

Exhibit No. 1

BEFORE THE HEALTH CARE ALTERNATIVE DISPUTE RESOLUTION OFFICE

COLLEEN BARKMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KEVIN O. BARKMAN

Claimants

v.

Case No.: 2018-191

FAHRNEY-KEEDY MEMORIAL HOME, INC : D/B/A FAHRNEY-KEEDY HOME AND VILLAGE

Respondents

RESPONDENT'S RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW the Respondent, Fahrney-Keedy Memorial Home, Inc. d/b/a Fahrney-Keedy Home and Village, by and through their counsel D. Elizabeth Walker, Esquire and Walker, Murphy & Nelson, LLP, and pursuant to the Maryland Discovery Guidelines, herein Responds to Plaintiff's Request for Production of Documents as follows:

- a. The information supplied in these Responses is not based solely upon the knowledge of the executing party, but includes the knowledge of the party's agents, representatives and attorneys, unless privileged.
- b. The word usage and the sentence structure below is that of the attorneys who, in fact, prepared these Answers and said language does not purport to be the exact language of the executing party.
- c. The defense reserves the right to amend or supplement these Responses.

RESPONSES TO REQUESTS

1. Any and all documents referenced in Respondents' response to Claimant's Interrogatories as well as all documents requested to be identified in Claimant's Interrogatories directed to this Respondent.

RESPONSE: All non-privileged and discoverable documents referenced in Defendant's Answers to Interrogatories will be provided.

2. Please produce all documents that support or contradict Claimant's Complaint allegations.

RESPONSE: Objection insofar as this request seeks trial strategy, the mental impressions of counsel, documents protected from production by attorney-client or work-product privileged, and/or peer review materials. Subject to and without waiving that objection, all non-privileged and discoverable documents will be produced.

3. A certified color copy of each medical chart, e-mail, electronic data, narrative record, report, agreement, contract, notes, incident reports, orders, tests, and all other documents (including but not limited to all photographs, videotapes, charts, diagrams or drawings) pertaining or relating to Kevin Barkman.

RESPONSE: See attached bates stamped copy of Mr. Barkman's chart. Documents will be produced in color to the extent reasonably available.

4. Any and all documents or materials subpoenaed by Respondent or Respondent's counsel in this case or obtained through a medical records authorization signed by the Claimant, or her legal representative.

RESPONSE: To be provided.

5. A Privilege log or similar index of all documents requested in these Document Requests but have not been produced because of any claimed privilege or objection. Said index shall include the date, author, type of document, reason for its creation, the specific document request to which it applies, and basis for its failure to be produced. Where such document is claimed to be a quality assurance document, set forth the factual basis for such claim and

indicate whether the document was generated only for purposes of a quality assurance review committee.

RESPONSE: None.

6. A copy of any recordings, transcriptions, notes, etc., reflecting statements made by Kevin Barkman or Barkman family members.

RESPONSE: See bates stamped copy of Mr. Barkman's chart to the extent any recordings of statements, etc., are contained therein.

7. A copy of any and all written or tape-recorded oral statements, commentaries, reports, notes, interviews, correspondence, communication, files and/or other documents referring or relating to either Kevin Barkman, any friend or Barkman family member.

RESPONSE Objection to the extent that this Respondent lacks sufficient knowledge regarding who may qualify as a 'friend'. To Respondent's knowledge there are no tape recorded oral statements regarding Mr. Barkman. All documents that can be reasonably identified as response are attached.

8. A copy of any recorded statements, e-mails or notes summarizing any statement from any of the Respondents' employees relative to Kevin Barkman or the matters alleged in the Statement of Claim.

RESPONSE: Objection insofar as this request is calls for a legal conclusion. Subject to that objection, see attached.

9. Any and all photographs, videotapes, charts, diagrams or drawings relating to Claimant.

RESPONSE: Objection insofar as this Request calls for a legal conclusion on the definition of 'relating to'. Subject to and without waiving that objection, see attached copy

of Mr. Barkman's chart to the extent it contains responsive photographs. To Respondent's knowledge, no videotapes exist. See attached copy of Mr. Barkman's chart to the extent it contains any non-privileged diagrams or drawings.

10. Any electronic data stored or kept by Respondent that references Claimant, or that is responsive to any of the above document requests, along with any manual, index, program or matrix required to interpret or use such data.

RESPONSE: Objection insofar as this Request is overly broad and unduly burdensome and calls for a legal conclusion regarding the scope of 'electronic data'. To Respondent's knowledge, all 'electronic data' is reproduced in terms of the chart and records attached hereto.

11. A copy of any incident report(s), investigative report(s) or witness statement(s) pertaining to Claimant or any other matters alleged in the Statement of Claim, including but not limited to Claimant's falls on October 4, 2015, October 12, 2015 and May 9, 2016.

RESPONSE: Objection insofar as this Request seeks documents prepared in anticipation of litigation and covered by attorney client privilege. The defense further objections insofar as it seek information deemed privileged pursuant to Md. Code Ann. Occup. § 1-401(d). Subject to, without waiving, and notwithstanding those objections, see attached incident reports.

12. Please produce all documents containing the names and/or last known address of any witness to any matters alleged in Claimant's Statement of Claim, including alleged damages.

RESPONSE: Objection insofar as this request is overly broad and calls for a legal conclusion. Subject to and notwithstanding those objections, should counsel identify any person, Respondent will confirm whether than person is a current employee, and, if not,

will provide last known address if known.

13. Produce all documents related to Claimant's falls sustained while a resident of the Fahrney-Keedy.

RESPONSE: Objection insofar as this request seeks documents prepared in anticipation of litigation and/or contains peer review materials. Subject to and notwithstanding that objection, please see attached bates stamped copy of Mr. Barkman's chart and incident reports.

14. Produce a copy of any documents that reflect whether any responsive documents to Document Request set forth herein (or any other document not produced because of a claimed privilege) were reviewed by Respondent's Peer Review committees or formed the basis for Quality Assurance deliberations. (You may redact any information that reflects the deliberative process of those committees.)

RESPONSE: Objection insofar as this Request seeks information obtained in anticipation of litigation and/or privileged peer review material.

15. A copy of any reports or documents showing facility wide incidences for falls, limited to years 2015 and 2016.

RESPONSE: Objection insofar as this Request is overly broad, unduly burdensome, and requests irrelevant documents irrelevant to this personal injury litigation. Respondent further objects to the extent that Claimants' request is inappropriate in that it would call for the production of privilege patient information protected from disclosure under HIPAA and Md. Code Ann., Health Occupations § 1-401. Additionally, Respondent objects to the extent the information sought calls for irrelevant and inadmissible information regarding any other incident because each incident is unique and involves specific facts not

generalizable across the resident population.

16. Produce all data or reports that the Respondents keep on patients who sustain falls, regardless of whether such falls caused injury, and include all available data fields (where the data is in electronic format). Where the reports reference a patient's name, with the exception of Claimant, you may redact it to protect their privacy.

RESPONSE: See response to Request No. 15. Objection furthermore insofar as this request is unduly burdensome in that fall records may not be kept centrally and identifying and accessing the requested information could involve individually reviewing hundreds of charts over an unspecified time period.

17. A copy of the medical staff by-laws and any and all rules, regulations, guidelines, protocols, procedures or written rules governing the Fahrney-Keedy staff in effect during Kevin Barkman's residence at the facility.

RESPONSE: Objection insofar as this Request is overly broad, unduly burdensome, and/or oppressive. The defense further objects insofar as this Request seeks privileged and proprietary information. Objection, furthermore, insofar as this Request seeks documents protected by Md. Code Ann., Health Occupations § 1-401. Without raising said objections, and to the extent such documents are available, upon signing a confidentiality agreement, Respondent will produce a table of contents of any policies and procedures, if any, for the limited time period in which the decedent was a resident at Respondent's facility and will engage in a discussion about the production of any relevant policies and procedures based on the specific allegations in this case.

18. A copy of any and all nursing standards referenced by any licensing authority, state agency or created by Respondents.

RESPONSE: Objection insofar as this request is overly broad and unduly burdensome in that the set of nursing standards that may be referenced by any licensing authority is undefined. Subject to and notwithstanding that objection, see response to Request No. 17 to the extent any 'standards' have been created.

19. A copy of any guidelines, rules, regulations, protocols and procedures regarding resident assessment, cafeteria safety, wheelchair safety, fall prevention and care planning which were in effect during Mr. Barkman's residence at the Fahrney-Keedy.

RESPONSE: See response to Request No. 17.

20. A copy of any guidelines, rules, regulations, protocols and procedures regarding nutrition, weight loss, eating assistance and hygiene in effect during Mr. Barkman's residence at the Fahrney-Keedy.

RESPONSE: See response to Request No. 17.

21. A copy of any guidelines, rules, regulations, protocols and procedures regarding charting and documentation in effect during Mr. Barkman's residence at the Fahrney-Keedy.

RESPONSE: See response to Request No. 17.

22. A copy of any guidelines, rules, regulations, protocols and procedures regarding the use of wheelchair alarms, in effect during Mr. Barkman's residency.

RESPONSE: See response to Request No. 17.

23. The manual or instructions for the wheelchair from which Mr. Barkman fell on May 9, 2016. If you do not have the original, you may produce a copy from the same or similar model.

RESPONSE: Objection insofar as this request seeks publically available records equally accessible to Claimants. Subject to and notwithstanding that objection, none.

24. A copy of the following policy and procedure manuals for Fahrney-Keedy or Respondent's nursing facility in effect during Kevin Barkman's Fahrney-Keedy residence:

- (a) Executive Director or Administrative policy and procedural manual;
- (b) Nursing policy and procedure manual;
- (c) Dietary policy and procedure manual;
- (d) Initial Evaluation policy and procedure manual;
- (e) Activities policy and procedural manual;
- (f) Restorative nursing and physical therapy;
- (g) Service or care planning;
- (h) All requirements relating to observing, documenting, reporting, and responding to resident's condition;
- (i) All requirements and/or policies and procedures related to the required notification of licensing authority for injuries sustained by residents
- (j) All policies and procedures relative to the provision and billing of skilled therapy including OT, PT and speech therapy;
- (k) All requirements and/or policies and procedures related to documenting, reporting, and responding to resident injury;
- (l) All requirements and/or policies and procedures related to documenting, reporting, and responding to family member or third party concerns or Complaints;
- (m) All requirements and/or policies and procedures related to monitoring residents in the cafeteria and cafeteria transport;
- (n) All requirements and/or policies and procedures related to resident nutrition, eating assistance and weight loss;
- (o) All policies or protocols or internal documents regarding the response or answering of call bells or alarms;
- (p) Admission and discharge guidelines and procedures.
- (q) All policies or protocols addressing how patients should be transferred or discharged to a hospital or critical care facility after an injury

RESPONSE: See response to Request No. 17.

