

IN THE IOWA DISTRICT COURT IN AND FOR CERRO GORDO COUNTY

KRISTINE CHRISTENSEN, Individually	)	
and as Executor of the Estate of MARIA	)	LAW NO. LACV069306
O'BRIEN, STEPHANIE PROHASKI,	)	
Individually, ANTHONY SAVAS,	)	
Individually, and TEODORE SAVAS,	)	
	)	
Plaintiffs,	)	DEFENDANTS' SECOND MOTION IN
	)	LIMINE
v.	)	
	)	
GOOD SHEPHERD, INC. d/b/a GOOD	)	
SHEPHERD HEALTH CENTER,	)	
Defendants.	)	

Defendants, by and through their undersigned counsel, move this court in limine for an order directing the plaintiffs named herein and the plaintiffs' counsel that would prevent the plaintiffs or the plaintiffs' attorneys, witnesses, or representatives from making or eliciting any comments or references as set forth below during voir dire, opening statements, questioning of witnesses, trial, closing arguments, or at any other time during the trial of this cause that may be heard by jurors or potential jurors as to any of the following:

**28. Plaintiff's counsel's remarks, contentions, arguments, statements, comparisons, or introduction of evidence or elicitation of testimony, including through suggestive, leading questions, concerning or related to Good Shepherd's financial status, financial condition, wealth, or ability to pay or afford said damages.**

For over a century the Iowa Supreme Court has recognized plaintiff's counsel's arguments or statements concerning the wealth of a defendant or appeals to the authority of tax-payers are impermissible.

In Blair v. Madison County, 46 N.W. 1093 (Iowa 1890), during closing argument, plaintiff's counsel argued that the defendant county was wealthy and that "one of the heaviest tax-payers of the county" thought plaintiff should recover damages. On appeal to the Iowa Supreme Court, the Court observed, "This manner of argument must always be condemned, and ought to never be permitted. We do not know of any circumstance which would justify it..."

Blair, 46 N.W. at 1094. The Court also characterized plaintiff's counsel's statements as "improper conduct". Id. at 1096. However, because defendant's counsel failed to make the objection at the time plaintiff's counsel engaged in the misconduct, the Court declined to reverse the judgment in favor of plaintiff. Id.

Similarly, the Court has long observed it is also misconduct for plaintiff's counsel to make statements regarding the wealth of a defendant in an opening statement. For example, in Sullivan v. Chicago, R.I. & P.R. Co., 93 N.W. 367 (Iowa 1903), the Iowa Supreme Court recognized it is misconduct for a plaintiff's attorney to make an opening statement in which counsel referred to the wealth of a defendant corporation as a purported disclaimer to the jury. The Court approved of trial court's ruling that sustained defendant's misconduct objection. Sullivan, 93 N.W. at 367. The Court explained,

Irrespective of the form of the statement as made, there could have been no other purpose, and it could have no other effect, than to call the attention of the jury to the fact that the defendant was a corporation operating extensive lines of railway, earning large sums of money, and inferentially, at least, therefore able to pay any amount, however large, that the jury might see fit to award as damages. That such considerations can have any part in the determination of the legal rights of parties who come before our courts, no one will contend for a moment.

Sullivan, 93 N.W. at 368. Despite the Court's recognition of plaintiff's counsel's misconduct, the Court declined to reverse on that ground. Id. However, the Court directed trial courts to scrutinize counsel's statements and to not hesitate to grant a new trial if the court determines the verdict was influenced by improper conduct. Id.

Furthermore, the Court has held plaintiff's statements as to the wealth of the parties or their financial status, including a comparison of the parties situations and arguments to the jury to increase their award of damages, constitute prejudice that deprived the defendant of a fair trial by an impartial jury. In White v. Chicago & N.W. Ry. Co., 124 N.W. 309 (Iowa 1910), the Iowa Supreme Court held plaintiff's counsel engaged in prejudicial misconduct that required reversal of the verdict in favor of plaintiff. There, counsel presented the jury with statements throughout trial, including opening and closing summations, that concerned the poverty of the plaintiff, the

wealth of the defendant, asserted attorney's fees would cut the jury's award by one-half the amount, and the court would reduce the verdict if it was too high. White, 124 N.W. at 312. In ordering a new trial, the Court explained counsel's comparison of the parties' financial status and encouragement of the jury to award damages constituted an improper argument to the jury. Id. at 312. The Court elaborated that the latter,

was a direct appeal to the jurors to forswear their duty and shift the burden to the court, and ought not to have been tolerated. The line of argument pursued, in effect, was that the jurors would be blamable if the assessment of damages were too low, while they might shirk all responsibility by putting it too high and allow the court to reduce it....

In view of the attitude of the court, it may well be assumed that the jury took these matters, as well as the amount of plaintiff's attorney's fees, into account, and they are to be regarded as objectionable as though improperly injected as evidence.

