IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

KEVIN O. BARKMAN	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. C-21-CY-18-643**
	)	
FAHRNEY-KEEDY MEMORIAL HOME, INC	)	
	)	
	)	
	)	
Defendant.	)	
	)	

MOTION TO COMPEL
WITH SUPPORTING MEMORANDUM

COMES NOW Plaintiff, by counsel, and files this, his Motion to Compel and in support thereof, states as follows:

I. Background

1.This is a negligence case in which Plaintiff's decedent, suffered from serious neglect at Defendant's skilled nursing facility, Fahrney-Keedy Memorial Home, Inc. ("Fahrney-Keedy"), resulting in severe dehydration and several falls that led his death on May 14, 2016.

2.Plaintiff issued discovery with his complaint, sending courtesy copies to the defense on or about April 27th, 2018.[1] Plaintiff granted Defendant an extension to answer the complaint and discovery.

[1] Plaintiff issued initial, identical discovery before the Health Care Alternative Dispute Resolution Office and then reissued that same discovery on September 10, 2018 in this court.

3. On September 10th, 2018, Defendant provided initial responses to discovery. Their Document Requests (Exh. No. 1) and Interrogatory Answers (Exh. No. 2) consisted largely of objections, although Defendant did produce the chart, several incident reports and some emails exchanged between Defendant's staff. (FK POD 00001 – 845). Defendant asserted numerous privilege objections but did not identify specific documents being withheld.

4. On September 13, 2018, Plaintiff outlined various discovery deficiencies with Defendant's responses. (Exh. No. 3). No supplementation was forthcoming, although Defendant outlined its position on discovery. (Exh. No. 4). On February 14, 2019, Plaintiff wrote to Defendant seeking a compromise on the personnel files and requesting that Defendant produce selected facility protocols. (Exh. No. 3). On February 19, 2019, Plaintiff sent defense counsel a draft of this Motion for review. Defense counsel requested additional time and Plaintiff agreed to wait until the end of February to file this motion. To date, no supplementation has been provided.

5. On December 6, 2019, Plaintiff issued supplemental discovery to obtain additional information regarding protocols and instructions given on wheelchairs and restraints. (Exh. No. 5). Mr. Barkman's last fall was from his wheelchair and Defendant has argued that its staff could not lock the wheelchair because it would constitute an improper restraint. Defendant neither timely objected to, nor answered this discovery.

6. The Court recently set a trial date of December 16, 2019 and entered a complex ligation pretrial order. Plaintiff requires this discovery to undertake proper depositions and complete discovery.

7. After engaging in multiple, good faith efforts to resolve this matter, the Plaintiff has been unable to resolve various discovery disputes as outlined herein.

8. Plaintiff seeks an order from this Court overruling numerous objections lodged in response to Plaintiff's discovery requests, as set forth below.

A.

Summary of Argument

In Maryland discovery rules are broad, comprehensive and subject to liberal construction.[2] *Androutsos v. Fairfax Hospital*, 323 Md. 634, 594 A.2d 574 (1991). Such rules anticipate the disclosure of all relevant facts surrounding the litigation. *Kelch v. Mass Transit Admin*, 287 Md. 223, 229, 411 A.2d 449, 453 (1980). Where a party requests the discovery of a document held by the other side, the party withholding the requested document is still required to state whether it has the item in its possession. *Id.* 411 at 449.

Defendant's conduct cannot be evaluated in a vacuum. Equally important, discovery requires consideration of information that goes beyond the written chart to include incident reports, staffing and electronic charting information.[3] Unlike a discrete incident malpractice case, Defendant's conduct, in neglecting Mr. Barkman's ongoing needs for hydration and supervision, implicated multiple shifts over an 8-month period. All of Plaintiff's multiple falls were unwitnessed and Plaintiff has alleged that Defendant's staff was inadequate in both numbers and training to meet his needs.[4] Plaintiff has also alleged that Defendant failed to record material information in his record, which is further supported through the testimony of Mr. Barkman's sister, a registered nurse, who was a vocal advocate during his stay at Fahrney-Keedy.[5]

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[2] Md. Rule 2-402(a) provides that a party may obtain discovery of any matter not privileged, including "the identity and location of persons having knowledge of any discovery matter, if the matter sought is relevant to the subject matter of the action." This very broad provision is designed to avoid confusion at trial. *Id*. 411 A.2d 449.

