SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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PEOPLE OF THE STATE OF NEW YORK by LETITIA JAMES, Attorney General of the State of New York,

Petitioner,

AFFIDAVIT OF SENIOR AUDITOR-INVESTIGATOR KRISTEN RONAN

-against-

FULTON COMMONS CARE CENTER, INC.; MOSHE KALTER; AARON FOGEL; FRADY KALTER; ESTHER FOGEL; MINDY STEGER; SHEINDY SAFFER; CHANA KANAREK; DOVID KALTER; YITZCHOK KALTER; ARYEH KALTER; SHEVA TREFF; CHAYA LIEBERMAN A/K/A SARA LIEBERMAN; THE NEW FULTON COMMONS COMPANY LLC; FULTON COMMONS REALTY CO., L.P.; FULTON COMMONS REALTY CO., INC.; THE NEW BRIDGE VIEW COMPANY LLC; STEVEN WEISS; and CATHIE DOYLE,

Respondents.
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State of New York)
) ss.:
County of Suffolk)

KRISTEN RONAN, being duly sworn, deposes and says:

1. I am a Senior Auditor-Investigator employed by the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"), assigned to the Hauppauge Regional Office. I have been employed by MFCU for over five years and have participated in several investigations into the conduct of Medicaid providers.

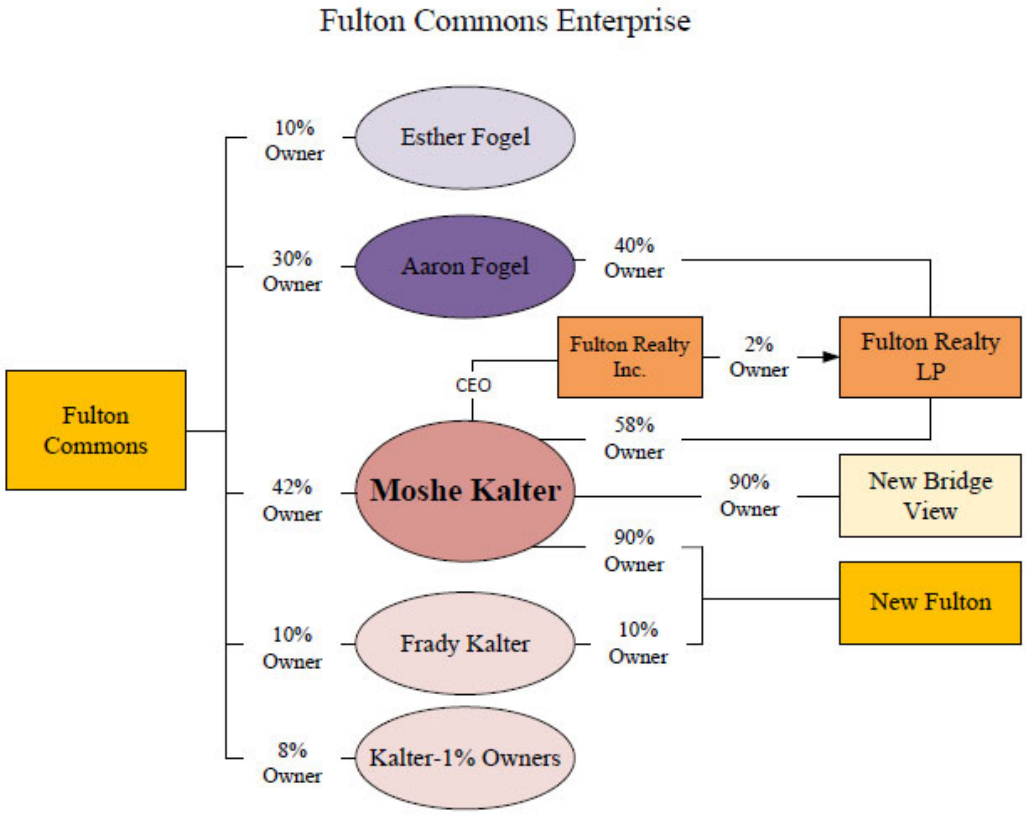
2. The Attorney General, through MFCU, is conducting an investigation of Fulton Commons Care Center, Inc. ("Fulton Commons"), a 280-bed nursing home, located at 60 Merrick

Avenue, East Meadow, New York. Fulton Commons is registered with the New York State Department of Health ("DOH") as a Medicaid provider and is also a Medicare provider. This Affidavit is submitted in support of the special proceeding commenced today through the Attorney General's Verified Petition, seeking injunctive relief, restitution, disgorgement of wrongfully converted Medicaid and Medicare funds, and costs from Fulton Commons and related Respondents.

3. The owners of Respondent Fulton Commons are two related families. Specifically, Respondent Moshe Kalter ("Kalter"), his wife, Respondent Frady Kalter, and their eight adult children (Respondents Mindy Steger, Sheindy Saffer, Chana Kanarek, Dovid Kalter, Yitzchok Kalter, Aryeh Kalter, Sheva Treff, and Chaya Lieberman a/k/a Sara Lieberman) own 60% of Fulton Commons. Respondent Frady Kalter's brother, Respondent Aaron Fogel ("Fogel"), and his wife, Respondent Esther Fogel, own the remaining 40% of Fulton Commons. Collectively, Fulton Commons' owners will be referred to hereafter as "Respondent-owners." Respondents Mindy Steger, Sheindy Saffer, Chana Kanarek, Dovid Kalter, Yitzchok Kalter, Aryeh Kalter, Sheva Treff, and Chaya Lieberman a/k/a Sara Lieberman will be collectively referred to hereafter as "Respondent Kalter-1% Owners." Fulton Commons' full ownership breakdown by percentage is detailed below at ¶ 38.

4. As depicted in the below chart, Respondents The New Fulton Commons Company LLC ("New Fulton"), Fulton Commons Realty Co., L.P. ("Fulton Realty LP"), Fulton Commons Realty Co., Inc. ("Fulton Realty Inc."), and The New Bridge View Company LLC ("New Bridge View") are related companies of Fulton Commons. New Fulton is owned by Respondents Kalter and Frady Kalter. As stated on Fulton Commons' Cost Report (defined in ¶ 18) and explained more fully below in ¶ 42, Fulton Realty LP is owned by Respondents Kalter, Fogel, and Fulton