25. A copy of the following individual's job descriptions who participated in the care of Kevin Barkman during her Fahrney-Keedy residence:

- (a) The administrator or executive director;
- (b) The director of nurses or care manager;
- (c) The charge nurse;
- (d) Nurses' assistant;
- (e) The Medical Director;
- (f) Registered Nurses;
- (g) Physical and occupational therapists
- (h) Nurses' Aides;
- (i) Nurse Practitioner;
- (j) Physical Therapist

- (k) Occupational Therapist
- (l) Speech Therapist

RESPONSE: Respondent will make any currently employee and its corporate representative available for deposition for the purposes of providing this information.

26. All guidelines and procedures utilized by Respondent(s) for determining whether the facility had enough qualified personnel to meet the needs of its residents. Such documents can be limited to documents used during Mr. Barkman's Fahrney-Keedy residency.

RESPONSE: See response to Request No. 17.

27. The substance of any written or other instructions given to the nursing or nurse aid staff (who cared for Mr. Barkman), regarding fall prevention, wheelchair usage, cafeteria safety, monitoring residents in the cafeteria, transporting residents to activities, transporting residents to meals, wheelchair alarm usage, resident assessment, charting, answering call bells and documentation/charting.

RESPONSE: Objection insofar as this request is overly broad and unduly burdensome in that the term 'other instructions' is undefined. Subject to and notwithstanding those objections, see provided policies table of content. Respondent will make available for deposition any current staff member available for deposition.

28. All quality indicator reports or other documents used to report information to the offices of Medicare or Medicaid, including Medicare Cost reports filed by Fahrney-Keedy regarding their residents. Please note that Claimant is only interested in obtaining this information from October, 2015 through May, 2016. You may redact the names of any residents (except Kevin Barkman) to protect their privacy.

RESPONSE: Objection insofar as this Request is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence. Respondent

further objects to the extent that Claimants' request is inappropriate in that it would call for the production of privilege patient information protected from disclosure under HIPAA and by Md. Code Ann., Health Occupations § 1-401. Additionally, Respondent objects to the extent the information sought calls for irrelevant and inadmissible information regarding any other resident.

29. A copy of any and all insurance policy(ies), including excess or umbrella policy(ies) that will or may cover the allegations as described in the Statement of Claim that have been issued to this Respondent.

RESPONSE: Declarations sheets to be provided.

30. If this Respondent's insurance policy has a deductible or self-insured retention limit, produce Respondent's bank account and liquidated asset information reflecting that it has sufficient funds available to meet any judgment and trigger the application of insurance coverage should such coverage become necessary.

RESPONSE: See attached Declarations Sheets.

31. A copy of all OSCAR reports relating to the Fahrney-Keedy submitted by Respondent to CMS from 2014 through 2016

RESPONSE: Objection insofar as this information is publically available and equally accessible to Claimants.

32. A copy of any and all expert statements or reports obtained from or relied on by any expert (and if a report has been prepared, the preparation of such report is hereby requested), along with any and all reports, correspondence, papers, notes, records, statistics, literature, or other documents that your expert(s) has reviewed or created in reference to this case.

RESPONSE: See attached Certificate and Report of Dr. Frank Ryan. The defense

expressly reserves the right to call any certifying expert(s) as well as to elicit admissions against interest from the Claimant's experts. In addition, the defense reserves the right to call Mr. Barkman's prior and/or subsequent treating health care providers at trial, mediation, or arbitration of this matter.

33. A copy of any expert's curriculum vitae or resume, along with any published articles.

RESPONSE: Objection insofar as this request is unduly burdensome and calls for production of publications the content of which is irrelevant to this Occurrence. Subject to and notwithstanding those objections, please see attached copy of Dr. Ryan's CV.

34. A copy of any and all books, treatises, commentaries, reports, statutes, codes, ordinances, rules, regulations, or published documents on which you or your experts intend to rely.

RESPONSE: Objection insofar as the request seeks defense strategy and the mental impressions of counsel. Subject to and notwithstanding those objections, Respondent states that at this time it does not know which materials its experts have or will rely on. All non-privilege expert materials will be produced.

35. With respect to any expert retained by Respondent, please produce copies of all 1099s or other documentation reflecting compensation received from Law Firms and Insurance Companies for providing expert witness testimony on behalf of all Claimants and Respondents for the last five (5) years and include a list of all cases (including Claimant's names(s) the Respondent's name(s), the Claimant's attorneys name(s) and address, the Respondent's attorney's name(s) and address, the court location, case number and date of said testimony) by way of trial, video or deposition during this period.

RESPONSE: All discoverable expert materials will be produced.

36. With respect to any expert retained by Respondents in this case, a separate list of all cases that either the Respondents or defense counsel (and his or her firm) retained the expert prior or contemporaneously to this response.

RESPONSE: All discoverable expert materials will be produced.

37. All licensure documents upon which Respondents rely upon in claiming that they were licensed health care providers as defined under Virginia law relative to their operation of Fahrney-Keedy.

RESPONSE: None.

38. A copy of the personnel files for this Respondent's staff who oversaw the operation or management of the Fahrney-Keedy during Claimant's residency. Claimant has no objection to entering into a protective order to protect the privacy of these employees. Furthermore, Respondent may redact payroll information as it deems necessary.

RESPONSE: Objection. This response calls for the production of protected information irrelevant to the allegations in this personal injury litigation. This Request is unduly invasive and seeks personal, private, confidential, and proprietary documentation. Objection furthermore as there have been no allegations made which could potentially make the protected, private contents of a personnel file relevant to this matter.

39. A copy of the personnel files for the President, Executive Director, Resident Care Manager, Administrator, Medical Director, Director of Nurses, Nursing Supervisors and Regional Director or Manager of all named Respondents during Mr. Barkman's Fahrney-Keedy residency.

RESPONSE: See response to Request No. 38.

40. A copy of the personnel files for all staff who were responsible for caring for Mr. Barkman on October 4, 2015, October 12, 2015 and May 9, 2016, along with the files of those who were responsible for supervising staff providing direct care on these dates.

RESPONSE: See response to Request No. 38.

41. A copy of the personnel files for the staff who were responsible for creating and implementing the care plans for Mr. Barkman and specifically for any care plan intervention related to fall prevention.

RESPONSE: See response to Request No. 38.

42. A copy of any ombudsman complaints, licensure reports or inspections, correspondence or documents, e-mails, incident reports or written resident complaints relating to issues with resident hygiene, fall prevention, cafeteria safety, lack of patient monitoring, falls causing injury or death, or inadequate staffing which were filled out by any employee, agent and/or servant of Respondent or any other individuals (including families or patients at the Fahrney-Keedy). This request is limited to 2014 through March, 2016. You may redact the names of other residents to protect their privacy.

RESPONSE: Objection insofar as this request seeks publically available records equally accessible to Claimants. Objection further more as this Request seeks the protected information of other residents. Objection furthermore to the extent it calls for irrelevant and inadmissible information regarding any other incident and is not limited in scope. Objection furthermore insofar as this Request seeks evidence gathered in anticipation of litigation and protected by the attorney work product doctrine, and seeks documentation protected by Md. Code Ann., Health Occupations § 1-401.

43. All ombudsmen reports and Social Services' inspections or deficiencies, along with all internal documents addressing or responding to such reports or deficiencies, which were generated for Fahrney-Keedy from 2014 through June, 2016.

RESPONSE: Objection insofar as this request seeks publically available records equally accessible to Claimants. Objection further more as this Request seeks the protected information of other residents.

44. Any reports submitted to any licensing agency for injuries or falls sustained by Mr. Barkman, along with all supporting documentation.

RESPONSE: To be provided, if any.

45. A copy of minutes or reports of meetings where concerns or problems with resident care or staffing were addressed or discussed in the areas that we have asked in other requests, such as resident hygiene, feeding, weight loss, resident admission or discharge, resident toileting, fall prevention, problems with resident care, charting, responsible or physician party notification of significant changes in resident condition or lack of staffing, including but not limited to: regional meetings, in-service meetings, staff development meetings, department head meetings, staff meetings, nurses' meetings, nurses aides' meetings, incident report meetings, safety meetings, resident council meetings, family council meetings and fall prevention meetings. These minutes and reports of the meetings may be limited to Kevin Barkman's Fahrney-Keedy residence and one year prior thereto. Respondent may redact resident names (other than Kevin Barkman) to protect their privacy.

RESPONSE: See attached to the extent Mr. Barkman is discussed at care planning meetings, weekly rounds, and similar staff conferencing.

46. A copy of all consultant or related reports that were prepared for or at the request of Respondent which specifically addressed resident fall prevention, hygiene, feeding, weight loss, resident admission or discharge, resident nutrition, resident toileting, or problems with resident care, charting, responsible or physician party notification of significant changes in resident condition or staffing.

RESPONSE: None.

47. Produce all statistical or other data or reports that the Respondents keep on the residents who sustain falls and include all available data fields (where the data is in electronic format). This material is sought for 2014 through 2016, broken down by month and by unit or floor. Where the reports reference a resident's name, you may redact the name of the resident to protect their privacy.

RESPONSE: Objection in so far as this request seeks proprietary information if it even exists.

48. Census and acuity reports for Fahrney-Keedy for October 2015 and May 9, 2016.

RESPONSE: Staffing reports to be provided.

49. An itemized copy of all billing and reimbursement records, including third-party reimbursement by Medicaid and/or Medicare for the services provided by this Respondent or any contractor to Kevin Barkman during his Fahrney-Keedy residence.

RESPONSE: To be provided.

50. A copy of any billing and reimbursement records generated by any physical, occupational or speech therapist who cared for Claimant at Fahrney-Keedy and provided therapy to Kevin Barkman.

RESPONSE: To be provided.

51. If any employee or agent of Respondent(s) who cared for Kevin Barkman was ever warned (orally or in writing) or disciplined for matters relating to substandard resident care or care planning, staffing, tardiness, charting, recording and retention, resident inattention, unsafe transfers or transports, resident hygiene, resident toileting, resident nutrition, resident hydration, handling of family/third party complaints, resident monitoring or supervision, abuse or negligence, or any matters involving the allegations contained in the Complaint of this case, then produce all such documents reflecting the nature of the conduct and Respondent's disciplinary response, if any.

RESPONSE: Objection. Responsive material, if any, is protected from production by applicable privilege, calls for peer-review materials, or is irrelevant insofar as many of the categories listed are not part of this Complaint.

52. All staffing schedules, including any time cards and sign-in sheets for all staff members who worked on the floor, ward or wing where Kevin Barkman resided during his Cameron Glen residence. Claimant seeks to obtain the planned schedule as well as the "as worked" schedule to show the employees who actually worked during the relevant period.

