yes, that's fair.
Q. When she arrived at the hospital her vitals were not either elevated temperature or any other specific indication for heat stroke or heat exhaustion; is that correct?
A. The only thing was maybe points to soft side dehydration that was the only thing that was abnormal. The initial blood pressures were within normal range. But then she had a drop down lower an hour later. They gave her some something to stabilize. Essentially normal, yes. They suspected a urinary tract infection and yeast and urinalysis --
Q. That was a long answer. I was simply asking the

question when she arrived at the hospital her vitals did not indicate elevated temperature or any specific indication of heat stroke; is that correct, or heat exhaustion?
MR. MENTON: Your Honor, he just answered this question.
MR. SMITH: Well, he packed a lot into an answer that was pretty simple and a different time to answer.
MR. MENTON: He said essentially correct and explained his answer and he is allowed to elaborate.
THE COURT: I'm going to overrule, move on.
MR. SMITH: Did you say you're overruling, move on or I'm sorry, I didn't understand?
THE COURT: You made your point. I'm overruling the objection, but move on.
MR. SMITH: Thank you.
BY MR. SMITH:
Q. And this resident when arriving at the hospital they did what is called troponin level, correct, they took is it an enzyme test of a heart enzyme?
A. It's an enzyme, yes, an enzyme that is used assess heart function.
Q. And when your troponin level was normal then that means you're not having a MI, myocardial infarction, correct?
A. Typically troponin are done in a series so you can

monitor over time how they change. An individual reading can read normal, subsequent ones you do at intervals at either two or three or six hours can show a change. So it's not just assessing the one reading, it's looking at a series of readings over time.
Q. There was no reading that you saw with respect to troponin levels that indicated anything abnormal?
A. There were no subsequent troponin level readings to interpret at all, just the first.
Q. So would you say the hospital didn't take enough sufficient troponin levels to make a determination one way or the other, they dropped the ball on that?
A. I stated the fact there was only one troponin level documented.
Q. The cardiologist that worked in the emergency room to determine whether or not somebody is in an MI in addition to taking an EKG will sometimes take a troponin level and say, let me see what the troponin is, that's a check are you having an MI, isn't it?
MR. MENTON: Your Honor, this is outside this witness's area of expertise talking about what emergency room or cardiologist did.
MR. SMITH: He offered --
THE COURT: I'm going to overrule, you may answer the question.

THE WITNESS: Sometimes they do that, I guess. They may follow it up later on, they may not. They look at the patient and assess what is going on with the patient.
BY MR. SMITH:
Q. So what we know as far as tests that the hospital took things look normal when she arrived at the hospital; is that right?
A. 8:07 when the test at 8:07 was yes she was normal.
Q. Would it be fair to say that during her hospital stay she experienced problems with the hospital being able to control blood pressure?
A. Yes.
Q. Are you familiar with the term transfer trauma?
A. I can infer what the term means.
Q. The term to refer to the stress and strain that evacuating somebody from a nursing home for example can cause on that individual, correct?
A. Correct.
Q. As far as this resident would you agree that she could have been suffering from some transfer trauma?
A. She could have.
Q. And she could have had elevated stress that also resulted in a change in mental status; is that correct, some delirium?

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A. One could interpret that as that, correct, but change in mental status being her heart attack that she is sustaining at that time. Some people when they have a heart attack have troubles talking and acting like you are mentally capable going through a heart attack. Blood pressure can be erratic when you are going through a heart attack.

Q. This patient after being in the hospital had a cardiac rupture more than well a week later, correct, after the evacuation?

A. Yes, she died on the 20th.

Q. And your cause of death, immediate cause is a rupture acute MI myocardial infarction; is that right?

A. Correct.

Q. Then you said a contributory cause was the environmental heat exposure?

A. Correct.

Q. Did you include contributory cause of transfer stress from being evacuated from her home?

A. No, because the evacuation was because of the environmental heat exposure. That's the reason for the evacuation, thus it's going back to the beginning.

If I may for a moment. Clinicians like to when they deal with death certificates put the end results or something that happened along the way as the cause. But

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that isn't always the cause, you need to go back to the reason why they went in there in the first place. The reason for her being there in the first place is because where she was before was not safe because of the heat exposure. So that is the reason why evacuation happened and she sustained whether it be stress because of the heat exposure or stress in transfer trauma, precipitated her to having an MI initially and then a week later having another MI.

Q. Doctor, with respect to this patient, you're not able to say within a reasonable degree of medical probability or certainty that this patient wouldn't have experienced an MI and a ruptured heart if she had stayed or if she went to a different facility. You just don't know. You're just speculating, aren't you? You don't know whether, if she was never exposed to whatever the temperature was at Hollywood Hills she still could have had an acute MI, correct. People have them, 96 year old people have heart attacks, don't they?

A. That's true, but she lived to 94 and didn't have one up until being exposed to the hot environment and being evacuated.

Q. She lived up till that time. Did you do a thorough check to see if she had ever had an MI, or are you just volunteering that as a surmise?

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A. Short of the acute MI -- I didn't see evidence of old fibrosis, otherwise I would have noted it in my report.

Q. And you can't say for certain whether she would have, whether it was her first or subsequent, you can't say within a reasonable degree of medical probability that she would have had an MI regardless of whether she was at Hollywood Hills or not? She had a chronic long term heart condition, didn't she?

A. She had hypertension like hundreds of thousands of people do have.

Q. And that puts you at risk for a having a myocardial infraction, doesn't it?

A. Yes, it can.

Q. And you don't have any way to say whether or not it would have happened regardless of environmental heat exposure, do you?

A. I can't do summation of things that may or may not happen. I can go by the facts and what actually happened. So in interpreting exactly what comes in and the circumstances of what happened, and my assessment of her heart, this is my conclusion.

Q. My final word on this is but for the fact, is it your opinion that, but for the fact you can say within a reasonable degree of medical probabilty and certainty that but for the exposure to whatever the condition was at the

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time she was exposed, that she would not have had this heart attack?

MR. MENTON: Objection, asked and answered.

THE COURT: Overruled.

BY MR. SMITH:

Q. Can you say that?

A. The fact is that she was removed from an hot environment. Subsequently proximate to that removal she had a myocardial infarction. I can't separate those facts. Those are facts that happened. So I have to include in my decision making as to what the cause and manner of death what actually happened to her.

Q. You're not able to answer my question?

A. That is how I'm answering your question.

Q. Let's take a look at Resident No. 12. This patient was 90 years old, correct?

A. Correct?

Q. She was hypertensive with atherosclerotic cardiovascular disease; is that correct?

A. Yes, very good.

Q. Are you aware that in July of 2017 she had been placed on hospice with a prognosis of six months or less to live?

A. I don't know that my report reflects that, familiar with that.

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Q. I'll just direct your attention to Bates stamped 0012373 it's part of the medical record, did you have a chance?

THE COURT: What page was that?

MR. MENTON: The Doctor has the book.

THE WITNESS: Oh, 12373, yeah I do remember that.

BY MR. SMITH:

Q. At that time hospice had found that Dr. Spira (phonetic) that it's my medical judgment the patient is terminally ill and more likely than not have a prognosis of six months or less to run it's expected course, correct?

A. That's correct what's written there.

Q. And the resident didn't expire until October 9th, 2017; is that correct?

A. That is correct.

Q. When she first arrived at the hospital, her temperature was 99.3 which would be within the range of normal; is that correct?

A. If that was an oral temperatures, yes, that is correct. Half an hour later they did a rectal temperature of 100.2.

Q. And the 100.2 may be just above normal, but it's not by any means a heat stroke temperature, correct?

A. Not in the range of heat stroke, no, it is not.

Q. And it's really not in the range of being an

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abnormal temperature --

A. -- abnormal, it's not normal 100.2 degrees.

Q. Do you know what her temperature was on the day before?

A. According to what I see here, the last recorded temperature on September 12th entry at 6:39 p.m. oh, that's vital signs, September 12th during the evening shift, I don't know the time it was recorded at 96.

Q. As to the time I'll direct your attention to Bates 0013358 which is a scanned copy of a Memorial record or the nursing home records that gives the time of that temperature and that would have been on the night shift after 10:45 p.m.

A. It gives a time range of 10:45 p.m. to 7:15 a.m. I do not know what time that temperature was taken. In that range of hours, several hours the shift.

Q. The hospital when they assess the patient at the hospital, the hospital treated the patient with a broad range antibiotic, obviously thinking there could be some infection; is that fair?

A. She had an elevated temperature and they thought she might have or that's one of the things they do when they see an elevated temperature, without having a blood culture to confirm the actual infection. Of note when you look at her lab results, she had an elevated white blood cell count without neutrophilia. She had elevated enzymes and elevated

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lactic acid. The assessment they were treating her for elevated body temperature, dehydration and systemic inflammatory response. It did not say she had an infection.

Q. But the fact they gave her a broad spectrum antibiotic would be indicative of a course of treatment for suspected infection?

A. As a generality, yes, could be.

Q. As far as her course of treatment in the hospital, did she have some hospital acquired bacteria, staphylococcus, I'll mangle that word.

A. Hominis, H-O-M-I-N-I-S.

Q. She had several bacteria. But she had some bacteria during the time she was in her course of treatment at the hospital and it looks like she may have developed those infections in the hospital, correct?

A. During the hospitalization bacteria was identified, more than one bacteria identified in her system.

Q. And there is no way to know whether she acquired them or those infections, bacteria in house or had them when she arrived? You just don't know?

A. I can't say specifically, no.

Q. And in your autopsy you said vitreous electrolytes found but they were not contributory to her cause of death and manner of death?

A. Yes, not a resident at the time I determined as

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far away as when she went in the hospital.

Q. Long time until October 9th, correct?

A. Yes.

Q. Would it be fair to say that you cannot state with any degree of medical certainty whether heat affected her underlying condition, whether she would have lived longer or not? You don't know; is that true?

A. Again, I'm going to answer that statement on every case. She was in a room where an individual was found dead and had a rectal temperature of 105 hours after she was found dead. She was exposed to elevated heat prior to being removed from that room. Subsequent to that she doesn't return to what her baseline was known to be and she died. There was no intervening stay at a nursing facility where went back to being normal. She declined from that point onward and died.

Q. Well, let's talk about baseline. We went through that. She had been admitted to hospice, correct. She was discharged back to hospice?

A. After the hospital, yes.

Q. So her baseline was terminal, six months or less. She was discharged to hospice still terminal, six months or less, correct?

A. It's not as simple as that. Her family requested a DNR so they did nothing for her in the hospital, they

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discharged her to go hospice. But, again, I know she was in a room that was hot and I can't ignore that fact. After she was in a room that was hot is when she had a downward spiral.

Q. You don't know, she could have had a downward spiral from the fact she was terminal with six months or less to live; isn't that true?

A. She didn't have that downward spiral starting the day before, she was normal the day before.

Q. She was normal the day she got there essentially, wasn't she?

A. No, she had a temperature of 100.2, it wasn't normal.

Q. She had an oral temperature of 98.6 or 99.1 whatever it was, and the maximum temperature was 100.2, correct?

A. That's recorded in the records, yes.

Q. Let's go to Resident No. 1.

THE COURT: I have binder II.

MR. SMITH: I'm sorry.

BY MR. SMITH:

Q. As far as preexisting conditions, this resident was 84 years old, correct?

A. That is correct.

Q. And had hypertension, congestive heart failure,

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COPD, atrial fibrillation, type II diabetes?

A. Yes.

Q. She was obese, correct, 220 some pounds?

A. Yes.

Q. You mentioned she had an enlarged heart and her heart was exceptionally large?

A. Yes, 800 grams.

Q. Put that in the range of normal?

A. About a woman of her height -- most women's height weight more towards what normal size would be, I would say 350 so a little more two times should be for her, more than two and a half times.

Q. So those are things we would agree this was a very frail, sick woman with a chronic heart condition; is that fair?

A. That's fair.

Q. She went to the hospital with a temperature of 107.5, correct?

A. That's correct.

Q. And they treated her at the hospital and her temperature came down to normal, correct?

A. I don't necessarily know it came down to normal, I know that her temperature -- well, an 105.3, I'm not certain, later on in her care before she died her temperature subsequent readings.

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Q. This is a patient that the family made a decision they did not want the patient to receive any further heroic efforts and decided they would place a DNR?

A. DNR is Do No Resuscitate, if she was coded they would not resuscitate.

Q. Beyond just putting in a DNR, she was placed on palliative care and put on a morphine drip; is that right?

A. I don't know that she was given morphine. I did not find that in toxicology report. I wanted to know if surrogate put withdraw care so if they were doing any other care for her at that time.

Q. Her vitreous electrolytes did not indicate dehydration; is that correct?

A. They were not contributory, that is correct.

Q. Going back to my question about the morphine drip, I had asked you earlier if her body temperature continued to go down. I will ask you again, did her body temperature once she was in the hospital continue to go down?

A. That's what they wrote, yes.

Q. The hospital was informed that the health care surrogate requested withdrawal of care because No. 1 had already had a DNR in the file; isn't that right?

A. That is correct.

Q. She expired after about eight hours; is that correct?

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A. Yes, time of death was like 3:00 o'clock in the afternoon I want to say. No, 4:20, oh we got the call at 3:20 p.m.

Q. Were you given any kind of information by the police department that Resident No. 1 had actually been taken from her room and placed in front of one of the spot coolers in the facility?

A. I believe they had reported that.

Q. Were you aware that her temperature reading on the night shift at the Hollywood Hills nursing home on the 12th was 97 degrees?

A. That's what is recorded in the recorded, yes.

Q. And something happened between 10:45 p.m. when her temperature was reported at 97 and 3:00 a.m. when it spiked up to 107?

A. That's correct.

Q. We know that the Hollywood Hills staff had her actually in the hallway sitting right there with the nurse at the nurses' station?

A. I don't know what time that occurred. I don't know the documented timing of that. I know they reported that occurred, yes. There is no documented timing of when she was sitting in front of the spot cooler at what hour of time. I don't think that is recorded anywhere.

Q. I want to go back to the morphine drip. I did find

that reference, it's Bates stamped 0006302 and Memorial Regional records they placed her on a morphine drip, correct?

A. That is correct.

Q. At 9:10 a.m.?

A. That's correct.

Q. Would morphine have an affect on somebody with an enlarged heart?

A. In what capacity?

Q. Could it hasten her death, could it be eusthenia type of situation?

A. I don't know exactly what you mean. Morphine can be used to moderate pain. Even those it says she was given a morphine drip, our toxicology performed on hospital blood doesn't show she had morphine. I mean this blood may have been before they started a morphine drip and that's why I don't see it. So was she given morphine after the blood was drawn, sure that happens. I don't know that would reverse all the things they found when she was initially assessed because upon arrival, her temperature had cooled to 105, but she had elevated troponin of .2, respiratory -- and elevated lactic acid levels. So she had multi organ failure by those laboratory values at that time. I don't know that anything could be reversed at that point. Even if her temperature goes down, reversible multi organ failure likely would not

have that occurred.

Q. Are you able to say within a reasonable degree of medical certainty that the patient would not have recovered if there had not been a DNR and the patient was placed on palliative care?

A. I really can't say what would happen, all I know is she died eight hours after committed in that state with that temperature.

Q. Let's go to Patient No. 2 he was 92 years old, correct?

A. Yes.

Q. Can you tell me what her preexisting medical conditions were?

A. Chronic pulmonary disease, hypertension, peripheral cardiovascular disease, dysphagia, nutritional deficiency and ambulatory dysfunction.

Q. This patient was a patient that died at Hollywood Hills; is that correct?

A. That is correct.

Q. Do you have the temperature readings reported on this patient through 9/12 and 9/13?

A. My records review says September 1st and 13th at 1:42 a.m. temperature ranging between 97 and 98.2.

Q. In that range the last temperature is 1:42 a.m. that was taken was 97 degrees, correct?

A. If that's what the records summarize, I don't know exactly.

Q. I'll help you out by referring to page 0008630 the top line?

A. Yes, 97 degrees.

THE COURT: What date was that?

THE WITNESS: That was on the 13th at 1:42 a.m.

BY MR. SMITH:

Q. So the staff were taking temperatures at least at 1:42 a.m. in the morning, correct?

A. A temperature was taken on this patient at 1:42 a.m.

Q. And EMS there is some confusion about timeline. I want to know, I thought I heard you say something that this patient that the EMS first arrived and saw the patient at something like 7:30 in the morning?

A. This patient was dead and time of death reported 6:55 a.m.

Q. Where did that come from that time of death?

A. That was likely reported to us by the individual who called in. It states in the investigative report on page 8550 September 13th the police department contact the Broward County Medical Examiner's Office to report death of a white male.

Q. What you are reading from is your medical

investigative report and you're saying he got a phone call at that time?

A. The phone call was documented that the time pronounced at 6:59 a.m. per Fire Rescue.

Q. Now I want you to look at Bates 8523 which is run sheet for EMS and it shows, first of all the run sheet from EMS for this resident shows that EMS was dispatched at 6:45, correct?

A. Correct.

Q. Was en route at 6:46, correct?

A. That is correct.

Q. It says there is patient contact at 7:30, correct?

A. That's correct.

Q. Then if you go to the next page, you will see that this was not an EMS unit, and I think we will hear from Mr. Sidney Duress (phonetic) the EMS firefighter that he was actually not the person the EMS that responded with respect to this call reflected on the second page. R5 was not the original unit that triaged this patient but was later assigned to complete the report.

MR. MENTON: Just to correct the confusion it wasn't Lieutenant Duress filled out report.

BY MR. SMITH:

Q. We will hear from the firefighter who actually filled out the report. But if you read the next page, the

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person who filled this out is not the person that actually responded to the call in the facility, correct?
A. That's the way this reads.
Q. So that time of death, if this is not the person that responded, we don't know if that time of death is accurate, do we?
A. Which time of death are you referring to the 7:30 that he says?
Q. The 6:59 a.m.
A. Well, at 6:59 a.m. it was reported to our office.
Q. Okay, we will clear it up with the firefighter person.
A. We have other records of time of death. If you're interpreting written here, this person encountered the person at 7:30. But it says here time of death pronounced on scene as part of MCI. I don't know what that refers to, but that's before encountered the patient.
Q. We will clear it up with the firefighter. If you go back to 0008523 am I correct the assessment of this patient at least when this person responded and writes the report for EMS said the patient's skin temperature was cold, correct?
A. That is what they wrote.
Q. That was at least based on the run report itself, that was some time at least five hours prior to the core

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body temperature readings that your medical investigator found?
A. Correct.
Q. The body being cold to touch?
A. Yeah, that was before.
Q. Now let's go I believe it is our last resident, let's take a look at Resident No. 2. Can you tell me this resident's preexisting medical conditions?
A. A 78 year old woman had including but not limited to preexisting transient -- accident, dementia, dysphagia and dysfunction.
Q. Do you know what was the last body temperature recorded before the EMS arrived on scene?
A. According to the records at around 7:11 p.m. following administration of Tylenol, her temperature was 98.8.
Q. You're saying at 7:00 p.m. If you go to Bates number 0006767 is there an entry that is dated 9/13/2017 and it shows that entry was made at 4:42 a.m. There were vitals taken before 4:42 she made the entry at 4:42 a.m.
A. The entry at 4:42 a.m.
Q. The temperature was 101.6?
A. Yes. I don't what time that is reported to be.
Q. And the note was made it says based upon her condition at that time basically is saying, call placed to

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911 for respiratory distress. Resident transferred to Memorial Regional and that would have been after the transfer to Memorial Regional.
MR. MENTON: If you could give me a second I don't have that, are you talking about the late entries and the progress notes?
MR. SMITH: It's not a late entry.
THE COURT: Page 6767.
MR. MENTON: What patient?
THE COURT: Patient No. 2.
BY MR. SMITH:
Q. Doctor, are you familiar enough with charting at nursing homes to know whether a resident was in distress, resident they take the vitals and do everything and call 911, that they make the entry after the commotion has calmed down and they sit down and chart, would that be common practice?
A. I can't speak to what is common practice in that environment.
Q. I didn't know if you were aware?
A. I can't speak to no indication as to what that temperature 101.6 occurred because this is a handwritten note put in there. Even though it is recorded later than when it occurred. The timing as to when a temperature was taken could have been put in the handwritten note, but it

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was not. I don't know when she was 101.6. Says the last time they took temperature at 7:11 on the evening of the 12th and she was 108.6. I don't know how much time transpired between 98.8 to 108.6. I know they called before 1:00 in the morning to transport her. I don't know proximate to that call.
Q. Let me show you Bates number 6778 as far as another temperature and vitals that were taken. It shows the night shift again on the 12th on 6778 and vital records show on the night shift of September 12th sometime after 10:45 p.m. the temperature was taken and shown to be at about 97, correct?
A. Again, this time range says 10:45 p.m. to 7:15 a.m. so I don't know what time her body temperature was 97. At some point in time it went up to 101.6 and EMS was called at 4:00 o'clock in the morning. That's what is documented.
Q. But at least as far as sometime during that shift 10:45 to 7:15 temperature and vitals were taken and temperature was 97 degrees, correct.
A. That's what is documented, yes.
MR. SMITH: Judge, I know we had a break a short time ago, can I ask for just five minutes and then I'll wrap up. I just want to check my notes.
THE COURT: Yes.
(A brief recess.)

THE COURT: Mr. Smith.
MR. SMITH: Your Honor, I wanted to say thank you, Dr. Osborne, I have no further questions.
THE COURT: Don't get up.
REDIRECT EXAMINATION
BY MR. MENTON:
Q. Dr. Osborne, just a couple of questions on follow-up. First of all let's start with Bates 6767 this is an entry that purports to have been made at 4:42 a.m. and I think you reference this earlier. This was a patient who was actually transported by EMS prior 4:42; is that right?
A. Correct.
MR. SMITH: On redirect I'm just going to object to leading questions.
THE COURT: Sustained.
MR. MENTON: I'm just trying to speed it up, your Honor.
BY MR. MENTON:
Q. If we go back to the run report Bates stamped page 6673 when was this patient picked up by EMS?
A. Patient contact is documented at 4:07 a.m. and hospital arrival at 4:28 a.m.
Q. What did EMS record the patient's temperature at when they picked her up at 4:01 a.m.?
A. Tympanic temperature of 107.5.

Q. Did you have any way to reconcile the temperature that you were asked about on 6767 at 4:42 a.m. by the facility of 101.6?
A. As I said earlier, I don't know when she was 101.6. I know it had to fall somewhere after the last documented temperature of, sorry, 97 and that was taken somewhere in between 10:45 p.m. and 7:15 a.m. I know wasn't that long because she wasn't there at 7:15 a.m. It happened before 4:00 o'clock so between 10:45 p.m. and 4:00 o'clock a temperature was taken that was 101.6. I don't know when that was.
Q. With respect to the EMS report you were asked about regarding Patient No. 6, did you actually speak with any of the EMS personnel regarding the report and the report of what time they found that patient?
A. Did I personally speak to any of them, no.
Q. What would you rely upon, what were you looking at for purposes of the estimated time of death?
A. On every individual when someone calls in a report of death, the first thing the investigators ask is what was the pronouncement time. So if that is what is proffered to investigator in the initial report that is the time he documents as the pronouncement time.
Q. Regarding the temperature for Patient No. 6 that was reported at 1:42 a.m. do you know, you didn't speak with

anybody from the Hollywood Hills facility staff to confirm that those temperatures were actually taken at that time, did you?
A. I did not speak to anyone at Hollywood Hills to corroborate what is documented.
Q. With respect to Patient No. 1 you were asked a number of questions about some of the comorbidities she had including an enlarged heart. With an enlarged heart are any of the comorbidities that Mr. Smith asked you about cause the patient to have a temperature of 107.5?
A. The underlying comorbidities they would not elevate her temperature by themselves.
Q. For a patient who had an enlarged heart and those comorbidities, what would be the consequences of being exposed to heat conditions?
A. They would worsen her comorbidities.
Q. Is there any way to quantify how much they would exacerbate her comorbidities?
A. There is no correlation I can draw. I just know it is a known fact that individuals with those comorbidities of heart disease, COPD, even diabetes elevated temperatures are things they can't tolerate well. It will worsen their underlying medical conditions.
Q. Would it be safe to have other patients with comorbidities in an environment that led to Patient No. 1

having a temperature of 107.5?
A. No, it is not safe to have them in that environment.
Q. Why is that?
MR. SMITH: Your Honor, I was going to let it go, but I'm going to object as beyond the scope safe environment.
THE COURT: Sustained.
BY MR. MENTON:
Q. Mr. Smith asked you some questions about Patient No. 1 and her lowering her temperature. Can you describe what you understood some of the steps that were taken to lower her temperature?
A. She was reported to be given intravenous solution that is called saline as well as packing her body with ice packs.
Q. To your knowledge and professional experience are you aware of any patients who have survived core body temperatures of 107.5?
MR. SMITH: Objection, lack of predicate. He said he wasn't aware of --
MR. MENTON: It's a different question.
THE COURT: That's beyond the scope of cross, sustained.
BY MR. MENTON:

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Q. You were asked some questions with respect to Patient No. 9 and some the infections that she was diagnosed with while she was in the hospital. Does exposure to heat related conditions introduce susceptibility to that bacterial infection or does it increase infections that may exist?

A. I cannot specifically say that I know that it does or does not.

Q. With respect to Patient No. 9, you were asked some questions, give me a second let me find that page. Patient No. 10 Mr. Smith several times asked you whether she was normal at the time that she was taken out of the facility. I think you addressed it earlier in your direct testimony, but what was her, did she have any conditions that indicated exposure to heat such as --

MR. SMITH: Objection, leading.

BY MR. MENTON:

Q. In reviewing your report did you indicate whether any of those conditions that you listed in your report are reflective of having been exposed to heat conditions?

A. For No. 10 again, the underlying medical conditions or her clinical assessment when she was transported?

Q. What you found as part of your autopsy findings based upon your review of the medical records as it relates

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to some of her different levels as recorded in your report?

A. I don't know I fully understand the question, I'm sorry.

Q. Were her electrolytes normal?

A. The electrolytes that I did I found at autopsy were non-contributory. The clinical record indicates she had elevated potassium when she was admitted. They admitted her and were treating her for dehydration, electrolyte imbalances and kakeksia.

Q. What is the treatment you reviewed from the hospital medical records indicate as it relates to some of the steps they were taking? And were they indicative they were treating her only for infections?

A. From my review they treated her for the electrolyte imbalances. She happened to have blood culture that was positive for staphylococcus capitis.

Q. Doctor, I'm looking at your report Bates stamped page 10670 page seven of your report where you talk about some of the clinical laboratory tests. What do those clinical laboratory tests reveal and are they consistent with exposure to heat conditions?

A. It doesn't speak specifically to heat exposure. Hyperkinemia that doesn't necessarily speak to dehydration. She was quickly assessed to be dehydrated. That's what she was treated for. Again, like a few other individuals she

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had elevated white count without neutrophilia which doesn't necessarily mean she was actively having an infection, just means she has a lot of white cells circulating in her blood.

Q. Then would a patient with a condition, you were asked some questions about whether Patient No. 10 was terminally ill. Would the conditions in this facility have been a safe environment for a terminally ill patient?

MR. SMITH: Object, beyond the scope if a safe environment.

THE COURT: Your response?

MR. MENTON: Judge, he opened the door I think by raising these questions about being terminally ill. If at the end of the day, you know I think that's part of what we are trying to say here. These patients who are frail and had comorbidities were they in an environment that they couldn't sustain their lives.

It's not just the fact they had comorbidities and they were sick, were they in an environment that contributed to their demise. I think that is what I'm trying to get to.

THE COURT: I think you can ask about a safe environment and that's an ultimate questions of fact that I'm going to have to determine and he wasn't asked on cross.

BY MR. MENTON:

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Q. Back to your broken leg example a terminally ill patient who is in an environment that had extreme heat, would that contribute to hastening their decline?

A. Yes.

Q. Explain to the Judge how and why.

A. Depending on what conditions make them terminally ill, your body has to do extra work to maintain your whatever your normal body temperature is. That puts a strain and a stress on your body and it complicates and worsens whatever is going on with you originally. If your heart is enlarged, then you have to do extra work to maintain a body temperature that is normal for your heart to pump. That is extra strain you are not used to because of the external thing you can't control.

Q. Likewise with respect to Patient No. 9 and the conditions that Mr. Smith was asking you about, would that patient being exposed to a hot environment would that contribute to complications of her conditions?

A. I believe it would, yes.

Q. How and why

A. For the very reason that I explained. She is already compromised by her underlying disease. She cannot remove herself from the environment that is actually causing her additional stress on her body. And being exposed to high temperatures is a stress. Your body has to work

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against that high temperature to maintain it's own normal functioning.

Q. Some of the earlier questions that Mr. Smith asked you about the guidelines. Do the guidelines in here to your knowledge provide that in a situation of environmental hypothermia that it cannot be classified as a homicide?

A. There is nothing that says it cannot. The guidelines also now speak to situations where you have more than one individual being in the same environment or injurious factors. Those examples speak to a single individual experiencing a single thing.

Q. So with respect to for example guideline number 38 about a death for infants and young children who die after being placed in a potentially hostile environment it says they may be classified as an accident. Are there instances when those cases are classified as homicide?

A. Yes, when the circumstance point to or in the opinion of the person classifying it that there is enough information that you would bring it to that point.

Q. The same language has been repeated in guideline number 34 regarding deaths from environmental hypothermia. Is it appropriate to classify those deaths as homicide even if there is no direct intent to kill or hurt someone?

A. Intent is not a prerequisite for our determination of anything being a homicide.

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Q. An you were aware of this guideline at the time that you made you conclusions in this case?

A. Yes.

Q. You could have classified these cases as an accidental death with what you reached based upon your review and analysis?

A. Correct. This is an event where individuals were under the same conditions and each subsequently died within a reasonably short period of time being affected by the same factor. I can't negate that more than one person died at this time because of being in that environment.

Q. How does that then relate to whether or not you classified these as accidents or homicides?

A. Then I have to assess whether or not what could have been done to mitigate the external factors because these people couldn't control the external factors themselves. They are debilitated, old and dependent upon someone else.

So, (a) was there an acknowledgement of there being a hazardous environment. When you're talking about temperatures, everyone can assess whether it is too hot or not. Is that a problem for you to continue functioning. On top of that the providers for the ill, debilitated individuals, hyper vigilance needed to be in play because they sometimes can't tell you they are too hot. They can't

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verbalize, they can't emulate what way it's too hot. They can't read the situation. So they are dependent upon you to pick up on clues or monitor the changes that were going on with them and see how the changes over time for reconsideration whether it's okay for them to stay where they are or do they need to be moved.

Q. Mr. Smith asked you a few questions about some of the patients and whether or not they showed signs of dehydration. Do you know whether any of these patients PEG tubes?

A. I believe one of mine had a PEG tube. One did have a PEG tube.

Q. Just for those of us what is a PEG tube?

A. A PEG tube is an acronym that stands for percutaneous endoscopic gastrostomy tube. They take a tube from the outside of the body that goes through the abdominal wall into the stomach and that's how you get fed. So you're not eating through your mouth, you're not swallowing. People that have swallowing problems they stop doing that because they don't want them to choke. So they fed them through PEG tubes. So someone has to put food in that for them to get food, they can't do it themselves.

Q. So patients who are on PEG tubes are they hydrated through PEG tubes?

A. Yes, and also an IV to hydrate without directly

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drinking water.

Q. So if you have an IV or you have a PEG tube, would that reduce your chances of signs of dehydration?

A. How you treat the hydration usually give people foods, unless there is another reason for them to be dehydration.

MR. MENTON: That's all the questions I have, thank you.

THE COURT: The parties having invoked the rules of sequestration. Meaning that after leaving here today you should not discuss the questions asked of you nor your testimony given with any other witnesses in this case until this case is concluded.

You obviously can discuss it with your attorneys. You should refrain from discussing specific questions and answers given to the folks coming in from homicide to insure they give us their honest recollection of the facts they remember without what questions might be asked.

THE WITNESS: Yes.

THE COURT: Thank you. Is there anything that we need to cover today before we go off the record?

MR. SMITH: Can we leave our boxes here?

THE COURT: Just don't leave anything valuables but I'm assuming the courtroom will be locked. All

right, let's go off the record.
(Thereupon the hearing concluded for the day.)

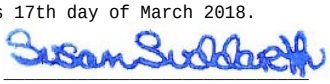
CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
COUNTY OF BROWARD

I, SUSAN SUDDARTH, a Court Reporter and Notary Public in and for the State of Florida at Large, DO HEREBY CERTIFY that I was authorized to and did stenographically report the proceedings in the above-styled cause before the Honorable MARY LI CREASY as ADMINISTRATIVE LAW JUDGE at the time and place as set forth; that the foregoing pages, numbered 1 to 195 inclusive, constitute a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

Dated this 17th day of March 2018.



Susan Suddarth - Court Reporter
Notary Public - State of Florida at Large
Commission #GG019907
Expires October 2, 2020

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Exhibit 6

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

vs. Case No. 17-5769

REHABILIATION CENTER AT HOLLYWOOD HILLS, LLC,

Respondent.

_____/

PROCEEDINGS HAD AND HELD BEFORE

THE HONORABLE

JUDGE MARY LI CREASY

MARCH 9, 2018

10:49 a.m. - 1:25 p.m.

REPORTED BY:

STEPHANIE ANEZ, COURT REPORTER

NOTARY PUBLIC, STATE OF FLORIDA

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(10:49 a.m.)

THE COURT: Today is March 9, 2018, we are here for the continuation of case 17-5769, Agency for Health Care Administration versus Rehabilitation Center in Hollywood Hills, LLC. My name is Mary Li Creasy, I'm the Administrative Law Judge presiding. Are there any preliminary matters for us to discuss before we take the next witness today?

MR. MENTON: No, Your Honor.

THE COURT: Mr. Menton, you want to call your next witness?

MR. MENTON: Yes, Your Honor. We would call, the agency would call Mr. Scott Crawford and Mr. Warren's going to handle the direct examination.

THE COURT: Thank you. Good morning, Mr. Crawford.

THE WITNESS: Good morning.

SCOTT CRAWFORD,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GABRIEL WARREN, ESQ.:

Q Mr. Crawford, Good morning.

A Morning.

Q Could you please state your name for the record?

A William Scott Crawford.

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Q And what's your occupation Mr. Crawford?
A Professional engineer.
Q Can you just briefly describe for us what a professional engineer does?
A Well I'm a design engineer. We do design for new buildings, building services design, HVAC, plumbing, fire, electrical.
Q By whom are you currently employed?
A I'm self-employed. I joined Frank Williams in 1990. On or about in '94 I became self-employed since '94.
Q And what's the name of your business, sir?
A Its Crawford Williams Engineering.
Q How many engineers do you employ at Crawford Williams Engineering?
A I have two other engineers beside myself.
Q You may have just touched on it, but can you briefly summarize your professional experience since college.
A Well I -- back up a little bit, my father had an air conditioning contracting business growing up and I worked in the field hanging duct work, preparing systems, things like that. Well I decided I needed -- I wanted to go to college, so instead of hanging duct work. So I went to a community college, got a two year

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associate degree, went to University of Florida got a Bachelor of Science in Mechanical Engineering. Then I went back and I worked in my father's business for nine years doing mechanical contracting and decided I wanted to do engineering full time, so I joined Frank Williams in 1990.
Q And what type of licensure or certification do you hold?
A Professional engineering.
Q What type of projects do you work on?
A We do a multitude of projects, but the last four or five years are mostly senior housing. Assisted living, skilled nursing. Since they released all the beds, the 3800 beds a couple of years ago, more skilled nursing.
Q Are most of those projects in Florida or out of the state?
A Most of them in Florida.
Q And do you work on particular systems within those projects?
A Yeah we manually do the mechanical HVAC and plumbing and fire. Most projects.
Q And just for the record what is HVAC?
A Heating, Ventilation, Air Conditioning, sorry.
Q You may get more questions like that. It's a lot of stuff probably obvious to you, but it may not be to the lawyers. And can you just briefly describe, elaborate a little bit further what your work on those projects entails? Those type of projects.

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A Well architects design the building to meet their space requirements and all the program requirements of the owner. And then he brings the building to us and we design the mechanical systems. So we determine the capacity air conditioning systems required. We determine the air distribution, the type of systems and we draw it up, and permit it and see it through construction.
Q At this time Judge, we offer Mr. Crawford as an expert in mechanical engineering in HVAC systems.
THE COURT: Any objection?
MR. SMITH: No objection.
THE COURT: All right. Mr. Crawford is so admitted as tenure. Recognized as tenured.
Q (MR. WARREN) Thank you Judge. Mr. Crawford, just to touch on one more issue, as part of your work on the senior living projects you just described, do you submit plans to the Agency for Health Care Administration?
A Yes. Every job pretty much.
Q Can you just describe your interaction with them?

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A Well plans of construction they have four offices. One in Miami, Tallahassee, Tampa now and Orlando. Depending on where the facility is, we have to go to a stage two review, which is like a preliminary design kind of review and we meet with them directly. And then the stage 3 is a final plans submission, where we send the plans in and get their comments back.
Q And how do those interactions involve the building code, fire department specifications, those types of things?
A Well its -- they have to comply. I mean that's part of the submission. Our plans have to be code compliant and they have to meet all requirements of facility guidelines and other publications they reference, like NFPA for building code.
Q Are you familiar with the Florida building code requirements regarding fire departments or nursing homes?
A Yes I am.
Q Can you briefly describe what those requirements are?
A Well you're saying fire compartments or they can be smoke compartments.
Q My apology. Thank you for bringing that up.

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A Most -- well I shouldn't say most. All nursing homes are designed with smoke compartments of limited size, so if a fire breaks out in one area it doesn't spread to another. So they have compartmentalized those and they put up smoke walls to prevent the spread of a fire and smoke from one to the other area.

Q And does your work on the projects you describe incorporate those building code requirements. You have to design around those?

A Yeah. Typically we try to stay within the smoke compartment. We don't try to cross smoke compartments too much because the duct work and things because you have to put fire smoke dampers between the compartments and they're more restrictive. So we typically design systems by compartment.

Q Okay. Let's jump right into this proceeding. How did you come to be involved in this case?

A I was referred by a former employee who's a professional engineer who was approached by someone and then they gave my name to you and Steve called me directly.

Q And what were you asked to do in this case?

A I was asked to analyze the building to determine --

Q By buildings you mean Rehabilitation Center Hollywood Hills?

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A Yeah I was asked to examine the building and to determine how they -- how do I say this. How they maintained the temperature inside the building after they lost the chiller.

Q And can you describe the documents that you've reviewed, the materials you've reviewed in preparation for this case?

A I was given James Williams deposition, I was given the crime scene photos. I was given a generator replacement plans. That was done in 2016. And I was given the coolant tower replacement plans.

THE COURT: I'm sorry sir, did you say coolant tower?

THE WITNESS: Yes ma'am.

Q (MR. WARREN) And lets just jump right in. Let me back up. Did you also do a site inspection of the facility?

A Yes I did.