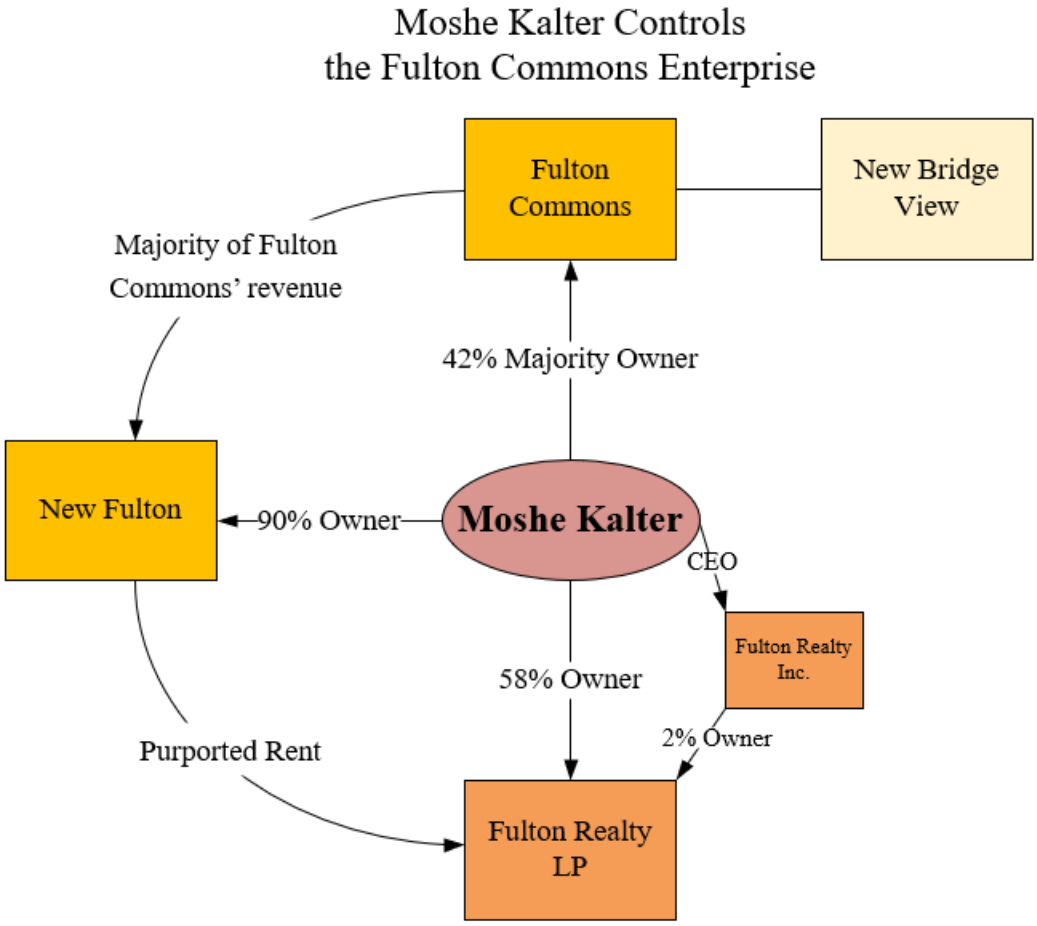
Realty Inc.,[1] which is another entity controlled by Kalter. New Bridge View is owned by Kalter, and Frady Kalter is its Vice President. Collectively, Respondents Fulton Commons, New Fulton, Fulton Realty LP, Fulton Realty Inc., and New Bridge View will be referred to as the "Fulton Commons Enterprise" or "Corporate Respondents."



5. As detailed in the following chart and explained more fully below in ¶¶ 22–23, Fulton Commons transfers the majority of its revenue to New Fulton, which then pays Fulton Commons' operating expenses. As detailed below in ¶¶ 49–54, Fulton Commons, through New Fulton, pays significant funds to Fulton Realty LP as purported rent. New Bridge View's role in the Fulton Commons Enterprise is to employ Fulton Commons' Comptroller, Respondent Steven

[1] To date, MFCU has not determined the ownership structure for Fulton Realty Inc.

Weiss ("Weiss"), as well as the bookkeepers who process payments through New Fulton on behalf of the nursing home. Organization charts relating to the Fulton Commons Enterprise are attached hereto as Exhibit 3.



6. MFCU has received numerous complaints from Fulton Commons employees, residents, and family members of residents, as well as reviewed media reports, regarding Fulton Commons' neglect, abuse, and mistreatment of its residents resulting from inadequate staffing, insufficient services and supplies, and failure to follow infection control guidelines. MFCU's investigation of Fulton Commons commenced in or about early 2018. Since July 2021, I have been assigned to work with my colleagues on analyses of Fulton Commons' finances, staffing levels,

resident deaths, infection control and prevention strategies, and related-party transactions, which are some aspects of the investigation.

7. This Affidavit and the facts stated herein are based both upon my personal knowledge and upon information and belief. The sources of this information and basis for this belief are specified herein. Because this Affidavit is being submitted for the limited purpose of supporting the Verified Petition, I have not included details of every aspect of the investigation.

8. The topics included in this Affidavit are:

- Respondent Kalter, as Fulton Commons' Operator, Submitted False Cost Reports and Schedules to DOH from 2018 through 2021 (p. 30);
- Respondent-Owners Withdrew in Excess of 3% Equity from Fulton Commons Through its Related Parties Without DOH Authorization (at pp. 30–33); and
- Summary of Fulton Commons' Owners' Conversion of Nursing Home Assets (pp. 33–34).

- MFCU's Staffing Analyses Established that Fulton Commons Consistently Failed to Meet Federal Staffing Targets for Minimizing Risks to Nursing Home Residents. (pp. 34–48);
  - Fulton Commons' Staffing Levels Were Consistently Rated as Below Average by Government Agencies (pp. 34–36);
  - Fulton Commons Staffing Levels Were Almost Consistently Below CMS Study Target Range from January 2020 Through January 2022 (pp. 36–39);
  - Fulton Commons' Insufficient Staffing (pp. 39–42);
  - Fulton Commons' Controlling Owner and Operator Focused Only on Its Census (pp. 43–45);
  - Fulton Commons Continued to Admit Residents During Periods of Insufficient Staffing (p. 45); and
  - Amount of Staffing that $1 Million Could Have Provided to Fulton Commons' Residents (pp. 45–48).

- Fulton Commons Failed to Deliver Adequate Care to Its Residents Before, During, and After the COVID-19 Pandemic (pp. 48–68);
  - Fulton Commons Received Numerous Sanctions for Poor Performance from 2018 to 2022 (pp. 48–52);
  - Fulton Commons Put its Residents at Increased Risk of COVID-19 Infections and Underreported COVID-19 Deaths at the Facility (pp. 53–66);
    - The Attorney General's Nursing Home Report (pp. 53–54);
    - Fulton Commons' Deaths Nearly Doubled in 2020 (p. 55);
    - Fulton Commons Failed to Report to DOH Nearly Half of Its COVID-19 Deaths (p. 55);
    - Fulton Commons' Self-Reported COVID-19 Deaths Indicate that Non-COVID-19 Residents' Deaths Increased by 44% from 2019 to 2020 (p. 56);
    - Fulton Commons Moved Asymptomatic Resident into Same Room with Resident Exhibiting Multiple COVID-19 Symptoms (pp. 56–58);
    - Fulton Commons Failed to Follow DOH Infection Control Guidance to Cohort Staff (pp. 58–62); and
    - Fulton Commons Increased Risk to Residents by Orchestrating Mass Room Transfers on the Eve of a DOH Survey (pp. 62–66).

  - Fulton Commons Sent Misleading Robocalls to Residents' Family Members Denying There Was COVID in the Nursing Home After and

While its Staff Treated Symptomatic Residents with COVID-19 Protocols (pp. 66–68).

- Respondent Kalter, as Fulton Commons' Operator, Submitted False Medicaid Certifications to DOH (pp. 68–69).

BACKGROUND

9. The Medical Assistance Program, commonly referred to as Medicaid, is a joint state and federal program—funded by federal, state, and local monies—designed to provide medical care to those who would not otherwise be able to afford such care. Under the Medicaid Program, enrolled providers receive reimbursement for eligible services rendered to Medicaid recipients. In New York State, the Medicaid Program is administered by DOH through its published rules and regulations, which are promulgated under Title 18 of the Official Compilation of Codes, Rules and Regulations of New York State.

