

1 GAYLE

2 billing."

3 Did you read that sentence before you  
4 signed the document?

5 A. Possibly. Maybe, maybe not.

6 Q. What's your understanding of what that  
7 sentence means?

8 A. As it states.

9 Q. Did you understand that to mean that all  
10 of the patients were billed through Medicaid?

11 A. I don't know about all the patients.

12 Q. All of your patients. Let's stick with  
13 that.

14 A. I don't know.

15 (Defendants' Exhibit D-11, Form 1099, was  
16 marked for identification as of this date.)

17 Q. I'm showing you a document that's been  
18 marked as D-11. It's Bates stamped D-46. It's a  
19 document from Harry's Nurses Registry, a 2007 Form  
20 1099.

21 There is two on here. The bottom one is  
22 issued to you, Claudia Gayle.

23 Have you ever seen this document before?

24 A. Can I ask a question before I answer that  
25 one?

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Q. I'm not here to answer your questions but if you would like to confer with your lawyer while there is a question pending, go ahead.

THE WITNESS: What is this on top here?

MR. BERNSTEIN: It's somebody else's.

Disregard that.

A. What was your question?

Q. My question is, have you ever seen this 2007 1099 from Harry's Nurses before?

A. I believe so, yes.

Q. When did you receive this 1099?

A. I believe it was the end of January.

Q. Of 2008?

A. Yes, I believe so. Somewhere around there.

Q. Other than filing this lawsuit, of course, have you objected in any way to the 1099?

A. What is your question directly? What are you asking?

MR. BERNSTEIN: Note my objection.

THE WITNESS: Pardon me?

MR. BERNSTEIN: I was talking to the reporter.

MR. SILBERSTEIN: Read my question back.

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(Testimony was read back.)

A. Objected to what, the 1099 itself or the amount that's written on the 1099?

Q. Both.

A. Well, when I received it, I made sure to check it against my pay stubs to see if it matched.

Q. Does it match?

A. Minus the worker's compensation, yes, it matches.

Q. Did you register any objection with the federal or state government over receiving this 1099?

MR. BERNSTEIN: Objection.

A. What are you asking me?

Q. Have you told anybody from the federal government or the state government that you should not have received a 1099 from Harry's Nurses?

A. No.

Q. At the time that you were on the Harry's Nurses Registry in 2007 did you personally maintain any liability insurance?

A. Yes. It was requested of me to get liability insurance.

Q. Who requested that you get that insurance?



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A. Harry's Nurses Registry, Inc.

Q. Who at Harry's Nurses?

A. I was told I needed it.

Q. For what purpose?

A. Some malpractice insurance. I wasn't told the purpose of it. It's called malpractice insurance.

Q. Someone at Harry's Nurses told you that you if you wanted to work on the Harry's Nurses Registry that you needed to have your own malpractice insurance? Is that what you're saying?

A. I was told that I needed malpractice insurance before I could go on a case.

Q. In February 2007, prior to your application to Harry's Nurses, did you maintain malpractice insurance?

A. No, not prior to that.

Q. So you purchased a policy specifically because you wanted to work on Harry's Nurses Registry?

A. Because I was told that I needed to have it before I could start a case.

(Defendants' Exhibit D-12, insurance policy, was marked for identification as of this



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date.)

Q. I show you a document that's been marked as D-12. It's also Bates stamped as D-28. It appears to be an insurance policy from CNA.

Have you ever seen this document before?

A. This is actually the first I'm seeing it.

Q. You've never seen this document before?

A. No, because they faxed it directly to his registry.

Q. Did you purchase a policy through CNA?

A. Yes, I did.

Q. The effective date of that was 2/20/07 to 2/22/08 as reflected in the top right corner; is that correct?

A. I guess that's it.

Q. That policy would have expired as of 2/28; is that correct?

MR. BERNSTEIN: Objection.

A. I guess it would have expired.

Q. You haven't paid any other premiums to CNA?

A. No.

Q. What was the purpose of this policy, in your understanding?

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A. Just that I needed to have it before I go on a case.

Q. Was it in effect during the entire time that you worked for Harry's?

A. Well, at the time it was purchased it's good for a year.

Q. What about worker's compensation insurance?

A. What about it?

Q. During the time that you worked for Harry's Nurses Registry, did you ever maintain a worker's compensation policy for yourself?

A. No, because I'm not required to do so.

Q. How do you know that?

A. Because I don't have employees.

Q. During the time that you were on the Harry's Nurses Registry in 2007, how was the worker's compensation issue handled?

MR. BERNSTEIN: Objection.

A. Exactly what issue are you referring to?

Q. There are allegations in your complaint about worker's compensation, correct?

A. Yes.

Q. What are those allegations?



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A. The allegations are or the complaints are that Harry's Nurses Registry, Inc. would take from my pay without my permission, illegally take from my pay without my permission \$1 per hour for every hour that I worked to pay for worker's compensation.

Q. Let me stop you there.

When you say without your permission, what do you mean by that?

A. Because I was never informed that it was going to take out, one, and when I was aware that it was being taken out, I requested several times for it to stop. I even brought this law to him to show him that I do not need to pay for worker's compensation, and he refused --

Q. Let me stop you there.

When you say you weren't informed prior to working, do you mean that you weren't informed by Carmen or by Cherrilyn?