Q And what are your primary conclusions in this case?

A Primary conclusions is they didn't have enough capacity. They lost a 125 ton chiller and they replaced it with 15 tons of portable air conditioners.

THE COURT: Can you repeat that please? They lost a 125 ton?

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THE WITNESS: Yes ma'am.

THE COURT: Chiller?

THE WITNESS: They lost a 125 ton chiller. And they replaced it with 15 tons of portable air conditioning. But that was on the total building. The buildings divided into the psyche portion and skilled nursing portion of the building. So I think on the skilled nursing side they replaced it with 9 tons. And if you prorate the area it's about 80 plus tons of air conditioning for the skilled nursing.

Q And did you form conclusions about the installation of use to the spot coolers at the facility?

A Yeah I determined that they weren't used correctly. One of the first questions that I asked Steve is where did reject the heat to. When you use a spot cooler you got a factory cooler that's cooling space, but also its rejecting heat. And it rejects more heat than it cools. So if you put one of those in a room, close the door it gets warmer not colder. So I asked where did they reject the heat to. And then when we visited the site we determined that they rejected it into the ceiling space, which was confined and not opened or ventilated in any way on the first floor. And then the second floor was more open. There was one smoke compartment that was actually vented. The other two weren't, but they had more air going in the second floor to drop the heat into.

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Q Let's break down those conclusions and talk a little more detail. Let's start with the first one. Your conclusions that Hollywood Hills didn't have enough load capacity. What is load capacity?

A It's the amount of refrigeration capacity required to maintain a subpoint temperature.

Q And what happens if a facility does not have appropriate load capacity?

A You can't maintain a subpoint. So for example if I design this room to maintain 75 degrees and I don't sufficient capacity it will never get to 75 degrees on a design day. So we're always designing for design day, which is the worst case day.

Q When you say worst case design day, what do you mean by those terms?

A Well Ashrae, which is the American Society for Heating, Air Conditioning and Refrigeration Engineers.

THE COURT: I'm sorry. Can you say it again?

THE WITNESS: Ashrae.

THE COURT: A-S-H.

THE WITNESS: A-S-H-R-A-E.

THE COURT: Okay.

THE WITNESS: They publish a manual, which has the design day conditions. So you design -- the design day occurs one percent of the time or less. So you take those conditions and you design the building, so they meet those conditions on that design day.

Q And what temperature do you typically use as a target when you calculate load capacity for buildings?

A Well typically its 50, I'm sorry 75 degrees Fahrenheit, 50 percent RH, relative humidity. It's an indoor design temperature.

Q And why do you use 75?

A Again that's what Ashrae says is to be a design temperature or a desired design temperature.

Q Do you typically or do you use 81 degrees in your calculations -- would you use 81?

A No, no. That's too warm. I mean when somebody's in an air conditioner space, if it was 81 degrees they wouldn't consider it to be comfortable.

Q Can you explain for us then how you calculate load capacity? What's involved in that?

A Well we do a takeoff of the building. We measure all the walls, windows, ceilings --

Q When you say measure those different things, what do you mean?

A Well either we do it on a plan or we do it

physically.

Q What are you measuring?

A Areas. Window areas. We take the orientation of the windows, the area of the windows, the walls, the roof type. And we input all that into a computer program, which we use a hourly analysis program by a carrier, which tells you the capacity required to meet the conditions because it uses the hour wire weather design data and it takes the worst day, it picks the worst day and says this is your worst day, this is how many times you need to meet the -- to maintain the set point on that day.

Q And you mentioned the carrier hourly analysis program. Is that the program that you use with the factors you just describe to calculate the load capacity of the buildings?

A It is. In this case we used it and we actually inputted the actual weather data that we got from the IFA site, which is six miles away. So we actually used the -- we inputted the actual weather data. It didn't pick the worst day, we just put in the actual weather data.

Q Okay. And then let's turn and talk about your load capacity calculations in this case.

THE COURT: Is there a math warning?

MR. WARREN: I'm sorry Judge?

THE COURT: Is there a math warning?

MR. WARREN: There is a heavy math warning.

THE WITNESS: I'll try not to --

MR. WARREN: And Judge I think you have the book up there and Counsel for your benefit this is deposition composite Exhibit 178. Mr. Crawford do you have a copy of that up there?

THE WITNESS: I do.

THE COURT: 178?

MR. WARREN: Yes ma'am.

THE COURT: All right. Thank you.

Q (MR. WARREN) Mr. Crawford, is Exhibit 178 your load capacity calculations in this case?

A Yeah it's a summary. We'd call it a load profile.

Q A load profile?

A Right.

Q Okay. And feel free to correct me if I get any terminology wrong.

A That's fine.

Q You talked about what temperature you normally use when designing your buildings. What temperature did you use as a baseline from your calculations in this case?

A We set out to determine what capacity we required to maintain 81 degrees in the space.

Q And how did you come to 81 degrees?

A That was the number that James Williams said it never exceeded in the space, in the facility.

Q And can you just briefly explain then how 81 degrees played into your calculations? Was that the maximum temperature?

A That was the indoor temperature set point that we used in the space, so. You can see its 80.7, 80.9. It varied slightly, but that was the indoor temperature setting.

Q And let's just talk about some of the factors and different assumptions that went into your calculations.

A Okay.

Q What areas of the building did your calculations account for?

A Well we only calculated the patient areas, what we consider patient areas. We didn't include physical therapy, we didn't include the admin, the kitchen, the dining room. All those common area spaces we didn't include. We included the patient's rooms, the nurses stations, corridors, anything that we saw in the photos that had spot coolers in them.

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Q And why did you limit your calculations to only patient areas?
A Well that was the only areas they actually added the spot coolers to. They didn't have the spot coolers in the other areas.
THE COURT: How do you know that?
THE WITNESS: Just from the photos. I've seen photos. And the deposition.
Q (MR. WARREN) And let's be a little bit more predicate and talk about your site inspection.
A Okay.
Q Were you a part of the site inspection on February 6th on the Hills facility?
A Yeah it was myself and Brent Gordon from my office went to the site.
Q And who's Brent Gordon and what does he do?
A He's an engineer that works for me. He's a mechanical engineer. Just passed his PE in October.
Q Can you describe for the Judge what the site inspection entailed? What'd you learn, what'd you see, what'd you measure?
A Well we went there to determine where the systems were, how many systems, the system type, the building instruction.
Q When you say the systems, what do you mean?

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A Well for example the air site systems in this building are all fan coils and there's a central chiller. And so they're trying to see if there was any other ancillary systems in addition to that, but all the patient rooms and common areas were off the chiller. So we went and found all the systems, most of them are above the ceiling. Had to pop a lot of ceiling tiles. There were two that were in closets and every patient room had its own fan coil unit. And then we also looked at the building construction. We looked at the wall, construction type, the windows, the roof. We tried to find insulation, we could between floors and ceiling. We're just trying to see what the building was constructed of. And it appeared that there were two different construction types. The far east and it's a little different construction type than the rest of the building, so that might have been an addition at some point, which is that square at the end down there.
Q Okay. And you mentioned you popped ceiling tiles. Can you explain what the purpose of that was and what you observed?
A Well we were two things; we were trying to find the systems, but we were also trying to decide if it was a ventilated space or not because the crime scene photos show those units being ducted to the ceiling. So

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you're trying to see if there was any path for that heat to escape the building. And so that's why we went and looked at all the ceilings to try to figure that out. We went in every smoke compartment and popped the ceiling tiles.
Q Is that on both the first and second floor?
A Yes.
Q Did you -- as far as this site inspection, did you also go into the adjacent psychiatric facility or was it just the nursing home?
A Just the skilled nursing, we didn't go in the psyche area.
Q And you mentioned something about an addition. Was that on the nursing home side?
A Yes.
Q And can you explain what you found there?
A Well it's a different construction type, so that was a little -- and they had central exhaust instead of middle exhaust in each room switched for the lights. It was a different system in terms of the way -- it was a flat roof with a metal pan. Exterior was different height, I mean you can tell it was not really original. Just by two construction types.
Q And what was the area that was the new addition?

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A It was on the -- the first floor was all physical therapy and admin and the second floor was patient rooms.
Q Do you know -- I know we have a life safety plan up here. Do you know which wing or which side of the building that the new addition was on?
A Yeah it's the very east side -- it's the square on the very east end. You see the building kind of goes along and there's a square on the end.
Q Is this the east side over here?
A Yeah.
THE COURT: Let the record reflect it was pointed to the right side of the demonstrative exhibit that was propped up in the court room.
THE WITNESS: Okay.
Q (MR. WARREN) This section here with A over it, is that the section you're referring to that was new addition.
A I believe it was. I never saw a plan that showed that, but it was different construction type.
Q Okay. And you mentioned you looked at every smoke compartment?
A Yes.
Q Why'd you do that?
A Well they were trying to see if any of those

were ventilated, to see if there was a path for the heat to escape.

Q Did you do that on the first and second floors?

A Yes.

Q And what did you observe about the construction between the first and second floors?

A Well there's no insulation between the floors because typically you wouldn't on a multi-story building because both floors are conditioned so it's just a slab, a concrete slab, bar joist construction between the floors.

Q What is between the ceiling tiles on the first floor and the concrete slab for the second story?

A Nothing. I mean it's just a drop ceiling below a slab and a bar joist. There's no insulation in there.

Q Can you estimate that distance between the ceiling tiles and the concrete slab based on your site inspection?

A It was two feet or less I would say.

Q Okay. Now I want to talk just a little bit of math. The square feet that you measure of the building and actually I can refer you to -- is there an exhibit number on there?

A Sorry, this is the original.

THE COURT: Mr. Warren, can you tell me what it is

you were looking at. Is that an architectural plan?

THE WITNESS: It's a life safety plan.

THE COURT: Life safety plan.

MR. WARREN: He has one on his deposition that had his hand written notes on it with details. I'm not sure which one.

THE WITNESS: I just don't see it marked anywhere.

MR. WARREN: I think its deposition Exhibit 181.

THE COURT: Deposition Exhibit what?

MR. WARREN: 181.

THE COURT: Is it in the binder?

MR. WARREN: Unfortunately not because of its size, Judge.

THE WITNESS: You glad I got him a copy?

THE COURT: No I'm not hanging on to any of the exhibits right now.

THE WITNESS: I know, but I'm just saying you can refer to that.

THE COURT: And is it all right for me to mark on this or you have another that you want me to mark on? In order for me to preserve the record I have to mark each exhibit with my initials, the date that its admitted and I don't want to --

MR. WARREN: Mr. Crawford you have a copy of that, correct?

THE WITNESS: Yeah I made a smaller copy. I printed it out.

MR. WARREN: Is that okay for the Judge to write on and mark it?

THE WITNESS: Yes.

MR. WARRAN: Okay.

THE COURT: Does opposing Counsel have access to a similar --

MS. SMITH: That's not the same one but we can still confirm one of these is it.

THE WITNESS: They took them and made prints.

MR. SMITH: Here's what I have as 181.

THE WITNESS: That's not it. It's the same plan, but that's not the --

THE COURT: It has handwritten notes on it.

MR. SMITH: Let me see if I have that, but just FYI I'm showing what has been marked as deposition 181. Is that it?

THE WITNESS: Yes sir, that's it.

THE COURT: Which one is that? Page 2 of 181?

MR. SMITH: I think its page 2 of 181.

THE COURT: I'm going to indicate what this is. I'm not admitting it at this time.

Q (MR. WARREN) And Mr. Crawford I want to just talk about the square footage of the building.

A Okay.

Q Can you tell us how many square feet is on the first floor nursing home side?

A Yeah we measured 28,187.

Q Was that 21,187?

A Yes.

Q And what's the square footage of the first floor on the psychiatric side?

A 4,053 square feet is what I measured.

Q And for the second floor what's the square footage of the nursing side?

A 14,631.

Q And what's the square footage of the psychiatric side?

A 15,678 square feet.

Q Okay. And did you calculate these measurements during the site inspection?

A No, we took this plan and put it in AutoCAD and measured it on AutoCAD. So we had imported this PDF into AutoCAD.

Q Where did you get the life safety drawings from?

A They were part of that generator replacement set that you gave me.

THE COURT: And can you tell me -- we'll call it an

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acronym. What CAD is? AutoCAD? C-A-D?
THE WITNESS: Oh yeah sorry. C-A-D.
THE COURT: Can you explain what that is?
THE WITNESS: AutoCAD is actually it's a brand. It's computerated designs what CAD stands for.
THE COURT: Thank you.
Q (MR. WARREN) And what do you use CAD for?
A All of our plans are based on a CAD now.
Q What is it?
A It does -- we draw duct work, measure things. I mean it's just -- everything is digital now. We don't have to do a hand drawing or measurements anymore.
Q Okay. During the site inspection did you have the opportunity to inspect the facilities main AC chiller?
A I did.
Q And what's your understanding of when the facility lost their power to their AC chiller?
A Well they lost a I guess one of the fuses, it came a part so the chiller went down. It was fed separately from the building.
Q Did you know when that was?
A According to the deposition it was Sunday afternoon about three something.
Q Sunday, September 10th?

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A Yes, sir.
Q Okay. Did you do any research to find out the capacity of that chiller?
A I did. I took the model numbers and looked it up. It was a Trane. A 125 ton chiller.
Q And let me just turn to composite -- deposition composite Exhibit 185.
A Is that the spec sheet of the chiller?
Q Yeah it is.
A All right.
Q Judge just let me know when you --
THE COURT: I'm there.
Q (MR. WARREN) Okay.
THE COURT: Mr. Warren I do have a question. When you say the building had a 125 ton chiller, was that for the entire property or just the nursing component?
THE WITNESS: That was the entire building.
Q (MR. WARREN) Can you describe for us what we're looking at in Exhibit 185?
A Well I just downloaded -- I took the model number down at the site and then I went back online and looked it up and see what the model number included. So I highlighted each one of the things that are in the model number.
Q Was this how you confirmed the capacity of the chiller?

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A Yes.
Q And again, what was the capacity?
A 125 tons.
Q During your site inspection, did you examine the entire HVAC system in that facility?
A Yeah we looked at every system that was in the skilled nursing patient areas. I didn't go into the kitchen or some of those areas.
Q You mentioned earlier that the units were fan coil units. What does that mean?
A Means they circulate chilled water through them and blow air across the coil, have to create cooling effect. And there's a three way valve that bypasses that unit to control the temperature. When you reach a set point it bypasses the unit.
Q And do those units have fans?
A They do.
Q Was that in each of the rooms that you observed?
A Yes.
Q Let me back up and ask you another question about the main AC chiller. Can you explain briefly how that chiller operates. How does it cool, how does it let out cool air.

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A Well it's a water cool chiller and it projects the heat to a cooling tower of its own site next to it and it circulates 45 degree water through the building. And every unit is tied to it. It circulates cold water through the coil, blows air across the cooled coil and creates a cooling effect.
Q And once the AC chiller lost power, how quickly would the water in there heat up? What temperature is that water normally at?
A They circulate at 45. It wouldn't take long. I would say minutes probably for it to reach room temperature because the pumps stop running as well, so the flow will stop completely.
Q And you mentioned that there were fans in the units in each of the rooms. If the fans were operating without the main AC chiller, what would be the effect of that?
A Just moves air around. That doesn't have any cooling effect, in fact it actually has a little bit of heat in it by the fan motor horsepower.
Q And can you explain that?
A Well as the air passes over the motor, its cooling the motor off so you're actually picking up a little heat from the fan motor as it runs.
Q Okay. And are you aware that Hollywood Hill's

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deployed spot coolers at the facility after it lost its AC chiller?

A I am.

Q And how did you learn about it and what did you learn about it?

A Well again, the crime scene photos and the depositions and then I was able to determine where they were in the facility from both and the capacity of those units.

Q And let's turn -- I think its deposition Exhibit 181. Is that the copy of the plans that had your notes with spot coolers on it?

A Yes, that's --

THE COURT: Mr. Warren do you want to admit any of these exhibits. Do you want to admit 185?

MR. WARREN: Yes, Judge if we could.

THE COURT: Any objection?

MR. SMITH: No.

THE COURT: Authorize deposition composite Exhibit 185 is admitted without objection. I don't have anything on 181.

MR. WARREN: Unfortunate it was due to the size, Judge. I think Mr. Crawford brought you a copy.

THE WITNESS: You can have this one.

THE COURT: So this will be page 1 of Exhibit 181.

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Thank you. Similarly mark this with the exhibit.

THE WITNESS: I think it's already marked.

THE COURT: It is, thank you. Go ahead.

Q (MR. WARREN) Mr. Crawford, we're looking at the same thing?

A Yeah I gave mine to the Judge, but I know what it has on it.

Q Okay.

A I remember.

THE COURT: Just use this. Counsel you have a copy?

Q (MR. WARREN) Mr. Crawford using the depositions and the police photos, how many spot coolers did you count for in the facility?

A Well on the second floor it was pretty clear there were three, which confirmed by both. On the first floor Mr. William's deposition said there was four, but the crime scene shows five.

Q Was this just on the nursing home side?

A Yes.

Q And did you do any research on these spot coolers?

A Yeah I did. I looked up the manufacturer to determine the capacity based on the model numbers.

Q And tell us a little bit more about who was the manufacturer and where it was made.

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A It's a Welton and ICEN was the trade name. It was manufactured by Welton, which is a Korean company and they're marketed in the United States under the name Americool.

THE COURT: Under the name what?

THE WITNESS: Americool.

THE COURT: How do you spell that?

THE WITNESS: Let me look real quick.

MR. WARREN: Let me turn you if it helps to deposition composite Exhibit 174. 174, 175.

THE WITNESS: Its 175 actually. Well that's the Americool.

THE COURT: Americool. A-M-E-R-I-C-O-O-L. By Welton. W-E-L-T-O-N. Folks we need to take a break. I need to get some more pens.

(Off the record.)

Q (MR. WARREN) Mr. Crawford I think we were talking about deposition composite Exhibits 174 and 175. Can you explain to us what these exhibits reflect?

A 174 is the cut sheets of the units that I found based on the model numbers and that's the brochure for -- basically tells me the capacity of the units. All of them were the WPC 3000s, which is 13,200 except for one was WPC 4000, which is 16,800 BTUs and that's total

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capacity not sensible. That's total capacity.

Q What's the difference between total and sensible capacity?

A Well typically a direct expansion you have like this sensible heat ratio or the sensible part of its 75 percent of the total. So when you calculate the loads you always have to make sure you meet the sensible and the total load. Sensible is the temperature changing ability of the unit. The latent is the dehumidification above the unit.

Q And some of what you just said, is there some way you can put that into layman's terms?

MR. SMITH: Your Honor, at this point I would just like to interpose an objection. This appears to be a new opinion from the time of deposition and I'm pretty thorough with the witnesses opinions. And there's no alienation and distinctions between sensible load and overload that I recall.

THE COURT: Well I'll let you cross examine him on that. Deposition to impeach him if there's a significant variation and you can also ask him to explain why he didn't mention it in response to particular questions.

MR. SMITH: Thank you.

THE COURT: Overruled. Go ahead.

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Q (MR. WARREN) Thank you, Judge. Can you explain for us a little more simply what that difference is between sensible and total?

A Well the reason I was clarifying it was because we did our load calculations in there -- listed the sensible load totals, but these numbers are total load.

Q And what's the significance of that?

A The sensible is 75 percent of the total. Typically or more in that range.

Q Can you explain for us how these effected units that we're looking at here on 174 and 175, how they work?

A Well they bring air in to the space in one side and come out through the evaporated cooler, go out the nozzle. On the other side of the unit they bring in air through the condenser coil and discharge heat somewhere else. The way an air conditioner works, it absorbs heat from the space and rejects it to another area. So in a typical home, you have a unit outside that's where you reject the heat to. You absorb it on the inside and reject it to the outside.

Q Do these units reject heat through an exhaust system?

A They do. The can be ducted, they can be water cooled. These are air cooled units here, which means

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you have to vent them to the exterior to a ventilated space.

Q And then what size area do these units cool?

A Well according to the manufacturer they cool I think it was 355 square feet, which is on page 2 of 175. I'm sorry it's not page 2. Let me find that. I don't have page 2. It's on page 2. Its 355 square feet.

Q And is that about 18 feet by 18 feet?

A Roughly yes.

THE COURT: When I look at my Exhibit 175, does not have page 2 either.

MR. WARREN: Judge, mine does not. It looks like it skips every even number.

THE COURT: Correct. It was doubled sided, but didn't go through a double sided copier.

MR. WARREN: We'll try to get that cleared up, thank you Judge. So Mr. Crawford I think you touched on it earlier. The cooling capacity on the different size units deployed by Hollywood Hills. Can you reiterate those numbers for us and tell me the different types of units you found and what the cooling capacity was in those?

A There were three units on the second floor. It reached 13,200 BTs each. So that's about 1.1 tons so they had about 3.3 tons on the second floor. And on the

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first floor there were four or five units depending on what you go by, but if you take five units, you were 13,200 BTUs and one of them was 16800 BTUs.

Q And what was the cooling capacity for those five units in total?

A 5.8 tons total.

Q And again, is that on the nursing home side?

A Yes.

Q So what was the total capacity of the spot coolers that you looked at?

A They were roughly 9 tons. 9.1 tons. On that first and second floor.

Q So what's the difference between the capacity of the main AC chiller and the spot coolers deployed by Hollywood Hills?

A I don't know the capacity of each system, but if you just take the areas and prorate the areas, its roughly 85 tons on the skilled nursing side more than any other side.

Q So prorated was that 85 tons for the nursing home side?

A Right.

Q So do I have that right? 85 versus 9 tons.

A Correct.

Q Going back to the square footage calculations,

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did you do the calculations about how many spot coolers will be needed using the manufacturers 355 square feet, to determine how many spot coolers would have been needed just on the second floor?

A We took the patient area, which is 12,545 square feet and you divide that by 355 and you come up with 35 units.

THE COURT: That's just for the second floor?

THE WITNESS: Yes.

Q (MR. WARREN) And is that just on the nursing home side?

A Yes.

Q Let me ask you: Are spot coolers designed to be a replacement for a full HVAC system?

A No. Inherently by name spot coolers are designed to cool off a specific area wherever they're placed. They're not really designed to cool large areas, just very small 18x18 area.

Q You talked about need for these units to be vented, do you know how these units are supposed to be vented?

A Well they have to reject the heat to the outside or to the water or something. You can't dump the heat back in the space because you don't get any cooling effect if you put the heat right back in the

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space. So can either vent them through windows, or you can vent them through ceilings that are ventilated, or they have water source units where you can use a water cooler unit, but you have to reject the heat somewhere other than the space.

Q And did you do any research on how these types of units are supposed to be vented?

A I did look at other manufacturers. This manufacturer doesn't have an article in there installation about the optional ceiling kit they call it. I found another manufacturer which addressed that.

Q And let me just turn you to deposition composite Exhibit 177.

A It just talks about for ceiling kit users and it says note the space for the makeup air and discharge air is directly -- normally above drop ceiling must be well ventilated, large enough for the heat to be absorbed. Heat load to be absorbed. Condenser discharge areas for ventilation of the makeup air. Inlet by the way of a factor install the flactorner ceiling kit.

Q And what does it mean to inject heat?

A It means to put it somewhere else. I mean you absorb the heat on one side and the cooling coil and the condenser coil rejects it to another area. For example on your house if you have an outside unit and you have

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an indoor unit and your indoor unit's absorbing the heat and rejecting it to the outside. To the outside unit.

Q Do these Welton spot coolers have temperature gauges on them?

A They do. They have set points and they have a temperature measuring phase of it.

Q And can you explain what those two temperature's would show?

A Well the zip line is the temperature you're trying to achieve and the actual temperature is the measure of the air within the proximity of the spot cooler.

Q And what do you mean within the proximity?

A Well the sensors right on the unit. So somewhere close to the unit is the temperature its measuring.

Q Do you know on these types of units how far out the temperature measurement would extend?

A Well just using their numbers, the say 355 square feet. That's 9 feet each way basically from the unit.

Q 9 feet in diameter?

A Well 18x18 is 355 square feet, so I mean I don't -- just going by what they're data shows on there.

Q Do these units have high pressure controls?

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A They do.

Q Can you explain what a high pressure control is and how it works?

A Well if you don't reject the heat, it builds up in the condenser. You can't -- the pressure builds up in the condenser coil, which at some point trips the high pressure control. So it saves the compressor from overheating.

Q And based on what you reviewed in this case, did you see any indication of the high pressure controls on the spot coolers used in the facility were triggered?

A I have no way of knowing if they were or not.

Q Do you have any opinion based on where they were installed and vented, whether or not the high pressure controls would have been triggered?

MR. SMITH: Objection Your Honor. Predicate and he said I have no way of knowing.

THE COURT: Sustained.

Q (MR. WARREN) What did you review in regards to how the spot coolers were installed and vented?

A Well we looked at the photos. They weren't there when we did their site visit obviously. So we went by the photos and the deposition to determine how they were installed.

Q You say you looked at the photos, are these two

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depictions of the photos you looked at?

A Yes.

Q And did these show how the spot coolers are vented?

A Well they're using the ceiling kit and they're venting them through the ceiling.

THE COURT: They are using the ceiling kit?

THE WITNESS: Yes.

THE COURT: And how do you know that?

THE WITNESS: You can see the tile. See the tile. The tile that's replaced and it has the fitting and it goes down to the back of the unit.

Q (MR. WARREN) And based on your site inspection --

THE COURT: Hold on a second Mr. Warren. Can you tell me whether these are on the first or second floor.

THE WITNESS: I can't tell you. Sometimes there's room numbers on them that you can see on the photos.

THE COURT: And to your knowledge were the units on the first and second floor vented similarly?

THE WITNESS: Yes.

THE COURT: Into the ceiling?

THE WITNESS: Yes.

THE COURT: Thank you.

Q(MR. WARREN) Mr. Crawford did you look at a

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number of police photos regarding spot coolers?
A Yes.
Q Not just those two?
A Correct. I looked at them all.
Q And did that help conform your understanding of how the spot coolers were installed and vented?
A Yeah I tried to figure out exactly where they were and the space. Some of the photos actually show room numbers next to them so you can find it.
Q And you told us earlier that you investigated the ceiling space above the first floor and between the first and second floors. Is that where the units on the first floor were vented?
A Yes, they were vented to the ceiling.
Q And based on the venting that you reviewed, can you describe how that space above the first floor ceiling between the first and second floors would impact the high pressure controls?
A Well it's a confined space. There's nowhere for it go other than back into the space. So I think you're blowing air out of this unit into the ceiling and it's just going somewhere else inside the envelope. It's not going outside. So you're not really rejecting the heat, you're just putting it into the ceiling. So you're moving it from where you are into the ceiling and

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it comes out somewhere else because it's a -- an acoustical ceiling is a very leaky ceiling. The air will just come right back out because you can't just blow air in a straw. You have to have your finger over it. So you're pumping air into the space and its coming out somewhere else.
Q And based on your observations about porous ceiling, what did the indicate to you about whether high pressure controls could have been tripped?
A Well its possible they could have stayed under their limit, I don't know. The discharge air of these units is typically 15 to 20 degrees above room temperature. So it was probably 95 or better above the ceiling. Whether or not that would trip the high pressure control I'm not sure.
Q Okay. Let's turn and talk about your load capacity calculations. Did you use your observations from your site visit into your calculations?
THE COURT: Mr. Warren, do you want to move any of these into evidence?
MR. WARREN: Yes Judge. We'll move 174, 175, 177.
THE COURT: Any objections?
MR. SMITH: No.
THE COURT: Depositions 174, 175, and 177 are so admitted without objection. Mr. Warren give me a moment

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to go ahead and mark these please.
MR. WARREN: Sure.
THE COURT: Go ahead.
Q (MR. WARREN) Mr. Crawford, lets flip back to deposition composite Exhibit 178. Load capacity calculations. Did you use your observations from your site inspection in these load calculations?
A We did. We had to use the U-values based on what we saw. Construction types. We made conservative estimates on the insulation and U-values to try to come up with the best answer we could, but --
Q Lets back up just briefly.
A Okay.
Q What is an envelope load summary?
A Well the loads consists of two things. It's the internal loads; which are people, lights, equipment. And then there's external load or the envelope load, which is the building envelope load; windows, doors, the walls, roof, floor.
Q So do your calculations incorporate both the internal and external loads?
A Yes.
Q And can you give us an example of some of the different observations or subpoints you used in calculating the load summaries both internal and

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external?
A We had to take the building construction type, we had to look at the walls. The walls are concrete masonry walls, with drywall and tile. The roof is made of barrel tile of fiberboard type construction. So we had to estimate the U-values, which is the imburse of the R-value, if you want to go there.
THE COURT: What's R-value?
THE WITNESS: Thermal resistance is the R-value, like R-19 installation or something like that.
Q (MR. WARREN) And what's U-value?
A It's the imburse of the R-value. And that's what we use when we calculate the loads.
Q Did you incorporate those factors into your calculations for the external loads?
A We did. We had to -- based upon what we saw at the site, estimate the U-values and those are input into the computer program.
Q What about the internal load. What factors are considered in calculating the internal load?
A Well we took the people and number of beds is 152 and we took the breakdown of that first and second floor based on the number of beds. And we took four staff on each floor and we also added some IT equipment there was in the closet --

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Q Hold on let me stop you for a second. You said you accounted for people, why?

A Well people put off heat, so you have to include it. It's not a lot but it's still part of load.

Q What assumptions did you make about how much heat the people in the building were putting off?

A Well there's values. We use the seated and rest values I think for the patients and we used the sedentary work values for the staff.

Q Are those standard values used in your field?

A Yeah it's in the program.

Q And I think you were about to talk about some IT equipment factored into your calculations?

A Yeah we have to take -- the internal loads including lighting, which we took a half about a square foot in the corridors only. We didn't include the patients rooms because we assume their lights would be off and actually they have incandescent lights in the patient room, so it doesn't really add a whole load, so we took those off. We assumed they would be off.

Q What do you mean not a lot of load?

A Incandescent lights have a lot of wattage per bulbs, so.

Q Does that mean heat?

A A lot heat, yes I'm sorry. They put off a lot

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of heat. So we took the hallways, the common areas at half watt per square foot for the lighting, which is pretty conservative. We took the IT equipment based on the number of servers we found. We did not include the TV's --

Q Why not?

A Again, trying to be conservative. I don't know how many TV's were on or off so we just tried to take the worst case, so. We didn't include TVs or lighting in the patient rooms and we took -- there's a couple of computers at the nurses desk we used. That kind of thing. So we tried to estimate the internal load based on what we saw.

Q Did you observe any fans or other venting, did you incur those in your calculations?

A Well fans don't really change anything. The only thing we did find was that there was essentially an exhaust on the new addition for the newer part of the building, which probably would have been running during the time the power was on. In the old part of the building the fans were switched with the light. We call those intermittent fans and typically they're off not running.

Q Where are those fan located?

A In the bathroom ceilings. But in the new

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section -- the way we have to design them now is you have a continuous exhaust system. So we took ten air changes an hour in the bathrooms, the janitors closets and used that as the number for the exhaust rate because there's a building fan on the south side of the building it's on the exterior of the wall. And there's one on the roof for the new additions and those fans are running continuously. So we took those numbers -- we're drawing air out so we have to have infiltration to make that up, so we use that for our infiltration from the outside.

Q Can you explain what that means, infiltration impacting the fans on your calculations in terms of movement of heat and heat transfer?

A Its air leaking into the building caused by a negative impact of the fans. The fans are exhausting air, again air has to come from somewhere. So it draws an end from the outside of the building, so that's an infiltration to the building, so we have some outside air entering the building.

Q Were the fans that you identified in the bathrooms, were those connected to the facility duct work?

A They're individually ducted to the exterior wall into a wall cap. Pretty much independent of the

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facility duct work.

Q Would those provide ventilation even if the fan was off?

A There's a backdraft damper in there. I guess if you had enough pressure you could push it open, but typically it takes the fan coming on to push the backdraft damper open.

Q And you talked about factors you consider for internal and external load and the things you observed and measured. Did you have to make any assumptions and I know you talked a little bit about it, but did you have to make any assumptions?

A Yeah when we did the U-values of the building, we had to -- the thickness of the roof or the roof fiberboard we had to make some assumptions on.

Q And how would you characterize the assumptions you guys were making?

A Well we tried to be conservative in our assumptions. We didn't want to excuse the numbers. I want to know the answers. So we tried to estimate as close as we could to what we saw in the field.

Q And what do you mean by conservative? What does conservative mean?

A It means that would be -- show less load than there would be otherwise. Trying to give them the

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benefit of the doubt basically.
Q Okay. Let's turn and look at deposition composite Exhibit 178.
A Okay.
Q And I know we touched on it briefly earlier. This is your load profile. Can you explain for us what the first page of this document reflects?
A Well this is a snapshot. When you do a load calculation, you do it hour by hour and that's a snapshot at that particular moment what the capacity required to maintain 81 degrees in spaces. So you take that and you would, again, it's a sensible load, but it would give you the total sensible load required to maintain the temperature in the space.
Q And I see you've got first floor written at the top. Is this first page, are those calculations the first floor?
A There's four patient areas without spot coolers.
Q And walk us through each one of these data points, what do they mean and what is the significance?
A Well obviously the hour and you do it every hour and then the outdoor temperatures the actual weather data we input.
Q Where did you get that from?

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A That was the IFIS site that we used to up those six miles from the unit.
Q What's IFIS mean?
A You're going to ask me, I went to Florida too. I'm not sure exactly.
Q And I'll just point you to deposition exhibit 179. Is that the University of Florida IFIS data you used?
A Yes that's it. From Fort Lauderdale.
Q And is this -- even though you couldn't remember what IFIS stands for. Do you typically use IFIS now in your calculations?
A No typically we use the actual weather data and the computer program selects the worst day. In this case we actually input the days, the weather from that day for Monday and Tuesday. We input it into the program manually.
Q Was that the actual weather data?
A Yes.
Q And do you believe this UF IFIS to be credible and accurate?
A I believe it is. I've compared it to other sites and it was pretty much consistent to other sites.
Q Okay. Now let's go back to 178 there. I think you were on OA temperature. What's OA mean?

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A The outdoor temperature that's the temperature outside.
Q Okay.
A The zone temperature is a set point inside we're trying to maintain and the RH is the relative humidity --
Q Hold on a second, Mr. Crawford.
A Okay.
Q The zone temperature, you said that's the zone temperature you're trying to maintain?
A Correct.
Q In this case, what was that temperature?
A 81 is what we put in there.
Q Is that the temperature you got from the deposition?
A Yes.
Q And I see some slight variations in zone temperatures here?
A Yeah the program -- I don't know why exactly it varies slightly, but it does. We put the subpoint in at 81.
Q And what's the next column there? RH.
A Relative humidity. That would be the relative humidity in the space.
Q Inside the building itself?

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A Yes.
Q Where'd you get that data?
A That's calculated from the program.
Q And do you know very briefly how it calculates relative humidity?
A Well it takes the latent loads from the people, the infiltration, all the latent loads and it determines the amount of humidity in the space. And determines the relative humidity, which is relative to temperature.
Q And what's the next column there?
A That's the zone sensible load. That's the BTUs for the hour that it would take to maintain that sensible load. Then the last column is total zone is tons. It's just a converted 12,000 BTUs per ton.
Q Okay. And I see you have one here for Monday and one here for Tuesday. What was the significance of those two days?
A Well that was the day the chillers were down. Just the two full days it was down. It went down Sunday afternoon, evacuated Wednesday morning. So we just took two full days, Monday and Tuesday.
Q And why didn't you do the calculations for Wednesday and Thursday?
A Well we just -- it was a part day. We just tried to take full days of calculations to get a profile

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of what the load would be because you can see most of these loads are really high in the afternoon.

Q And based on your experience, is your approach here to calculate the load capacity for the first floor reasonable?

A Yes.

Q Is this typically the approach you'd use in your design of a building?

A Yeah we would try to determine the capacity required to maintain a subpoint in a building with a load calculation.

Q Let's talk about the last columns zoning condition. Can you explain in a little more detail what this reflects and what's the significance of it?

A Well it's a snapshot. So its midnight on Monday the 11th it took 7.3 tons of sensible cooling to maintain 81 degrees in a space. And then we just do it every hour. When we design a building we use the worst day, the worst case. So on this particular case it would be -- was it 12.4 tons. I think it was the snapshot of it at 3 o'clock or so in the afternoon.

Q Are you talking about 3 o'clock on Monday the 11th?

A Yeah that's the highest load. So if I was designing a system, I would design it to make sure I had

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12.4 tons of sensible load.

Q Why would you use that?

A Because it has to work every time. It can't work sometimes. So it has to maintain temperature. There's a lot of cases where you see where you have part of the days, that every air conditioning system is designed for that worst design day.

Q Okay. Let's turn to page 2 of Exhibit 178. And can you explain the differences between the first and second page and then the calculations?

A Well first of all its mislabeled. It should say tons in the last column. What we did in this floor was we added back the heat rejected into the space back into the load. So it didn't add that much on the first floor.

Q When you say heat rejected back from the space, what do you mean?

A Well you're not getting a cooling capacity. I told you when you put one of those units in a room and close the door, it gets warmer not cooler. So you're not getting a cooling effect from those units, you're actually getting a little more heat from those units because you're not rejecting the heat from outside, its rejected within the envelope. So it goes into that ceiling tile and comes out somewhere else in the

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building. So it's still within the envelope of the building. So we added that back in, which is the heat of rejection of the condenser to the load, so it didn't raise it that much in the first floor because you're only talking about 20 percent of 5 point something tons, 5.8 tons.

Q And let's talk about how you figured out how much heat was being rejected or not rejected from the spot coolers. How hot is the discharge air coming out of these spot coolers?

A Well typically its 15 to 20 degrees above the room air. The total heat rejection ranges 15 to 25 percent of the maverick cooling so if I have a one ton unit, then take 20 percent higher than that is what heats going out. So if I have one ton cooling effect, I have 15,000 Btus of heating going on.

Q I think I got that. So how did you round to 95 degrees then?

A Well again we took a conservative and I think it was higher than that, but we took 15 degree rise to the condenser coil. So if its 81 degrees or 80 degrees in the space and you put it to the condenser coil and dump it into the ceiling, you're looking at 95 or 100 degrees above the ceiling.

Q And then how -- what calculations did you make

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with that number regarding the thermal heat rejection from the spot coolers?

A Well we just added back the heat that was being rejected into the loads because you're not getting any cooling effect, you're actually getting more heat than you're cooling in that case. So the difference is about 20 percent.

Q And then do the numbers in the very far right column on page 2, Exhibit 178, do they incorporate those calculations you just talked about?

A Yes. So the peak load would be 12.9 as to 12.4 ton sensible.

Q So does this column show the amount of cooling capacity that would be needed accounting for the heat impact coming from the spot coolers?

A Yes. On the first floor.

Q Do you remember what the total cooling capacity in tons on the first floor of the spot coolers unit was?

A I believe it was 5.8 tons if you take off five of them.

