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JUN 11 2010

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 19
 20 **COUNTY OF HUMBOLDT**

21 VINNIE LAVENDER, by and through her
 22 Conservator, WANDA BAKER, WALTER
 SIMON; JACQUELYN VILCHINSKY,

23 Plaintiffs,

24 vs.

25 SKILLED HEALTHCARE GROUP, INC., et
 26 al.,

27 Defendants.

CASE NO. DR060264

**MOTION TO DISQUALIFY JUDGE W.
BRUCE WATSON; DECLARATION OF
KIPPY L. WROTEN AND DARRYL ROSS
IN SUPPORT THEREOF**

CLASS ACTION

Action Filed: May 4, 2006
 Trial Date: November 30, 2009

Wroten & Associates, Inc.
Attorneys at Law





1 Defendants seek an order pursuant to *Code of Civil Procedure § 170.1* disqualifying Judge
2 Bruce Watson from presiding over further proceedings in the instant matter. This Motion to
3 Disqualify is based on bias Judge Watson has shown toward defendants and their attorneys. The
4 motion is made at the earliest practicable opportunity following discovery of facts as recently
5 during the last court session supporting disqualification. Defendants rely on the statements and
6 signed declarations of the attorneys representing defendants' interests in this matter and have
7 submitted those signed declarations in support thereof.

8 **I. THE COURT HAS EXHIBITED BIAS TOWARD DEFENDANTS AND THEIR**
9 **COUNSEL**

10 Bias exists where, as here, the judge exhibits a "predisposition to decide a cause of an issue
11 in a certain way, which does not leave the mind perfectly open to conviction. *Pacific & Southwest*
12 *Annual Conf. of United Methodist Church v. Supv Court (Barr)* (1978) 82 Cal. App. 3d 72, 86.
13 The test of impartiality, or partiality as exhibited here, is objective. The facts evidencing bias
14 must be viewed through the eyes of the "average person on the street" at the time the motion is
15 brought. *Warren v. Sup. Ct. (Taylor)* (1998) 64 Cal. App. 4th 618, 630. Persons aware of the
16 facts in the instant matter might reasonably entertain a doubt that Judge Watson is capable of
17 being impartial while presiding as judge over this case. Such bias provides the solid grounds for
18 disqualification here. *C.C.P §170.1(a)(6)(c)*.

19 As set forth fully in the declarations Kippy Wroten and Darryl Ross, Judge Watson has
20 engaged in ex parte communications with plaintiffs' counsel under particular circumstances which
21 exhibit bias against defendants' counsel. (See Declaration of Kippy Wroten and Darryl Ross,
22 attached hereto as exhibits "A" and "B.") Further, Judge Watson utterly failed to admonish
23 plaintiff's counsel for physically aggressive behavior plaintiff's counsel directed to defense
24 counsel in the judge's presence. (Decl. Kippy Wroten.) Defendants' expert, Dr. Brangman was
25 precluded from testifying on the defendant's compliance with the standard of care while plaintiffs'
26 lay witness, Carla Hernandez, was allowed to testify regarding her knowledge that the nursing use
27 of oxygen tanks was improper. (Decl. Kippy Wroten.) Throughout the trial plaintiff witnesses
28 have been allowed to testify regarding their opinions of "harm" as a result of nursing services



1 while defendants have been blocked from defending their care through the opinions of qualified
2 experts. (Decl. Kippy Wrotten.)

3 Further, excerpts of transcripts attached hereto detail repeated additional examples of bias
4 and partiality. (See Trial Transcript excerpts, attached as Exhibit "C.") Plaintiffs' expert was
5 allowed to answer questions at length over defense counsel's objections, while defense counsels'
6 expert was drastically limited in his answers. (Trial Transcript excerpts, pages 2-11, 20-29 Exhibit
7 "C.") Judge Watson allowed plaintiffs' counsel to question Luther Snoke on an email he had
8 never seen, while Judge Watson refused to allow defense counsel to question Kelly Atkins on an
9 email she authored. (Trial Transcript excerpts pages 15-19, Exhibit "C.") Judge Watson refused
10 to allow Joan Redden, with training in the area, to testify regarding 3.2 even sustaining plaintiffs'
11 counsel's objection before it was asked. On the other hand, Judge Watson freely allowed
12 plaintiffs' counsel to question Luther Snoke on 3.2 despite the fact Mr. Snoke had no expertise in
13 the areas. (Trial Transcript excerpts pages 11-15, 19-20, Exhibit "C.") Additionally, on May 4
14 when deciding whether to seat an alternate juror, the court postponed trial until the following week
15 stating he had balanced the needs of the jurors, plaintiffs and witnesses. (Trial Transcript excerpt
16 pages 31-32.) Glaringly absent was any statement (or indication) that Judge Watson had
17 balanced or even considered the needs of the defendants. The remainder of the court transcript is
18 replete with additional examples of judicial bias, but the examples articulated above are sufficient
19 to demonstrate "when viewed from the eyes of the average person on the street" Judge Watson is
20 biased against defendants and their counsel and thus, disqualified to continue to preside at the trial
21 of this matter.

