

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BUREAU OF HEARINGS
DIVISION OF UNEMPLOYMENT APPEALS

AMY [REDACTED] CLAIMANT

APPEAL DOCKET NO.: [REDACTED]

[REDACTED] MEDICAL CARE FACILITY, EMPLOYER

ORIGINAL

Testimony taken and proceedings had in the above-entitled matter before Administrative Law Judge Erick Williams, at 611 West Ottawa, Second Floor, Lansing, Michigan 48933, on Tuesday, July 30, [REDACTED] commencing at 10:30 a.m.

APPEARANCES:

AMY [REDACTED]	CLAIMANT
[REDACTED]	ATTORNEY FOR CLAIMANT
[REDACTED]	FACILITY ADMINISTRATOR
J. LATIF BAIG	ATTORNEY FOR EMPLOYER
[REDACTED]	DIRECTOR OF NURSING

TRANSCRIBED BY:

Darlene McAninch, CER 8689
Theresa's Transcription Service
P.O. Box 21067
Lansing, Michigan 48909-1067
(517) 882-0060

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1 Lansing, Michigan

2 Tuesday, July 30, [REDACTED] 10:30 a.m.

3 * * * * *

4 P R O C E E D I N O . G S

5 ALJ WILLIAMS: This is Amy [REDACTED] versus [REDACTED] Medical Care
6 Facility. [REDACTED]

7 (Dialing)

8 MS. [REDACTED]: [REDACTED].

9 ALJ WILLIAMS: Good morning. This is Erick Williams with the
10 Michigan Unemployment Agency Hearing office.

11 MS. [REDACTED]: Hi.

12 ALJ WILLIAMS: Is this Ms. [REDACTED]

13 MS. [REDACTED]: This is [REDACTED]. I have Ms.

14 [REDACTED] here with me.

15 ALJ WILLIAMS: Oh. Okay. All right. Let me see if I can get
16 Mr. Baig and the [REDACTED] Medical Care Facility people on the line here.

17 MS. [REDACTED] Okay. Great. Thanks.

18 (Dialing)

19 RECORDING: Welcome to the conference call, a service of www
20 dot free conference dot com. When you have entered your conference,
21 please announce yourself. While in the conference, you may press
22 four for a menu (inaudible).

23 (Dialing)

24 RECORDING: You will now enter the conference. Please
25 announce yourself.

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ALJ WILLIAMS: Hello, this is Erick Williams with the
Unemployment Agency for J Latif Baig. Mr. Baig?

MR. [REDACTED] Mr. Williams, this is [REDACTED] with the [REDACTED]
Medical Care Facility.

ALJ WILLIAMS: Yes. Hello.

MR. [REDACTED] J just--J just left to call you on another phone
number.

ALJ WILLIAMS: Oh. Okay.

MR. [REDACTED] (inaudible) right back.

ALJ WILLIAMS: All right. And I've got Ms. [REDACTED] and Ms.
[REDACTED] on the line. You're there Ms. [REDACTED] and Ms.
[REDACTED]?

MS. [REDACTED] Yes.

ALJ WILLIAMS: All right.

MS. [REDACTED]: Judge, can you hear us okay?

ALJ WILLIAMS: I can hear you fine. Can you hear all right,
Mr. [REDACTED]

MR. [REDACTED]: Yes, sir, I can.

ALJ WILLIAMS: Okay.

MS. [REDACTED] I was just going to give a little disclaimer.
I feel like I'm in the middle of [REDACTED] right now. We're having
construction right in front of my office on the road, and I was
hoping that you couldn't hear it, so as long as you can hear us I'm
sure we'll be fine, but it's jack hammers and so forth in the
background.

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ALJ WILLIAMS: No. I can't hear any interference.

MR. BAIG: Hello. J Baig here.

ALJ WILLIAMS: Oh, hello. This is Erick Williams. We've got Ms. [REDACTED] and Ms. [REDACTED] on the line.

MR. BAIG: Okay.

ALJ WILLIAMS: And if everybody is assembled, we can continue.

MR. BAIG: Okay.

ALJ WILLIAMS: This is the second session of the hearing that started on June 18th, and if I'm not mistaken, we ran out of time during Ms. [REDACTED]' testimony. Is that right? (inaudible) Baig.

MR. BAIG: I believe so, yes.

ALJ WILLIAMS: Okay. Shall we--shall I swear in Ms. [REDACTED] and we can continue with her?

MR. BAIG: Yes. But, Judge, can I have a--can we have a listing of the exhibits that have already been entered into the record?

ALJ WILLIAMS: Let's see, I've got one, five, seven and seventeen, according to my notes.

MR. BAIG: Okay. Are you referring to the page numbers or exhibit--your exhibit numbers?

ALJ WILLIAMS: Those are my exhibit numbers. Let me see if I can--hold on a minute. Exhibit 1 is a December 18 letter by [REDACTED] to Amy [REDACTED].

MR. BAIG: Okay.

ALJ WILLIAMS: Exhibit 5 is something that you marked as EE5

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and EE6.

MR. BAIG: Okay.

ALJ WILLIAMS: Drug Administration Standards. Exhibit 7 is something that you marked as EE7, EE8, and EE9.

MR. BAIG: Okay.

ALJ WILLIAMS: Exhibit 17 is something that you marked as EE17 and EE18.

MR. BAIG: Okay. And that's it?

ALJ WILLIAMS: That's it.

MR. BAIG: Okay.

ALJ WILLIAMS: One, five, seven and seventeen.

MR. BAIG: Okay. Then I'm ready.