White, 124 N.W. at 312. See generally Burke v. Reiter, 42 N.W.2d 907 (Iowa 1950).

Notably, Good Shepherd has filed a motion to sever/bifurcate Plaintiffs' punitive damage claim. In short, Good Shepherd believes Plaintiffs should not be able to taint the jury with punitive damage evidence or arguments as to Plaintiffs other causes of action. Addressing punitive damages in bifurcated proceedings is appropriate and necessary to prevent substantial prejudice that most likely result if the jury heard Plaintiffs' arguments or evidence, specifically including Good Shepherd's financial status, wealth, and ability to pay a judgment. This is because, as the Iowa Supreme Court stated in Sullivan, "It is well known to persons familiar with jury trials that jurors are frequently influenced in reaching a verdict by considerations which have no legitimate application in the case." 93 N.W. at 368 (quoting State v. Dooley, 57 N.W. 414 (Iowa 1894)). The Sullivan Court also observed, "If we expect to retain the benefits of our jury system, great care must be taken not only by the court, but by attorneys as well, to see to it that only matters proper for their consideration are brought to the attention of juries." Sullivan, 93 N.W.2d at 368-69.

29. **Any testimony as to whether Good Shepherd breached alleged applicable statutes or legal standards.** The court should prohibit Plaintiffs from injecting any comments

or elicitus any opinion testimony from witnesses that Good Shepherd breached any governing legal standards, including whether Good Shepherd acted negligently, violated any laws, or was reckless.

The Iowa Supreme Court has held that a witness may not provide his opining as to whether a defendant met or breached an applicable legal standard. For example, in Kooyman v. Farm Bureau Mut. Ins. Co., 315 N.W.2d 30, 36 (Iowa 1982), Kooyman sued Farm Bureau Insurance for bad faith. Kooyman sought to introduce an attorney's opinion that Farm Bureau acted in bad faith. Id. Farm Bureau objected, and the trial court sustained their objection. Id. Additionally, Kooyman attempted to introduce another attorney's opinion that Farm Bureau failed to perform a sufficient investigation. Id. Again, the trial court sustained Farm Bureau's objection. Id. The Iowa Supreme Court held the trial court properly sustained Farm Bureau's objections. Id. Both of the attorney's opinions that Kooyman sought to offer were inadmissible under longstanding precedent that a witness cannot present his opinion as to whether a defendant met or did not meet the standard of care. Id. (citing Grismore v. Consolidated Products Co., 5 N.W.2d 646, 663 (Iowa 1942); Schlichte v. Franklin Troy Trucks, 265 N.W.2d 725, 730 (Iowa 1978)). See also State v. Cromer, 765 N.W.2d 1, 10 (Iowa 2009); In re Det. of Palmer, 691 N.W.2d 413, 419 (Iowa 2005) ("[A] witness cannot opine on a legal conclusion or whether the facts of the case meet a given legal standard."); Aller v. Rodgers Machinery Mfg. Co., Inc., 268 N.W.2d 830, 840 (Iowa 1978) (reaffirming Griswold's prohibition on expert opinion as to satisfaction or breach of standard of care).

Under the established precedent, the issue of whether Good Shepherd satisfied or breached any applicable legal duties is a matter within the province of the jury. Here, Plaintiffs' expert, Dr. Naughten, has offered multiple opinions as to Good Shepherd's alleged breach of purported standards of care which Good Shepherd specifically object to. (See Good Shepherd's Exhibit B, highlighted opinions). Good Shepherd incorporates all highlighted portions of Exhibit A herein. Good Shepherd reserves the right to further address and object to Plaintiffs' expert's testimony and does not waive any objections.

Therefore, this court should bar Plaintiffs from eliciting any testimony from any witnesses, including expert witnesses Dr. Naughten, Joyce Black, and Byron Arbeit, as to Good

Shepherd's satisfaction or breach of any applicable legal standards.

30. **Any argument or contention, whether express or implicit, characterizing or referencing Plaintiffs as the “underdog”.** This line of argument is nothing more than an improper appeal to the jury's sympathy. Furthermore, it is an implied attempt to impermissibly get the jury to make inferences about the wealth of the parties, or to improperly compare the situation or status of the parties. Good Shepherd incorporates the Iowa Supreme Court cases under section 28 to support that its position that the court should prohibit from Plaintiff engaging in this conduct. Additionally, such commentary or testimony is unfairly prejudicial under R. 5.403.

31. **Any reference to the Plaintiffs, including decedent Maria O'Brien and her family, as a “victim”.** It is anticipated that Plaintiffs' counsel may make express or implied arguments, contentions, characterizations or references to Mrs. Maria O'Brien or her family as “victims”, as well as questioning of witnesses along those lines. The court should bar Plaintiffs from doing so for multiple reasons. First, Mrs. O'Brien and her family, including Ms. Stephanie Prohaski, are not victims as a matter of law. Under Iowa Code § 915.80(8), “ ‘Victim’ ” means a person who suffers personal injury or death as a result of any of the following:

- a. A crime.
- b. The good faith effort of a person attempting to prevent a crime.
- c. The good faith effort of a person to apprehend a person suspected of committing a crime.