10. New York State Medicaid service providers, such as nursing homes, are reimbursed either on a fee-for-service basis ("FFS"), where providers bill the state directly for services provided to Medicaid recipients, or through claims submitted to Managed Care Organizations ("MCOs"). MCOs receive monthly payments for each Medicaid recipient enrolled in the respective plan and are responsible for handling claims on those recipients' behalf.

RELEVANT STATUTES AND REGULATIONS

11. The relevant state and federal statutes and regulations below: (a) set forth nursing home administration requirements; (b) require nursing home Medicaid providers to submit to DOH accurate annual cost reports, accompanying schedules, and financial statements, in compliance with provided instructions, regarding their operation; (c) require nursing home Medicaid providers to provide notice to and seek approval from DOH prior to withdrawing equity from the nursing home in excess of 3% of the facility's total reported annual revenue based on its most recently

reported data,[2] or any equity that would create or increase a negative net worth position; (d) prescribe that nursing home Medicaid providers comply with Medicaid regulations and submit accurate claims and certifications with the state in order to legally receive and retain reimbursement for care allegedly provided; and (e) summarize the DOH survey process.

I. Legal Duties of New York State Nursing Home Operators Under State and Federal Law

12. State law imposes various duties on nursing home operators to provide vulnerable residents with the necessary care to meet their needs in what, for the "vast majority" of nursing home residents, will be their last home. (*See* 10 NYCRR § 415.1[a][1].) The accompanying Affidavit of Medical Analyst Mary E. Conway ("RN Conway Aff.") sets forth the federal and state statutes and regulations mandating nursing home operators to provide required care and staffing, and also sets forth the laws defining neglect, abuse, and mistreatment and mandating their reporting by nursing home employees. (*See* RN Conway Aff. at ¶¶ 17–21.)

II. Nursing Home Administration

13. "A nursing home shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." (10 NYCRR § 415.26.)

14. "No nursing home shall operate unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license and registration, or temporary license, issued pursuant to Article 28-D of the Public Health Law." (10 NYCRR § 415.26[a][1].)

[2] Typically, the most recently reported data is that of the year before.

15. Federal law requires that nursing homes "must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility." (42 CFR § 483.70[b].)

16. Nursing homes "must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility." (42 CFR § 483.70[d][1]; 10 NYCRR § 415.26[b].)

17. The governing body appoints the administrator who is "[r]esponsible for management of the facility" and "[r]eports to and is accountable to the governing body." (42 CFR §§ 483.70[d][2][ii], [iii].)

III. Cost Reports and Certifications Regarding Related-Party Transactions

18. Nursing home providers are required to file annual "Cost Reports" to report income, expenses, assets, liabilities, and statistics to DOH pursuant to 10 NYCRR § 86-2.6. The data is used by DOH to develop Medicaid rates, assist in the formulation of reimbursement methodologies, and analyze trends. In addition to a certification that the Cost Report is "true and complete," the operator is required to execute the following certifications in order to submit their Cost Report to DOH:

Certification Statement

> Misrepresentation or falsification of any information contained on this form may be punishable by fine and/or imprisonment under New York State Law and Federal Law.

Certification of Operator

> I also certify that all salary and non-salary expenses presented in the RHCF-4 [Cost Report] (with the exception of those expenses attributable to Research, Physicians Offices and other Rentals, Gift Shop, Public Restaurant, Fund Raising and Sold Services) considering the adjustments contained in the Part II and the recoveries of expenses detailed in Exhibit I of the Part IV *were incurred to provide patient care in the facility*.

(Emphasis added.)

19. The Cost Report and the instructions thereto require, in several places, the disclosure of "related companies" or "Non-Arm's Length Arrangements." Schedule 16 of the Cost Report defines a "Non-Arm's Length Arrangement" as:

> An arrangement between the operator of a facility and an organization related to the operator by common ownership or control for the furnishing of services, facilities, or supplies; An arrangement where there is a family relationship between the operator and the organization, and where services, facilities, or supplies are furnished and in instances where the operator and the organization are involved in any other business.

20. In addition to Schedule 16, which requires every nursing home to identify and list each company with which it has a Non-Arm's Length Arrangement, each nursing home is also required to submit Part III of the Cost Report and an audited financial statement for its related companies. Fulton Commons reported Fulton Realty LP as a related entity in Schedule 16 of its

2018 through 2021 Cost Reports. In addition, in other sections of its 2018 through 2021 Cost Reports, Fulton Commons reported New Fulton as a related entity.[3]

21. I have reviewed the transcript of the Executive Law § 63(12) examination under oath of Respondent Kalter, taken on April 7, 2021, which is attached hereto as Exhibit 1. As reflected in pages 101–102, Kalter testified that Fulton Commons' ownership structure, explained in ¶¶ 3–4 above, and more specifically detailed in ¶ 38 below, has been in place since at least 2018.

22. In addition to Fulton Commons and Fulton Realty LP, Kalter is also the controlling owner of New Fulton. During his Executive Law § 63(12) examination, Kalter testified that Fulton Commons transfers funds to New Fulton, which is responsible for paying "all expenses" of Fulton Commons. (*See* Ex. 1 at 186.) Fulton Commons' bank records reflect that Fulton Commons transferred almost all of its revenue to New Fulton from at least January 1, 2018 through December 31, 2021, as depicted below in ¶ 47.

23. Kalter further testified that Fulton Commons has no employees and that all individuals providing services on behalf of Fulton Commons are actually employees of New Fulton. (*See* Ex. 1 at 182.) My review of W-2 statements for 2020 and 2021 confirmed that New Fulton employs Fulton Commons staff.

IV. Equity Withdrawal Limits from Nursing Homes

24. Public Health Law § 2808(5)(c) requires nursing home owners to obtain written permission from DOH prior to withdrawing equity or transferring assets in excess of 3% of a nursing home's prior year's annual revenue.

[3] Fulton Commons also reported a third related entity, Fulton Commons Mgmt Co. LLC, on its Cost Reports. That entity is not named herein as MFCU's audit did not reveal significant transfer of funds or purported services involving this entity during our audit period.

25. Similarly, Public Health Law § 2808(5)(a) requires nursing home owners to obtain approval from DOH prior to withdrawing equity or assets that would create or increase a negative net worth position. (*See also* 10 NYCRR §§ 400.19[b][1], 415.26[h][7].) Violation of this provision may result in both replacement of the withdrawn equity or assets as well as a penalty of up to ten percent of the amount withdrawn. (*See* 10 NYCRR § 400.19[e].)

V. Conditions of Participation in and Reimbursement from the Medicaid Program

26. Fulton Commons is a registered Medicaid "Provider" with DOH, subject to program regulations and a Medicaid Provider Agreement that explicitly makes the New York State Medicaid regulations the foundation of the relationship between the state and the provider.

27. My review of official Medicaid data indicates that, at all relevant times, Fulton Commons' unique Medicaid Provider number was 02204108. In 2001, DOH issued an operating certificate to Fulton Commons as a proprietary corporation, and Kalter has signed annual certifications to DOH as the President of Fulton Commons from at least 2005 through 2021.[4] These certifications—which, along with Fulton Commons' operating certificate, are attached hereto as Exhibit 2—are required in order to receive payment from Medicaid, as explained in ¶¶ 28–31 below. Moreover, during his Executive Law § 63(12) examination, Kalter testified that he "run[s] the nursing hom[e]" and that he, alone, is the governing body of Fulton Commons. (Ex. 1 at 38, 75.)

i. Filing of Medicaid Claims for Payment

28. DOH reimburses Medicaid providers for care and/or services allegedly provided based on the providers' representation that the services were rendered in compliance with

[4] Kalter did not list his title on the certifications for 2006, 2007, 2012, or 2015.

applicable laws, regulations, and rules. Out of necessity, DOH relies upon providers' representations as to the accuracy of the claims they submit.