ALJ WILLIAMS: All right. Ms. [REDACTED] are you there?

MS. [REDACTED] Yes, I am.

ALJ WILLIAMS: We'll swear you in and we can continue with Mr. Baig's questioning. You do swear or affirm that the testimony you're about to give will be the truth?

MS. [REDACTED] I do.

ALJ WILLIAMS: Okay. And you better spell your name again, just in case there's a--this is typed up and another reporter does it.

THE WITNESS: Okay. Last name [REDACTED]

ALJ WILLIAMS: Okay.

THE WITNESS: First name [REDACTED]

ALJ WILLIAMS: All right. Okay. Go ahead, Mr. Baig.

[REDACTED]

duly sworn in by ALJ Williams testified as follows:

DIRECT EXAMINATION

BY MR. BAIG:

Q Okay. Ms. [REDACTED] can you restate your position, again?

A I'm an RN. I'm the Director of Nursing at [REDACTED] Medical.

Q Okay. And ma'am, you're the one who--you had a part to play in her termination?

A Yes, I did.

Q Okay. Now, ma'am, can you refer to EE2 and 3 and can you tell us what this is?

A Give me just a moment to refer.

Q It's a Performance Counseling [REDACTED] Medical Care Facility date December 14 of [REDACTED]

A That is correct. That is a counseling statement that [REDACTED] the Administrator, and myself had counseled Ms. [REDACTED] on following my coming in to observe her medication path and finding problems with that.

Q Okay. And ma'am, did you have an occasion to discuss this counseling note, the form with the Claimant?

A Absolutely. Both [REDACTED] and myself were present during that counseling statement. We did make Ms. [REDACTED] aware that she was suspended pending notification and recommendation from our board of directors.

Q Okay. And ma'am, what was discussed at the counseling session with

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Ms. [REDACTED]?

A What we discussed was number one, my Inservice Director had been in about a week prior on December 7th, to observe medication pass. We do this with all of our different nurses, we're required to do competencies, and he had come in to observe medication pass and was the initial person who had found problems with Ms. [REDACTED]'s medication pass.

Q Did you discuss--did he discuss with Ms. [REDACTED] what Mr. [REDACTED] informed you about?

A Absolutely. Absolutely.

Q All right.

A And Ms. [REDACTED] confirmed to us that Mr. [REDACTED] did discuss this and made her aware that her practice must change, and it had not.

Q Okay. And then with respect to this December 14, [REDACTED] counseling session, what else did you discuss with the Claimant?

A We discussed the medication pass that I came in to observe that day. I can go through my observations of the medication pass but again Ms. [REDACTED] was not following standards of practice. She was not following policy and procedure for both our facilities, for our pharmacy. She was signing off medication from multiple residents at the same time, and she confirmed that she was not following any of the above.

Q Okay. Now did you present to her this Counseling Session Form?

A Yes, we did.

Q Okay. And--okay. I don't see her signature, but did you give her an

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opportunity to look at this form?

A Yes, we did.

Q Okay. At this time, Your Honor, I would like to have the EE2 and 3, the--oh, actually it's the--it is EE2 and 3, the Performance Counseling Form dated 12/14 of [REDACTED] on the first page and signed on December 14, [REDACTED] by Ms. [REDACTED] Mr. [REDACTED] and a--(inaudible) entered into the record please.

ALJ WILLIAMS: All right. We'll mark that as Exhibit 2. Excuse me. Ms. [REDACTED], do you have any objections to that exhibit?

(Exhibit Number 2 marked)

MS. [REDACTED]: No, Your Honor.

ALJ WILLIAMS: All right. Exhibit 2 is admitted.

(Exhibit Number 2 admitted)

MR. BAIG: Okay.

BY MR. BAIG:

Q Now, ma'am, you've been talking about standards of practice.

A Yes.

Q Can you elaborate what you mean by standards of practice and what that entails?

A Absolutely. Standards of practice, when we look at the healthcare industry regulation governing the practice, in this case, a pharmacy, and our healthcare facilities, the standards are designed to protect the safety of our patients. Standards of practice with regard to medication administration are there to decrease medication errors and

[REDACTED]

1 prevent any adverse medication or adverse drug event, to monitor drug
2 interactions, to improve documentation of medication administration,
3 and when we talk about the standards of practice, that's where we're
4 referring to the five rights of medication administration.

5 Q And what are those five rights?

6 A I can tell you as a nurse, the five rights are a part of every single
7 nursing program. It's what we're taught throughout our nursing
8 education. Standards aren't just developed by individuals alone,
9 they're derived from many sources. Sources include legal regulation,
10 professional regulation, professional literature, educational
11 programs and from research. Standards determine the qualification
12 for every nurse to perform their delegated function. For the--when
13 we talk about the standards related to medication administration,
14 historically they have been referred to as the five rights, which
15 includes the right patient, the right drug, right dose, right route
16 and right time. Those standards have evolved through the years and
17 also include right documentation, right reason and right response.
18 As I've said, they're designed to allow nurses to pass medications to
19 their various patients as safely as possible because when we look at
20 medication administration, medication errors are a significant cause
21 of morbidity and mortality. They estimate that there's several
22 thousand deaths annually from medication. Harm can arise from
23 unintended consequences, and what we do know for a fact is about one
24 out of every three adverse drug events reported are attributable to
25 nurse administration of medication.

[REDACTED]

1 Q Okay. Hold on. So that's why the procedures with regard to nurse
2 administrated medication are so important. Correct?