[3] Despite being a high fall risk requiring vigilant supervision, all of Plaintiff's falls were unwitnessed. Defendant's description of how the falls occurred in the nursing record lacks important details, arguably to avoid incriminating themselves. For example, Mr. Barkman explained to his sister that his first fall (October 4, 2014) occurred because the staff failed to respond to his call bell for assistance to the bathroom. Defendant did not chart that incriminating information in the record.

[4] Complaint, ¶ 17 h.

[5] Mrs. Barkman-Crowther explains that even though Kevin had a history of a recent fall upon admission, the staff initially put no fall interventions in place. On his second fall, the staff was purportedly responding to an alarm when he was found on the floor. The nurses re-wrote the original note to blame Mrs. Barkman-Crowther for moving a motion sensor alarm. On his final fall the staff told Mrs. Barkman-Crowthers that Kevin fell because he had a heart attack. The

The party asserting privilege has the obligation to prove it.[6] A mere assertion that the matter is confidential or privileged will not suffice and the privilege must be construed narrowly.[7] Plaintiff issued discovery to explore staffing levels, staff training, facility protocols and prior instances of similar neglect. Here, administrative issues involving inadequate staffing and staff training are intermingled with issues related to patient neglect in a skilled care nursing setting. Courts considering these issues in Maryland, Virginia and the District of Columbia have ordered the production of these documents. Defendant's objections to Plaintiff's document requests should be overruled.

B. **Defendant's Objections to Document Requests Should be Overruled**

1. **Incident Reports, Electronic Records & Witness Statements**

Defendant objected to **Document Request No. 10**, seeking all electronic data stored by Defendant that references the Plaintiff, on grounds that such request was overly broad and sought a legal conclusion as to what constitutes "electronic data." (Exh. 1).[8] Pursuant to **Document Request No. 11**, Plaintiff also sought production of all incident reports, investigative reports or witness statements relating to Mr. Barkman's falls on October 4, 2015, October 12, 2015, and May 9, 2016. Defendant objected on the grounds of attorney client privilege and that such reports were prepared in anticipation of litigation. *Id*.

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medical evidence suggests the exact opposite – that his heart attack, based on Troponin levels, occurred the day after his hospital admission.

[6] *See E.I. Du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 415, 718 A.2d 1129, 1138 (1998) ("[t]he party seeking the protection of the privilege bears the burden of establishing its existence).

[7] *See Pierce County, Wash. v. Guillen*, 537 U.S. 129 (2003) (stating that, "[w]e have often recognized that statutes establishing evidentiary privileges must be construed narrowly because privileges impede the search for the truth."); *Baldrige v. Shapiro*, 455 U.S. 345 (1982) (stating, "[a] statute granting a privilege is to be strictly construed so as `to avoid a construction that would suppress otherwise competent evidence.'" quoting *St. Regis Paper Co.* v. *U.S.,* 368 U. S. 208, 218 (1961).

[8] In refusing to produce electronic data, Defendant explained that such information would likely be proprietary, burdensome and irrelevant. (Exh. No. 4).

Facts regarding patient care, or lack of care, are not privileged. While Defendant did produce what they claimed were incident reports, their last report addressing the May 9, 2016 fall is a different form, that was generated from a computer print-out. Also not produced were any reports that were required to be filed with their licensing agency or any witness statements. Since Defendant produced no privilege log, its objections should be overruled completely so Plaintiff can determine what responsive documents actually exist.