Q So looking at Tuesday the 12th on page 2, Exhibit 178. From the hours of it looks like noon to 6 p.m. Are those numbers twice the cooling capacity that was on the first floor? Approximately twice.

A Talking about the first floor loads what the

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spot coolers --
Q Exactly.
A Yes essentially. I mean again that's 12.9 tons of sensible cooling, which is about 17.2 tons of total cooling.
Q So what does that mean? What's the significance of that?
A That means they didn't have enough capacity to maintain 81 degrees.
Q And I see here, looks like 5 a.m. on Tuesday the 12th, in that far right column it says 4.9 tons would be needed. Obviously that's less than the 5.8 tons that you estimated they had. What's the significance of that? What does that mean?
A I'm trying to find that number, but anyway. Basically what it means -- I see. If you have less than your cooling capacity, then you would be able to maintain or slightly drop the temperature for a short period of time.
Q Does that mean that at 5 a.m. on the 12th, there was enough cooling capacity to bring the temp back down to 81 degrees?
A I didn't say back down. It's a snapshot, it's not a cumulative effect. It doesn't show -- its assuming everything in the space is 81 degrees. It's

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not a cumulative effect. So if its higher than that, it just doesn't lose ground, but it doesn't necessarily cool it down to 81. Just means that your and again it's a little bit hard to compare apples to apples. This load is assuming everything in the room is 81 degrees and that's the snapshot of what it takes to maintain that.
Q Let's turn to page 3. Page 3 appears to be similar calculations. Is this floor the second floor?
A Yes.
Q And does this account for the impact of the spot coolers?
A No. This is just the load of space.
Q In your opinion was the impact of the spot coolers greater on the first floor or on the second floor?
A The second floor.
Q And then why is that?
A Because all the heat from the first floor went to the space above the ceiling which heated up the slab. So essentially you had a heated slab on the second floor. So the heat transmission through that slab because there's no insulation there, had a bigger impact on the second floor than the first.
Q Let's turn to page 4 of Exhibit 178. Does this

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reflect your calculations for the second floor accounting for the impact of the spot coolers?
A Yes. We added the floor transmission load based on a 95 degree temperature below and 81 above. We added that load to the space.
Q Lets back up. When you say 95 below and 81 above, what does that mean?
A That's the temperature difference. Normally there's no temperature difference between floors because they're both conditioned floors. In this case the ceiling space became really warm, created a floor load on the space above. So essentially heated the slab and created a heat transmission through the slab.
Q Did that heat transmission impact the air temperature on the second floor?
A yes.
Q And what was the effect of that?
A I don't know the temperature effect, but the capacity required to maintain 81 was significantly higher. The floor load was by itself like 7 or 8 tons.
Q And do your calculations here on page 4 reflect that?
A Yes, that's the load required to maintain 81 degrees with the heated floor.
Q And are you looking at the very far right

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column there?
A Yes.
Q And what was the total cooling capacity in tons of the three spot coolers on the second floor?
A 3.3 tons.
Q And on page 4, did your calculations show at any point in time, that there was enough cooling capacity even to maintain whatever the current temperature in the facility was?
A No.
Q I just want to make sure I'm clear. Your calculations for the first floor, did they include the heat transfer from the spot coolers?
A We used the condenser, the heat rejection in the first floor, we did add that back into the load. We didn't do that in the second floor.
Q You did not?
A No.
Q Why not?
A Second floor had a lot more volume above the ceiling and actually one of the smoke compartments was actually vented. So it might have actually got the heat outside the space.
Q Do your calculations for the second floor only include the heat transfer from the first floor?

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A No they include the base load for the building, envelope and internal loads, plus the floor load.

Q But not any type of heat transfer from the spot coolers on the second floor themselves?

A Correct.

Q I think I started to cut you off before you were explaining that. Why didn't you take that into account?

A Attics are hot anyway. Space above that space is pretty warm anyway. But one of the smoke compartments have louvers, it was vented and the other --

Q What are louvers?

A The louvers to the outside -- they were openings to the outside, so the heat could escape. That one particular smoke compartment in the middle -- is that the first or second, I can't remember. Okay the smoke compartment B, part of that was vented to the outside.

Q Are you referring to the life safety plan?

A Yes. There's three smoke compartments. A, B, and C on the second floor. A and C were tight, there was no ventilation to the outside. B was actually vented and one of the spot coolers was in B.

Q Can you show us on this diagram where you found

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the louvers? Where the louvers were located.

A Well there on gable vents, so the parts that stick out. You see that smoke com B left side. On a gable vent, up high. Go all the way to the top and bottom of that. There's louvers there and louvers down there at the gable vents. When you look above the ceiling you can see light and sees that louver.

Q And did you find any other ceiling vents outside of those louvers in that one section?

A No.

Q And can you explain how the smoke compartments that you found, how do those work? Would the venting that we noticed here, would that have any impact on other smoke compartments?

A No, by nature of the smoke compartments, they're smoke tight. So there's nowhere for air to go from one to the other.

Q Was there venting in those other smoke compartment?

A We only found it in B on the second floor.

Q Did you confirm whether there was any venting on first floor?

A I did. There's no venting on the first floor.

Q How did you confirm that?

A We looked above the ceiling tiles, we took a

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flashlight examined the perimeter walls, went outside the building and looked to see if there was any vents. Looked for light above the ceiling, nothing.

Q So based on your observations, where would the hot air in the ceiling have gone?

A Back in the space. It would come back through the ceiling tiles.

THE COURT: And into the slab to heat the slab?

THE WITNESS: It's in the cavity. The heat was rejected to the cavity above the acoustical ceiling and the slab. So overtime that hot air is transferred through the slab. It takes some time, but overtime it would heat that slab up as well.

Q (MR. WARREN) Based on your calculations here, did the facility have a sufficient load capacity to maintain 81 degrees at any time in your calculations?

A No. Not on the second floor particularly. The first floor there are moments maybe when it could of. But again it doesn't take into account the cumulative effect of the heat buildup overtime.

Q Did you try to calculate what the actual temperature was in the building at any given point?

A No I didn't speculate on that.

Q Why not?

A There's too many variables. The density in the

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building, what's going on, the activity levels. All those things inside the building. It's very hard to predict a temperature. What I could predict, it wasn't 81 degrees. It was higher than that.

Q Are you aware that Hollywood Hills was evacuated the morning of September 13th?

A I read that in deposition, yes.

Q Did you have any opinions about whether or not the evacuation would have dropped the temperature in the building?

A Well it was 75 degrees outside when they evacuated so it probably helped some. Relieved some of the heat on the first floor anyway.

Q Why's that?

A Just because it was cooler outside than inside. So any doors you opened its going to -- hot airs going to escape. It's going to try to reach the equilibrium somehow.

Q And you talked about earlier people give off heat.

A Yes.

Q What would be the impact of an additional 20, 30, 40 people in the building?

A Well it's probably 15 to 20 people per ton. So a couple tons of heating cooling capacity.

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Q Is that a significant impact?
A No I don't believe it is.
Q Did you -- you mentioned you reviewed the police photos, the spot coolers and insulation. Did you also review the temperature readings that the police took the morning of September 13?
A Yeah I saw that on the photos.
Q Are you familiar with the temperature gun used by the police, used in those photos?
A Yes I've seen it.
Q And how does that model measure temperature?
A Well it measures surface temperature, it doesn't measure air temperature.
Q And generally speaking, how do surface and air temperatures inside the building relate to each other?
A Well they try to reach equilibrium's, so if the temperatures maintained for a time in a building, the surface temperature in the room become the same. So if it's 75 degrees in the room for extended periods, the walls would be 75 as well.
Q Generally speaking, what's a more stable temperature; surface or air?
A Well air temperature changes can happen fairly quickly. Surface temperatures take longer because the density. The thermal mass of a surface takes longer to

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heat or cool it. Takes longer to change the temperature based on the thermal mass.
Q And what if a particular surface was in direct sunlight? Would that impact the temperature of the surface?
A It would. You can get radiant heat on the surface. Just like it would be like if you were standing out in the sun versus in the shade. It'll change the surface temperature based on that if you get direct sunlight.
Q Based on the photos you looked at, did you see any areas that appeared to be in direct sunlight?
A I didn't see any. Most of them are in the hallways actually.
Q Do you know about when those photos were taken?
A I think 11:15, 11:30 maybe.
Q Did you do the calculations based on measurement of those photos to try to work back and determine what the temperature may have been earlier around September 13th through September 12th?
A No, I didn't try to predict the temperature.
Q Why not?
A There's too many variables. It's really hard to predict temperatures inside a space based on -- you got to know a lot of things to do that.

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Q And what conclusions, if any, did you draw from those temperature readings.
A Well at some point the air temperature must have been near that because the walls weren't -- there's no heat producing elements in the walls. The walls piece of drywall, so there's nothing for it to produce heat. Something had to heat it up.
MR. WARREN: Judge can we take a five minute break?
THE COURT: Take a look at what exhibits you have.
MR. WARREN: I will. Thank you, Judge.
(Off the record.)
THE COURT: Continue with questions or do you want to bring in some exhibits?
MR. WARREN: Duly numbered.
Q (MR. WARREN) Mr. Crawford, just a couple quick questions here. You may have touched on this, what happens if a facility does not have the necessary load capacity to maintain a given temperature?
A If it don't have the refrigeration capacity it needs, it can't maintain a subpoint. So it just climbs overtime.
Q And then you talked about your calculations and assumptions regarding the second floor. I think you mentioned that you did not factor in the heat rejection from the second floor spot coolers on the second floor.

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Was that a conservative approach to this calculation?
A Yes.
Q Can you explain why?
A Well first off, you only got 3.3 tons, so 20 percent of 3.3 tons is not very significant. The one space was actually ventilated, so the one unit was -- the heat was being rejected from one of the one ton units.
Q Let's talk about the spot coolers are vented and the other two smoke compartments on the second floor. Was it appropriate to exhaust those into the ceiling when there's no venting?
A You have to reject the heat. You can't put heat in a confined space. So if there's no venting, there's nowhere for it to go. It just builds up overtime. So only information I read earlier it says it's got to be above ventilated space where they can handle the heat load or the heat rejected from the unit.
Q Did you only find one ventilated smoke compartments on the second floor?
A Yes.
Q And based on what you saw on the first floor, given what you observed about the construction design of the ceiling tiles and the second floor slab. Was it appropriate to vent the first floor units into the first

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floor ceiling?
A No.
Q Why wasn't it?
A It's not a ventilated space. Its confined. There's nowhere for it to go. The heat comes in to that space and it can't go outside. There's nowhere for it to go so it goes right back into that space. So it's all within the envelope.
MR. WARREN: Judge, at this time we can move a couple of exhibits. Judge 176 is some additional research Mr. Crawford did on venting these units. We move that in as well.
THE COURT: Any objection?
MR. SMITH: 176? No objection.
THE COURT: Okay 176 is moved in with no objection.
MR. WARREN: We move 178.
THE COURT: Any objection?
MR. SMITH: No objection.
MR. WARREN: We move in 179, the weather data.
THE COURT: One second.
MR. WARREN: Oh I'm sorry.
THE COURT: 178 is admitted. 179 the weather data. Any objection?
MR. SMITH: NO.
THE COURT: 179 is admitted.

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MR. WARREN: 181 and 182 are the large building plans. We would move those in.
MR. SMITH: I think no objection. I just need to confirm.
THE COURT: I have the second page of 181 and you had another for me.
MR. WARREN: This is 181.
THE COURT: So this is 181 and 182.
MR. WARREN: I think this is page 2 of 181.
THE COURT: Page 2 of 181. I don't have 182.
MR. WARREN: Do you have that Mr. Crawford?
THE WITNESS: You know what it is?
MR. WARREN: I think it may have been the plans highlighted in the patient areas.
MR. SMITH: I can help the witness. I think you're looking for --
THE COURT: It's on the three page exhibit.
MR. WARREN: It is.
THE COURT: Thank you. I got to mark them first. My initials, the date. Any objections to 181, 182, 183?
MR. SMITH: No objection.
THE COURT: Okay all three are admitted.
MR. WARREN: Judge, what were those numbers again?
THE COURT: 181, 182, and 183.
Q (MR. WARREN) And Mr. Crawford can you explain

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what --
MS. SMITH: The three page document, I don't have 183.
THE COURT: It's what Mr. Smith just showed me.
MS. SMITH: The three page Exhibit was 182. That's all 182.
THE COURT: Maybe I misspoke. Mr. Smith is there a 183? Mr. Smith which document are you trying to admit?
MR. SMITH: I'm not trying to admit --
THE COURT: I'm sorry. Mr. Warren
MR. WARREN: Judge I have 183 as Mr. Crawford's field notes.
THE COURT: Do you have any of those? I have not seen those. And I don't know that he referred to them in his testimony, right?
MR. WARREN: He just mentioned that he took notes, but I don't think he specifically referred to them.
MR. SMITH: I don't object to them other than it's not going to be very helpful to the record that he admits to testifying about them. I wouldn't want to try and say were going to base findings and facts, you know.
THE COURT: Right. So we're not going to admit 183.
MR. WARREN: And then 184 Judge is just the math.
THE COURT: He didn't testify about those either.

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MR. WARREN: I believe this was the basis of his rejection calculations on how -- I don't think it's necessary to --
THE COURT: If you want to move this in it is.
MR. WARREN: Okay.
Q (MR. WARREN) Mr. Crawford let me back up and ask you about deposition composite Exhibit 182.
THE COURT: No, its 184.
MR. WARREN: I was going to do both if that's all right.
THE COURT: Okay. Go ahead.
Q (MR. WARREN) 182. Do you have those plans in front of you?
A The field notes?
Q These were the highlighted ones.
A Judge has those. It just highlighted the areas that we calculated. The loads, yeah.
Q The highlighted areas, are those limited to patient safety areas?
A Yes. Patient rooms, corridors, nurses station.
Q Okay. Do you have Exhibit 184 in front of you?
A Yes.
Q What is this document and how did you use it?
A Well we trying to turn the total heat rejection of the first floor units, so we can add it back to the

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first floor load. And this document gives you the range of 15 to 25 percent for the total heat rejection of the unit, so we used 20 percent.

Q Why did you choose 20 percent?

A Just the middle of the range.

Q And where'd you get the 15 to 25 percent from?

A Its on page 2.

THE COURT: Its 25.

Q (MR. WARREN) Okay. And just again would you use these calculations in your load capacity analysis?

A When we considered the heat added to the first floor units for the spot coolers, we use this number.

MR. MILLER: Judge at this time we move in 184.

THE COURT: Any objections?

MR. SMITH: No.

THE COURT: 184 is submitted.

MR. WARREN: There's one other exhibit, its 173. These were the Hollywood Hills life safety plans.

THE WITNESS: Is the life safety plan we made notes on as well we marked the photos where the spot coolers are. Both life safety plans, which you have both of those.

MR. WARREN: And I'm specifically just referring to the life safety drawings. But the ones I think I'm referring to in the deposition report are blank. They

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do not have your notes on them.

THE COURT: Mr. Smith, do you know which ones he's referring to? 173.

MS. SMITH: Not that I'm aware of.

MR. SMITH: I don't have 173. That's what we're looking for? 173.

MR. WARREN: Yeah, you don't have that?

MR. SMITH: I have 181, 182, 183.

Q (MR. WARREN) Mr. Crawford, do you recall deposition Exhibit 173 at your deposition?

A I'm trying to. I had marked up two life safety plans. One was with areas and one was with the spot coolers in the photos.

Q And are those life safety plans reflected in other exhibits potentially 182 and 181?

A Yes.

Q And did those life safety plans in Exhibit 173 were those -- was that the raw basis of 181 and 182.

A Yeah I think that's where we started. That was the plans provided part of the generator replacement set.

MR. WARREN: I'm okay. I don't think I'm going to move that one.

THE COURT: Okay. Does that complete your direct exam?

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MR. WARREN: It does.

THE COURT: All right. We ready to cross?

MR. SMITH: We are.

CROSS EXAMINATION

BY MR. GEOFFREY SMITH, ESQ.:

Q Briefly, good afternoon.

A How are you?

Q You mentioned early on in your testimony that you did some research on the type of spot cooler deployed and it was an ICEN spot cooler, correct. The trade name is marketed as an ICEN, I-C-E-N spot cooler.

A Yeah that's the trade name and its made by Welton.

Q And you said you had researched insulation and you couldn't find any for this specific manufacturer on how you would install that particular type of spot cooler?

A Their manual did not include the option of ceiling kit.

Q Did your research include like a simple google research, how to install an ICEN spot cooler?

A No I did not do a google research on how to install an ICEN spot cooler.

Q Okay. But you found some similar types of spot coolers and that would be reflected in Exhibits 176 and

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177, is that fair?

A 177 was the optional ceiling kit. That was another manufacturers data. What was the other number?

Q 176.

A That's just a -- generic discussion.

Q And from your research you concluded that it would not be appropriate or proper to vent a ICEN spot cooler up into a ceiling space. Is that fair?

A My knowledge and research tells me I can't reject heat to a confined space.

Q And so you wouldn't anticipate that there will be materials to show that the proper insulation of those ICEN spot coolers is to vent them to the ceiling space above an acoustic ceiling type?

A I would say they you wouldn't be able to -- a confined space. A ventilated space -- the ceiling kit comes with it, but it's clearly has to be rejected to a ventilated area.

Q Right. And if you look at 177, what that told you if it went to a confined space, if we're using that ceiling kit, that eventually if there was nowhere for the heat to go, it would come back through the tube and trip the high pressure safety mechanism and shut the unit down, correct?

A It said that if it -- condenser pressure got to

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high it would trip the high pressure control. But in this case we're dumping the heat back in the space so it gots somewhere to go.

Q And was this like some unique case, the ceiling tiles in this building are different than ceiling tiles in most build. And this had especially porous ceiling tiles or something?

A No. All acoustical ceilings are leaky, but this is a skilled nursing facility, which has air tight smoke compartments.

Q And would it be correct if the condenser discharged and returned space, this is what your Exhibit 177 reflects. The condenser discharge and return space is unventilated, closed off or unable to handle the heat load, the makeup air will continue to get hotter until the system is not able to handle the high heat buildup. This will lead to the unit tripping its high pressure safety switch. If this occurs you'll get an HP on the control panel. That's what the information in your research showed that if you had that confined space, it'd trip the safety feature and you'd get a high pressure trip off, correct? That's what the research showed. I'm not asking you to comment other than what your research showed.

A Our space is confined to the outside, but it

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dumps back in to the inside space.

Q You don't think they were talking about a normal ceiling in Exhibit 177? A normal acoustical ceiling.

A I'm not sure what you mean by a normal ceiling.

Q Well acoustic tiles that are porous like you described.

A Well all acoustical tiles are porous.

Q Okay. We'll move on. As far as your load calculations, am I correct that for each spot cooler that of the type that were deployed in the building, it was approximately 1.1 tons of cooling capacity?

A All but one of them was, yes.

Q And the one was bigger by how much was it?

A 16,800. So that would be --

Q And --

THE COURT: Let him finish the answer please.

THE WITNESS: I'm just trying to tell you in finds what that is.

Q (MR. SMITH) I'm sorry.

A Yeah I don't know the answer. Just divide 16,800 by 12,000 is how many tons it is.

Q It's slightly more than the 1.1 tons?

A Correct.

Q And that was part of your calculations,

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correct?

A I'm not sure what you mean.

Q The spot cooler that was the 16,318 --

A I included that in the total capacity.

Q That's what I'm asking. And the column on the far right would be if you were designing a system to say I want to maintain 81 degrees, the far right column of Exhibit 178 would tell you in tons what you need in terms of loading capacity, is that fair?

A It's a snapshot of one given hour. If everything in the room is 81 degrees, I need this many tons to maintain this temperature.

Q And you didn't look at any other temperature set points?

A No I did not.

Q And most of your work in HVAC, is it fair to say has been in the area of design of systems?

A Yes.

Q And you'd agree, one would not typically design a HVAC system using spot coolers as your cooling mechanism for the facility?

A We've never used spot coolers as a permanent solution.

Q Right. And spot coolers aren't intended to be a permanent solution are they?

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A There's some factory installations that use them continuously for people working in large volume spaces they use them for cooling a person in a large space. But in a facility like this we don't use spot coolers.

Q But the use of spot coolers in a facility like this would be emergency type situation?

A Correct.

Q As a short term measurement?

A Correct.

Q What one might call a stop gap?

A If used properly, yes.

Q And have you ever in your business used spot coolers?

A Do we use spot coolers?

Q Yeah do you use them on buildings that you worked on?

A No.

Q Now you talked about looking at the gauges on the spot cooler and there's a gauge that gives you the set point for the cooler, correct?

A Yes.

Q And then there's another gauge that kind of gives you the temperature surrounding the cooler?

A The sensor's on the cooler so it's pretty close

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to it.
Q And you could observe in at least one photo that you looked at in the police photos that the temperature around one of them was 74, am I right?
A One photo showed that, yes.
Q Were you able to read any of the other photos as to the temperature?
A No.
Q But people walking by that are in the building as the spot coolers running, they'd be able to see when they walk by the cooler what its set at and what the temperatures reading if its running?
A I would expect so, yes.
Q I heard you say that you made an assumption on the number of people in the building? Is that right?
A No I didn't say that. It's based on the number of beds.
Q Well could I be correct then you used whether we call it an assumption or calculation or a data point. You said there was a 152 beds so when you were calculating heat, you were saying there's 152 residents. You weren't saying the empty bed was putting off the same amount of heat as the bed with a resident in it?
A The life safety plan shows 152 beds, so we took that as the occupancy of the building.

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Q So you baked into the assumption that there's 152 residents, correct?
A We used 152 beds, that's correct.
Q And then you used a number for staff, do you recall what the number of staff you added to that quota?
A I believe we took four per floor.
Q So 8 staff members you added? So 160 total people?
A Yes.
Q And then I heard you say, Mr. Warren asked you some questions about the time of the evacuation. I thought I heard you say it was 75 degrees at the time of the evacuation?
A If you look at the IFIS weather data that's what it showed.
Q And what time were you looking at on the IFIS weather data?
A It was 9/13, 6 a.m. 75.36.
Q And then if you go out to noontime, how did it compare at noontime. What was the noontime temperature?
A According to historic data it was 88.
Q And all things considered, you would expect that from 6 a.m. until noontime the temperature in the building would increase with the heating of the day?
A Some yes.

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Q So whatever it was at 6 a.m., it probably go up some from there?
A Typically.
Q As far as your assumptions on people in the building, did you make any calculations of the affect, I've heard numbers from 50, 100 may be somewhere along we'll get a full count, but people involved in the evacuation process on the second floor.
A Did I include those in my load calculations, is that what you're asking me?
Q Yeah.
A No I did not.
Q And in fact you didn't do any load calculations that would take you beyond what time on September 12th?
A We did two full days. Monday and Tuesday. 24 hours.
Q Okay so you did not do any from midnight til 6 a.m. Any load calculation midnight to 6 a.m. of September 13th?
A I did not.
Q And you discussed a little about the temperature readings. Surface temperature versus air temperature. Do you recall that?
A Yes, I do.
Q And when you did your site inspection, did you

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notice there are wall cavities through which air that is vented into a ceiling space could find its way into wall cavities?
A I didn't observe that.
THE COURT: Did or did not?
THE WITNESS: I did not.
Q (MR. SMITH) Did you observe the opposite?
A I did not observe the wall cavity construction.
Q And if you assume for me the wall cavity construction is such that there's opening where vented heat into a ceiling space can find its way into wall cavities. Would it be logical as the heat buildup behind that wall cavity raised that temperature of that wall couldn't it?
A Unless those wall cavities are constructed completely to the ceiling. So most of them aren't vented like that.
Q I understand you're now answering a different question --
A In a smoke compartment, its smoke tight. And the construction is smoke tight.
Q Here's my assumption for an expert witness.
A Okay.
Q Assume there are openings where the wall cavity space is open to the space in the ceiling and that heat

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can find its way into that wall cavity. Just assuming. If it turns out not to be true, then the assumption will have no value for the Judge. But assume that to be the case; would it be logical that the wall could heat up?

A Well air always tries to reach equilibrium, so there'd be heat transferred, there's a difference in temperature between the ceiling and the wall.

Q So the wall could heat up?

A Yeah. If the ceiling above is hotter it will try to reach equilibrium with the wall cavity if its open to it.

Q I'm still confused. Is that yes the wall could heat up?

A I'm trying to explain it to you, but I guess I'm not doing a good job.

Q I mean it's either no it couldn't heat up or yes it could heat up.

A It's possible, how's that.

Q And in fact the wall temperature can't be hotter than the ambient air temperature in the room?

A Can the wall temperature be hotter than air temperature?

Q The wall heated up because it had a heat source. Heat behind it. It heated up it, it could be hotter than the air temperature in the room?

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A If there's a heat source the wall could be hotter.

Q And then you mentioned that the temperature readings that were taken at noontime by the police, you had reviewed photos and you didn't see any rare where there were temperature readings that would have been taken like in a sunlight situation?

A I don't recall seeing that.

Q I just want to show you and this is in deposition Exhibit 127, it's a copy of those photos. And I'm trying to find a good way to identify --

THE COURT: Which exhibit are you referring to?

MR. SMITH: It's 172. Your Honor --

MR. WARREN: I thought you said 127?

MR. SMITH: I'm sorry for being dyslexic. Its 172. And I'm just going to have to count back pages so just give me a minute.

THE WITNESS: Should be a photo numbering, right?

THE COURT: There's times. It states the times.

Q (MR. SMITH) I think these JPEG numbers may mean something. Yes they do appear to be the same. So I'm going to say this is a photograph and it has asset man_0072.jpg. And I'll just show you a few photographs that start there and I guess just look at the series of the next two behind that one. And if you'll just take a minute. Is there what appears to be lighted area in that photograph?

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A It looks like the headwall of a room. Light fixture in it.

THE COURT: I think that's what he's asking you.

Q (MR. SMITH) Is there a lighted area?

A No this appears to be a light. It's a photo of a headwall.

Q And then go to the next one. Is there a dot that appears to be within that lighted area?

A It's on the wall below the light.

Q And did you tell me earlier was that light fixtures generate heat?

A The fixture itself does, yes.

Q So the heat would be put off around where its glowing on the wall?

A No not necessarily.

Q Do you know that for a definitive fact that it would have no effect on the wall?

A A minimal effect if any.

Q And as far as knowing what might have impacted those surface temperatures, without knowing exactly where each temperature was taken, what radiant heat may affected that particular surface, you can't really draw conclusions about that? The temperatures. You need to know that information, don't you?

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A You can tell the surface temperature of the fixture wherever they were shooting the gun at. What it was reading.

Q And it could be affected by sources other than just -- I gave you the example earlier that there was a heat source in the wall that that could affect the temperature, right?

A There are several things that can affect temperature.

Q And you need to know that in order to draw any conclusions about those temperatures, don't you?

A You need to know it's a surface temperature and its drywall. So it's not going to change quickly.

Q And you mentioned during your testimony that you looked at some manufacturer information on the square footage of cooling for each unit and how much it would cool. Would I be correct, you said there would need to be 30 spot coolers on the second floor according to manufacturer's recommendation, right?

A That's there manual. It says that.

Q Based on a square footage, correct?

A Yes.

Q But that doesn't match up to your load capacity analysis, correct?

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A I'm not sure -- there's is just a generic number. I don't know how they arrive at their number.

Q But between the two, yours would be more precise in answering the question would the spot coolers maintain the temperature of 81 degrees, fair?

A My load is specific to the building and what the patient area and the walls and the windows that are there. It's not a generic number from the manufacturer.

Q So to answer my question, would I be correct that yours would be a more precise calculation on the number of spot coolers that would be needed in this building to main a temperature of 81 degrees?

A That's correct.

Q Within your load capacity analysis, the assumptions that you made included that there was three spot coolers on the second floor, right?

A That was according to James William's deposition and the crime photos.

Q And do you know if that changed at any time. Did they ever add an additional spot cooler upstairs?

A Not that I'm aware of.

Q If they did it would be simple math to say you got another 1.1 tons of capacity?

A I guess you could say that. It's quite a little less than needed.

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MR. SMITH: Okay. Thank you.

THE COURT: Redirect?

MR. WARREN: Yes, Judge.

REDIRECT EXAMINATION

BY MR. GABRIEL WARREN, ESQ.:

Q Mr. Crawford, Mr. Smith asked you some questions about how to properly vent these spot coolers. Do you remember that?

A Yes.

Q Can you explain whether or not it's appropriate to vent these units into the ceiling?

MR. SMITH: Objection Your Honor, this was covered in direct.

THE COURT: Asked and answered.

Q (MR. WARREN) Moving on. Mr. Smith also asked you about a temperature reading on one of the spot coolers that said 74 degrees. Do you remember that?

A Yes.

Q Do you know if that 74 degrees reflected the set point or if that reflected the ambient temperature form the temperature gauge?

A I believe it was the ambient temperature.

Q Mr. Smith also asked you some questions about the load capacity needed to maintain temperature in the building. I think you mentioned that the load capacity is what you need to maintain a specific set point. If a facility is maintaining that set point does that necessarily mean that it would lower the ambient temperature?

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A Well if you have enough capacity you could maintain. You don't go backwards. If you don't have enough capacity the temperature just climbs in the building.

Q Okay. Mr. Smith also asked you some questions about the temperature inside the building for the morning hours in the morning hours of the 13th. And you testified earlier to your understanding that the windows were closed in the facility. What impact would the windows being closed have on the air temperature?

MR. SMITH: Objection. Beyond the scope and I didn't ask him anything about windows being open or closed.

THE COURT: Sustained.

Q (MR. WARREN) Yeah Judge, he did ask about air temperatures.

THE COURT: He didn't ask anything about windows being opened or closed.

Q (MR. WARREN) Mr. Smith asked you some questions about the temperature in the building on the 11th and the 12th. Do you remember that?

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A Yes.

Q And your load calculations regarding that. If the windows were closed in the building during that time, what impact would that have on the temperature?

MR. SMITH: Same objection, Your Honor.

THE COURT: Sustained.

MR. WARREN: I have no further questions, Judge.

Q (THE COURT) I only have a couple. Hold on a second. Mr. Crawford, where is your business William's Crawford Engineering located?

A Sarasota.

Q And you are a licensed physical engineer in the state of Florida?

A Professional engineer.

Q Oh professional engineer.

A Yeah.

Q Do you have any professional engineering certication or licensure in any other state?

A Yes.

Q Where?

A I knew you were going to ask me that. I have several. Tennessee, South Carolina, Texas, California, Georgia, I mean I probably got 10 or 12.

THE COURT: Okay. Counsel as a result of your additional questions of this witness, does anybody have

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anything further?
MR. WARREN: No, Judge.
MR. SMITH: No.
THE COURT: Mr. Crawford the parties have invoked what is known as the rule of sequestration of this case. And what that means is we're asking all of the witnesses when they leave here not to go out and speak to other witnesses about either the questions asked or the answers given. We're hoping that the other witnesses will come in, testify to the best of their own ability without trying to guess what the questions might be or trying to match their testimony with that of another witness.
THE WITNESS: Okay.
THE COURT: Thank you sir. Appreciate your time today. Counsel before we go off the record is there anything else we need to discuss?
MR. SMITH: I don't believe so, Your Honor.
THE COURT: It's my understanding you all had previously brought to my attention some concerns about depositions. Is there anything regarding that that you want to discuss on the record?
MR. MENTON: Yeah Judge. We'll continue to work with Counsel to make sure -- I know they've given us some dates and names we're still trying to figure out

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some. There's one witness that we have under subpoena that have told us that they have been in contact with. And apparently she's having a baby and she's not going to show up, so we have made contact about that. So I don't know it's a former employee that --
MS. SMITH: We don't represent her, so.
MR. MENTON: But they made contact with her somehow.
MS. SMITH: Because I didn't talk to her at all.
MR. MENTON: So we do have one under subpoena. I don't know if she's going to show up and we'll see.
THE COURT: I'll excuse her from that subpoena if she's having a baby.
MR. MENTON: If that does happen, we would look to file a depo or something like that.
THE COURT: That's fine.
MR. MENTON: Judge we're still trying to pin down exactly who is coming and when and hopefully we can get that worked out, but I think we just obviously want to have an opportunity to depose any witnesses that they're going to call.
MR. SMITH: Certainly. And I think we've given you everybody that we know of. The one question mark we we're trying to get, actually there's two. We were trying to get one ARNP and we were trying to get another

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witness Brian James, he was represented by Counsel and I --
MR. MENTON: There's a doctor too at one point that you said you were trying to get. It was some Doctor -- You had him on your list and you said you were trying to get him. And then there was another staff person.
MR. SMITH: And again, represented by other attorneys and I'm working the best I can to -- I'm hamstrung on whether or not they're going to cooperate.
MR. MENTON: I just want to know because I have to notice them and make arrangements to get a court reporter and all that. I've done that for everybody that they told us for sure, but there's several that they said they're working on --
THE COURT: Well you better get them on a subpoena.
MR. MELTON: Well if they're not calling them as witnesses, then I don't care.
MR. SMITH: Your Honor, if we're going to call them, then we'll make everything --
THE COURT: Make them available. Probably at the last minute, so.
MR. SMITH: Make them available and it's not our plan to call people that we can't produce the deposition.
THE COURT: All right. Let's go off the record.

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(Hearing concluded at 1:25 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF BROWARD

I, STEPHANIE ANEZ, do hereby certify that the foregoing pages 3 through 95 contain a true and correct record of the proceedings taken before me.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, Nor financially interested in the action.

Signed this 9th day of MARCH, 2018.

STEPHANIE ANEZ

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Exhibit 7

Hurricane Irma Timeline (FINAL)

Tuesday 9/5/2017

Larkin Community Hospital Healthcare System Administrators & RCHH participated in the first Call with Governor Scott @8:45pm. During this call important information was given which included numbers to be called if assistance was needed (Governor Scott's cellphone and other emergency numbers were provided).

Friday 9/8/2917

Larkin Community Hospital Healthcare System Administrators & RCHH participated in the second Call with Governor Scott @8:30pm. During this call important information was given which included numbers to be called if assistance was needed (Governor Scotts cellphone and other emergency numbers were provided).

Saturday 9/9/2017

Larkin Community Hospital Healthcare System Administrators & RCHH participated in the third Call with Governor Scott @1:30pm. During this call important information was given which included numbers to be called if assistance was needed (Governor Scotts cellphone and other emergency numbers were provided).

Sunday 9/10/2017

Larkin Community Hospital Healthcare System Administrators & RCHH participated in the fourth Call with Governor Scott @3:30pm. This was a very brief call just to provide an update. Unfortunately during the time of the call we were not aware that the AC transformer was flipped.

Sunday 9/10/2017

The building has 2 FPL transformers that provide the building electrical power. One powers the life safety systems and all of the electricity and the second one only powers the AC Chiller.

At 3:00 pm electrical power for the building flickered but immediately came back without the assistance of the generator. The electrical power to the chiller that cools the air conditioner went down and did not return. The building has a dedicated specific (second) line from the transformer to the chiller.

3:41pm FPL online Ticket number 4301 was created to FPL by RCHH Administrator see Exhibit #1

3:50pm call to FPL after online ticket was generated by RCHH Administrator. Call was made by Director of Engineering. Spoke to a live person. FPL was informed of AC issue and the urgency of the request Exhibit #2

4:07pm call to FPL. Made by Director of Engineering. Automated message/status check Exhibit # 3

RCHH Emergency protocol was put in place. 8 spot coolers were distributed evenly on the first and second floor.

admitted sep #s 9/13/17 (nothing on 9/13/17 or Mark E Cuba is admitted) me

Monday 9/11/2017

1:14am call to FPL. Made by Director of Environmental Services Joselin Rosario, she spoke to a live person and informed that AC issue was not resolved, she informed that we had electric but needed AC issue resolved because it was a nursing home with elderly frail individuals, some on oxygen. She was told by FPL representative that nursing home was not priority because we had electric and that those without electric are being made priority. She proceeded to inform that we must be made priority as we were a nursing home with elderly, some on oxygen and residents needed AC. Exhibit # 4

7:00am call to FPL. Made by Director of Engineering, automated message. Exhibit # 6

11:00am Began to drive Alpha staff to offsite parking lot to get their cars, while outside saw an FPL vehicle and asked James and Francisco from engineering to go stand at the corners of facility to flag down

11:04pm call to FPL. Made by Director of Environmental services, automated message. Exhibit # 7

12:00 Noon approximately fans are brought from offsite storage and placed in facility

Nursing home Alpha team sent home after Bravo team arrived between 11:00 am and 3:00 pm

5:00pm Monday 5 Admissions approved and expected from Memorial Regional Health System, Case Managers and families informed that facility is on Spot coolers and fans, A/C is not working.


DAILY ADMISSIONS

On Monday 9/11/17 @ 5:34pm Natasha Anderson CEO of Larkin Behavioral Health Services contacted Governor Scott's cell phone 239-451-0450 that was provided by Governor Scott during the Emergency Hurricane daily calls that he facilitated for Hospitals, Nursing Homes and ALF's. Natasha Anderson left a message informing she was calling on behalf of Larkin Behavioral and The Rehabilitation Center of Hollywood Hills, in the message she stated that our AC transformer located on the FPL pole was tripped during Hurricane and we needed immediate assistance to reset it.

9/11/17 @ 5:36pm Natasha Anderson contacted the Emergency Line 1-800-342-3557 to also report AC transformer being Struck at this time the representative gave her an emergency Tallahassee number to call to report.

9/11/17 @5:39pm Natasha Anderson contacted the number provided 850-815-4925 and spoke to the person who answered the phone (first name Jorge). Natasha Anderson explained to Jorge the situation and expressed that we needed to be made priority as we were a Hospital and Nursing Home with over 162 patients (elderly on oxygen, adult mental health and adolescent mental health). Jorge informed Natasha Anderson that this matter would be escalated. Natasha Anderson informed him that we had contacted FPL and that our work order number was #4301

9/11/17 @6:57pm Natasha called Jorge back at 850-815-4925 to see if he had any new updates from our emergency and he informed her that there were no new updates and reassured her that this has been reported and escalated and that he would continue to follow up.

9/11/17 @7:29pm Natasha Anderson received a call from the emergency center in Tallahassee 850-245-4444 informing her that they were working on our emergency, at this time Natasha Anderson provided more information on both facilities (current census and different populations). Natasha Anderson was informed that she would be provided with an update.

9/11/17 @9:24pm Natasha Anderson contacted the emergency line 850-245-4882 again to inform that we have yet to receive an update.

9/11/17 @9:57pm Natasha Anderson received a call from the emergency line 850-544-1457 informing that they were still working on our request but no new updates to provide. Natasha Anderson expressed once again the urgency of getting FPL to come reset the AC Chiller transformer.

