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Q. Were the hours ever established by the patient's family or physician?

A. To me?

MD  
Q. Yes.

A. No. It's always done through Harry's Nurses Registry. They are the mediators.

Q. The mediators?

A. I mean, I get the case through them so it's what they tell me. I can't go to the patient and ask for hours.

Q. You always know prior to going to the home what your shift was going to be?

A. Yes.

Q. For the approximately six patients who you worked with, did you always work the same amount of hours in the day, not necessarily the same shift but it was always the same amount of hours?

A. Not necessarily. Again, it depends on -- no.

Q. Tell me how the hours varied, the amount of the hours.

A. Whatever the agency tells me. Whatever Harry's Nurses Registry, Inc. tells me, how many hours I need to spend out there, that's the hours I

1 GAYLE

2 spend there.

3 Q. If you could, tell me the range.

4 Sometimes it was six hours, sometimes it was 12.

5 A. I might have been called to go to relieve  
6 a nurse 4:00 in the evening. I might have done four  
7 hours to finish that 12-hour shift and then take  
8 over the night and do 12 more hours, and then I  
9 might have continued in the day to do 12 more hours.  
10 And then I might get off the case at that time, come  
11 back and do another 12 hours, leave, either night or  
12 day.

13 Q. So all different kinds of times?

14 A. It's all different kinds of hours.

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

17 Q. I show you the documents which have been  
18 marked as Exhibit D-15. They're Bates stamped as  
19 D-68 and D-69. The first one is a payroll time card  
20 and the second one is a home-care time sheet.

21 Take a minute to look at those and let me  
22 know when you are done.

23 A. Okay.

24 Q. Have you ever seen these documents before?

25 A. I believe so.

1 GAYLE

2 Q. Let's start with the second page, please,  
3 the home-care time sheet.

4 A. Yes.

5 Q. Is that your handwriting?

6 A. Where?

7 Q. Anywhere. Besides the client's  
8 signatures, is the handwriting as far as the times  
9 and the name and the date, is that your handwriting?

10 A. It appears to be so, yes.

11 Q. Let's look on the left. It says  
12 "11/9/07."

13 Do you see that?

14 A. Yes.

15 Q. There is a schedule listed. It says  
16 "Saturday," and there is a 3 next to it. I guess  
17 that's Saturday, the 3rd, and Sunday, the 4th.

18 A. Yes.

19 Q. There is a schedule on here. It looks  
20 like you worked on Saturday night, the 3rd, from 8  
21 p.m. until Sunday morning at 8 a.m.; is that right?

22 A. Yes, that's correct.

23 Q. Who would have set the schedule listed on  
24 this time sheet?

25 A. It's set by Harry's Nurses Registry, Inc.

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It depends on how much care the patient needs as per Medicaid, Harry's would designate that to me. The registry would designate that to me.

Q. For this particular patient during this week, I guess it says that you worked 69 hours; is that correct?

A. Four times 12 is 48, plus 24.

Q. That's 72.

It says "69 plus 3" at the bottom. Do you know why it says that?

A. No. I didn't put that at the bottom.

Q. That's not your handwriting?

A. No, it's not.

Q. Were these the time sheets that you testified you handed in to Harry's on a biweekly basis?

A. Yes, these were the time sheets that I would have handed in. All of them would not have the same amount of hours.

Q. This is representative --

A. Yes.

Q. Try to let me finish.

There is a space for the client to sign at the bottom; is that correct?

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A. Yes.

3

Q. Can you tell me the process by which the client signed that?

4

5

A. At the end of the week the client would sign.

6

7

Q. Who would present the time sheet to the client for signature?

8

9

A. I would.

10

Q. Was it a requirement that the client sign the time sheet prior to you submitting it to get paid?

11

12

13

A. It's at the bottom. It asks for it.

14

15

Q. Were all the time sheets that you submitted to Harry's signed by the clients?

16

17

A. They requested signature. I believe so.

18

Q. How would the quadriplegic patient sign it?

19

A. What?

20

Q. You said you worked with a quadriplegic.

21

A. Yes.

22

Q. So who signed on his behalf?

23

A. His father or his wife.

24

Q. His father or his wife?

25

A. Yes.

1 GAYLE

2 Q. You interacted with them while you were  
3 there?

4 A. Yes. They were always there.

5 Q. During the time that you were on the  
6 registry for Harry's, did anyone tell you that you  
7 were not allowed to offer your services to the  
8 general public or to other registry services during  
9 that period of time?