There is not a shred of evidence that the State charged Good Shepherd with any crime or that Good Shepherd in fact committed any crime in this case. Hence, as a matter of law, Mrs. O'Brien and family are not “victims”.

Second, such commentary or argument is irrelevant and unfairly prejudicial. See IA R. Evid. 5.402; 5.403. If counsel reference the Plaintiff(s) or their family as a “victim”, then that strongly suggests or implies to the jury that Good Shepherd was somehow involved in a crime or some other illicit act. The intent of such characterizations would only be to arouse the jury's passions and to inflame the jury. Third, bad acts or evidence of crimes is inadmissible under IA

R. Evid. 5.404.

32. **Witness Kandee Bartholomew, Courtney Pietieg, Vanessa Honken-Mayo, or any other witnesses formerly employed by Good Shepherd.** Plaintiffs have identified Ms. Bartholomew as a witness at trial and subpoenaed her to testify. The court should exclude her from testifying in this matter because her purported testimony is irrelevant. Concerning Ms. Bartholomew, Ms. Stephanie Prohaski testified as follows:

A. Kandee was a former, I believe, CNA there. She is now a nurse, not at Good Shepherd any longer.

Q. What knowledge would Kandee have about any aspect of your mother's care or anything related to the lawsuit?

A. Well, she would go and visit mom and could see – she's known mom for years and years, and she has a medical background, and she was concerned about things too, so...

Q. Okay. Obviously, there were many staff members over a few years involved in your mother's care. This is the only staff member who is listed as a witness with knowledge. I'm just wondering, is there anything specific that Kandee knows about your mother's care or anything specific Kandee Bartholomew told you about your mother's care that you thought was specific?

A. She wasn't on staff when mom was there.

(Exhibit A, Prohaski Dep. tr. 110: 1: 14).

Ms. Prohaski goes on to testify that Ms. Bartholomew did not work at the hospital at which Mrs. O'Brien was treated. (Exhibit A, Prohaski Dep. tr. 110: 23: 25). The events at issue in this case will revolve around Mrs. O'Brien's time at Good Shepherd after Ms. Bartholomew was no longer an employee. Ms. Prohaski admits Ms. Bartholomew did not work at Good Shepherd at the time Mrs. O'Brien was at the facility. Hence, Ms. Bartholomew lacks personal knowledge to testify in this case. See IA R. Evid. 5.602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter..."); see also Coad v. Pennsylvania Ry. Co., 175 N.W.2d 344 (Iowa 1919). Her purported testimony will not aid the jury in determining the issues at trial.



Additionally, the deposition indicates Ms. Bartholomew may be called to testify as to her opinions regarding allegations in this case, including “lack of care” and “everything that we already said”. (Exhibit A, Prohaski Dep. tr. 111: 21: 25). Presumably, her testimony means Plaintiffs’ allegations in this case.

IA R. Evid. 5.702 allows opinion testimony by “a witness qualified as an expert by knowledge, skill, experience, training, or education.” A witness’s ability to testify as an expert is determined in reference to the topic under examination. Hylar v. Garner, 548 N.W.2d 864, 868 (Iowa 1996). The witness must be qualified to answer the particular question propounded. Id. However, the witness need not be a specialist in the particular area of testimony so long as the testimony falls within the witnesses’ general area of expertise. Mensink v. Am. Grain, 564 N.W.2d 376, 379 (Iowa 1997); Ranes v. Adams Laboratories, Inc., 778 N.W.2d 677, 687 (Iowa 2010) (“All expert witnesses must be qualified in the area of their testimony based on one of the five areas of qualification.”). There is simply no issue in this case that Ms. Bartholomew should provide any expert opinions, including any legal standards. See Federal Land Bank of Omaha v. Woods, 480 N.W.2d 61, 69 (Iowa 1992) (exclusion of expert testimony by attorney as to whether bank had first lien and if bank violated federal statute requiring first lien was proper, “first the Woods were seeking a legal conclusion from the expert. Legal conclusions are peculiarly for the court to decide and not the jury. Preliminarily, the court decides whether a statute imposes a duty, the breach of which imposes liability for damages. If the court concludes there is such a duty, the court instructs on it and the jury determines whether the duty was breached.”); see also Surgical Consultants, P.C. v. Ball, 447 N.W.2d 676, 679 (Iowa 1989) (stating nurses’ aides could not render an expert opinion as to standard of care in bariatric surgery case).