Important to note that during the above time the building was still cool and spot coolers were in place on both sides to maintain the temperature at no point were patients at risk

Tuesday 9/12/2017

9/12/17 @5:51am call to FPL. Made by Director of Environmental Services. Exhibit # 8

9/12/17@9:40am Jorge Carballo Nursing Home Administrator makes the directive to put a hold on any new admissions until the AC is restored. Exhibit # 9

9/12/17 @9:43am Jorge Carballo called Gov. Rick Scott at 239-451-0450 and left voice mail message stating this is Jorge Carballo, Administrator from Hollywood Hills Rehab in Hollywood, Florida. We lost AC chiller Sunday at 3:00 PM, please help, FPL work order #4301, and this is a 152 Skilled Nursing Facility with an attached 50 bed behavioral acute hospital. Exhibit # 10

9/12/17 @ 9:30AM Administrator asks Directors to look for additional fans to maintain ventilation in the facility. Exhibit # 11 and 11A

9/12/17 @9:46am Jorge Carballo sent a text message to Gov. Rick Scott at 239-451-0450 as follows: 1200 N 35 Ave Hollywood FL 33021 152 Skilled Nursing Home FPL - Ticket #4301 Not having AC Nursing Home FPL - Ticket # 4301 Not having AC dehydrates seniors and in water boil zone need help FPL ticket #4301 thank you!!! Exhibit #12

9/12/17 @9:58am Natasha Anderson contacted the Tallahassee Emergency number 850-245-4882 to inquire if there were any updates as the problem had not been resolved. Natasha Anderson was informed that there were many hospitals and healthcare facilities with FPL problems due to hurricane such as Broward Health System and Memorial Healthcare in which all were also waiting to get issues resolved. Representative stated that she understood but really just wanted to make sure that we are also made priority since we had frail elderly patients.

9/12/17 @9:59am Natasha Anderson immediately after the above call contacted Governor Scott's cell 239-451-0450 left a message informing that this was my 2nd time calling his cell to report an emergency that has not been resolved. Natasha Anderson left the facility information and populations served on the voicemail.

9/12/17 @12:41pm Natasha Anderson called Governor Scott's cell 239-451-0450 again to inform that we have yet to receive help from FPL.

9/12/17 @ 12:53pm Yanet Lopez from Larkin Behavioral Health Services reached out to Memorial Engineering Admin Hurola and inquired whether or not she had any spot coolers that we could borrow in in to help keep the facility temperature maintained. These spot coolers were received at 3:15 pm and went to the behavioral hospital since that was identified as the area in need.

9/12/17 @1:18pm Yanet Lopez from Larkin Behavioral Health Services reached out to Broward Coalition and the coalition offered to send a mass email to all members to see if there were additional coolers that could be provided. An email was sent at 1:21pm. This was done to try to have back up coolers in case the existing ones failed, since FPL was not fixing the problem.

9/12/17 @ approximately 4:17 PM Jorge Carballo received a call from Susan Glass from Agency for Healthcare Administration as she was assisting with the emergency operation and wanted to obtain a status on the facility. Jorge Carballo informed Ms. Glass that facility did not have AC since Sunday at 3:00 PM and that the AC had been lost due to a transformer being damaged during the Hurricane. FPL was notified of the problem via FPL work order #4301 submitted to FPL on Sunday, 9/10 at 3:49pm. The facility was not accepting patients as of Tuesday morning, 9/12/17 until the AC would be repaired. Exhibit # 12

9/12/17 @4:41pm Natasha Anderson received a call from Susan from AHCA on behalf of the emergency operation center to get updated information on facilities for the Florida Health System at this time she informed Susan that Larkin Behavioral Health Services (the psychiatric hospital in the same building as the nursing home has stopped receiving patients as of 9/12/17 at 10:00am due to the FPL AC transformer being struck; Natasha Anderson informed Susan of all our efforts and everyone that we have contacted. Susan requested our FPL account number for the facility. Natasha Anderson conferenced James Williams Director of engineering on the call and he provided Susan with ALL account numbers for the facility and also the FPL work orders. Susan informed Natasha Anderson and James Williams that she would note and inform that we still needed assistance for Behavioral Health and for the Nursing Home.

Nursing Home Administrator made rounds at RCH between 7:00 pm and 11:00 pm to monitor status of facility. Fans and spot coolers operational and temperature at or below 81 degrees.

9/12/17 @9:54pm Administrator while rounding asks the team to if possible freeze 2 gallons of water and bring in AM. Discusses with Charge nurse and asks Sergo Collin Nursing Supervisor to place 2 Gallons in each Nurses station. Total of 8 Gallons of water are place in in 4 freezers to have ice in AM due to boil water restriction. Exhibit # 14

Dr. Brian Abraham's physician assistant Brian James made rounds in the evening from 6pm to about 9:30 pm. Dr. Evancho made rounds in the mid-morning. Dr. Cadogan from Humana rounded from 3:00 to 4:00 pm

Wednesday 9/13/2017

Recollection of 9/13/2017 events during the night shift from Maria Colon Castro Director of Nursing. Recollection is based upon limited discussion with staff and without being able to refer to complete documentation. Further, it is not meant to be a complete and exhaustive recreation of the facts.

2:55 am: Resident #1 213 A- [redacted] 99 yr old female expired while on Vitas Hospice crisis care with a Vitas nurse at bedside.

Last documented vital signs [redacted]

3:00 am:

911 called for Resident #2 208 B- [redacted] 84-year-old female was transferred to MRH due to [redacted] as per nursing documentation and supervisor written statement. Last documented vital signs: [redacted]

4:00 am

911 was called for Resident #3 208A A- [redacted] 78 yr old female was transferred to MRH due to [redacted] as per nursing documentation and supervisor written statement. Last documented vital signs: [redacted]

4:20 am

911 was called for Resident #4 [redacted] 96 yr old male who was in [redacted] Last documented vital signs [redacted]
Admitted on 10/17/15 for short term rehabilitation, became long term on 12/1/15. Diagnosis of right leg [redacted]

While paramedics were in facility 226-B [redacted] 84 year old male was [redacted]

While paramedics were in the facility, Resident # 6 229 [redacted] 92-year-old male was [redacted] Last documented vital signs: [redacted]

[redacted]

While paramedics were in the facility, Resident # 7 218A [redacted] a 70 year old female was [redacted] Last documented vital signs: [redacted]

Resident #8 in room 219A [redacted] 71 year old female resident was [redacted] Last documented vital signs: [redacted]

At 6:10am a call was made to Director of Nursing by nursing assistant to inform of incidents and of rescues concern about the temperature of the second floor, Director of Nursing asked to speak to the nursing supervisor and was told the nursing supervisor was with a resident providing emergency care. Director of nursing than asked if the temperature was cooler on the first floor after being told this was correct she instructed to proceed with moving residents to the first floor. Director of nursing immediately notified Facility administrator about the incidents and the moving of the residents.

At approximate 6:20am on Wednesday, September 13, Director of Nursing called Nursing Home Administrator at mobile device 786-599-4843 to inform that the nursing assistant had called her indicating that firefighters and police officers were in the center and they are threatening to contact DCF, that the second floor is hot; and that a [redacted] The Director of Nursing asked the nursing assistant whether the problem of the temperature was on the 2nd floor only or both floors and the nursing assistant said that the 1st floor was fine, the problem was the just the 2nd floor. The Director of Nursing told the nursing assistant to start moving patients to the 1st floor. The Director of Nursing provided the instruction to the Nursing Supervisor, Sergo Collin. The Director of Nursing was preparing to leave her home to go to the center.

At approximately 6:22am Wednesday, September 13, Administrator called Director of Engineering James Williams and immediately following Sandy Sosa, Corporate CEO and informed that Hollywood Police was in RCHH facility and that there were 2 patients that had expired.

The Administrator left his home at approximately 6:30am to the center.

At approximately 6:40am on Wednesday, September 13, Nursing Home Administrator received a phone call from Sergeant Hubert and the conversation was as follows to the best of the Administrator's recollection:

Jorge Carballo: "This is Jorge Carballo."

Serg. Hubert: "This is Sergeant Hubert, Hollywood Police. We are in your facility."

Jorge Carballo: "Yes, I know my DON just informed me."

Serg. Hubert: "How long before you get here?"

Jorge Carballo: "I'm already on my way."

Serg. Hubert: "Where are you coming from."

Jorge Carballo: "I'm in Miramar, but right now by Pembroke Road and Flamingo."

Serg. Hubert: "Ok, so you are about 15 to 20 minutes out?"

Jorge Carballo: "Yes."

Serg. Hubert: "Ok, I'll see you when you get here."

Director of nursing arrived to facility at approximately 6:45am, When Director of Nursing arrived at facility Chief of fire department informed her that a complete evacuation had been ordered and that Memorial Regional Hospital staff had been called in to help in this process. There were few patients left to bring down the elevator and staff from Memorial Hospital, police department and fire department were taking residents outside of the building. Director of nursing than assisted in the process of safe handling the residents during transfer to avoid injuries as memorial staff, medics and police officers did not know patients conditions, comorbidities and limitations, also ensured that residents on isolation for infectious diseases were not in contact with other residents in order to prevent the spread of diseases. At this time no other resident was observed in distress.

Administrator arrived at facility at approximately 7:00 am and entered the facility to find that residents from the 2nd floor were being brought down to the 1st floor and outside of the facility. MHS Regional staff was arriving with stretchers to move patients to the emergency department of the hospital. Administrator inquired with police officers where Sergeant Hubert could be located. Administrator could not locate Sergeant Hubert immediately. The Administrator was then informed by EMS Chief that the facility had been deemed for mass casualty evacuation. Administrator contacted Corporate CEO to inform that the facility had been deemed mass casualty evacuation. Administrator then proceeded to assist with the evacuation efforts.

The Building was completely evacuated shortly after Director of nursing and administrator arrived and residents were kept outside of the building in the sun as instructed by authorities until approximately 9 am that they were transferred across the street under the shade of the Memorial Regional parking lot, at approximately 9:15 local authorities and paramedics were loading the residents into different vans and taking them to the memorial system hospital. Facility administration was later notified that some resident also went to Cleveland clinic and Aventura Hospital.

The behavioral hospital started a voluntary evacuation as a safety measure. All 22 patients were evacuated to hospitals within 4 hours.

Mark Early

MARK EARLY Call and Text Log: The following is a summary of our efforts to obtain Portable A/C spot coolers for the Rehabilitation Center at Hollywood Hills (RCH) and Larkin Behavioral Health Services (LBHS). Note Cell phone and landline communication was very poor (intermittent) and it was difficult to communicate by cell phone with vendors in the field. In addition most vendors did not have power or staff available to support our efforts to obtain cooling and power. Most businesses were closed due to no power, limited staff and support staff working outside the office could not be reached due to intermittent and non working cell phone service. A lot if not most local vendors whom would have portable A/C spot cooler inventories were closed including Johnstone and others..

TUESDAY 09/12/2017

9/12/17 @ 12:30PM Corporate CFO received a call from the Larkin Health System (LHS) Corporate CEO to locate space coolers for The Rehabilitation Center at Hollywood Hills (RCH) and the Larkin Behavioral Health Services Hospital (LBHS).

9/12/17 @ 12:30PM Corporate CFO began working with the Corporate Purchasing Director to locate Portable A/C spot coolers. Corporate Purchasing Director reached out to multiple vendors by phone and email.

9/12/17 @ 1:59PM Corporate CFO called The Rehabilitation Center at Hollywood Hills (RCH) CEO to follow up (was not able to reach). 954

9/12/17 @ 2:04PM Corporate CFO called The Rehabilitation Center at Hollywood Hills (RCH) CEO to follow up (was not able to reach phone service was not working). 954

9/12/17 @ 2:16PM Corporate CFO called The Rehabilitation Center at Hollywood Hills (RCH) CEO to ensure follow-up with FPL, Rick Scott Hotline and to determine if the generator at another facility could be moved to RCH. 954

9/12/17 @ 2:01PM Corporate CFO Texted The Rehabilitation Center at Hollywood Hills (RCH) Director of Engineering (Texted requesting him to call Corporate CFO ASAP). Wanted to discuss the possibility of moving generator to power chiller. 954

9/12/17 @ 2:21PM Corporate CFO called The Rehabilitation Center at Hollywood Hills (RCH) Director of Engineering to ensure he followed-up with FPL, Rick Scott Hotline and to determine if the generator at another facility could be moved to RCH. (was not able to reach phone service was not working). 954

9/12/17 @ 2:33PM Corporate CFO called Rehabilitation Center at Hollywood Hills (RCH) Director of Engineering to ensure he followed-up with FPL, Rick Scott Hotline and to determine if the generator at another facility could be moved to RCH. Director of Engineering. 954

9/12/17 @ 2:53PM Larkin Health System (LHS) Purchasing Director placed an urgent message with Regional Director Member Field Services (Crystal Culbertson) about obtaining 4-6 portable A/C units for Hollywood Hills. LCH cc'd MPE, NA, AL

9/12/17 @ 3:00PM Purchasing Director responded to Regional Director Member Field Services (Crystal Culbertson) Premier, Inc. *"Thank you Crystal, we really appreciate it!"*. cc'd MPE, NA, AL, JW

9/12/17 @ 3:05PM Region Director-Facilities and Construction, Premier, Inc. (Joy WIlliams) responded to Larkin (LHS) Purchasing Director and Regional Director Member Field Services (Crystal Culbertson) Premier, Inc. *"Good afternoon Hary, quick question, do these locations have power? Would a generator be needed at this time as well? Thank You,"*. cc'd MPE, NA, AL, JW

9/12/17 @ 3:06PM Purchasing Director responded to Regional Director Member Field Services (Crystal Culbertson) Premier, Inc. & Region Director-Facilities and Construction, Premier, Inc. (Joy Williams) *"No Power"*. cc'd MPE, NA, AL, JW

9/12/17 @ ~3:45PM As of ~3:45pm the portable A/C spot coolers could not be obtained. The Corporate CFO suggested powering the RCH A/C chiller with a generator from another Larkin Facility. It was recommended not to attempt this because it could blow out the power to the entire facility and damage existing lighting, resident equipment and the existing generator.

9/12/17 @ ~4:00PM Corporate CFO called the Governor's Hotline to find the line was turned off. A message stated no one was available.

9/12/17, at 4:52 PM Larkin (LHS) Corporate Purchasing Director spoke with *Region Director- Facilities and Construction* of **Premier Inc**: (Joy WIlliams) and was provided an update regarding their efforts to obtain spot coolers:

"Good afternoon, below is an update:

- *I have asked for Grainger and Wesco to reach out to Natasha and Mercedes directly for details.*
- *I have reached out to Sunbelt Rentals and am awaiting a call back.*
- *I have e-mailed Trane to see if they have a point of contact for portable AC units.*

The following local companies did not have Portable AC rental units available:

- *Spot Coolers*
- *Miami Portable Cooling*
- *American Portable Air Conditioning*
- *Portable AC Rental*

Thank you,"

09/12/2017 6:00 PM LBHS CEO responded to *Region Director- Facilities and Construction* of **Premier Inc**: email regarding their efforts to obtain Portable A/C spot coolers. *"You can call my cell phone 954-815-9263. Thanks so much."*

Included in the email were the (LHS) Corporate Purchasing Director, Corporate CFO, Corporate Nursing Director, WESCO, and others from Premier

9/12/17 @ 6:27PM Corporate CFO called Corporate CEO to provide an update on efforts to obtain portable A/C spot coolers for the Hollywood Hills building. Advised the Corporate CEO that the Corporate Purchasing Director was in contact with multiple vendors and wasn't able to confirm availability of spot coolers or a generator. The various vendors and group purchasing organization (GPO) contacts agreed to continue efforts to find spot coolers. 954

Tue 09/12/2017 10:22 PM Corporate CFO received email from The Rehabilitation Center at Hollywood Hills (RCH) CEO advising that the generator is working fine and the issue is the transformer on the pole (an FPL issue). RCH CEO advised against retrofitting the facility Chiller with another generator because it could blow the Chiller which was purchased and installed less than one year ago. RCH CEO stated he had 10 spot coolers, (1) one spot cooler had the motor blow, (2) were provided to Larkin Behavioral Health Services (LBHS) and he would like to get an additional 4-5 spot coolers. LHS/LBHS/RCH personnel were working to obtain A/C spot coolers since the prior day.

Exhibit 8

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STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.: 17-005769

AGENCY FOR HEALTH CARE ADMINISTRATION

PLAINTIFF,

V

REHABILITATION CENTER AT HOLLYWOOD HILLS,

DEFENDANT.

_____/

DAY 2

The above-styled case came on for hearing before the Honorable Judge Mary Li Creasy, Presiding Judge at the Broward County Courthouse, 201 Southeast 6th Street, Fort Lauderdale, Broward County, Florida on the 30th day of January, 2018 and commencing at 9:00 a.m.

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E X H I B I T S

(NONE)

Thereupon, the hearing commenced:

THE COURT: Good morning, everyone. We're here for the second day of the filed Administrative Hearing in Case Number 17-5769. Is the Agency ready to proceed, Mr. Menton?

MR. MENTON: Yes, Your Honor. Thank you.

THE COURT: Before we get started, are there any preliminary matters that we need to discuss today?

MR. MENTON: No, Your Honor.

THE COURT: All right. Why don't you go ahead and call your next witness?

MR. MENTON: Thank you. The Agency would call Ms. Tracy Meltzer.

THEREUPON:

TRACY MELTZER

a witness, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MENTON:

Q Thank you, Your Honor. Can you please state your name?

A Tracy Lynn Meltzer.

Q Ms. Meltzer, where are you currently employed?

A Memorial Regional Hospital.

Q And what is your position at Memorial Regional Hospital.

A I'm one of the Directors of Nursing.

Q How long have you been in that position?

A Since January 2004, 14 years.

Q Can you briefly summarize for the Judge your education and professional background?

A To sum it up, I have a Bachelor's Degree in Nursing and I also have a Master's Degree in Nursing and I am a licensed Nurse Practitioner.

Q Can you summarize for the Judge some of the areas that you've worked in the healthcare arena as part of your practice?

A I've worked in a nursing home as a nurse's aide in my early career. Once I became a nurse, I worked in the emergency room, med-surg floors, in the intensive care unit, in trauma, in the OR a little bit and I've been a Nurse Clinician; also an educator at one point.

In the last several years, I've been one of the Administrators over several of the nursing departments at Memorial Regional Hospital. I'm over the surgical ICU, the trauma ICU, the neuro ICU, the neuro step-down ICU, epilepsy monitoring

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unit, the neuro/tele unit, the trauma telemetry unit, surgical unit, geriatric unit, colony acute care for -- unit and now the tele unit.

Q And you mentioned a lot of different service lines; are you currently overseeing all of those? Which ones are you overseeing?

A I'm overseeing the nurse line service, which includes neurosurgery, stroke, the geriatric fracture program; I'm over the geriatric care for elders program and -- orthopedic surgery program, surgical critical care.

Q How about the bariatric unit?

A Yes, on surgical unit for bariatric surgery patients.

Q You mentioned the geriatric fracture program and then another geriatric program. Explain for the Judge what that involves?

A So in one of my nursing units, we get patients admitted to that unit who have geriatric -- who would be considered elder patients who have sustained some sort of fracture or trauma and then also if any patient that is over 65 years old comes from home and has to be admitted to the hospital, they go to the ACE Unit which is the unit that specializes in looking at elderly patients, not just

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for medical reasons but for things such as sleep hygiene, getting them mobile, making sure they get out of bed, socialization, look at their pharmacy, call the pharmacy making sure that they don't got any medicines that are competing with each other. The big focus on taking care of the elder patient.

Q Let's move for a minute -- and can you explain for the Judge your role in hurricane preparedness at the hospital in advance of Hurricane Irma?

A So I'm one of the Directors of Nursing, so some of my responsibilities are to attend planning meetings, prepare for patients that might be boarded in the hospital; assure that we have appropriate staffing for during the storm, after the storm; assure that we have sleep areas for the staff that are staying, divide the staff up into the during teams and the after teams.

Q Okay.

A Extra supplies, ordering extra supplies that we might need.

Q And during what timeframes were you actually at the hospital?

A During the storm?

Q Yes, and then we'll come back afterwards.

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A So, I was not in the hospital during the storm; I was the before and after team. So when it was evident and the timeframe was set for the during people to be in the hospital, I was not there anymore.

Q And then you came back after the storm passed?

A I came back after the storm passed.

Q Okay. And we'll talk about that in a minute. Before we go to after storm period -- we've had a little bit discussion already in this case about the command center. What was the command center and what was your role?

A The Memorial Regional command center?

Q Yes, maybe you can just explain; there's the health care one and a hospital one and how that transitioned?

A So because of the hurricane, each hospital in our health care system sets up its own command center and then our executives also set up a command center that oversees pretty much if there's any issues going on at any of the hospitals; that's who they would report their issues to; system-wide command center. So I was part of the Memorial Regional Hospital command center.

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Q Okay. And did there come a time when the system command center began winding down and do you know why that was?

A So on Tuesday when I came in -- that was September 12th, correct?

Q Yes.

A When I came in to man the command center at night, it was discussed with me in a hand-off that the system had shut down their command center and they were not going to have somebody staying the night in their command center so they forwarded their phone calls to the Memorial Regional Hospital command center so we would be responsible to answer their phones if any of the other hospitals had any issues.

Q And what was your understanding as to why the system command center was being shut down?

A None of the hospitals really were having any big issues anymore and most of the hospitals were back to normal operations, and Memorial Regional Hospital was still not back to normal operations, so we were keeping our command center open another night.

Q Okay. And can you explain then what your role was at the command center for Memorial Regional

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Hospital?
A After the storm?
Q Yes.
A So when I came in after the storm, which was on Monday the 11th, I came in around 10:00; that was when the all-clear was given and we were told to come in, so I relieved the people that were there during the storm.
So we received a hand-off; what some of the issues were that were happening around the hospital and I was to stay in the command center and there were a couple other people there with me, and we just helped the hospital get back to normal operations, so just whatever happened we would be responsible for.
Q And that was on Monday the 11th, is that right?
A Monday, the 11th, yes.
Q And did you have occasion to return back to the command center at Memorial Regional on September 12th?
A Yes, so I went home Tuesday morning, September 12th to sleep and then I came back to work the nightshift in the command center Tuesday evening.

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Q And approximately when was that, do you know?
A It was around 6:00 p.m.
Q Okay. In that process, what were your duties that evening on September 12th and how long were you expected to be at the command center?
A I received a hand-off so I was just following up on some of the things that we received in hand-off. One of the things was that we still had some boarded patients that were discharged from the hospital that had nowhere to go. There's just reports that we're still under boiling water order.
We had a hand-off that we had received a patient from Hollywood Hills Rehab Center with a very high temperature and then there were some air-conditioning problems going on over there and at Larkin and then we had sent Larkin one or two spot coolers to help them out.
Q Okay. And at that point in time, had you actually been in the rehabilitation center facility?
A No.
Q And did you know exactly what the status was of anything going on over there at that point in time?
A No.

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Q And you mentioned that during the hand-off that there was one patient that had already been transferred?
A Yes.
Q What did you know about that patient?
A She said the patient had come from the rehab center with a very high temperature.
Q Okay.
A And there were some air-conditioning issues over there.
Q All right. Did you remember if anybody conveyed to you what that temperature was?
A Yes.
Q And what was it?
A I was told it was -- I can't remember if it was 105 or 103, it was one of those two numbers.
MR. SMITH: Your Honor, I'll just note the hearsay. I'm sure we'll probably get there, but I just want for this point to say that that's a hearsay statement.
THE COURT: Thank you.
BY MR. MENTON:
Q And did you discuss this patient with anyone else at the command center?
A I discussed it with Judy Frum when she

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came back; she was one of the people that came back to man the command center with me that evening; she came after I was already there.
Q And I think you mentioned that you were also advised regarding assistance that Memorial had provided to the rehab center. Can you explain a little bit more what you mean about that?
A You mean the spot coolers?
Q Yeah.
A I was told that we sent them to Larkin, the psych facility.
Q Okay. And what is Larkin and where is that in relation to the rehab center?
A It's in the same building. Larkin had informed us that they were no longer receiving patients because of their air-conditioning problems.
Q Okay.
THE COURT: Did you say it's a psych facility?
THE WITNESS: I believe it's a psych facility.
BY MR. MENTON:
Q And where is that building in relation to the hospital, do you know?
A It's across the street.

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Q And is the psych facility part of the same building as the rehab facility?
A I believe it is.
Q Okay. Let's move forward a little bit. Did there come a time when you learned that additional patients had presented to the Memorial Emergency Department from Hollywood Hills in the early morning hours of September 13th?
A Yes.
Q Can you explain for the Judge how that came to your attention?
A I was in the command center and when the phone rang I answered the phone and our Administrative Officer informed me that we had received two more patients from the rehab center with extremely high temperatures and that somebody was going to notify DCF and law enforcement because there was an extreme situation occurring over there.
Q And when you say high temperatures, what was your understanding as to the condition of those patients?
A 105 degree temperatures.
Q And as a nurse, what did that indicate to you?
A That there was a heat problem over at the rehab

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center is what I was thinking.
Q Okay. And did you have discussions then with Ms. Frum about that situation?
A Yes. She was in the room with me in the command center so I relayed the phone call that we had received.
Q And going back to the temperatures for a minute, can you explain then for the Judge the information that was conveyed to you led to your - how did you respond to that in terms of other patients that might be there; what was your reaction then?
A At the time, after the first phone call from the Administrative Officer, Judy and I just were saying back and forth to each other that it sounded like that they had a problem over there and that it was a real mess, and we were answering back and forth what we could do to reach out to assist them.
Q Is it unusual for the emergency department, which you oversee, to see multiple patients from the same facility with temperatures that high?
A It is unusual, yes.
Q Does Memorial receive patient transfers from nursing homes on a regular basis?

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A Yes.
Q And had you ever received more than multiple patients with temperatures this high from a nursing home before?
A I wouldn't know.
Q It was never brought to your attention in your role as overseeing the Emergency Department before this?
A I wasn't overseeing the Emergency Department at Memorial Regional.
Q You mentioned that somebody called the DCF hotline? What is the DCF hotline, what do you know about it and what were you told as it relates to this incident?
A I was just told that there were some concerns about the conditions in the rehab center and that somebody was going to call DCF. I don't remember who they told me who was going to call and that law enforcement was going to be notified.
Q And what is DCF, just so the Judge has an understanding?
THE COURT: I've got the understanding.
MR. MENTON: Okay.
THE COURT: Department of Children and Families.

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BY MR. MENTON:
Q Now can you explain for the Judge what the timeframe was then that you were discussing this situation with Ms. Frum?
A So we received a call maybe around 6:00 in the morning. We were sitting in the command center, waiting for our relief to come in; which we thought they would be may be coming in around 7:00.
We were just talking about Judy went to sleep for a few hours and when she got up, we had discussed what had occurred since she went to sleep, like the events that unfolded in the evening; the things that we encountered. And that was one of the things that I -- she was sitting with me in there when the phone rang so I just told her what the Administrative Officer said.
Q So then after you relayed to Ms. Frum what the Administrative Officer said, what actions did you and Ms. Frum take next?
A We were just discussing, you know, that it sounded like a mess over there and we were commenting -- feeling sorry, that maybe the staff was overwhelmed and we were thinking about what could we do to reach out to them.
And then shortly after that, the

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phone rang again, and it was the Administrative Officer telling us that a third patient had just come in with an extremely high temperature from the rehab center and that they were in cardiac arrest.

Q And what did you do then?

A Then we really were concerned that there was an extreme situation going on over there, so we started asking each other, should we go over there, should we call over there, what should we do to reach out to them? Judy was concerned that we shouldn't leave the command center unattended, so I suggested that we forward the phone calls and that we walk over there and she agreed to that.

Q Okay. And did you do that?

A Yes we did.

Q And at this point, to your knowledge, had you or anyone reached any conclusions as to whether the facility needed to be evacuated?

A No.

Q And at about what time did you walk over to the facility?

A Somewhere around 6:30 in the morning or so.

Q Okay. And can you describe for the Judge then what happened when you got to the facility?

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A We walked over to the facility and there were some police cars that were already there, an ambulance, another ambulance was pulling in. There were some policemen and other uniformed people standing around the building.

So we walked in with an EMS crew that was going into the building and there was a police officer standing at the sliding door on the side, and he pried it open for us. We told him that we were from the hospital and we were trying to offer our assistance. We walked in from the outside into the first floor and the heat from the first floor was hotter than the outside temperature was. It was very noticeable when we walked in.

There was an elevator right there when we walked in the door, there was I think the nurse's station or the reception area, right when we walked in, and there was some staff and I'm assuming they were residents; there were people in wheelchairs sitting behind that desk structure.

So the elevator opened and the EMS crew was going to the second floor so we got in the elevator with the EMS crew and went up to the second floor. When the elevator opened on the second floor, it was hotter on the second floor than it was

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on the first floor. We approached the nurse's station that was there. There was a spot cooler sitting at the nurse's station and we approached the nurse's station and told them that we were from the hospital and how can we assist them?

Judy asked to see the person in charge so she said she was going to go find the person in charge, so I went down the left side of the hallway and tried to help the staff. There was several staff in the hallway; there were several patients in the hallway at that point. The staff was trying to bring the patients from their rooms into the hallway.

One of the staff members from the rehab center made a comment that they were dropping like flies and they were diligently trying to move patients out of their rooms.

Q Let me back up for a second and have you explain a couple of things that you were talking about. First of all, what was the reason that you and Judy decided to go over to the facility to begin with?

A Because we had already received several patients from the rehab center with illnesses that corresponded to heat situations from lack of

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air-conditioning, so we decided to go over there based on what we were hearing to see if we could help them out because it sounded like they had an extreme situation over there with the heat.

Q And you mentioned the heat when you walked in the first floor -- when you got off the elevator; how would you describe the heat when you came onto the second floor?

A So when the elevator opened, the heat, there Was like a blast of heat like when you open your car door at the end of the day after it's been sitting out -- when you open your car door it was like a blast of heat hitting us when the elevator opened.

Q Were there any Hollywood Fire Rescue or police personnel on the second floor when you got on the second floor?

A I didn't notice if there were, I just walked in with the EMS crew that we walked in the doors with.

Q Okay. And I think you said, at some point you saw some of the Fire Rescue crew in the facilities, is that right?

A Yes.

Q Okay. And at any point -- and this goes forward in time too -- at any point, did the Fire

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Rescue crew seem panicked or in a chaotic situation?
A No, they were very methodical and organized in their approach. They knew what they were doing.
Q Okay. So let's go back then to when you got off the elevator on the second floor; you said, Ms. Frum went to look for a person in charge and you started describing what you did. Can you just continue on then and explain to the Judge what you did?
A So I noticed right when -- the first patient that I noticed was in the hallway and it was a gentleman and he was kind of stiff with his body; he was kind of laying across his wheelchair. He didn't bend at the waist and he wasn't sitting in it properly.
At first I thought maybe he was deceased so I went up to him and took a look at him. He was dry, he was breathing very slowly, his mouth was open. He had some thick mucus in the corner of his mouth. I felt him; his skin was dry and when I realized he was breathing I went on to see if I could help the staff. So I went into one of the patient rooms and there were two females in the beds.
The first patient I went up to was

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closest to the window, the window was open, and I was asking her, trying to establish whether she needed my assistance, if I could by myself get her out of the bed and put her in a wheelchair; there were two wheelchairs in the room. I was trying to speak to her. She was dry. She was warm. She had sunk-in eyes. She was curled up in a fetal position and she just looked at me with her eyes; she was nonverbal. I couldn't really establish whether I was going to be able to lift her myself and put her in wheelchair so I went to the next lady in the bed that was closest to the door. She too was in a fetal position curled up on her bed, which was just a mattress; there was no sheet. She was in a diaper. She was hot and sweating. She was very wet. Her hair was wet. And she too, her diaper was saturated with urine and feces, and she too just kind of looked at me.
She was nonverbal and that's when some of the Hollywood Hills staff came in the room. And one of the staff members picked the lady up closest to the window by herself and put her in the wheelchair. And I asked her if she wanted me to help her lift her, and she said we don't have time for that; we've got to get these people out of here, so then

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another worker helped me put the other lady into a wheelchair.
Q You said the staff member indicated, we have to get the lady out of here. At that point, did you know whether the facility had any plan that it was implementing to deal with the situation?
A No I did not.
Q Did anybody from the staff at the facility ever indicate to you that they had a plan to deal with the situation?
A No, they just said they were trying to get the people out of there and they didn't know what happened.
Q Based upon what you saw when you arrived, did there appear to be patients in distress on the second floor of the facility?
A Yes.
Q Now Hollywood Hills has suggested in this case that the temperature in the facility never got above 80 degrees; is that consistent with what you observed?
A I wouldn't know. It was just hotter on the first floor than it was outside and it was hotter on the second floor than it was on the first floor.

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Q So you didn't have a thermometer to measure the temperature?
A No.
Q What was the situation as it related to the patients in the facility and whether they were in a safe environment?
A Based on the extreme heat on the second floor and the knowledge of the patients that we had already received at the hospital, that there was an extreme heat situation and that the patients were not safe to be in that facility on the second floor at that time.
Q And did you have discussions then with Judy and some of the Fire Rescue personnel about the situation and what to do about it?
A Not at that time but yes, later we did.
Q Let's go through some of the events that occurred leading up to that time. Can you describe for the Judge then; did you go to check on other patients and what did you find?
A Like I said, there were four or five patients in the hallway at that point. They were sweating. Both of them had warm temperatures and shallow breathing, nonverbal. They were already in wheelchairs in the hallway. Then I went into a

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room and found two gentleman dead in their beds and then I went back out into the hallway and at that time EMS -- we were discussing that there were two gentlemen dead in Room 226 and at that point EMS gathered and decided to do a formal triage approach to the second floor, so we were going in teams and we were going to start from one end of the hallway and work our way back and check all the patients in all the rooms.

And at that point when we were walking into the first room at the end of the hallway, one of the EMS guys told me that they only had two ambulance rigs there at the time and he didn't want to take one of his rigs out of service to transport patients to the hospital, so I told him that I would go back to the hospital and send people over with stretchers and wheelchairs so that we could help them transport patients across the street to the hospital.

And it's at that point that I decided to go find Judy, my colleague that was over there with me, to tell her what we were going to do and what I was going to do. So it's at that point that we went and found Judy and discussed what we had found; basically the people in distress and several people

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are going to be going to the hospital. And Judy had told me that she had already notified our CEO, Zeff Ross of the situation in the rehab center.

The EMS guy that I was with told people to stop using the elevator; that we were going to use the elevator to transport patients and that's when I told them that I was going to go back to the hospital. I was calling the green alert, which is the MCI notification for our hospital, to notify the hospital that we were going to be receiving an influx of patients from the rehab center.

Q And what is an MCI, you mentioned that term; I think we've had it before, but just --

A Mass casualty incident, it's when you're receiving patients that could interrupt normal operations of the hospital; a number of patients from an incident.

Q At that point, did you have a general estimate as to how many patients you thought might be involved in this MCI?

A One of the things that you have to do when you're calling a green alert at the hospital, is you need to estimate how many patients you think the

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hospital is going to be receiving. So I was trying to estimate, asking staff that were in the vicinity, how many patients were in the building, how many patients were on the second floor; nobody was really giving me any concrete answers, so based on the wing that I was on, I figured there was about 20 patients on that wing and there was a second wing the other way, so I figured maybe there was 40 patients on the second floor and maybe about the same on the first floor. So I was thinking somewhere around 80 to 100 patients in total and knowing that the most critical patients would go to the closest facility, which is Memorial Regional Hospital, I estimated that a good majority of the second floor patients and possibly some of the patients on the first floor would be going to our hospital. So that's why I picked a number around 50; that's what I notified the hospital that we would be receiving approximately 50 patients.

Q And did you, in your position at the hospital, have the authority to call a green alert like that?

A Yes.

Q And you mentioned that before you did that, you had some discussions with Judy. Did you tell her about what you had seen and what you had

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observed in the facility?

A Not specifically, just that there were a number of patients in distress that would need to go to the hospital.

Q And do you know if that was also discussed with the Fire Rescue personnel on the floor, do you recall?

A With EMS and myself?

Q Yes.

A We were gathering in the hallway. There were discussions that we were going to start a formal triage and we were going to keep -- one of the EMS guys said to me that he didn't want to take his crew out of service, that they wanted to keep working, and that's when I said I would go back to the hospital and send stretchers over for them to transport patients so they didn't have to leave.

Q From the people that you were interacting with, did anybody express any objections or concerns about the need to get the people off the second floor and out of the facility?

A No.

Q Did you agree with that decision?

A Yes.

Q And why?

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A There was an extreme heat situation there and I knew that we had already had seen some deceased people and I was afraid that somebody else was going to die so, I thought that we needed to get the people out of that building.

Q Did you consider whether you could of or any other options?

A No.

Q Why couldn't you just move all the patients closer to the spot coolers; was that an option that was going to work?

A No, it was an extreme situation with people already in distress and I felt that they needed medical attention to avoid further deaths.

Q Can you describe for the Judge, of all the patients that you saw, what percentage of them were actually in some form of distress that you thought needed attention?

A All of the patients that I saw that I assessed were in distress, all of them, if not dead.

THE COURT: And how many approximately out of what you saw?

THE WITNESS: It was seven plus the two dead gentleman, nine.

BY MR. MENTON:

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Q And was that consistent with the observations that you heard from the others that were on the floor triaging patients?

A I didn't have any discussions with anybody else about what their findings were.

Q Explain to the Judge how you called the green alert and then what you did after that?

A So I notified -- I called from the facility; I called over to our Administrative Officer who is in charge of the facility, that I was initiating a green alert, which is a mass casualty incident and that we were expecting approximately 50 patients with heat-related illness and that she should call the operator to put the announcement out.

Q Okay. And then what did you do?

A Then I went down the stairs and I got to the hospital to start preparing the hospital for the arrival of casualties.

Q And explain to the Judge the different things that you did in that regard?

A So the first thing that I did was telling them that we were going to be pushing people on stretchers. I went to our security office and notified the security office that they need to set

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up a secure route so the staff would know where to push the stretchers, where to enter our hospital again; which doors were closest to the emergency room and after I did that, I went into the emergency department and I briefed the staff there who were already trying to, you know, gather -- so we were clearing out space to give to the patients so we were giving briefings to the physicians that were there, to the nursing staff that was there; I was opening up a nursing unit to try to get some of the admitted patients out of the emergency department; we were very full.

Q What do you mean by opening a nursing unit; explain to the Judge what that means and what the purpose of that was?

A Because I was in the command center all night, I knew that we had a significant number of patients in the hospital that were discharged, but could not go home for one reason or another. So they were boarding in our hospital, so we wanted to open up a nursing unit that we had recently closed to move those patients into an area, so we could get more admitted patients out of the emergency department into the nursing unit so that we could make space for the patients that we were expecting to receive from the rehab center.

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Q I think you mentioned this, but did you brief the doctors and nurses in the ED and what did you tell them?

A Yes, I briefed them that there was an extreme heat situation in the rehab center and that we were expecting patients with heat-related illnesses from the rehab center, elderly patients with heat-related illnesses.

Q And were there other Memorial staff that assisted in preparing the emergency department? Who were they and what were they doing?