RESPONSE: This Respondent is no in possession of records from Cameron Glen. Insofar as this Request seeks staffing schedules from this Respondent, to be provided.

53. A copy of all documents reflecting any complaints or concerns regarding inadequate numbers of staff, inadequate staff training or untimely and/or improper staff response to emergency situations, limited to Kevin Barkman's Fahrney-Keedy residence.

RESPONSE: See attached, if any.

54. A copy of all documents reflecting any complaints or concerns regarding inadequate numbers of staff or inadequate staff training from 2014 through March, 2016, along

with complaints regarding lack of supervision or care in the cafeteria, as well as any documents which reflect Respondent's responses to such complaints.

RESPONSE: Objection insofar as this request is overly broad and that the phrase 'documents reflecting any complaints or concerns' is undefined. Objection furthermore, insofar as this request calls for a legal conclusion on adequacy and calls for information protect by Md. Code Ann., Health Occupations § 1-401.

55. All training materials and lists of in-services (along with the substantive course material) provided to the nurses and nurse aides who cared for Kevin Barkman on the day he fell (March 1, 2016 and the following day, which relate to resident hygiene, feeding, weight loss, resident admission or discharge, fall prevention, use of bed alarms, resident toileting, problems with resident care, charting, responsible or physician party notification of significant changes in resident condition or lack of staffing.

RESPONSE: Objection insofar as this Request is overly broad, unduly burdensome, and/or oppressive. The defense further objects insofar as this Request seeks privileged and proprietary information. Without raising said objections, and to the extent such documents are available, upon signing a confidentiality agreement, Respondent will produce a table of contents of any policies and procedures, if any, for the limited time period in which the decedent was a resident at Respondent's facility and will engage in a discussion about the production of any relevant policies and procedures based on the specific allegations in this case.

56. A copy of any and all internal memoranda, e-mails or documents which reference staffing shortages or inadequacies during Mr. Barkman' FAHRNEY-KEEDY residency.

RESPONSE: See attached, if any.

Respectfully submitted,

WALKER, MURPHY & NELSON, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Responses to Claimant's Request for Production of Documents was sent via E-Mail and/or First-Class Mail, postage prepaid on this 15th day of September 2018, upon the following:

Jeffrey J. Downey, Esquire
The Law Offices of Jeffrey J. Downey
8270 Greensboro Drive, Suite 810
McLean, Virginia 22102
jdowney@jeffdowney.com
Attorneys for Claimant

D. Elizabeth Walker /mw
D. Elizabeth Walker

Exhibit No. 2

BEFORE THE HEALTH CARE ALTERNATIVE DISPUTE RESOLUTION OFFICE

COLLEEN BARKMAN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
KEVIN O. BARKMAN

Claimants

v.

Case No.: 2018-191

FAHRNEY-KEEDY MEMORIAL HOME, INC :
D/B/A FAHRNEY-KEEDY HOME AND
VILLAGE

Respondents

RESPONDENT'S ANSWERS TO CLAIMANT'S INTERROGATORIES

COMES NOW the Defendant, Fahrney-Keedy Memorial Home, Inc. d/b/a Fahrney-Keedy Home and Village, by and through their counsel D. Elizabeth Walker, Esquire and Walker, Murphy & Nelson, LLP and pursuant to the Maryland Discovery Guidelines, herein Answers the Claimant's Interrogatories:

- a. The information supplied in these Answers is not based solely upon the knowledge of the executing party, but includes the knowledge of the party's agents, representatives and attorneys, unless privileged.
- b. The word usage and the sentence structure below is that of the attorneys who, in fact, prepared these Answers and said language does not purport to be the exact language of the executing party.
- c. The defense reserves the right to amend or supplement these Answers.

PRELIMINARY STATEMENT

The word usage and sentence structure is that of attorney who, in fact, prepared these answers and the language contained herein does not purport to be the exact language of the executing party. These Interrogatories have been interpreted and answered in accordance with

the applicable Rules of Civil Procedure, plain English usage, the objections stated herein, and the definitions and instructions included with the Interrogatories.

GENERAL OBJECTIONS

1. This Respondent objects to the Interrogatories propounded by Plaintiff to the extent that they seek information or attempt to impose obligations beyond the scope of the discovery rules.
2. This Respondent objects to the Interrogatories propounded by Plaintiff to the extent that they seek information beyond this Respondent's immediate or current knowledge.
3. This Respondent objects to the Interrogatories propounded by Plaintiff to the extent that they seek information and/or documents already in the possession, custody or control of Plaintiff or some third party over whom this Respondent exercise no dominion or control.
4. This Respondent objects to the Interrogatories propounded by Plaintiff to the extent that they seek the disclosure of information protected by any privilege, including but not limited to the attorney-client communication privilege, the attorney-work product doctrine, and/or the mental impressions, conclusions or opinions of this Respondent's attorneys. The communication of any privileged or work-product information is inadvertent and shall not constitute a waiver of the privilege or the protection afforded by the work product doctrine.
5. This Respondent objects to the Interrogatories propounded by Plaintiff to the extent they seek information irrelevant to the allegations in the Complaint and Answer.
6. This Respondent objects to these Interrogatories, because a number of them are combined to form one interrogatory when, in fact, they are more than one.
7. This Respondent objects to these Interrogatories to the extent they seek to discover privileged, non-discoverable, impeachment evidence, if any.
8. This Respondent objects to these Interrogatories to the extent that they are overly broad, unduly burdensome, and/or oppressive.
9. This Respondent objects to these Interrogatories to the extent that they are too vague and ambiguous to interpret.

10. This Respondent reserves the right to supplement or amend these responses at such time as any additional responsive information becomes available to this Respondent through discovery or otherwise.

11. This Respondent expressly incorporates herein by reference those facts disclosed elsewhere during discovery including, but not limited to, deposition testimony, expert reports and/or written discovery.

This Respondent hereby incorporates the above general objections into each of its specific responses to Plaintiffs' Interrogatories. The general objections asserted above shall be deemed to be applicable to and continuing with respect to each of the Plaintiffs' Interrogatories. This Respondent does not waive any general objection in response to any specific interrogatory and reserves the right to revise any other objection at any appropriate time. Notwithstanding these objections, this Respondent provides the following responses in a good faith attempt to comply with the letter and spirit of the Rules of Civil Procedure and Discovery Guidelines.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1. Please state the name, address, telephone number and job title of each person providing or assisting in the preparation of these answers to interrogatories, and further identify all sources and all documents relied upon in answering this discovery.

ANSWER: Cassandra Weaver, LNHA, 8507 Mapleville Road, Boonsboro, Maryland 21713, (301) 733-6284. These responses were drafted with the assistance of undersigned counsel.

INTERROGATORY NO. 2. With respect to each person employed or working at Fahrney-Keedy supervising or providing care for Kevin Barkman (limited to the months of October 2015 through May 9, 2016) please state their name, last known address and telephone number, job title or capacity, professional degree or license held, and their length of employment, noting dates of resignation or dismissal, and circumstances surrounding dismissal or termination.

ANSWER: Objection insofar as this Interrogatory is overly broad and unduly burdensome. Any current employee will be produced for deposition upon counsel's request.

Claimants are also referred to Mr. Barkman's chart, pursuant to Maryland Rule 2-421(c) of Civil Procedure, a copy of which is being provided with Respondent's Responses to Claimant's Request for Production of Documents, for the identification of all employees and independent contractors who provided care. Mr. Barkman's caregivers include, but are not limited to: Janet Cole, RN, Julia McGlaughlin, RN, Amy Smallwood, LPN, Carol Hood, LPN, Angie Keebaugh, LPN, Marcia Sheppard, LPN, Carol Hood, LPN, Tiffany Gregory, RN, Taylor Harmon, LPN, Lori Clark, RN, Samantha Frazier, CRNP, Celeste Kent, OT, Deanna Ashkeboussi, SLP, and Nicole Glaze, COTA/L.

INTERROGATORY NO. 3. With respect to any employee(s) identified in response to Interrogatory No. 3, set forth your contention as to whether their alleged negligence, as stated in the Statement of Claim, was within the course and scope of their employment for Respondent Fahrney-Keedy Memorial Home Inc.

ANSWER: Objection insofar as the defense denies any and all allegations of negligence, causation and damages, and demands strict proof thereof at trial. Defendant contends that its agents and employees complied with the standard of care in the treatment and care planning of this former resident. Subject to and without waiving that objection, should Claimants identify an individual or set of individuals, Respondent will answer whether that person or those people were acting within the scope of their employment. Generally, nurses and nursing staff are hired by the facility health care provider and physician care givers are independent contractors. Care provided by those individuals specifically identified herein as employees was within the scope of their employment.

INTERROGATORY NO. 4. Please identify all individuals (by stating their name, current or last known address, current or last known place of employment and telephone number) that

Respondent has reason to believe possess knowledge relevant to the subject matter of this lawsuit, including both liability (most notably, but not limited to, Claimant's falls on October 4, 2015, October 12, 2015 and May 9, 2016) and damages, or who Respondents are aware, through personal knowledge or belief, may have knowledge relevant to the specific subject matter of this lawsuit. Please note that Claimant will object to the trial testimony of any witness who is not identified in response to this Interrogatory.

ANSWER: Objection insofar as this Interrogatory seeks the discovery of impeachment witnesses, if any and calls for a legal conclusion. Without waiving said objection, for those individuals with knowledge of facts related to this lawsuit, Mr. Barkman's care and treatment while at Respondent's facility and/or other facts related to this case, and pursuant to Maryland Rule 2-421(c) of Civil Procedure, Claimants are primarily referred to Mr. Barkman's chart, a date-stamped copy of which is being produced with Respondent's Responses to Claimants' Request for Production of Documents. In addition, Respondent's attorneys and/or representatives may also have responsive knowledge. Some staff at Respondent's facility who may have knowledge of Mr. Barkman include, but are not limited to: Janet Cole, RN, Julia McGlaughlin, RN, Amy Smallwood, LPN, Carol Hood, LPN, Angie Keebaugh, LPN, Marcia Sheppard, LPN, Carol Hood, LPN, Sandra Morgan, MA, Heather Stevens, COTA/L, Leisa Rice, LPN, and Taylor Harmon, LPN along with any other individual identified in the chart. Other than those discoverable individuals identified herein, or elsewhere during discovery, none currently identified.

INTERROGATORY NO. 5. Set forth in detail your contention of how Mr. Barkman fell on May 9, 2016 and provide the following additional information: whether the fall was witnessed and by whom, the names of all staff who were working on the shift at the time of the fall, the

identity of the staff member who found Claimant, when and where Mr. Barkman was last observed before the fall, the identify of all staff responsible for caring for Mr. Barkman that day (both nurses and CNAs) and the identification of all fall precautions which were in place when Mr. Barkman was escorted to the cafeteria prior to his fall.