A. Or by Harry himself, that I needed to pay worker's compensation.

Q. Before you started to work with Harry's Nurses, which you said was a few days after your application on February 20, how many times, if at all, did you meet with Harry Dorvilier?

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2 A. I didn't meet with him in person but he  
3 was in the office at times.

4 Q. Your conversations then, prior to working  
5 with Harry's Nurses Registry, would have been with  
6 Cherrilyn and Carmen; is that correct?

7 A. Basically.

8 Q. Your complaint is that or your allegation  
9 is that Carmen and Cherrilyn did not tell you that  
10 they deducted a dollar per hour for the worker's  
11 comp; is that correct?

12 A. No.

13 MR. BERNSTEIN: Objection.

14 Q. What's wrong with that?

15 A. My allegation is not against Carmen or  
16 Cherrilyn. It's against Harry's Nurses Registry,  
17 Inc.

18 Q. But you said you weren't informed prior.  
19 Who should have informed you?

20 A. Just as he has paper here, the paper says  
21 that I pay for all taxes, health insurance,  
22 malpractice insurance, why didn't he put in it that  
23 I would have to pay for worker's compensation?

24 Q. You are saying that it wasn't disclosed  
25 exactly --



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A. Exactly. There was no disclosure.

MR. BERNSTEIN: You are making the reporter's life very difficult.

THE WITNESS: I'm sorry.

Q. You testified then that -- I think these are your words -- that you complained about it several times during the time that you worked on the Harry's Nurses Registry; is that correct?

A. Yes.

Q. How many times?

A. Maybe three or more.

Q. Was that verbally --

A. Many times, verbally and directly to Mr. Harry.

Q. You have to let me finish my question.

A. I'm sorry, go ahead.

Q. Was it verbally or in writing?

A. Both.

Q. Both?

A. Yes.

Q. Let's go through each time.

You said there was about three times?

A. When I say "three times," three times in writing and verbally several times.

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1 GAYLE

2 Q. The documents that were in writing, do you  
3 have copies of them?

4 A. I wouldn't know where to lay my hands on  
5 them. I know I gave Harry a copy. I left copies  
6 with Carmen and never got a response.

7 Q. Were they typed on your computer or were  
8 they handwritten?

9 A. Handwritten.

10 Q. What were they handwritten on?

11 A. Papers like those.

12 Q. Like a legal pad?

13 A. Yes.

14 Q. You pointed at a legal pad?

15 A. I would say basically like a legal pad.

16 Q. Did you photocopy it before you handed it  
17 in?

18 A. I believe I did. It's likely of me to do  
19 so.

20 Q. I haven't seen those documents. I would  
21 ask that you search for them and produce them in  
22 connection with this case.

23 A. If I can find them.

24 Q. When was the first time that you submitted  
25 a written complaint?



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A. After I received the first paycheck.

Q. That would have been in or around March 2007; is that correct?

A. Yes, somewhere around there.

Q. To the best of your recollection, what did that complaint say?

A. When I saw the pay stub, I questioned what it was. When I was told what it was, I went and I did my research.

I called the worker's compensation board and based on what I was told, I was told that it was illegal for an employer to deduct any compensation from an employee's paycheck to pay for worker's compensation.

The lady I spoke with -- I don't remember her name -- gave me the section in law. I looked it up, I wrote it in a note and I told Harry's that I'm requesting him to stop deducting the worker's compensation from my pay and return that which he has already taken.

Q. When was this?

A. That was, like I said, somewhere between -- I believe that was in March.

Q. In March?

1 GAYLE

2 A. Mm-hm.

3 Q. Do you remember who you handed that to?

4 A. I gave it to Carmen to give him.

5 Q. Did you speak directly to Harry on that  
6 occasion?

7 A. Not at that particular time when I handed  
8 that to her, but I did call the office and I spoke  
9 to Harry and --

10 Q. You were upset because you were getting  
11 paid \$20 an hour and they were deducting \$1 per hour  
12 which meant that you were only making \$19 per hour;  
13 is that correct?

14 A. I never said I was upset. I was --

15 Q. How would you characterize it?

16 A. Oh, God. If I work -- I'm sorry, let me  
17 stop.

18 I just wanted that which was rightfully  
19 mine.

20 Q. I'm going to refer you back to D-4. Can  
21 you find it in that pile there? It's the letter  
22 from White Glove Placement.

23 This says that you were making at the time  
24 in February '07 \$28.50 per hour, correct?

25 A. Yes.



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2 Q. If you were only making \$20 per hour at  
3 Harry's and you were claiming that they were  
4 wrongfully taking a dollar away from you, you were  
5 only receiving \$19 per hour, why did you continue  
6 working at Harry's for another eight months?

7 A. Because it was home care and I had one  
8 patient versus 40.

9 Q. So you were willing to get \$9 per hour  
10 less because of that?

11 A. Well, at the end of the day it amounted to  
12 more pay because you work more hours.

13 Q. Was there a limit on how many hours you  
14 could work with White Glove?

15 A. No.

16 Q. Why was it more hours working with  
17 Harry's?

18 A. Home care, the facility says who they  
19 need. When they have a need, they call for you. If  
20 they don't get have a need, you don't get work.