A When you initiate the green alert in the hospital, people come from all different areas so there were people reporting from the nursing floors, there were people from the operating room. It was change of shift at the hospital, so the night shift and the day shift were all there together, so there were many people -- doctors come, anesthesiologists, surgeons, everybody kind of like comes to the emergency room to see if they can help in any way. So all of those people who were there was who I was briefing.

I assigned a Physician Lead in the emergency department to manage what doctors would see what patients. The Clinical Manager at the time

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was the most senior person in the emergency department that worked in the emergency department so I assigned him to ready his areas because we were getting supplies, IV solutions; we were getting lab tools; all kinds of things that we thought we might need to work up the patients that were coming and treat them.

Q And did any patients arrive at the Memorial Regional Emergency Department while you were there?

A Yes, I was sending some staff over with stretchers and I heard that the first patient was coming so I went over to make sure that there was an empty room for the patient to go into and that there was a doctor and a nurse assigned to that room, and they were doing CPR on that patient when he came through the door.

Q Was Memorial staff transporting patients on the stretchers that you talked about directly --

MR. SMITH: Leading.

THE COURT: Rephrase the question.

BY MR. MENTON:

Q Can you describe what the role of the Memorial staff was that went over to the facility as it relates to taking patients to the hospital?

A No, I just assigned -- I said, who's here

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that's not a nurse, raise your hand and I found 10 empty stretchers and I said, each of you take a stretcher and follow me and I had them go out the door and I said go up to the rehab center and help them. So I don't know what happened once they got there; I just instructed them to take the stretchers over there.

Q Going back to the patient that you did observe in the emergency department, did you assist with that patient?

A No.

Q Where did you go from the ED?

A So I went to assign somebody to oversee the morgue.

Q And why was that?

A We had received some patients over the night. I knew at least one of them was deceased and I knew the morgue was relatively full. In seeing the two deceased men in the rehab center, I didn't know if those patients were going to come over, so I assigned someone to make sure that there was morgue space, so if in fact if we received more patients that died, that we would have a place to take them so they wouldn't take up space in the emergency department so that we could open that up for more

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patients.

Q Based upon what you had seen when you were over at the facility, did you have concerns that there might be additional deceased patients from the facility if they didn't get out in time?

A Yes.

Q And can you explain to the Judge what led you to that decision?

A So I knew about the first patient that we had received on Tuesday the 12th with an extremely high temperature and then coupled with the three more that we received during the overnight period with extremely high temperatures, I knew that one of those patients had died. And then seeing the two dead people in the facility and the condition of at least one of the gentleman, I felt that possibly more people could die.

Q Based upon your presence there -- the process of getting the patients out of the facility has been described by Hollywood Hills as being chaos or chaotic --

MR. SMITH: Objection to the question, Your Honor. It's not proper to say "been described by Hollywood Hills as this".

THE COURT: No and Hollywood Hills hasn't

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presented any witnesses yet.

MR. SMITH: Right.

THE COURT: So if you could refrain from making those types of --

BY MR. MENTON:

Q How would you describe the evacuation process that was conducted from your involvement with it in observations?

MR. SMITH: Objection, lack of predicate. She hasn't even described that she was involved at the facility in the evacuation process.

THE COURT: What was your question, sir?

MR. MENTON: My question was, how would she describe the process of getting the patients out of the facility based upon her involvement; I did say based upon her involvement.

THE COURT: Overruled, go ahead and answer.

THE WITNESS: So I was not involved in the evacuation per se. When I went over there, I observed staff frantically trying to move patients out of their rooms into the hallway.

BY MR. MENTON:

Q And you said staff, is that the facility

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staff?
A The rehab staff, yes. And I decided that I would try to help them get the patients out of their rooms into the hallway. I don't know what they were planning to do with them once they got them to the hallway. I didn't know what was happening; I just tried to help them.
Q Okay. Based upon your involvement after you left the facility, just describe how that process worked in terms of patients being triaged and transported to Memorial Regional.
MR. SMITH: Objection, lack of predicate.
THE COURT: The witness can say to what extent she knows. She's already told us that she was not part of the evacuation.
BY MR. MENTON:
Q As someone that was at the hospital helping getting ready for it; that's all I'm asking for. What were your observations as to how that process was unfolding?
A At the hospital?
Q Yes.
A So our staff was responding. Everybody has a role in the response of a disaster, so I was just helping organize the staff at the hospital. I

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went back to the command center at some point and gave an update about the types of patients that we were going to be receiving, answering phones. Once I left the emergency room and went to the morgue. Just basically when I received a call I would go and respond to whatever the situation was.
Q Okay. And you mentioned everybody has a role; are there protocols that the hospital has for mass casualty incidents?
A Yes, there's guidelines for each type of situation that we may encounter; hurricane or bomb threat or mass casualty incidents, fire; we have plans for all of those things.
Q Are those things that you are trained on in advance of an event like this?
A Yes, yes.
Q And is your staff also trained as it relates to those?
A Yes, we have drills. We have meetings and we have mock -- we have tabletop drills; before a hurricane everybody pulls out the plans; we review our plans at the start of hurricane season. We try to be as well prepared as we can be.
Q And based upon your involvement in this particular incident, did you try to follow those

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protocols as best you could and did the staff that you were involved with try to do that?
A Yes, in the hospital, yes.
Q Now do you know what time it was that you got back to the command center?
A To the command center, after I left the emergency department?
Q Yes.
A Approximately 7:30 in the morning.
Q And I may have asked you this already, but if I didn't, what time did you leave the facility to go back to the hospital; do you know roughly?
A The rehab center?
Q Yes.
A Right after I called the green alert at the facility is when I left the facility, so probably around 7:00 a.m.
Q Now did Memorial use its auditorium as part of the evacuation process?
A Yes.
Q And did you go to the auditorium during the evacuation process?
A Yes.
Q And what did you do and what did you observe there?

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A I was called to bring some privacy screens down to the auditorium because they had a patient that needed to be changed who was incontinent. So as I was going down with the privacy screens I saw two of the Nurse Managers that report to me; the Nurse Manager of the ICU and the Nurse Manager of the trauma unit so I asked them to come with me.
When I got to the auditorium there were already several patients in wheelchairs lined up in the auditorium, so we dropped off the privacy screens and then it appeared to me that nobody was deemed in charge of that room so I put my two Nurse Managers in charge of the room.
Q Okay. So did you give the staff in the auditorium any directions with respect to the in-flow and out-flow of patients?
A Yes, I assigned -- I made an announcement in the auditorium that any patient coming in and any patient leaving the auditorium, we needed their name and we needed to know where they were going. And at that point there were some medical records from Hollywood Hills in the auditorium, so we were trying to match up the medical records with the patients that were there. So I asked them to keep a log.
Q Let me back up to that for a second, the

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medical records. Can you just explain that a little bit further? Where did those medical records come from and how was that process working of trying to match them up with the patients?

A I received a call that somebody was over at the Hollywood Hills facility and that they had hard copy medical records, but most of the medical records were electronic, so somebody brought the hard copy medical records over to our facility, and they were in Human Resources and Human Resources brought those medical records into the auditorium, which is where at that time the majority of the patients were, so we were trying to match up the medical record with the patient before they left to go to a different facility.

Q Okay. And you mentioned that you instructed patients to keep a log; what was included in that log and did it include information as to where the patient went?

A I instructed the nurses to write down -- we had registered several patients at that point; so to take their admission sticker, their registration sticker; put it on paper with their name and then put it next to their name what facility that patient was being transported to. The auditorium was being used

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as a staging area.

Q And were there some patients who were admitted directly to Memorial Regional from the facility?

A From the rehab facility?

Q Yes.

A Yes, there were patients that went to the emergency department that got admitted.

Q Okay. Do you know how many patients?

A It was between 30 and 35. I think the final Number that everybody said was 34 to Memorial Regional Hospital.

Q In terms of the acuity of the patients, was there any prioritization in terms of the acuity of patients as to who would stay at Memorial and who would go somewhere else?

A Once they got to the emergency department we wouldn't send them out, we would admit them to our facility, wherever they needed to be admitted to.

Q Did the information regarding the transfer of patients and the admission of patients, was that being relayed to the command center?

A The patients being admitted from the emergency department?

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Q Yes. Or from the auditorium, just the information regarding the log that you were talking about earlier?

A So the log that we were keeping in the auditorium -- the patients that were in the auditorium and where they were going to, yes, that was being sent to the system-wide command center; they had reopened at that point so we were sending that to the system-wide command center so they were keeping a master log for all of our facilities; it was being coordinated through them.

Q All right. Let me move to a different area for a second. You mentioned that sometime on the 12th, it was your understanding that Memorial sent some spot coolers over to Memorial Regional, do you recall that?

A To Larkin?

Q To Larkin, I'm sorry.

A That's when I received the hand-off.

Q That's what I mean.

A There was an air-conditioning problem and that we had sent one or two spot coolers over to Larkin.

Q Okay. So are you familiar with those spot coolers; have you seen those devices before?

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A Yes.

Q And we have -- I think some photographs and there's going to be more testimony and evidence about it; is this the type of unit that you're talking about?

A Yes.

Q Did you see some of those units when you went to the facility on the morning of September 13th?

A Yes.

Q And were those units -- based upon what you observed and saw, were those units working in a manner that was keeping the patients in the facility safe?

A What I observed when I got up on the second floor was I observed a spot cooler sitting at the nurse's station. One hose was pointing towards the nursing station, one hose was going up into the ceiling and then one hose was pointing out towards where the elevator was.

Q And were those working effectively to keep the environment safe from what you saw?

MR. SMITH: Your Honor, I think we're getting -- straying into some kind of expert testimony on the efficacy of spot cooling. I

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mean, I've kind of sat and let it go a while.
THE COURT: Sustained.
MR. MENTON: That's fine, Your Honor, we'll have other witnesses that can talk about that.
BY MR. MENTON:
Q Where was the spot cooler that you saw at the nurse's station oriented; how was it directed?
A So one hose was pointing towards the nurse's station and one hose was pointed towards the hallway where I was coming from, from the elevator, and one hose was up into the ceiling.
Q Did you touch the spot cooler?
A I touched the hose, yes.
Q And how would you describe it?
A Normal -- didn't feel any different but there was heat coming from the spot cooler. From the end that I passed.
Q Okay. What time did you leave Memorial that day?
A What time of the day?
Q Yes. Let me back up a second. You talked about, you went to the morgue, you went to the ED, you went to the command center and you went to the auditorium; was there anything else that you did

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after you left the rehab facility, as you recall?
A After the last patient was out of the auditorium, I went to the MHS command center with the completed log and then I went to the Memorial Regional command center and there were still a couple of medical records that we hadn't been able to place so we tried to find out where those patients were and somebody volunteered to drive those records to wherever the patient was, and then I basically said I was leaving for the day because I had been there over 24 hours.
Q Okay. And do you know approximately what time that was, roughly?
A I had been there 24 hours, almost; it was around 2:00 in the afternoon.
MR. MENTON: That's all the questions I have, Your Honor.
CROSS EXAMINATION
BY MR. SMITH:
Q Good morning, Ms. Meltzer.
A Good morning.
Q I don't have a lot of questions for you, but I have a few.
A Okay.
Q Am I correct that for the past 14 years

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you've served as a Supervisory Nurse where about 95% of your time is spent in administrative duties?
A Yes.
Q Am I correct that prior to the events of September 13th and the evening of the 12th and going into the morning of the 13th that you've described today, you really had no material involvement or knowledge of Hollywood Hills?
A Correct.
Q It's next door to the hospital, so that you would assume that you would receive transfers from -- the hospital received transfers over the years from that nursing home?
A Yes.
MR. MENTON: Objection, calls for speculation.
THE COURT: Overruled.
BY MR. SMITH:
Q Do you know that there were transfers?
A Yes.
Q And to your knowledge, you were not aware of anything that it was other than just a typical nursing home?
A Correct.
Q On that hand-off phone call that you

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described when you first came on duty on the evening of the 12th, the only thing that you were advised is that you had a patient with a high temperature that had been transferred over from Hollywood Hills and that they were having some AC problems?
A That they were having some AC problems and that Larkin was no longer receiving patients because of their air-conditioning problems and we had sent one or two spot coolers over to Larkin.
Q Okay. That was on the evening of the 12th that you were advised that the spot coolers had been sent over? Do you know if it could have been more, like four spot coolers from Memorial?
A It may have been, they didn't specify a number.
Q But that's the full extent of your knowledge of the particular patient; you didn't review medical records or get any other details on that particular patient?
A No.
Q And you'd agree, just based on your experience in your nursing career that patients can have high temperatures, as high as 105 degrees from conditions other than heat exposure, things like sepsis, urinary tract infection, central line

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infection or pneumonia; is that true?
A Yes they can, not often though.
Q But the high temperature does not automatically equate to heat exposure?
A No.
Q You said that when you went over to Hollywood Hills, there was an EMS crew already there, correct?
A I assume. There was an ambulance there and there was one that had pulled in and they were getting out and we walked in with that crew.
Q So it appeared to you at the time that was the second EMS crew coming to the scene?
A Yes.
Q And there were also police officers at the front door?
A Yes.
Q There were several people by the front door?
A Yeah, five or six maybe.
Q Five or six that appeared to be police or other officials?
A Yes.
Q And there were a couple of squad cars there?

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A Yes.
Q And you said you noted it was hotter inside than outside, but you couldn't approximate the actual temperature?
A No.
Q You did tell us that when you went to the second floor, you felt that feeling you'd get when a car has been parked out in the sun all day -- I've been there, I've missed the shady spot and my car is parked in the sun for several hours, I open the door, it's been sealed up, I didn't have the thing to block the sun from coming in and I open the door and I get that sensation. But I've never had it happen to me in the evening hours, so I just want to know, was the sun up when you went over there or was it still dark out?
A It was still dark, dusk.
Q It wasn't dawn yet?
A No.
Q And you said it was -- do you know the exact time you got over there; was it between 6:30 and 6:45 or --
A It was after 6:30 and before 7:00, that's all I know.
Q So somewhere between 6:30 and 7:00, fair

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enough. Would it be fair to say that you spent no real time -- maybe a couple minutes on the first floor?
A If that, yes. We were just waiting for the elevator, that's why we were on the first floor.
Q And when you exited the elevator, you observed that there were residents -- before I go to that, you told me -- you discussed the temperature, but you can't approximate that temperature on the second floor either, correct?
A No.
Q You said when you exited the elevator, you observed that there were residents that were sitting behind the nurse's station on the second floor, is that right?
A Yes there were.
Q And that spot cooler -- that spot cooler you mentioned that Mr. Menton pointed out, one of the hoses was pointed towards those patients?
A Yes.
Q You were asked about the spot coolers; you said you had some familiarity because you had used them before or --
A Yes, it's the same type of spot cooler we use in our hospital.

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Q Okay. And when do you use them?
A When we have an air-conditioning problem, we place in the air-conditioning duct.
Q So it's used as sort of a temporary fix if you need supplemental cooling?
A Yes.
Q I just want to understand, there's two hoses there; they're blue and white that come out, in addition to the hose that goes up into the ceiling. When you've seen them set up at Memorial, is there a hose that goes up into the ceiling?
A Yes.
Q And the two arms that come out; in your experience when they've been used, are those supposed to be blowing cool air, if you know?
A The big one blows cool air.
Q Does the other one blow warm air?
A No, it blows -- ideally it's supposed to blow cool air too, but I believe that one's smaller.
Q I just want to understand; whatever you know, but are they both supposed to be blowing cold air or cool air?
A I don't know. I know one of them for sure blows cool air.
Q Okay. But you're not sure if they're both

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supposed to blow cold air?
A I don't.
Q And your observation the day you were in the facility was, you felt like one of those two hoses, not the one going up to the ceiling, but one of the other two was blowing warm air?
A There was warm air coming off the machine someplace; I don't know if it was from the hose or from the machine itself.
Q Oh, okay, I misunderstood. I thought it was coming out of one of the hoses. Do you know if there was cool air coming out of the hoses?
A I don't know.
Q Would it be fair to say when you arrived, that the staff appeared to be working diligently and not to being inattentive to the situation that you confronted?
A They were frantic and working diligently to help their residents.
Q Fair to say, things were happening pretty quickly?
A Yes.
Q The first patient that you encountered that you discussed, the gentleman in the wheelchair that you said seemed stiff; you examined him?

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A I touched him.
Q You touched him. Did you take any kind of vital signs of that patient?
A I felt for a pulse but I did not record it; I just felt it.
Q And he had a pulse?
A Yes.
Q Appeared to breathing?
A And he was breathing, yes.
Q Did you assess that he was in a critical State and needed immediate medical attention?
A I didn't assess that, no.
Q Did you stop to render immediate aid to that first patient in the wheelchair?
A I did not. I mentioned to one of the EMS crew that there was a patient there that was perhaps in distress.
Q Okay. So you did pass it along to the EMS that this patient may need immediate attention?
A Yes.
Q And you never encountered that patient again, correct?
A Not that I'm aware of, no.
Q And you can't identify it either by a name, which we're not using names, but you can't

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identify that patient either by a name or by a number?
A No.
Q It's just somebody that you saw and you don't know what that patient's eventual outcome was?
A No, I don't know.
Q And you don't know for that patient or any of the residents at the nursing home what their baseline was, as far as what was their normal level of functioning?
A No I don't know.
Q And based on what you saw and observed, patients were being taken out of their rooms -- I think we used the word facility staff -- and I just want to be clear, by the Hollywood Hills' staff, were being brought out of their rooms so that assessments could be made?
A That Hollywood Hills' staff was bringing patients out of their rooms and putting them in the hallway.
Q And you were just trying to help them get the people transported somewhere?
A I was trying to help them get the people out of their rooms and into the hallway.
Q And did you assume that what you would be

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doing is assisting -- that you were trying to help them, like get the people to be transported?
A I assumed at that point that they were just getting the patients out of their rooms into the hallway. I didn't know where they were planning on taking them or transporting them to. I didn't know at the time that I got there; I was just trying to assist them.
Q And as far as everything that you observed, the staff appeared to you to be concerned?
A Yes they were concerned.
Q The residents behind the nurse's station; would it be fair to say you never assessed their condition?
A On the first floor or the second?
Q Second floor.
A No I did not assess them.
Q And you mentioned going into the patient room where there were two female patients. Would it be correct that you observed that a window in that room was open?
A Yes it was open.
Q Do you know if there was a fan operating in that room?
A I didn't notice one way or another.

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Q Did you notice if there were water containers; glasses of water sitting on any of the nightstands?
A I didn't notice any of that.
Q And you mentioned the nurse that came in and actually took a patient out of bed and put her into the wheelchair; you offered help but she said we don't have time for that?
A Correct.
Q And that you did not in any way mean to suggest that that nurse was doing something improper; she was simply trying to address the situation?
A Correct.
Q You weren't trying to be critical?
A I was not being critical, no.
Q She appeared concerned?
A She appeared concerned, very concerned.
Q And you had no knowledge of any situation, conditions at the facility prior to between 6:30 and 7:00 when you arrived?
A Other than what I had received in report from the Administrative Officer, that they had an extreme situation and they were going to notify DCF and law enforcement of the situation -- personal

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knowledge.
Q Right, other than what people told you, you don't know what the conditions were at midnight?
A No.
Q Or at 3:00 in the morning?
A No.
Q The two deceased that you saw, do you have any information contrary that EMS had already known that those two patients were there, had assessed the situation and declared under the signal 7 deceased patients?
A I did not have any knowledge of that at the time, no.
Q But you thought at the time that you were the first person that had discovered those two people, the two deceased?
A When I went in the room there was no one in the room and I thought that maybe I was the first one that had went in that room, yes.
Q Have you subsequently learned that in fact the EMS was aware that there were two deceased?
A No I am not aware of that.
Q You don't know one way or the other?
A I do not know one way or another.
Q I know things were happening quickly, but

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do you recall whether those two deceased were covered or uncovered when you saw them?
A I don't remember.
Q And you don't remember if they were clothed or not clothed?
A I don't remember.
Q And you don't know have any information how long they had been deceased?
A No.
Q And you don't really know any particulars about their underlying medical conditions or what caused them to die?
A No.
Q In fact, at that point in time, you had made no conclusion that it was heat that caused their deaths?
A No I did not know that for a fact.
Q For example, you don't know if one or both of them could have suffered a heart attack from a stressful situation?
A Correct.
Q And you were not involved in the actual evacuation or triaging process?
A I was not involved in the triaging process, no.

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Q As to the number of patient rooms on the second floor you went in; I know you mentioned the two where there were two female residents and the one where there were the deceased, would it be correct, those were the only two rooms you went in?
A Those were the only two rooms that I recall going in. I may have walked into one of the rooms with EMS but I didn't see any patients in there and that's why I decided to go back to the hospital at the request to send transportation over there.
Q You said you had kind of after -- the events you described, you saw the two female patients, the gentleman in the wheelchair, the two deceased and then you kind of huddled up with Judy Frum and EMS, correct?
A Yes.
Q And you talked with Judy and she was with a black gentleman who you assumed to be the facility's supervisor?
A Yes.
Q And the decision as to getting patients out of the building; was that a decision that was collective among that group?
A It was collective among EMS, Judy and

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myself.
Q Did you exclude the black gentleman who was the supervisor from participation in that discussion or do you recall if he was in disagreement, agreement?
A I was just talking to Judy at that point. He was standing there. He never expressed agreement or disagreement. He really wasn't involved in my conversation with Judy.
Q But he was there, part of that group?
A He was standing there and listening.
Q So you don't know whether the facility's supervisor supported or opposed or was ambivalent about whether to evacuate?
A I don't know, I never spoke with him.
Q And from the time -- you said you had determined that you would go back to the hospital and that you were going to call a code green and that was by 7:00 a.m.?
A Yes.
Q So would it be fair to say, based on what I'm hearing, you were in the facility something less than 30 minutes?
A Yes.
Q Do you know if any of the patients that

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were transported to Memorial Regional were transported under a Jane Doe or John Doe name because they didn't know who the patient was?
A I do not know.
Q During your direct, you said that you were advised that somebody had gotten records from the facility; would I first of all be correct -- that's only based on what someone told you?
A I saw the records in our facility; I saw several racks of records.
Q But you don't know who brought them there?
A I don't know who physically transported them.
Q Do you know -- could it have been the Hollywood Hills' Director of Nursing; could she have brought over the records?
A I don't know who brought them over, they were there though.
Q I think it's clear, but at one point in your testimony you had said, "I went back to the command center". And if you're using that terminology, command center, in your testimony today, do you mean the command center at Memorial Regional as opposed to the command center at Hollywood Hills?

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A Correct, the command centers in our facility.
Q And when you say you called a green alert or a mass casualty incident, I just want to be clear on the record, when you say when you and Ms. Frum did that, what you're saying is that for Memorial Regional you're declaring something to be a mass casualty incident and so the hospital should be prepared for that?
A Correct.
Q It's not that you're declaring for the first responders or Fire Rescue that this is a mass casualty incident?
A Correct. I was notifying the hospital that they were going to be receiving an influx of patients.
Q Under the hospital's code green policies and protocols?
A Yes.
Q And as far as what you encountered between 6:30 and 7:00 -- I've kind of got two conflicting messages, so I just want to get your best take on this. I've got from you -- I thought at one point you said people seemed frantic?
A The staff, yes.

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Q Staff seemed frantic, but that it seemed to be an orderly scene; that there wasn't like people panicked or screaming, yelling up and down the halls or things like that?
A One of the staff mentioned that people were dropping like flies and another staff member -- it may have been the same person in the room said, we don't have time to assist people into wheelchairs; we have to get them out of here like in a hurried fashion, so they seemed frantic, yet caring.
Q Okay. And I'm just trying to get more of a -- what your observation was on the apparent scene; even with just the "they're dropping like flies". I could see -- somebody could scream out down the hallway, "they're dropping like flies". Or somebody could say to you and the people around them, "we've gotta get busy here, they're dropping like flies". And I'm just trying to get the character; were people screaming, yelling; was it a panicked situation?
A It was a frantic; it was like "they're dropping like flies"; like "hurry, up we've gotta get these people out of here, they're dropping like flies".
Q Were they screaming up and down the

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hallways?
A That was the only thing that was loud at that point was that statement. I didn't observe any other staff screaming. They seemed frantic, in a hurry, trying to get people out of their rooms.
Q Nobody that you observed like saying, "come down here quick, come here"; you know, that kind of thing?
A No.
MR. SMITH: Thank you, Ms. Meltzer, that's all I have.
THE COURT: Any redirect?
MR. MENTON: Just a couple questions, Your Honor. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MENTON:
Q Ms. Meltzer, let me just ask you -- Mr. Smith asked you some questions about your role as an Administrator. Do you still have a current RN license?
A I have my Nurse Practitioner license.
Q Nurse Practitioner license. And as part of that, do you take CLE courses and keep up to date from a clinical standpoint?
A I take continuing medical education, yes.

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Q Okay. Now Mr. Smith also asked you a couple questions about whether a temperature of 105 could be the result of something other than heat exposure, and I think in response -- and he asked about infection, but you said "not often"; what did you mean by that, do you recall?
A It's rare to see a patient with that high of a temperature or 105 or higher from an infection.
Q What about when you start even getting higher than that like 107.5?
MR. SMITH: Your Honor, now I'm going to object. I would like to keep this witness as she was presented to us a fact witness and if she's seen 107.5, fine, she can talk about it in her career, I just don't want to get into expert opinions; this is my opinion about what that means or --
THE COURT: Well, I think you opened the door by asking her, is it rare or not to see a patient with 105 --
MR. SMITH: Your Honor, I was very deliberate and I asked about what she had seen in her career and that's all I'm saying.
THE COURT: And that's all he's asking her as well, so overruled. Go ahead.

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MR. SMITH: Okay.
THE WITNESS: Can you repeat the question please?
BY MR. MENTON:
Q In your experience, have you seen any temperatures of 107.5 as a result of infections?
A No.
Q Have you seen temperatures of 109 as a result of infections?
A No.
Q Have you seen multiple patients from the same facility with temperatures of 105 due to infections within the same day?
A No.
Q And do the incidences that you saw with the temperatures that you observed, did that influence upon your decision-making process as to the safety of the patients within the facility?
A Yes.
Q And why?
A We had received several patients with very high temperatures and we knew there was an air-conditioning problem and I felt that people were suffering in that facility from heat-related illness and feared for their safety.

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Q And Mr. Smith asked you some questions about the two patients that were deceased within their rooms at the facility and whether you knew what the cause of death was, and I think that you did not because you didn't actually conduct an assessment, is that right?
A Correct.
Q But based upon what you had observed in the facility, did the existence of two deceased patients in that facility add to the concerns that you had?
A Yes, I suspected that that was a heat-related death.
MR. MENTON: That's all the questions I have, Your Honor.
THE COURT: Ms. Meltzer, I have a couple follow-up questions. Did anybody, while you were at the Hollywood Hills facility from 6:30 to 7:00, identify themselves to you as being a staff member with any authority? Did anybody say, I'm the Director of Nursing or I'm the Medical Director?
THE WITNESS: No.
THE COURT: Did you seek out anybody in the position with authority at Hollywood Hills?

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THE WITNESS: No I did not, Judy Frum did.
THE COURT: And are you aware of anybody who was in a position of authority other than the African-American gentleman that's been described?
THE WITNESS: No.
THE COURT: And do you know his name or his position there?
THE WITNESS: No I do not.
THE COURT: Counselors, as a result of my additional questions, Mr. Menton, do you have any follow-ups for this witness?
MR. MENTON: No, Your Honor.
THE COURT: Mr. Smith, any follow-up as a result of my questions?
MR. SMITH: Just -- I think one.
BY MR. SMITH:
Q The person that you believed to be the supervisor; you said Ms. Frum was seeking him out -- did she interact with the person you believed to be the supervisor on scene?
A I don't know. When we got there she said she was going to find the person in charge.
Q And then she was interacting --
A Offered her assistance.

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Q -- and then she was interacting with the African-American gentleman you described as the one you assumed was the supervisor?
A She was standing with him, yes.
THE COURT: Any follow-up?
MR. MENTON: No, Your Honor.
THE COURT: All right. Thank you. Ms. Meltzer, the parties have invoked what's known as the Rules of Sequestration. That means that we are asking the witnesses who leave here that you not share the questions asked or the answers that you gave with any other witnesses until this proceeding is over.
It is our hope that by giving this instruction that the witnesses will not talk to each other and other witnesses won't come in here with preconceived notions about what the questions might be or what they think they should give as the answer; that they come in and testify to the best of their ability based upon their own recollection. All right. Thank you.
THE WITNESS: Thank you.
THE COURT: Mr. Menton, is your next witness available?
MR. MENTON: No, Your Honor, our next witness is subpoenaed for 2:00.
THE COURT: All right.
MR. MENTON: And we only have one more witness because Chief Ladwick had that medical incident yesterday.
THE COURT: It is approximately 12:30, we will reconvene at 2:00.
MR. MENTON: We can try to get him earlier, I just don't know how I'm going to let everybody know if we get him or not, but he's subpoenaed to be here at 2:00.
THE COURT: All right. Thank you.
MR. MENTON: Thank you.
(Thereupon, the Court was in recess.)
THE COURT: We're back on the record, if you'd please call your next witness.
MR. MENTON: Thank you, Your Honor. The Agency would call Mr. Doug LaMendola.
THEREUPON:
DOUGLAS LAMENDOLA
a witness, having been first duly sworn, testifies as follows:
THE COURT: Mr. LaMendola, can you please spell your last name for me?
THE WITNESS: L-A capital M-E-N-D-O-L-A.

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THE COURT: Thank you, sir. Mr. Menton.
MR. MENTON: Thank you, Your Honor.
DIRECT EXAMINATION
BY MR. MENTON:
Q Good afternoon, can you please state your name?
A Douglas LaMendola.
Q And Mr. LaMendola, where are you currently employed?
A I currently work for Joe DiMaggio Children's Hospital.
Q And what is your position?
A I'm the Director of Emergency Services.
Q And how long have you been in that position?
A Since September 7, 2017.
Q Okay. Can you describe for the Judge a little bit what Joe DiMaggio Center is and how it relates to Memorial Regional Hospital?
A Absolutely. We're connected to Memorial Regional and are a pediatric emergency department. We're a Trauma Center here in Southeast Florida and we provide children's services.
Q And can you explain for the Judge what your responsibilities are as it relates to that

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facility?
A I'm the Director of the Emergency Room and I oversee all operations of both staff, policy and financial services over that department.
Q Can you summarize for the Judge your education and professional background?
A I've got an Associate's Degree in Nursing and a Criminal Justice from Monroe Community College in Rochester, New York. I also have a Bachelor's Degree in Nursing from University of Rochester and currently working on both MSN and an MBA --
Q Now as part of your professional experience, have you had opportunity to be involved in hurricane preparedness?
A Yes, yes I have.
Q And I want to ask you specifically as it relates to Hurricane Irma and Regional Hospital, but before that, can you tell the Judge a little bit about your prior experience with hurricane preparedness?
A I just moved here from Corpus Christi, Texas so I was helping Corpus Christi wrap up from Harvey. I was the Executive Director of the Coastal Bend Regional Advisory Council for South Texas that handled all coordination of Disaster Management for

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South of Texas.
Q And I'm sure most of us know; but when was Hurricane Harvey in relation to --
A Right before Irma -- just two weeks before.
(Thereupon, an off the record discussion was held.)
BY MR. MENTON:
Q So you started work at Memorial Regional on September 7th; explained then what involvement you had with that new facility as it relates to hurricane preparedness.
A I think we had a two day corporate orientation and we were allowed to go home after that and then I thought, what a better way to get to know my staff? So probably around the 9th or the 10th, I brought a duffel bag and helped out with my Staff. We distributed floor mattresses, water and food and we hunkered down for the duration, fully expecting mass casualties in case we were ground zero as well as displacement of residents in Broward County.
So we really prepared for whatever came our way. So I stayed there completely through until after action and I spent the night with my staff and worked during the days with them side by

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side.
Q When you say until after action, what do you mean by that?
A Until after the hurricane -- I think it was 48 hours after the hurricane to make sure that staffing got back to normal; that everybody that had worked during the hurricane had gotten to go home to take care of their orders, their affairs; to make sure their homes and their pets and families were okay and then go back to a similar resemblance of a normal work schedule.
Q Did you actually leave the hospital yourself after the storm had passed?
A It wasn't, I don't think until like 48 hours after that I made sure that -- I stayed to make sure the staff was okay.
Q So were you working at Memorial Regional in the late evening of September 12th and the early morning on September 13th?
A I was.
Q And what were your duties?
A I had gotten off the day shift on the 12th where we were inventorying the unit and making sure that everything was okay. We never got bombarded with a mass influx of pediatric patients, so I was

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making sure -- first of all, I was getting to know my area where I worked and I was getting to know the supply rooms; the way out of the trauma base, and I was making sure that everything was stocked in full preparation.
Then roughly when the night shift came, I went off to meet with my day shift. I believe we ate a meal together in the lounge and then I retired back to my office where I think I listened to some music and crashed in my office.
Q Did there come a time on the morning of September 13th when you learned of issues at the Hollywood Hills Rehabilitation Center?
A Yes.
Q And can you explain to the Judge how you learned and what you did.
A We had gotten some breakfast probably around 6:00, the night shift, or the day shift, I'm sorry, it would have been around 6:00; had gotten some breakfast, came back and made sure -- we got out of our sweatpants, jogging pants and t-shirts and we got back into our scrubs. We were heading out towards the nurse's station for day shift and an overhead -- probably 6:50, 6:55, maybe a little after then, around 7:00, we had a code green overhead page.

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Q Okay. And we've heard a little bit about that, but why don't you describe for the Judge what your understanding is of the code green. Is that a term that you were familiar with and what did you interpret that to mean?

A Actually I had just gone through the two days of orientation; we were getting ready for the hurricane so it was disaster and mass casualty; that was the term for disaster and mass casualty. They had stated the location as the emergency department for the morning, so we weren't busy at the time, so I took another nurse with me and we went over to the adult side to see if we could render aide.

Q Okay. You said you took another nurse; where did that nurse come from, where did you go and who did you see?

A Her name was Marlene, she was one of my day nurses. She went to the ED and I said, go inside and see if you can help out there and I'll stay out here and see what's going on and see what we can do. And then her and I departed ways for the rest of the day.

Q Okay. So why don't you then just describe for the Judge what you did as you went over to the adult ED section of the hospital?

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A I went into the ambulance bay and I met up with my adult counterpart; his name is David Stearns. He's a very nice guy. It was on my agenda to be with him eventually after the storm had passed. I went over there and he was coming out of the emergency department, by some ear monitors we woke him up and I said "Dave" and he turned around and said "Yeah" I go, "I'm Doug and I'm your partner in crime Over at the Pediatric ER"; he said, hey, I've been meaning to meet you, nice to meet you and we shook hands. I said, what's going on?

We've got a nursing home behind us and they're having mass casualty issues and we're going over, do you want to come with me? He said, sure. He handed me four rolls of tape and off we went with a bunch of people from the emergency department at Memorial. We went down the street back to the nursing home.

Q And you said four rolls of tape; what were the four rolls of tape?

A My apologies, those are triage tapes for mass casualties, so the colors are black, red, yellow and green.

Q Is this a process that you were familiar with or did you know what the tape was for?

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A Yes, it's for disaster management in mass casualties. You tag the different patients by their severity, black meaning dead or unhelpable, red being very critical, yellow meaning needing severe medical attention and green was being stable at the time.

Q And what was it that you were supposed to do with that tape?

A It was my understanding that we were going to get to the nursing home and render whatever assistance was needed. If it was mass casualties, then we would go in with triage nurses and go help them out in triage, however many people we needed to triage.

Q Okay. And about what time was this and who went with you over to the facility?

A It was -- roughly by that time it was 7:05, maybe 10 after 7:00 that we were heading back to the nursing home from the emergency department. And to be honest with you, only being a few days on the job, it was David Stearns -- he was the only person I could remember by name.

I was brand new to the facility and I was very out of my element as far as in another department so I had gotten to know some of the faces

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and the names in the pediatric realm but I was in a place where I didn't know anyone else.

Q But was it more than just you that walked over there at that time?

A Yes, there was a full entourage.

Q And just from -- I know you were new and didn't know everybody but just generally, how many people and what kinds of people were part of the entourage?

A I didn't see any doctors at that time; it could have been, but like I said, I didn't know who anybody was then. David Stearns was the only one that I knew. He had the accompaniment of some of his nurses. As we walked back, I saw other people coming out of other doors. They were wearing different uniforms, different shade shirts, so they were transporters, they were maintenance, they were environmental services, there were other nurses; there people in scrubs which could have been from the cath lab, they could have been from surgery; it could have been a multitude of a different hospitals that rendered care.

Q And just roughly, any idea of how many people had gone over there as you were there?

A At first, I'd probably say 20, like I

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said, but later on down the road there were many more people from Memorial that were coming to render aide.

Q Can you describe for the Judge then what you did as you walked over to the facility and who you met with and what happened from there?

A Sure. When we got to the nursing home we were on the side street or on the south side of the building and we met up by the large entrance going into the nursing home on the street. And we gathered -- there were fire and police that were already there on the sidewalk and we met up with them there and kind of formed a battle plan.

Q Okay. So when you say formed a battle plan, what were you told and what were you asked to do and how did you --

A So normally during a disaster -- I said, is this the command center and we stake out that place right there on the sidewalk and it's deemed the command center where police, fire and all first responders would get together and stage operations; starting and finishing right there.

Q And the term command center has been used a couple of times here; is this command center that you're talking about different than the command

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center for the hospital?

A Oh yes, this is an on-site command center, so this is where people like myself on the front line are taking their direction -- so you've got Fire, Police and EMS as well as -- that's where I met Judy Frum for the first time who was the Chief Nursing Officer for Memorial. And as soon as I realized -- my base fear was that I would be the top dog there and that I would have to run the final numbers. I was very relieved to meet her and realized she had rank over me and she'd be offering me guidance on what to do.

Q And was Fire Rescue also involved and what was their role that you could tell in the command center?

A So -- I think in my deposition, I told you guys that I had seen at least two fire trucks there at the time and they had dropped off the one street that was over by Joe DiMaggio Hospital with a fire truck and they had a representative there; I think it was one of the Battalion Chief there that had established the on-scene command center just to see -- along with EMS and police to see what assistance they could be.

Q Okay. And can you just describe for the Judge what you were seeing as this process was Unfolding, compared to what you saw with Hurricane Harvey and whether it was consistent with the mass

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casualty protocols that you learned about when you first started working at the hospital?

A I didn't have to wade in any water. In Harvey we had some communities nearby us that had really suffered flooding and some friends had lost homes so a lot of the doctors in the hospital I worked at had lost homes -- objects; none of that was here in Irma, thank goodness. So when we came up to the nursing home, there was a street, there was a sidewalk that was heading up to the south side entrance of the nursing home and then there was another sidewalk I think parallel to it; to the right of the sidewalk, it was where police, fire and EMS was, and that was where they had gathered to kind of formulate what was going on.