ANSWER: Upon information and belief, on the late afternoon of May 9, 2016, Mr. Barkman suffered a myocardial infarction causing him to pitch forward and out of his wheelchair. At the time, he was sitting in the second floor skilled nursing dining room in his wheelchair for observation. The room was otherwise empty but open for observation by staff in the area. While the fall was unwitnessed, Mr. Barkman was quickly treated by staff including Taylor Harmon who began administering aid. Before he was moved to the dining room, Mr. Barkman had just been seen by Andrew Kessel, MA. Other facility staff on duty at the time include Marcia Sheppard, LPN, and Carol Hood, LPN.

INTERROGATORY NO. 6 Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the matter alleged in the Complaint, the number(s) of said policies, the amount of liability coverage provided in each policy, and the named insured in said policy, the relevant beginning and end date for each policy, and further specify whether a reservation of rights or denial of coverage has been issued under said policy for any reason. Where any Respondent is insured up to a certain deductible or self-insured retention limit, set forth the assets that Respondent(s) has set aside to meet its initial obligations to pay any judgment up to the deductible or self-insured limit, including a specification of the bank account, account number, funds held, and current liabilities under that account.

ANSWER: Columbia Casualty Company, Policy No. 2057217113, \$1,000,000.00 limits.

INTERROGATORY NO. 7. For both retained and non-retained experts (including Claimant's healthcare providers) state the name, address and qualifications of each person whom you expect to call as an expert witness at the trial of this case, the subject matter upon which each such expert is expected to testify, the substance of the facts and opinions to which each such expert is expected to testify, and a summary of the grounds for each such opinion. Specify any and all documents and/or materials relied upon by said expert in forming such opinions, and list all publications by such expert on any subject the expert has contributed to, and a listing of all cases that the expert has given deposition or trial testimony in the last five years.

ANSWER: Objection insofar as this Interrogatory seeks information obtained in anticipation of litigation, attorney-work product and/or impeachment witnesses, if any. The defense further objects insofar as it seeks information related to privileged consulting experts and peer review material, if any. Subject to and without waiving that objection, the defense intends to call Frank Ryan, M.D., as an expert at trial to testify concerning the issues of causation and damages. Claimants are referred to Respondent's Certificate of Qualified Expert and Report which will be filed upon receipt of Claimant's Certificate of Qualified Expert.

INTERROGATORY NO. 8. Please state and fully describe any orders, guidelines, training, manuals, procedures, or policies, which were explained or issued to employees of the Fahmey-Keedy or Respondent(s), regarding fall prevention, restorative exercises, documentation and care planning, and set forth when such training or information was given to the staff who had direct care responsibility over Mr. Barkman on May 9, 2016.

ANSWER: Objection insofar as this Interrogatory is overly broad, unduly burdensome and is unlikely to lead to the discovery of admissible information in this case. Without waiving

said objection, to the extent this Request seeks information that is privileged and proprietary, upon execution of a Confidentiality Agreement, Respondent will produce a copy of reasonably applicable manuals, policies and procedures, if any. See Confidentiality Agreement attached to Respondent's Responses to Request for Production of Documents.

INTERROGATORY NO. 9. Please state and fully describe any orders, guidelines, training, manuals, procedures, or policies, which were explained or issued to employees of The Fahrney-Keedy or Respondent who had direct care responsibilities for Mr. Barkman, regarding the provision of physical, occupational and speech therapy.

ANSWER: Please see response to Interrogatory No. 8.

INTERROGATORY NO. 10. Please state and fully describe any orders, guidelines, training, manuals, procedures, or policies, which were explained or issued to employees of The Fahrney-Keedy (who had direct care or supervisory responsibilities for Mr. Barkman) for the following areas: care planning, resident assessment, fall prevention, patient supervision, wheelchair safety and operation and caring for dementia or Alzheimer's patients.

ANSWER: Please see response to Interrogatory No. 8.

INTERROGATORY NO. 11. If it is your contention that Mr. Barkman's injuries as alleged in the Complaint were caused in whole or in part by Mr. Barkman or an individual who is not an employee of Respondent(s), please state any and all facts which support your contention and identify all individuals with knowledge relating to such contention, as well as all documents which support such contention.

ANSWER: Objection insofar as this Interrogatory calls for a legal conclusion, it seeks the mental impressions of counsel, requires expert opinion(s) and/or seeks to shift Claimants' burden of proof. Notwithstanding and without waiving said objections, Respondent

contends that its agents and employees complied with the standard of care in the treatment and care planning of this former resident. Respondent contends at this time that Mr. Barkman's unwitnessed fall was the result of a myocardial infarction he suffered in his wheelchair causing him to pitch forward out of it. Respondent reserves the right to amend this answer as discovery is ongoing.

INTERROGATORY NO. 12. Within two (2) years prior to the period of Mr. Barkman's residence up through the end of her residency at Fahrney-Keedy, had Respondent(s) ever been charged by any public or private body with violating any rules, statutes, regulations, standards or policies? If so, please provide the following information: a specification of the time and date of every violation, a description of the governmental or quasi-governmental entity that wrote up or found the violation, and a description of the corrective measures that were taken with respect to each and every violation. Where any violation resulted in a legal action, please specify the names of the parties and the jurisdiction where said legal action was filed.

ANSWER: Objection insofar as this Interrogatory seeks confidential peer review material pursuant to § 1-401(d) of the Health Occupations Article. To the extent this Interrogatory seeks non-privileged information that is publicly available, Claimant has equal ability to obtain the discovery sought.

INTERROGATORY NO. 13. Please specify what electronic or other information is stored in computers owned or operated by Respondent, including but not limited to billing information, which in any way relates to Kevin Barkman, but was separate from the written chart that Respondent produced in litigation. Please identify each item of electronic media pertaining to Mr. Barkman, and specify whether Respondent(s) is willing, absent a Court Order, to produce the raw data to Claimant.

ANSWER: Objection insofar as this request is overly broad, unduly burdensome and unlikely to lead to the discovery of admissible evidence. Subject to and notwithstanding that objection, billing records and Mr. Barkman's entire chart either has been produced or will be supplemented if additional records are identified to ensure completeness.

INTERROGATORY NO. 14. As to each exhibit Respondent intends to use at the time of trial, please identify and explain in detail all such documents and/or other tangible things, listing each document and thing with particularity and describing the nature of the information in each document, the author of each document, the recipient of each document, the person to whom each document have previously been furnished, and the persons from whom each document has been obtained.

ANSWER: Objection insofar as this interrogatory impermissibly seeks to shift the burden of proof, seeks trial strategy, the mental impressions of counsel, and impeachment evidence, if any. Subject to and without waiving that objection, Respondent contends that, at this early juncture in the case, it is unable to respond to this Interrogatory, but reserves the right to use any document produced in discovery.

INTERROGATORY NO. 15. For the period of Mr. Barkman's residence, please set forth in detail all measures undertaken by employees of Fahrney-Keedy or Respondents, which are not documented in Mr. Barkman's chart, for the prevention of the following adverse outcomes: falls, weight loss and poor hygiene, and further specify the following: the identity of the individual who created said measures, the reasons for the creation of such measures, any and all observations as to how said measures affected Mr. Barkman, and a description of any adverse effects of such measures on Mr. Barkman. If any such measures were discontinued, specify the reasons for discontinuance.

ANSWER: Objection insofar as this Interrogatory is overly broad and unduly burdensome and is compound in nature. Subject to and without waiving that objection, Claimants are referred to Mr. Barkman's chart pursuant to Maryland Rule Rule 2-421(c). By this answer Respondent, through its witnesses, and otherwise, retains the right to adduce evidence about any and all interventions made on behalf of Mr. Barkman, not all of which are possible to include in this response; see generally Mr. Barkman's plan of care.

INTERROGATORY NO. 16. During the period of Mr. Barkman's residence at Fahrney-Keedy, set forth the staffing levels broken down by each of the three shifts listing the number of nurse assistants, RNs, LPNs, therapists, restorative aids, wound care specialists, bath aids, dietary specialists, or other employees who provided hands-on care to Mr. Barkman.

ANSWER: Plaintiff is referred to Respondent's staffing schedules, a copy of which will be provided in Respondent's Response to Request for Production of Documents.

INTERROGATORY NO. 17. Limited to the months of Claimant's falls (October 4, 2015, October 12, 2015 and May 9, 2016) and set forth the staffing levels at Fahrney-Keedy broken down by each shift, and state whether all of the scheduled staff had reported to work on the shift during which Mr. Barkman fell.

ANSWER: Please see response to Interrogatory No. 16.

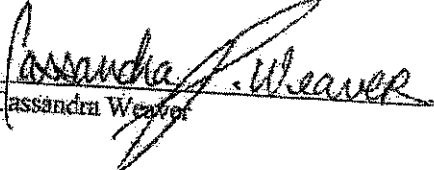
INTERROGATORY NO. 18. During the period of Mr. Barkman's residence at the Fahrney-Keedy and one year prior thereto, had any employee, resident or resident's family member(s) complained about the failure to adequately supervise residents in the cafeteria or a lack of adequate staffing at the nursing home; if so, identify who, when, and why, and how the complaint was addressed, and identify the specific documents related to the complaint, to be produced in Claimant's accompanying request for production of documents.

ANSWER: Objection insofar as this interrogatory is overly broad, unduly burdensome, not calculated to lead to the discovery of admissible evidence, and calls for the production of peer review material, if any. Further the privacy of information pertaining to or from any other resident is HIPAA protected and not discoverable.

INTERROGATORY NO. 19. If it is your contention that any of the information or documents requested in discovery are privileged or subject to non-production for any reason, set forth the name, date and author of the document, nature of the document and basis for the privilege. If you are claiming such document was generated for quality assurance purposes, indicate whether in fact the document was solely created for use by any quality assurance committee, the identity of the individual who will attest to that fact, and set forth the date and manner in which the document was transferred to said committee.

ANSWER: Please see privilege log, to be provided.

**I SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT
INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF
MY INFORMATION, KNOWLEDGE AND BELIEF.**


Cassandra Weaver

Respectfully submitted,

WALKER, MURPHY & NELSON, LLP

D. Elizabeth Walker/mcn
D. Elizabeth Walker, Esquire
9210 Corporate Boulevard, Suite 320
Rockville, Maryland 20850
(301) 519-9150
(301) 519-9152 Facsimile
ewalker@walkermurphy.com
*Attorneys for Defendant Fahrney-Keedy Memorial
Home, Inc. d/b/a Fahrney-Keedy Home and
Village*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's
Answers to Claimant's Interrogatories was served via E-Mail on this 30th day of August 2018,
upon the following:

Jeffrey J. Downey, Esquire
The Law Office of Jeffrey J. Downey
1225 I Street NW, Suite 600
Washington, DC 20005
jdowney@jeffdowney.com
Attorneys for Plaintiff

D. Elizabeth Walker/mcn
D. Elizabeth Walker

Exhibit No. 6

JANE RATTI,

Plaintiff

v.