Defendant should also be compelled to produce any electronic records or data regarding Mr. Barkman, including an audit trail. Electronic records are often a part of a patient's medical chart, especially in a SNF receiving federal funding.[9] Courts have noted that such electronic information is available and admissible in a variety of settings, even absent expert witness foundation. *Johnson v. State,* 457 Md. 513, 179 A.2d 984 (Md. App. 2018)(Explaining that Court's regularly admit electronic information through the business records exception, including GPS information, employee card access, hotel card information and car toll transponder data).

Since computer data and electronic records can be transferred to a disc electronically, there is little burden in Defendant producing such information. However, as the request is limited to electronic information about the Plaintiff, this argument is meritless and unsupported by any authority. Defendant has made no showing that production of their electronic data would be overly burdensome.

Courts considering the production of electronic data for nursing homes have ordered such information produced. *Hirsch v. CSP Nova*, Law No. 108222 (Va. Cir. Ct. 2018)(Holding that

[9] SNFs like Defendant, who receive federal funding, must comply with the HITECH Act, 42 U.S.C.A. 17935(e)(1) and its implementing regulations, 45 CFR § 164.524(c)(4)(i), which also limit the charges the facility can issue to a reasonable commercial duplication or scanning rate.

requested electronic information, including audit trails and meta data, constitute part of the discoverable medical record. The electronic data "represents the only means by which Plaintiff can verify the integrity of the records")(Exh. No. 8, p. 9). As Defendant made use of electronic charting, they will have underlying data that shows who made the entry, when it was charted or performed, and if there was any alteration. Beyond leading to discovery of admissible evidence, there are also significant documentation lapses that necessitate further investigation and/or corroboration.[10]

2. **Training Materials and Limited Personnel Staff Personnel Records.**

In support of Plaintiff's Complaint allegations regarding inadequate staffing and deficient training, Plaintiff is seeking limited personnel and training information for direct care staff, including training records and staff policies and procedures relative to fall prevention and other areas of care, including resident monitoring, alarm usage, physician notification, resident assessment, hydration, care planning, charting and documentation. (Exh. 1, Req. Nos. 17 – 24, 55). Plaintiff also sought disciplinary information for staff who cared for Plaintiff, limited the same care issues involving Mr. Barkman. (*Id*, Req. No. 51). Defendant objected to the production of personnel and training as seeking privileged and proprietary information but did produce an index of policies.[11]

Prior to filing this Motion, Plaintiff had proposed a compromise the production of approximately twenty files, limited to direct care providers and a few management personnel who interacted with decedent's family. (Exh. 3, Letter of Feb. 14, 2019). Plaintiff has no objection to

[10] When Mr. Barkman sustained his last fall on May 9, 2016, treatment records for assistance with transfers, fall mats incontinence care and personal body alarm – all fall prevention interventions – are blank.

[11] The Defendant has yet to produce the actual policies, despite Plaintiff requesting specific policies prior to filing this motion. However, the policies are useless without being able to establish that the staff was actually educated on them prior to Mr. Barkman's falls. Equally important, these policies are just part of the education provided to staff on issues related to Mr. Barkman's care.

producing such files under a protective order and limiting Defendant's production to position descriptions, in-service and other training, evaluations, disciplinary write-ups and any employee concern/complaint forms.

In *Ratti v Charles County Nursing and Rehabilitation* Case No C08-1511 (Charles County Circuit Ct. 2009)(Exh. No. 6) the Court ordered the nursing home to produce "personnel files of the nurse(s) and nurse aid(s) who cared for Ms. Mae Baldwin on the night of August 6, 2007" and prior shifts, under a protective order. Surrounding jurisdictions have also compelling training materials and personnel records in comparable nursing home negligence cases. *Margaret Smallwood v. Health Care Institute*, Law 2007 CA 007517M (D.C. Superior Ct. 2008)(Exh. No. 7);(Requiring Defendant to produce personnel files for direct care staff, the Administrator and DON); *Miriam Hirsch v. CSP Nova*, Law No. 108222 (Loudoun Cir. Ct. 2018)(Exh. No. 8)(Requiring production of staff personnel files in a fall case). Other Courts have also required the production of personnel files, when they could lead to the discovery of admissible evidence.[12]