Both of the doors were opened and on either side of the sidewalks were planks because that strip of lawn -- this is what sticks out in my mind, is that strip of lawn had really gotten soaked and boggy so they put planks down there in order to move equipment or people in and out of that nursing home and that's where we stationed.

Q So there were already some activities underway by the time that you got there?

A Yes.

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Q So when you got to the scene -- you mentioned you went to the command center; I may have got you sidetracked, so can you just walk the Judge through what you were told and what you were tasked to do and what you did?

A So myself and David Stearns walked up to the nursing home and as we were doing that, there was a patient coming out on a stretcher that appeared in distress. And David Stearns then drove away and he went with that patient. He seemed to be a red, meaning immediate medical attention.

MS. SMITH: Your Honor, at this point I do need to kind of raise an issue because I think we're getting ready to go into an area of testimony that we do have a relevance objection to. This witness did not participate in any of the care of the patients who were mentioned in the Complaint as all patients who were not part of the Complaint and we haven't done Discovery on those cases per your Order.

We haven't had our expert review those files and I just want to make sure that we're not complacently agreeing that those patients are at issue in this proceeding. If they need to bring another Administrative Complaint and

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handle it that way, we'll deal with it then. But this witness didn't really have any exposure and I just don't think we should just be sort of filling in the record with discussions about the medical state of patients who aren't named in the Complaint.

THE COURT: Mr. Menton, your response?

MR. MENTON: Sure. Your Honor, we're not going to ask this witness about that specific patient who is being wheeled out. I'm just asking him to describe the scene as he's coming in. I think that we do intend to ask him about his role in the evacuation process because they're having issues raised by them during the Discovery process, that I think opened a door to that and require us to respond in terms of how the evacuation was conducted; whether it was chaotic, whether or not there was more people that were involved and how those other people may have influenced those who were involved in their analysis of the conditions at the facility, whether there were patients at risk, why they had to get them out of there and all those kinds of things.

So all of that, I do think is very

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relevant to this proceeding. We do have in the Amended Administrative Complaint that was granted; not just the 12 patients, but we have records to the mass casualty incident and the evacuation of the facility, so that all goes in context. So we recognize your Order in terms of the other patients by name. We're not going to ask you as part of this proceeding to make specific findings of facts as it relates to the other patients that we attempted to add on to this.

We'll have to bring another Complaint about that and we'll deal with that at another time. So we're not going to ask him about specific patients, we're just going to ask him about his involvement in the evacuation process, and what he saw and observed that day.

MS. SMITH: Your Honor, one more thing, it's a little bit of a slippery slope because they have had some of the AHCA surveyors review all of the other records. We have not had our experts review them.

And the next thing you're going to hear when they come back is, they want to give you some global recognitions about what they saw

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universally in patients and I just don't want it to be, well, Judge, we've sat here all this time, we've heard all kinds of testimony about all these other patients, so now we should just get to put in this global one too because that would be extremely prejudicial.

THE COURT: But there are global allegations in the Amended Administrative Complaint generally about the conditions at Hollywood Hills that are not patient specific with regards to those additional 67 patients that AHCA attempted to -- and that are excluded from this proceeding.

So, yes, there is going to be some generalized testimony about what was observed on the day in question and the types of conditions that first responders and medical professionals at Memorial were witnesses and experiencing; those will not -- there won't be specific findings of fact with regards to any of those additional patients who AHCA attempted to identify -- my Order from this particular proceeding.

But I think of necessity, it's impossible for these witnesses to parcel out in their

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description what happened on that day and their impressions of those who ultimately did not perish versus those who did. Because of that day, as they were taking it in, they didn't know and sitting here today, some of these witnesses still may not know what happened to any particular individual. So I'm going to keep that in mind.

This is a Bench Trial not a Jury Trial so you're welcome to raise this issue again, bring it to my attention, but I am going to allow some leeway with regard to the witnesses, certainly from the hospital explaining generally what their impressions were and why they undertook the actions that they did with regard to either triage or moving people to different parts of the hospital, or trying to secure medical records, Your Honor.

MS. SMITH: Sure, Your Honor and I completely understand that distinction. I'm just trying to point this out to you ahead of time so that when that issue comes and the AHCA surveyors say, I've reviewed all the records and X percent had this, and I think that's a different thing.

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And I just don't want it to be said that we didn't object and I don't want to continue to interrupt this witness with every question that raises it, so if I can just have a continuing objection and then when that other testimony comes up, we can handle that at that point, that'd be fine.

THE COURT: That's all right.

MS. SMITH: Thank you, Your Honor.

MR. MENTON: And I'm going to try and stay within the parameters that Your Honor set forth in the Order and if I vary, I'm sure they'll bring it to my attention.

BY MR. MENTON:

Q Mr. LaMendola, I think you were explaining to us that there was a patient being wheeled out of the facility and David Stearns from the hospital went to check on that patient and then you went somewhere else. We're not going to deal with the patient that Mr. Stearns was handling, but can you just explain for the Judge what you did then --

A Sure.

Q Where did Mr. Stearns go as far as you know and then what did you do?

A So this patient -- I don't know names -- I

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don't names of any of the people from the nursing home still to this day and just to let you know I don't know outcomes of anybody; what the finishing line is. As an ER nurse, I don't ever get closure like that unless they -- expired in my presence. Forgive me, but I didn't follow up or get names of anybody; I didn't circle back. I'm not built that way, I don't need that kind of closure -- it's a coping mechanism for what I do, but to the best of my knowledge, this patient coming out was a category red.

So David said, I'm going to take all reds immediately over to Memorial and I said "great" and he and a couple of other people wheeled that stretcher over to Memorial and that was the last time I saw him. He was tied up, running with his level 1 trauma center and that's it. From there it was time to get to business.

Q And so how did you get to business; what did you do?

A I turned to EMS Fire and Police and said, what's going on here? And that's when they briefed me basically on the crux of what was going on. They said, we've got a nursing home here with several patients inside, air-conditioning has been out now

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for several hours and we have casualties throughout the nursing home. I said, okay, do we have a number?

No, not at this time; we have two current black or deceased up on the second floor. I said, okay, what do you need to be done? They said, the whole second floor is cleared of patients; nobody needs to be triaged there. We have patients on the first floor and if you could go in and triage patients on the first floor, that would be greatly appreciated. So that's where I started.

Q And did you do that by yourself?

A No.

Q Explain to the Judge --

A There was another nurse from Memorial somewhere and I have not seen or talked to him, but I was given a paramedic to come along with me. We got to the front doors, we went in and it was agreed that he would take the left side of the first floor and that I would take the right side of the first floor and we would just start going room to room and triaging people and evacuate them out.

Q Okay. And can you describe for the Judge what your observations were as you entered the facility?

A We walked through the doors to the first

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floor of the facility and it was extremely hot. Outside wasn't that bad, again, coming from Texas I know hot, and I'd say it wasn't as bad as Texas outside.

But when we went into the nursing Facility, there was a noticeable climate change, and I turned to the right and then I noticed a hallway, and what I recollect is that there was a large building fan, like a construction fan blowing hot air down the hallway and not a lot of people, not a lot of people in that room to begin with.

Q And just given what you felt when you walked in the building, how did you respond to that? What was your reaction; did it cause you concern?

A I'm a big boy so I started to sweat; it was pretty hot. So my first concern was just going -- gearing myself to get ready for what I was going to see, smell, and feel. At the time, going in and turning down the hallway, I smelled urine, feces, very strong odors and I got to the first room on the left and I had this paramedic with me who had a notebook, and I said I need you to jot down the patient's name and anything that's pertinent as we go through triage. And we started right there.

Q And then describe for the Judge the triage

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process. What did you do and can you describe some of the interactions that you had with patients as you went through that process?

A Well, the first thing, as a nurse is good manners, introduce yourself -- I'm Dr. LaMendola, I work at the emergency room at Joe DiMaggio and I'm here to help. And I would do this with each patient but time is of the essence. The first thing you do as a triage nurse is you take a good look at your patient head-to-toe and you see what they're going through hemodynamically, what their body is going through and then you can listen to their lungs; I had a stethoscope with me; listen to their lungs, listen to their hearts and take a pulse and touch their skin to see if it's hot, cool, moist, dry, and go from there and to come to a determination in my assessment whether they were a red, yellow or green at the time; what speed they needed to be moved out of that nursing home.

Q And did you then assess a color to the patients that you were --

A Yes. Each patient got a colored ribbon tied around their wrist as done by a paramedic. Some had single patients in the room, some had two patients in the room. So if it was a two-patient room, I would jump over to the roommate and start assessing them, then

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I categorize both.

Q Can you just describe for the Judge, how many patients did you see during this triage process and what were their color coding's approximately that you found?

MS. SMITH: I'm just going to object to compound as far as the color coding part of that. I don't know if that's going to be on there -- if you want to hear the number of patients that were color-coded, certain colors within the first floor?

THE COURT: If he can remember, that's fine. Overruled.

THE WITNESS: Throughout the triage process in part of the hallway of the first floor of the nursing home, I signed as to where I triaged roughly 20 people. And in my deposition, and I'm sure you'll remember roughly half of those were greens, then 25% of those were yellow and 25% were red; so it would have been 5, 5 and 10.

BY MR. MENTON:

Q Based upon your involvement, was the triage process that you followed, the approach that was being utilized by others in the facility,

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can you tell me?

A Yes, it's a standardized triage process. A lot of things are taken into looking at people in putting them in that category. A lot of it is also nursing -- how to accommodate them and you have to figure out what's going on with the patient; you have to look at that first and foremost and it's a lot of general practice.

Q Okay. So this isn't something you invented?

A No, it's not specific to -- I wish it was. If I had copyrighted it, I wouldn't be here as well.

THE COURT: I'm going to interject a question. Mr. LaMendola as you were triaging the individuals and banding them, were you then moving them into the hallway for somebody else to transport them outside or were you just going from room to room?

THE WITNESS: Your Honor, all of them were being moved out. If I ran into a red, we want to not get called injustice, so my plan was to get reds out immediately. And then yellows and then greens.

THE COURT: Okay.

THE WITNESS: So the five or so reds that I ran into were immediately taken out. I would

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yell for EMS and Fire Rescue and they would come; either walk or push people out of the hallway, like say with the yellows and then we got the greens out too.

THE COURT: Thank you, sir.

BY MR. MENTON:

Q And I think this is inherent within your description of your category red, but did you find patients that needed immediate medical attention?

A Yes I did.

Q And just describe then for the Judge what you saw or --

A A lot of these people were --

MS. SMITH: And Your Honor, this is specific conditions about patients that are not in the Complaint.

THE COURT: Again, he's not identifying anybody in particular, so this goes to his general observations on that day and how he responded the way he did. I'm going to allow it, overruled. Go ahead.

THE WITNESS: I'm sorry, can you repeat the question?

BY MR. MENTON:

Q Did you find patients during your triage

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process that needed immediate medical attention?
A Yes. So there were probably about five that were categorized as red; thank goodness there were no blacks in my area. The reds needed to be taken out immediately. I saw a wide variety of different indicators that indicated that they needed to be moved and had the possibility to either continue deteriorating or deteriorate rapidly.
Q Okay. Based upon your observations on the first floor and what you saw; were the patients there located within a safe environment?
MS. SMITH: Your Honor, that was an opinion question and we were told he wasn't going give any expert opinion, that he was just going to give observations.
THE COURT: Your response, Mr. Menton?
BY MR. MENTON:
Q Let me see if I can reframe it. Let me see if I can do it this way. Based upon your observations and your involvement in the triage process, did you determine that any patients needed to be moved to a safe location?
A Yes, it's been my experience that the elderly needed to be kept in a comfortable climate, that they can rapidly decline. If they become weak --

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they become very weak and dehydrated, it's my belief that they all needed to be moved out of the right wing of that first floor of that nursing home under those conditions.
Q Do you know whether by the time you had gotten there, a decision had already been made to move all those patients out?
A Oh yes, yes.
Q And from your involvement, did anybody ever express disagreement with that decision or that there wasn't a need to move those patients?
A Like I said, it was that little curbside command center with fire, EMS, police and nursing that that was the overall consensus to get them out.
Q And during this process, did you interact with any of the staff from the facility?
A To the best of my recollection, I only saw one staff member there and I did interact with her.
Q And describe for the Judge the interactions that you had with her and what you talked with her about?
A It was either in the first or second patient room that I went in to triage; it was a nurse who -- after I introduced myself to the patient, I started listening to lungs; she

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introduced herself; I can't remember her name. She was six months pregnant at the time and she was from the Dominican Republic and she said that she had just moved to the night shift and these were her patients on that part of the first floor.
Q Did she indicate to you whether she or the Staff at the facility had any plans as to what to do With the patients?
A No.
Q And did you have any discussions with her as to the evacuation that was taking place and what was necessary?
A I briefly had a conversation with her. I said, "Do you work the night shift", and she said, "Yeah." And so I said, "Do you need treatment or something, you look pretty tired?" And she said, "No, no, I'm okay, I just want to stay here with my patients."
MS. SMITH: Your Honor, I'll just note the hearsay to all the things that she told him so I don't have to keep interrupting.
THE WITNESS: Sorry.
THE COURT: That's okay, go ahead.
BY MR. MENTON:
Q Did you ask her whether she had been given

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any directions or --
A And I said, who did this to you guys? And she just kind of looked at me blank, and I said, "Do you have administrators here; is there anybody overseeing this and she just didn't answer me, just looked at me. So I went on my business and just triaged patients and then I think I asked her how far along she was and I think I again asked her if she needed something or if she needed medical attention after my other interactions.
Q Okay. And during this process, did you also have interactions with some of the residents as you were triaging them and helping them being moved?
A I did. Like I said, as a nurse, it's about the human connections; you have to introduce yourself and you can learn a lot about these patients from just talking with them, and I talked very briefly with almost each and every one of the patients that were lucid and coherent.
Q Did any of the patients indicate to you objections to being moved out of the facility or that they wanted to stay?
MS. SMITH: I have a different objection to this. He was asked in his deposition, and I can find the exact page if you'd like, but I'll

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represent to you that he was asked, did he have any discussions with anyone else at the facility; any people at the facility and he said, no.

THE COURT: That's for cross examination. You can challenge him on that with cross.

MS. SMITH: Okay.

BY MR. MENTON:

Q Mr. LaMendola, I think I was asking you about the interactions that you had with residents; whether any of them had asked that they wanted to stay or indicated that they wanted to stay and then I think you were continuing on with your answer about the interactions you had.

A After I concluded on my triage in the rooms, I went back to the -- I guess it's like a centralized nursing station; there's a dayroom there and I went into the dayroom because I physically checked all of the rooms in my section to make sure that all the bodies were moved and there's a dayroom there with several residents that were there, and only one person there asked me what we were doing. And I said, "I'm from Joe DiMaggio and we came across to move people out of the nursing home because of the heat."

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Q Okay. Did any of the patients express to you any concerns about the conditions of the facility?

A Oh, yes. While I was talking to each of the patients triaged, there was one lady -- I don't know if she was like the third or fourth room down, and I was assessing her and I asked her, "How are you doing ma'am?" And she said, "It is so hot."

And I said, "Well, we're going to get you out of here and we're going to get you across the street to Memorial and get you into air-conditioning and get you a hot meal", and she said, "thank God"; she goes do I have to jump out the window? I said, "No, ma'am, you don't have to do anything. The firemen are going to take you out of here and everything is going to be all right."

MS. SMITH: I'll just note the hearsay, Your Honor.

BY MR. MENTON:

Q Can you describe for the Judge kind of the state of some of the patients that you encountered in rooms that you were triaging?

A Most, if not all of them were flushed, hot, warm; at best, some were sweaty, some had stopped sweating.

Q What was their state of dress; did you note anything about that?

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A All various, all various in state of appearance. From wearing just adult garments to being in gowns or nightwear.

MS. SMITH: Your Honor, I think this is going way beyond just general observations about the evacuation. This is really going into specific patients and what was there. I can't look at the medical records and go through all of these patients; it wasn't supposed to be part of this case.

THE COURT: This gentleman has not identified any specific patient. He was asked a question generally what was the state of patients, so overruled. Go ahead.

And I would appreciate it if Counsel would refrain from making faces when I make a ruling. If you want to object, you can object. State your objection on the record and let it be. I don't need you rolling your eyes, making other grimaces.

MS. SMITH: Your Honor, I apologize, I didn't mean to. I'm kind of concerned about prejudice to my client; there's so much coming in about the patients. I did not mean to be

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offensive, I apologize.

THE COURT: Understand, thank you. Go ahead.

BY MR. MENTON:

Q I think, Mr. LaMendola, I was asking you about the general conditions of the patients and if you can describe -- there's generally -- any of the steps that needed to be taken with respect to some of the patients that you encountered?

A All of them needed to be moved out of that nursing home. It was in the response time in regards to the color category; that the reds needed to be moved immediately, yellows right after that and then greens had some time.

Q You indicated that you saw patients in various states of dressed and undressed. What did you do with those patients and can you explain for the Judge some of the circumstances that you encountered?

A Normally I put myself there so I would treat every patient like they were my mother and father, so I'm going to either get a sheet or get a gown, put a gown on them. Some of them were, like I said, earlier and also in my deposition I had smelled urine and feces. Some of the residents required;

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roughly I think I said 25% needed to be changed and that's not to be done right at that time. A lot of that was done down the road after they were removed from the situation and I begin to assess everybody, so those people were taken care of later once we moved them outside.

Q You said you smelled urine and feces when you entered the facility; did you find any patients in dirty beds?

A Roughly 25%, yes.

Q Now as part of the evacuation process; what was the role of the Memorial staff as it related to the 25% that you just mentioned?

A This was all -- could you define role of the staff of Memorial?

Q What happened with the 25% of the patients that you found in the condition that needed to be --

A Most of them were changed when we got them out to the curbside. We had linen there, we had water, we had things right there on the curbside. We would drape them; they were on the south side of the building under the trees in the shade on the sidewalk, so we were able to drape sheets over them, change their garments, use washcloths and towels to dry them and clean them right there and then move

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them out.

Q You may have addressed this earlier, but what happened with the patients that you identified as reds?

A They were immediately taken out by Fire Rescue, EMS and taken right over to Memorial and treated.

Q Okay. Now let's go back to the patients that were not red; where did they go and what happened with them?

A It was a continuous motion. So we would get them to the sidewalk -- like I said, those planks were there, and I didn't know if there was a pond under there or what. We would make sure everybody was stabilized; they had water, they were clothed, the basic necessities, medically stable and then we would move them over those planks across -- whatever was underneath there onto the street, from there we would take everybody, yellows first and then greens over to the ramp garage where we had a large section cleared up where we could better assess and render aide.

Q And I probably should have asked this question before I went into that, but when you finished the triage process, what was your role as

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it relates to the evacuation of the patients?

A So after that, we then moved them directly out of the nursing home onto the sidewalk, then the sidewalk over to the ramp garage. From there we had to get them categorized by the sheer number of patients -- so it was already deemed that nobody would be going back into that nursing home, so even greens -- we had to find a place for them to go. So that was really a staging area. All the yellows -- Memorial was filling up quick, so the yellows and greens all needed other hospitals or long-term facilities to go to. To my knowledge, they were all going to be going to other hospitals.

Q You said it was deemed that nobody was going to go back into the facility; were there options considered such as moving some of the patients back into the facility?

A No.

Q And why is that?

A It was just told to me that nobody was going back into that facility and that all patients were going to be moved out and dispersed to hospitals throughout the county.

Q There's been some suggestions in the press and in the first part of these proceedings that

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during the evacuation, patients were left out in the sun and exposed to heat outside. Is that consistent with your observations and involvement?

A No.

Q Can you explain to the Judge?

A It reflects on my patient care and no, we were constantly moving them from the nursing home to the sidewalk, across the planks to the ramp garage where we had maintenance bring fans and water and comfort them just to make sure everybody was covered, cared for, getting hydration and things of that nature. It was really well run.

Q When the patients were moved outside, were they in shady areas where they were outside before they were moved to the garage?

A I think I mentioned that it's outside -- it's got like a pretty row of trees and it offers good shade. That sidewalk -- the grass is very well-shaded.

Q Based on your involvement, was that something that people involved in the evacuation were aware of when taking into account, the sun and the shade and where that was?

A Whenever you have a mass casualty, you have to take into account so, you know, it'd be

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like if you're pulling a person out of flaming car, you don't want to drop them into a puddle of flaming oil. You want to make sure that you're moving them from one condition to a safe condition. So it was deemed by the command staff that that stretcher along the sidewalk would be well-shaded and a safe place for the patients to go.

Q Then you mentioned the garage; explain how that process transitioned into the garage and what steps were taken in the garage that you specifically know about.

A So I don't know -- I don't know why that part of the garage was empty that day because I can't find a parking spot space to save my life, but it was. And we moved all the patients there, therefore we were able to put them into categories for transport.

So we were able to -- who is ambulatory, who was not ambulatory, who was wheelchair bound and who couldn't walk because we had to go through different transports. We had single ambulances and we had small, like Broward buses, and then we had public transit buses that even diverted in to help transport patients. And the public transport buses could only take -- I think they're all

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handicap accessible but I think they can only take two or three wheelchairs and the ambulances, they could only take the stretcher; I think they were fitting two in there, in each of the singles inside the ambulances, then the shorter buses. We were doing mostly ambulatory with some of the wheelchair patients fitting on there as well.

So using that ramp garage is where we'd categorize them in the different stages.

Q Okay. And did the garage serve as a role as you were transporting patients out; when buses came in and escorted them?

A Yes. So that part of the garage that we used was right by a driveway out, so buses and ambulances could pull right up and then patients could be loaded one by one, the buses -- the large buses two by two.

Q And I think you talked about earlier just the triage process generally, but how did this part of the evacuation process work? How would you describe it to the Judge?

A In an emergency the triage process is always continued. So you asked me earlier what my part was there, it was maintaining the continuity of the triage process. So you are always watching people

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to see if they remain stable or if they start to deteriorate.

If the green, for example, would deteriorate to a yellow, they would need to be transferred. If a yellow deteriorates to a red, they need to be moved immediately. If a red were there, they weren't -- they were all brought in -- have to initiate life-saving measures to prevent them from becoming black.

Q And was that process employed as it relates to the evacuation of the rehabilitation center here?

A Yes it was.

Q And how did it function, describe it for the Judge?

A It functioned extremely well; this was a really big evacuation. I think it went very smooth. In the ramp garage, I noticed one change in color status; that was one patient and I don't know any names and I don't know outcomes, but one patient went from a yellow to a red and the transportation process was broken for a moment; they were placed on a stretcher, they were taken over to Memorial into the emergency room, in the trauma unit.

Q And based upon your involvement, did the

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facility itself, Hollywood Hills Rehabilitation Center, bring in any additional staff to assist in this process?

A I only met the one, the one nurse that was in my -- so I couldn't tell you if they had maintenance there. I couldn't tell you if they had groundskeepers there; I only met the one nurse.

Q And based upon your involvement, do you know the extent to which any of the nursing home staff participated in the triage process or the evacuation process itself?

A The one nurse that I met did nothing. I don't know if she was an RN or an LPN, but she was only there to answer any questions that I had about the staff. So I believe a couple of times I would run into a patient and I would have to ask if their medical status had changed and she was able to answer that.

Q Based on your involvement, how many Memorial Hospital staff members participated in the triage and evacuation process?

A There were a lot; it was a really good amount. It was a really good effort for rescuing -- so I'd have to say, probably at least 50 from all different trades as I explained and people coming out.

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Q And I think you mentioned this earlier, but was there a person from Memorial Regional that you were looking to for direction through this process?

A Yes there was.

Q And who was that?

A That was Judy Frum, the Chief Nursing Officer and that was the first time that we met on that site.

Q And how would you describe for the Judge her efforts and what was her role?

A To me, heroic, heroic. My feelings for Judy are of reason -- she was later awarded a medal by the Florida State Senate for her recognition of that scenario and for ultimately saving lives.

Q What time did you leave the facility; do you know roughly?

A The facility itself; I'd have to say triage wrapped up shortly -- that process of triage took 30 to 40 minutes, so we got the patients out onto the sidewalk and over to the ramp garage -- I'd have to say by 8:15 we were done with triage and moving them over to the ramp garage.

Q And then you stayed around for a while after that at the garage as the transports took

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place?

A Yes, sir.

Q Okay. Now subsequent to this event, have you been part of any follow-ups or de-briefings done by Memorial regarding the evacuation and subsequent treatment of these patients?

A I was subject to one de-briefing and it wasn't focused on the nursing home. This was, Your Honor, a very unique situation. This was a de-briefing on the hurricane itself. So in my facility and in my experience, this is a code for me that fell into a hurricane.

We were already on a high alert for the hurricane that had just come and just gone and then all of a sudden we get this code green to -- thank goodness we have the resources, but I attended a de-briefing on the hurricane that also included our after action for the nursing home.

Q And who was at the meeting and what was the purpose of the meeting in general?

A It was all the Directors from Memorial Regional and Joe DiMaggio that participated in the Hurricane, as well as the subsequent rescuing of the patients from the nursing home.

Q And as part of the process, did anybody

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identify any flaws in how the green alert was handled or the evacuation process was handled?

A No, it went flawless as far as mass Casualties. It was absolutely flawless.

Q Okay. So in retrospect, is there anything that you'd go back on that needed to be done differently?

A Well, on my part, I wish I would have known who was who. I still couldn't tell you the Chiefs of Police or the Chiefs of Fire that I met. I wish I'd been there a little longer to be able to experience the community, but overall it was a good welcome to Florida and this is where I've made my home for my family. So in retrospect, I feel it was a very good initiation to be included in the community.

MR. MENTON: That's all that questions I have, Your Honor.

THE COURT: We're going to take a five minute break before we do cross, thanks.

(Thereupon, a short break was had.)

CROSS EXAMINATION

BY MS. SMITH:

Q -- services at Joe DiMaggio, Children's Hospital, correct?

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A Yes, ma'am.

Q And you said you began that employment on September 7, 2017?

A Yes, ma'am.

Q So you had been employed by Joe DiMaggio for about two or three days when Hurricane Irma hit Florida?

A Yes.

Q Despite only being on the job for two days, you were the Administrator in Charge of Joe DiMaggio's Emergency Room before, during, and after the storm, correct?

A Yes.

Q And you felt very confident to carry out those responsibilities, despite only being on the job for two days, correct?

A Yes.

Q Joe DiMaggio's is a children's hospital?

A It is.

Q Prior to coming to Joe DiMaggio, you were the Emergency Coordinator for Driscoll Children's Hospital for about a year and a half, from October 2015 to June of 2017?

A Yes.

Q And Driscoll is also a children's

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hospital?
A It is.
Q And prior to that, you were the ER Director for -- I know I'm going to say it wrong, Spohn Health System, is that right?
A Spohn.
Q Spohn Health System?
A Yes.
Q And you were there for about eight months?
A Yes, ma'am.
Q And prior to that, you were the ER Director for Regional Care in Paris, Texas for about a year and a half?
A Yes, ma'am.
Q Is that the totality of your administrative roles as either an ER Director or a similar capacity?
A No.
Q How many years prior to that were you the Director of an emergency room?
A Probably eight years, I do the interim work.
Q What is interim work?
A Usually its facilities that don't have a Director and that are in different various stages of

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crises, staffing. ER Directors are kind of hard to find so I would step in for three, six months at a time, help out, get their budget situated, their staffing situated with their nursing shortage and staffing until they become stabilized and then move on to the next assignment.
Q Is it fair to say for the last two years, your experience has been in a children's hospital though, is that right?
A No. Before -- was an adult ER and before that I had never worked in the pediatric setting before.
Q Right, as of the last two years; you've been six months at Joe DiMaggio and a year and a half at Driscoll Children's?
A Yes, ma'am.
Q That's accurate, right? So the last two years you've been at a children's hospital?
A Yes, ma'am.
Q You've never been a Nursing Home Administrator, correct?
A That is correct.
Q You've never been a nursing home Nursing Director, correct?
A That is correct.

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Q Have you ever worked in a nursing home?
A Yes.
Q How long ago?
A Probably five years ago, six years ago. I took a break from doing intern work and I took a travel assignment at Batavia VA Nursing Home in Batavia, New York for six months.
Q And other than that, have you ever worked in an nursing home?
A No, ma'am.
Q You're not a paramedic, correct?
A No.
Q You're not an EMT, correct?
A That's correct.
Q And you've never been a firefighter, correct?
A Nope.
Q You were not part of the decision to evacuate the facility, correct?
A That is correct.
Q Other people made that decision before you arrived on the scene?
A Thankfully, yes.
Q You don't really even know who made that decision, do you?

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A Just the collaboration at the curbside is what I know.
Q You don't know what time the MCI was called, do you?
A No I don't. Like I said, I heard the code green either right around 7:00 or shortly after.
Q You did not review the Broward County EMS protocols for an MCI, have you?
A No I have not.
Q You were not able to listen to the radio communications going on between the various firefighters, EMTs and paramedics on the scene on September 13th, were you?
A No.
Q You have not listened to the 911 taped calls from the facility made on September 12th and September 13th, have you?
A No.
Q You've not watched any surveillance videos from inside the nursing home?
A No.
Q You're not privy to the police investigation files, right?
A No.
Q You don't know who was the Battalion Chief

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in charge of the MCI, do you?
A No.
Q And you don't know who was coordinating the various aspects of the MCI operations, do you?
A Just at the curbside. Like I said, when I walked out, there was fire, there was police, EMS and then Judy Frum from Memorial; they were the ones that were coordinating the whole on-scene incident.
Q Right, and then name by name, you couldn't tell us, for example, who those first responders were in control of the operations, transportation or anyone for example?
A No.
Q When you arrived on the scene there were approximately 20 police, firefighters and EMS personnel, correct?
A Yeah, roughly; that would be safe to say.
Q And while you were at the scene, you say there was well over 50 Memorial Hospital employees that you saw assisting with the evacuation?
A Yes, ma'am.
Q You also saw two helicopters, correct?
A Yes, ma'am.
Q And I assume they were some kind of first responder helicopters or were they media or do you

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know?
A Couldn't tell you.
Q But you do know that there was media already on the scene at that point, correct, because you saw yourself on TV?
A I looked horrible; that is correct, yes.
Q So sometime while you were there, there was media present or at least they were starting to come onto the scene, correct?
A Yes, ma'am.
Q You've not been provided any access to the temperature monitoring logs taken at the facility on September 11th or 12th, have you?
A Can you repeat the question?
Q Have you not been provided or shown the temperature monitoring logs taken within the facility on September 11th and 12th, have you?
A No, ma'am.
Q You did not personally take any temperature readings inside the building, did you?
A No, ma'am.
Q You do not know what the temperature was inside the building, do you?
A No, ma'am.
Q You did observe, however, that the

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majority of the windows in the areas where you were evacuating patients were open, correct?
A It was about 50/50.
Q I believe you said in your deposition it was a majority, is that not accurate?
MR. MENTON: Objection, Your Honor. I don't think that's the proper way --
MS. SMITH: I'll rephrase the question, I'm sorry, I apologize.
BY MS. SMITH:
Q Is that accurate, that the majority of the windows were open?
A It could be that majority were open, yes.
Q The sliding doors to the building were propped open?
A I'm sorry, I don't know if they were sliding or if they were pop-out, but the doors were open, yes.
Q You don't recall seeing any spot coolers, do you?
A No, ma'am, I do not.
Q So you can't tell us if the spot coolers were running or not?
A No, ma'am, I couldn't.
Q You can't tell us anything that happened

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at the nursing home before you arrived, correct?
A No, ma'am.
Q You never went to the second floor of the nursing home, did you?
A No, ma'am.
Q You didn't have any part in the evacuation of the second floor residents, did you?
A No I did not.
Q The second floor was completely evacuated when you arrived?
A I was told that there were no patients that were needing triage on that second floor and that other people had conversations and it came up that there were deceased there, but that there was nobody that needed medical attention on that floor.
Q You can't tell us anything about the evacuation of the left side of the first floor either, can you?
A No, ma'am.
Q So your knowledge is limited to the 20 patients that you evaluated on the right side of the first floor, correct?
A That's correct.
Q You mentioned that the triage took about 30 to 40 minutes and that you triaged 20 patients;

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so that you spent about a minute and a half to two minutes per patient's evaluating them?

A That is correct, except for one of the last patients.

Q And was that the very last patient; and you had to get assistance getting that patient out of the facility because the bed was too big to wheel out?

A Yes, ma'am.

Q And how long did you spend with that patient?

A I couldn't tell you.

Q Was it a substantial portion of the 30 or 40 minutes?

A I couldn't tell you the time. All I know is that we split time with her fan. She had a bedside fan, 50% on her and 50% on me, 50% on her, 50% on me. It seemed like forever but it probably wasn't that long. Fire Rescue was really quick.

Q Everything was happening pretty quickly, correct?

A Yes, ma'am.

Q And you didn't have time to get the medical records before getting the patients out of the building, did you?

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A No, that's correct.

Q And you never reviewed any patient's medical records, did you?

A The only thing we had was the LPN and that's the - something for -- that I could ask questions. I think like two times I asked if it was baseline and I just asked some people.

Q And you don't know if that LPN was in fact an employee of the facility or might have been a Hospice nurse or a home health nurse in the facility, do you?

A I think -- no, I don't.

Q You didn't provide any patients with any of their routine morning medications when you were doing evaluations, did you?

A No, ma'am.

Q You didn't take the time to gather their medications and send them out with the patients as you were evacuating them, did you?

A I did not have time.

Q You didn't mean to leave the impression that the one LPN that was working with you was the only nursing home staff in the building, did you?

A I can't tell you about the rest of the

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building; that's the only employee of that nursing that I ran into in my interactions, both on the right side of that floor and the -- and she's the only staff member I saw.

Q Right, and I'm just saying, you can't say one way or the other whether there was other staff in the building?

A No, ma'am.

Q You never reviewed the Medical Examiner's reports on any of the patients named in the Complaint in this proceeding, have you?

A No, ma'am, I don't know who's named in the Complaint.

Q You can't comment on anything that the nursing home staff did or didn't do to keep patients comfortable prior to the evacuation, can you?

A I can only tell you what I saw.

Q So that would be no, that you can't comment on anything that they did prior to the evacuation?

A Prior, correct.

Q And you can't tell us anything about the nursing home residents after you left the facility on September 13th, correct?

A After the facility, after the ramp garage,

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after the ramp garage; no I can't.

Q And when you went to the ramp garage, you saw someone who appeared to be staff from the nursing home wheeling a cart with medical records over to the parking garage, didn't you?

A I don't know if they were from the nursing home or if they were from Memorial; I saw a cart being wheeled by someone across the parking lot area.

Q You didn't take time to give the patients breakfast or food or anything before you evacuated them, right?

A I didn't have time.

Q You mentioned that there were approximately 25% of the patients, so that would be five patients about that needed to be changed that you were in adult diapers or whatever when you assessed those patients?

A That is correct.

Q You'd agree with me that it's not unusual for patients in a nursing home who are woken up to need to have their diapers changed in the mornings, correct?

A I don't know what state of their day they were in, if they were already cared for, I don't know. Some were dressed, some were not dressed, some were

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naked, some were in their gowns, so I don't know if I walked into a place that was just getting going, if they've already been up, but if I were to walk in while everybody was sleeping, then I would agree with your statement.

Q Right, because when the patients wake up is when you would change them, right?

A Some do, yes.

Q In fact, just going along with what you just said, you couldn't tell us what state of rounding on patients the nursing staff was in when the evacuation was begun, can you?

A No, just that there were dressed people in the dayroom, already staged there after I had come down from triage and came back before I left into that dayroom -- people were like ready for their day.

Q Sure. But it could be that the rounds were interrupted when the evacuation began, correct?

A Can you repeat that question, I'm sorry.

Q Sure. The normal morning rounds from the nursing home staff could have been interrupted by the evacuation, correct?

A It is possible, yes.

Q You went out of the building at some point

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to help take a patient out; he was bariatric patient?

A She, I believe, female, yes.

Q And was that the last patient you took out?

A I believe so.

Q And when you came out at that point in time, many of your patients were sitting in wheelchairs on the right side on the sidewalk underneath the patchy shade of the trees?

A Some were, yes. Some had already been moved to the ramp garage.

Q And you can't tell us how long any patients might have sat in that area when you were inside of the facility?

A No I can't, it wasn't long.

Q Well, you just said I can't tell you and then you said it wasn't long. You weren't there watching them were you; you were inside assessing patients, right?

A Yes, ma'am.

MS. SMITH: Thank you, that's all the questions I have.

THE COURT: Any redirect?

MR. MENTON: Yes, Your Honor, just a few.

REDIRECT EXAMINATION

BY MR. MENTON:

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Q First of all, Mr. LaMendola, in response to one of Ms. Smith's questions just a second ago, you said it wasn't long, and I know you weren't there, but why did you say it wasn't long; what led you to that conclusion?

A Everything was fluent, everything was moving. So the priority was for fire and rescue to get them out of the imminent danger or the hot climate in the nursing home; to get them out of this dangerous situation.

From there, other fire and EMS on the curb moved them to the second area which was stable, away from the scene situation where we would continue to hand them water, large fans were set up, it was completely shaded and start delegating where they go for transportation.

Q And Ms. Smith also had asked you a question about the -- you didn't have time to give them breakfast or you didn't give them breakfast; is breakfast part of the triage process for a mass casualty event?

A No it's not. We don't have time for that.

Q And likewise, with respect to medical records, if you're in a triage process in a mass casualty event, are you trying to deal with medical

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records at that point in time?

A No, if I have any immediate medical questions I am going to ask the patient's nurse, who was that nurse standing right there. If I have any immediate concerns I'm going to ask her.

Q All right. And other than the nurse that you mentioned earlier, was there anybody available for you to ask those questions to as you were going through this?

A No, no.

Q As it relates to the medication reconciliation or administration and that sort of thing, again, is that part of the triage process for an MCI?

A Not at all.

Q And why not? Why aren't those things --

A Because you have to get to a stable environment; these are critical moments where every minute counts, where you have to make sure that everybody is stabilized, where everybody has sight safety and that you can delegate and determine where people are going safely and that they maintain their homeostasis, where they maintain to be safe so that we can plug them into where they get the proper care.

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Q And I ask that question in a general sense; let me ask it specifically as it relates to the Hollywood Hills Rehabilitation Center. Was that the situation that you found or can you describe for the Judge how that need, as you described it in the triage process, corresponds to what you saw there on the ground there that morning?

A Inside the nursing home?

Q Yes.

A They needed to be removed from that facility due to the heat and the danger that those people were in.

Q And I know you indicated that you didn't have a thermometer so you weren't taking temperatures. There's been testimony in this case that the facility -- well, let me ask you a different way. There's going to be some testimony apparently that the facility never got above 80 degrees.

There's also going to be police records that took temperature readings within the facilities in the high 90's some over 100 degrees, which is closer to what you would experience. If you had to pick one --

MS. SMITH: Your Honor, I object, it's --

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all I asked him was -- he didn't take any temperature readings; it's beyond the scope.