22 **II. THE INSTANT STATEMENT OF DISQUALIFICATION IS TIMELY**

23 This Motion to Disqualify is presented at the earliest practicable opportunity after
24 discovery of the most recent facts stated herein constituting the grounds for disqualification of
25 Judge Watson. The most recent example of bias occurred on June 4, 2010.

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 For the foregoing reasons, plaintiffs' Motion to Disqualify Judge W. Bruce Watson should
3 be granted.

4
5 DATED: June 7, 2010

WROTEN & ASSOCIATES, INC.

6
7 By: *Laura K. Sitar*
8 Laura K. Sitar
9 Attorneys for DEFENDANTS

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EXHIBIT "A"



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21 VINNIE LAVENDER, by and through her
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SIMON; JACQUELYN VILCHINSKY,

23 Plaintiffs,

24 vs.

25 SKILLED HEALTHCARE GROUP, INC., et
26 al.,

27 Defendants.
28

CASE NO. DR060264

**DECLARATION OF KIPPY L. WROTEN
IN SUPPORT OF DEFENDANTS'
DISQUALIFICATION STATEMENT**

CLASS ACTION

Action Filed:
Trial Date:

May 4, 2006
November 30, 2009



1 6. The observation of this ex parte conversation between the presiding trial judge and
2 opposing counsel is the most recent of a series of escalating events which has caused me
3 increasing concern regarding the existence of judicial bias which I believe has impacted the
4 neutrality of the judicial management in our ongoing trial.

5 7. In addition, on May 3, 2010 a conference was held in the Department 1 jury room
6 regarding the defense objection to the admission of Department of Public Health records. Seated
7 around the small jury table were attorney Ross at the head of the table; along one side of the table
8 sat attorney Needham, the undersigned, and attorney Healey; Judge Watson sat directly across
9 from attorneys Needham, Wroten, and Healey. The conference was not on the record. Judge
10 Watson first invited attorney Healey to explain the plaintiffs' position regarding the admissibility
11 of the challenged DPH records. Attorney Healey was allowed free reign to fully explain his
12 position without objection. Judge Watson next inquired of co-plaintiff attorney Needham for any
13 additional argument on behalf of plaintiffs. Attorney Needham was also allowed free reign to
14 argue the entirety of his position. Judge Watson next inquired of the undersigned, attorney
15 Wroten. Despite having afforded plaintiffs a full opportunity to explain their position through two
16 counsel His Honor Judge Watson interrupted the undersigned shortly after I started to outline the
17 defense opposition and announced his ruling in favor of plaintiffs. At this time the undersigned
18 first expressed my perception there was ongoing disparate treatment to the favor of plaintiff
19 counsel by the Court. At this time attorney Needham rose from his chair and leaned aggressively
20 into the undersigned's face (coming within a fraction of an inch of being nose to nose) and while
21 leaning over the undersigned began yelling. Attorney Healey quickly rose from his seat, moved
22 around the undersigned and took hold of attorney Needham from the right while attorney Ross
23 placed his hand on attorney Needham's left shoulder. In combination attorneys Healey and Ross
24 told attorney Needham to sit back down as they physically assisted him back to his seat. Attorney
25 Healey repeated "we don't need this" to attorney Needham. Judge Watson was sitting directly
26 across the table from attorney Needham during the entirety of this incident and never spoke, not a
27 single word of admonishment for the physically aggressive behavior undertaken by attorney
28 Needham in his presence.

EXHIBIT "B"



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19 **COUNTY OF HUMBOLDT**

21 VINNIE LAVENDAR, by and through her
Conservator, WANDA BAKER; WALTER
22 SIMON JAMES C. BREWER; JACQUELYN
VILCHINSKY,

23 Plaintiff,

24 vs.

25 SKILLED HEALTHCARE GROUP, INC., et
26 al.

27 Defendants.

CASE NO. DR060264

CLASS ACTION

**DECLARATION OF LAURA SITAR IN
SUPPORT OF DEFENDANTS' MOTION
TO DISQUALIFY**

Date: June 7, 2010

Time: 8:30

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ACTION FILED: May 4, 2006
TRIAL DATE: Nov. 30, 2009

DECLARATION OF LAURA K. SITAR

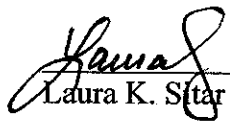
I, Laura K. Sitar, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Shareholder member with Wrotten & Associates Inc., attorneys of record for Defendants. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. Attached here as Exhibit "A" are true and correct excerpts from trial transcripts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 7, 2010, at Eureka, California.



Laura K. Sitar

Wrotten & Associates, Inc.
Attorneys at Law



EXHIBIT "C"



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24 vs.

25 SKILLED HEALTHCARE GROUP, INC., et
al.,
26

27 Defendants.
28

CASE NO. DR060264

**EXHIBIT TO DEFENDANTS' MOTION
TO DISQUALIFY; EXCERPTS FROM
TRIAL TESTIMONY; DECLARATION**

CLASS ACTION

Action Filed: May 4, 2006
Trial Date: November 30, 2009

1 Defendants hereby submit the following excerpts from trial testimony in the instant matter
2 in support for their Motion to Disqualify:

3 TRANSCRIPT EXCERPTS

4 Victoria Fierro- 2/22/10 8:45 am

5 Page 25:

6 Q Switching gears. Have you provided testimony to
7 4 legislative bodies with respect to nurse staffing issues?

8 5 A Yes, sir, I have.