3 A Absolutely. That's what policies and procedures are based on, and
4 when we look at regulation, they follow those same standards of
5 practice.

6 Q Okay. Can you--the (inaudible) on the regulations is part of the
7 exhibits that have been entered. I think--

8 A Absolutely.

9 Q One moment. For example, okay, your own medical care facility Drug
10 Administration Standard, it's Exhibit 5, EE5 and 6, how do those
11 relate to what you just told us about the five rights?

12 A Well they--our policy and procedure and our pharmacy policy and
13 procedure are based on those standards of practice that we are going
14 to set up one medication--or one resident's medication at a time so
15 you do not risk administering medication to the wrong resident, that
16 we are going to review the medications that we are pulling from the
17 cassette with the medication order on the medication administration
18 report. We have to do double checks to make sure that we are
19 administering every medication appropriately. We have to identify
20 the resident which we do using a photo which is on the electronic
21 medication administration report, and then we have to chart
22 immediately after administering the medication and before proceeding
23 to the next person.

24 Q Okay. So I'm looking at--on Exhibit 5, EE5 and 6, the page 6, it
25 looks like number 14, how does that relate to what you just told us?

1 A Give me just one minute. I'm trying to look at this on the computer
2 and it's a little bit dark, so give me just a moment, please.

3 Q Sure.

4 A How it relates, the areas that are highlighted there, as when
5 preparing medications for administration, realistically we are
6 required to take the cart to the resident and to pull out their
7 individual cassette from their supply, you compare the cassette to
8 the medication administration record. You always have to do double
9 checks to make sure you have all those five rights. You have to
10 identify the resident using their photo on that electronic mark to
11 make certain that you're administering the medication to the correct
12 person, it's identification source, and then immediately when you're
13 done you need to chart--

14 Q Hold on. That's 14i on the policy? Identify the Resident?

15 A Yes. That is "I" on the policy.

16 Q Okay. Go ahead.

17 A And then "k" on the policy is charting the administration of the
18 medication before you proceed to the next resident.

19 Q Okay. And so that--you were talking about administering medication,
20 charting and documenting it one patient--one resident at a time, so--

21 A Absolutely.

22 Q --is that what "k" refers to?

23 A Yes, it is.

24 Q Okay. Go ahead, continue. What else there is relevant to what you
25 just told us?

[REDACTED]

1 A I'm sorry. What did you say?

2 Q Okay. Go ahead and continue and just tell us what else in this--

3 these standards, Exhibit 5, is important to what you just told us.

4 A Pretty much that is it. I mean, it follows--I mean policies and

5 procedures follow standards of practice. On the first page, and I

6 don't know if it's highlighted here, again, Item Number 4,

7 "Medications will be administered at the time they are prepared,

8 doses will not be pre-poured." The reason--

9 Q Okay. Hold on.

10 A --the rationale for that--

11 Q Go ahead.

12 A --set up one resident (inaudible) and you don't run the risk of

13 administering the wrong medication to the wrong resident.

14 Q Okay. Now, with respect to that, what is the Claimant--how did the

15 Claimant violate this portion of the policy?

16 A What I can tell you, and I did not observe Ms. [REDACTED] doing

17 medication pass. When I came in at six a.m. to observe her, she had

18 already completed. What I will say is medications--what requirements

19 are when you've got a prescribed medication time, you can administer

20 medications up to one hour prior and one hour after the prescribed

21 time, so for the six a.m. medication pass, she can start at five

22 a.m., but you must be completed by seven. When I located Amy that

23 morning, Ms. [REDACTED], she told me at six o'clock in the morning, she

24 had already completed her medication pass which consisted of 49

25 medications to 21 different residents.

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ALJ WILLIAMS: I'm sorry. Give me those numbers again.

THE WITNESS: (inaudible)

ALJ WILLIAMS: Ms. [REDACTED]

THE WITNESS: --changed her process--

ALJ WILLIAMS: Ms. [REDACTED] Ms. [REDACTED]

THE WITNESS: --from when Mr. [REDACTED] had counseled her the week prior.

ALJ WILLIAMS: How many patients? How many passes?

THE WITNESS: Hello?

ALJ WILLIAMS: Ms. [REDACTED], can you say again those numbers?

You gave the number of passes, the number of patients.

THE WITNESS: Yes.

ALJ WILLIAMS: And that was--I didn't catch them.

THE WITNESS: (inaudible) 49 medications to 21 different residents by six o'clock in the morning. I will guarantee from watching med pass with her coworkers and looking at their reports on a daily basis, it takes her peers the full two hours to pass the medication. Upon reviewing her (inaudible), what I noted was that she had documented her first five residents, the first four of them at 5:11 in the morning and one at 5:12 in the morning. So starting at 5 a.m., it's physically impossible to go through the five rights and complete this entire process in that time frame. In addition, what I noted was she administered oral medications, patches, eye drops, insulin, and nebulizer treatments, and those all require in addition to doing one resident at a time and reviewing the five

[REDACTED]

