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[REDACTED]

ALJ WILLIAMS: Okay. Ms. [REDACTED].

MS. [REDACTED]: Yes. I call the Claimant.

ALJ WILLIAMS: All right. And Ms. [REDACTED] you do swear or affirm that the testimony you are about to give will be the truth?

MS. [REDACTED]: Yes, sir. I do.

ALJ WILLIAMS: Okay. And was [REDACTED] your former name, Ms. [REDACTED] or is it your current name?

MS. [REDACTED]: It's both, Your Honor, but it's not my current name. I was married and now divorced again, went back to my maiden name.

ALJ WILLIAMS: Okay. So how would you prefer to be called? Ms. [REDACTED] or Ms. [REDACTED]

MS. [REDACTED]: Ms. [REDACTED] would be fine. Thank you.

ALJ WILLIAMS: Okay. All right then. And again, you do swear or affirm that the testimony you are about to give will be the truth?

MS. [REDACTED]: Yes, sir.

ALJ WILLIAMS: Okay. Go ahead, Ms. [REDACTED]

MS. [REDACTED]: Sure.

[REDACTED]

duly sworn in by ALJ Williams testified as follows:

DIRECT EXAMINATION

BY MS. [REDACTED]

Q Can you please state the date you were hired by the facility?

A July 26th of [REDACTED], I believe.

1 Q Okay. And are you an LPN?

2 A Yes.

3 Q Okay. And now you've heard some testimony about the way you pass  
4 medications. Is that true?

5 A Yes.

6 Q And how long have you been doing it in this--that fashion?

7 A Five, five and a half years.

8 Q Now has it--have you ever made requests for assistance during your  
9 shift to help you with med pass?

10 A Yes.

11 Q And tell us about your request for assistance.

12 A We had, myself and other nurses along with me had gone to the  
13 Director of Nursing and (inaudible) [REDACTED] the new Director  
14 regarding help from our night supervisor, [REDACTED] because we  
15 couldn't get any help. We have gone about possibly getting extra  
16 nurses on, or even extra aides on so that way I didn't spend so much  
17 time with patient care and trying to stop them from climbing out of  
18 bed and falling, that type of thing. We've gone multiple times.

19 Q Now do you believe yourself to be a patient safety advocate?

20 A Yes, ma'am.

21 Q And over the course of time, did you make various complaints about  
22 patient safety?

23 A Yes.

24 Q At any time, did you ever conduct yourself in a fashion that you  
25 thought you were compromising patient safety?

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A Absolutely not.

Q Did you always follow the five rights when administering medication?

A I always followed the right patient by looking at the photo and also talking with the patient and they're also in their own individual rooms. I always triple check their standard, always triple, not double. The right drug and the dose, and I always gave it appropriately in the right manner by the right route, and I always gave it between five and seven, between that two-hour time limit.

Q Can you please tell the Judge your procedure for documenting medication administration during med pass?

A I had passed the medication and then I went back and documented at the end of my med pass. I talked with [REDACTED] on December 7th. He said that was (inaudible) standard and I told him (inaudible) and then I started doing it after five and six, I would go back and document.

Q Okay. Let's slow down a little bit about that.

A Okay.

Q So you've been documenting at the end of the med pass for some period of time and then Mr. [REDACTED] who we heard some testimony about, came in on December 2nd--or 7th, and told you that it--your procedure didn't meet nursing standard. Tell us about your discussion with him and your statements about wanting to improve, and take it a little bit slower because it's important to tell the Judge about that conversation.

A Okay. He seen my last person that I gave the medication to. He

[REDACTED]

1 asked if I did Accu-check at the same time, which accu-check is  
2 checking blood sugar, at the same time as passing the medications. I  
3 stated, "Yep." He then--I told him that we needed help because I'm  
4 spending a lot of the time running back and forth getting medications  
5 so I'm also ensuring the safety of the residents because at that time  
6 they do like to fall out of bed and we have had falls, and he said,  
7 "What should we do about it?" I said, "We've been asking for help  
8 for a long period of time. We need help." And he said, "What, aides  
9 or nurses?" I said, "Both would be wonderful, but I would take an  
10 aide so I can maintain what I have to do with my duties instead of  
11 constantly having to go to and helping the residents." He said,  
12 "Okay."

13 Q Okay. And so did he tell you from this day forward you have to  
14 document after every patient? Did he tell you that or did he tell  
15 you to improve your process?

16 A No, he just stated that it was against nursing standard to do it the  
17 way I was doing, and I told him I would improve from then on out, and  
18 I started documenting after five, six residents instead of the very  
19 end.

20 Q In your mind, did you believe that you were doing what he told you to  
21 do, work on your process and try to improve?

22 A Yes.

23 Q Okay. And were you ever argumentative or resistant with Mr. [REDACTED]?

24 A No.

25 Q All right. And were you trying to work with your employer and

1 Q Who knew?

2 A Director of Nursing did, at that--it was different than [REDACTED]  
3 [REDACTED] and the Assistant Director of Nursing knew, we had talked  
4 about it prior, and then I had talked to the night shift supervisor,  
5 she used to watch me do it as she's walking through the halls, so  
6 yes, management did know that I was doing it this way.

7 Q And while you were performing med pass in that fashion was your  
8 performance evaluated satisfactorily?

9 A Yes.

10 Q Why do you believe you were singled out and attacked on the med pass  
11 issue?

12 A I believe I was singled out due to me becoming a whistle blower in  
13 September regarding possible abuse, harm, neglect, and then after  
14 that, you know, everything kind of went down from there.