9 6 Q Could you describe for the jury in general that
10 7 experience?

11 8 A In the year 2000, The Speaker of the House of --
12 9 in Florida's legislature appointed me to a newly created
13 10 commission called the task force on the study of the
14 11 affordability and the availability of long-term care. It
15 12 was a 19-member commission that was chaired by the
16 13 lieutenant governor of the state, and it was designed to
17 14 look at the long-term care industry, the relationship of
18 15 public policy to that industry, and as it is titled, the
19 16 availability and affordability of long-term care.

20 17 It was a commission that took about a year to do
21 18 its work. It held public hearings across the state. They
22 19 had an extensive research component to it, and ultimately
23 20 the commission provided a large report that was many inches
24 21 thick that was given to the Florida legislature in January
25 22 of 2001. And in the legislative session in Florida that
26 23 followed, which was in spring of 2001, they passed a major
27 24 piece of healthcare reform legislation --



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5 1 THE COURT: Well, not yet, but -- so, please,
6 2 continue.

7 Victoria Fierro- 2/22/10 8:45 am

8 Page 28:

9 13 Q Okay. Focusing on the Medicare/Medi-Cal
10 14 component, have you reviewed information relative to the
11 15 Defendant facilities, or the Defendants generally, to obtain
12 16 some general understanding of the percentage of revenue
13 17 derived from the governmental sources you described?

14 18 A I have, sir.

15 19 Q And what have you learned?

16 20 MS. WROTEN: Objection, your Honor. The question
17 21 is vague and ambiguous. There's 24 Defendants.

18 22 THE COURT: You can answer it generally.

19 23 THE WITNESS: Thank you, your Honor.

20 24 Well, one of the documents that I looked at to get
21 25 a general sense for that was Skilled Healthcare is a
22 26 publically-traded corporation and they provide documents
23 27 to --

24 28 MS. WROTEN: Objection, your Honor. She is beyond

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1 the scope of a CPA, and she's now testifying on corporate
2 issues.



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3 THE COURT: Go ahead, you can complete your
4 answer.

3 Victoria Fierro- 2/22/10 8:45 am

4 Page 29:

5 6 Anyway, corporations that are regulated by the
6 7 Security and Exchange Commission must file an annual report
7 8 call a 10-K. And the 10-K report includes its financial
8 9 statements so that investors and other people in the public
9 10 can understand information about those publically-traded
10 11 companies. It also gives management analysis and details in
11 12 their annual reports to describe the basic character and
12 13 nature of the business.

13 14 So in the 10-Ks for Skilled Healthcare --

14 15 MS. WROTEN: Objection, your Honor, she's now
15 16 going beyond the question.

16 17 THE COURT: What's your next question?

17 18 BY MR. HEALEY:

18 19 Q Well, roughly, based on the review of these
19 20 records that you've looked at, what's the rough percentage
20 21 of -- you take the overall revenue that you understand these
21 22 Defendant facilities have received in the government
22 23 side -- or excuse me, strike that.

23 24 If you look at the overall revenue sources,
24 25 100 percent, what percent of that is derived based on your
25 26 review of the records from government source?

26 27 MS. WROTEN: Objection. Your Honor, again, we're
27 28 compiling this together in a single enterprise hearing



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1 without any evidence to serve as foundation.

2 THE COURT: We'll note that. That's overruled.

3 You can answer.

4 THE WITNESS: Approximately 70 percent.

5 BY MR. HEALEY:

6 Q Seventy percent of the entire revenue?

7 A Well, there's two ways you look at it: You look
8 at it in number of days and look at it in the number of
9 dollars.

10 MS. WROTEN: Your Honor, I need a side bar.

11 You've just crossed seven states.

12 THE COURT: No, you didn't.

13 MS. WROTEN: Yes, you did. You did.

14 THE COURT: Don't do that. Don't.

15 Mr. Healey, what's your question?

16 MR. HEALEY: I'll move on, your Honor.

19
20 Victoria Fierro- 2/22/10 8:45 am

21 Page 52:

22 Q Describe for me generally your understanding of
23 20 how that staff posting is supposed to work when it's done?

24 21 MS. WROTEN: Objection. That's now calling for
25 22 expert opinion in analysis on staff postings.

26 23 THE COURT: How did you analyze what was provided
27 24 to you?

28 25 THE WITNESS: I reviewed the federal regulations





1 26 on it, and I reviewed the policy and procedure for Skilled
2 27 Healthcare regarding it, as well as the documents
3 28 themselves.

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9 1 BY MR. HEALEY:

10 2 Q So back, if I can, to the question. The -- is it
11 3 your understanding that the information here that's included
12 4 on the report, is it supposed to be actual, projected, or
13 5 something else, in terms of staffing?

14 6 MS. WROTEN: Objection, your Honor. Calls for
15 7 speculation on her part.

16 8 THE COURT: How did you interpret it?

17 9 THE WITNESS: Based on the language of the federal
18 10 regulation, they have to record, by shift, the actual
19 11 nursing hours and the number of staff.