10 MR. BERNSTEIN: Objection.

11 A. Did anyone tell me I'm not allowed to  
12 offer my services to the general public?

13 Q. Yes.

14 A. What's the purpose of your question?

15 MR. BERNSTEIN: You can't ask that. He is  
16 trying to win a lawsuit.

17 Q. You have a very wise lawyer.

18 You are thumbing through those records in  
19 front of you. What are you looking for?

20 A. I'm just looking at what was written here,  
21 something that came up before. But the truth is, I  
22 don't know how to answer your question.

23 Honestly, no disrespect, I don't mean to  
24 talk a lot. It just doesn't make sense to me.

25 Q. That's fine. I told you in the beginning,

1 GAYLE

2 if you don't understand the question, just tell me  
3 and I'll try to rephrase it.

4 Let me try to do that.

5 A. Please.

6 Q. Did anyone at Harry's tell you that you  
7 were not allowed to offer your services to other  
8 nurse agencies or registries during the same time  
9 that were you on the Harry's Nurses Registry?

10 A. No.

11 Q. Did Mr. Dorvilier or anyone else at  
12 Harry's ever tell you that you could only work  
13 exclusively through Harry's?

14 A. No.

15 Q. Were you aware of any other LPNs who  
16 worked on other jobs while they were on Harry's  
17 Nurses Registry?

18 A. No. I'm not aware of it.

19 Q. Nobody?

20 A. I don't know because I don't know Harry's  
21 nurses.

22 Q. I'm not talking about all the nurses. I  
23 am talking about any of the nurses.

24 Did you know any nurses who were on the  
25 registry with you at Harry's who were on other nurse

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agencies or registries?

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A. I think the last case that I was on there was a nurse who said she worked for another nursing agency. I don't know the name of the nursing agency.

4

5

6

7

Q. What was that case you were on?

8

A. A case in Long Island.

9

Q. What was the name of that nurse?

10

A. I believe her name is Jackie. I'm not sure.

11

12

Q. Do you remember Jackie's last name?

13

A. No.

14

Q. How did you come to learn that she was on another nurse's registry?

15

16

A. Nurses talk.

17

Q. Any other nurses that you discussed being on other nurses registries with?

18

19

A. No.

20

Q. Isn't it true that many of the LPNs in your industry are registered on multiple registries at one time?

21

22

23

MR. BERNSTEIN: Objection.

24

A. I wouldn't know that.

25

Q. During the time that you were on Harry's



1 GAYLE

2 Nurses Registry were there any time requirements  
3 established by Harry's as to an amount of hours that  
4 you had to work per week?

5 A. No.

6 Q. No one ever told you you had to work  
7 either a minimum amount of hours or a maximum amount  
8 of hours?

9 A. No. But I was only per day, I would say.  
10 If you go to the case there is an amount of hours  
11 you need to be there for. It was by the day, not by  
12 the week.

13 Q. Not by the week?

14 A. Right.

15 Q. Did anyone ever tell you that you were not  
16 allowed to work more than 40 hours per week?

17 A. No.

18 Q. Were you aware of any other LPNs who were  
19 being paid as W-2 employees by Harry's?

20 A. I am aware that there are nurses that are  
21 being paid as W-2s by Harry's, but as to the names  
22 of the nurses, I don't know.

23 Q. So your understanding sitting here today  
24 that there are LPNs employed by Harry's Nurses  
25 Registry who are not paid on the 1099 like you were,

1 GAYLE

2 but are getting W-2s?