15 Q Did you make a complaint to the Michigan Department of Civil Rights  
16 in September [REDACTED]?

17 A I did call them, but they stated it wasn't a racial-type thing and I  
18 had (inaudible) contact Department of Social Services about  
19 protective services.

20 Q And did you make five complaints about abuse?

21 A Yes, I did.

22 Q Okay. And when did that happen?

23 A That was in September and they got back with me and I received a  
24 letter in I do believe it was November--

25 Q Okay.

1 A --from them.

2 Q Now in November of [REDACTED], did you report to the Director of Nursing  
3 who testified today that a coworker was getting into bed and hugging  
4 and kissing a resident?

5 A Yes, I did.

6 Q Did you write her a letter?

7 A Yes, I did.

8 Q Can you please tell the Judge about your letter?

9 A You want me to read it or just summarize?

10 Q You can read it if the Judge will accept it.

11 A Okay. (inaudible)

12 MR. BAIG: Objection, Your Honor. Best evidence rule law, we  
13 don't have a copy of that letter. Nothing was sent to us.

14 ALJ WILLIAMS: Response to that?

15 MS. [REDACTED]: Well we've had some testimony about the  
16 letter, Your Honor, and I've already basically read it into the  
17 record, and I just want to substantiate the issue I've already  
18 brought up to the Director of Nursing in terms of her complaints made  
19 to the Director of Nursing in this regard.

20 ALJ WILLIAMS: Well--

21 MR. BAIG: Your Honor, there was testimony--

22 ALJ WILLIAMS: I'll sustain the--

23 MR. BAIG: Your Honor, there was no testimony re--okay, very  
24 good.

25 ALJ WILLIAMS: I'll sustain the objection. We've had

1 questions on that but the questions are not evidence and this seems  
2 to be a rather important part of Ms. [REDACTED]'s case that she was  
3 suffering retribution, so I think it's important to follow the  
4 hearsay rule and the original writings rule when it comes to such a  
5 essential part of the employees case. If it is something that you  
6 need to request an adjournment in order to arrange, I would consider  
7 that, but I don't think it would be proper to have the letter merely  
8 read into the record without showing it to the other side.

9 MS. [REDACTED]: Okay. I'll try to fix it, Your Honor.

10 BY MS. [REDACTED]:

11 Q All right. Ma'am, did you write a letter to the Director of Nursing  
12 on November 25th, [REDACTED]

13 A Yes.

14 Q Did you bring some concerns to her attention about a coworker named

15 [REDACTED]  
16 A Yes.

17 Q Did she ever follow up with you about this letter and this complaint?

18 A No.

19 Q Where did you place the letter?

20 MR. BAIG: Your Honor, I maintain my objection. We're still  
21 talking about this letter and again I raise the best evidence rule.

22 ALJ WILLIAMS: Yes. And that's sustained and I think the  
23 subject is ruled on. So don't talk about the contents of the  
24 complaint without the complaint being in evidence.

25 MS. [REDACTED]: Hold on for one second. Okay. Your Honor, I

1 think my hands are pretty tied if I can't talk about the contents of  
2 the letter without them seeing it. I have it. I can circulate it by  
3 fax or we can adjourn.

4 MR. BAIG: Your Honor, we've had--we've already done pretty  
5 much two hearings. Counsel must have known that she was going to  
6 discuss this letter at some point, you know, it's already been what,  
7 you know, over a month. I would--I'm against any adjournment for  
8 that reason.

9 ALJ WILLIAMS: Yeah. Is there anything else that you can  
10 present, Ms. [REDACTED] on this in the time we have left today?

11 MS. [REDACTED]: Yeah. I just simply wanted to establish that  
12 she made this complaint about a coworker, and I was hoping I could  
13 just--I didn't intend--I apologize for not sending in the letter, but  
14 I just wanted to establish that she made that complaint between her  
15 performance evaluation and her termination, but I can certainly fast  
16 forward to the termination and make good use of our time.

17 ALJ WILLIAMS: Let's revisit the letter issue, if you don't  
18 mind, and if you can--if there are other things to litigate today,  
19 and when we get to an end we'll think about--raise this issue of your  
20 adjournment motion.

21 MS. [REDACTED]: Okay. Great.

22 BY MS. [REDACTED]:

23 Q All right. So after you had the discussion with Mr. [REDACTED] about the  
24 manner in which you were passing your medication, when was the next  
25 time anyone brought it to your attention that your med pass was an



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issue?

A That was on December 14th, [REDACTED].

Q Okay. And were you suspended on that date?

A At--when at that point I had to finish out my shift, and then I went down to [REDACTED]'s office--the conference room and there they just-- and I brought [REDACTED] in with me, another nurse, and they told me that I was suspended until the board meeting. I asked when the board meeting was and they told me it was Monday the 17th, and I said, "Okay." And he said I have to make a motion to speak so I said, "Okay." And (inaudible) Monday and I was terminated on Monday.

Q Now there's been some testimony that you admitted that you were violating policy and procedure. Is that true?

A No.

Q Okay. Tell me about your discussion on December 14th regarding med pass.