20 12 MS. WROTEN: Objection, your Honor. She's now
21 13 testified as to the federal regulations.

22 14 THE COURT: The problem with all the objections,
23 15 it becomes quite confusing as to what's being asked, how
24 16 she's going to answer.

25 17 So, Mr. Healey, let's go back to Plaintiffs' 84
26 18 and with this, how the document, she used it in her
27 19 analysis. Perhaps she can explain to us the purpose for her
28 20 use, what it meant to her.

21 We don't need, necessarily, the, nothing personal

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22 to you, ma'am, the federal requirement or not thereof, but
23 how she used it, what it meant when she looked at Valley
24 Healthcare Center in particular.

25 MR. HEALEY: Thank you, your Honor.

Victoria Fierro- 2/22/10 8:45 am

Page 59:

Q Am I right that you later saw an e-mail in the
3 course of your review on this file that indicated that
4 contrary to what's being stated in this e-mail, the
5 Defendant facilities were not posting actual hours but
6 projected hours?

7 A Yes.

8 MS. WROTEN: Objection -- objection. Your Honor,
9 we really do need to have a side bar.

10 THE COURT: What's your objection?

11 MS. WROTEN: We're going into pre-litigation --
12 apparently pre-litigation response to a CLRA demand.

13 MR. HEALEY: I'll move on, your Honor.

14 THE COURT: I'm not sure what that is, but -- all
15 right.

16 What's next after this?

17 BY MR. HEALEY

18 Q In general, if -- hypothetical for you. If you
19 were looking at staffing in a skilled nursing facility, and
20 the skilled nursing facility properly complied, based on
21 your understanding of what information should be in that
22 daily staff posting requirement, meaning actual hours, would

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Attorneys at Law



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23 you be able to determine whether or not the facility was in
24 compliance with the minimum staffing requirement on a
25 particular day?

26 MS. WROTEN: Objection, your Honor. It's calling
27 for a legal conclusion.

28 THE COURT: No. You can answer.

Victoria Fierro- 2/23/10 8:28 am

Page 23:

Q Could you walk us through the various categories
17 listed here?

A Well, in order to try to make the terminology more
19 understandable for everyone, I've broken this down in three
20 categories.

So the first category is the licensed staff, and
22 we're just talking about direct care nursing here. So it's
23 the licensed staff, and specifically relative to the
24 analysis that we're doing in this case, it include the RNs,
25 the registered nurses, it include the LVNs, the licensed
26 vocational nurses, and it includes the MDS coordinator, who
27 is a nurse as well, a licensed nurse. Typically they're RNs
28 but sometimes they're LPN -- LVNs.

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Q Okay.

A The second category is the unlicensed staff. They make a distinction in the industry between licensed and unlicensed and basically, the unlicensed are the certified nursing assistants. And because you're dealing with frail, elderly population, certified nursing assistants have to receive specific amounts of training, and they have to pass an exam in order to be certified. But they are not licensed in the classic sense of licensing that an RN is licensed as.

MS. WROTEN: Your Honor, again, I have to renew my objection.

THE COURT: Your objection is what now?

MS. WROTEN: She is a CPA. She's been a CPA since 1991, in Florida.

THE COURT: No, no. Let's do this: How about, Mr. Healey, can you summarize her background for us that brings her here today?

MS. WROTEN: Your Honor, can we do this outside the presence of the jury?

THE COURT: No, no. Let's go ahead.

What background is she offering us? The educational as a CPA, then as I understand yesterday, testimony was that great deal of experience in auditing and doing research and that for skilled nursing facilities. And

1 25 with that comes utilizing all these categories to make an
2 26 audit and make certain findings.

3 27 Is that incorrect?

4 28 MR. HEALEY: I believe that's accurate, your

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10 1 Honor. I'll just pose the question to the witness to make
11 2 sure I have it straight.

12 3 MS. WROTEN: May I take her on voir dire?

13 4 THE COURT: No, you'll have your opportunity to
14 5 question her. She gets -- Plaintiffs get to present their
15 6 case, bring their witness. Her -- the weight -- the jury
16 7 will determine the weight for that evidence, but she's here
17 8 and it's relevant and material to what they're asking her.

19 9 And these are areas that, ma'am, you would have
20 10 utilized in conducting any audit or any -- I don't know what
21 11 the other term would be outside of "audit," but an analysis
22 12 for skilled facilities?

23 Joan Redden - 4/20/10- 8:37 am

24 Page 19:

25
26 Q Okay. Now, when you went to the surveyor academy,
27 2 did you observe how the Department of Public Health told
28





1 3 their surveyors they should review 3.2 staffing?
2 4 MR. HEALEY: Objection, hearsay, your Honor.
3 5 Observed what they were told?
4 6 MS. WROTEN: What you observe is the first
5 7 question.
6 8 THE COURT: Did you observe?
7
8 9 BY MS. WROTEN
9 10 Q Yes. Did you observe? Did you observe the
10 11 lesson? Were you in attendance at the lesson and observe
11 12 the lesson being given by the Department of Public Health to
12 13 their surveyors on how it was they were supposed to go
13 14 forward with their task of auditing a 3.2?
14 15 MR. HEALEY: Objection, hearsay, your Honor.
15 16 THE COURT: All right. Did you participate in the
16 17 class?
17 18 THE WITNESS: Yes, sir.
18 19 THE COURT: All right.