29. Title 18 of the Official Compilation of Codes, Rules and Regulations of New York State provides that "[n]o payments will be made to or on behalf of any person for the medical care, services or supplies furnished . . . in violation of any condition of participation in the program." (18 NYCRR § 515.5[a]; *cf.* 18 NYCRR §§ 515.5[b], [e].) In other words, in New York State, all conditions of participation in the Medicaid Program are also conditions of payment.

30. Specifically, to receive reimbursement from Medicaid in New York State, all providers—including Respondent Fulton Commons—must sign a Certification Statement for Provider Billing Medicaid (the "Medicaid Certification"). As noted in ¶ 27 above, Respondent Kalter executed the Medicaid Certifications for Respondent Fulton Commons every year since at least 2005.

31. The Medicaid Certification reads, in pertinent part:

> I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized *and done so in accordance with applicable federal and state laws and regulations* . . .
>
> * * *
>
> In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department . . .

(Emphasis added.)[5]

[5] eMedNY is the electronic system for New York State's Medicaid Program. The eMedNY system allows New York State Medicaid providers to submit claims and receive payments for Medicaid-covered services provided to eligible members.

32. Title 18 also provides that Medicaid payments may be withheld when DOH "has determined that a provider has abused the program or has committed an unacceptable practice." (18 NYCRR § 518.7[a]; *see also* 18 NYCRR § 515.3[a] [referring to the repayment of overpayments determined to have been made as a result of an unacceptable practice].)

ii. Unacceptable Practices

33. 18 NYCRR § 515.2(b) specifically prohibits as an "unacceptable practice" "conduct which constitutes fraud or abuse and includes the practices specifically enumerated in this subdivision."

> (1) False claims.
>
> (i) Submitting, or causing to be submitted, a claim or claims for:
>
> (a) unfurnished medical care, services or supplies;
>
> . . .
>
> (ii) Inducing, or seeking to induce, any person to submit a false claim under this subdivision.
>
> (2) False statements.
>
> (i) Making, or causing to be made any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment.
>
> (ii) Inducing or seeking to induce the making of any false, fictitious or fraudulent statement or a misrepresentation of material fact.
>
> (3) Failure to disclose. Having knowledge of any event affecting the right to payment of any person and concealing or failing to disclose the event with the intention that a payment be made when not authorized or in greater amount than due.
>
> (4) Conversion. Converting a medical assistance payment, or any part of such payment, to a use or benefit other than for the use intended by the medical assistance program.
>
> . . .
>
> (6) Unacceptable recordkeeping. Failing to maintain or to make available for purposes of audit or investigation records necessary to fully disclose the medical necessity for and the nature and extent of the medical care, services or supplies furnished or to comply with other requirements of this Title.
>
> . . .
>
> (12) Failure to meet recognized standards. Furnishing medical care, services or supplies

that fail to meet professionally recognized standards for health care . . .

34. 18 NYCRR § 515.2(a) also specifically prohibits as an "unacceptable practice" conduct by a person that is contrary to:

> . . .
> (3) the official rules and regulations of the department of Health, Education and Mental Hygiene, including the latter department's offices and division, relating to standards for medical care and services under the program . . .

VI. The DOH Survey Process

35. Pursuant to state and federal law, DOH typically conducts on-site inspections, called "surveys," of nursing homes every 12 to 15 months. Trained inspectors visit the facility, review records, observe resident care, and interview residents and staff members. Usually on-site for just a few days, the surveyors are unable to monitor every activity or review every record, and therefore use sampling methodology to review records of some, but not all, residents. Out of necessity, DOH surveyors rely on the truth of the resident records, which are required by law to be kept accurately.

36. DOH then issues a report, which may include a "Statement of Deficiencies" ("SOD") and may require corrective action. If deficiencies are found, the facility must file a "Plan of Correction" ("POC").

INVESTIGATIVE FINDINGS

I. Respondent-Owners' Financial Misconduct from January 1, 2018 Through January 31, 2022

A. Financial Analysis of Fulton Commons' Cash Flow from January 1, 2018 Through December 31, 2021

37. I have worked on all financial aspects of the investigation conducted by MFCU pertaining to Fulton Commons, its owners, and its related parties. I have personally examined the records of Medicaid and Medicare payments made to Fulton Commons, as well as the Medicaid

enrollment data submitted by Fulton Commons to DOH when it sought to enroll in the Medicaid Program. I have also personally reviewed the following financial records produced to MFCU by Fulton Commons, its related parties, financial institutions, and other third parties, pursuant to duly issued subpoenas under Executive Law § 63(12), including, without limitation: (a) bank records for accounts held by Fulton Commons and its related parties; and (b) financial statements and Cost Report schedules.

38. Fulton Commons' Cost Report for 2020 reflects that Fulton Commons' ownership is as follows:

Fulton Commons' Ownership	
Fulton Commons Owner	**Percentage of Ownership**
Moshe Kalter	42%
Aaron Fogel	30%
Frady Kalter	10%
Esther Fogel	10%
Mindy Steger	1%
Sheindy Saffer	1%
Chana Kanarek	1%
Dovid Kalter	1%
Yitzchok Kalter	1%
Aryeh Kalter	1%
Sheva Treff	1%
Chaya Lieberman a/k/a "Sara" Lieberman	1%
Total	**100%**

39. My review of those records revealed that Kalter controlled Fulton Commons, New Fulton, and Fulton Realty LP and their respective bank accounts, and that millions of dollars were

transferred from Fulton Commons to Respondent-owners from January 1, 2018 to December 31, 2021, as detailed below in ¶¶ 45–62.

B. Fulton Commons Related Parties and "Sister" Facilities

40. As described below in ¶¶ 41–44, Kalter is a controlling owner of all of Fulton Commons' related entities as well as its three "Sister Facilities," as defined below. Moreover, in his sworn testimony, when asked his occupation, Kalter testified, "I run the nursing homes. I am the owner. I own the nursing homes." (Ex. 1 at 38.)

41. I have reviewed various business records, including bank statements, produced in response to MFCU's subpoenas regarding Fulton Commons, New Fulton, and Fulton Realty LP, for the period of January 1, 2018 to December 31, 2021, as well as Fulton Commons' 2018 through 2021 Cost Reports. I have also reviewed 2019 and 2020 Cost Reports for Midway Nursing Home ("Midway"), Mayfair Care Center ("Mayfair"), and Bridge View Nursing Home ("Bridge View"). Midway, Mayfair, and Bridge View will be collectively referred to herein as Fulton Commons' "Sister Facilities." Each of the Sister Facilities has its own version of New Fulton.[6] The Sister Facilities, along with their related entities, will be collectively referred to herein as the "Sister Facilities Enterprises."

42. My review of these records revealed that Fulton Realty LP is owned by Respondent Kalter (58%), Respondent Aaron Fogel (40%) and Respondent Fulton Realty Inc. (2%). Moreover, Kalter is its President and Frady Kalter is its Vice President. Kalter is also the President of Fulton Realty Inc. My review further revealed that New Fulton is jointly owned by Respondents Kalter and Frady Kalter, with Respondent Kalter listed as the President and 90% owner and Respondent

[6] As detailed in ¶ 5 above, New Bridge View was also responsible for employing Respondent Weiss and other bookkeepers who processed payments through New Fulton on behalf of Fulton Commons.