A I told [REDACTED] and [REDACTED] at that time. I am being very cautious. I am--my safety is important to me. I am doing the five rights, the right route, dose, kind, so on and so forth. The only thing that I had done differently was chart at the very end. I do my (inaudible) and I thought in head at this point is any time a person picks up one pill, there's a potential for mistake or harm. I did not commit any errors, and I never received any paperwork on the 14th at all or on the 17th regarding my suspension or termination. I had got that in the mail on the 22nd of December, and I stated in the conversation that we had had, [REDACTED] and I on the 7th, and they

1 had talked to [REDACTED] regarding her med pass, and I didn't want to get  
2 her in trouble or anything so I just let her have her say on how she  
3 does her med pass.

4 Q Okay.

5 A And that was basically it.

6 Q And did you ever admit that you were knowingly violating policy and  
7 procedure?

8 A No. When [REDACTED] pulled me to the charting room, she was  
9 looking for policies and procedures and she couldn't find them.

10 Q Okay. Let's break that down a little bit. On that day, you had a  
11 discussion with the Director of Nursing about that you didn't believe  
12 you were violating policy and procedure, and did you raise some  
13 concern to her that policy and procedure wasn't readily available to  
14 you?

15 A Yes.

16 Q Okay. And when she attempted to locate the policy and procedure  
17 regarding med pass, was she able to do so?

18 A No.

19 Q Okay. Where was she looking?

20 A She was looking in the policy and procedure manual right there at the  
21 nurse's station.

22 Q Okay. So all of these policies and procedures that the employee has  
23 introduced during the course of this hearing, did she have those  
24 handy to discuss with you?

25 A No.

[REDACTED]

1 Q Okay. Would you have ever knowingly violated the employee--I'm  
2 sorry, employer policy and procedure?

3 A Not knowingly. Not intentionally.

4 Q Did you believe that you were doing the best you could in light of  
5 the employer's staffing decision?

6 A Yes.

7 Q Now on--at the board meeting, did you admit that you were knowingly  
8 violating policies and procedures at the board meeting?

9 A I stated nursing standards was what I stated, not policy and  
10 procedure.

11 Q Tell us what you said at the board meeting. Let's be a little bit  
12 more clear, about med pass.

13 A I had been doing the med pass for a little over five, five and a half  
14 years the same way. My bosses were aware of it, that this was the  
15 way I was doing it. Safety is important to me. I do follow my five  
16 rights, and I do it this way so that I can get it done safely so that  
17 I can help the aide from prevent people from falling out of bed.

18 Q Okay.

19 A And different issues like that.

20 Q All right. And so at the board meeting, did you reiterate your  
21 concern that the staffing was causing you to have to perform med pass  
22 in a certain way?

23 A Yes. And I also stated, "Whether I work in here or not, however you  
24 find, please, on all three shifts, talk to the staff, talk to the  
25 residents, because all the percussion without write ups or

[REDACTED]

(inaudible), see how things are run. See if there's any complaints. Please, do that once a month, whether I'm here or not." And I was told by [REDACTED] who was running the board meeting, and she screamed at me, "Do not tell me how to do my job."

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5 Q Did you have some concern that the board was disconnected from the  
6 day-to-day affairs of the facility?

7 A Yes. And once again, for the second time I asked them to please do  
8 that, and [REDACTED] did (inaudible) yes and (inaudible) I don't know  
9 if that was ever followed through with.

10 Q Okay. Now at any time were you ever warned that if you did not  
11 document after every patient who you medicated that you would be  
12 fired?

13 A No.

14 Q Do you believe that you complied with the directives of Mr. [REDACTED]  
15 after he discussed your performance with you on December 7th?

16 A Yes.

17 MS. [REDACTED] I don't have anything else, Your Honor.

18 ALJ WILLIAMS: All right. Mr. Baig.

19 CROSS-EXAMINATION

20 BY MR. BAIG:

21 Q Okay. Ma'am, you've signed this job description that's been entered  
22 in as Exhibit 43. Correct?

23 A Yes, sir.

24 Q Okay. And part of that--part of the essential functions are that you  
25 are--you have the ability to follow established standards of nursing

practices and implement facility policies and procedures. Correct?

A Yes.

Q Okay. And ma'am, if you could look at, let's see, Exhibit--Exhibit 5, [REDACTED] Medical Care Facility's Drug Administration Standards. You're aware of the Drug Administration Standards, weren't you?

A Yes. Fifteen minutes before and after. Yes.

MS. [REDACTED]: He's asking about that document. Are you familiar with that?

THE WITNESS: Oh, yes. I'm sorry.

BY MR. BAIG:

Q Yeah. Okay. Okay. And if you look at the second page of that document, Item 14k, it clearly says, "Chart after administering the medication and before proceeding to the next resident." Correct?

A That's what it says, yes.

Q Okay. And you testified that your--the procedure that you followed, your own procedure was that you passed medication to residents and then documented. Correct?

A That's correct.

Q Okay. So that is in direct--your procedure is in direct violation of [REDACTED] Medical Care Facility Drug Administration Standards. Correct?

A Yes. It was not available to me. It was not in the policy and procedure manual.

ALJ WILLIAMS: Exhibit--you're talking about Exhibit 5?

THE WITNESS: Yes. It was on the policy and procedure manual at the (inaudible).



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BY MR. BAIG:

Q Okay. Ma'am, but weren't you aware of that standard?

A The nursing standard that yes, we would do the five rights.

Q No, I mean chart after administrating medication and before proceeding to the next resident?

A No. Because I had been doing it with permission and approval with the bosses prior to this.

Q Okay. Now when Mr. [REDACTED] instructed you that what you were doing was incorrect, that you needed to document after administrating medication before proceeding to the next resident. Correct?

A No, sir. What he stated was that it was against nursing standards the way I was passing my medication, and I told him that I would improve on that.