20
21 Joan Redden 4/20/10- 8:37 am

22 Page 27:

23 Q Now, ma'am, simple question: Going through the
24 17 entire time through our class period, starting -- in fact,
25 18 I'll start back in 2000.
26 19 Going through first quarter of 2009, were there
27 20 any regulations adopted and effectuated that described how
28



1 21 to apply the 3.2 law?

2 22 MR. HEALEY: Objection. Your Honor, violates your
3 23 prior ruling, relevance. And this document pertains to the
4 24 separate staff-to-patient ratio regulation. We've already
5 25 been through this.

6 26 MS. WROTEN: It's cross-examination. But I'm
7 27 going to get there. I don't have to hit it all at once.

8 28 THE COURT: I'll sustain that.

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14 1 MS. WROTEN: Well, what grounds so I can
15 2 effectively get the information out? I just need to know
16 3 which one.

18 4 THE COURT: The problem is that she's not going to
19 5 be able to testify to us what the law is.

20 6 MS. WROTEN: Oh, I'm not having her testify to the
21 7 law.

22 8 THE COURT: Part. I'll be instructing the jury --

24 9 MS. WROTEN: Understood.

25 10 THE COURT: -- what the law is, what law applies
26 11 in this particular case.

27 12 MS. WROTEN: And to be --

28

1 13 THE COURT: She can tell us, as she's done.

2 14 MS. WROTEN: Yes.

3 15 THE COURT: Had confusion. And so there you go.

4 16 MS. WROTEN: And that's all I'm asking for, your

5 17 Honor. I'm not even --

6 Joan Redden 4/20/10- 8:37 am

7
8 Page 29:

9 Q I want to caution you, again, you're not here to

10 8 testify as to what the law is. You understand?

11 9 A Correct.

12 10 MR. HEALEY: Objection, asked and answered.

13 11 Counsel's just arguing. Let's just ask the questions,

14 12 respectfully.

15 13 MS. WROTEN: I'd love to.

16 14 THE COURT: What's the question?

17 15 BY MS. WROTEN

18 16 Q Now, going back to this issue of the e-mail that

19 17 you've got in front of you that you can utilize it if it

20 18 assists you, was -- if we go back through this period of

21 19 time, and just to be clear, and I apologize if I'm

22 20 repeating, I can't remember if I got an objection and

23 21 sustained and the like, so I'm going to come back one more

24 22 time to be sure that I got it, I think I did, through this

25 23 period of time through 2009, there was not a regulation to

26
27
28





1 24 clarify the 3.2 adopted by the Department of Public Health;

2 25 is that correct?

3 26 A That's --

4 27 MR. HEALEY: Excuse me.

5 28 THE COURT: All right. I'll sustain that.

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9
10 Kelly Atkins- 4/22/10 10:22 am

11 Page 40:

12 Q Can you just explain to the jury what you wrote

13 13 and why you talked about flying pigs?

14 14 A Well, the pig part, is probably -- you know, I

15 15 didn't really think everybody was going to be reading my

16 16 e-mails, so -- I grew up in a small farm town in Wisconsin,

17 17 so I apologize if it's seems rude, but I really just was

18 18 trying to say to my team that there are definite -- there

19 19 were definitely the emergency rule-making question at hand.

20 20 There's been all this controversy that I know you've been

21 21 listening to for weeks now about what -- when the 3.2 was

22 22 put into law but then they never clarified all the

23 23 regulations regarding what counts in the 3.2 or postings.

24 24 MR. HEALEY: Excuse me for the interruption. I

25 25 apologize.



1 26 I move to strike that, your Honor, as subject to
2 27 the prior Court's ruling.

3 28 And I apologize for the interruption.

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8 41

9 1 MS. WROTEN: It's the e-mail he brought in to
10 2 discredit her. She gets to explain her³ e-mail. It's her
11 3 e-mail.

12 4 MR. HEALEY: Your Honor, this is a narrative that
13 5 it's trying to interject an issue we've already talked
14 6 about.

15 7 THE COURT: Let's do this: I'll strike the
16 8 response.

18 9 MS. WROTEN: Your Honor, this is their exhibit --

19 10 THE COURT: No.

20 11 MS. WROTEN: -- they read to this jury to
21 12 discredit this witness's intention.

22 13 THE COURT: Let's do -- let's do this, okay. My
23 14 way. Firstly, the Plaintiffs offered it whether it was to
24 15 discredited her or whatever would be argument for a later
25 16 time. Don't need to go there.

27 17 You can ask her what was she attempting to say,
28



1 18 and she can explain what she was stating. Regarding the
2 19 regulations whether, in fact, there were or were not, she
3 20 can simply tell us what there are or that. But balance --

4 21 MS. WROTEN: That is what she's doing.

5 22 THE COURT: -- is to the Court. Well, there we
6 23 go, so let's do it that way.

7 24 MS. WROTEN: That is what she's going.

8 25 THE COURT: Well, not necessarily so --

9 26 MS. WROTEN: I'll take another step then.