Frady Kalter listed as the Vice President and 10% owner. Respondent Kalter is also the 90% owner of New Bridge View, while Frady Kalter is its Vice President.

43. My review of the 2020 Midway, Mayfair and Bridge View Cost Reports determined that Respondent-owners are also owners of these three nursing homes, as detailed in the chart below.

[*remainder of page intentionally left blank*]

Sister Facilities Ownership			
Owners	**Bridge View**	**Mayfair**	**Midway**
Moshe Kalter	41%	33%	42%
Aaron Fogel	50%	39%	50%
Frady Kalter	—	10%	—
Esther Fogel	—	10%	—
Mindy Steger	1%	1%	1%
Sheindy Saffer	1%	1%	1%
Chana Kanarek	1%	1%	1%
Dovid Kalter	1%	1%	1%
Yitzchok Kalter	1%	1%	1%
Aryeh Kalter	1%	1%	1%
Sheva Treff	1%	1%	1%
Chaya Lieberman a/k/a Sara Lieberman	1%	1%	1%
Avrohom Kalter[7]	1%	—	—
Total	**100%**	**100%**	**100%**

44. I have reviewed the incorporation records available on the New York State ("NYS") Department of State public database for Respondents Fulton Commons, New Fulton, Fulton Realty Inc., Fulton Realty LP, and New Bridge View, in conjunction with documents received from Fulton Commons. Fulton Commons and Fulton Realty LP share the same address:

[7] This individual is not a reported owner of Fulton Commons or any of the related entities discussed herein.

60 Merrick Avenue, East Meadow, NY—Fulton Commons' physical address. In addition, New Fulton and New Bridge View's address are the same: 143-10 20th Avenue, Whitestone, NY—Bridge View's physical address. Based on my review of various documents, including certain bank records and Fulton Commons' Cost Reports, Kalter has a controlling interest in all of the Corporate Respondents.

C. Medicaid and Medicare Payments to Fulton Commons Were Jointly Possessed and Controlled by Respondents Moshe and Frady Kalter

45. Moshe Kalter exercised control over millions of dollars of Medicaid and Medicare revenue that Fulton Commons received from January 1, 2018 through at least December 31, 2021, and funneled millions to himself and his family members through related-party transactions, as reflected in the cash flow chart below.

46. I have reviewed Fulton Commons' Medicaid Claim Payment History Report, which I obtained through eMedNY for the time period of January 1, 2018 through December 31, 2021. Based on my analysis of the bank statements, check deposits, and ACH deposits[8] from DOH, I determined that Fulton Commons received payments from the FFS Medicaid Program, which were negotiated against and/or deposited into Fulton Commons' bank accounts. These bank accounts are checking accounts held in the name of Respondent Fulton Commons with Respondents Kalter and Frady Kalter as signatories, and with either a business address of 60 Merrick Avenue, East Meadow, New York or 143-10 20th Avenue, Whitestone, New York.

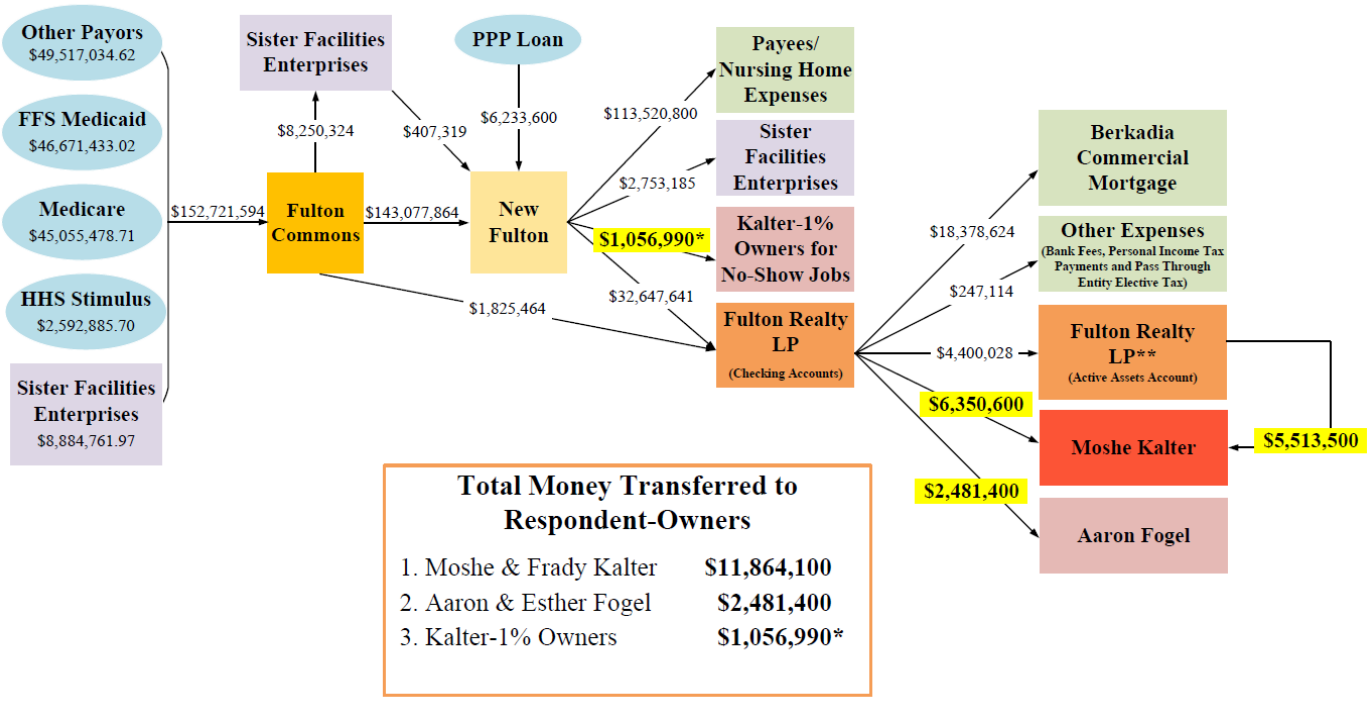
47. As depicted in the cash flow chart below, from January 1, 2018 to December 31, 2021, Fulton Commons received $46,671,433.02 from FFS Medicaid[9] and $45,055,478.71 from

[8] "ACH" (Automated Clearing House) deposits are electronic deposits.

[9] While it is likely that Fulton Commons also received payments from Medicaid MCOs, Fulton Commons failed to properly categorize MCO payments on its 2018 through 2021 Cost Reports and these payments are not easily discernible from other payments (such as from private insurance)

Medicare. During the same time period, the Fulton Commons Enterprise transferred $15,402,490 to Respondent-owners through related-party transactions. This chart was based on a review of Fulton Commons, New Fulton, and Fulton Realty LP's bank account records.

Fulton Commons Cash Flow Chart: Transfer of $15,402,490 to Respondent-Owners from Fulton Commons from 2018–2021



Notes:

*This sum is based on W-2 records, produced by Respondents Fulton Commons and New Fulton, reporting salaries paid to each of the eight Kalter-1% Owners by New Fulton.