Q Did he tell you that you needed to document after you had administered medication--as soon as you had administered medication to every resident?

A Not that I recall. No, sir.

Q Okay. Ma'am, you did administer--the final incident that led to your termination was where you administered 49 different medications to approximately 20 or so residents. Is that correct?

A I just have (inaudible) count it but that could very well be (inaudible) amount of right medications (inaudible).

Q Okay. And some of those medications--if the doses weren't proper, could harm a patient. Correct?

A If they are not proper, yes. I did do my three checks for standard

[REDACTED]

1 for each pill that was pulled.

2 Q Okay. Well. Okay. I understand. Some of that medication was  
3 insulin that Ms. [REDACTED] testified to?

4 A Yes. They're called flex pens.

5 Q Okay. And ma'am, would you agree that if the medication that you  
6 administered was improperly documented that could affect--that could  
7 adversely affect a resident, say for example, the next nurse that  
8 would be responsible for administering medication would read that  
9 chart and put--administer an incorrect medication or dose?

10 A The what?

11 Q Wouldn't you agree?

12 A Absolutely not. I would not agree to that because that's why you do  
13 your three checks. You check the right dose, the right medication  
14 three times before you administer that medication and that's what I  
15 did with every single pill, insulin--

16 Q Yeah (inaudible)--

17 A --the whole thing.

18 Q Right. But, ma'am, but if you're--if you're administering you know  
19 40 doses and then going back and documenting 40 different medications  
20 after you administered them, I mean it's possible that you could make  
21 a mistake and not document correctly. Would you agree that's a  
22 possibility?

23 A No. And also we do shift-to-shift reports and we let next shift know  
24 what time we did insulin and that type of thing. No. Absolutely  
25 not.

1 Q You heard Ms. [REDACTED] testify that she reviewed documentation and  
2 from her assessment it looks like you administered several doses in  
3 about 11 minutes. Wouldn't you agree?

4 A That's because I was documenting after administering the meds.

5 Q Right. And she said that there certain medication that it would be  
6 impossible for you to do that in that time because there were other  
7 steps that you needed to do like, for example, with insulin needing  
8 to dial the dose and that type of thing.

9 A No. With the insulin--

10 Q How do you respond to that?

11 A I'm sorry.

12 MS. [REDACTED] He said, "How do you respond to that?"

13 BY MR. BAIG:

14 Q Okay. Go ahead. How would you respond to that?

15 A Okay. I'm sorry about that. I didn't mean to interrupt. The  
16 insulin pens, you turn a dial on the end of the pen, and it tells you  
17 exactly how many units will be given to the resident. On the  
18 nebulizer treatments, standard of practice there is the aides get to  
19 talk to the CNAs, the aides, and have them get pulses that we need to  
20 check for the nebulizer because if their pulses are over 100, you are  
21 not to give it, you are to wait 15 minutes to recheck the pulse and  
22 if it's low enough then you can get it. That was stated in many in-  
23 services that we can put the medication in the cup and the aides can  
24 start those. Every single nurse followed the in-services and they  
25 did so. So precautions were done. If a blood pressure needed to be



1 taken, the aides took the blood pressure as I continued med pass and  
2 then they would report to me what the blood pressure was and I would  
3 go from there. And that was standard of practice there at the  
4 nursing home.

5 Q Well that's what you claim that you were doing and you claim other  
6 nurses were doing. Right?

7 A Correct.

8 Q Okay. But that wasn't the standard nursing practice at the nursing  
9 home as documented by the policy that you have in front of you.

10 A Well from what I have in front of me now, no, and as our Director of  
11 Nursing, she okayed this that it was fine to do in any in-services so  
12 we believed our Director of Nursing.

13 Q Okay. But that was--was that Ms. [REDACTED] or someone else?

14 A That was [REDACTED]

15 Q That was [REDACTED]. She agreed that what you were doing,  
16 administering medication at one time and then documenting it later  
17 was the correct way of doing it?

18 A She--I think she had stated--I'm sorry, she had noticed this prior,  
19 all the bosses were aware we were doing it like this for the last few  
20 years.

21 Q Now wait a minute. We're talking about Ms. [REDACTED] She was your  
22 boss--when did she become your boss?

23 A Just--I couldn't be sure but I think it was July of [REDACTED] I may be  
24 wrong. I might be wrong on that but--

25 Q July of [REDACTED]

[REDACTED]

1 A I--I--

2 Q Okay. And so--Okay. So did she tell you that documenting that later

3 was the correct way of doing things?

4 A She didn't come out and state that. No.

5 Q She never--you never had a discussion with her about that, did you?

6 A I talked to all the bosses about everything I've done there.

7 Q But not with Ms. [REDACTED] did you?

8 A Yes. She was Inservice Director prior to coming Director of Nursing,

9 and I was in her office many times talking with that woman, yes,

10 about different issues including med passes and different things to

11 that effect.

12 Q Okay. One moment. Okay. Now, ma'am, were you aware of the [REDACTED]

13 Drug Administrating--Drug Administration procedure?

14 A No. I did not (inaudible).

15 Q That's Exhibit--

16 A No, I was not aware of that. No.

17 Q Okay. So--okay. So you didn't know that facility staff should

18 prepare only medications for one resident at a time?

19 A I basically did prepare one at a time.

20 MS. [REDACTED]: Answer the question. He said, "Were you

21 aware that you're supposed to do it that way?"