CHARLES COUNTY NURSING
AND REHABILITATION CENTER, INC.

Defendant

* IN THE
* CIRCUIT COURT
* OF
* CHARLES COUNTY
* Case No. C08-1511

FILED
NOV 19 2009
CIRCUIT COURT
FOR CHARLES CO., MD

* * * * *

DISCOVERY ORDER

This matter came before this Court this July 14, 2009 on Plaintiff's Motion to Compel various documents and Defendant's Motion for Protective Order;

The Motions are each GRANTED IN PART and DENIED IN PART; it is hereby

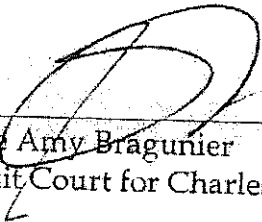
Defendant is hereby ORDERED by the Court to produce to Plaintiff the Charles County Nursing and Rehabilitation Center (CCNRC) incident report of August 6, 2007 stemming from Ms. Mae Baldwin's fall. To the extent there is any deliberative process, notes, or comments contained in said report, that information may be redacted.

ORDERED that Defendant's objections to Document Request numbers 8, 9 and 10 seeking personnel files are overruled in part. Defendant shall produce to Plaintiff the personnel files of the nurse(s) and nurse aid(s) who cared for Ms. Mae Baldwin on the night of August 6, 2007 as well as those staff members who provided care to Ms. Baldwin on the previous shifts during her residency at CCNRC where she previously fell. The contents that must be produced include job descriptions, performance evaluations, disciplinary actions and documents relating to any in-service or other training received by such individuals. Any other information or documentation in said employee files may be redacted or withheld from production; it is further

ORDERED that Defendant is to produce any acuity report(s) for August 6, 2007 for the unit at CCNRC on which Ms. Baldwin was a resident.

ORDERED that Defendant is to produce any documents describing complaints of or incidents at CCNRC occurring in the three years prior to August 6, 2007 involving the nurses who worked the night shift of August 6, 2007 on Ms. Baldwin's unit that are substantially similar to the allegations that are contained in Plaintiff's Complaint where said nurses ignored or failed to respond to an alarm or that the nurses in question ignored a warning of a danger to the safety of a CCNRC resident; it is further

ORDERED that the balance of Plaintiff's Motion to Compel is DENIED, and Defendant's Motion for Protective Order to protect its documents beyond those cited above is GRANTED. The discovery of the balance of the requested documents by Plaintiff is hereby precluded, including but not limited to the sought discovery of corporate documents, budgetary and financial documents, documents dealing with compensation, and any and all other document categories laid out in Defendant's Motion for Protective Order and documents in the categories discussed above dealing with dates, persons, and subject matters beyond what this Court has compelled to be produced subject to further review by this court as warranted.


11/19/09
Judge Amy Bragunier
Circuit Court for Charles County

Copies to:

Elliott D. Petty
Hodes, Pessin & Katz, P.A.
901 Dulaney Valley Road
Suite 400
Towson, Maryland 21204
410-339-6747

*Attorney for Defendant,
Charles County Nursing and Rehabilitation Center, Inc.*

TRUE COPY



TEST: SHARON L. HANCOCK, CLERK

Jeffrey J. Downey, Esquire
Justin Stone, Esquire
Law Office of Jeffrey J. Downey, P.C.
1225 I Street, N.W., Suite 600
Washington, D.C. 20005
Attorneys for Plaintiff

Exhibit No. 7

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MARGARET SMALLWOOD, as Administrator and
Personal Representative of the Estate of **William T. Woodard**,
Plaintiff

v.

Health Care Institute, et al
Defendants

)
)
)
)
)
) 2007 CA 007517 M
) Judge Jennifer M. Anderson
) Next Event – Discovery
) Closed: 12/19/08
)
)
)

ORDER GRANTING IN PART PLAINTIFF’S MOTION TO COMPEL

Upon consideration of Plaintiff’s Motion to Compel, Defendant’s Opposition, Plaintiff’s Reply, and the arguments made at the September 26, 2008 hearing, it is this 14th day of October 2008, hereby

ORDERED that Plaintiff’s Motion to Compel is **GRANTED IN PART**; it is further

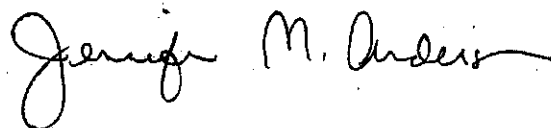
ORDERED that Plaintiff’s Motion to Compel is granted with respect to document requests numbers 9, (personnel files), 23 (similar complaints), and 32 (budgets and financial statements) subject to certain limitations. Defendant shall not be required to produce the personnel files for Board of Directors of Nexus or other personnel files for employees of Nexus, but shall produce personnel files of the Administrator, Director of Nurses and all staff who provided direct care to Mr. Woodard. The personnel files are hereby subject to a protective order and such documents shall not be disseminated outside the confines of this litigation, except that both parties may show such documents to their experts or agents, and may use such documents as exhibits in depositions or at trial. Defendants may also remove the following portions of the staff’s personnel files: tax information, payroll information, social security numbers, mental

health information, benefit enrollment forms, employee savings forms, and wage assignments in the case of untimely death. At the conclusion of the case the personnel files shall be destroyed by Plaintiff's counsel or returned to the Defendant.

As to Defendant's production of similar complaints of other residents, Defendant shall produce any such complaints, deficiencies or other documents that fall in the same general category of those care deficiencies areas outlined in Plaintiff's document request number 23, but limited to the areas of staffing, hygiene, hydration, nutrition, charting, pressure sore prevention and physician notification, for the period 12/1/04 through 7/31/06. While Defendant shall exercise due diligence in producing all ombudsman, patient, family, Department of Health and internal staff complaints or documents that relate to the individual topic areas, it shall not be required to review individual patient charts for such documents. Defendant may also redact the name of other patients (except Plaintiff) to protect their privacy.

As to Defendant's Budgets and financial statements, the production of these documents will be limited to years 2005 and 2006. If Defendants' budgets were subject to a fiscal year, Defendants shall produce only the budgets and financial statements covering the periods of December 2005 through June 2006.

Defendant shall produce such documents within 30 days of the signing of this Order, or sooner should they become available.



Judge Jennifer M. Anderson

cc:

Jeffrey J. Downey
The Law Office of Jeffrey J. Downey, P.C.
1225 I Street, N.W., Suite 600
Washington, D.C. 20005-5960
Counsel for Plaintiff

Catherine A. Hanrahan
Camille E. Shora
1341 G Street, N.W., Suite 500
Washington, DC 20005-3300
Counsel for Defendants

Exhibit No. 8

TWENTIETH JUDICIAL CIRCUIT
OF VIRGINIA



JEFFREY W. PARKER, JUDGE
40 CULPEPER STREET
WARRENTON, VIRGINIA 22186

STEPHEN E. SINCAVAGE, JUDGE
POST OFFICE BOX 470
LEESBURG, VIRGINIA 20178

Loudoun, Fauquier and
Rappahannock Counties

JEANETTE A. IRBY, JUDGE
POST OFFICE BOX 470
LEESBURG, VIRGINIA 20178

DOUGLAS L. FLEMING, JR., JUDGE
POST OFFICE BOX 470
LEESBURG, VIRGINIA 20178

W. SHORE ROBERTSON, JUDGE RETIRED
JAMES H. CHAMBLIN, JUDGE RETIRED
THOMAS D. HORNE, JUDGE RETIRED
BURKE F. MCCAILL, JUDGE RETIRED

April 3, 2018

Jeffrey J. Downey, Esquire
The Law Office of Jeffrey J. Downey, P.C.
8270 Greensboro Drive, Suite 810
McLean, Virginia 22102

Juliane C. Miller, Esquire
Hudgins Law Firm, P.C.
515 King Street, Suite 400
Alexandria, Virginia 22314

Re: Miriam Hirsch, et. al. v. CSP Nova, LLC, et. al.
Civil Case No. 108222

LETTER OPINION AND ORDER

Dear Counsel,

This case came before the Court on April 3, 2018 for argument on the Plaintiff's Motion to Compel ("Motion"). The Court heard argument and took the Motion under advisement. This Letter Opinion and Order ("Letter Opinion") follows.

Background

This is a negligence case brought by the Executor of Miriam Hirsch's Estate ("Plaintiff")¹ in which Miriam Hirsch ("Miriam") suffered a hip fracture when she fell on March 1, 2016, while

¹ Although this case was originally brought by Vicki Beth Hirsch, Miriam's daughter, as Miriam's "next friend," by order entered January 23, 2018, this Court permitted the substitution of the Estate for the individual as Plaintiff following Miriam's death during the pendency of this case.

she was a patient at Potomac Falls Health and Rehab Center (“Potomac Falls”), a licensed long-term care and rehabilitation skilled nursing facility owned and/or operated by CCSP Nova LLC (“CCSP”) and Commonwealth Care of Roanoke, Inc. (“CCR”) (collectively, “Defendants”).^{2,3} Plaintiff has filed an Amended Complaint asserting the following claims against Defendants:

- Count I: Negligence/Survivorship
- Count II: Punitive Damages

Plaintiff alleges in the Amended Complaint that Miriam was admitted to Potomac Falls on February 18, 2016, with dementia, confusion, unstable gait, and a history of falling from bed. Plaintiff further alleges that Miriam was known to the facility from her prior admissions and the staff of Potomac Falls knew she was a high fall risk requiring active supervision and extensive assistance with her daily living activities, including toileting. She had, in fact, fallen during a prior admission. Plaintiff alleges that Defendants and their employees owed Miriam a duty to provide reasonable care and to properly monitor, assess, treat, maintain, and rehabilitate her. Plaintiff also alleges that, as operators of a skilled nursing facility, Defendants had a duty to provide sufficient staffing, including nurses, nurse aides, and other staff, in sufficient numbers and with sufficient training to meet Miriam’s needs. Plaintiff alleges that Defendants violated the applicable standards of care by providing staffing that was insufficient in numbers and training to meet Miriam’s basic daily living needs and to keep her safe. Specifically, Plaintiff alleges that, prior to the fall, Miriam experienced multiple failings by Defendants’ staff to respond to her calls for help and that, on the evening in question, the staff had failed to respond to Miriam’s call bells for toileting, which ultimately resulted in Miriam attempting to toilet herself when she fell and broke her hip in the early morning of March 1, 2016. Plaintiff also alleges that Defendants and their agents/employees subjected Miriam to substandard care in violation of accepted standards by negligently failing to (a) undertake adequate fall assessments

² A former co-defendant, Inova Health Systems Services, was recently nonsuited from this case.