10 Luther Snoke - 4/27/10 8:35 am

11 Page 22

12
13 A It's an e-mail that states it's from Devin Shelby,
14 24 and I understand him to be an employee of Skilled
15 25 Healthcare, LLC.

16 26 Q In the e-mail he's states --

17
18 27 MR. ROSS: Hang on, hand on, your Honor. I
19 28 object. I don't see that Mr. Snoke was a recipient.

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23 23
24 1 There's no foundation that he has any knowledge of it.

25 2 I mean, before we display it, maybe we should ask
26 3 him.

27
28



1 4 THE COURT: Mr. Healey?
2 5 MR. HEALEY: It's a business record, your Honor.
3 6 It will take two minutes.
4 7 MR. ROSS: Well, that's not the point, your Honor.
5 8 The point is he's got to establish -- okay.
6 9 THE COURT: Let's let him read it then.
7
8 10 MR. HEALEY: Sure.
9 11 BY MR. HEALEY
10 12 Q Take a moment to review it.
11 13 THE COURT: What's your question?
12 14 BY MR. HEALEY
13 15 Q Am I right that as you read this e-mail, you
14 16 understood that Mr. Shelby is asking to see if some of
15 17 Maryhelen's hours can be moved from central supply into
16 18 nursing for purposes of meeting the 3.2 compliance?
17 19 MR. ROSS: Your Honor, that's improper. He's
18 20 getting around the display.
19 21 THE COURT: That's not improper. But why would
20 22 this -- the e-mail is not directed to this witness.
21 23 MR. HEALEY: The reason to show it, your Honor, is
22 24 simply the witness wasn't sure as to whether we were moving
23 25 hours from central supply to CNA. This e-mail establishes
24 26 she's a central supply person and they're moving hours to
25 27 the nursing category.
26 28



1 28 MR. ROSS: Your Honor, respectfully, this e-mail
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5 24
6 1 establishes that it was written. He doesn't have any
7 2 knowledge as to what it establishes, so it's an improper
8 3 foundation for the questions.

9 4 THE COURT: If you want to rephrase it and that.

10 5 MR. HEALEY: I'll try.

11 6 THE COURT: He can't tell us what Mr. Shelby was
12 7 doing or not.

13 Luther Snoke- 4/27/10 8:35 am

14 Page 30:

15 Q So, if we're trying to figure out what the true
16 21 nursing PPD would be for a facility on a given day, would
17 22 you agree with me it wouldn't be appropriate to include all
18 23 or any of those hours in this training column, right?

19 24 MR. ROSS: Your Honor --

20 25 THE COURT: Well, can you answer that?

21 26 MR. ROSS: -- calls for a legal conclusion.

22 27 There's no foundation, your Honor.

23 28 THE COURT: It's overruled.

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1 Can you answer that?

2 THE WITNESS: I don't know.

3 BY MR. HEALEY

4 Q Well, clearly if there's time in here for
5 training, for training somebody to, you know, be a van
6 driver, what have you, that shouldn't be considered part of
7 nursing, right?

8 MR. ROSS: Your Honor --

9 THE COURT: Would you count that as part of
10 nursing?

11 MR. ROSS: Your Honor, it's irrelevant. He
12 doesn't have the foundation.

13 THE COURT: Okay. Overruled.

14 MR. ROSS: The witnesses last week were asked
15 about who counted and they weren't allowed to testify.

16 THE COURT: Mr. Ross, it's overruled.

17 Would you count that?

Carl Bryant – 4/28/10 10:20 am

Page 34:

Q So when we take a look at the subsequent

7 rule-making process that occurred, I'm now looking at

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8 Exhibit --

9 MS. WROTEN: And Mr. Thamer, this has been marked
10 actually twice for you. It's 5606 and 5702. This is -- I'm
11 going to show it to you. This is the December 7th, 2009,
12 Department of Public Health publication, which now crosses
13 over for the description of the direct caregiver and the
14 counting of 3.2.

15 MR. THAMER: Can I look at the document, please.

16 THE COURT: He doesn't already have a copy?

17 MR. THAMER: Well, your Honor, there's 5,000
18 exhibits and I don't --

19 THE COURT: I don't mean you. I mean the witness.

20 MS. WROTEN: I'm asking him right now.

21 MR. THAMER: So, your Honor, with regards to --
22 which exhibit number is it? There's two here.

23 MS. WROTEN: Yes, both. We've marked it twice
24 with two witnesses and we've displayed twice.

25 MR. THAMER: All right. Your Honor, once again,
26 it deals with the patient-to-staff by shift ratio issue that
27 the Court's ruled on.

28 THE COURT: Let's do this --

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1 MS. WROTEN: I'm going to hit that straight on.

2 It's real easy.

3 THE COURT: You can take a look at it. Did you
4 change the number on it, Mr. Thamer?

5 MR. THAMER: I didn't change anything. I just
6 wrote it down. I just wanted to know which exhibit she was
7 talking about.

8 THE COURT: That's fine. Which exhibit is that,
9 please?

10 MS. WROTEN: It has two numbers on it, 5706.

11 What's the other one?

12 MR. THAMER: No, 5606 and 5702.

13 MS. WROTEN: Thank you.

14 THE COURT: Same thing.

15 MS. WROTEN: Same exhibit. We've marked it twice.

16

17 BY MS. WROTEN

18 Q Now, sir, that's the Department of Public Health
19 announcement to all facilities as to the actions they were
20 taking as far as the rule-making process, correct?