3. **Production of Policies, Procedures and Operation Manuals for the Wheelchair**

Nursing homes are unique in that they are charged with providing specialized training to their staff to meet the needs of their residents. Guidelines embodying practice standards are nothing

[12] *In Re: Crestcare Nursing and Rehabilitation Center*, 2006 Tex. App. Lexis 1436 (Ct. App. Tex 2006)(Exh. 9) (Defendant nursing home ordered to produce personnel files for direct care staff, Administrator and Directors of Nursing, finding that Defendant did not show that such materials fell within a constitutionally protected zone of privacy; the trial Court was also not required to first conduct an *in camera* inspection). *D'Angelo v. United States*, 588 F.Supp. 9, 12 (W.D. N.Y. 1983)(In malpractice action against VA, Defendant required to produce personnel files including, *inter alia*, complaints, disciplinary actions, job descriptions and evaluations);*Alterra Health Care Corp v. Shelly ex. rel. Mitchell,* 779 So.2d 635(Fla. App. 2001)(Refusing to grant writ of error where trial court ordered production of personnel files in a nursing home negligence case, finding that employer has no standing to raise privacy rights of their employees); *Green v. Fulton*, 157 F.R.D. 136 (D. Me 1994)(Plaintiff entitled to obtain personnel files of arresting officer in alleged excessive force case); in Re Lavernia Nursing Facility Inc. 12 S.W.3d 566 (Tex App. 1999)(Upholding sanctions against nursing home for failing to provide the complete personnel file for nurse aide accused of abuse).

new in the industry.[13] As Defendant was required to provide staff with training[14] necessary to meet the needs of their patients, including patients at high risk for falls and dehydration, this information should be fair game in discovery.

Although Defendant has refused to produce staff training materials, their production of an index for their facility protocols reflects their own acknowledgement that such materials are relevant and discoverable. Defendant did condition the production of selected files on the signing of a protective order. (Exh. No. 10). Defendant cites no authority suggesting that such protocols or guidelines or not discoverable, or that they should be covered by a protective order.[15] However, in the interest of compromise, Plaintiff agreed to a modified protective order on the policies, procedures and training materials, even though Defendant has not made any showing of why such an order is necessary.[16] Defendant has yet to agree to Plaintiff's proposed modifications, which modified the Defendant's proposed order to allow the protocols to be show to witnesses and expanded coverage to include personnel and training information. (Exh. 10, Plaintiff's proposed protective order).

[13] Under federal law nursing homes "must develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents." 42 C.F.R. § 483.13 (c).

[14] See 42 C.F.R. § 483.75(e), requiring administration to provide nurse aide training and regular in-service staff training. Virginia law requires that "all resident care staff receive annual in-service training commensurate with their functions or job-specific responsibilities" to include, but not to limited to the following: infection control, emergency preparedness, safety and accident prevention, restraint usage, confidentiality, understanding needs of the aged and disabled, resident's rights, care of the cognitively impaired, basic principles of CPR and prevention of pressure sores. 12 VAC 5-371-260 A & B.

[15] Nursing home protocols generally incorporate public regulatory standards. The Heaton manuals used by Defendant appear to be on sale on the web at https://www.med-pass.com/webforms/index/index/id/7/. However, Plaintiff needs to obtain the relevant versions of the manuals that were in effect and used to train the staff prior to Mr. Barkman's injuries.

[16]Protective orders "should be sparingly used and cautiously granted" with the moving party bearing the "heavy" burden to demonstrate good cause. *Baron Financial Corp. v. Natanzon, 240 F.R.D. 200, 202, (D. MD. 2006), citing Medlin v. Andrew,* 113 F.R.D. 650, 653 (M.D. N.C. 1978)(the burden of demonstrating good cause for a protective order is a heavy one."