3 A. That's what I was told.

4 Q. Who told you that?

5 A. I don't remember exactly.

6 Q. You have a distinct memory of someone  
7 telling you that but you don't remember who it was?

8 A. Mm-hm.

9 Q. Yes?

10 A. I'm sorry, yes.

11 Q. When were you told that?

12 A. It might have been last year.

13 Q. Did someone tell you that over the phone  
14 or in person?

15 A. I'm not sure.

16 Q. Where did you perform the LPN services  
17 when you were on Harry's Nurses Registry?

18 A. Where?

19 Q. Where?

20 A. Harry's Nurses Registry is a home-care  
21 agency.

22 Q. Correct.

23 A. And I see each client in their home.

24 Q. All of the service is performed in the  
25 client's home, correct?

1 GAYLE

2 A. Correct.

3 Q. Did you ever perform any LPN services at  
4 Harry's place of business?

5 A. No. There were no clients there.

6 Q. I'm not talking about the scheduling of  
7 the time that you worked for each patient, but with  
8 respect to the sequence of work that needed to be  
9 performed once you got to the home, would it be  
10 accurate for me to say that that sequence of work  
11 was directed by the treating physician?

12 MR. BERNSTEIN: Objection.

13 A. I don't know. It comes -- the directions  
14 came from Harry's Nurses Registry, Inc., because  
15 Cherrilyn, who was there at the time, had to go out  
16 to see each client.

17 Whatever Cherrilyn brings in, that's what  
18 comes to me and that's what I go to do.

19 Q. Do you know if Cherrilyn received those  
20 directions regarding the work from either the  
21 treating physician or from the patient's family?

22 A. I don't know.

23 Q. You never had that conversation with her?

24 A. No, I didn't.

25 Q. What about with Carmen?

1 GAYLE

2 A. No. Carmen is not a nurse.

3 Q. What did you wear while you were working  
4 with the patients at their homes?

5 A. What?

6 Q. What did you wear at the patient's home?

7 A. Uniform, scrubs.

8 Q. A uniform? What did the uniform consist  
9 of?

10 A. Nursing scrubs.

11 Q. Who paid for those scrubs?

12 A. I do.

13 Q. Did Harry's ever purchase scrubs for you?

14 A. No.

15 Q. Did you use a blood pressure meter  
16 apparatus? I think it's called a sphygmometer?

17 A. Yes, I've used it.

18 Q. Do you own one of those?

19 A. Probably.

20 Q. Who paid for that?

21 A. I think somebody gave me -- the last one I  
22 received somebody gave me.

23 Q. Did Harry's ever pay for that?

24 A. Somebody gave it to me.

25 Q. Did Harry's ever purchased for you a blood

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pressure apparatus?

A. No.

Q. Did Harry's ever provide you with any tools, materials or equipment for your jobs?

A. Yes.

Q. What did they give you?

A. Papers, time sheets, progress notes sheets.

Q. Anything besides that?

A. Not that I can recall right now.

Q. Let's talk about transportation. With the six patients, you said one was in Queens, one was I think in Brooklyn, one was on Long Island.

Did you drive to all of their houses?

A. Yes, I did.

Q. In whose car?

A. In my car.

Q. Did Harry's ever pay you for any travel expenses?

A. Unfortunately, no.

Q. Did you submit for any reimbursed expenses at all during the time you worked for Harry's?

A. It would be a waste of my time, no.

Q. During the time that you were on the

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Harry's Nurses Registry, was it your understanding that you had the right not to work?

A. I answered that question before.

Q. What's the answer?

Was it your understanding that you had the right to refuse an assignment?

A. I answered the question before.

MR. BERNSTEIN: Answer it again.

A. Rephrase your question.

MR. SILBERSTEIN: Can you read it back, please?

(Testimony was read back.)

A. Are you asking me if that was disclosed to me or did someone say that to me?

Q. I am asking what your understanding was. Was it your understanding you had the right to refuse a placement?

A. I believe I had the right to refuse a placement.

Q. If I had refused a placement would you still have gotten paid by Harry's?

A. No.

Q. Sitting here today, in May 2008, have you made any complaints about Harry's to any other

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branch of the federal or state government?

A. Why would you ask me that question?

If I made any complaints --

MR. BERNSTEIN: Object to the form of the question.

THE WITNESS: What was that?

MR. BERNSTEIN: That's between me and the court reporter.

Q. You are talking an awful long amount of time to answer this question. It's been about 30 seconds.

A. Go ahead. What was your question again?

Q. Have you made any other complaints about Harry's to any branch of the federal or state government?

A. I called the worker's compensation board to complained about my money that he was taking.

Q. When was that?

A. Last year.

Q. Who did you speak to?

A. I spoke to a gentleman -- I left a message and I spoke to a gentleman by the name of -- David I believe his name was.

Q. When was that?

1 GAYLE

2 A. Last year. I don't remember the date and  
3 time.

4 Q. What did you tell David?

5 A. That I believe my money is being taken out  
6 -- erase that.

7 As a matter of fact, I asked him about  
8 again regarding the monies that were taken out of my  
9 pay for worker's compensation and why, and he said  
10 he would look into it.