21 Q. During the entire time that you worked  
22 with White Glove, did you ever work more than 40  
23 hours during a week?

24 A. Oh, yes.

25 Q. You are just talking about as a rule of



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thumb you think that you could work more hours with home care?

A. Rephrase your question.

Q. I am just saying, generally speaking you believe that you would get more hours per week working for home care rather than in a nursing home through White Glove?

A. Not necessarily, but it was just easier work. At the time I needed a break from the nursing home. I needed to be off my feet.

Q. That was the first time that you said you complained. That was in writing on a legal pad, right?

What was with the second time?

A. Subsequent letters followed. Exact dates, I don't remember.

Q. How many subsequent letters?

A. I would say at least two more.

Q. Were they handwritten or were they prepared on a computer?

A. They were always handwritten because I never had my printer with me.

Q. On a legal pad like this?

MR. SILBERSTEIN: Pointing at my legal

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pad.

A. Maybe a legal pad, maybe 8 by 11.

Q. Did you make photocopies of those letters?

A. The first one I know I did, because I was in his office at the time.

Q. By "his" do you mean Harry Dorvilier?

A. Yes. I was in his office at the time so I know I did make a copy of the first one.

I'm not sure about the second and the third one, because if I had written it at home, I didn't have a copy at home.

Q. Who did you hand the second and third --

A. They were always handed to Carmen.

Q. -- complaints to?

Wait until I finish my question.

You said before that you had obtained -- withdrawn.

You testified earlier that you called the worker's compensation board; is that correct?

A. Sure, yes.

Q. How did you get the number for the worker's compensation board?

A. Online.

Q. Who did you speak to?

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A. Anyone who would answer.

Q. Your testimony is that they provided you with a section of the law?

A. Yes, sir.

Q. Which section of the law was it?

A. I believe it was Section 31.

Q. Did you print Section 31?

A. No, I just put it in my favorites on my computer.

Q. You have it in favorites on your computer?

A. Yes, sir.

Q. You testified earlier that you gave someone at Harry's the section of the law?

A. No. I did not testify that.

Q. That's wrong, okay.

Did you tell them about the section of the law?

A. I told Harry himself. I brought my computer into his office and I told him I wanted to talk to him, and I showed it to him. He displayed arrogance at the time and walked away and muttered something. He wasn't interested in seeing it.

Q. You have a laptop computer?

A. Yes, I do.



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Q. You have this worker's compensation section favorited on that computer?

A. Yes, I do.

Q. You called it up on the favorites and showed it to Harry?

A. Yes, I did.

Q. You said earlier that on the first time when you handed in the written complaint to Carmen, that you didn't interface with Harry, but then you testified there was a second and third occasion.

On which of those occasions did you show the worker's comp law on your computer to Harry?

A. I really don't remember but I know I have.

The first time I wrote a letter -- I wrote a letter a second time and a third time. Somewhere either after or between those two second letters, that was when I went to his office with my laptop and pulled up the law and showed it to him.

Q. Did anyone from the worker's compensation board tell you that that law would not apply to independent contractors?

A. No.

Q. Did you ask them if it applied to independent contractors?

1 GAYLE

2 A. Yes.

3 Q. What did they say?

4 A. It does not apply because for one thing it  
5 applies to subcontractors. Meaning that if you're a  
6 contractor and I am a subcontractor, I have  
7 employees under me, I would need to have worker's  
8 compensation to cover my employees.

9 I don't have employees under me. I am  
10 Harry's employee. He is the one who needs to  
11 maintain the worker's compensation policy from his  
12 pocket to cover me, not me.

13 Q. Do you understand what the difference is  
14 between an employee and an independent contractor?

15 A. According to New York State law, it's  
16 really hard to define the two.

17 Q. But you know there is a difference?

18 A. There really is no difference.

19 Q. You think there is no difference?

20 A. According to New York State law there are  
21 very slight differences.

22 (Defendants' Exhibit D-13, document, was  
23 marked for identification as of this date.)

24 Q. I'm showing you a document that's been  
25 marked as D-13. It's Bates stamped as Gayle v.



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Harry's number 3.

Have you ever seen this document before?

A. Yes.

Q. In the middle of the page there is handwriting, some stuff is circled and then I think it says the word "illegal."

Is that your handwriting?

A. It is.

Q. When did you write the word "illegal" on this?

A. I don't know. After I got this pay stub, that's when I did it.

Q. This was in October of 2007?

A. Possibly.

Q. That's what it says, right, October 3, 2007?

A. Oh, okay.

Q. Why did you write the word "illegal" on it?

A. Because the deductions are illegal.

Q. Did you hand this to anybody at Harry's?

A. I don't remember.

Q. You may have, you just don't remember?

A. Exactly.

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Q. I want to talk about the process by which you were placed by Harry's Nurses during the nine months or 10 months that you worked there.

You testified earlier that you worked with approximately six patients; is that accurate?