After Plaintiff's last fall on May 9, 2016, a member of the nursing staff who responded to the fall admitted to Mr. Barkman's sister that his wheelchair had not been locked at the dining table, when he was left alone, unsupervised in the cafeteria. In discovery, Defendant responded that locking the wheelchair would constitute an illegal restraint. Plaintiff has attempted to obtain the manual or instructions that came with the wheelchair, along with their policies on wheelchairs and restraints. No substantive answers have been forthcoming from Defendant.[17]

4. **Production of Staffing and Census Information**

Mr. Barkman's neglect is inextricably connected to a lack of adequate staffing. A nursing home is obligated to provide sufficient staffing to meet the patient's needs. Plaintiff alleges that throughout Mr. Barkman's residency, the facility lacked adequate staffing to meet his needs. That failure impacted Mr. Barkman in multiple areas. Beyond his multiple unwitnessed falls, he suffered from severe dehydration to the point of developing kidney failure.

Plaintiff issued document request to fully explore staffing levels, protocols regarding staffing and notice of any staffing deficiencies. **Request No. 48** sought census and acuity reports for October 2015 and May 9, 2016. (Exh. 1). Defendant stated that staffing reports were "to be provided." They never were. **Request No. 26** sought Defendant's guidelines used to determine whether they had enough staff to meet their resident's needs. Defendant objected on grounds that

[17] Pursuant to Document Request No. 27, Plaintiff asked for the production of any written instructions given to the staff regarding, **inter alia**, wheelchair usage and cafeteria safety. Defendant objected to "other instructions" as undefined and suggested that they would make staff available for depositions. (Exh. No. 1, Req. No. 27). To follow up on this non-response, Plaintiff issued supplemental document requests to obtain documents supporting Defendant's contention that it could not lock the wheelchair, as well as the original or an exemplar operation's manual. (Exh. 5, Request Nos. 1 & 4). Defendant failed to respond to this supplemental discovery, including Interrogatory Nos 1 through 4. Defendant should be compelled to file complete responses.

this request was overbroad, burdensome and sought privileged information under Md. Code Ann. Health Occupations, § 1-401.[18]

Defendant's reliance on § 1-401 is misplaced as there has been no showing that any of the documents sought by Plaintiff were the by-product of a medical review committee. Equally important, simply because a document is provided to the committee does not shield it from discovery, if it was otherwise discoverable.[19]

5. **Production of Staffing Records and Substantially Similar Complaints**

Notice may give rise to a duty to correct, especially in the context of nursing homes cases where staffing in an issue. Decedent's sister personally experienced significant staffing shortages and explained that Defendant's own staff admitted to being short-staffed.[20] Defendant has taken the position that since "all falls are different," this evidence can never be relevant. (Exh. 4, p. 3).

However, if patients were falling because staff was not responding to call bells, that fact could be relevant to notice. If patients were not provided fluids as part of their plan of care because there was not sufficient staffing, that fact could be relevant to notice.[21]

Plaintiff issued discovery to obtain information showing that Defendant was aware of staffing shortages before or during Mr. Barkman's residence, as well as similar instances of neglect involving other residents. **Document Request Nos. 54** and **56** sought complaints or concerns

[18] Defendant asserted the same privilege objection for all of Plaintiff's requested policies and protocols, Request Nos. 17 – 26, yet produced an index suggesting they would produce some of the policies if Plaintiff signed their protective order. Defendant should not be able to cherry-pick the policies they want to produce.
[19] Md. Code Ann., Health Occupations § 1-401(e)(2) states that any record that is considered by the committee that is otherwise subject to discovery and introduction into evidence in a civil trial is not subject to the privilege.
[20] Decedent's sister was a registered nurse who elevated her concerns to the Director of Nursing and the CEO, Steve Coetzee, who also acknowledged staffing problems on the weekends.
[21] In the five days leading up to Mr. Barkman's final fall, the staff noted in his treatment records that he had not received his required fluids (per his plan of care) some 25 times. His BUN, reflecting dehydration levels, was 77 upon his hospital admission, 300% beyond normal.