1 rights, for example, patches require hand washing, removing the old
2 patch, dating and initialing the new patch, cleaning the area,
3 applying the patch and holding it in place for 30 seconds. Eye drops
4 and (inaudible) require hand washing, applying gloves, administering
5 the drops and then holding pressure on the (inaudible) duct for a
6 full minute. Insulin requires--and insulin is one of those
7 medications that is ever so critical. It requires dialing up the
8 correct amount of insulin, washing your hands, preparing the area
9 that you're going to administer on the resident, what--you know,
10 cleaning it with an alcohol wipe, allowing it to dry and
11 administering the medication. Nebulizers, which are ever so critical
12 because you have to do an assessment of the resident prior. The
13 nurses are required to check the resident's heart rate before
14 administering the medication. So it takes some time to do that and
15 then again you have to hand wash, you have to set up the medication
16 and the nebulizer cup, attach the tubing, put the mask on the
17 resident and turn on the nebulizer, so we had all those different
18 things completed within 11 minutes of time and documented, and it's
19 impossible to do that if you are doing it appropriately. As I said,
20 it takes Amy--Ms. [REDACTED] peers the full two hours to pass
21 (inaudible) medications to all their residents, going through the
22 appropriate processes that they go through. When I--

23 BY MR. BAIG:

24 Q Okay. Now--okay. Now with respect to the pharmacy's procedure, I
25 guess the [REDACTED] Exhibit 7--EE7, 8 and 9, what in these procedures

is significant with respect to the Claimant's--

A Absolutely.

MS. [REDACTED]: Your Honor.

THE WITNESS: They mirror our own policy--

ALJ WILLIAMS: Ms. [REDACTED]

THE WITNESS: --3.2 the facility staff should prepare medications for one resident at a time.

MS. [REDACTED]: Can I stop you for a second? I need to lodge an objection.

ALJ WILLIAMS: Okay. Ms. [REDACTED].

MS. [REDACTED]: Yes. I have an objection to the documents she's referring to which are EE7, EE8 and EE9.

ALJ WILLIAMS: Yes.

MS. [REDACTED]: I don't think they're relevant. I think they're hearsay, and I think that the witness is potentially just trying to utilize them to bolster her standard of care testimony regarding medication pass, and I don't think they're appropriately part of this record, and I don't think there's any indication that my client was given them or told that she had to comply with them so I think it's duplicative and (inaudible) relevant.

ALJ WILLIAMS: Response to that, Mr. Baig?

MR. BAIG: Well, Your Honor, you've already admitted them into the record. They're exhibit record. They're Exhibit 7, so I guess we must have addressed their admissibility at the last hearing.

MS. [REDACTED]: I thought they were excluded at the last

[REDACTED]

1 hearing based on my objection, so--but I'll rely on--our collective
2 knowledge is probably better but my recollection was that these were
3 excluded or maybe introduced for a limited purpose. I guess I can't
4 recall.

5 ALJ WILLIAMS: Well, Exhibit 7 was admitted and I don't have
6 any notes here to say that it was--it was limited. I'll overrule the
7 objection if the [REDACTED] Medical Care Facility--if their policies were
8 informed by the pharmacy instructions and of course I guess drugs
9 always carry instructions that you get from the pharmacist. It's
10 relevant.

11 MS. [REDACTED]: Thank you.

12 MR. BAIG: Thanks.

13 BY MR. BAIG: ?

14 Q Go ahead, Ms. [REDACTED]. What here is relevant to what the Claimant
15 did?

16 A Okay. As we said, 3.2 preparing medications for one resident at a
17 time, under Item Number 4, the 4.1.1 verifying each time a medication
18 is administered that it's the correct medication, correct dose,
19 correct route, correct (inaudible), correct time are all relevant.
20 The other items that are highlighted, I don't know if they're
21 highlighted on your copies there, when we look at medications
22 obviously with medication administration, you know, obtaining vital
23 signs, looking at expiration dates, looking at allergies before you
24 administer. Item Number 5 identify--5.1, identifying the resident
25 per facility policy, which we already established. Item 5.4,

[REDACTED]

1 administering medications within time frames specified. Item 5.5,
2 documenting the administration. I'm sorry. Documentation--actually
3 Item Number 6, after medication administration document necessary
4 medication administration and treatment information are all--are all
5 areas of importance.

6 Q Okay. Now with respect to Exhibit 17, the regulations as to EE17 and
7 18, what's relevant to what you've already discussed regarding the
8 five rights and policies and procedures and standards that the
9 Claimant violated.

10 A The importance of those number one, this regulation is the
11 authorities that govern how we do business and come in and survey us
12 to make sure we are doing it appropriately.

13 ALJ WILLIAMS: Can I ask a question?

14 THE WITNESS: They use those things standard.

15 ALJ WILLIAMS: Can I interrupt?

16 THE WITNESS: So--

17 ALJ WILLIAMS: Ms. [REDACTED]

18 THE WITNESS: Yes.

19 ALJ WILLIAMS: Where does this come from?

20 THE WITNESS: This is regulation. It's federal regulation.

21 ALJ WILLIAMS: Do you know where it comes from?

22 MR. BAIG: CMS.

23 THE WITNESS: CMS.

24 ALJ WILLIAMS: Is there a citation?

25 THE WITNESS: There--on the paperwork?

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ALJ WILLIAMS: Do you know what the citation of this is in the federal regulations?

THE WITNESS: It is under, hold on just a moment. Do you have your policy book here?

ALJ WILLIAMS: Well I mean if you don't know, you don't know.

THE WITNESS: I can--we can get that information for you.

MR. BAIG: Don't know it off the top of our heads.

ALJ WILLIAMS: Okay. Do you know where you got it? What form did you get it in?

THE WITNESS: Where we get it is right from federal regulation of the CMS guidelines.

ALJ WILLIAMS: It's some book? Is there a book that you get it from?

THE WITNESS: It's the red and white one. Nursing Home Regulation Manual.

ALJ WILLIAMS: Nursing Home Regulation Manual published by CMS?

THE WITNESS: Yes. Nursing Home Regulation Manual.