21 A Correct.

22 Q Now, sir, again, as you've testified, there was no
23 rule-making process in regard to defining the terms of that

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24 Health and Safety Code section 1276.5 until we get to this
25 point in time, correct?

26 MR. THAMER: Objection. That's a misstatement of
27 the law, your Honor, that --

28 THE COURT: Well, let me do this. Be overruled.

Carl Bryant - 4/28/10 10:20 am

Page 37:

Q Now, moving through, moving through.

10 As the Department of Public Health raffled with
11 this instruction from the legislature to put 3.2 in a
12 shift-by-shift analysis, did that alter the rules that
13 pertained to Health and Safety Code section 1276.5?

14 MR. THAMER: No. 1, objection. It highly supports
15 pretrial order, No. 1.

16 No. 2 --

17 THE COURT: Well, let's do that. I'll sustain
18 that. It's the form of the question.

19 MR. THAMER: Right.

20 MS. WROTEN: Sure, the form? Okay.

21 BY MS. WROTEN

22 Q What did the Department do when it started going
23 through the regulations and adopting process in order to do
24 the shift-by-shift application of the 3.2 staffing ratio?

25 MR. THAMER: Objection, relevancy. It's not

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26 relevant to this case, your Honor.

27 THE COURT: Well --

28 MR. THAMER: What they did to, respectfully --

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1 THE COURT: Shift by shift?

2 MR. THAMER: That was the question.

3 THE COURT: 3.2?

4 MS. WROTEN: One more time to make sure everybody
5 is clear.

Carl Bryant - 4/28/10 10:20 am

Page 38:

A Before we get there, it requires them to adopt

12 regulations regarding that.

13 Q Okay.

14 MR. THAMER: Objection, move to strike. Violates
15 the Court's order.

16 THE COURT: We need to strike that.

Carl Bryant - 4/28/10 10:20 am

Page 38:

Q Now, between 2000, January 1 of 2000 and January

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27 1st of 2007, was there any regulation that further defined
28 how to do either of those two tasks?

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1 MR. THAMER: Objection, the 1276.65 wasn't even
2 operative in 2000.

3 THE COURT: To your knowledge, yes or no?

4 THE WITNESS: No, sir.

5 THE COURT: Okay.

Carl Bryant – 4/28/10 10:20 am

Page 39:

Q When the Department of Public Health started the
8 rule-making process to take 3.2 and apply it to this 3.2 for
9 the morning shift, 3.2 for the afternoon shift, 3.2 for the
10 evening shift, did it result in new rule-making or initial
11 rule-making that impacted 1276.5's 3.2 requirement?

12 MR. THAMER: Objection. Two things: No. 1, it's
13 irrelevant; No. 2, he's not qualified to give that opinion.

14 THE COURT: All right. Let me -- I'll sustain
15 that.

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Page 46:

Q And, in fact, did you this, I didn't do it. This
is yours.

A That's correct.

MS. WROTEN: Can we turn that on now?

MR. THAMER: So, your Honor, just for the record,
I'm going to object to this. This is a document I've never
seen before today's date. It wasn't produced in discovery,
it wasn't produced at either of his three depositions.

THE COURT: We'll note that.

BY MS. WROTEN

Q Okay. So to help us know, looking at the law of
what it is we're going to count and what we're not going to
count, you created this graph for us, correct?

A Yes, ma'am.

Q So looking at this graph here --

MR. THAMER: Your Honor, just -- if you can just
take -- your Honor, if you can see by the graph it clearly
talks about statutes that the Court's already ruled are

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1 irrelevant for purposes of this lawsuit, it references
2 1276.65, it talks about 723 -- 72329.
3 MS. WROTEN: Let me assist you doing this. We'll
4 go this way and then we'll move down. We'll start this way
5 so we can explain what it is. We're just going to through
6 and explain what it is and why he has those categories
7 there.

8 THE COURT: All right.

9 Carl Bryant - 4/28/10 10:20 am

10 Page 48:

11 Q So that's -- we're not talking anything outside
12 of -- that's 1276.5, correct?

13 MR. THAMER: Objection, calls for a legal
14 conclusion.

15 THE COURT: All right.

16 MS. WROTEN: Make it real simple.

17 THE COURT: Sustain that.

18 Carl Bryant - 4/30/10 10:22 am

19 Page 6:

20 Q And I actually referred you to Marion
21 Schoenbackler who says I get them, right?

22 MR. THAMER: Objection, her testimony speaks for
23 itself and --

24 THE COURT: Sustain it.

1 6 MR. THAMER: -- it's a misstatement.

2 Carl Bryant - 4/30/10 10:22 am

3 Page 18:

4 Q Go to the second page. It tells you who you can
5
6 6 count. 9A RNs, just go to the first four sentence -- that's
7 7 right, you've got it. Just go to where it says who you
8 8 count, RNs. There you go. B, they've got to be productive
9 9 hours, tells where to put them. Go down to C, LVNs. It
10 goes down to E, CNAs. And then it tells you how to add them
11 up. Just like what you said in Varela 2004 under oath.