A. Somewhere around there.

Q. Do you remember who the first patient was?

A. Not really.

Q. Do you remember where they were located?

A. I believe the first patient probably was a lady in Brooklyn.

Q. A lady in Brooklyn?

A. I believe so.

Q. What type of case was that?

A. What do you mean what type of case was that?

Q. I think you said earlier there are different types of cases that you get staffed on as an LPN.

A. I wasn't told what kind of case it was. It was a geriatric patient.

Q. A geriatric patient?

A. Yes.

Q. Did she need any type of specific care or

1 GAYLE

2 just general care?

3 A. She needed general and specific. She had  
4 a G-tube.

5 Q. A G-tube?

6 A. Yes.

7 Q. I'm not familiar with that term. What  
8 does it mean?

9 A. A gastronomic tube. She had a tube into  
10 her stomach in order for her to be fed.

11 Q. Let's start with that one. That was the  
12 first one.

13 Can you walk me through the process by  
14 which you were placed as an LPN in that home?

15 A. I don't understand what you mean, walk you  
16 through the process on which I was placed.

17 Q. You applied on February 20, 2007 and you  
18 have a certificate of insurance --

19 MR. DORVILIER: Can you just give me the  
20 first application?

21 MR. SILBERSTEIN: Off the record.

22 (Discussion held off the record.)

23 Q. You applied on February 20, 2007 and then  
24 you submitted your certificate of insurance on  
25 February 22, 2007, two days later, and then your

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testimony is that the first patient with whom you worked was a lady in Brooklyn.

I am trying to figure out when did you start with that lady in Brooklyn.

A. I don't remember what date I went there.

Q. Was it within a week or two?

A. I don't remember. I am being honest with you.

I don't remember exactly if it was a day later, two days later or a week later.

Q. But it was sometime within a week --

A. February has 28 days. It's possible I started in February.

Q. But it would have been late February or early March?

A. Yes.

Q. How did it come to be that you were placed in that home? Can you tell me the process by which you --

A. There was no process. I finished an application, they got what they wanted. A case came up, I was called and given an address, a name and information and I was told to go to that home to take care of that patient for so many hours.



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Q. That's what I wanted to know.

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You got a call from whom?

4

A. Carmen.

5

Q. She called you on your cell phone?

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A. That's where I get my calls, yes.

7

Q. What did she say?

8

A. I have a case for you in Brooklyn.

9

Q. Did she ask if you were interested in it?

10

A. She knew I was interested in cases.

11

That's why I came and applied.

12

Q. So you welcomed that news?

13

A. Yes.

14

Q. What else did she tell you about the case

15

in Brooklyn?

16

A. Usually you're told I have a case for you.

17

It's in Brooklyn or wherever it is. You're given

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the name of the patient, you're given the address,

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you are given the diagnosis, you're told what the

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patient needs to be done and you're told by the

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agency when to go there and when to leave.

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Q. For this lady in Brooklyn, did you go

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straight to her house?

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A. Yes. Why wouldn't I?

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Q. Did you ever go and meet a patient at the

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hospital?

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A. No. I have never been to the hospital for a patient.

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Q. You have always met the patients at their homes?

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A. Definitely.

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Q. During the period of time in 2007 that you were on the Harry's Nurses Registry, did you ever refuse any placement?

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A. It's possible I might have. Maybe it's farther than my reach.

12

13

Q. Farther than your reach meaning your technical abilities or the geographic area?

14

15

A. The geographic area, possibly.

16

Q. Do you own a car?

17

A. Yes, I do.

18

Q. Is that how you get to work every day?

19

A. Yes.

20

Q. Did anyone at Harry's ever tell you that you did not have the right to refuse a placement?

21

A. What are you asking?

22

Q. Well, you said that you may have refused a placement because it was far, out of your reach, meaning the geographic area.

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My question is that if you told them that you were not interested, did anyone at Harry's ever tell you, Well, you did not have the right to refuse this placement?

A. No.

Q. After you accepted the placement from Harry's -- why don't we stick with the first one where you worked with the lady in Brooklyn -- who provided you with the instructions on how to care for your patients?

A. Usually you meet a nurse there. There is always a nurse to -- one oncoming, one ongoing.

Q. A nurse --

A. There is a nurse. A nurse has to relieve a nurse.

If the patient is under 24-hour care, the nurse who is there, would have to wait for the nurse to come to relieve her.

Q. Do you mean another nurse from Harry's Nurses Registry?

A. Or another agency, if there was another agency.

Q. So sometimes there was more than one agency involved?

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A. Possibly, with cases.

Q. What other agencies worked on these --

A. I don't know.

Q. On any of your six cases, did you ever interact with nurses from another agency for one of your patients?

A. Yes, that same case.

Q. The one in Brooklyn? The lady in Brooklyn?

A. Yes.

Q. She had 24-hour care?

A. I believe she had either 23 or 24.

Q. What agency or registry did those nurses work on?

A. I don't know.

Q. Do you have any documents that would reflect that?

A. No.

Q. How do you know they were on a different agency?

A. Because they said they didn't work with Harry's Registry.

Q. Let's stay with the lady in Brooklyn. When you first got there on the first day,

1 GAYLE

2 had she already been discharged from the hospital?