Furthermore, Plaintiffs have never designated or identified Ms. Bartholomew, Ms. Pietieg, or Ms. Honken-Mayo as lay or expert witnesses or provided any reports from any of them; therefore Plaintiffs did not comply with the court’s May 7, 2015 order. “Pretrial scheduling orders serve an important function in our civil justice system. A scheduling order encourages pretrial management and assists the trial court in controlling the direction of the litigation.” Fry v. Blauvelt, 818 N.W.2d 123, 129 (Iowa 2012). Failure to comply with a pretrial order may result in sanctions pursuant to Rule 1.602(5). The latter section incorporates sanctions

which may be imposed for failure to make discovery pursuant to Rule 1.508. These sanctions may include exclusion of testimony of any expert who has not been timely identified. Farley v. Ginther, 450 N.W.2d 853 (Iowa 1990); see also Loftsgard v. Dorrian, 476 N.W.2d 730 (Iowa Ct. App. 1991). In Olson, the court explained that Iowa Rule of Civil Procedure 1.508(3) requiring a party to supplement discovery as to experts “as soon as practicable, but in no event less than 30 days prior to the beginning of trial except on leave of court” provided the plaintiff with no relief, as Rule 1.602 gives the district court power to impose scheduling orders with alternative time limits.

Additionally, they also lack qualifications to testify as an expert witness. Allowing Plaintiffs to use Ms. Bartholomew, Ms. Pietieg, or Ms. Honken-Mayo as an expert witness in this case at this late hour would substantially prejudice Good Shepherd. Fry, 818 N.W.2d at 130 (“The failure of a party to meet pretrial deadlines not only undermines the goals of the schedule, but also prejudices the other party, who is subject to the deadlines as well.”). As a result, all potential expert testimony by them must not be allowed.

Moreover, testimony of Ms. Bartholomew, Ms. Pietieg, or Ms. Honken-Mayo, or other witnesses regarding other patients or residents at Good Shepherd, particularly as to their conditions, care, or treatment potentially violates HIPAA and possibly other federal laws and regulations, and could invade their right to privacy.

Additionally, this court should bar Ms. Bartholomew, Ms. Pietieg, or Ms. Honken-Mayo from testifying in this matter because any probative value of their purported testimony is far outweighed by the dangers of unfair prejudice, waste of time, confusion of the issues, and misleading the jury. IA R. Evid. 5.403. As former employees, Good Shepherd is concerned they may try to offer testimony concerning alleged prior bad acts or other, unrelated accidents that are inadmissible, as well as hearsay statements. See IA R. Evid. 5.404. Therefore, the court should bar them or other former employees from testifying at trial.

Regarding Ms. Pietieg and Ms. Honken-Mayo, the court must exclude them as witnesses in this matter because of Plaintiffs’ discovery rule violations. Good Shepherd many months ago served interrogatories on Plaintiffs requesting Plaintiffs identify persons with knowledge and the



substance of their information, and to identify Plaintiffs witnesses, including their contact information. (See Ex. C, Plaintiffs' Supplemental Answers to Good Shepherd's Interrogatories to Plaintiffs, Nos. 15 and 19); see also IA R. Civ. Pro. 1.501(2). Even in their second supplemental answers to interrogatories, dated August 19, 2016, Plaintiffs had still not yet identified Ms. Pietieg and/or Ms. Honken-Mayo. Good Shepherd believed it had received all discovery requested from Plaintiffs. See Whitley v. C.R. Pharm. Serv., 816 N.W.2d 378, 381 (Iowa 2012) ("Under the rules of civil procedure, parties seeking discovery should normally be justified in believing they have received substantially all the information requested"); see also IA R. Civ. Pro. 1.503(7). Surprisingly, Plaintiffs identified both women as part of their witness list for the first time on the eve of trial. See IA R. Civ. Pro. 1.503(4)(b) (party under duty to seasonably supplement or correct disclosure or response). Plaintiffs' violations of the discovery rules unfairly prejudices Good Shepherd by thwarting the discovery process and hindering its ability to prepare for trial. See Hamilton v. Bethel, 131 N.W.2d 445 (Iowa 1965) (recognizing purpose of discovery is to allow the interrogating party to prepare for trial).

Because Plaintiffs failed to include either Ms. Pietieg or Ms. Honken-Mayo in response to either interrogatory, the court must exclude both women as witnesses at trial. IA R. Civ. Pro. 1.517(3)(a) states, "If a party fails to provide information or identify a witness as required by rule 1.500, 1.503(4), or 1.508(3), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." "Noncompliance with discovery rules and discovery orders should not be tolerated." Golden Circle Air, Inc. v. Sperry, 543 N.W.2d 629, 633 (Iowa Ct. App. 1995) (citing Preferred Mktg. Associates Co. v. Hawkeye Nat. Life Ins. Co., 452 N.W.2d 389, 393 (Iowa 1990)).