³ In this discovery dispute, Plaintiff admittedly focuses on the discovery requests issued to CCSP, “the licensed operational entity,” but asks the Court to also apply its rulings to CCR, “the management company” on whom Plaintiff served the identical discovery requests. Defendants respond that, given that CCSP and CCR are “distinct entities” with “custody and control of different information and documents” and “independent obligations to respond to the discovery requests,” Plaintiff’s request to have the Court’s rulings applied jointly to both Defendants should be rejected. Defendants fail, however, to specify which Defendant has custody and control of what information and documents or to otherwise distinguish between or describe the “independent obligations” of the individual Defendants. Conversely, Plaintiff alleges that Defendants jointly participated in the “operation, control, and/or management” of the Potomac Falls facility. Thus, unless and until Defendants specifically draw a meaningful distinction between Defendants and their discovery obligations, the Court may properly treat Defendants as mutually responsible for responding to Plaintiff’s discovery requests and apply all discovery rulings to them jointly.

of Miriam's condition and/or document the results of such assessments in her record; (b) provide adequate care planning, including care planning for fall prevention; (c) provide adequate assistance with basic daily living activities, including hygiene and related care; (d) timely respond to Miriam's request of assistance through her call lights, forcing her to void urine or feces upon herself; (e) provide adequate supervision of the staff, who would watch TV and use their phone while patient call lights went unanswered; and (f) provide Miriam with adequate assistance in consuming food and water, causing her to lose weight. Thus, Plaintiff alleges, Defendants breached their duty of care by failing to provide sufficient staffing to meet Miriam's basic daily living needs and prevent her fall. Plaintiff further alleges that, as a direct and proximate cause of Defendant's negligence and breaches in applicable standards of care, Miriam sustained personal injuries including a hip fracture, as well as pain and suffering, medical expenses to treat her injuries, humiliation, embarrassment, inconvenience, and a corresponding decline in her physical and mental condition. Plaintiff also alleges that Defendant's willful, wanton, and reckless conduct via their management staff, as well as their ratification of such conduct undertaken by their employees, warrant an award of punitive damages against Defendants. Plaintiff seeks to recover \$1,250,000 in compensatory damages and \$700,000 in punitive damages.⁴

With regards to the parties' instant discovery dispute, Plaintiff served its initial discovery requests, consisting of Plaintiff's First Interrogatories and Document Requests, on Defendants on May 8, 2017, seeking information on a variety of subjects, including staffing levels, staff training, facility protocols, and prior instances of similar problems. On August 7, 2017, CCSP (and, according to Defendants, CCR) provided objections and responses to Plaintiff's interrogatories and document requests. On August 9, 2017, Plaintiff sent Defendants a letter outlining various discovery deficiencies in "Defendants' discovery responses in this matter." On August 29, 2017, Defendants responded and provided some supplementation including emails exchanged between Plaintiff's daughter and Defendants' staff. The parties continued to engage in good faith efforts to resolve this matter, including (a) Plaintiff's proposed compromise for a limited production of personnel files and policies that had been reached in a somewhat similar case involving the same Defendant and defense counsel and (b) Defendants' offer to produce additional documents pursuant to the terms of a protective agreement. Additionally, Defendants continued to supplement their discovery responses, providing additional documents on October 25, 2017. Ultimately, however, Plaintiff rejected Defendants' protective-agreement proposal. Likewise, Defendants rejected Plaintiff's proposed compromise, claiming the earlier case was factually diverse from this case,⁵ and refused to provide much of the requested discovery,

⁴ By order entered September 1, 2017, this Court overruled Defendants' Demurrer to Count II (Punitive Damages) of Plaintiff's Complaint, finding that Plaintiff had "sufficiently pled allegations supporting a punitive damage claim."

⁵ Defendants report that they were unable to agree with the proposed compromise because the earlier case, Temes v. CSP Nova LLC, a wrongful death case, involved different facts, a different theory, and very different allegations. The Temes case, Defendants point out, involved a patient's residency in a nursing facility that lasted three years and allegations that poor care during those three years gave rise to a host of medical issues that led to the patient's death. In

including, as Plaintiff points out, “the event report for [Miriam’s] fall, staff training in-services, personnel records, electronic records, policies and procedures[,] and . . . information on staffing.

Accordingly, Plaintiff filed the instant Motion to Compel on February 7, 2018, seeking an order from this Court overruling the numerous objections lodged by Defendants in response to Plaintiff’s discovery requests and compelling Defendants to respond to those requests. Defendants filed an Opposition to Plaintiff’s Motion to Compel on March 27, 2018, asserting that Plaintiff “is not entitled to documents and information that have no relationship to the negligence alleged” and asking the Court to deny Plaintiff’s Motion to Compel.

By scheduling order entered February 22, 2018, this matter was placed on the Court’s April 3, 2018 docket at 9:00 a.m. for a one-hour hearing on Defendants’ Motion to Compel.

A four-day jury trial has been set in this case to commence on July 16, 2018.

Applicable Standards

Rule 4:8 deals with interrogatories and provides, in pertinent part, as follows:

The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories The party submitting the interrogatories may move for an order under Rule 4:12(a) with respect to any objection to or other failure to answer an interrogatory.

. . . . Interrogatories may relate to any matters *which can be inquired into under Rule 4:1(b)*

Va. Sup. Ct. R. 4:8(d) and (e) (emphasis added).

Rule 4:9 deals with requests for production of documents and provides, in pertinent part, as follows:

Any party may serve on any other party a request . . . to produce . . . any designated documents or electronically stored information . . . which constitute or contain matters *within the scope of Rule 4:1(b)*

this case, Defendants further state, Plaintiff asserts a survival, rather than death, claim; Miriam’s residency in the nursing facility lasted only three weeks before her fall on March 1, 2016; and the allegations are restricted to a discrete event, Miriam’s fall. Thus, Defendants conclude, “because this case has more narrowly focused facts, the scope of discovery should be . . . narrow[er] than that in the Temes case.”

....
.... The party upon whom the request is served shall serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the complaint upon that defendant. . . . The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Va. Sup. Ct. R. 4:9(a) and (b)(ii) (emphasis added).

Rule 4:1(b)(1) provides, in relevant part, as follows:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Subject to the provisions of Rule 4:8 (g), the frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(Emphasis added.)

Rule 4:12(a) provides, in pertinent part, as follows:

If . . . a party fails to answer an interrogatory submitted under Rule 4:8, or if a party, in response to a request for inspection submitted under Rule 4:9, fails to . . . permit inspection as requested, the discovering party may move for an order compelling an answer . . . or an order compelling inspection in accordance with the request. . . . If the motion is granted, the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the

motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court shall, after opportunity for hearing, require the moving party . . . to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

The grant or denial of discovery requests is within the discretion of the circuit court, and is reversible only where the court's action is "improvident and affect[s] substantial rights." Nizan v. Wells Fargo Bank Minn. Nat'l Ass'n, 274 Va. 481, 500 (2007); Rakes v. Fulcher, 210 Va. 542, 546 (1970).

Analysis

As indicated above, Rule 4:12(a) authorizes a party to seek order compelling discovery if a party fails to answer interrogatories or properly respond to document requests. Under Rule 4:12(a)(3), an evasive or incomplete answer is a failure to answer. A prevailing party on a motion to compel is entitled to proper responses and an award of its attorneys' fees under Rule 4:12(a)(4).

Here, as mentioned above, Plaintiff seeks an order from this Court overruling the numerous objections lodged by Defendants in response to Plaintiff's discovery requests and compelling Defendants to respond to those requests. The documents and information requested are relevant, Plaintiff argues, because the fall by Miriam that is at the core of this case implicates administrative issues involving inadequate staffing and staff training as well as issues related to patient neglect in a skilled care nursing setting.

Defendants, on the other hand, assert that Plaintiff's Motion to Compel should be denied because the documents and information requested by Plaintiff "have no relationship to the negligence alleged" in connection with the isolated incident of Miriam's fall. "The discovery rules," Defendants argue, "should not allow vague allegations relating to matters insufficient to demonstrate a breach in the standard of care to dictate the boundaries of discovery." Thus, Defendants further argue, Plaintiff "should not be allowed to base discovery requests on allegations that implicate theories which would never demonstrate the elements of negligence." Defendants' argument continues as follows:

Much of what Plaintiff seeks to compel is neither relevant to the negligence survival claim nor reasonably calculated to lead to the discovery of admissible evidence. To the extent Plaintiff responds

by suggesting the matters are raised in the Complaint, it is undisputed that the core allegation of negligence is founded on the March 1 fall and therefore to be discoverable, the requested information must either be relevant to establishing negligence respecting the fall or reasonably calculated to lead to the discovery of evidence admissible to prove negligence.

While I generally agree with Defendants' assertion that, to be properly discoverable, the requested information or document "must either be relevant to establishing negligence respecting the fall or reasonably calculated to lead to the discovery of evidence admissible to prove negligence," I do not agree with Defendants' assertion that the documents and information sought in Plaintiff's discovery requests "is neither relevant to the negligence survival claim nor reasonably calculated to lead to the discovery of admissible evidence." In my opinion, in suggesting that Plaintiff's discovery requests transcend the proper scope of discovery, Defendants rely on a much too narrow reading of the applicable discovery principles. Indeed, as indicated above, Virginia law contemplates a rather liberal application of discovery rules in civil cases, allowing the discovery of any information that "is relevant to the subject matter involved in the pending action" or that is "reasonably calculated to lead to the discovery of admissible evidence." Va. Sup. Ct. R. 4:1(b)(1). In Virginia, "[a]ll relevant evidence is admissible except as otherwise" excludable under the law. Va. R. Evid. 2:402(a). It is well established in Virginia that "[e]very fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue is relevant." Virginia Elec. & Power Co. v. Dungee, 258 Va. 235, 260 (1999). "Evidence is relevant if it has any logical tendency, however slight, to establish a fact at issue in the case." Ragland v. Commonwealth, 16 Va. App. 913, 918 (1993) ; see also Rule 2:401 ("Relevant evidence' means evidence having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence."). Here, the records and information requested are vital to determine the care Miriam received during her stay at Potomac Falls and to determine the causal effect, if any, that such care had on Miriam's fall and resultant injuries. Thus, in my view, the documents and information sought in Plaintiff's discovery requests are directly relevant to Plaintiff's theories of liability, and Defendants' attempt to narrow the scope of discovery is not well taken.