ALJ WILLIAMS: Okay. Okay. Excuse the interruption. Go ahead.

A What is relevant is on Item Number 17 under Administering Medication, the authorities that regulate us, as I said, also follow these same standards. They assure the correct medication is administered and the correct dose in accordance with the manufacturers specifications with the standards of practice, to the correct person via the correct

[REDACTED]

1 route, the correct dose at the correct time. That's what we are
2 surveyed on, and also the documentation of medications including the
3 administration of routine medications and if not administered, an
4 explanation as to why. The other exhibit that we have--

5 ALJ WILLIAMS: Well before you--before you go on--

6 THE WITNESS: Okay.

7 ALJ WILLIAMS: There's no question on the floor. I might
8 point out that it looks like you know given the truncated nature of
9 these unemployment hearings, there's a lot of evidence already on the
10 record about what the policy of the employer is.

11 THE WITNESS: Absolutely.

12 ALJ WILLIAMS: Go ahead, Mr. Baig. Any more questions for Ms.

13 [REDACTED]

14 MR. BAIG: Sure.

15 BY MR. BAIG:

16 Q Ms. [REDACTED] did the--you've got before you a job description--it
17 looks like a Job Title License Nurse, it looks like it's five pages
18 signed by the Claimant on July 26 of [REDACTED]

19 A Yes, sir. I do.

20 Q Okay. And with respect to the Claimant's violation, what's relevant
21 here?

22 A Three different areas, essential functions of the position, Item
23 Number 2, ability to follow established standards of nursing practice
24 and implement facility policies and procedures, Item Number 10,
25 ability to safely administer and document medications and treatments

per the physician order and accurately record all care provided, and then Item Number--both 23 and 24, ability to promote resident safety by identifying safety hazard and initiating corrective action immediately and ability to demonstrate compliance with facility policies and procedures and ensure a safe looking environment.

MR. BAIG: Your Honor, I don't know if I have these ones numbered. These were sent after the first set of exhibits, but it's a five-page document with the Claimant's signature on it. Do you have a copy?

ALJ WILLIAMS: Just a minute.

MS. [REDACTED]: Those are EE43 through 47, if that helps.

MR. BAIG: Oh, okay. Okay. I didn't number them.

ALJ WILLIAMS: Hold on a minute. 43, 44, 46--well let me mark this following that pattern as Exhibit 43. Do you have that Ms.

[REDACTED]
(Exhibit Number 43 marked)

MS. [REDACTED]: Yes, I do.

ALJ WILLIAMS: Objections?

MS. [REDACTED]: None.

ALJ WILLIAMS: All right. Exhibit 43 is admitted.

(Exhibit Number 43 admitted)

MR. BAIG: Okay.

BY MR. BAIG:

Q Now, Ms. [REDACTED] you have before you a employee handbook acknowledgment, it looks like signed by the Claimant on June 28 of

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[REDACTED] It's probably EE48.

A Yes, I do.

MR. BAIG: Okay. Your Honor, at this time I would like to offer for the record the Handbook Acknowledgment by the Claimant dated June 28 of [REDACTED]

ALJ WILLIAMS: All right. We'll call this Exhibit 48. Objections?

MS. [REDACTED]: No objection.

ALJ WILLIAMS: Exhibit 48 is admitted.
(Exhibit number 48 marked and admitted)

BY MR. BAIG:

Q Okay. And then Ms. [REDACTED] it looks like there is another set of standards or regulations. Can you explain what EE50 until the end of the package is?

A (inaudible) F32 and F33 starts off at the top of the page?

Q Okay. What page number in the exhibit is that? E50?

ALJ WILLIAMS: Our exhibits aren't numbered J.

MR. BAIG: Okay.

BY MR. BAIG:

Q Well ma'am, can you identify what the remainder of the documents are from EE50 until the end of the packet?

A Yes, sir. Again that refers back to nursing home regulation manual and with regard to medication pass, with regard to how regulators hold up as a facility accountable and determining significance of medication error (inaudible)--what happens is--

1 Q Hold on. Hold on. That's in your CMS manual?

2 A Yes.

3 Q Okay. Go ahead. Continue. What's the significance of this document
4 to what the Claimant did?

5 A The significance of this is determining what is a significant and
6 non-significant medication error, and what it states is that we are
7 held to an error rate not to exceed five percent, and if we exceed an
8 error rate of five percent, it is--an error is considered as
9 significant. So what occurred is we look at the number of errors
10 observed and we divide it by the opportunity for error--

11 ALJ WILLIAMS: Let me interrupt. Ms. [REDACTED]. Ms. [REDACTED]

12 THE WITNESS: --so (inaudible) passing multiple medications.

13 I'm sorry.

14 ALJ WILLIAMS: Ms. [REDACTED]

15 THE WITNESS: Yes.

16 ALJ WILLIAMS: Let me interrupt again. Did Ms. [REDACTED]
17 commit any medical--medication errors that led to your decision to
18 fire her?