33. **Testimony of Dr. Naughten or any other witnesses, as well as contentions or arguments of Plaintiffs' counsel, suggesting that Good Shepherd had a "profit motive" to retain residents, including Mrs. O'Brien.** The court should prohibit Plaintiffs from presenting this theory through witnesses or arguments by Plaintiffs' counsel. There is no evidence whatsoever to indicate that Good Shepherd's alleged profits took priority over its tenants' health, particularly Mrs. O'Brien's. As such, the court should any evidence or suggestions, whether express or implicit, because of unfair prejudice to Good Shepherd, waste of time, misleading the

jury, confusion of the issues, and irrelevance. See IA R. Evid. 5.402; 5.403.

34. **Plaintiffs' grief, mental anguish, mental suffering, mental distress, or the like.** The court should bar such evidence as irrelevant and improper. See Iowa Civ. Jury Ins. 200.20; Iowa-Des Moines Nat. Bank v. Schwerman, Inc., 288 N.W.2d 198, 204 (Iowa 1980) (holding "grief, mental anguish or suffering" are not elements of adult child's loss consortium claim) (abrogated on other grounds); IA R. Evid. 5.402; 5.403.

35. **Defendants reserve the right to file additional supplemental motions in limine as well as memorandums of authority as preparation for trial continues and as Plaintiffs have failed to timely provide exhibits for trial.**

WHEREFORE, Good Shepherd respectfully request the court to instruct the plaintiffs and plaintiffs' attorneys not to mention, refer to, interrogate concerning or attempt to convey to the jury in any manner, either directly or indirectly, any of the above-mentioned matters, and to further instruct the plaintiffs and their attorneys not to make any reference to the fact that this motion has been filed and granted, and to warn and caution each and every one of their witnesses to follow these same instructions. Additionally, Good Shepherd requests the court to exclude Plaintiffs' witnesses Courtney Pietieg and Vanessa Honken-Mayo from testifying. Good Shepherd requests an expedited hearing on the pending Motions in Limine in advance of trial.

SCHELDROP BLADES  
SCHROCK SMITH P.C.



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**CERTIFICATE OF SERVICE**

By signing above, the attorney certifies that this document was served electronically on all parties who receive electronic notice through EDMS as listed on the notice of electronic filing or

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1 IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

2 Maria O'Brien, Individually,  
3 Stephanie Prohaski, Individually,  
4 Anthony Savas, Individually,  
5 Theodore Savas, Individually,  
6 and Kris Christensen, Individually,

7 Plaintiffs,

8 vs.

Law No. LACV069306

9 Good Shepherd Geriatric  
10 Center, Inc. d/b/a Good Shepherd  
11 Health Center, Inc. also d/b/a  
12 Good Shepherd, Inc., Diane  
13 Horning, Individually, Mike  
14 Svejda, Individually, Ian  
15 Stockberger, Individually,  
16 and Nurses "Jane Doe" 1-3,

17 Defendants.

18

19

DEPOSITION OF STEPHANIE PROHASKI

20

21

22 Taken on behalf of the defendants, at 5 North  
23 Federal Avenue, Suite 200, Mason City, Iowa, on the  
24 17th day of May, 2016, commencing at 9:58 a.m.,  
25 pursuant to the Iowa Rules.

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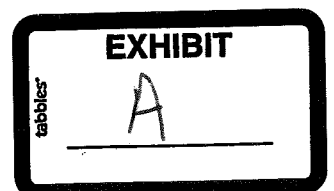
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## 1 CERTIFICATE

2 I, Tracy L. Hett, a Certified Shorthand  
3 Reporter and notary public in and for the State of  
4 Iowa, do hereby certify that at the aforementioned  
5 time and place there appeared before me said  
6 deponent, who was by me first duly sworn to testify  
7 to the truth, and was then orally examined; that I  
8 took down in shorthand the testimony of said witness  
9 and that the same has been transcribed into  
10 typewriting under my supervision and control; that  
11 the above and foregoing deposition is a true and  
12 correct transcript of my shorthand notes so taken  
13 and of the testimony of said witness.

14 I further certify that I am not related to  
15 or employed by any of the parties in which this  
16 deposition is taken, and further that I am not a  
17 relative or employee of any attorney or counsel  
18 employed by the parties hereto or financially  
19 interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my  
21 hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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25

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Tracy L. Hett  
Certified Shorthand Reporter

1       he no longer thought there was evidence of a broken  
2       neck?

3       A.           It's not necessarily broken.

4       Q.           Okay.

5       A.           And that's what he said.

6       Q.           Okay. Did you get any further explanation  
7       as to why he expressed that opinion?

8       A.           We didn't talk to him again after that.

9       Q.           Sort of the same question about Doctor  
10      Coddington. Do you have any criticisms about Doctor  
11      Coddington's care in any aspect or degree of your  
12      mother?

13      A.           Just concern that he couldn't find the  
14      x-ray. And he, you know, didn't want to talk with  
15      our brothers. That's --

16      Q.           Where were the x-rays done? Here at Mercy?

17      A.           Yes.

18      Q.           Among some of the other witnesses who are  
19      listed, there's one other name I want to ask about.