22 THE WITNESS: Yeah.

23 MS. [REDACTED]: Okay.

24 MR. BAIG: One moment.

25 BY MR. BAIG:

1 Q So you're---tell me if I'm right here. Okay. So you're excuse for  
2 not documenting correctly as Ms. [REDACTED] counseled you about when you  
3 were suspended, was that everyone was doing it the way that you were  
4 doing it, i.e. administering medication and documenting later. Is  
5 that correct?

6 MS. [REDACTED] You can answer if you understand the  
7 question.

8 THE WITNESS: I don't understand the question. Could you  
9 repeat that, please?

10 BY MR. BAIG:

11 Q Well, ma'am, you stated that for five years you were preparing  
12 medication, administering it, and then later on documenting what you  
13 administered to residents.

14 A Correct.

15 Q Okay. So you're excuse is that because you and everyone else was  
16 doing it that way that was correct?

17 A My reasoning is because I was worried about the safety of my  
18 residents anywhere from falling out of bed or anything to that effect  
19 so upon asking for help numerous times I and other nurses passed  
20 medications this way, and it had been over a five-year period.

21 Q How many times did you ask--Okay. Ma'am, you said that Ms. [REDACTED]  
22 was your supervisor since July of [REDACTED] and you testified that you  
23 asked for additional help. Do you recall when you asked Ms. [REDACTED]  
24 for additional help?

25 A Prior to her becoming the Director of Nursing, she was our Inservice

[REDACTED]

1 Director, and she took a lot of the complaints and tried making  
2 things run efficiently and things to that effect. I had been in her  
3 office--

4 Q Okay.

5 A --along with other nurses multiple times. As for the actual dates, I  
6 do not have those.

7 Q Well, ma'am, you testified that she was an inservice person, but  
8 that--in her position as Director of Nursing from July [REDACTED] until the  
9 date of your termination, did you ask her for additional help?

10 A I think we touched base on it once or twice but then we started going  
11 to [REDACTED].

12 Q Okay. Now after you were--after Mr. [REDACTED] observed you not passing  
13 and documenting meds, did you go to Ms. [REDACTED] and ask for  
14 additional help?

15 A I believe we communicated--most of the time it was by letter because  
16 I worked midnights and she worked days, but by the time she came in  
17 most of the time I was already gone.

18 Q Ma'am, you didn't really communicate that concern to Ms. [REDACTED], did  
19 you?

20 A Yes, sir. I did.

21 Q While she was Director of Nursing?

22 A Yes, sir. I did.

23 Q What I can't understand, ma'am, is if you were--if in your mind you  
24 thought that you were following procedure by documenting afterwards--  
25 you were already passing and documenting meds in a pretty quick

[REDACTED]

1 fashion, weren't you?

2 A I was passing meds reasonably and safely, and then I continue to  
3 document afterwards.

4 Q But what I'm getting at ma'am, you testified that you--there would be  
5 no way that you could pass and document meds as the way that Ms.  
6 [REDACTED] had testified to, you know, the procedure, giving a resident  
7 meds and then charting it, then going to the next resident and giving  
8 the med, then charting it and so on and so forth.

9 A Correct.

10 Q You testified that that couldn't be done in a two-hour period.

11 Right?

12 A Correct.

13 Q Okay. So with your procedure you were--you were doing it pretty  
14 quickly, right?

15 A It was mediocre. I mean it did take me over an hour to pass the  
16 medication, and then the rest of the time I was helping the aide and  
17 documenting. (inaudible)

18 Q Okay. What I can't understand is--what I can't understand is is that  
19 if your procedure was efficient as you were--as you claim and you  
20 claim that you were passing meds in accordance with the five rights,  
21 why would you need help?

22 A Because that--

23 Q Why would you need a nurse's aide?

24 A Why would I need a nurse's aide?

25 Q Go ahead, I'm listening.

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[REDACTED]

MS. [REDACTED] No. She's trying to answer. I'm sorry.

Just answer his question. Why did you need assistance during med--  
you know we don't do this every day, so--

THE WITNESS: Got it.

MS. [REDACTED]: --just explain it like we're not there.

A We--and I'm just going to go with myself, had expressed need for  
help. That way it ensured the safety of the resident and I could  
just slow down. I wouldn't have to be so crazy, it felt like.  
That's the wrong word I'm using. I wouldn't feel so rushed, and that  
way it ensures the safety of the resident--

Q Yeah but--

A --helping them not fall out of bed and different things to that  
effect.

Q Okay. So it wasn't because of this procedure regarding  
documentation. It was for something else. Right?

A Well, not really because if you sat there and did it the way [REDACTED]  
[REDACTED] is explaining, it took about an hour and a half to two hours  
to do depending if you were on that floor (inaudible). For new  
people coming in--

Q Yeah, well what I'm getting at--

A --add three hours.

Q Okay. Well what I'm getting at, ma'am, if--Okay. You said that you  
were not aware of the--of Exhibit 5, the Standards of Practice  
document as to every resident, you testified that Mr. [REDACTED] didn't  
explain it to you. Okay. So how could you come to the conclusion

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1 that you needed more help to document if no one ever--if you were  
2 never aware of the facilities policy and Mr. [REDACTED] never told you  
3 about it?

4 A Well the main and simple factor, I have been there seven and a half  
5 years. I know my limitations, and I hope I have enough common sense  
6 to ask for help when I feel I need the need.

7 Q Now, ma'am, it's because that someone did explain it to you and  
8 that's why you're--you've testified that you couldn't do every--do  
9 what Ms. [REDACTED] said in two hours. Correct?