19 THE WITNESS: I cannot tell you if she committed errors or
20 not. She had the potential to commit errors.

21 ALJ WILLIAMS: So you didn't--

22 THE WITNESS: I do know that.

23 ALJ WILLIAMS: You didn't fire her because she committed
24 medical--medication errors. Correct?

25 THE WITNESS: (inaudible) We fired her because she had the

1 potential of committing medication errors by not following--

2 ALJ WILLIAMS: Okay.

3 THE WITNESS: --policy and procedure and standards of
4 practice.

5 ALJ WILLIAMS: Okay. All right. Any more on this,
6 (inaudible)?

7 MR. BAIG: Well I guess in light of my witnesses statement, I
8 guess this document probably isn't relevant.

9 ALJ WILLIAMS: I agree.

10 MR. BAIG: What--why the Claimant was fired--terminated, so,
11 we'll we'll skip that. With that I don't have any other questions of
12 Ms. [REDACTED]

13 ALJ WILLIAMS: Okay. Ms. [REDACTED] any questions for Ms.
14 [REDACTED]

15 MS. [REDACTED] Yes, I do.

16 CROSS-EXAMINATION

17 BY MS. [REDACTED]

18 Q Ms. [REDACTED] as the Director of Nursing, did you have occasion to
19 evaluate my client's performance?

20 A Yes, I did.

21 Q And you evaluated her performance in a formal performance evaluation.
22 Is that true?

23 A That is true.

24 Q And those performance evaluations are done annually. Is that
25 correct?

[REDACTED]

1 A Not all of them. There are performance evaluation that I prepared
2 was not an annual, it was based on deficient performance at the time.

3 Q All right. Fine. So do you dispute that the last date you evaluated
4 her was September 19, [REDACTED]

5 A That is correct.

6 Q All right. And on the score key for the evaluation, a rating of
7 three is good. Correct?

8 A That is correct. It is meeting expectations.

9 Q And one of the criteria you had to evaluate regarding my client's
10 performance was, "Follows protocol for medication administration and
11 treatment." Is that correct?

12 A That is correct.

13 Q And on September 19, [REDACTED] you evaluated her performance in that
14 regard as a three or good. True?

15 A That is correct. That is based on the competency that had been done
16 by my Assistant Director of Nursing at the time who evaluated that
17 Amy had been following all policies and procedures at that time.

18 Q Now did your Assistant Director of Nursing get disciplined in any way
19 for the manner in which my client was administering medication?

20 A No.

21 Q Do you know whether or not the Assistant Director of Nursing was
22 fully aware that my client was administering medication in the manner
23 of which you now claim was improper?

24 A I do not know that.

25 Q Have you ever questioned her about that?

1 A My Assistant Director of Nursing is no longer employed with us.

2 Q Okay. Did you ever question her as to whether or not she was aware

3 that Ms. [REDACTED] was administering medication in the manner

4 that you terminated her for?

5 A No, I did not question that. As a nurse, I would--she is completing

6 a--she is attesting to the fact that this process is happening. That

7 falls under her nursing license.

8 Q All right. Now, if my client testifies that she was administering

9 medication in this manner for five years prior to her termination,

10 would you have any facts to dispute that?

11 A All of my competency is in Ms. [REDACTED]'s chart shows that she was

12 administering medications appropriately.

13 Q Okay. Now my client asked for help, further assistance during med

14 passes. Isn't that true?

15 A I'm not aware of it.

16 Q Are you aware of other nurses asking for further assistance

17 (inaudible)?

18 A (inaudible) to work together to complete the medication pass.

19 Q Now have you ever personally performed the med pass to determine

20 whether or not it is physically possible to pass out medication in

21 the way you've testified it should be done within two hours?

22 A I have passed medications in multiple facilities to know (inaudible).

23 Q I want to know--

24 A In that particular facility, no I have not.

25 Q Okay. Now if you as a healthcare provider had to choose between

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timely administrating medication and timely charting the administration of medication, which would you choose?

A I would have to say I would have to follow policy and procedure and do things appropriately, and if I went beyond my time frame, that would be my evidence that I needed assistance.

Q Okay. And if my client--

A (inaudible) number one.

Q Safety should be number one. Okay. Now based on all the criticisms you've provided of my client, do you have any evidence that there were any medication errors that occurred?

A I have no evidence of that. No.

Q And you'll also admit that my client is a patient safety advocate. Isn't that true?

A (inaudible) state that.

Q She brought multiple concerns to your attention over time with regard to safety at the facility. Isn't that true?

A She brought concerns. Yes.

Q Okay. And isn't it true that in September [redacted] she went to the Michigan Department of Civil Rights and complained she was discriminated against when she was suspended in September [redacted]

A I have no idea as to that.

Q Are you also aware that she made multiple complaints to the state regarding patient safety concerns?

A No, I'm not aware of that. Any time there is a complaint, the state, they do not provide us with the name of the individual making the

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complaint.

Q Well what other nurses med passes were being audited during this time?

A (inaudible) one of them.

Q And what documents do you have with you today to prove that, ma'am?

A I have reports of all them.

Q With you today?

A Not admitted into evidence, but yes, I review reports of all the nurses and my (inaudible) and my Inservice Director review competencies of all the nurses.

Q And do you know and can you testify under oath that none of the other nurses passed out meds and then documented?

A Not that I am aware of.

Q Did you interview them and find out if any of them were passing out medications similarly to my client?

A No. I didn't interview all the nurses.

Q Now, Exhibit 48, the Handbook Acknowledgment, there's no policy or (inaudible) in the employee handbook regarding med pass, is there?

A No, there is not. Or what's relevant with that is Amy has signed for personal conduct which means or which states because of the nature of our work each employee is expected to maintain good standards of personal contact--conduct and work performance as determined by the Human Services Board. The medical facility may use progressive discipline ranging through verbal warnings, written warnings, transfer, demotion, suspension without pay, and termination; however,

[REDACTED]

1 disciplinary action may be initiated at any step depending on the
2 seriousness of the offense and with regard to the seriousness of her
3 offense where she violated was Item Number 45 unsatisfactory work and
4 not following facility policies and procedures.