11 Q. Did you submit anything in writing to  
12 David or anybody else at the worker's compensation  
13 board?

14 A. If I sent anything in writing? I sent him  
15 copies of my pay stubs.

16 Q. Did you put a cover letter on that?

17 A. I don't remember.

18 Q. You may have?

19 A. Maybe, just say as requested.

20 Q. Did you make a copy of it?

21 A. No, I don't think I did.

22 MR. SILBERSTEIN: I'd like you to search  
23 your files and to the extent there is any cover  
24 letter or memo that went with the submission  
25 you made to the worker's compensation board, I



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call for the production of that document.



Q. What about the Federal Department of Labor? Have you communicated with the Federal Department of Labor regarding Harry's Nurses?

A. Yes, I did.

Q. When was that?

A. When?

Q. Yes.

A. Last year.

Q. Who did you speak with?

A. I spoke with many different people. I don't remember their names.

Q. How many times?

A. Maybe two or three times.

Q. Did you submit anything in writing to the Federal Department of Labor?

A. I was in the process of doing so.

Q. Are you still in the process of doing so?

A. No, because I had retained Mr. Bernstein so I didn't bother to do it.

Q. Did you send anything to the Federal Department of Labor?

A. No, I have not. They sent me documents to fill out and I did fill them out but then when I

1 GAYLE

2 started with Mr. Bernstein I just left that.

3 MR. SILBERSTEIN: I call for the  
4 production of those documents.

5 MR. BERNSTEIN: I will take it under  
6 advisement. But, as you are aware, it's not  
7 relevant to the stipulated threshold issue.

8 MR. SILBERSTEIN: I'd like to see what  
9 they say.

10 If she filled out documents relating to  
11 what she was doing at Harry's Nurses Registry,  
12 it could very well be an admission against  
13 interest.

14 ~~A~~ I think it's also evidence that Ms. Gayle  
15 is pursuing some sort of vendetta against the  
16 company.

17 So I think the relevancy should be  
18 revealed by the documents. If they exist, I  
19 call for their production.

20 MR. BERNSTEIN: Mr. Silberstein, are you  
21 contending that investigating one's legal  
22 remedies constitutes a vendetta?

23 MR. SILBERSTEIN: We are not done. It  
24 very well could be a vendetta.

25 Q. What about the State Department of Labor?

1 GAYLE

2 Have you called them?

3 A. You just asked me that.

4 Q. No, I said federal.

5 A. Well, you know what, then we have to take  
6 back some of that.

7 I don't know if it was federal, state. I  
8 called the Department of Labor and I called worker's  
9 compensation. Be it state or federal, I'm not sure.

10 Q. Fair enough.

11 Did you call more than one Department of  
12 Labor?

13 A. I only know of one Department of Labor. I  
14 just went to the Department of Labor. That's it.

15 Q. Would you have any documents reflecting  
16 who you called?

17 A. No.

18 MR. SILBERSTEIN: Let's just go off the  
19 record for a minute.

20 (Discussion held off the record.)

21 Q. Ms. Gayle, I'm going to direct your  
22 attention to document that was marked as D-3. It's  
23 your original application, which, by the way, I need  
24 you to leave here.

25 If you look at the first question on the

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first page it says, "If under 18 years of age, can you provide required proof of your eligibility to work."

There is no box checked next to that sentence. Why is that?

A. It must have been an oversight.

Q. It was an oversight on your part?

A. Probably.

Q. Did you ever furnish your eligibility to work to Harry's Nurses?

MR. BERNSTEIN: Objection. Don't answer.

She is not under 18 and I'm not letting her answer questions about immigration work status, as you are well aware.

If you don't like it, you can call the Court right now.

MR. SILBERSTEIN: I'll reserve on it.

Nothing else for today.

MR. BERNSTEIN: Nothing else from me.

(Time noted: 3:27 p.m.)