regarding inadequate staff or staff training.[22](Exh. No. 1). Through **Document Request No. 28**, Plaintiff sought quality indicator information that Defendant filed with Medicare from October 2015 through May, 2016. Defendant asserted similar objections of overbreadth and statutory privilege. Neither applies as Defendant routinely reports information to Medicare on events like falls and dehydration. To assess the larger picture on falls in the facility, Plaintiff sought any reports showing facility wide incidence of fall report through **Document Request No. 15.**

Where incidents or negligence are substantially similar, they are admissible to prove notice. *Blanco v. J.C. Penny Co*.,251 Md. 707, 248 A.2d 645 (Md. 1968)(Noting majority rule that evidence of past accidents or defects, if sufficiently relevant and illuminating because there is similarity of time place and circumstances, will be admissible to prove notice); *Mondawin Corp v. Kres*, 258 Md 307, 266 a.2d 8 (Md. 1970)(Notice of a prior fall at the water fountain that caused Plaintiff's fall was relevant to notice); *Blanco v. J.C. Penney Co.*, 251 Md 707, 248 A.2d 645 (1968).

In *Ratti v Charles County Nursing and Rehabilitation* Case No C08-1511 (Charles County Circuit Ct. 2009) the Court ordered the nursing home to produce complaints of incidents involving substantially similar falls, where the nursing staff in question ignored an alarm or warning of danger. (Exh. 6). Courts in Virginia, the District of Columbia and other jurisdictions have similarly found the discovery of prior complaints as relevant to notice.[23] While Defendant will argue that

[22] Defendant objected to this request as*, inter alia*, overly broad, calling for a legal conclusion and seeking information protected by Md. Code Ann. Health Occupations § 1-401.

[23] *Smallwood v. Health Care Institute*, Law No. 007517 (District of Columbia 2008)(Exh. No. 7)(Ordering production of similar complaints from other residents that fell within the general category of Plaintiff's complaints in the case at issue); *Hirsch v. CSP Nova*, Law 108222 (Loudoun Cir. Ct. 2018)(Exh. No. 8)(Requiring the production of prior complaints as relevant to show notice or knowledge of a dangerous condition or defect);*Advocat Inc. v. Sauer*, 111 S.W.3d 346, 363-64 (Ark. 2003), *cert denied*, 124 S.Ct. 532, 535*, on subsequent appeal sub nom, Hardford Fire Ins. Co v. Sauer, No. 04-124, 2004 WL 135-4280* (Ark. 2004)(Inspection reports admissible to show that Defendants were on notice of dangerous conditions due to understaffing).

such information is irrelevant, neither the Plaintiff nor the Court can make that determination without the disclosure of the actual information. Plaintiff has no objection to redacting the names of other, neglected patients to protect their privacy.

C.

Defendant Should be Required to File Complete Interrogatory Answers

Defendant's Interrogatory answers suffer from many of the same deficiencies as their document responses. Defendant asserts broad, general objections in response to numerous Interrogatories, making it impossible for Plaintiff to determine what information is being withheld.

Defendant fails to provide contact information for staff listed in response to **Interrogatory No. 2.** (Exh. No. 2). Defendant should be required to provide address and contact information for all employees and distinguish between current and former staff. Plaintiff is allowed to contact former employees[24] and Defendant cannot hide its contact information to thwart such contacts.

Defendant also objects to answering **Interrogatory No. 3**, seeking to learn if Defendant contends that any conduct of their staff was acting outside the scope of their employment. Defendant kicks the can down the road asking for Plaintiff to identify the employees who were alleged to be negligence. If there is any basis to deny that conduct alleged in Plaintiff's complaint or her detailed expert reports was outside the scope of employment, Defendant should be forced to answer this question over its objection.

Defendant avoids answering **Interrogatory No. 4**, seeking to identify staff with knowledge **specifically relevant to this claim**. While Defendant referenced the entire chart and listed the direct care staff members in response to Interrogatory No. 2, it's not clear which of these staff members have any knowledge regarding Plaintiff's falls. Plaintiff should not be forced to depose all healthcare providers referenced in the chart to find out if they have relevant knowledge in this case.