5 Q All right. And ma'am you admit that as of September [REDACTED] she was
6 performing satisfactorily because you had just done her performance
7 evaluation. True?

8 A As best as I knew, yes, that was true based on the information that
9 was supplied to me at that time by my Assistant Director of Nursing.

10 Q Yes. And my client complained of improper conduct of her coworkers
11 in the interim--between her performance evaluation and her
12 termination. Isn't that true?

13 A I'm not sure what you're asking.

14 Q On November 25th, [REDACTED] my client wrote you a letter. Isn't that
15 true?

16 A I don't recall.

17 Q Do you recall her writing a letter that said it has been brought to
18 my attention that [REDACTED] has been crawling into the resident's
19 bed with the resident still occupying them, resident of Room [REDACTED]
20 crawling into bed with him, rubbing his back and giving him a kiss.
21 Does this refresh your recollection, ma'am?

22 A I guess but I'm not certain how this--what does that have to do with
23 medication pass?

24 Q Well, between her satisfactory performance evaluation where she was
25 passing out medications in the exact same way you now claim is

[REDACTED]

1 deficient, in the interim, she complained that other employees were
2 crawling into bed, rubbing backs of them, kissing, she went to the
3 Michigan Department of Civil Rights and also made patient care
4 complaints in the interim. That's why it's relevant, ma'am. You're
5 aware of all those things and that occurred between the satisfactory-

6 -
7 MR. BAIG: Hold on. Objection. Is counsel testifying or is
8 this a question?

9 ALJ WILLIAMS: It's a multiple question but it's a question.

10 BY MS. [REDACTED]:

11 Q All those things happened between the satisfactory performance
12 evaluation and the termination. True?

13 A If she wrote a letter (inaudible)--

14 MR. BAIG: Hold on. Hold on. Hold on. Hold on. Hold on.
15 Objection. Can counsel break down this multiple question into
16 several questions?

17 MS. [REDACTED] I will if Your Honor wants me to.

18 MR. BAIG: Your Honor--

19 ALJ WILLIAMS: Yes, please do that Ms. [REDACTED]

20 MS. [REDACTED] Okay.

21 BY MS. [REDACTED]:

22 Q Ma'am, what I'm trying to find out is if you admit that in November
23 [REDACTED] my client reported to you that a coworker was crawling into
24 resident's beds, rubbing their back and kissing him. Do you
25 acknowledge that?

[REDACTED]

1 A I don't recall is what I have said.

2 Q Would you recall investigating that? That's a pretty significant
3 allegation.

4 A I would have to go back and review--review files. We follow up on
5 significant number of issues on a daily basis.

6 Q Now--

7 MR. [REDACTED] Just because somebody reports it, doesn't always
8 mean it's true.

9 ALJ WILLIAMS: Just a minute. Was that Mr. [REDACTED]

10 MR. [REDACTED] Yes, sir. It was.

11 ALJ WILLIAMS: Now this is Ms. [REDACTED] testimony.

12 MR. [REDACTED] I'm sorry.

13 THE WITNESS: Judge, what I will say is--

14 ALJ WILLIAMS: No. Next question.

15 THE WITNESS: --with regard (inaudible)--

16 ALJ WILLIAMS: Next question.

17 MR. BAIG: Hold on. Hold on. Hold on. This is Mr. Baig.
18 From my client's testimony she apparently doesn't know. I mean
19 she's--

20 ALJ WILLIAMS: Right.

21 MR. BAIG: --doesn't recall from her memory.

22 ALJ WILLIAMS: Okay.

23 MR. BAIG: She would have to refer to employer records.

24 ALJ WILLIAMS: Next question.

25 MR. BAIG: (inaudible)

ALJ WILLIAMS: Okay. Next question.

BY MS. [REDACTED]:

Q During my client's entire seven years of employment did she ever make a medication error?

A I'm not familiar with that. I've only been in this position at the time of this--well, I've only been in this position since the beginning of June last year. I do not know.

Q All right. Now regarding the med passes that you claim were decisions that gave rise to my client's termination, do you have any evidence to suggest that my client didn't determine that the right patient was given the drug?

A I am able to determine that your client did not follow policy and procedure and standards to ensure safety of the residents.

Q Do you have any evidence to suggest that my client did not verify that she was giving the right drug to the right patient?

A She did not follow policy and procedure. That's what I have evidence of--

Q Do you have--

A --and that is set up to afford safety of the residents.

Q Do you have any evidence to suggest that my client did not give the right dose to a patient?

A I don't know what you're getting at. I can't state specific drugs that were administered. What I do know and Amy confirmed it to me, and she confirmed it in our meeting with--in our counseling statement, and she confirmed it to the board that she was not

1 following policy and procedure. She was aware of it. She was aware
2 of standards of care through her training, and she did not follow
3 them.

4 Q All right. Do you have any evidence to suggest that my client didn't
5 determine she was providing the drug to the patient via the right
6 route?

7 A I don't have anything other we've talked about.

8 Q Do you have any evidence to suggest that my client did not determine
9 that she was giving the medication at the right time?

10 A I do not have that evidence. She did administer within the time
11 frames but she administered within a period of time that it's
12 absolutely impossible to go through all of the appropriate processes
13 in that short--short time frame.