In discussing the propriety of Plaintiff's discovery requests, the parties conveniently break those requests down into several overall categories: (1) Medical Information Relating to Miriam, (2) Training Materials and Policies and Procedures, (3) Personnel Files of the Staff Members who Cared for Miriam, (4) Information about Prior Complaints and Staffing Problems, (5) Financial and Operational Documents, and (6) Interrogatories. The Court adopts the same categories in its analysis below.

1. Medical Information Relating to Miriam

Plaintiff seeks to compel Defendants' production of their complete medical records relating to Miriam's stay in Potomac Falls, including all records, electronic data reports, notes, videos, photos, orders, tests, as well as recorded statements, commentaries, reports, notes, interviews or other communications relating to either Miriam, any friend, or Hirsch family member. Plaintiff

admits that Defendants did produce the written chart, but asserts that Defendants “failed to produce other documents regarding [Miriam’s] care and the fall at issue,” including incident or event reports and other investigative reports, and electronic medical records.

Defendants assert in response that, notwithstanding their previously noted objection that some of the information sought by Plaintiff is “neither relevant nor reasonably calculated to lead to the discovery of admissible evidence,” they have produced all medical information relating to Miriam. “There is,” Defendants declare, “no medical information regarding Miriam Hirsch that has not been produced.” They add that “[t]he only other document which may fall within the broad description of requested information [that they have not produced] is the event report,” which they would have produced had Plaintiff agreed to a protective order.” Nevertheless, Defendants further add, even though the “document itself is not discoverable as it would not prove or disprove whether Potomac Falls breached the standard of care with respect to Miriam Hirsch on March 1, 2016,” the “factual description of what occurred as contained in the event report has been provided to Plaintiff.”

Consequently, the Court will first need to determine what, if any, requested medical records regarding Miriam’s stay in Defendant’s facility have not been produced by Defendants. Plaintiff refers specifically only to incident or event reports and other investigative reports, and electronic medical records.

With respect to the referenced event report,⁶ Defendants’ claim that that document “is not discoverable as it would not prove or disprove whether [Defendants] breached the standard of care with respect to Miriam” is unsound. As noted above, information need only be “relevant to the subject matter involved in the pending action” or “reasonably calculated to lead to the discovery of admissible evidence” to be properly discoverable. Va. Sup. Ct. R. 4:1(b)(1). Given that “[e]vidence is relevant if it has any logical tendency, however slight, to establish a fact at issue in the case,” this standard is a far easier criterion to satisfy than Defendants’ suggestion that it need be factually dispositive to be discoverable. Ragland, 16 Va. App. at 918. Thus, the Court will need to decide if the information contained in the referenced event report and any other investigative reports is relevant to Plaintiff’s claims.

Moreover, to the extent Defendants claim the referenced event report is privileged, they would need to provide a privilege log. Va. Sup Ct. R. 4:1(b)(6)(i) (“When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”). To date, no such privilege log has been provided by Defendants. Thus, the privilege objection is overruled.⁷

⁶ As best the Court can tell, the Court has no access to this referenced document at this point.

⁷ As Plaintiff points out, Defendants have not asserted a quality assurance privilege under Code § 8.01-581.16 or Code § 8.01-581.17. Thus, no analysis under those statutes is necessary.

Additionally, with regards to Defendants' apparent contention that a protective order would be needed before the referenced event report could be produced, it is first worth noting that no such request for a protective order is presently before the Court. If such a request were made, the Court would need to determine whether good cause for such an order has been shown. Rule 4:1(c) provides in pertinent part that,

[u]pon motion by a party . . . and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that . . . confidential . . . information not be disclosed or be disclosed only in a designated way.

To date, Defendants have offered no reason for maintaining the confidentiality of the information contained in the referenced event report. Plaintiff implicitly asserts that no such need exists.

Furthermore, with respect to the requested electronic medical records, Defendants objects to the production of those records on the ground that the request is "intrusive" and seeks information that is "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." As discussed above, this objection is without merit. All of Miriam's medical records pertaining to her stay at Potomac Falls are relevant to Plaintiff's negligence claim arising from Miriam's fall. Moreover, the requested electronic data regarding Miriam's care, including the audit trails and metadata associated therewith, constitute a part of her medical records to which Plaintiff is entitled pursuant to Code § 8.01-413.⁸ This electronic data is a requisite complement to Miriam's physical medical records and represent the only means by which Plaintiff can verify the integrity of those records. In addition, Defendants have failed to explain precisely how the production of such electronic data is "intrusive" or would otherwise constitute a burden.

For the above reasons Defendants are compelled to produce the complete medical records in their possession relating to Miriam's stay in their facility to the extent they have not yet done so.

2. Training Materials and Policies and Procedures

⁸ Code § 8.01-413 provides, in pertinent part, as follows:

B. Copies of a health care provider's records or papers shall be furnished within 30 days of receipt of such request to the patient, his attorney, his executor or administrator, or an authorized insurer upon such patient's, attorney's, executor's, administrator's, or authorized insurer's written request

B1. A health care provider shall produce the records or papers in either paper, hard copy, or electronic format, as requested by the requester.

Plaintiff seeks to compel Defendants' production of information regarding on the job training provided to the Potomac Falls' staff and the internal policies they were expected to follow in providing care to residents. Specifically, Plaintiff seeks production of training materials provided to nurse aides and nurses who cared for Miriam on the day she fell regarding fall prevention, use of bed alarms, hygiene, resident feeding, weight loss, admission and discharge, resident toileting, charting, staffing, and responsible party and physician notification, as well as guidelines, rules, protocols, and/or policies involving staff by-laws, licensing authority standards, resident assessment, fall prevention, care planning, nutrition, weight loss, eating assistance, hygiene, charting and documentation, and use of bed rails, restraints, bedside commodes, bed alarms, and floor mats, in effect during Plaintiff's stay at Potomac Falls.

Defendants objected to these requests on the ground that "[p]olicies and procedures are not discoverable" or the ground that the requests are "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." Defendants further argue that "[p]olicies, procedures and training materials related to licensing information, nutrition, weight loss and eating . . . have nothing to do with the alleged fall."

While the Court may agree with Defendants respecting Plaintiff's request for licensing information, Defendants miss the mark in terms of the relationship between nutrition, weight loss, and eating and Miriam's ability to get out of bed for the purpose of toileting herself when no assistance in that regard is forthcoming. Clearly, the less she eats and the lighter she becomes during her stay at Potomac Falls, the less strength she will have to support herself when forced to get out of bed by herself to use the bathroom. Likewise, the issues of fall prevention, use of bed alarms, hygiene, admission and discharge, resident toileting, charting, staffing, responsible party and physician notification, resident assessment, care planning, and the use of bed rails, restraints, bedside commodes, bed alarms, and floor mats are all potentially relevant to the question of Defendants' liability for any damages suffered by Miriam as a result of her fall at Potomac Falls. At the very least, Plaintiff's discovery requests regarding those issues may reasonably lead to the discovery of admissible evidence. Although Defendants' alleged negligence may have resulted in a "single discrete event"—i.e., Miriam's alleged fall—the scope of Defendants' negligence is clearly not limited to the precise moment of the fall itself, notwithstanding Defendant's apparent claim to the contrary. It potentially extends to the entire period of Miriam's stay at Potomac Falls and to all aspects of the care she received, or did not receive, during that stay. Thus, while, as Plaintiff concedes, policies and procedures that constitute private rules may not be admissible for purposes of determining the standard of care in a negligence case, see Pullen & McCoy v. Nickens, 226 Va. 342, 350-51 (1983), they are "at least . . . subject to discovery, if not admissible," Estate of Curtis v. Fairfax Hosp. Sys., 21 Va. Cir. 275, 278 (1990).

Indeed, as the Court cogently explained in Curtis:

[T]he materials sought may not arguably constitute private rules at all, as the term is used in Pullen The materials sought may properly be seen as reflecting widely-adopted standards established or required by third-party entities Thus, to the extent the hospital's policies and protocols are reflective of industry custom

and even state-wide practices, they may be distinguished from the purely private rules held inadmissible by the Supreme Court in Pullen.

However, the defendant's arguments concerning the admissibility of this material is an issue which need not be definitely resolved to permit discovery to proceed since evidentiary admissibility is not at issue in a motion to compel discovery. Rather, Virginia Supreme Court Rule 4:1(b)(1) provides in pertinent part that the "parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action" and "it is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The trial court is given broad discretion to determine whether the material sought may lead to discovery of admissible information.

Logically, the hospital's rules, regulations, and protocols can lead to discovery of admissible evidence on a myriad of issues. As claimant points out, the information will likely permit a more thorough and effective examination of the defendants and their expert witnesses about the medical care provided to the plaintiff, particularly in light of the applicable standard of care. In addition, the policies and procedures also can aid in the discovery of other reports or records generated by parties to the litigation or by other witnesses which may be admissible. The documents also can assist in understanding what the defendants knew or should have known about claimant's condition and when they knew it.

21 Va. Cir. at 279-80. The same rationale applies here. Hence, the requested training materials and policies and procedures are relevant or reasonably calculated to lead to the discovery of admissible evidence and are thus discoverable in this case.

For the above reasons, Defendants are compelled to produce the requested training materials and policies and procedures to the extent they have not yet done so.

3. Personnel Files of the Staff Members Who Cared for Miriam

Plaintiff seeks to compel Defendants' production of the personnel files for the Potomac Falls' staff members who were responsible for caring for Miriam and for overseeing her care on the day of her fall and those that were involved in her care planning related to fall prevention. Such files, Plaintiff asserts, "contain a wealth of discoverable evidence, including, *inter alia*, position descriptions, employee evaluations, disciplinary information, orientation and complete in-service records for training." Plaintiff further asserts that such files may also contain complaints by staff

that “the nursing home is understaffed” or that otherwise corroborate the written complaints submitted to Potomac Falls’ staff by Vicki Beth Hirsch about Miriam’s care.

In a letter dated October 25, 2017, Defendants identified the names of those individuals who participated in caring for Miriam. However, Defendants object to producing the requested personnel files on the ground that they are “neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.”⁹

Defendants’ objection is without merit. Indeed, Defendants again appear to conflate discoverability with admissibility and focus inappropriately solely on the isolated incident of Miriam’s fall. As noted above, one of the central issues in this case is Plaintiff’s allegation that Defendants “provided staffing which was insufficient in . . . training to meet the needs of their nursing home residents, including the needs of [Miriam].” Plaintiffs are thus entitled to know what training was received by the staff members who were responsible for monitoring Miriam’s condition, providing care to meet her basic daily needs, and planning her care with regards to fall prevention. Such information would no doubt be in the requested files. That information, as well as the other information possibly in those files cited above by Plaintiff, is clearly relevant with respect to Plaintiff’s negligence and punitive damages claims.

For the above reasons, Defendants are compelled to produce the requested personnel files to the extent they have not yet done so. Counsel are encouraged to submit an appropriate protective order regarding the personnel files or, alternatively, forthwith schedule the matter for argument.