10 A No.

11 Q Okay. Now, ma'am, you said that you complained to various  
12 authorities about the facilities practices and procedures--I mean you  
13 make complaints. Correct?

14 A Yes. I did file complaints with Adult Protective Services.

15 Q Okay. And you know that--that your complaints were anonymous.  
16 Right?

17 A To a point. Yes.

18 Q No. I mean when you made the complaint you're--the complaining  
19 person's name is kept confidential by the--by the authority that  
20 you're complaining to.

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q Okay. So you would agree that [REDACTED] Medical Care Facility wouldn't  
25 know that you're the one that made the complaint.

1 A I don't know that.

2 MR. BAIG: Okay. Very good. I don't have any other  
3 questions.

4 ALJ WILLIAMS: Ms. [REDACTED].

5 MS. [REDACTED]: No, Your Honor. I don't have any follow up.

6 ALJ WILLIAMS: All right. I don't have any questions. Oh,  
7 Ms. [REDACTED]

8 THE WITNESS: Yes, sir.

9 EXAMINATION

10 BY ALJ WILLIAMS:

11 Q Do you record the exact time that you give a medication when you're  
12 doing a medication pass?

13 A No, sir. It's computerized and it gives the time that I chart so I  
14 have to report off to the next shift coming on, and we do a lot of  
15 report and different times and different things that we do do in our  
16 shift.

17 Q Where's the computer?

18 A In the charting room, sir. And then they also have portable ones in  
19 the medication room on the medication cart.

20 Q So your entries would go on the computer on the medication cart. Am  
21 I correct?

22 A I use both in the nurse's charting room and on my cart depending on  
23 where I was at and what was going on at the time.

24 Q Now if you charted after each patient, how would you go about doing  
25 it?



[REDACTED]

1 A I would go deliver the med, I would do my three check to make sure I  
2 have the proper medication and proper doses and the proper person and  
3 I would deliver that medication and then I would have to come back  
4 and chart.

5 Q Where would you chart?

6 A In the computer.

7 Q Which computer?

8 A Sometimes I did it in the medication room, and sometimes I did it in  
9 the nurse's charting room, depending on if there was an emergency  
10 going on or different situations.

11 Q Do you--would you chart at a computer that was at the medication cart  
12 itself? At the patient's bedside?

13 A No, sir. I did not. I was charting after (inaudible).

14 Q Right. If you had charted after each patient, would you chart near  
15 the--would you do the charting work at the bedside or someplace else?

16 A Someplace else most of the time. There were times I did chart at the  
17 room in the hallway and there is spots on there for like if you give  
18 a medication that needed a pulse or blood pressure, you could put  
19 that right in the computer. It has a spot for that, and also it also  
20 had--you have a spot for time that it was given that you could  
21 manually put in.

22 Q Did the facility provide facilities where you could do charting at  
23 the bedside or at the patient's room?

24 A If you pulled the cart out of the med--out of the medication room  
25 then yes. Then it would be done in the hallway.



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Q Ordinarily then, when you're doing a medication pass, do you push the carts down the hallway?

A There were times that I did do that. It depended on who was working on that--at that time. Down on the other hall because sometimes they were able to come down and help. If the help was there, that was no problem, but most of the time the help was not there.

Q What was faster, using the--taking the medication cart with you from room to room or some other method?

A Other method.

Q What was that method?

A Doing it safely, it was faster to pass the medication, make my notes on the little paper I carried with me on what was what, and then I would chart afterwards.

Q When you're doing a medication pass, where are the medications?

A In the medication cart.

Q And is the medication cart at the patient's bedside or at the patient's room or some place else?

A Sometimes we're at the rooms and a lot of times they're in the medication room.

Q Now when you got the--you would get the drugs out of the cart and give them to the patient?

A Yes, sir. I would do my three checks to make sure it was the right drug, right patient and right dose that I was filling the cart for, then I would take it to their room, look at the--I knew my patients because I had been on that floor for five years, but they also have

1 photos of the patient at the doorway. I would go in and say, "Hi Ms.  
2 so and so. How are you this morning? It's med pass time," and we'd  
3 have a conversation as we're taking the medication.

4 Q So sometimes you would have the medication cart there at the room and  
5 sometimes it would be down the hall some place else?

6 A Correct.

7 Q And after you gave the medication to the patient you would--what  
8 would you do, go give the medication to some other patient?

9 A I would give the next person, the other patient their pills.

10 Q And did you carry multiple sets of pills with you?

11 A I would--I had a cart, a treatment cart. I would be checking Accu-  
12 check, or blood sugars, and I had their cups labeled on who was who  
13 and that, and I would pass them.

14 Q Are there two carts?

15 A Actually, at one point there was three medication carts because  
16 there's three different halls.

17 Q For each hall, is there one cart or multiple carts?

18 A I don't know what they have now, but they were having east and west  
19 on one, and north hall and the loop on the other, and they just kept  
20 switching it around so you had to be very careful on what you pulled  
21 for whom because one day the meds might be there and the next day  
22 might be in a different drawer, so you had to be very cautious.

23 Q When you took the medications out of the cart and the cart was in the  
24 medication room, would you take medication for more than one patient  
25 from the cart?

[REDACTED]

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A Yes.

Q And where would you hold the medication as you went from patient to patient?

A On my treatment cart. I was doing blood sugars at the same time.

Q So you had two carts?

A Yes, sir.

Q I take it the medication cart has a--the medication cart has drawers for each patient?