14 Q And you did not physically observe her watching--doing her med pass.
15 True?

16 A She had completed by the time I located her.

17 Q Okay. But you never watched her do it. Right?

18 A No I did not.

19 Q You could've done that. You could've scheduled that and done that.
20 Right?

21 A That was my attempt that morning. She admitted to me that she was
22 not following appropriate process.

23 ALJ WILLIAMS: Okay. Can you answer that question just like
24 she asked it?

25 THE WITNESS: I'm sorry. Please repeat it.

1 ALJ WILLIAMS: You could have rescheduled your observation so
2 that you could watch Ms. [REDACTED] Correct?

3 THE WITNESS: That is correct.

4 ALJ WILLIAMS: All right.

5 BY MS. [REDACTED]

6 Q All right. And just one final question. I think it was Exhibit 2.
7 It was the counseling notice, EE2 and EE3. If my client testifies
8 that the first time she saw this document was when it was mailed to
9 her on December 19, would you have any reason to dispute that?

10 A Let me locate the document. Give me just a moment, please. That was
11 the document that we reviewed with her in her counseling session that
12 morning 12/14. I witnessed--or I was there and signed it on that
13 date, Mr. [REDACTED] was there and signed it on that date, and the other
14 person who signed it was another nurse who came along as a witness to
15 the event. That was at Ms. [REDACTED]'s request.

16 Q Okay. But the doc--you may have discussed the document, but if she
17 testifies she never saw the document until you mailed it to her in
18 the 19th, would you have any reason to dispute that?

19 A I don't believe that to be the case.

20 MS. [REDACTED] All right. I don't have any more questions.

21 ALJ WILLIAMS: Mr. Baig, any more questions for Ms. [REDACTED]

22 MR. BAIG: Yes. I have a few redirect.

23 REDIRECT EXAMINATION

24 BY MR. BAIG:

25 Q Okay. Ma'am, counsel asked whether you interviewed other nurses

[REDACTED]

1 about whether they were passing meds in a similar fashion that--
2 against policy and procedure. Did you ever observe other nurses
3 passing medication, and if so, were they following your policies and
4 procedures or not?

5 A I have observed, myself and both my Assistant Director of Nursing and
6 Inservice Director, both or all observed medication pass. I also
7 follow with the audit reports for nursing, and according to the audit
8 report, the nurses are administering over the two-hour period, which
9 would lead me to believe that they are following policy and
10 procedure.

11 Q Okay. And then this Assistant DON, Director of Nursing, was the
12 supervisor of these other nurses?

13 A Absolutely.

14 Q Okay. Now counsel asked you about this September 19th of [REDACTED]
15 evaluation that the--that rated the Claimant a three. Do you have
16 any reason to believe that she was not passing meds incorrectly prior
17 to September 19th of [REDACTED]

18 A I have no reason (inaudible) for not passing meds correctly prior.

19 Q Okay. And so she wasn't passing meds incorrectly prior then do you
20 have any thoughts as to why she may have failed after that?

21 A I do not know that, sir.

22 Q Okay. And then ma'am, counsel asked you several questions about the
23 Claimant making complaints to Civil Rights and other authorities.
24 Ma'am, did any of that factor into her terminate--the decision to
25 terminate her?

1 A I would have no knowledge of any complaints made to other civil
2 rights or other organizations. When we have investigations come in,
3 state surveyors come in, if they are following up on a complaint, we
4 do not have knowledge. They do not provide us knowledge of who made
5 the complaint.

6 Q Okay. So then, even if you knew of a complaint, you wouldn't know
7 who made the complaint. Correct?

8 A That is correct.

9 MR. BAIG: Okay. Very good. I don't have any other
10 questions.

11 ALJ WILLIAMS: Ms. [REDACTED] any more questions for Ms.

12 [REDACTED]

13 MS. [REDACTED] No, Your Honor.

14 ALJ WILLIAMS: All right.

15 EXAMINATION

16 BY ALJ WILLIAMS:

17 Q Ms. [REDACTED] do you know whether Ms. [REDACTED] suspended in
18 September of [REDACTED]

19 A Yes she was.

20 Q And what was that about?

21 A It was deficiency--performance deficiency.

22 Q What performance was deficient?

23 A It had to do with lack of respect, attitude, negativity with her
24 coworkers, unprofessional manner of handling resident care,
25 complaints received from residents.

1 Q And I take it--I guess I understand from Mr. [REDACTED] testimony, Mr.
2 [REDACTED] said this that you and nobody else at [REDACTED] Medical Care
3 Facility reported Ms. [REDACTED] s wrongful medication pass technique
4 to the professional board.

5 A Yes, sir. That is correct.

6 Q And why didn't you?

7 A In reality, I am--and that is my error. I will accept that. I am
8 new to this position. I've had the opportunity to report anybody
9 before, and I just didn't think about the urgency of it.

10 ALJ WILLIAMS: All right. I have no more questions. If there
11 are no more questions of Ms. [REDACTED] are there any?

12 MR. BAIG: Well I do have one question.

13 ALJ WILLIAMS: Mr. Baig?

14 MR. BAIG: This is Mr. Baig.

15 REDIRECT EXAMINATION

16 BY MR. BAIG:

17 Q Do you know if it's--if it's a requirement for you to report--

18 A I did not know at the time.

19 MR. BAIG: Okay. You did not know at the time. Okay. Very
20 good. I don't have any other questions.

21 ALJ WILLIAMS: Thank you very much Ms. [REDACTED]

22 MS. [REDACTED] You're very welcome.

23 ALJ WILLIAMS: Next witness on the [REDACTED] Medical Care Facility
24 side.

25 MR. BAIG: That's it, Your Honor. It's just Mr. [REDACTED] and Ms.