3 A. She was home. That's where I met her, in  
4 her home.

5 Q. She had just gotten home from the  
6 hospital?

7 A. I don't know.

8 Q. Who gave you the instructions on how to  
9 care for that patient?

10 A. The nurse who was there.

11 Q. What did she tell you?

12 A. The needs of the patient.

13 I mean, I had gotten them previously from  
14 Carmen at Harry's Registry, but then, when you go  
15 there, just to be more familiar when you are meeting  
16 the patient, the nurse who was there would say,  
17 Okay, this is where this is kept, this is where this  
18 is kept, and usually at this time you might change  
19 her or usually at this time she might want to go sit  
20 with her family.

21 That's just basically it.

22 Q. Did this woman live alone?

23 A. No.

24 Q. She lived with who?

25 A. Family.

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Q. Who in the family lived with her?

A. I don't know, sir. She had family members there.

Q. After you were placed in a household -- let's stay with this first lady -- on a day-to-day basis, who gave you the instructions on how to care for the patient?

A. You get the information once, you stick with it. There is a routine.

Q. Were the family home when you cared for this lady?

A. There was always family home.

Q. Did the family give you instructions on how they wanted her cared for?

A. The instructions are basically there. They are Jewish and they have a specific way in which they want to be cared for. You follow their lifestyle.

Q. Did you interact with the family throughout the day?

A. Not necessarily. They asked me if I wanted something to drink or something to eat or Are you okay.

Q. Was this their mother?



1 GAYLE

2 A. I believe so, mother, wife, grandmother.

3 Q. Did they speak to you about her medical  
4 condition during the day while you were there?

5 A. Not really, unless there is something to  
6 be discussed. Not per se really.

7 If something was going on, maybe, but if  
8 nothing was going on, it's just regular routine.

9 Q. For that shift, for that placement that  
10 you had for this lady in Brooklyn, did you have kind  
11 of a set shift or how did it work?

12 A. I wouldn't say there was -- it started out  
13 where I would have gotten set shifts but then, I  
14 don't know what happened, that case got messed up.  
15 There was all kinds of foolishness.

16 Q. How did the case get messed up?

17 A. I don't know.

18 Q. What did you mean by that?

19 A. I don't know.

20 Q. You have your hand covering your face.  
21 You've paused now for 30 seconds.

22 You told me that the case got messed up  
23 and now you're telling me you don't know how.

24 A. I think there was something going on  
25 between the agency and the patient. That's what I'm

1 GAYLE

2 saying.

3 Q. What agency?

4 A. Harry's Nurses Registry, Inc., because  
5 there were other nurses coming and sometimes the  
6 times were being crossed and what have you.

7 Q. She had 23- or 24-hour care, correct?

8 A. Yes.

9 Q. Out of that block of time, how many hours  
10 did you customarily work per day?

11 A. I was filling in so it wasn't like, this  
12 is your case and these are the hours you have.

13 Q. You were filling in on what kind of basis?

14 A. Per need.

15 Q. So they called you on a daily basis when  
16 they needed you or was it a weekly thing?

17 A. Whatever day she might need someone I was  
18 asked to go there if I'm available.

19 Q. I want to understand.

20 You said there was another agency  
21 involved. Is it your testimony that the other  
22 agency had the responsibility of covering the 23- or  
23 24-hour care and only when one of their nurses  
24 couldn't make it they called you to fill in?

25 A. No, that's not what I'm saying.

1 GAYLE

2 Q. Tell me what you mean.

3 A. I don't know what the arrangements were  
4 with Harry's Nurses Registry or with the other  
5 agency or with whoever else was working. How many  
6 agencies were involved, I do not know.

7 I don't know how much time Harry's had out  
8 of it. But whatever time or hours he had, and if  
9 the regular nurse who had the case wasn't available  
10 and I was available, she would ask me if I could go.

11 Q. Who would ask you?

12 A. Carmen.

13 Q. Carmen would call you and ask you if you  
14 could go?

15 A. Yes.

16 Q. So you weren't working five or six days  
17 per week during this period of time?

18 A. No.

19 Q. How many days per week were you working  
20 for this patient?

21 A. I don't know.

22 Q. A couple?

23 A. Maybe a day, maybe two days.

24 Q. What were you doing during the other  
25 times?

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1 GAYLE

2 A. Nothing, just waiting for another case.

3 Q. Were you working through White Glove?

4 A. I was at home waiting for another case.

5 Q. In the event that they did call you, how  
6 many hours would you work at this lady's home in  
7 Brooklyn?

8 A. I believe I did 11 hours and I think I've  
9 done 12 hours.

10 Q. It was either an 11-hour shift or a  
11 12-hour shift?

12 A. *supervisor* Yes.

13 Q. During those 11 or 12 hours that you were  
14 in this woman's house in Brooklyn, who supervised  
15 you?

16 A. What do you mean who supervised me?

17 Q. What don't you understand about the  
18 question?

19 A. Exactly what are you asking?

20 Q. Do you know what the word "supervise"  
21 means?

22 A. Yes, I do.

23 Q. Why can't you answer the question?

24 A. Are you looking for direct or indirect  
25 supervision, because you have both.

1 GAYLE

2 Q. Tell me both.

3 A. Well, I am always supervised by Cherrilyn  
4 Williams, the DON, the director of nursing.

5 Q. Is that the direct or indirect?

6 A. That's indirect. But there is no way I  
7 could go on a case without a direct supervisor. I  
8 am an LPN.

9 Q. Let's break it down. You said there was  
10 direct supervision and indirect supervision.

11 During the 11 or 12 hours that you were in  
12 this house in Brooklyn, who was your direct  
13 supervisor?

14 A. If I'm there during the daytime, if  
15 something should go wrong, I would always have to  
16 pick up the phone and call Harry's Nurses Registry,  
17 Inc. If there is anything I need, I have to pick up  
18 the phone and call Harry's Nurses Registry, Inc. As  
19 far as the patient -- that case is concerned, I must  
20 report to Harry's Nurses Registry, Inc. And  
21 whatever has to be dealt with would have to go  
22 through Cherrilyn who was the director of nursing  
23 there.