12 MS. WROTEN: Objection, that part's argument.

13 BY MR. THAMER

14 Q I'd like to show you one more --

15 MS. WROTEN: Excuse me. I'd move to strike.

16 THE COURT: Be overruled.

17 Carl Bryant - 4/30/10 10:22 am

18 Page 20:

19
20 Q Now, real quick, you mentioned early on this
21
22 18 patient-to-staff ratio by shift that isn't operative yet.

23 A Correct.

24 Q I just want to talk about that just for one
25
26 21 second.

27 MS. WROTEN: I'm just going to object since I was

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Attorneys at Law



1 23 precluded to going into the area.

2 24 THE COURT: You weren't. I mean, you were

3 25 precluded from this witness telling us what those statutes

4 26 are or interpreting for us --

5 27 MS. WROTEN: Oh, good. Okay. Thank you.

6
7 Kelly Atkins - 4/23/10 8:33 am

8 Page 45:

9 Q Well, wait, let me see if I understand this. I

10 4 mean, Ms. Redden was here, she testified very directly that

11 5 there's a 3.2 PPD minimum required. My question to you is,

12 6 are you saying that it's your understanding that the

13 7 facilities that you oversee are not required to meet a 3.2

14 8 PPD minimum?

15
16 9 MS. WROTEN: Your Honor, I object to the colloquy

17 10 that started his question.

18 11 THE COURT: Overruled.

19 12 MS. WROTEN: The question is fine, but the

20 13 colloquy --

21
22 14 THE COURT: Be overruled. You can answer.

23 15 THE WITNESS: The question always goes back to

24 16 what gets included to count to 3.2, because of the

25 17 contingents that have not been funded.

26 18 Yes, with -- what we disagree about is what gets

27 19 counted, but, yes, it is 3.2. But what gets counted is

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20 really important.

21 BY MR. HEALEY

22 Q Let's just focus on the requirement. The 3.2 PPD
23 you would agree with me, that's a legal requirement that as
24 you understood it throughout this class period that those
25 facilities were supposed to meet, correct?

26 MS. WROTEN: You know what? I'm just going to
27 object, No. 1 --

28 THE COURT: Overruled.

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1 MS. WROTEN: No, your Honor, I've got to say the
2 form, it calls for a legal conclusion, the question.

3 THE COURT: All right. It's overruled.

4 MS. WROTEN: And I'd also -- it's a little bit
5 tough when I get an order from the Court and I try to follow
6 it, and now that's used against us as if that's the state of
7 facts.

8 THE COURT: It's overruled. The question is
9 permitted and it's permissible. You can answer.

1 5/4/10 Trial Proceedings

2 Page 5:

3
4 THE COURT: And a couple of things. We began this

5 14 trial November 29th or thereabouts, in my recollection.

6 15 Began selecting jurors in January. We're now in May. We

7 16 have a class of plus or minus 34,000 Plaintiffs that are

8 17 elderly Plaintiffs and that. We have a jury, 12 people.

9 18 We've lost one alternate. We have two alternates. We have

10 19 Ms. Garwin, who is somewhat seriously ill at the moment, but

11 20 has advised us she will be present on Monday. We have a

12 21 second juror who advises us she's ill at this point, and

13 22 doesn't -- did not advise us when she'll be able to return.

14 23 The Plaintiffs have offered an accommodation which

15 24 is video testimony without the Mr. Larson aspects to it,

16 25 nondeposition testimony. There are some remedies, but

17 26 balancing prejudice, we have jurors who have been with us a

18 27 long time. We have Plaintiffs -- well, firstly, I suppose

19 28 we would say Plaintiffs, and we have witnesses, and -- so,

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1 at this juncture, I think we'll ask the jury in. We will
2 recess 'til Monday at 8:30, and we'll need to pick up at
3 that point.

4 MS. WROTEN: Was there a balance to the prejudice
5 to the Defendants, your Honor?

6 THE COURT: Yes --

7 MS. WROTEN: We're the ones being prejudiced.

8 THE COURT: -- that's the balance to the
9 Plaintiffs.

10 MS. WROTEN: Were are the ones being prejudiced.

11 THE COURT: I understand that's your position.
12 The Plaintiffs would say they're prejudiced --

13 MS. WROTEN: The 32,000 --

14 THE COURT: -- and each side would argue they're
15 prejudiced. The system will be prejudiced if, in fact,
16 there was a need for a mistrial.

17 So, it's the balancing of all of those things, and
18 the outcome is a relatively short delay here as it is.
19 We'll accommodate the witnesses and most hopefully reach our
20 goal. So with that, Mr. Bailiff, if you'll ask the jurors
21 in, please.

DATED: June 7, 2010

WROTEN & ASSOCIATES, INC.

By: _____

Laura K. Sitar

Attorneys for DEFENDANTS

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DECLARATION OF LAURA K. SITAR

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I, Laura K. Sitar, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Shareholder with Wroten & Associates Inc., attorneys of record for Defendants. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. Included herein are true and correct excerpts from Trial Transcripts in the instant matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed, June 7, 2010, at Eureka, California.



Laura K. Sitar

Wroten & Associates, Inc.
Attorneys at Law