**As of 1/1/2018, the Fulton Realty LP Active Assets account had a balance of $2,899,815.17.

1. Unless otherwise specified, all the chart totals other than those of the Sister Facilities Enterprises are the net balances as determined from the analyses of the bank accounts.
2. This chart is not inclusive of every transaction in the accounts.
3. Some amounts are rounded down to the nearest dollar, which may affect the total balances.
4. The amounts transferred to Moshe Kalter and Aaron Fogel were transferred into joint bank accounts with their spouses, Frady Kalter and Esther Fogel, respectively.

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in the bank records; thus, any Medicaid MCO payments from 2018 through 2021 are incorporated into the "Other Payors" section of the cash flow chart.

48. My review of relevant Fulton Commons records and bank records further revealed that Fulton Realty LP transferred an additional $300,000 to Kalter and $200,000 to Fogel in January 2022. In addition, Respondent Kalter-1% Owners received gross salaries for no-show jobs totaling $34,689.80 in January 2022. Accordingly, between January 1, 2018 and January 31, 2022, Respondent-owners transferred a total of $15,937,180.59 to themselves from the Fulton Commons Enterprise.

Respondent-Owners	**January 1, 2018 to January 31, 2022**
Moshe & Frady Kalter	$12,164,100.00
Aaron & Esther Fogel	$2,681,400.00
Kalter-1% Owners	$1,091,680.59
Total Amount Transferred to Respondent-Owners	**$15,937,180.59**

D. Purported Rent Payments

49. Kalter, Fulton Commons' largest percentage owner, required Fulton Commons to transfer millions of dollars to Respondent-owners through related-party transactions, including purported rent paid to Fulton Realty LP. Importantly, Kalter testified that he negotiated the terms of Fulton Commons' rent with himself, and that no one else was involved in setting the terms of the lease. (*See* Ex. 1 at 156.) Kalter further testified that rent "negotiations" are based on fair market value considerations, including Fulton Commons' mortgage, "the bed size, the campus size, quality of the home, age of the home, profitability of the home, so on and so forth." (*Id*. at 141–142.) In addition, although there was no written lease or physical manifestation of the lease agreement between Fulton Commons and Fulton Realty LP, there was an escalator clause that

caused an increase in Fulton Commons' rent between at least 2018 and 2020. (*Id.* at 156, 177–178.)

50. To illustrate, the table below represents Fulton Commons' rent to revenue ratio in comparison to the New York State ("NYS") average rent to revenue ratio calculated for all nursing homes in the state using Cost Report data for 2018 and 2020.[10] Fulton Commons' rent to revenue ratio was calculated by dividing Fulton Commons' rent by its total operating revenue. In the years 2018 and 2020, Fulton Commons' rent to revenue ratio was higher than the NYS average by over 13% and 20%, respectively. Notably, Fulton Commons had the highest percentage of rent to revenue of any nursing home on Long Island that reported a rental expense on its Cost Report in 2018 and 2020—which was also the tenth highest out of all 351 such nursing homes in the state in 2018 and fourth highest out of all 379 such nursing homes in 2020.

Fulton Commons' Rent to Revenue Ratio vs. NYS Average Rent to Revenue Ratio				
Fulton Commons	**2018**	**2019**	**2020**	**2021**
Rent[11]	$8,368,098	$9,096,302	$9,851,796	$7,156,909
Total Operating Revenue	$38,619,853	$40,638,641	$32,134,075	$29,953,410
Fulton Commons Rent to Revenue Ratio	**21.66%**	**22.38%**	**30.65%**	**23.89%**
NYS Average Total Rent to Revenue Ratio	**8.65%**	**See Footnote[12]**	**10.62%**	**See Footnote[12]**

[10] The NYS average total rent to revenue ratio excludes all facilitates that had a rent to revenue ratio of less than 1%.

[11] In the 2018 Cost Report, the rent included moveable equipment depreciation.

[12] The NYS average rent to revenue ratio for 2019 could not be calculated as DOH did not publicly release the 2019 Cost Report data for all nursing homes in New York State. In addition, the NYS average rent to revenue ratio for 2021 was not calculated by the time of this filing as the 2021 Cost Reports were only released in September 2022.

51. I took part in a review of Fulton Realty LP's expenses as reported on Fulton Commons' Cost Reports from 2018 through 2021. Fulton Realty LP's expenses reportedly included management fees in the amounts of $3,255,000, $3,428,000, $489,000, and $970,000, respectively. In addition, as shown in the table below, these purported management fees were over 40% of Fulton Realty LP's total expenses in 2018 and 2019. When questioned about the 2018 and 2019 fees, Kalter testified that these fees were paid to him as compensation for acquiring the building and the mortgage. (Ex. 1 at 160–166.)

Fulton Realty LP's Management Fees vs. Fulton Realty LP's Total Expenses				
Fulton Realty LP	**2018**	**2019**	**2020**	**2021**
Management Fees	$3,255,000	$3,428,000	$489,000	$970,000
Total Expenses	$8,096,604	$8,102,021	$5,773,878	$5,729,199
% of the Management Fee to Total Expenses	**40.20%**	**42.31%**	**8.46%**	**16.93%**

52. The audit team also compared Fulton Commons' purported rent to Fulton Realty LP's total reported property expenses for 2018 through 2021 to determine the "excess rent" for those years. As part of this analysis, MFCU accepted all of Fulton Realty LP's reported expenses for all four years and excluded only the management fees from consideration. The review revealed that Fulton Commons' excess rent was consistently over 40% of Fulton Commons' rent for the years 2018 through 2020, and over 30% in 2021, as detailed in the chart below.

Fulton Commons' Excess Rent vs. Fulton Commons Overall Rent				
	2018	**2019**	**2020**	**2021**
Fulton Commons' Rent	$8,368,098	$9,096,302	$9,851,796	$7,156,909
Fulton Realty LP's Property Expenses	($4,841,604)	($4,674,021)	($5,284,878)	($4,759,199)
Excess Rent	**$3,526,494**	**$4,422,281**	**$4,566,918**	**$2,397,710**
% of Fulton Commons' Excess Rent to Fulton Commons Rent	42.14%	48.61%	46.35%	33.50%
Source: 2018 through 2021 Cost Reports				

53. Looking at the excess rent another way, Fulton Commons' rent was marked up by as much as 94.61% in 2019, and no less than 50.38% in 2021. To perform this analysis, Fulton Commons' excess rent was divided by Fulton Realty LP's reported property expenses for each year between 2018 and 2021.

Percentage of Fulton Commons' Rent Mark-Up (Excess Rent) over Fulton Realty LP's Reported Property Expenses				
	2018	**2019**	**2020**	**2021**
Excess Rent	$3,526,494	$4,422,281	$4,566,918	$2,397,710
Fulton Realty LP's Reported Property Expenses	$4,841,604	$4,674,021	$5,284,878	$4,759,199
% of Fulton Commons' Rent Mark-Up (Excess Rent) over Fulton Realty LP's Reported Property Expenses	**72.83%**	**94.61%**	**86.41%**	**50.38%**

54. Even though Fulton Commons' total operating revenue decreased from 2019 to 2020, Respondent Kalter required the nursing home to pay increased rent in 2020. That year, as a result of Fulton Commons' significantly inflated rent payments, Fulton Commons recorded a net loss of $3,890,821, causing Fulton Commons to end 2020 with a manufactured negative net worth of $2,163,601—in violation of Public Health Law § 2808(5)(a) and 10 NYCRR §§ 400.19(b)(1) and 415.26(h)(7). The first chart below shows Fulton Commons' revenues and expenses in 2020,

with a calculation of its net loss. Importantly, the non-revenue support services amount of $21,318,255 includes Fulton Commons' rent of $9,851,796 (which, as discussed above in ¶ 52, was artificially inflated by more than $4.5 million that year). The second chart below shows Fulton Commons with a positive fund balance ("equity") at the beginning of 2020. That number was reduced by Fulton Commons' net loss, which reflects a negative equity balance of $2,163,601.