24 Q. Did you take direction from the family  
25 while you were in the home?

1 GAYLE

2 A. What kind of direction?

3 Q. Any kind of direction regarding the care  
4 of the woman that you were caring for?

5 A. All the directions as far as nursing is  
6 concerned was taken from Harry's Nurses Registry.

7 Q. From whom?

8 A. Cherrilyn gives it to Carmen. Carmen,  
9 this is what the patient needs because she has to go  
10 and assist the patient before anybody else could go.

11 Q. Did the family ever ask you for any of  
12 your patients to care for their relative in a  
13 certain way?

14 A. I don't understand what are you asking.  
15 Is this relating to nursing care or is  
16 this in relating to outside of nursing care.

17 Q. Nursing care, your LPN duties?

18 A. Nursing care would have to be performed  
19 according to state law and what the registry wants  
20 me to do.

21 I am sending you out there let's say to  
22 give IV to this lady, or to handle her G-tube feed,  
23 that's what I have to go there to do. I can't go  
24 there to do whatever the family member asks, no.

25 Q. No?



1 GAYLE

2 A. No.

3 Q. Any time the family member asked you to do  
4 anything for one of these patients, you would call  
5 Harry's Nurses? Is that what you're saying?

6 MR. BERNSTEIN: Objection.

7 A. If it's outside of nursing and it's not  
8 what my -- what do you call it, the assignment of  
9 duties, work -- if it's not in my assignment, no.

10 Q. What about the physicians? How did they  
11 come into play with all this?

12 A. What are you asking?

13 Q. The woman in Brooklyn, the geriatric  
14 patient, did she have a physician who was treating  
15 her?

16 A. Every patient has a physician.

17 Q. This woman was very ill, correct? She has  
18 what you called a G-tube?

19 A. I believe she did, yes.

20 Q. Did you interact at all with her physician  
21 while you were working as an LPN in that home?

22 A. Let me think. I'm trying to remember.

23 I think there was one time I had to speak  
24 to the physician -- did I? I think there was some  
25 discrepancy with the medication -- no, I don't

1 GAYLE

2 recall. It's probably the other nurse I spoke to.

3 Q. What was the discrepancy in the  
4 medication?

5 A. More doses were ordered to be given to the  
6 patient than is medically recommended as per the  
7 manufacturer of the medication.

8 Q. How was that situation handled?

9 A. Well, I go by the manufacturer's  
10 direction. *me*

11 *DA* Q. So you perceived there to be a problem?

12 A. Yes. It's a problem if I'm told to give  
13 more doses than is actually required or suggested.  
14 Yes, that's a problem. I don't want to overdose a  
15 patient and kill them.

16 Q. Did you speak to that patient's physician  
17 on that issue?

18 A. I honestly don't remember. I know it was  
19 an issue with the nurses. I don't remember if I did  
20 or didn't.

21 Q. That's one patient, this woman in  
22 Brooklyn. You had about five other patients --

23 A. Before you move on, I did speak to  
24 Cherrilyn about this. That is who I would have to  
25 speak to -- she would have spoken to the doctor

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directly -- because everything I would have to report to Cherrilyn.

Q. How many times per day when you were working out of a patient's home did you speak with Cherrilyn or anybody else at Harry's?

A. It all depends. If there is a question to be asked, I would call and speak to Cherrilyn. If there is nothing and everything is routine and okay, then there is no need to make a call.

Q. So sometimes days went by and you didn't call at all?

A. It's possible.

Q. You testified earlier there was about six different cases that you were placed on. We have been talking primarily about one case for a geriatric woman in Brooklyn. There are five other cases approximately.

For those five other cases, did you ever interact with any of those patient's physicians?

A. I don't think so. I had one patient where he had to go to the hospital. I called Harry's Nurses Registry and I told Cherrilyn that the patient needed deep suctioning and he really needs to go to the hospital, the ER so they could suction



1 GAYLE

2 him properly. Cherrilyn then took over, did what  
3 she had to and we got the patient out of there.

4 I remember speaking to the doctor's  
5 office, but I never spoke directly to the doctor. I  
6 spoke to the receptionist regarding information,  
7 directions as to which hospital to go to.

8 MR. SILBERSTEIN: Let's take a couple of  
9 minutes.

10 (A break was taken.)

11 Q. Ms. Gayle, while you were working as an  
12 LPN through Harry's Nurses, did you complete any  
13 kind of paperwork relating to your care of the  
14 patients?