4. Information about Prior Complaints and Staffing Problems

Plaintiff seeks to compel Defendants’ production of similar complaint information regarding, *inter alia*, falls, resident hygiene, resident admission or discharge, and inadequate staffing, and fall data that Defendants kept on patients from 2014 through March 2016, with patient names redacted. Plaintiff also sought the production of information on census and patient acuity, which is relevant to determine what Defendants’ staffing levels should have been during the relevant time period.

Defendants object to producing the requested information regarding prior complaints and staffing on the ground that such information are “neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” “The standard of care,” Defendants assert, “is situation specific and dependent of factors present at the time.” Thus, Defendants further assert, “even if one of the caregivers assigned to [Miriam] on the date of the fall had been reprimanded previously for failing to properly care for a resident this reprimand would not be admissible to show she was negligence in her dealings with [Miriam] on March 1, 2016.” Likewise,

⁹ Defendants previously also objected to the requested personnel files on the ground that the requests seek “private and confidential information.” Defendants appear to have abandoned that ground as they did not raise it in their Opposition. Nevertheless, Plaintiff “has no objection to entering into a protective order to address Defendants’ confidentiality and privacy concerns.”

Defendants also assert, “[t]he number of nurses or certified nursing assistants on duty does not show the nature and quality of care given to [Miriam].”

For the same reasons as stated above, Defendants’ objections, which again are focused solely on the isolated incident of Miriam’s fall, are, in my view, without merit. As Plaintiff points out, evidence of prior complaints is relevant to show notice or knowledge of a dangerous condition or defect. See Ford Motor Co. v. Phelps, 239 Va. 272, 276 (1990) (holding that evidence of similar prior complaints “will be received to establish that defendant had notice and actual knowledge of a defective condition”).

Indeed, in Crouse v. Med. Facilities of Am. XLVIII, 86 Va. Cir. 168, 179-80 (2010), the trial court held that evidence “that bed alarms were not being properly implemented at other facilities” in Virginia provided notice of that condition to the defendants. 86 Va. Cir. at 179. “Far from being ‘irrelevant,’” the court observed, the evidence was “probative of whether Defendants had notice and actual knowledge of similar incidents of inadequate bed alarm use at other facilities.” Id. Thus, the court concluded,

[t]he jury could properly infer from this testimony that Defendants had notice of inadequate bed alarm use in MFA facilities prior to [the plaintiff’s] fall. Further, given that bed alarms were an “important part of safety and fall prevention,” notice that bed alarms were not being used also put Defendants on notice that the defect could lead to falls like [the plaintiff’s].

Id. at 179-80.

It is clear, therefore, that prior complaints regarding similar incidents are relevant, at least for purposes of discovery, to establish that a facility had notice of a defective or dangerous condition prior to the subject injury.¹⁰

¹⁰ Relying on Stottlemeyer v. Ghramm, 268 Va. 7, 12 (2004) (holding that “the circuit court did not err by denying plaintiff’s attempts to cross-examine Dr. Ghramm about his alleged prior acts of misconduct and negligence relating to his former patients” because that “collateral evidence would have distracted the jurors from the issues of Dr. Ghramm’s alleged negligence, and such evidence would have excited prejudice and misled the jurors”), Defendants argue that “[i]nformation about prior bad acts is not admissible to show that the same conduct occurred on a particular date.” In relying on the Virginia Supreme Court’s holding in Stottlemeyer to support their argument in the context of the instant discovery dispute, Defendants are again focusing inappropriately on the admissibility of evidence at trial rather than on its relevance for purposes of discovery. Here, the admissibility of the evidence sought by Plaintiff is not presently at issue. Instead, as noted above, the pertinent question before the Court in the instant context is whether the information sought by Plaintiff is either “relevant to the discovery of admissible evidence.” Va. Supt Ct. R. 4:1(b)(1). Indeed, “[i]t is not ground for objection that the information sought will be inadmissible at the trial.” Id. Thus, the question of the admissibility of the evidence sought by

Evidence of prior complaints is also relevant to show that conduct previously engaged in may be repeated. WTAR Radio-TV Corp. v. City Council of Virginia Beach, 216 Va. 892, 895 (1976) (“A previous course of conduct may raise an inference that such conduct will be repeated.”).

Likewise, despite Defendants’ claims to the contrary, information regarding staffing at Potomac Falls in other parts of the facility on the day in question and on other days at the facility is relevant to the issue of whether Defendants had adequate staffing to meet Miriam’s basic daily living needs at the time of the subject fall.

Hence, the information sought by Plaintiff is subject to discovery, regardless of whether it is ultimately admissible at trial. Accordingly, Defendants are compelled to produce the requested information about prior complaints and staffing at Potomac Falls to the extent they have not yet done so.

5. Financial and Operational Documents

Plaintiff seeks to compel Defendants’ production of Defendants’ balance reports, 10ks, annual operating expenses, financial statements, and tax returns.¹¹ Plaintiff asserts that, given that Defendants’ demurrer to Plaintiff’s punitive damages claim has been overruled, such information is appropriate to explore Defendants’ net worth and each Defendant’s role in Potomac Falls, a joint venture, and the true nature of their business relationship.

Defendants object to producing the requested financial and operational documents on the ground that such information “would not prove facts sufficient to support a punitive damage claim” and “would only become relevant if an award of punitive damages was deemed appropriate after all of the evidence was received.” Thus, Defendants conclude, “the motion to compel discovery of the financial and related information should be denied at least until the ruling on Defendants’ anticipated motion for summary judgment and more likely until after the court rules on a motion to strike plaintiff’s evidence at trial.”

It appears that Defendants, in essence, are seeking, for discovery purposes, to bifurcate the issues of liability and the issue of punitive damages. Indeed, while Defendants appear to acknowledge that the requested information is relevant to a determination of punitive damages, see Norfolk & W.R. Co. v. A.C. Allen & Sons, 122 Va. 603, 615 (1918) (holding that in a case in which punitive damages are recoverable, the plaintiff may present evidence of the defendant’s wealth), they assert that the discovery of that information should only be conducted once it is found at trial that punitive damages are allowable. Such a procedure, however, is neither procedurally practicable nor appropriate under the alleged circumstances of this case. First, Defendants’ suggested bifurcation of discovery would require that discovery be re-opened after the jury has

Plaintiff is not now before the Court, notwithstanding Defendants’ repeated attempts to make it appear so.

¹¹ Plaintiff “has no objection to including these financial records within the coverage of a protective order.”

found, based on the evidence presented at trial, that punitive damages are appropriate. Such a delay would likely require the need for a second, different jury to hear the evidence on damages, if the parties were unwilling to allow the Court to determine punitive damages. Needless to say, any such delay in order to reopen discovery and then rehear much of the case would be burdensome and inefficient. Defendants provide no actual reason, much less a compelling one, for putting the parties, Court, and any additional jury through such an ordeal. Moreover, there is no motion to bifurcate currently before the Court. Until such a motion is made and heard, Defendants' argument is moot. Second, as Plaintiff suggests, the information sought by Plaintiff, who has alleged that Defendants "were engaged in a joint venture," is necessary to determine each Defendant's role in the operation of Potomac Falls. Hence, such information would clearly be relevant to the issue of each Defendant's specific percentage of liability.

Accordingly, for the above reasons Defendants are compelled to produce the requested financial and operational documents to the extent they have not yet done so. Counsel are encouraged to submit an appropriate protective order covering the financial and operational documents, or forthwith schedule the matter for argument.

6. Interrogatories

Plaintiff assert that Defendants' responses to certain Interrogatories are deficient as follows:

- Interrogatory No. 3: Defendants fail to provide contact information for staff listed in their response to said interrogatory. Defendants object that the request is overbroad and irrelevant.
- Interrogatory No. 6: Defendants fail to provide all the information they know about the fall at issue, including what Miriam told them about why the fall occurred. Defendants object that the request is overbroad and irrelevant.
- Interrogatory No. 8: Defendants fail to confirm the requests that Vicki Beth Hirsch made on Miriam's behalf, including that a bed alarm be used for her mother. Defendants object that the request is vague, overbroad, and irrelevant.
- Interrogatory No. 11: Defendants fail to state what guidelines or training on fall prevention was provided to Miriam's direct care staff. Defendants object that policies and procedures are not discoverable and that the request is irrelevant.
- Interrogatory No. 16: Defendants fail to state what additional information is kept separate in their electronic charting. Defendants object that the request is vague, overbroad, and irrelevant.
- Interrogatory No. 18: Defendants fail to state whether there were any fall prevention interventions that were provided to Miriam that were not included in the chart. Defendant objects that the request is overbroad and irrelevant.

- Interrogatories No. 19 and 20: Defendants fail to provide information regarding their staffing levels at Potomac Falls between February 18, 2016, and March 1, 2016. Defendants object that the requests are irrelevant.

Defendants now declare in response to Plaintiff's Motion to Compel only that they have answered the referenced Interrogatories. They add, however, that the "additional staffing information" requested in Plaintiff's interrogatories "is not discoverable" because that "information will not prove an element of negligence related to [Miriam's] fall nor will it lead to the discovery of admissible evidence."

For the same reasons as stated above, Defendants' objections, which again are chiefly centered on the isolated incident of Miriam's fall, are, in my view, without merit. As noted above, notwithstanding Defendants' assertion to the contrary, information regarding staffing at Potomac Falls is relevant to the issue of whether Defendants had adequate staffing to meet Miriam's basic daily living needs at the time of the subject fall.¹²

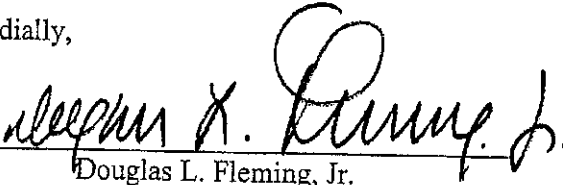
Accordingly, Defendants' objections are overruled and Defendants are compelled to provide full and complete responses to the aforementioned Interrogatories, to the extent they have not yet done so.

For the reasons set forth in this Letter Opinion, the Plaintiff's Motion to Compel is granted. On all matters to which the Court compelled responses, the Defendants shall respond within twenty-one (21) days from the date of this Letter Opinion.

IT IS SO ORDERED.

Counsel's objections are preserved.

Cordially,



Douglas L. Fleming, Jr.
Circuit Court Judge

Signatures dispensed with pursuant to Rule 1:13

¹² It is also worth noting that, with respect to their claims that Plaintiff's Interrogatories are "overbroad," Defendants fail to show that Plaintiff's discovery requests are either "unreasonably cumulative or duplicative" or "unduly burdensome or expensive." Va. Sup. Ct. R. 4:1(b)(1).