20                   Kandee Bartholomew, who is that?

21      A.           Kandee was a former, I believe, CNA there.  
22      She is now a nurse, not at Good Shepherd any longer.

23      Q.           What knowledge would Kandee have about any  
24      aspect of your mother's care or anything related to  
25      the lawsuit?



1       A.           Well, she would go and visit mom and could  
2       see -- she's known mom for years and years, and she  
3       has a medical background, and she was concerned  
4       about things too, so...

5       Q.           Okay. Obviously, there were many staff  
6       members over a few years involved in your mother's  
7       care. This is the only staff member who is listed  
8       as a witness with knowledge.

9                I'm just wondering, is there anything  
10       specific that Kandee knows about your mother's care  
11       or anything specific Kandee Bartholomew told you  
12       about your mother's care that you thought was  
13       specific?

14      A.           She wasn't on staff when mom was there.

15      Q.           Oh, I see.

16      A.           But she was at the hospital when we brought  
17       her, you know, in at the end and stuff.

18      Q.           And what did Kandee Bartholomew tell you  
19       that was significant to you or the family?

20      A.           Well, her knowledge and so on with dehy --  
21       She concurred with the physician there that all of  
22       the conditions that mom came in with were --

23      Q.           Was she working at the hospital, I mean at  
24       that time?

25      A.           No. She was there as a friend and as mom's

1       adopted daughter sort of.

2       Q.           Okay.  So she was a close friend of the  
3       family?

4       A.           Yes.

5       Q.           I see.

6                   Did Kandee provide you, meaning you or the  
7       family, with any opinions about Good Shepherd or its  
8       care?

9       A.           Yeah.  I don't know specifics, but she was  
10      appalled by some of the things that went on.  And  
11      she -- When we voiced our opinions before all of  
12      this came to fruition, when mom was still there and  
13      so on, she agreed with, and she knew what we were  
14      talking about, because it has been occurring.  Our  
15      concerns were concerns that she had too while she  
16      was working.

17      Q.           So Kandee is a close friend of your  
18      mother's and the family?

19      A.           Yes.  And a former employee at Good  
20      Shepherd.

21      Q.           What specifically was she appalled by?

22      A.           All of the things, the lack of care, the  
23      not answering -- well, everything that we already  
24      said.  It's nothing new.  What we were experiencing  
25      had been going on for a long time.

1 Q. All right. And she was no longer working  
2 for Good Shepherd, if I understand you correctly,  
3 when your mother was first admitted?

4 A. Yeah. She hasn't -- I don't know how long  
5 she hasn't been there. But no, she's not working.  
6 She wasn't.

7 Q. All right. Have you or the family talked  
8 with any other current or former employees or staff  
9 members of Good Shepherd about any aspect related to  
10 your mother's care or the lawsuit after your  
11 mother's death?

12 A. Not -- no.

13 Q. Okay. At any time was there any dispute or  
14 conflict between the facility, Good Shepherd, and  
15 the family members about the billing status or  
16 monies that were supposedly still owed, anything  
17 like that?

18 A. Yes. And that was -- That is something I  
19 will not answer. I can't answer. That was more  
20 Kris did that. Like I said, she did the financial  
21 part.

22 Q. You weren't involved with that part of  
23 things?

24 A. No.

25 Q. We've discussed a number of matters and

1 covered a lot of ground over the last couple of  
2 hours.

3 I guess one final question I want to ask  
4 you, if there's anything else that I maybe haven't  
5 thought to ask you, any other concern, complaint  
6 that the family has about any aspect of your  
7 mother's care that maybe I didn't know about or  
8 didn't know or didn't think to ask you, but  
9 something else that you would think important that  
10 maybe a jury should know about that we haven't  
11 discussed here this morning?

12 MR. HENNINGSEN: I'm going to object as  
13 vague and ambiguous and multi part, but answer it  
14 the best you can.

15 A. Not really.

16 BY MR. SCHROCK:

17 Q. All right. I think that's all I have for  
18 you. Thank you.

19 (Deposition concluded at 12:08 p.m.)

20 \* \* \* \* \*

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Bruce J. Naughton, M.D.  
80 Depew Avenue  
Buffalo, NY 14214

Dr. Naughton is a medical doctor, specializing in internal medicine and geriatrics. He has significant experience in treating the elderly. He is qualified to testify in this case based on his background, training, experience, and review of all matters exchanged in discovery, including depositions and medical records. Attached hereto is a copy of his curriculum vitae that more particularly sets forth his qualifications to testify to a reasonable degree of medical certainty that Good Shepherd failed to meet the applicable standard of care.

Good Shepherd failed to meet the minimum standard of any reasonable facility charged with caring for the elderly. Good Shepherd had a duty to monitor and assess the well-being of Maria O'Brien and make certain she received the care her symptoms and conditions required. She was entitled to reasonable accident and fall prevention. The home failed to provide appropriate care and staffing to Maria O'Brien, and their actions and inactions are directly and causally related to her injuries and untimely death.