[25]

[24] Rule 4.2, governing communication with persons represented by counsel, does not prohibit Plaintiff from conducting *ex parte* interviews of former employees of Defendants. *Upjohn v. United States*, 449 U.S. 383 (1981).

[25] See, *Ex Parte Coose Valley Healht Care Inc*. 789 So.2d 208, 219 (Ala. 2000)(Plaintiff entitled to a complete list of staff who worked at the facility).

Defendant argues that information regarding the identification of these witnesses is privileged information, prepared in anticipation of litigation. While the content of a witness's interview with counsel may be privileged, the fact that the person has relevant knowledge is not privileged in a civil case.[26]

Defendant avoids answering **Interrogatory No. 5,** specifically that section of the question that asked about "fall precaution which were in place when Mr. Barkman was escorted to the cafeteria prior to his fall." (Exh. No. 2). Defendant should be compelled to answer this question without objection.

Interrogatory No. 11 is a basic contention interrogatory asking if Defendant contends that Plaintiff herself, or some other party, did anything to cause his injuries. Defendant's answer is largely nonresponsive, and its objections should be overruled.

Through **Interrogatory No. 12,** Plaintiff seeks to determine whether, in the two years leading up to and including Mr. Barkman's residency, Defendant was put on notice of violating any statutes, regulations or standards. (Exh. No. 2). Defendant objects on the ground that such information seeks confidential peer review information pursuant to § 1-401(d) of the Health Occupations Article. *Id*. However, Defendant has made no showing that any of the requested information is a by-product of their medical review committee.[27]

Similarly, Defendant should be compelled to answer **Interrogatory No. 15,** seeking to determine if Defendant put in place, *inter alia*, any fall prevention measures not documented in the

[26] *United States v. Dean Foods Co*. No. 10-cv-59, 2010 WL 3980185 at *3(E.D. Wis. 2010)(Granting Defendant's Motion to Compel Plaintiff to identify persons that were interviewed by counsel in government investigation of antitrust violations); *Rogers v. Tri-State Materials Corp*., 51 F.R.D. 234, 246 (N.D. W.Va 1970)(Holding that names and addresses of persons having relevant facts may be ascertained by interrogatories).

[27] Anticipating the over-use of the medical review privilege, Plaintiff asked Defendant to produce any documents which showed that any documents requested by Plaintiff were actually reviewed by a peer review committee. (Exh. 1, Request No. 14). Defendant objected on peer review grounds. *Id*.

chart. Defendant objects to this question as overly broad and burdensome and directs Plaintiff to Defendant's chart.

Plaintiff also sought to determine the staffing levels in Defendant's nursing homes at various times, through **Interrogatories 16 and 17.** Defendant referred to schedules they have yet to produce. (Exh. No. 2). Even if they produce the documents, they should still be compelled to answer this relevant interrogatory.

D. **Conclusion**

Defendant, who has already taken Decedent's surviving sister' deposition, has had eight months to make good on their discovery responses. Prior to moving forward with the next phase of discovery, specifically deposing Defendant's staff, Plaintiff seeks to cut through the boilerplate obstructionism and obtain the documents that will help prove his case. Given the evidence to date of Defendant's willful cover-up and attempts to reinvent history, Plaintiff is also evaluating an amendment to include a punitive damage claim.

Wherefore, these and other premises considered, Plaintiff moves this Court for an order overruling Defendant's discovery objections and compelling full and complete answers to discovery, as outlined above.

Respectfully submitted,
Plaintiff, by counsel,

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CERTIFICATE OF SERVICE

I hereby affirm that on this 28th day of March, 2019, a copy of this Motion to Compel, with Exhibits a was provided to defense counsel of record, by e-mailing (with exhibits) and mailing a copy of this Motion (without exhibits) regular mail, postage prepaid, to the following:

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