15 A. Yes. I gave them nurse's notes for work  
16 that was done there.

17 MR. SILBERSTEIN: Let's mark this, please.

18 (Defendants' Exhibit D-14, notes, was  
19 marked for identification as of this date.)

20 Q. When you say "the nurse's notes," were you  
21 referring to this page?

22 A. Yes.

23 Q. Can you tell me how these progress notes  
24 were completed by you, what the process was?

25 A. You just write whatever you did to the

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GAYLE

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patient, the patient's condition, if the patient is stable, if the patient is in any distress.

3

4

That was basically it.

5

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Q. What was the procedure by which these progress notes were completed? Was that on a daily basis?

7

8

A. Yes. They were supposed to be done on a daily basis and turned in at the end of the week or fortnight.

10

11

Q. At the end of each day, when would you -- withdrawn.

12

13

At what point would you complete the progress notes for a day of work?

14

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A. Most times would be done during the shift, on the tour.

16

17

Q. Sometime before you left for the day you would complete --

18

19

A. Mm-hm.

20

Q. -- your notes?

21

A. Right.

22

Q. Try to remember to let me finish my question.

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Then they were handed in once per week?

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A. Mainly biweekly.

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Q. During the period of time after you completed the progress notes up until the time that you handed them in, where were they kept?

A. On my person. They were kept with me.

Q. You would fill in the patient's name, looking at the top left corner?

A. Yes, each slot would be filled in.

Q. Where it says "nurse's name," does that refer to you?

A. Yes, it does.

Q. When you finished completing the notes, would you sign it customarily?

A. After, yes.

Q. When you handed them in biweekly, who did you give them to?

A. We would drop them in a box outside in an envelope or give them to Carmen and sign that it was handed in.

Q. Were they handed in in conjunction with any other documents or did you hand in just the progress notes by themselves?

A. They were handed in with the time sheets.

Q. How often were the time sheets handed in?

A. Biweekly.



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Q. Biweekly?

A. Mm-hm.

Q. How often were you paid by Harry's Nurses?

A. Biweekly.

Q. Biweekly?

A. Mm-hm.

Q. Was it every other Friday?

A. Was it Friday or Thursday? Either one.

Q. Was it Thursday?

A. I believe it was Thursday.

Q. Can you tell me the process by how that worked?

A. I'm not sure what you are asking.

Q. Did you go physically to the Harry's Nurses location, hand in your time sheets and your progress notes physically?

A. Yes, I did.

Q. What time of day was that?

A. I'm not sure. Sometimes I would drop them off on the way from my client's home or I might have done it at another time.

Q. Who would you meet with when you did that?

A. The office was open. I would give them to Carmen, the receptionist.

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GAYLE

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Q. Always?

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A. Most times. I wouldn't say "always."

4

Q. Did Carmen in exchange give you a check?

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A. At that same time?

6

Q. Yes.

7

A. No, because you would have to wait for

8

another pay period.

9

Q. So you handed in your progress notes and

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time sheets for the two-week period and you would be

11

paid for the two-week period at the end of the next

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two-week period?

13

A. Yes, either a week or two. Whenever the

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next pay period would be, I would get paid for

15

those.

16

Q. How were you paid? Was it through direct

17

deposit?

18

A. No, checks.

19

Q. You picked it up?

20

A. Yes.

21

Q. Did you pick up your check at a different

22

time than when you dropped off your progress notes?

23

A. Yes.

24

Q. What day was payday?

25

A. I believe it was Thursday.

1 GAYLE

2 Q. Also Thursday?

3 A. Mm-hm -- what do you mean "also Thursday."

4 Q. You said you dropped off the progress  
5 notes and the time sheets on Thursday.

6 A. No, I didn't say that. I said I dropped  
7 off the progress notes on my way from the client's  
8 home or at other times.

9 I think at the same time you asked me  
10 about the pay and I said usually we're paid on  
11 Thursday, I believe -- I said Friday first and then  
12 I said, No, I think it's Thursday.

13 Q. One of my other questions was how often  
14 you submitted the progress notes and I think you  
15 said you submitted them every other week, you  
16 thought on a Thursday or a Friday?

17 A. When I said Thursday or Friday, I was  
18 referring to pay.

19 Q. Tell me about how you submitted the  
20 progress notes, please.

21 A. They were submitted on -- two weeks  
22 completed, they would be submitted.

23 Q. How?

24 A. Take them in.

25 Q. Take them in?



1 GAYLE

2 A. Yes.

3 Q. On a Thursday or a Friday?

4 A. No, not necessarily a Thursday or a  
5 Friday. I think the pay week starts on Monday, I  
6 don't remember, because his is not Sunday through  
7 Saturday.

8 Q. Was there a scheduled day or time during  
9 the week when you were supposed to come to Harry's  
10 Nurses to drop off the progress notes and the time  
11 sheets?

12 A. I believe they requested them to be  
13 dropped off at the end of the week. They would have  
14 to be dropped off by Monday morning, I believe,  
15 because the payroll was done on Wednesday.

16 Q. So you would physically go to Harry's --

17 A. You have to, yes.

18 Q. Let me finish the question.

19 Was it always on a Monday or could it have  
20 been on a Friday? I don't understand.

21 A. It could be any day of the week. I could  
22 probably get there Monday, I could probably get  
23 there Tuesday, I might have dropped them off on  
24 Wednesday morning. I'm sure I've done that before.