A No, sir. They're all in two or three drawers. They've got liquids in one drawer. They've nebulizers in another drawer. They're not-- they're separated by little plastic separators.

Q Would you pour--were there some liquid drugs that you would have to pour in advance?

A If they were liquid, if I had liquids or crushed medications that had to be mixed (inaudible), I save those for the last. That way I did them completely--I would run back and forth from the med room to the patient.

Q And the medication chart is moveable?

A Yes.

Q Why wouldn't you move the medication chart from room to room?

A Because there's the Director of Nursing, not [REDACTED] but previous, and the Assistant Director of Nursing, they okayed me to do it this way because I had a back injury there and the med cart was too heavy and it was putting pressure on my back, and it just went from there, and they okayed this for the last five years. And we

1 just didn't have the proper time.

2 Q So your problem was that you had a back problem that made it  
3 necessary to keep the medical--medicine chart--medicine cart in one  
4 place and not move it around?

5 A That was part of it, and then the other part was efficient--more  
6 efficient and safety issue was always there. Never had a problem  
7 with that, and we were able to do it efficiently and faithfully that  
8 way, along with my back injury that I try not to think about.

9 Q Well how is it more efficient to have your medication cart down the  
10 hall in the medication room and you have to walk back and forth  
11 between patients?

12 MS. [REDACTED]: Take your time and explain that because we  
13 don't do this so you've got to take your time. Why would that be  
14 more efficient. Make him understand.

15 THE WITNESS: It is more efficient because then I can actually  
16 pass the meds, okay, in a more timely manner and at the same time  
17 ensure the safety of my residents, but I'm a fast walker. I'm very  
18 fast, and that's why it was more efficient this way, and the other  
19 nurses, like I can't--I don't know if I can say or not, they were  
20 doing it the same way when there was no help. When certain nurses  
21 were on, then we were able to do, you know, slow it down and we  
22 helped each other.

23 MS. [REDACTED]: But why it is less efficient than just taking  
24 the cart with the charting mechanism right in the room? Help him  
25 understand that.

[REDACTED]

1 THE WITNESS: Because you pull it up and you go through five  
2 or six different screens and then you've got different time buttons  
3 an PRN buttons and you're flipping through computer screens trying to  
4 sign out all these medications and then you go to the next one and  
5 the same thing. It was just as safe but more efficient to stand  
6 there, do this, pull the medication, following the three checks of  
7 (inaudible) standards, you follow the three checks for those drugs  
8 and then at the end you can chart, it was kind of more uniform that  
9 way.

10 BY ALJ WILLIAMS:

11 Q Now in order to draw up the medication, did you need to access any  
12 computer records?

13 A Yes, sir. We did.

14 Q And this access device, the computer is at the medication cart. Am I  
15 correct?

16 A Yes, sir.

17 Q And you would take several patients' drugs at a time?

18 A I would do the three checks on each person, label their cups, and  
19 take it out on my treatment cart.

20 Q Okay. And you--one of the things you do is compare the patient's  
21 photo to the appearance of the patient?

22 A Yes. I would compare the photo on the computer that goes with their  
23 name onto the medication cartridge, and then when I would take it to  
24 their room, I would compare the photo that I had just seen with their  
25 name and go into their room, knock on the door and go into their

1 room, and that's how I was able to do that.

2 Q Do you compare what the patient looks like to what the photo of the  
3 patient looks like?

4 A Yes. And I also ask--talk to them and state their name and I talk  
5 with them for just a little bit while they're taking their medicine.  
6 "Well good morning so and so." "Well, hi, [REDACTED]." I would give them  
7 their medication.

8 Q So now when you compare the photos, do you--would you compare about  
9 five or six--take about five or six photos and then go find those  
10 five or six patients?

11 A Yes, sir. I would. I would also compare on their doorway along with  
12 that photo and their name again, and then before going in there and  
13 giving any medication.

14 ALJ WILLIAMS: All right. I don't have any more questions.

15 Any more Ms. [REDACTED]

16 MS. [REDACTED] No, Your Honor.

17 ALJ WILLIAMS: Mr. Baig?

18 MR. BAIG: Yes. I have a couple of questions in response to  
19 what she testified to your questions.

20 RE-CROSS-EXAMINATION

21 BY MR. BAIG:

22 Q Ma'am, you testified that when you do chart--when you make your entry  
23 on the chart it automatically gives the time--the time stamps the  
24 dose that you gave to the patient. Right?

25 A Automatically. But there is one button that you can manually do.

1 Q Okay. So basically then if you are administering the doses at one  
2 time and then charting later, then--because the charting program tags  
3 the time of the dose as given--as the time that you chart it, then  
4 you're not recording the correct time that you gave the dose to the  
5 patients. Right?

6 MS. [REDACTED] If you don't understand it, you got to tell  
7 him.

8 THE WITNESS: No. I--

9 MS. [REDACTED] She's expressing some not being able to  
10 understand the question.

11 BY MR. BAIG:

12 Q Okay. Let me put it this way. Okay. If you--if you have the cart  
13 with you which--which has the chart on the computer or what have you  
14 and you give the dose to a patient and then chart it immediately, the  
15 charting program will--will time stamp--will make a time stamp that  
16 you gave the dose at the time that you chart it. Right?

17 A Correct (inaudible) you can manually chart the time also.

18 Q Okay. But wouldn't manually charting the time take more time to do  
19 rather than let the charting program automatically do it at the time  
20 that you chart?