2020 Statement of Revenues and Expenses	Amounts
Total Patient Service Revenue	**$32,043,719**
Investment Income - Unrestricted	**90,356**
Total Operating Revenue	**32,134,075**
Operating Expenses:	
Non-revenue Support Services	**21,318,255**
Ancillary Service Revenue Centers	**5,037,189**
Program Services Revenue Centers	**11,834,577**
Total Operating Expenses	**38,190,021**
Operating Revenue minus Expenses	**(6,055,946)**
Non-operating Rev.: HHS Stimulus Funds	**2,174,200**
Non-operating Exp.: Federal, State and Local Taxes	**9,075**
Net loss	**(3,890,821)**

2020 Statement of Changes in Fund Balances	Unrestricted
Beginning of Year Fund Balance	**$1,687,858**
Net Loss	**(3,890,821)**
Unrealized Gains	**39,362**
Balance at End of Year	**(2,163,601)**

E. No-Show Jobs at Fulton Commons for Kalter's Eight Adult Children

55. As explained below in ¶¶ 63–65, Fulton Commons' Cost Reports for 2018 through 2021 falsely assert that all of the nursing home's reported salaries were paid to provide patient care, despite Respondent Kalter-1% Owners, Kalter's eight adult children, receiving salaries for no-show jobs. Respondent Kalter testified that his children "don't render any services to Fulton Commons" (*see* Ex. 1 at 106), yet Kalter falsely signed electronic certifications attesting to the veracity of the Cost Reports, which Fulton Commons' agent then submitted to DOH. (*See* Ex. 4; *see also* Ex. 1 at 93–95.) Through this repeated scheme, Fulton Commons transferred $1,091,680.59 in "wages" between January 1, 2018 and January 31, 2022, to the Respondent Kalter-1% Owners.

56. I also reviewed a letter from Respondents' counsel, attached to the Affirmation of Special Assistant Attorney General Prabhjot Sekhon ("Sekhon Aff.") as Exhibit 6, that states, "…(e) none of the Kalter children have any decision-making role or otherwise, in the clinical aspects, business aspects or bookkeeping aspects of Fulton Commons (or any of the related businesses); (f) all of the Kalter children live in . . . New Jersey and each, solely in their capacity as 1% equity owner of Fulton Commons, is issued checks or wires from a company related to Fulton Commons; (g) payments issued to the Kalter children are solely on account of their 'owner' interest in Fulton Commons." The letter further states: "The Kalter children are neither directors, officers nor employees of Fulton Commons, and I am advised that they provide no work or services for Fulton Commons, they are not under control of Fulton Commons, they have never traveled to New York State for any purpose related to Fulton Commons (or any of its related companies), and they have no involvement with Fulton Commons' clinical operations, bookkeeping operations or business operations." (*Id*.)

57. I reviewed various documents received from Respondents Fulton Commons and New Fulton, including W-2 statements and check listings with payroll titles. A copy of the check listings with payroll titles is attached hereto as Exhibit 5. Those records reflect that Respondent Kalter-1% Owners received yearly W-2 statements from New Fulton, on behalf of Fulton Commons. Moreover, Respondent Sheindy Saffer was listed in the check listings under the department "Director," Respondent Aryeh Kalter was listed under the department "Controller," and Respondents Dovid Kalter, Yitzchock Kalter, Chana Kanarek, Sheva Treff, Chaya Lieberman, and Mindy Steger were listed under the department "Head Bookkeeper." (*See* Ex. 5.) These documents reflect that, through New Fulton, Fulton Commons paid a total of $1,056,990.79 in salaries to Respondent Kalter-1% Owners as staff of Fulton Commons between 2018 and 2021. The chart below details the salaries paid to each owner for their no-show jobs, broken down by year.

Respondents Yearly W-2 Wages Paid for No-Show Jobs at Fulton Commons					
"Employee"	**Wages 2018**	**Wages 2019**	**Wages 2020**	**Wages 2021**	**Total Wages**
Saffer, Sheindy	$19,500.00	$46,840.00	$108,643.35	$107,944.44	$282,927.79
Steger, Mindy	16,500.00	48,319.69	94,537.68	93,234.60	252,591.97
Kanarek, Chana	8,500.00	25,793.78	48,700.82	52,843.24	135,837.84
Kalter, Yitzchok	6,000.00	14,400.00	39,370.83	38,816.64	98,587.47
Kalter, Dovid	4,500.00	14,400.00	37,296.14	38,517.72	94,713.86
Kalter, Aryeh	3,000.00	8,000.00	36,362.02	35,891.40	83,253.42
Treff, Sheva	2,500.00	6,000.00	25,113.26	24,086.88	57,700.14
Lieberman, Chaya S.	—	6,541.56	20,851.86	23,984.88	51,378.30
Total Wages	**$60,500.00**	**$170,295.03**	**$410,875.96**	**$415,319.80**	**$1,056,990.79**

58. A review of Fulton Commons' check listings exposed that the Respondent Kalter-1% Owners also received an additional $34,689.80 in January 2022 as purported payment for these no-show jobs.

59. Respondent Kalter testified that he, alone, set the salaries for the Respondent Kalter-1% Owners and that the salaries were not tied to percentage of ownership. (*See* Ex. 1 at 108.) When asked to describe the metric or method used to determine compensation, Kalter testified, "There is no method, that's just what I decide to give them." (*Id.*)

F. Loans Made by Fulton Commons for the Benefit of Respondent-Owners' Other Business Investments

60. In yet another scheme to divert nursing home monies away from resident care and into Kalter's own pockets, Fulton Commons' 2018 through 2021 Cost Reports reveal related-party loans that benefited its owners' other business investments. The notes to the Cost Reports indicate that, *"the Company advances monies to the shareholders for use in related entities' operations. There are no repayment terms and the balances do not accrue interest."* (Emphasis added). (Ex. 4.)

61. The chart below depicts the net balances for the "due to and due from parent/subsidiary/affiliates" as reflected on the balance sheets from the 2018 through 2021 Fulton Commons Cost Reports.

Cost Report Balance Sheet Due to and Due from Parent/Subsidiary/Affiliates				
Balance Sheet	**2018**	**2019**	**2020**	**2021**
Due from Parent/Subsidiary/Affiliates	$13,046,556.00	$13,330,639.00	$13,330,639.00	$13,730,639.00
Due to Parent/Subsidiary/Affiliate	4,292,276.00	4,394,987.00	4,647,731.00	4,774,944.00
Net at Year End	**$8,754,280.00**	**$8,935,652.00**	**$8,682,908.00**	**$8,955,695.00**

62. During his sworn testimony, Kalter acknowledged that nursing home funds were regularly moved between Fulton Commons and its Sister Facilities Enterprises without any written loan agreements or terms in order to pay each other's expenses. (*See* Ex. 1 at 194–206.)

G. Respondent Kalter, as Fulton Commons' Operator, Submitted False Cost Reports and Schedules to DOH from 2018 Through 2021

63. I have personally examined the 2018 through 2021 Cost Reports, and their accompanying schedules and required financial records, submitted to DOH by Fulton Commons, which I obtained from DOH and Fulton Commons.