Maria O'Brien was admitted to Good Shepherd on September 24, 2012. She had previously been in Mercy hospital for approximately one week due to a fall at an assisted living facility. She sustained a right pelvic fracture and had right shoulder pain. Because of this Maria O'Brien was recognized as a high fall risk, used a walker and a wheel chair, and was able to balance herself, but was not steady.

Unfortunately, despite being a known fall risk, Maria sustained multiple falls while residing at Good Shepherd. Between admission and March 12, 2014, it is documented Maria O'Brien had fallen at least eleven times in the care of Good Shepherd. After the March 2014 fall, Maria was in extreme pain and complained of head and neck pain. Several weeks later on April 8, 2014, Maria was diagnosed with a non-operative T3 fracture. She also suffered a neck injury wherein a vertebrae subluxation occurred.

Good Shepherd inadequately supervised Maria O'Brien and inadequately trained and supervised their own staff. They failed to abide by relevant state and federal regulations, administrative codes, regulations, and laws. They also failed to respect and protect Maria O'Brien's rights. Good Shepherd failed to adequately monitor, coordinate, and evaluate Maria O'Brien's care. Specifically, in addition to other failures, they failed to document and provide routine preventive skin care such as adequate turning and repositioning or being kept clean through baths.

According to the death certificate, Maria O'Brien ultimately died of electrolyte abnormality. She was also suffering from suspected sepsis, dementia, and dehydration.

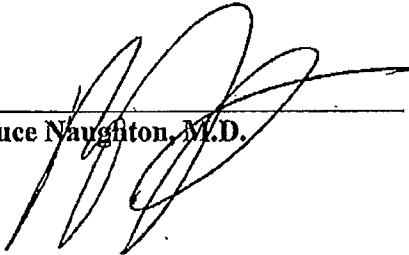
EXHIBIT

B

Skin breakdown can cause death in the elderly and certainly deconditioning as it did here. Specifically, it is well known that the development of skin breakdown conditions and the complications that accompany skin breakdowns contribute to an overall decline in the health of elder-care residents. It is also well known that fractures and significant injuries can lead to a decline in health in the elderly and ultimately death. The pain, lack of movement and ambulation, nutritional issues, and other matters related to the injury cause a decline in the health and allow any underlying conditions to worsen.

In this case, a resident that was relatively healthy upon admission, despite her prior fall, suffered a cascading decline in health under the care and supervision of Good Shepherd, following several falls, a final fall that caused a T3 fracture and neck injury, inadequate care, and development of pressure ulcers at various times. Such conditions cause declines in overall health, ambulation, immune systems, etc. They are also painful and cause harm to a person's overall emotional and mental wellbeing. More likely than not, these conditions and the poor care Maria O'Brien received caused her pain and were a substantial contributing factor to Maria O'Brien's death. In other words, Maria O'Brien likely would not have died in the time and manner that she did, but for the poor care from Good Shepherd.

I state that I have fully read the above answer relating to me, my qualifications, my mental impressions and opinions, and the facts known by me, and I verify under penalty of perjury and pursuant to the laws of the State of Iowa that the above is true and correct and all opinions are to a reasonable degree of medical certainty.

  
\_\_\_\_\_  
Bruce Naughton, M.D.

2/10/16  
Date



JMD DEG

## IN THE IOWA DISTRICT COURT IN AND FOR CERRO GORDO COUNTY

MARIA O'BRIEN, Individually,  
 STEPHANIE PROHASKI, Individually,  
 ANTHONY SAVAS, Individually,  
 THEODORE SAVAS, Individually, and  
 KRIS CHRISTENSEN, Individually,

Plaintiffs,

vs.

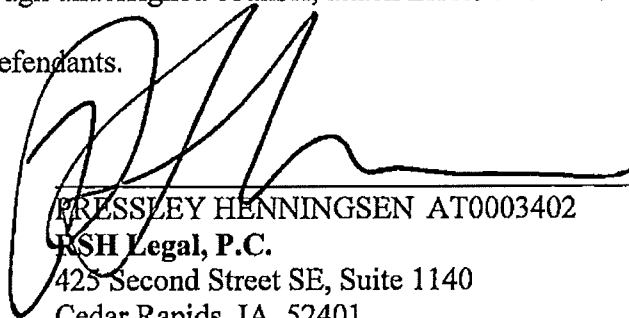
GOOD SHEPHERD, INC. d/b/a GOOD  
 SHEPHERD HEALTH CENTER, DIANE  
 HORNING, Individually, MIKE SVEJDA,  
 Individually, IAN STOCKBERGER,  
 Individually and NURSES "JANE DOE" 1-3,

Defendants.

LAW NO. LACV069306

**PLAINTIFFS' ANSWERS TO  
 INTERROGATORIES PROPOUNDED  
 BY DEFENDANTS  
 (Second Supplement)**

PLAINTIFFS, by and through undersigned counsel, attach hereto their Answers to  
 Interrogatories propounded by Defendants.