25 Q. Wednesday morning?

1 GAYLE

2 A. Yes.

3 Q. Your understanding was that they did the  
4 payroll on Wednesday and payday was Thursday, you  
5 think?

6 A. Thursday or Friday, I think.

7 Q. There would have been two occasions during  
8 an average week when you would have to go to Harry's  
9 Nurses, once to drop off your progress notes and  
10 your time sheets, and the other time to pick up your  
11 check?

12 A. In one week?

13 Q. Yes.

14 A. Basically -- you are paid every two weeks.

15 Q. Fair enough. So every other week then --

16 A. Basically every other week.

17 Q. There would be two occasions for you to go  
18 to Harry's?

19 A. Yes.

20 Q. Did you go to Harry's Nurses location for  
21 any other reason during the week?

22 A. No, unless there is something -- not  
23 really, unless there is something I wanted to drop  
24 off. No, because I didn't have personal friends  
25 there to go there.

1 GAYLE

2 Q. In the morning you would drive to the  
3 patient's home and you would work your shift at the  
4 patient's home. And then every other week, one time  
5 you would go to Harry's to drop off your time sheets  
6 and your notes and at another point during that week  
7 you would go pick up your check.

8 Is that the extent of everything?

9 A. Yes. But it's not necessarily every  
10 morning because one of the cases that I had I worked  
11 nights.

12 Nursing is 24 hours so I could work day or  
13 night. The case that I had just before the last one  
14 in Long Island, that was at night.

15 Q. What did you do during the day?

16 A. Stayed home and sleep.

17 Q. I want to talk about your training for a  
18 minute.

19 How did you become certified to become an  
20 LPN? Was that through the course you took up at  
21 BOCES?

22 A. Yes.

23 Q. When you started with Harry's in February  
24 of 2007, did you receive any additional training?

25 A. What do you mean "additional training"?



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GAYLE

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2 As in school? What are you saying?

3 Q. Did you receive any additional training in  
4 how to either be an LPN from Harry's --

5 A. I completed my course.

6 Q. So is the answer no?

7 A. Right. Usually when you work at a  
8 facility you get in-service. But as far as training  
9 to become an LPN, no, you complete the course, you  
10 send the certificate to the state, you take your  
11 boards and then you're licensed.

12 Q. I'd like to nail it down for the record.  
13 You did not receive additional training from Harry's  
14 Nurses; is that correct?

15 A. I would not need to.

16 MR. BERNSTEIN: Ms. Gayle, he is not a  
17 nurse. He doesn't know this. Just take it  
18 easy.

19 A. No. I was just saying I didn't need to.

20 Q. After you were added to the Harry's  
21 registry list in or around late February 2007 was it  
22 your understanding that you were free to remove your  
23 name from that registry at any time?

24 MR. BERNSTEIN: Objection.

25 A. No one has ever said that to me.

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Q. Well, what did they tell you at the time that you applied to be on the registry about how it worked? Can you tell me what was said to you?

A. Nothing was said. Basically you sign up with an agency, you get a case and you go on the case. When you want to work, you work. When you get a case, you work.

Q. Did anybody talk to you about the procedure by way you could remove your name from that list?

A. There was no procedure about removing the name or maintaining the name, no.

Q. That just wasn't discussed?

A. That just wasn't discussed.

Q. We've touched on this a little bit already and I want to get more into it.

With respect to your hours of work, did you have a set schedule with each patient?

A. If I had a set -- if I set them? Is that what you are asking me?

Q. I want to know how it worked. How did your schedule come to be established with each patient?

A. Based on what Harry's gave to me. When I

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was called, this resident needs care, they need it for 12 hours. Can you go there? Yes. That's it.

The hours are basically determined by the agency, not by me.

Q. I don't think we should talk about the woman in Brooklyn because I think you said you were filling in there.

Do you remember who the first person was that you were working regular shifts for?

A. Yes.

Q. Who was that?

A. What's his name? It's a patient by the name of Mark --

Q. I'll just call him Mark.

A. Okay.

Q. Where was Mark located?

A. In Queens.

Q. Was that a geriatric patient, as well?

A. He was a young guy in his mid-30s.

Q. What kind of care did he need?

A. He was a quadriplegic.

Q. A quadriplegic?

A. Mm-hm.

Q. Was that the first patient that you worked



1 GAYLE  
2 with after the woman in Brooklyn that we are talking  
3 about?

4 A. No.

5 Q. No?

6 A. No.

7 Q. Who was in between that?

8 A. I think there was a patient, a 14-year-old  
9 boy, out in Astoria, Queens.

10 Q. How long did you work with that person?

11 A. Probably two weeks.

12 Q. What was the matter with him?

13 A. He had CP. He was born that way.

14 Q. Let's talk about the 14-year-old boy with  
15 the CP. What was your schedule at that home?

16 A. I think I did some nights and some days.

17 Q. Some nights and some days?

18 A. Mm-hm.

19 Q. Who set that schedule?

20 A. The agency does.

21 Q. Harry's?

22 A. Yes, Harry's Nurses Registry.

23 Q. Were the hours ever established between  
24 you and the patient or the patient's family?

25 A. No.