THE COURT: Sustained.

MS. SMITH: Thank you.

BY MR. MENTON:

Q Now you were asked some questions about your background in children's pediatric, which is your current position, did you feel that you were professionally qualified and capable to handle the triage process from this nursing home?

A Yes, I maintained all of my certifications, which also include the ACLS, Advanced Cardiac Life Support. As well as Trauma Nursing Core Course. I also have ENPC, which is Emergency Nursing for Pediatrics. And I also have PALS, which is Pediatric Advanced Life Support but I maintain my adult's as well.

MR. MENTON: That's all the questions I have, Your Honor.

THE COURT: Sir, the parties have invoked what is known as the Rule of Sequestration. That means that we're asking the witnesses who come in and testify not to leave this room and share with other witnesses, either the questions asked or the answers given. It's our hope that they -- until the proceeding's over -- we're hoping that the other witnesses come in and give us their recollection of events to the best of their ability without any presupposition with regards to what the questions might be or what they think the answers might -- be. All right, sir?

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THE WITNESS: Yes, thank you so much, ma'am.

THE COURT: Thank you. Mr. Menton, any other witnesses for the Agency today?

MR. MENTON: No, Your Honor. And again, I apologize, we had anticipated having Battalion Chief Ladwick with Fire Rescue who we expected was going to be lengthy, but because of his medical issues he's not here so this was our last witness for today.

THE COURT: Do we have a full lineup for tomorrow?

MR. MENTON: Your Honor, we do. We have seven Fire Rescue personnel subpoenaed for tomorrow beginning at 9:00 a.m. Now some of it will get to be a little bit redundant as we go along because some of them were on the same crews but there are some members that were are different crews; we have seven of them lined up for tomorrow.

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THE COURT: Okay. Anything else that we need to address today?

MS. SMITH: No.

MR. MENTON: No, Your Honor.

THE COURT: I'd ask that Counsel for both parties -- before we begin tomorrow, take some time looking at the Amended Administrative Complaint; I'm going to do the same. I know that we are going to have this ongoing issue about the boundary of the testimony that can be elicited with regard to generalizations versus the specifics of those individuals who AHCA alleges suffered as a result of the event, but who did not perish.

So I'm going to do my best to make sure that we stay within the boundaries of the allegations of the Amended Administrative Complaint and that may help us with regard to any objections in the responses as well.

MS. SMITH: Thank you very much, Your Honor.

THE COURT: Thank you. See you tomorrow morning at 9:00.

(Thereupon, the Court was in recess at 3:22 p.m.)

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CERTIFICATE

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, DANNY HODGSON, A COURT REPORTER IN THE STATE OF FLORIDA, DO HEREBY STATE THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT AS TRANSCRIBED BY ME AT THE TIME, PLACE AND THE DATE HEREIN BEFORE FORTH.

I DO FURTHER STATE THAT I AM NEITHER A RELATIVE NOR EMPLOYEE NOR ATTORNEY NOR COUNSEL OF ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL, AND THAT I AM NOT FINANCIALLY INTERESTED IN THIS ACTION.

WITNESS MY HAND IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, STATE OF FLORIDA, ON THIS 21ST DAY OF FEBRUARY, 2018.

BY: Danny Hodgson
DANNY HODGSON, COURT REPORTER

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Appendix F

Exhibit 1

Cust No	TS_KY	CNTC_SRC	CNTC_TYPE		SLID
863162256	Sep 10, 2017 3:47:50 PM 924393	C	OUTI		VMA0BER
863162256	Sep 10, 2017 3:49:25 PM 322272	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:49:25 PM 322272	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:50:23 PM 362092	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:50:23 PM 362092	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:53:41 PM 310673	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:53:41 PM 310673	C	PAPO		VMA0BER
863162256	Sep 10, 2017 3:54:53 PM 152850	C	PAPO		DCE0KF8
863162256	Sep 10, 2017 3:54:53 PM 152850	C	PAPO		DCE0KF8
863162256	Sep 10, 2017 3:55:07 PM 909755	C		603	VMA0BER
863162256	Sep 10, 2017 3:55:07 PM 909755	C		603	VMA0BER
863162256	Sep 10, 2017 11:06:12 PM 824893	C	TFPC		VRU0TFC
863162256	Sep 10, 2017 11:06:12 PM 824893	C	TFPC		VRU0TFC
863162256	Sep 11, 2017 7:01:11 AM 971569	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 7:01:11 AM 971569	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 7:12:19 AM 752432	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 7:12:19 AM 752432	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 7:18:13 AM 352038	C	TFPC		VRU0TFC
863162256	Sep 11, 2017 7:18:13 AM 352038	C	TFPC		VRU0TFC
863162256	Sep 11, 2017 9:15:46 AM 932401	I	WPHL		ZZZ0CSP
863162256	Sep 11, 2017 9:17:06 AM 966642	I	WORS		ZZZ0CSP
863162256	Sep 11, 2017 9:17:06 AM 966642	I	WORS		ZZZ0CSP
863162256	Sep 11, 2017 9:17:10 AM 065977	I	WOCE		ZZZ0CST
863162256	Sep 11, 2017 10:32:33 AM 223014	I	WOCE		ZZZ0CST
863162256	Sep 11, 2017 10:36:48 AM 978885	I	WBAL		ZZZ0CSP
863162256	Sep 11, 2017 10:36:49 AM 400285	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 10:36:49 AM 400285	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 11:18:53 AM 915745	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 11:18:53 AM 915745	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 12:05:45 PM 483594	I	WPHL		ZZZ0CSP
863162256	Sep 11, 2017 12:05:46 PM 212745	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 12:05:46 PM 212745	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 12:05:55 PM 570325	I	WPHL		ZZZ0CSP
863162256	Sep 11, 2017 12:05:56 PM 946695	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 12:05:56 PM 946695	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 3:12:50 PM 327945	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 3:12:50 PM 327945	C	TFNC		VRU0TFC
863162256	Sep 11, 2017 3:31:55 PM 694949	I	WPHL		ZZZ0CSP
863162256	Sep 11, 2017 3:31:55 PM 878645	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 3:31:55 PM 878645	I	WOST		ZZZ0CSP
863162256	Sep 11, 2017 3:48:27 PM 920441	I	WPHL		ZZZ0CSP

863162256	Sep 11, 2017 3:48:28 PM 604245	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 3:48:28 PM 604245	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 422890	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 625486	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 625486	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:44 PM 468505	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 4:03:45 PM 254181	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:45 PM 254181	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:04:07 PM 855249	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 4:04:08 PM 323864	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:04:08 PM 323864	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 5:22:43 PM 095926	I	WBAL	ZZZ0CSP
863162256	Sep 11, 2017 5:46:30 PM 818046	I	WBAL	ZZZ0CSP
863162256	Sep 11, 2017 5:46:31 PM 383518	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 5:46:31 PM 383518	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 8:49:38 PM 400270	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 8:49:42 PM 383914	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 8:49:42 PM 383914	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:07:11 PM 835864	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 9:07:11 PM 835864	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 9:14:58 PM 981564	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 9:14:59 PM 192139	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:14:59 PM 192139	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 520583	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 864586	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 864586	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 8:41:56 AM 256847	I	WPHL	ZZZ0CSP
863162256	Sep 12, 2017 8:41:57 AM 901850	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 8:41:57 AM 901850	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 9:01:49 AM 339933	C	TFNC	VRU0TFC
863162256	Sep 12, 2017 9:01:49 AM 339933	C	TFNC	VRU0TFC
863162256	Sep 12, 2017 9:42:37 AM 099837	I	WBAL	ZZZ0CSP
863162256	Sep 12, 2017 9:42:40 AM 636461	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 9:42:40 AM 636461	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 9:47:53 AM 639728	I	WBAL	ZZZ0CSP
863162256	Sep 12, 2017 9:47:57 AM 042384	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 9:47:57 AM 042384	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 2:07:12 PM 761802	I	WPHL	ZZZ0CSP
863162256	Sep 12, 2017 2:07:13 PM 893939	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 2:07:13 PM 893939	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 2:21:19 PM 499448	C	PAPO	GXS0KE5
863162256	Sep 12, 2017 2:21:19 PM 499448	C	PAPO	GXS0KE5
863162256	Sep 12, 2017 2:31:08 PM 620697	C	XCIC	GXF05GM
863162256	Sep 12, 2017 2:31:50 PM 090441	C	PAPO	GXF05GM
863162256	Sep 12, 2017 2:31:50 PM 090441	C	PAPO	GXF05GM
863162256	Sep 12, 2017 2:36:12 PM 015717	C	PAPO	GXF05GM

863162256	Sep 12, 2017 2:36:12 PM 015717	C	PAPO	GXF05GM
863162256	Sep 12, 2017 6:02:12 PM 899506	C	PAPO	DXL0MAL
863162256	Sep 12, 2017 6:02:12 PM 899506	C	PAPO	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 657541	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 659174	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 659174	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 11:19:25 PM 306327	C	XCIC	PXB0701
863162256	Sep 12, 2017 11:22:20 PM 549469	C	PAPO	PXB0701
863162256	Sep 12, 2017 11:22:20 PM 549469	C	PAPO	PXB0701
863162256	Sep 13, 2017 8:46:34 AM 924854	I	WPHL	ZZZ0CSP
863162256	Sep 13, 2017 8:46:35 AM 643005	I	WOST	ZZZ0CSP
863162256	Sep 13, 2017 8:46:35 AM 643005	I	WOST	ZZZ0CSP
863162256	Sep 13, 2017 9:34:10 AM 199148	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 199148	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 204417	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 204417	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 206857	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:35:03 AM 565619	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 565619	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 568073	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 568073	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:34 AM 464445	C	XASU	GXB0BVL
863162256	Sep 13, 2017 9:35:34 AM 464445	C	XASU	GXB0BVL
863162256	Sep 13, 2017 9:40:38 AM 811389	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 811389	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 819786	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 819786	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 825386	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 11:18:27 AM 593794	I	WPHL	ZZZ0CSP
863162256	Sep 13, 2017 11:18:28 AM 153050	I	WOST	ZZZ0CSP
863162256	Sep 13, 2017 11:18:28 AM 153050	I	WOST	ZZZ0CSP

REQUESTED BY	KY_BA	PREMISE	DATE	REF
REHABILITATION CENTER AT	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
AUTHORIZED CALLER	1198882563	560383654	10-Sep	KASW
AUTHORIZED CALLER	1198882563	560383654	10-Sep	KASW
(954) 981-5511	1198882563	560383654	10-Sep	BATCH
(954) 981-5511	1198882563	560383654	10-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	
WEB CUSTOMER	6980842568	1681491	11-Sep	
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
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WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
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WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
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WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
(000) 000-0000	1198882563	560383654	11-Sep	BATCH
(000) 000-0000	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
(954) 981-5511	1198882563	560383654	12-Sep	BATCH
(954) 981-5511	1198882563	560383654	12-Sep	BATCH
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
MONA CLARK	1198882563	560383654	12-Sep	
MONA CLARK	1198882563	560383654	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	KASW
MRS PIAN	6980842568	1681491	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	

MRS PIAN	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
REHABILITATION CENTER AT	6980842568	1681491	12-Sep	KASW
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	KASW
MS PINA	6980842568	1681491	13-Sep	KASW
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
WEB CUSTOMER	6980842568	1681491	13-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	13-Sep	WORS-EXT
WEB CUSTOMER	6980842568	1681491	13-Sep	WORS-EXT

Comments
PEARL INITIATED OUTAGE
ALL PWR OUT - REPORTED AT 09-10-2017 03:49:25 PM - TKT# N/A
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM
ALL PWR OUT - REPORTED AT 09-10-2017 03:50:23 PM - TKT# 10923
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM
ALL PWR OUT - REPORTED AT 09-10-2017 03:53:41 PM - TKT# 10923
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM
ALL PWR OUT - REPORTED AT 09-10-2017 03:54:53 PM - TKT# 10923
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM
TRBL HAD TO RELEASE CALL. IF CB ADV CALL AM!!! GIVE CONTACT INFO PLS
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/10/2017> AT <22:51:59>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:43:54>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:57:32>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <07:00:25>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:15 AM POWER OUT NO ITR GIVEN CUSTOMER SELECTED TO RECEIVE CONFIRMATION E-MAIL FROM WORS
CUSTOMER SELECTED TO RECEIVE CONFIRMATION E-MAIL FROM WORS CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 10:36 AM TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <11:02:11>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 12:05 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 12:05 PM TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <14:57:38>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:31 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:48 PM

TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:04 PM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 05:22 PM
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 05:46 PM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 08:49 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM
<09/11/2017> AT <20:50:34>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:14 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:45 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.

CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 08:41 AM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM
<09/12/2017> AT <08:45:22>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 09:42 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 09:47 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 02:07 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00
NO ITR/ETR GIVEN.
ALL PWR OUT - REPORTED AT 09-12-2017 02:21:19 PM - TKT# 10923
CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY
GENERAL INFO
ALL PWR OUT - REPORTED AT 09-12-2017 02:31:50 PM - TKT# 4301
CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY
ALL PWR OUT - REPORTED AT 09-12-2017 02:36:11 PM - TKT# 4301

CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY

ALL PWR OUT - REPORTED AT 09-12-2017 06:02:12 PM - TKT# 4301
CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY
<2017-09-12 00859> <600100200100>OUTAGE - OTHER
*ASUP*CST CONCERNED ABOUT PATIENTS IN THE BUILD AND SAYS TEMPS A
RE AT 110 DEGREES. WORRIED ABOUT CUSOTMERS HEALTH

GENERAL INFO
ALL PWR OUT - REPORTED AT 09-12-2017 11:22:20 PM - TKT# 4301
CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY

CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 08:46 AM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00
NO ITR/ETR GIVEN.
<2017-09-13 00295> <600175200100>FREQUENT OUTAGES -SHORT TERM -
OTHER
CUST UPSET SAID THEY NEED POWER ASAP NURSING HOME OLD PEOPLE THE
RE AND NOW THEY ARE DEAD CAUSE OF THE HEAT CUST VERY ANGRY -
LOST SIGNAL - CALL DROPPED
<2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM -
OTHER
CUST SAYS DUE TO TF ON RESTORATION PEOPLE ARE DYING AT FACILITY
SAYS FPL HAS DONE NOTHING TO HELP THEM TT 4301
TROUBLE - INCLUDING STREETLIGHT AND OL
ETA ON OUTAGE NOT SATISFACTORY
<2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM -
OTHER
ASUPCUST UPSET HAS MOTHER HERE AND PEOPLE DYING, FPL HAD CRE
W CLOSE BUT DID NOT GO AND RESTORE POWER. CUST HUNG UP DID NOT
ALLOW TO TALK TO HER
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 11:18 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00
NO ITR/ETR GIVEN.

Representative Name	SLID	Regular Supervisor	Storm Role
Atencio, Vianca	VMA0BER	Perez, Jose Angel	Phone Representative
Egues, Dolores	DCE0KF8	Felpeto, Ricardo	Phone Representative - Account Supervisor
Atencio, Vianca	VMA0BER	Perez, Jose Angel	Phone Representative
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	TFCC		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	TFCC		
N/A	TFCC		
N/A	WORS		
N/A	WORS		
N/A	WORS		
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N/A	WORS		
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N/A	TFCC		
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N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
N/A	WORS		
Simpson, Gcs alexandra	GXS0KE5	Martin, Phillip	Phone Representative
Fausnaugh, Gcs melvin	GXF05GM	Martin, Phillip	Phone Representative
Fausnaugh, Gcs melvin	GXF05GM	Martin, Phillip	Phone Representative

Lopez, Dona	DXL0MAL	Felpeto, Ricardo	Phone Representative-Account Supervisor

Note: Screen Shot referencing nursing home, call to CIC for awareness of outage

Bienaime, Pierre	PXB0701	Lopez-Hamersly, Cristina	Phone Representative
N/A	WORS		
Anchondo, GCS Delma	GXD0YAS	Martin, Phillip	Phone Representative
Bustillos, Gcs maria	GXB0BVL	Martin, Phillip	Phone Representative
Alvarado, Gcs laura	GXL0XW6	Martin, Phillip	Phone Representative
N/A	WORS		

CIC	CIC Rep Name	SLID	Regular Supervisor

No			
Yes	Cueto, Orlando	OXC0V4O	Rivera, Victor

Yes	Rodriguez, John	JXR0JB8	Rivera, Victor
Yes	Quintino, Byron	BXQ0SPF	Rivera, Victor
Yes	Mijares, Dianna	GXM0S3U	Martin, Phillip

Cust No	TS_KY	CNTC_SRC	CNTC_T	SLID
863162256	Sep 12, 2017 2:31:08 PM 620697	C	XCIC	GXF05GM
863162256	Sep 12, 2017 2:31:50 PM 090441	C	PAPO	GXF05GM
863162256	Sep 12, 2017 2:31:50 PM 090441	C	PAPO	GXF05GM
863162256	Sep 12, 2017 2:36:12 PM 015717	C	PAPO	GXF05GM
863162256	Sep 12, 2017 2:36:12 PM 015717	C	PAPO	GXF05GM
863162256	Sep 12, 2017 6:02:12 PM 899506	C	PAPO	DXL0MAL
863162256	Sep 12, 2017 6:02:12 PM 899506	C	PAPO	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 657541	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 659174	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 6:04:17 PM 659174	M	CMPN	DXL0MAL
863162256	Sep 12, 2017 11:19:25 PM 306327	C	XCIC	PXB0701
863162256	Sep 12, 2017 11:22:20 PM 549469	C	PAPO	PXB0701
863162256	Sep 12, 2017 11:22:20 PM 549469	C	PAPO	PXB0701
863162256	Sep 13, 2017 9:34:10 AM 199148	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 199148	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 204417	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 204417	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:34:10 AM 206857	M	CMPN	GXD0YAS
863162256	Sep 13, 2017 9:35:03 AM 565619	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 565619	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 568073	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:03 AM 568073	M	CMPN	GXB0BVL
863162256	Sep 13, 2017 9:35:34 AM 464445	C	XASU	GXB0BVL
863162256	Sep 13, 2017 9:35:34 AM 464445	C	XASU	GXB0BVL
863162256	Sep 13, 2017 9:40:38 AM 811389	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 811389	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 819786	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 819786	M	CMPA	GXL0XW6
863162256	Sep 13, 2017 9:40:38 AM 825386	M	CMPA	GXL0XW6

REQUESTED BY	KY_BA	PREMISE	DATE	REF
MRS PIAN	6980842568	1681491	12-Sep	KASW
MRS PIAN	6980842568	1681491	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	
MRS PIAN	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
REHABILITATION CENTER AT	6980842568	1681491	12-Sep	KASW
MRS PINA	6980842568	1681491	12-Sep	
MRS PINA	6980842568	1681491	12-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
REHABILITATION CENTER AT	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	
MS PINA	6980842568	1681491	13-Sep	KASW
MS PINA	6980842568	1681491	13-Sep	KASW
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	
MRS ELI PINA	6980842568	1681491	13-Sep	

Comments	
GENERAL INFO ALL PWR OUT - REPORTED AT 09-12-2017 02:31:50 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY ALL PWR OUT - REPORTED AT 09-12-2017 02:36:11 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY ALL PWR OUT - REPORTED AT 09-12-2017 06:02:12 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY <2017-09-12 00859> <600100200100>OUTAGE - OTHER *ASUP*CST CONCERNED ABOUT PATIENTS IN THE BUILD AND SAYS TEMPS A RE AT 110 DEGREES. WORRIED ABOUT CUSOTMERS HEALTH	Called CIC a
GENERAL INFO ALL PWR OUT - REPORTED AT 09-12-2017 11:22:20 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY <2017-09-13 00295> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER CUST UPSET SAID THEY NEED POWER ASAP NURSING HOME OLD PEOPLE THE RE AND NOW THEY ARE DEAD CAUSE OF THE HEAT CUST VERY ANGRY - LOST SIGNAL - CALL DROPPED <2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER CUST SAYS DUE TO TF ON RESTORATION PEOPLE ARE DYING AT FACILITY SAYS FPL HAS DONE NOTHING TO HELP THEM TT 4301 TROUBLE - INCLUDING STREETLIGHT AND OL ETA ON OUTAGE NOT SATISFACTORY <2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER **ASUP**CUST UPSET HAS MOTHER HERE AND PEOPLE DYING, FPL HAD CRE W CLOSE BUT DID NOT GO AND RESTORE POWER. CUST HUNG UP DID NOT ALLOW TO TALK TO HER	913061269621000048 913061641374000048

advised no ETA

1

1

Cust No	TS_KY	CNTC_SRC	CNTC_TYPE	SLID
863162256	Sep 10, 2017 3:47:50 PM 924393	C	OUTI	VMA0BER
863162256	Sep 10, 2017 3:49:25 PM 322272	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:49:25 PM 322272	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:50:23 PM 362092	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:50:23 PM 362092	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:53:41 PM 310673	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:53:41 PM 310673	C	PAPO	VMA0BER
863162256	Sep 10, 2017 3:54:53 PM 152850	C	PAPO	DCE0KF8
863162256	Sep 10, 2017 3:54:53 PM 152850	C	PAPO	DCE0KF8
863162256	Sep 10, 2017 3:55:07 PM 909755	C	603	VMA0BER
863162256	Sep 10, 2017 3:55:07 PM 909755	C	603	VMA0BER
863162256	Sep 10, 2017 11:06:12 PM 824893	C	TFPC	VRU0TFC
863162256	Sep 10, 2017 11:06:12 PM 824893	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 7:01:11 AM 971569	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 7:01:11 AM 971569	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 7:12:19 AM 752432	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 7:12:19 AM 752432	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 7:18:13 AM 352038	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 7:18:13 AM 352038	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 11:18:53 AM 915745	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 11:18:53 AM 915745	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 12:05:45 PM 483594	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 12:05:46 PM 212745	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 12:05:46 PM 212745	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 3:12:50 PM 327945	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 3:12:50 PM 327945	C	TFNC	VRU0TFC
863162256	Sep 11, 2017 3:31:55 PM 694949	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 3:31:55 PM 878645	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 3:31:55 PM 878645	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 3:48:27 PM 920441	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 3:48:28 PM 604245	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 3:48:28 PM 604245	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 422890	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 625486	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:01 PM 625486	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:44 PM 468505	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 4:03:45 PM 254181	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 4:03:45 PM 254181	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 8:49:38 PM 400270	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 8:49:42 PM 383914	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 8:49:42 PM 383914	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:07:11 PM 835864	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 9:07:11 PM 835864	C	TFPC	VRU0TFC
863162256	Sep 11, 2017 9:14:58 PM 981564	I	WPHL	ZZZ0CSP

863162256	Sep 11, 2017 9:14:59 PM 192139	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:14:59 PM 192139	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 520583	I	WPHL	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 864586	I	WOST	ZZZ0CSP
863162256	Sep 11, 2017 9:45:01 PM 864586	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 8:41:56 AM 256847	I	WPHL	ZZZ0CSP
863162256	Sep 12, 2017 8:41:57 AM 901850	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 8:41:57 AM 901850	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 9:01:49 AM 339933	C	TFNC	VRU0TFC
863162256	Sep 12, 2017 9:01:49 AM 339933	C	TFNC	VRU0TFC
863162256	Sep 12, 2017 2:07:12 PM 761802	I	WPHL	ZZZ0CSP
863162256	Sep 12, 2017 2:07:13 PM 893939	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 2:07:13 PM 893939	I	WOST	ZZZ0CSP
863162256	Sep 12, 2017 2:21:19 PM 499448	C	PAPO	GXS0KE5
863162256	Sep 12, 2017 2:21:19 PM 499448	C	PAPO	GXS0KE5
863162256	Sep 13, 2017 8:46:34 AM 924854	I	WPHL	ZZZ0CSP
863162256	Sep 13, 2017 8:46:35 AM 643005	I	WOST	ZZZ0CSP
863162256	Sep 13, 2017 8:46:35 AM 643005	I	WOST	ZZZ0CSP

REQUESTED BY	KY_BA	PREMISE	DATE	REF
REHABILITATION CENTER AT	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
JAMES WILLIAMS	1198882563	560383654	10-Sep	
AUTHORIZED CALLER	1198882563	560383654	10-Sep	KASW
AUTHORIZED CALLER	1198882563	560383654	10-Sep	KASW
(954) 981-5511	1198882563	560383654	10-Sep	BATCH
(954) 981-5511	1198882563	560383654	10-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(954) 559-5538	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
(843) 683-1407	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
(000) 000-0000	1198882563	560383654	11-Sep	BATCH
(000) 000-0000	1198882563	560383654	11-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT

WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	11-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
(954) 981-5511	1198882563	560383654	12-Sep	BATCH
(954) 981-5511	1198882563	560383654	12-Sep	BATCH
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	12-Sep	WORS-EXT
MONA CLARK	1198882563	560383654	12-Sep	
MONA CLARK	1198882563	560383654	12-Sep	
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT
WEB CUSTOMER	1198882563	560383654	13-Sep	WORS-EXT

Comments	Call ID
PEARL INITIATED OUTAGE	9130592713740000481
ALL PWR OUT - REPORTED AT 09-10-2017 03:49:25 PM - TKT# N/A	9130592713740000481
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM	9130592713740000481
ALL PWR OUT - REPORTED AT 09-10-2017 03:50:23 PM - TKT# 10923	9130592713740000481
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM	9130592713740000481
ALL PWR OUT - REPORTED AT 09-10-2017 03:53:41 PM - TKT# 10923	9130592713740000481
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM	9130592713740000481
ALL PWR OUT - REPORTED AT 09-10-2017 03:54:53 PM - TKT# 10923	
CALL BACKS: NO - ETR PROVIDED:NO ESTIMATE AVAILABLE AT THIS TIM	
TRBL HAD TO RELEASE CALL. IF CB ADV CALL AM!!! GIVE CONTACT INFO PLS	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/10/2017> AT <22:51:59>	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:43:54>	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:57:32>	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <07:00:25>	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <11:02:11>	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 12:05 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <14:57:38>	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:31 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:48 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 08:49 PM TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.	
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <20:50:34>	
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:14 PM	

TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:45 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 08:41 AM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00
NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM
<09/12/2017> AT <08:45:22>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 02:07 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00
NO ITR/ETR GIVEN.
ALL PWR OUT - REPORTED AT 09-12-2017 02:21:19 PM - TKT# 10923 9130609461330000481
CALL BACKS: NO - ETR PROVIDED:09/17/2017 END OF DAY
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 08:46 AM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00
NO ITR/ETR GIVEN.

Comments

Agent issued outage on chiller and asked customer to hold while she got more info and caller did not re

Customer advised (mr. Williams) call dropped with previous agent and he was calling back to report the

Customer advises (Mona Clark) that the facility has power but there's no A/C due to the chiller account

espond (minute 5 of call) agent waits approx 4 mins for cust before releasing call (advised customer)

e outage on the chiller (provides A/C to the hospital)

: the transformer blew

ACCOUNT_NO	Expr1001	TOUCHPOINT_DATE	FPL_CONTACT
6980842568	7852	8/2/2017	ZZZ0AUN
1198882563	7852	8/2/2017	ZZZ0AUN
6980842568	7852	8/11/2017	ZZZ0AUN
1198882563	7852	8/11/2017	ZZZ0AUN
1198882563	7852	9/1/2017	ZZZ0AUN
6980842568	7852	9/1/2017	ZZZ0AUN
1198882563	7614	9/10/2017	VMA0BER
1198882563	7614	9/10/2017	VMA0BER
1198882563	7614	9/10/2017	VMA0BER
1198882563	7614	9/10/2017	DCE0KF8
1198882563	1807	9/10/2017	VMA0BER
1198882563	1672	9/10/2017	VRU0TFC
1198882563	1671	9/11/2017	VRU0TFC
6980842568	2697	9/11/2017	ZZZ0CSP
1198882563	1672	9/11/2017	VRU0TFC
1198882563	1671	9/11/2017	VRU0TFC
1198882563	1671	9/11/2017	VRU0TFC
1198882563	1672	9/11/2017	VRU0TFC
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
1198882563	2699	9/11/2017	ZZZ0CSP
1198882563	2697	9/11/2017	ZZZ0CSP
6980842568	2699	9/11/2017	ZZZ0CSP
6980842568	2096	9/11/2017	ZZZ0CSP
6980842568	7342	9/11/2017	ZZZ0CSP
6980842568	2697	9/11/2017	ZZZ0CSP
6980842568	2699	9/11/2017	ZZZ0CSP
6980842568	2697	9/11/2017	ZZZ0CSP
6980842568	2699	9/11/2017	ZZZ0CSP
6980842568	2697	9/11/2017	ZZZ0CSP
6980842568	7342	9/11/2017	ZZZ0CSP
6980842568	7342	9/11/2017	ZZZ0CSP

1198882563	1671	9/11/2017	VRU0TFC
1198882563	1671	9/12/2017	VRU0TFC
6980842568	2697	9/12/2017	ZZZ0CSP
1198882563	2699	9/12/2017	ZZZ0CSP
1198882563	2697	9/12/2017	ZZZ0CSP
1198882563	2699	9/12/2017	ZZZ0CSP
1198882563	2697	9/12/2017	ZZZ0CSP
6980842568	7474	9/12/2017	GXF05GM
6980842568	7614	9/12/2017	GXF05GM
6980842568	7614	9/12/2017	GXF05GM
6980842568	7614	9/12/2017	DXL0MAL
6980842568	7904	9/12/2017	DXL0MAL
6980842568	7904	9/12/2017	DXL0MAL
6980842568	7474	9/12/2017	PXB0701
6980842568	7614	9/12/2017	PXB0701
6980842568	7342	9/12/2017	ZZZ0CSP
6980842568	2697	9/12/2017	ZZZ0CSP
6980842568	7342	9/12/2017	ZZZ0CSP
1198882563	7614	9/12/2017	GXS0KE5
1198882563	7902	9/13/2017	GRR0K7D
6980842568	2697	9/13/2017	ZZZ0CSP
1198882563	2697	9/13/2017	ZZZ0CSP
1198882563	2699	9/13/2017	ZZZ0CSP
1198882563	2697	9/13/2017	ZZZ0CSP
6980842568	7904	9/13/2017	GXD0YAS
6980842568	7904	9/13/2017	GXD0YAS
6980842568	7904	9/13/2017	GXD0YAS
6980842568	7904	9/13/2017	GXB0BVL
6980842568	7904	9/13/2017	GXB0BVL
6980842568	7471	9/13/2017	GXB0BVL
6980842568	7905	9/13/2017	GXL0XW6
6980842568	7905	9/13/2017	GXL0XW6
6980842568	7905	9/13/2017	GXL0XW6
6980842568	7902	9/13/2017	GRR0K7D
6980842568	2699	9/13/2017	ZZZ0CSP
6980842568	2697	9/13/2017	ZZZ0CSP
6980842568	2699	9/13/2017	ZZZ0CSP
1198882563	2699	9/13/2017	ZZZ0CSP
1198882563	2699	9/14/2017	ZZZ0CSP
1198882563	2697	9/14/2017	ZZZ0CSP
1198882563	2699	9/14/2017	ZZZ0CSP
1198882563	2697	9/14/2017	ZZZ0CSP
1198882563	7852	9/15/2017	ZZZ0AUN

CUST_CONTACT_REMARKS
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 08/02/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 08/02/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 08/11/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 08/11/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 09/01/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
<E012><PPC PAYMENT CONFIRMATION> EMAIL SENT 09/01/2017 BVITAL@HOLLYWOODHILLSREHAB.COM
ALL PWR OUT - REPORTED AT 09-10-2017 03:49:25 PM - TKT# N/A CALL BACKS: NO - ETR PROVIDED:NO ESTIMAT
ALL PWR OUT - REPORTED AT 09-10-2017 03:50:23 PM - TKT# 10923 CALL BACKS: NO - ETR PROVIDED:NO ESTIM/
ALL PWR OUT - REPORTED AT 09-10-2017 03:53:41 PM - TKT# 10923 CALL BACKS: NO - ETR PROVIDED:NO ESTIM/
ALL PWR OUT - REPORTED AT 09-10-2017 03:54:53 PM - TKT# 10923 CALL BACKS: NO - ETR PROVIDED:NO ESTIM/
TRBL HAD TO RELEASE CALL. IF CB ADV CALL AM!!! GIVE CONTACT INFO PLS
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/10/2017> AT <22:51:59>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:43:54>
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <07:00:25>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <11:02:11>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <14:57:38>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <20:50:34>
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 12:05 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:31 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 03:48 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:03 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 08:49 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:14 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:45 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 09:15 AM
POWER OUT NO ITR GIVEN
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 10:36 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 12:05 PM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 04:04 PM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 05:22 PM
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/11/2017 AT 05:46 PM

HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/11/2017> AT <06:57:32>
HIGH VOLUME POWER OUTAGE CALL HANDLED BY AUTOMATED SYSTEM <09/12/2017> AT <08:45:22>
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 08:41 AM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/10/2017 03:53:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 02:07 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00 NO ITR/ETR GIVEN.
GENERAL INFO
ALL PWR OUT - REPORTED AT 09-12-2017 02:31:50 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017
ALL PWR OUT - REPORTED AT 09-12-2017 02:36:11 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017
ALL PWR OUT - REPORTED AT 09-12-2017 06:02:12 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017
<2017-09-12 00859> <600100200100>OUTAGE - OTHER
*ASUP*CST CONCERNED ABOUT PATIENTS IN THE BUILD AND SAYS TEMPS A RE AT 110 DEGREES. WORRIED ABOU
GENERAL INFO
ALL PWR OUT - REPORTED AT 09-12-2017 11:22:20 PM - TKT# 4301 CALL BACKS: NO - ETR PROVIDED:09/17/2017
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 09:42 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/12/2017 AT 09:47 AM
ALL PWR OUT - REPORTED AT 09-12-2017 02:21:19 PM - TKT# 10923 CALL BACKS: NO - ETR PROVIDED:09/17/201
FPL EMPLOYEE ACCESSED SMART METER WEB PORTAL
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 09:29 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00 NO ITR/ETR GIVEN.
<2017-09-13 00295> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER
CUST UPSET SAID THEY NEED POWER ASAP NURSING HOME OLD PEOPLE THE RE AND NOW THEY ARE DEAD CAUS
LOST SIGNAL - CALL DROPPED
<2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER
CUST SAYS DUE TO TF ON RESTORATION PEOPLE ARE DYING AT FACILITY SAYS FPL HAS DONE NOTHING TO HELP T
TROUBLE - INCLUDING STREETLIGHT AND OL ETA ON OUTAGE NOT SATISFACTORY
<2017-09-13 00297> <600175200100>FREQUENT OUTAGES -SHORT TERM - OTHER
ASUPCUST UPSET HAS MOTHER HERE AND PEOPLE DYING, FPL HAD CRE W CLOSE BUT DID NOT GO AND RES
ALLOW TO TALK TO HER
FPL EMPLOYEE ACCESSED SMART METER WEB PORTAL
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 11:18 AM
TICKET TYPE=SNCU. TKT NUMBER=4301. TKT DATE=09/11/2017 09:16:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 02:51 PM
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/13/2017 AT 08:46 AM
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/14/2017 AT 12:26 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00 NO ITR/ETR GIVEN.
CHECKED POWER OUTAGE THROUGH FPL.COM ON 9/14/2017 AT 04:24 PM
TICKET TYPE=SNC. TKT NUMBER=10923. TKT DATE=09/12/2017 08:56:00 NO ITR/ETR GIVEN.
<EC10><HRCNE IRMA POSTSTORM - NO-PEND> EMAIL SENT 09/15/2017 BVITAL@HOLLYWOODHILLSREHAB.COM

TOUCH_CHANNEL	TOUCHPOINT_CD
Outbound Electronic	7852
Outbound Electronic	7852
Outbound Electronic	7852
Outbound Electronic	7852
Outbound Electronic	7852
Outbound Electronic	7852
Inbound Phone Call	7614
Inbound Phone Call	7614
Inbound Phone Call	7614
Inbound Phone Call	7614
Inbound Phone Call	1807
Inbound Phone Call	1672
Inbound Phone Call	1671
Internet	2697
Inbound Phone Call	1672
Inbound Phone Call	1671
Inbound Phone Call	1671
Inbound Phone Call	1672
Internet	2699
Internet	2697
Internet	2699
Internet	2697
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Internet	2699
Internet	2697
Internet	2699
Internet	2697
Internet	2699
Internet	2697
Internet	2699
Internet	2697
Internet	2699
Internet	2096
Outbound Electronic	7342
Internet	2697
Internet	2699
Internet	2697
Internet	2699
Internet	2697
Outbound Electronic	7342
Outbound Electronic	7342

Inbound Phone Call	1671
Inbound Phone Call	1671
Internet	2697
Internet	2699
Internet	2697
Internet	2699
Internet	2697
Inbound Phone Call	7474
Inbound Phone Call	7614
Inbound Phone Call	7614
Inbound Phone Call	7614
Inbound Phone Call	7904
Inbound Phone Call	7904
Inbound Phone Call	7474
Inbound Phone Call	7614
Outbound Electronic	7342
Internet	2697
Outbound Electronic	7342
Inbound Phone Call	7614
Internet	7902
Internet	2697
Internet	2697
Internet	2699
Internet	2697
Inbound Phone Call	7904
Inbound Phone Call	7904
Inbound Phone Call	7904
Inbound Phone Call	7904
Inbound Phone Call	7904
Inbound Phone Call	7471
Inbound Phone Call	7905
Inbound Phone Call	7905
Inbound Phone Call	7905
Internet	7902
Internet	2699
Internet	2697
Internet	2699
Internet	2699
Internet	2699
Internet	2697
Internet	2699
Internet	2697
Outbound Electronic	7852

Exhibit 2

Berick, David (Finance)

From: Sendler, Robert B [redacted]
Sent: Thursday, August 16, 2018 1:47 PM
To: Berick, David (Finance)
Subject: RE: Nursing Home Impacts

Unfortunately no. My understanding is that it is happening so quickly and in real time that literally the request are being given to our representative on sticky notes. We would then forward the information to our central command who would add the request to the list of requests coming in from all sources.

Robert B. Sendler
Vice President and Chief Litigation Counsel NextEra Energy
700 Universe Boulevard
Juno Beach, FL 33408
[redacted]

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

-----Original Message-----
From: Berick, David (Finance) [redacted]
Sent: Tuesday, August 14, 2018 9:01 AM
To: Sendler, Robert B <[redacted]
Subject: RE: Nursing Home Impacts

Thanks for the explanation. That helps a lot . Is there a log of the state requests?

-----Original Message-----
From: Sendler, Robert B [redacted]
Sent: Tuesday, August 14, 2018 8:58 AM
To: Berick, David (Finance) <[redacted]
Subject: RE: Nursing Home Impacts

As to your first point, the fact that the printout I sent has both ticket numbers illustrates that FPL was viewing this as one location. The system showed 2 accounts but at the same address and defined them as building service and chiller. So when this facility was reported, it would have shown up on the state data base as having "partial" power. As far as restoration, the facility is defined in FPL's system as a "priority" location, but not as a "top CIF". The top CIFs all received the first wave of "special, dedicated" restoration service. Once the top CIFs are done, then priority locations, like this facility would be focused on. Due to the calls and the request from the state, this facility would have been given some level of priority versus other "priority" locations. We did not receive calls from the state, just the "written" requests in Tallahassee that I outlined yesterday.