PRESSLEY HENNINGSEN AT0003402

FISH Legal, P.C.

425 Second Street SE, Suite 1140

Cedar Rapids, IA 52401

Phone: (319) 365-9200

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[phenningsen@fightingforfairness.com](mailto:phenningsen@fightingforfairness.com)

ATTORNEY FOR PLAINTIFFS


Original to:

David E. Schrock  
 118 Third Avenue SE, Suite 200  
 Cedar Rapids, IA 52401  
 ATTORNEY FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 8/11/16.

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ Overnight Courier  
☐ Certified Mail ☐ Other

Signature: 

**EXHIBIT**

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C

**INTERROGATORY NO. 15:** Please state as to each and every person with knowledge, as to the incident causing injury or any of your claimed damages in this case;

- (a) the name, address and telephone number of each person;
- (b) the substance of all information or knowledge known to each person; and
- (c) whether or not any such person gave any statement or account, either oral or in writing, of his or her knowledge of the alleged occurrence, and if so, give the substance of same.

**ANSWER:**

Plaintiffs

Defendants

Defendants' employees

Defendants' residents

Treatment providers

Father Joseph Mirowski, 1311 2<sup>nd</sup> St. SW, Mason City, IA 50401

Iowa Department of Inspections & Appeals

Kandee Bartholomew, 739 10th St. NE, Mason City, IA 50401, 641-425-0016

Dr. Sandeep Bhangoo, 1010 4th St. SW Ste. 105, Mason City, IA 50401, 641-428-7847

Dr. James Coddington, 1010 4th St. SW, Ste. 120, Mason City, IA 50401  
641-428-6020

Dr. Dana M. Delach, 621 S. Illinois Ave., Ste. 100, Mason City, IA 50401  
641-428-6900

Dr. Burt Humburg, 1000 4<sup>th</sup> St. SW, Mason City, IA 50401

**SUPPLEMENTAL ANSWER:** See depositions, expert reports, and medical records.

or form the basis of, the mental impressions and opinions held by the expert [Rule 1.508(1)(a)(1)].

**NOTE:** Rule of Civil Procedure 1.508(1)(a)(1) also requires that for an expert retained in litigation or for trial the expert shall sign the answer. Please comply with this Rule. A form, using Rule 1.501(4) so that no notary is required is proposed for ease of compliance with the Rule.

**ANSWER:** If any materials and/or opinions of a consulting expert are relied upon by a testifying expert, Plaintiffs will supplement their Answer pursuant to the Scheduling Order and Iowa Rules of Civil Procedure.

**SUPPLEMENTAL ANSWER:** See depositions, expert reports, and medical records.

**INTERROGATORY NO. 18:** State the name and present address of each person who has been retained or specially employed by you in anticipation of litigation in connection with this case whom you do not expect to call as an expert witness at trial but whose work product forms a basis, either in whole or in part, of the opinions of an expert who is expected to be called as a witness.

**ANSWER:** If any material and/or opinions of a consulting expert are relied upon by a testifying expert, Plaintiffs will supplement this Answer pursuant to the Scheduling Order and Iowa Rules of Civil Procedure.

**INTERROGATORY NO. 19:** State the name and last known address of each person whom you intend to call as a witness in this case.

**ANSWER:** Witnesses are undetermined at this time. This Answer will be supplemented pursuant to the Scheduling Order and Iowa Rules of Civil Procedure.

Plaintiffs  
Defendants

Defendants' employees  
Treatment providers

Discovery is ongoing. This Answer may be supplemented.

**SUPPLEMENTAL ANSWER:** See Plaintiffs' Answer to interrogatory No. 15 and experts.

**INTERROGATORY NO. 20:** Please identify each and every document or other writing that you intend to introduce into evidence at trial. You are requested to produce and attach to your answers to these interrogatories a copy of all such documents or other writings.

**ANSWER:** Exhibits are undermined at this time. Plaintiff will supplement this Answer pursuant to the Scheduling Order and Iowa Rules of Civil Procedures. See Iowa Department of Inspections & Appeals report. See medical records.

**SUPPLEMENTAL ANSWER:** See depositions, expert reports, and medical records. See all documents produced in response to Requests for Production of Documents.

**INTERROGATORY NO. 21** If the Plaintiffs or their witnesses intend to rely on any specific, alleged statement or admission by any of the defendants, or by any other current or former employees of any of the defendants, please set forth the particulars thereof, the names of the persons who allegedly made such statements and in what context, and relevant dates thereof.

**ANSWER:** Shari Dunn, head of nursing, told both Stephanie and Kris, "Let's start over on the 1<sup>st</sup> floor where she will get better care and a new team. The care on the second floor is not very good."

Robin, Maria's case manager, was questioned by Stephanie, Maria's daughter, on or about March 13<sup>th</sup>. Stephanie stated, "I heard my mom was left alone in the bathroom and fell off