21 A No, sir, for the main and simple fact you go into the computer, you  
22 compare the dose, the drug and the person to the cartridge you're  
23 pulling the medication out of. Some of them could have 15 or 20 and  
24 then you would give the medication and then you would have to go back  
25 in and chart that you gave again. Where this way it was just sitting



1 down and charting all at once, so it was more time efficient.

2 Q Right. And you remembered the exact time that you gave each and  
3 every resident their dose. Right? And manually put it into the  
4 computer afterwards?

5 A And I also carried a note pad to make my special notes on. I always  
6 carried something to write on.

7 Q Okay. Okay. Ma'am, you testified that you had a back injury and  
8 your supervisor okayed you to do the administrating and charting in  
9 the way that you've been doing it. Correct?

10 A Yes. And they've even followed me doing it this way, and they had no  
11 problem with that.

12 Q Okay. Okay. And you testified that other nurses--other nurses were  
13 doing it the same way. Right?

14 A Yes, sir.

15 Q Okay. And so did these other nurses also have back injuries that the  
16 nursing supervisor okayed them to do it this way?

17 A Not that I'm aware of (inaudible) back injuries but I don't have  
18 access to their medical records.

19 MR. BAIG: Okay. I don't have any other questions.

20 ALJ WILLIAMS: Ms. [REDACTED]

21 MS. [REDACTED]: No. I don't have anything, Your Honor.

22 ALJ WILLIAMS: Okay. Thank you Ms. [REDACTED]

23 MS. [REDACTED]: Thank you so very much.

24 ALJ WILLIAMS: Any more witnesses on the [REDACTED] side?

25 MS. [REDACTED]: No, Your Honor.

1 ALJ WILLIAMS: Any more witnesses on the [REDACTED] Medical side?

2 MR. BAIG: No. I think we're all set.

3 ALJ WILLIAMS: All right. Any closing statements, Mr. Baig?

4 MR. BAIG: Yes. Simply, Your Honor, the Claimant was--even  
5 though the Claimant was saying that she was not aware of the  
6 procedure, she was aware of the procedure. If you read between the  
7 lines, her testimony, she's making complaints that she doesn't have  
8 enough time to do all this, well it kind of begs the question how  
9 would she make complaints that she didn't have the time to do all  
10 this, the administrating and the charting as the employer's policy if  
11 she didn't--wasn't made aware of that policy. It just doesn't make  
12 any sense. And then, Your Honor, the Claimant is just full of  
13 excuses. I mean she is saying that she was okay to do this procedure  
14 because of a back injury. Well that doesn't explain why other nurses  
15 would be allowed to follow the wrong procedure, Your Honor, and then  
16 also the fact that she would have to get the meds from the cart  
17 anyway, I mean, there's really no reason or any efficiency reasons  
18 for her not to pull that med cart and take it to each and every  
19 resident and chart after administrating each and every dose. The  
20 charting program automatically time stamps when the dose is given and  
21 it would correctly time stamp it if she would have followed the  
22 procedure. Your Honor, either the Claimant was just lazy and she had  
23 her--she had her own idea as to--and her own procedure for doing  
24 these things which was contrary to the medical facility's procedure,  
25 and it did pose a risk to the residents. For that reason I think she

1 should be denied.

2 ALJ WILLIAMS: Ms. [REDACTED]

3 MS. [REDACTED] Yes, Your Honor. I just--just briefly, I  
4 don't think the employer has established misconduct, and I just also  
5 emphasize that I think her testimony was clear that her concerns  
6 about patient safety during med pass and time constraints were  
7 related to her need to focus on med pass and concerns about residents  
8 falling out of bed and so forth and their other care needs that were  
9 going on which she needed aides or nurses to assist her with. I  
10 think her testimony was very clear that the policies relating to  
11 after the fact documentation were not readily available to her, and  
12 as soon as concerns were brought to her attention by Mr. [REDACTED] she  
13 made changes to her performance and attempted to comply with what he  
14 was asking but again, emphasizing that staffing and time constraints  
15 during med pass were a concern to her, so I think the evidence has  
16 revealed that she was attempting to perform in the spirit of patient  
17 safety, conform with her employer's expectations of her and do her  
18 best in light of the staffing decisions that the employer had made.  
19 And I don't have anything else.

20 ALJ WILLIAMS: All right. Well, if there's nothing else,  
21 we'll close the record at this point. Is there anything else?

22 MS. [REDACTED] No, Your Honor.

23 ALJ WILLIAMS: Okay. And--

24 MR. BAIG: No.

25 ALJ WILLIAMS: So we have had admitted Exhibits 1, 5, 7 and 17

[REDACTED]

1 at the last session, and at this session I believe we admitted  
2 Exhibits 2, 43 and 48, and we'll close the record at this point.  
3 Those exhibits are admitted and you can expect something from us from  
4 the hearing office on this and all our wisdom within the next two  
5 weeks.

6 MS. [REDACTED] Thank you, Your Honor.

7 ALJ WILLIAMS: Thank you, and good day.

8 MS. [REDACTED]: Okay. Thank you.

9 MR. BAIG: Thank you, sir.

10 (Hearing concluded.)

11 (Tape off.)

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STATE OF MICHIGAN )  
 ) SS  
COUNTY OF INGHAM )

I HEREBY CERTIFY that the foregoing testimony and proceedings, consisting of 76 typewritten pages, was mechanically recorded at the time and place hereinbefore set forth; was thereafter reduced to typewritten form; and that the foregoing is a full, true, and correct transcript of the recording so taken.

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