Robert B. Sendler
Vice President and Chief Litigation Counsel NextEra Energy
700 Universe Boulevard
Juno Beach, FL 33408
[redacted]

Exhibit 3

Berick, David (Finance)

From: Sendler, Robert B [redacted]
Sent: Monday, December 11, 2017 5:03 PM
To: Soto, Caitlin (Finance); Sieving, Charles
Cc: Berick, David (Finance); Isbey, Elizabeth (Finance)
Subject: RE: Nursing Home Impacts

[redacted] Because of that, I do not receive a lot of extra spam, but also miss some legitimate communications. Sorry about that. I will immediately get on forwarding the documents, recordings and other information we discussed as well as the answers to your questions below. I will advise regarding the power question, but will also ask to get the graphs that show it as well. The facility is served with 3 phases, two that power the building (lights, outlets, elevators, etc.) and one that is dedicated to the chiller system. Each is metered separately, both though with "smart meters". The smart meter communicates to our system to let us know if energy is flowing in real time. The graph I will forward will show this. You will be able to see the momentary interruptions on the 2 phases serving the building, but see that the energy continued to flow through the meter. As for the chiller phase, you will see it go out and stay out. As far as the generator in the building, it was ancient and dismantled. There was a portable generator at the facility, but when our crews arrived, they were told by the "engineer" of the building that it was not sized properly and could not power the chillers. Attachments will be sent tomorrow. Again, apologies for the unintended delay.

Robert B. Sendler, Esq.
Vice President and Chief Litigation Counsel
NextEra Energy
700 Universe Boulevard
Juno Beach, FL. 33408
[redacted]

From: Soto, Caitlin (Finance) [redacted]
Sent: Monday, December 11, 2017 10:22 AM
To: Sieving, Charles; [redacted]
Cc: Berick, David (Finance); Isbey, Elizabeth (Finance); Sendler, Robert B
Subject: RE: Nursing Home Impacts

Thank you Charlie.

Caitlin E. Soto
Oversight Counsel
United States Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510
Work: [redacted]

From: Sieving, Charles [redacted]
Sent: Monday, December 11, 2017 10:21 AM
To: Soto, Caitlin (Finance) [redacted] 'Robert.Sendler@NextEraEnergy.com'
[redacted]
Cc: Berick, David (Finance) [redacted] Isbey, Elizabeth (Finance)

Exhibit 4

Berick, David (Finance)

From: Sendler, Robert B [redacted]
Sent: Tuesday, December 12, 2017 6:00 PM
To: Soto, Caitlin (Finance); Isbey, Elizabeth (Finance); Berick, David (Finance)
Cc: Sieving, Charles
Subject: Nursing Home Impacts
Attachments: 20171212074205213.pdf

The critical infrastructure guidelines and the list of licensed and registered nursing homes in Broward County. The subject facility is on the second page, 8th from the top. Additionally, as explained on the call there are 3 that have a "Y" designating them as "Top CIF" as selected by the county.

Robert B. Sendler, Esq.
Vice President and Chief Litigation Counsel NextEra Energy
700 Universe Boulevard
Juno Beach, FL. 33408
[redacted]

Broward County 2017

Total Number of Feeders: [redacted]

Wednesday, January 11, 2017

Guidelines

GUIDELINES FOR CRITICAL INFRASTRUCTURE FUNCTION (CIF) DESIGNATION:

Critical Infrastructure functions (CIF) are facilities and infrastructure that play a critical role in a communities' ability to recover after a serious event, such as a storm, flood, tornado, etc.

Critical Infrastructure Function (CIF) is defined as one that is critical to the: Health, Safety, Welfare or Security of the community.

Direct Effect on CIF

Code	Description	Potential Fdrs	Potential Cum Fdrs	Potential % Fdrs	Potential % Cum Fdrs	Actual Top CIF	Actual Fdrs	Actual Cum Fdrs	Actual % Fdrs	Actual % Cum Fdrs
	1. Facilities having a direct effect on Public Health, Safety, Welfare, and Security such as:									
1A1	Acute Care Facilities Ambulatory Surgical Centers	[redacted]								
1A2	Smaller Hospitals (Certified By The Agency For HCA)									
1B1	911 Dispatch									
1B2	Police									
1C	Emergency Operations Centers									
1D	Special Needs Shelters									
1E	Fire Stations									
1F1	Water Treatment Plants									
1F2	Regional Booster Pump Stations									
1F3	Critical Well Fields									
1G1	Sewage Treatment Plants									
1G2	Regional Waste Water Booster Pump Stations (Not All L.S.)									
1H	Critical Federal, State, County, And Municipal Facilities									
1I	Nonspecial Needs Shelters									
1J1	Air Transportation Facilities (Airports, FAA, Airport NAV)									
1J2	Seaports (Includes Tank Farms)									
1J3	Bridges (Electrically Operated)									
1J4	Dot / Interstate Facilities (Mission Critical)									
1K1	Acitive Military									
1K2	Coast Guard									
1K3	Critical National Guard And Reserve									
1L1	In Route Air Traffic Facilities (Not Located Within Airport)									
1L2	Water Navigational Aids (Signal Buoys And Lights)									

Indirect Effect on CIF

Code	Description	Potential Fdrs	Potential Cum Fdrs	Potential % Fdrs	Potential % Cum Fdrs	Actual Top CIF	Actual Fdrs	Actual Cum Fdrs	Actual % Fdrs	Actual % Cum Fdrs
	2. Facilities having an indirect effect on Public Health, Safety, Welfare, and Security such as:									
2A1	Radio (Emergency Alert-LP1 And NPR Stations Only)	[redacted]								
2A2	Television									
2A3	Broadcasting Transmitters									
2A4	Main Telephone Facilities									
2A5	Telecom Facilities (NAP, Data Centers, LSPS)									
2A6	Mission Critical Cellular Facilities (S/police, Fire, Hosp.)									
2A7	Newspapers (Daily)									
2B	Gas Supply Pipelines									
2C	Water Management Facilities (Booster Storm Pumps)									
2D	Noncritical Federal, State, County And Municipal Facilities									

Non-CIF

GUIDELINES FOR PRIORITY FUNCTION DESIGNATION

Non-Critical Infrastructure but play a decisive role in community recovery after a serious event.

Focus is on identification, tracking, and communicating information.

Priority Function Facilities:

Blood Banks	**Private Schools**	**Radio (Nonemergency Alert Stations)**	**Hospices**
Government Staging Sites (Fema)	**Universities/Colleges**	**Polling Places**	**Veterinary And Animal Shelters**
Nursing Homes	**Lift Stations (Public + Private)**	**Retirement Villages**	**Mortuaries**
Dialysis Centers	**Other Water Treatment Plants**	**Gas Stations**	**Transmission Customers**
Assisted Living Facilities	**Critical Railroad Crossings**	**Medical Essential Service Program**	
Public Schools	**211 Centers**	**Grocery Stores**	
Charter Schools	**Medical Support Facilities**	**Pharmacies**	

	Cum Fdrs	% Cum Fdrs	Top CIF	Fdrs	Cum Fdrs	% Fdrs	% Cum Fdrs
Priority Customers	[redacted]						

Broward County 2017

Total Number of Feeders: [redacted]

Wednesday, January 11, 2017

Guidelines

GUIDELINES FOR CRITICAL INFRASTRUCTURE FUNCTION (CIF) DESIGNATION:

Critical Infrastructure functions (CIF) are facilities and infrastructure that play a critical role in a communities' ability to recover after a serious event, such as a storm, flood, tornado, etc.

Critical Infrastructure Function (CIF) is defined as one that is critical to the: Health, Safety, Welfare or Security of the community.

Code	Description	Potential	Actual
2E	Correctional Facilities	[redacted]	

Non-CIF

GUIDELINES FOR PRIORITY FUNCTION DESIGNATION

Non-Critical Infrastructure but play a decisive role in community recovery after a serious event.

Focus is on identification, tracking, and communicating information.

Priority Function Facilities:

Blood Banks	Private Schools	Radio (Nonemergency Alert Stations)	Hospices
Government Staging Sites (Fema)	Universities/Colleges	Polling Places	Veterinary And Animal Shelters
Nursing Homes	Lift Stations (Public + Private)	Retirement Villages	Mortuaries
Dialysis Centers	Other Water Treatment Plants	Gas Stations	Transmission Customers
Assisted Living Facilities	Critical Railroad Crossings	Medical Essential Service Program	
Public Schools	211 Centers	Grocery Stores	
Charter Schools	Medical Support Facilities	Pharmacies	

	Cum Fdrs	% Cum Fdrs	Top CIF	Fdrs	Cum Fdrs	% Fdrs	% Cum Fdrs
Priority Customers	[redacted]						

Broward County CIF List

Wednesday, January 11, 2017

Name	Address	City	Top CIF
Licensed Registered Nursing Homes			
[redacted]		LAUDERHILL	N
		TAMARAC	N
		SUNRISE	N
		LAUDERHILL	N
		PEMBROKE PIN	N
		SUNRISE	N
		HALLANDALE B	N
		POMPANO BEA	N
		DAVIE	N
		MIRAMAR	N
		FORT LAUDERD	N
		MIRAMAR	N
		LAUDERHILL	N
		WILTON MANO	N
		POMPANO BEA	N
		PLANTATION	N
		MIRAMAR	N
		LAUDERHILL	N
		LAUDERDALE L	Y
		PLANTATION	N
		MARGATE	N
		PEMBROKE PIN	Y
		COCONUT CREE	N
		LAUDERHILL	N
		FORT LAUDERD	N
		POMPANO BEA	N
		PLANTATION	N
		MIRAMAR	N
		PLANTATION	N
		PLANTATION	N
		WILTON MANO	N
		FORT LAUDERD	N
		WILTON MANO	N
		PLANTATION	N

Broward County CIF List

Wednesday, January 11, 2017

Name	Address	City	Top CIF
[redacted]		PLANTATION	N
		FORT LAUDERD	N
		LAUDERDALE L	N
		PLANTATION	N
		SUNRISE	N
		LAUDERHILL	N
		FORT LAUDERD	N
Rehabilitation Center At Ho Llywood	1200 N 35th Ave	HOLLYWOOD	N
[redacted]		HOLLYWOOD	N
		LAUDERHILL	N
		LAUDERDALE L	Y
		FORT LAUDERD	N
		HOLLYWOOD	N
		TAMARAC	N
		HOLLYWOOD	N
		DANIA	N
		POMPANO BEA	N
		POMPANO BEA	N
		POMPANO BEA	N
		POMPANO BEA	N
		FORT LAUDERD	N
		POMPANO BEA	N
		TAMARAC	N
		POMPANO BEA	N
		POMPANO BEA	N
		POMPANO BEA	N
		CORAL SPRINGS	N
		POMPANO BEA	N
		CORAL SPRINGS	N
		CORAL SPRINGS	N

Licensed Registered Nursing Homes Total: 64

Exhibit 5

Berick, David (Finance)

From: Sendler, Robert B [redacted]
Sent: Friday, January 12, 2018 4:45 PM
To: Berick, David (Finance); Sieving, Charles
Cc: Soto, Caitlin (Finance); Hallarman, Lynn (Finance); Isbey, Elizabeth (Finance)
Subject: RE: Nursing Home Impacts

Sorry for the delay, please see answers below.

Thanks

Robert B. Sendler, Esq.
Vice President and Chief Litigation Counsel NextEra Energy
700 Universe Boulevard
Juno Beach, FL. 33408
[redacted]

-----Original Message-----
From: Berick, David (Finance) [redacted]
Sent: Thursday, January 11, 2018 4:27 PM
To: Sendler, Robert B; Sieving, Charles
Cc: Soto, Caitlin (Finance); Hallarman, Lynn (Finance); Isbey, Elizabeth (Finance)
Subject: FW: Nursing Home Impacts

CAUTION - EXTERNAL EMAIL

Gentlemen,

Hope the New Year finds you well. Re-sending this query.

-----Original Message-----
From: Berick, David (Finance)
Sent: Friday, December 22, 2017 12:49 PM
To: 'Sendler, Robert B' [redacted]; Sieving, Charles [redacted]
Cc: Soto, Caitlin (Finance) [redacted]; Isbey, Elizabeth (Finance)
[redacted]
Subject: RE: Nursing Home Impacts

Gentlemen,

A few quick questions on this document....

The first page of the document has two categories for designation....Critical Infrastructure Function (CIF) Designation, and Priority Function Designation. Nursing homes are listed in the guidance for this second category "Priority Function

Designation." The follow-on two page sheets, as I understand it, show which Broward County nursing homes are on the CIF list. So my questions are:

1) What does the Priority Function designation mean? Practically and in terms of FP&L response priority?
As is stated in the guidance, "Priority Function Designation" puts the "Focus is on identification, tracking, and communicating information". That practically means that versus being just a singular customer out of the 4+million served, this category of customer is specifically identified in FPL's system, categorized and specific reports can be provided regarding the status of the category and the customer contained in that group. For nursing homes, specifically, the State tracks the status of all nursing homes impacted by a storm. FPL updates the State regularly regarding the "electric status" of the nursing homes - following Irma, FPL would advise if an impacted nursing home was "with power", "partial power" or "without power". Additionally, once the Critical Infrastructure Facilities have been resolved, "priority function facilities" would then be focused on.

2) Are the remaining nursing homes on the list....i.e. all but three designated CIF ...automatically included in this Priority Function designation or does the county (Broward, in this case, but also generally) have to affirmatively designate nursing homes to the Priority Function category?
FPL has all nursing homes designated as "Priority Function Facilities" as the default designation as FPL needs to track their status to support the State's efforts.

3) If so, is there a second "Priority Function" designation list that shows which nursing homes are so designated? And is Hollywood Hills so designated?
No, see above.

4) Hollywood Hills is co-located with Larkin Community Hospital. In fact, some of the calls you and the State are logging in regarding the Hollywood Hills outage are from employees of the hospital-side of the organization and not the nursing home side (i.e. James Williams). Can you share whether or not there is a separate CIF/Priority Function designation process for this co-located facility? And how it is designated, i.e. is it a CIF or Priority Function facility?
There are just 2 accounts for this location - one, named Rehabilitation Center at Hollywood Hills, and the second named Rehabilitation Center at Hollywood Hills Chiller. This may be just a misnomer, accidental or intentional, but Larkin Community Hospital (at least the "hospital" services - ER, etc. are only provided at the Miami-Dade locations). The Hollywood Hills Facility provides full time nursing, physical rehabilitation and behavioral health services. The 2 "hospitals" located in Miami-Dade are on the Top CIF list and received priority restoration (Larkin Community Hospital - 7031 SW 62nd Ave. and Larkin Community Hospital Palm Springs Campus - 1475 W 49th St.)

Thanks!

-----Original Message-----
From: Sendler, Robert B [redacted]
Sent: Tuesday, December 12, 2017 6:00 PM
To: Soto, Caitlin (Finance) [redacted]; Isbey, Elizabeth (Finance) [redacted]; Berick, David (Finance) [redacted]>
Cc: Sieving, Charles [redacted]
Subject: Nursing Home Impacts

The critical infrastructure guidelines and the list of licensed and registered nursing homes in Broward County. The subject facility is on the second page, 8th from the top. Additionally, as explained on the call there are 3 that have a "Y" designating them as "Top CIF" as selected by the county.

Robert B. Sendler, Esq.
Vice President and Chief Litigation Counsel NextEra Energy
700 Universe Boulevard

Juno Beach, FL. 33408

[redacted]

Appendix G

Exhibit 1

STATE OF TEXAS
***
COUNTY OF JEFFERSON

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Jefferson County, Texas, or any Peace Officer of the State of Texas,

GREETINGS:

WHEREAS, the Affiant whose signature is affixed to the Affidavit, attached hereto, is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is by this reference incorporated herein for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this warrant:

NOW, THEREFORE, you are commanded to enter the suspected place and premises described in said Affidavit and to seize the items requested to be searched and bring it before me. Herein fail not, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

ISSUED at 12:49 o'clock pm, on this the 14th day of September, 2017, to certify which witness my hand this day.

JUDGE J. STEVENS CRIMINAL DISTRICT COURT JUDGE
JEFFERSON COUNTY, TEXAS

****

** AFFIDAVIT FOR SEARCH WARRANT **

STATE OF TEXAS
***
COUNTY OF JEFFERSON

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER UNDER THE LAWS OF TEXAS, AND BEING DULY SWORN, ON OATH MAKES THE FOLLOWING STATEMENT AND ACCUSATIONS:

1. THERE IS IN JEFFERSON COUNTY, TEXAS, A SUSPECTED PLACE DESCRIBED AND LOCATED AS FOLLOWS: A commercial business building that has the assigned address as 4225 Lake Arthur Drive Port Arthur, Jefferson County Texas, 77642. The name of the business is Lake Arthur Place Nursing and Rehabilitation. The building has a reddish orange brick exterior in color with white trim. The address numbers is located above the covered drop off area in front of the main doors. The commercial building sits on the north side of the Lake Arthur Drive.

2. THERE IS AT SAID SUSPECTED PLACE AND PREMISES, PROPERTY CONCEALED AND KEPT IN VIOLATION OF THE LAWS OF THE STATE OF TEXAS AND DESCRIBED AS FOLLOWS: any and all evidence related to the following violation of Texas Penal Code 22.04:

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

Specific evidence affiant is searching for is as follows:

All waste management containers currently on the property for remediation purposes

3. Any computer system and/or computer server located at Lake Arthur Place;

4. Medical records of patients housed at said facility

5. Any communications, including but not limited to text messages and email communications between Jeff Rosetta and the corporate office of Senior Care Centers and/or Senior Care Center Management from August 18 to present regarding Respondents evacuation plan for its residents;

6. All photographs and/or video tapes of the rescue of patients and scene where the incident occurred

7. All witness statements of any witness to the occurrence whether signed or not

8. All accident and/or investigative reports which refer to of relate to this incident

9. The cell phone of JEFF ROSETTA so that the cellular data and items can be examined and that are commonly run on IOS, Android, Blackberry, Windows, BADA, Palm, Garnet, Open Web, Maemo, Open Source, Nokia, Samsung, Meego, Verdict, Firefox, Sailfish, Tizen or Symbian operating systems:

a. Call history and call logs;

b. Email messages and attachments, whether "draft", "read", or "unread"

c. Internet, Worldwide Web (www) browser files including, but not limited to browser history, browser cache, stored cookies, browser favorites and auto complete form history

d. Global positioning system (GPS) data including, but not limited to, coordinates, waypoints and tracks;

e. Data that is commonly called "deleted files", which can contain any of the above stated descriptions of data

f. Any account information, settings and saved usage information for any and all installed applications known as "apps" on the device including social media sites, third party applications and messages to include kik, text plus, Snapchat, Google messaging and on other messaging applications installed on the cellular device or accessed through said device;

g. Cell phone Cloud accounts to include Apple, Google Store, and Windows Cloud accessed through a cell phone device

h. Wi Fi and routing network information; to include- said - (network name) and GPS information of the network, GPS directions and cell tower data, calendar information, including sync counters, internet history and usage to include websites visited, search terms and cookies, used dictionary words, network service provider data, Cloud storage attached to device settings and applications, data collected during the maintenance, analysis, logical acquisition, file system acquisition, physical acquisition via device interface, physical acquisition via jtag, and physical acquisition via chip off extraction.

10. a list of employees at said facility and their work schedule to determine who to interview as witnesses

3. SAID SUSPECTED PLACE AND PREMISES ARE UNDER THE CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING DESCRIBED PERSONS: Jeff Rosetta, administrative director of Lake Arthur Place Nursing and Rehabilitation

4. IT IS THE AFFIANT'S BELIEF AND HE HEREBY CHARGES AND ACCUSES, THAT: Jeff Rossetta violated Texas Penal Code 22.04 which the details and facts will be laid out in the Probable Cause section of this affidavit:

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

5. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS: See "Attachment A" which for all purposes becomes a part of this affidavit.

WHEREFORE, AFFIANT REQUESTS ISSUANCE OF A WARRANT AUTHORIZING THE SEARCH OF AFORESAID PREMISES FOR SAID PROPERTY AND SEIZURE OF SAME AND TO ARREST OF SAID DESCRIBED AND ACCUSED PERSON.

AFFIANT

SUBSCRIBED AND SWORN TO, BEFORE ME THIS THE 14th DAY OF September, 2017.

JUDGE J. STEVENS, CRIMINAL DISTRICT COURT JUDGE
JEFFERSON COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF JEFFERSON

ATTACHMENT A

LOCATION:

The Affiant, Detective Fanette, is a certified peace officer in the State of Texas. The affiant is employed by the Port Arthur Police Department and has been so employed for the past 18 years. The affiant is currently assigned to the Criminal Investigations Division.

Hurricane Harvey made landfall in Texas on Friday night, August 25, 2017 as the strongest hurricane to hit the U.S. in more than a decade. By Saturday morning, August 26, 2017 it had dumped 18 inches (half a meter) of rain on some areas, and **forecasters urgently warned that it could cause catastrophic flooding in the coming days.**

Here is a timeline of key moments in the storm's development based upon news service reports by television, radio, newspaper and internet.

Aug. 17, 4 p.m., Tropical Storm Harvey is named, six hours after the National Hurricane Center in Miami issues a potential tropical cyclone for several small Caribbean islands.
Aug. 19, 4 p.m., Moving westward between the northern coast of South America and the larger Caribbean islands, Harvey is downgraded to a tropical depression, with maximum sustained winds of 35 mph (56 kph). Six hours later, it is further downgraded to a tropical wave.
August 23, Wednesday, 10 a.m., Harvey regenerates into a tropical depression about 535 miles (860 kilometers) southeast of Port O'Connor, Texas, with maximum sustained winds of 35 mph (56 kph).
August 24, Thursday, 1 p.m., after quickly strengthening over the course of a day, Harvey becomes a hurricane, with maximum sustained winds of 85 mph (140 kph). It is about 325 miles (525 kilometers) southeast of Port O'Connor, and Texas coastal communities in its path are urged to complete their preparations. By midnight, it is upgraded to a Category 2 hurricane and is 220 miles from Port O'Connor, with sustained maximum winds of 100 mph (160 kph).
August 25, Friday, 2 p.m., Harvey is upgraded to a Category 3 hurricane, with sustained maximum winds of 120 mph (195 kph). It is centered about 75 miles (120 kilometers) southeast of Corpus Christi. By 6 p.m., Harvey is a Category 4 storm just 45 miles from the city, with maximum sustained winds of 130 mph (215 kph).
Friday, 10 p.m., Harvey makes landfall as a Category 4 hurricane when the eye of the storm comes ashore between Port Aransas and Port O'Connor, two communities just off the coast of mainland Texas near Corpus Christi.
August 26, Saturday, 2 a.m., Harvey is centered about 15 miles inland and is weakening as it slowly passes over land. It has been downgraded to a Category 3, with maximum sustained winds of 115 mph (185 kph). Two hours later, it is downgraded further to a Category 2.
Saturday, 5 a.m., With maximum sustained winds of 90 mph (150 kph), Harvey is downgraded to a Category 1 storm. Forecasters warn of potentially catastrophic flooding in the coming days.
August 26, Saturday, Hurricane Harvey moved into the Houston-area bringing thunderstorms and tornadoes that caused severe damage in some areas.

Harvey brought a second wave of severe weather as it slowly began to circle back into the Gulf and regained some strength.

August 27 Harvey stationed itself over the **Houston-area bringing extreme flooding and over 50 inches of rain in some spots.**

August 29 As Harvey prepares for its second landfall, Southeast Texas floods. **Jefferson County received 26.03-inches of rain this day alone, according to the National Weather Service**
Harvey makes landfall for the second time around 10 p.m. on August 29, 2017 near Sabine Pass.

The storm officially brought 47.47" of rain to Jefferson County alone in a five-day period - more than half of that occurring in just one day.

Based upon the above mentioned facts Jeff Rosetta, administrative director of Lake Arthur Place Nursing and Rehabilitation located at 4225 Lake Arthur Drive Port Arthur, Jefferson County, TX 77642, with criminal negligence, and/or recklessness, and/or knowledge caused injury to elderly individuals as defined by Texas Penal Code 22.04 (c) (2), by failing to provide adequate care and safety of numerous elderly individuals that were in the care, custody and control of the said facility. Medical documents will show some of the individuals sustained injury as a direct result of the catastrophic flooding and the evacuation finally orchestrated at the last minute by citizens.

The timeline above was laid out to show there were several days of warning, and several days to prepare a plan and have the resources in place to execute the evacuation or execute any plan that would have provided adequate safety and living conditions for those elderly individuals who rely on the care of Lake Arthur Place Nursing and Rehabilitation. Nonetheless, appropriate action by Rosetta did not timely occur.

Det. Mike Hebert has informed affiant of what he witnessed himself as he assisted in the evacuation of Lake Arthur Place Nursing and Rehabilitation. On September 30, 2017 around noon time Det. Mike Hebert accessed Lake Arthur Place Nursing and Rehabilitation by means of boat because of the flooded conditions. The director of nursing at the facility told Det. Hebert the person in charge of the facility was Jeff Rossetta. The director of nursing brought Det. Hebert to Rosetta. Det. Hebert identified himself to Rosetta as a police officer with Port Arthur Police Department. Det. Hebert noted that at this time the water was about 10-12 inches deep throughout the entire facility. He also noted the strong odor of human feces and urine throughout the facility. Det. Hebert noticed that some of the patients were still in their rooms. Some were in hallways that were lying in beds or sitting in wheel chairs. The ones in wheel chairs had their lower extremities submerged in the flood waters. Det. Hebert said it was obvious that the patients needed immediate assistance to evacuate and be placed out of harm's way.

Even though Det. Hebert was in full patrol style uniform, Rossetta questioned the validity of Det. Hebert's official capacity. Rossetta told Det. Hebert his badge appeared to be fake and he was a fake cop. Rosetta became argumentative telling Det. Hebert to get out of his office and "get out of my building". Det. Hebert then turned to the director of nursing he had originally encountered and told her he need to quickly execute a plan to evacuate the patients.

Det. Hebert and Det. T. Cater, also of the Port Arthur Police Department, reentered Rosetta's office and made a second attempt to have him assist with the evacuation. Rosetta is still not cooperating and came out from behind his desk. Rosetta observed a patient being wheel chaired past his office and made the comment "you cannot take anyone out of this facility". Det. Hebert was standing in the doorway of Rosetta's office. Rosetta, by using his hands, pushed Det. Hebert out of the way in an attempt to get to the patient being wheeled to safety by his office.

Det. Hebert and Det. T. Cater had to physically restrain Rosetta with handcuffs so Rosetta could not prevent the necessary evacuation of the patients. Rosetta had made it clear he was not willing to allow the patients to leave or assist the Port Arthur Police Department to find a solution to bring the patients to safety. Rosetta would repeatedly accuse Det. T. Cater of "being a fake cop".

There were also persons who arrived by boat to assist in the evacuation and were told by Rosetta that they could not evacuate anyone and that "the National Guard was on the way". Det. Hebert had no knowledge of the National Guard being deployed to the location.

Rosetta's actions towards police personnel and his omission to act in the prior days leading to this event, as well as his actions on August 30, 2017 resulted in the injury of patients under the care of his facility.

Affiant believes that evidence to the Injury to Elderly is contained within above mentioned facility. Affiant also believes the facts laid out in this affidavit and the evidence to be located will show that Rosetta committed Injury to the Elderly with criminal negligence and/or recklessness, and/or knowledge by omission.

AFFIANT

Verified by:

John Stevens
CRIM. DIST. CT. JUDGE
Jefferson Co., Tx

Exhibit 2

From: Colello, Kirsten
To: Gartrell, Peter (Finance)
Cc: Grossman, Joy; Voorhies, Phoenix
Subject: RE: NHE
Date: Thursday, September 13, 2018 1:52:25 PM
Attachments: image001.png

Hi Peter,

Joy forwarded your request to me to respond in Phoenix's absence. The NHE 2016 data are standard to use, those are the data that we use in our CRS reports. We also have a calculation that the CMS Actuary prepares which includes hospital-based nursing facilities. The data you have below are expenditures for only free-standing nursing facilities and CCRCs. Below is the data that include the add-on's to freestanding, another option is that you can note that your data include free-standing only.

Feel free to contact me if you have further questions or I can be of additional assistance,

Kirsten

	Nursing Care Facilities	% Share
All Payers (from NHE worktables)	162,685	
Add-on's to total freestanding	7,219	
New Total - All Payers	**169,904**	**100.0%**
Out of Pocket	43,778	25.8%
Private Health Insurance	14,809	8.7%
Total Medicare (FS & Hosp-based)	40,554	23.9%
Medicare (Freestanding)	37,477	22.1%
Medicare (Hosp-based)	3,077	1.8%
Total Medicaid (FS, Hosp-based, & HCBW's)	54,133	31.9%
Medicaid (Freestanding)	49,991	29.4%
Federal	28,778	16.9%
State and Local	21,213	12.5%
Medicaid (Hosp-based)	4,142	2.4%
Medicaid HCBW		
CHIP	14	0.0%
Federal	13	0.0%
State and Local	1	0.0%
DOD	-	0.0%
DVA	5,042	3.0%
Other Third Party Payers & Programs	11,574	6.8%
Other Private Revenues	8,289	4.9%
General Assistance	403	0.2%
Other Federal Programs*	-	0.0%
Other State and Local Programs**	2,882	1.7%
Sum (check)	0.00	**100.0%**

Prepared by: Anne Martin, CMS Office of the

Actuary, [redacted]
11/21/2017

Kirsten Colello
Specialist in Health and Aging Policy
Congressional Research Service
Library of Congress

ph: [redacted]
[redacted]

From: "Gartrell, Peter (Finance)" [redacted]
Date: September 13, 2018 at 12:03:30 PM EDT
To: "Grossman, Joy" [redacted]
Subject: FW: NHE

Joy…

With Phoenix out, forwarding this question to you…

Let me know if you need clarification.

Thanks!

PTG

Peter Gartrell
202-224-4515

From: Gartrell, Peter (Finance)
Sent: Thursday, September 13, 2018 12:02 PM
To: [redacted]
Subject: NHE

Phoenix…

It's been a while, I hope this finds you doing well.

I'm working on an issue related to nursing homes and am trying to nail down spending figures.

Exhibit 3

Berick, David (Finance)

From: Hallarman, Lynn (Finance)
Sent: Friday, September 07, 2018 3:37 PM
To: Berick, David (Finance)
Subject: FW: email trail re: Medical Directors and CMS AMDA

See below

From: Christopher Laxton [redacted]
Sent: Wednesday, September 05, 2018 1:02 PM
To: Hallarman, Lynn (Finance)
Subject: RE: quick follow up question re: Medical Directors and CMS

Yes, you may quote us on the medical director data. It would be awesome if we could get the support of the Finance Committee on improving the oversight of nursing homes with respect to their engagement of medical directors across the board. I hope you can get your boss's OK on that – it would make a difference!

Thanks,
--Chris

Christopher E. Laxton, CAE

Executive Director
AMDA – The Society for Post-Acute and Long-Term Care Medicine
Direct: [redacted]
Cell: [redacted]

From: Hallarman, Lynn (Finance) [redacted]
Sent: Wednesday, September 5, 2018 12:38 PM
To: Christopher Laxton [redacted]
Subject: Re: quick follow up question re: Medical Directors and CMS

Ok thank u- would u be ok if I quote your organization about that - ? If not- that is fine -

As for letter- I will ask my current boss in the Senate if that is ok- I am done at end of September-

Best
Lynn

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Christopher Laxton [redacted]
Date: 9/5/18 9:43 AM (GMT-05:00)
To: "Hallarman, Lynn (Finance)" [redacted]
Subject: RE: quick follow up question re: Medical Directors and CMS

Hi Lynn, that is correct. Not only do they not collect data on medial director training or time spent (other than through the PBJ, which so far has not been effective), they do not even keep track of which medical directors are appointed to which nursing homes.

On that subject, I am the chair of the board this year for a coalition of nursing home clinical and provider organizations, Advancing Excellence in Long-Term Care Collaborative (www.aeltcc.org). One of the issues we are taking on this year is to ask CMS to, at a minimum, keep track of medical directors and the nursing homes they are connected to. I suspect it will be a revealing exercise. Would you be willing to review a draft of the letter that we are working on to send to CMS, and perhaps to consider sending an aligned one to CMS from the Finance Committee?

Thanks,
--Chris

Christopher E. Laxton, CAE

Executive Director
AMDA – The Society for Post-Acute and Long-Term Care Medicine
Direct: [redacted]
Cell: [redacted]

From: Hallarman, Lynn (Finance) [redacted]
Sent: Wednesday, September 5, 2018 9:35 AM
To: Christopher Laxton <claxton@paltc.org>
Subject: Re: quick follow up question re: Medical Directors and CMS

I spoke to someone just now(name escapes me) but bottom line is I want to reverify that CMS does NOT collect any data on medical directors - quality, time spent , training and so forth

Tx!

Lynn

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Christopher Laxton [redacted]
Date: 9/5/18 8:44 AM (GMT-05:00)
To: "Hallarman, Lynn (Finance)" [redacted]
Subject: RE: quick follow up question re: Medical Directors and CMS

Hi Lynn,

I'm just back from some travel. I can call you today – any times better than others?

--Chris
Christopher E. Laxton, CAE

Executive Director
AMDA – The Society for Post-Acute and Long-Term Care Medicine
Direct: [redacted]
Cell: [redacted]

From: Hallarman, Lynn (Finance) [redacted]
Sent: Tuesday, September 4, 2018 2:58 PM
To: Christopher Laxton [redacted]
Subject: quick follow up question re: Medical Directors and CMS

Hi Chris

Could you give me a call. I want to make sure I have it straight about medical directors and reporting to CMS.

Thanks

Lynn Hallarman, MD

[redacted]

From: Christopher Laxton [redacted]
Sent: Monday, June 18, 2018 12:05 PM
To: Hallarman, Lynn (Finance) [redacted]
Subject: RE: Nursing Home Medical Director resources

I will also have a recorded session on emergency preparedness from our most recent annual conference for you - We offered a 90-minute session in 2018 - *Disaster Preparedness 101*.

Session Objectives:

- Explain the physical and regulatory risks of hurricanes and other natural disasters
- Demonstrate knowledge of the components of a comprehensive disaster response plan
- Discuss how effective coordination of the IDT is crucial to a successful response
- Describe how effective communication with EMR is essential for coordination of caregivers and resources

Speakers:

- Annaliese Impink JD - Executive Vice President, Legal Operations and Regulatory Affairs, Sava SeniorCare Administrative Services LLC
- Stacey Hallissey PT - Senior Vice President, Rehabilitation Services, Sava SeniorCare Consulting LLC
- Mary Evans MD CMD – CMO, Sava SeniorCare Administrative Services LLC

We're just arranging access to the recording for you with our vendor.
--Chris
……
Christopher E. Laxton, CAE
Executive Director
AMDA – The Society for Post-Acute and Long-Term Care Medicine
Direct: [redacted]
Cell: [redacted]

From: Hallarman, Lynn (Finance) [redacted]
Sent: Monday, June 18, 2018 11:51 AM

To: Christopher Laxton [redacted]
Subject: RE: Nursing Home Medical Director resources

Super! Thank you.

Lynn

From: Christopher Laxton [redacted]
Sent: Monday, June 18, 2018 11:10 AM
To: Hallarman, Lynn (Finance) [redacted]
Cc: Alex Bardakh [redacted]; Mary Mulligan [redacted]
Subject: Nursing Home Medical Director resources

Hi Lynn,

Nice to speak with you this morning. I'm sending you some resources on nursing home medical directors, attending physicians, and emergency management (specifically evacuation of residents):

- CMS regulatory requirements
- AMDA white paper on the roles, tasks and functions of the medical director
- QAPI job expectations
- AMDA's model medical director agreement
- AMDA medical director toolkit (some duplicative material here)
- AMDA press release on the job analyses I mentioned to you
- AMDA press release (with links) on evacuations of nursing home residents during emergencies
- AMDA's attending physician competencies

Staff are looking for additional resources on emergency preparedness. We'll follow up with that when we locate some! Please feel free to follow up with questions.

Christopher E. Laxton, CAE, Executive Director

AMDA – The Society for Post-Acute and Long-Term Care Medicine
10500 Little Patuxent Parkway – Suite 210
Columbia, MD 21044- 3585
Direct: [redacted] | Cell: [redacted] | Main: 410-740-9743
[redacted] www.paltc.org | @PALTC_Chris

Exhibit 4

From: Zauche, Michele R CIV
To: Gartrell, Peter (Finance)
Subject: RE: Pensacola nursing home
Date: Tuesday, October 16, 2018 5:34:15 PM

Peter,
This is the information the field provided:

The FL EOC notified CG flood punt teams that residents at the nursing home were in need of assistance. A flood punt team from Sector Lower Mississippi River, as well as members from Station New Orleans who were responding, arrived at the facility at 1:30 p.m. Thursday. They helped coordinate assistance using three separate charter buses, each with a different level of specialty care capabilities. They worked until around 8 p.m. that night to get 103 of the patients loaded onto the three buses. Those patients were taken to several hospitals in the Pensacola region, including Sacred Heart.

There were 35 residents who remained at the facility. They were bedridden and their needs couldn't be met on the buses. The facility director and seven other staff members remained at the facility with those 35 residents. The facility still had power at that point. The facility director told the flood punt team leads that a caravan of 40ish ambulances was on the way and should arrive to pick up the remaining residents and staff that evening.

The flood punt teams also worked with local law enforcement that night to organize some type of security through the night since there were narcotics there. They left around 8 p.m. since there was nothing further they could do at that point, and they were told ambulances were en route.

Flood punt teams found out Friday morning that those ambulances had not yet arrived. The wife of a civilian employee at Sector Mobile works for the nursing home company, and she notified her husband at Sector Mobile that the ambulances hadn't arrived by Friday morning, and the remaining residents and staff still needed help. The commander of CG Sector Mobile reached out the CG air boss at the FL EOC in Tallahassee to see what could be done. A second flood punt team went to the facility Friday morning and confirmed that the patients and staff were still there. The commander of CG Sector Mobile received confirmation at 2:50 p.m. Friday that all remaining residents and staff had been picked up by ambulance.

I hope this is helpful. Thank you for your patience.

Respectfully,
Michele

From: Gartrell, Peter (Finance) [redacted]
Sent: Monday, October 15, 2018 4:13 PM
To: Zauche, Michele R CIV [redacted]
Subject: [Non-DoD Source] RE: Pensacola nursing home

UNITED STATES SENATE

SHELTERING *IN* DANGER

NOVEMBER 2018

AN INVESTIGATIVE REPORT
by the Minority Staff of the U.S. Senate Committee on Finance