64. Respondent Kalter falsely certified on all four Cost Reports that "all salary and non-salary expenses presented in the RHCF-4 [Cost Report] . . . were incurred to provide patient care in the facility." (Ex. 4.) However, a review of the 2018 through 2021 Cost Reports revealed that Fulton Commons reported the salaries of Respondent Kalter-1% Owners—salaries that were paid for no services, as noted above in ¶¶ 55–59. Accordingly, those salaries were not incurred to provide patient care.

65. In addition, Respondent Kalter certified that the 2018 through 2021 Cost Reports he submitted to DOH were "true and complete." (*See* Ex. 4.) These statements were similarly false.

H. Respondent-Owners Withdrew in Excess of 3% Equity from Fulton Commons Through its Related Parties Without DOH Authorization

66. Through schemes of inflated rent and no-show jobs, Respondent-owners illegally withdrew more than 3% of Fulton Commons' prior total reported annual revenue for each year from 2018 to 2021, without seeking or obtaining DOH approval, as determined by my review of DOH data,[13] Fulton Commons' Cost Reports, New Fulton's W-2 forms, and Fulton Realty LP's bank accounts. During those years, Fulton Commons' owners withdrew more than $2.5 million, $3.4 million, $3.7 million, and $1.8 million in excess of 3% of its prior years' revenue of $35 million, $38.6 million, $40.6 million, and $32.1 million, respectively.

[13] This DOH data includes all equity withdrawal requests from 2018 through 2021 from all nursing homes in New York State.

67. As detailed in ¶ 24 above, Public Health Law § 2808(5)(c) requires that nursing homes obtain written approval from DOH for equity withdrawals or transfers of assets greater than 3% of such facility's total reported annual revenue for patient care services. The total reported annual revenue is based on the prior year's revenue. Accordingly, in 2018, Respondent-owners would be permitted to withdraw up to 3% of 2017's annual revenue, and any amount above 3% requires DOH approval. In each year from 2018 through 2021, Fulton Commons withdrew in excess of 3% equity and failed to seek or obtain DOH approval. The chart below indicates that Fulton Commons withdrew 7.22% in 2018, 8.89% in 2019, 9.24% in 2020, and 5.75% in 2021, *above* the 3% permitted.

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Equity Withdrawals/Asset Transfers from Fulton Commons in Excess of 3%					
	2018	**2019**	**2020**	**2021**	**Total**
Fulton Commons' Prior Year's Total Operating Revenue (Cost Report)	$35,082,173.00	$38,619,853.00	$40,638,641.00	$32,134,075.00	$146,474,742.00
3% of Fulton Commons' Prior Year's Operating Revenue	**$1,052,465.19**	**$1,158,595.59**	**$1,219,159.23**	**$964,022.25**	**$4,394,242.26**
Excess Rent	$3,526,494.00	$4,422,281.00	$4,566,918.00	$2,397,710.00	$14,913,403.00
Kalter-1% Owners Salaries	$60,500.00	$170,295.03	$410,875.96	$415,319.80	$1,056,990.79
Total Equity Withdrawals/Asset Transfers	**$3,586,994.00**	**$4,592,576.03**	**$4,977,793.96**	**$2,813,029.80**	**$15,970,393.79**
Equity Withdrawals/Asset Transfers in Excess of 3%	**$2,534,528.81**	**$3,433,980.44**	**$3,758,634.73**	**$1,849,007.55**	**$11,576,151.53**
Percentage of Equity Withdrawals/Asset Transfers in Excess of 3%	**7.22%**	**8.89%**	**9.24%**	**5.75%**	–

68. Similarly, as detailed in ¶ 54, Respondent-owners, through Fulton Commons' rent scheme, withdrew equity from Fulton Commons that created a negative net worth position in 2020. As explained above in ¶ 25, Public Health Law § 2808(5)(a) and 10 NYCRR §§ 400.19(b)(1) and 415.26(h)(7) require that any such withdrawals be approved by DOH. Respondent-owners neither sought nor obtained DOH approval prior to this withdrawal of equity.

I. Summary of Fulton Commons' Owners' Conversion of Nursing Home Assets

69. I reviewed all of Fulton Commons' financial records described above as well as relevant testimony from examinations under oath of Fulton Commons' operator and owner, Respondent Kalter, and Comptroller, Respondent Weiss. I have calculated the total dollar value of Fulton Commons' owners' conversion of nursing home funds through its artificially inflated rent payments using Fulton Commons' Cost Reports for the years 2018 to 2021. Specifically, in those four years, Fulton Commons' rent exceeded Fulton Realty LP's legitimate expenses by $14,913,403.[14] During the time period of January 1, 2018 and January 31, 2022, Fulton Realty LP paid Kalter $8,142,000 in purported management fees, $3,722,100 in distributions, and an additional $300,000 that has yet to be classified. During that same period, Respondent Fogel received $2,681,400 in distributions. Accordingly, Fulton Realty LP paid Kalter and Fogel a total of $14,845,500 between January 1, 2018 and January 31, 2022.

70. In addition to the withdrawal of equity via excess rent, Respondent-owners withdrew additional equity through salaries for no-show jobs. I have calculated the total dollar value of Fulton Commons' owners' conversion of Fulton Commons' funds that were paid to Respondent Kalter-1% Owners as salaries despite these Respondents providing no services to Fulton Commons. As depicted in ¶¶ 55, 57, and 58 above, MFCU's analysis of Respondent Kalter-

[14] As detailed in ¶ 52 above, in performing this calculation, the management fees that were paid to Respondent Kalter were subtracted from Fulton Realty LP's expenses.

1% Owners' W-2 statements from 2018 to 2021 and check listings for January 2022 showed that these Respondents received a total salary of $1,091,680.59 for no-show jobs.

71. Using Fulton Commons' 2017 to 2021 Cost Reports, I have calculated the total dollar value of Fulton Commons' owners' conversion of Fulton Commons' funds that were in excess of 3% equity of the prior year's revenue. Specifically, each year from 2018 to 2021, Respondent-owners withdrew between $1.8 million and $3.8 million in excess equity without DOH approval, totaling $11,576,151.53.

72. In sum, between the excess rent and the no-show jobs, Respondent-owners withdrew a total of $16,005,083.59 from Fulton Commons between January 1, 2018 and January 31, 2022, of which $11,576,151.53 was beyond the amount permitted absent DOH approval. In the just over four-year period between January 1, 2018 and January 31, 2022, $15,937,180.59 was directly transferred to Respondent-owners, as illustrated in ¶ 48 above.

Conversion	**2018**	**2019**	**2020**	**2021**	**January 2022**	**Total**
Excess Rent	$3,526,494.00	$4,422,281.00	$4,566,918.00	$2,397,710.00	Unable to determine	**$14,913,403.00**
Kalter-1% Owners' Salaries	$60,500.00	$170,295.03	$410,875.96	$415,319.80	$34,689.80	**$1,091,680.59**
Total	**$3,586,994.00**	**$4,592,576.03**	**$4,977,793.96**	**$2,813,029.80**	**$34,689.80**	**$16,005,083.59**

II. MFCU's Staffing Analyses Established that Fulton Commons Consistently Failed to Meet Federal Staffing Targets for Minimizing Risks to Nursing Home Residents

A. Fulton Commons' Staffing Levels Were Consistently Rated as Below Average by the Centers for Medicare and Medicaid Services

73. During the relevant time period, the federal agency, Centers for Medicare and Medicaid Services ("CMS"), published "Overall" and various staffing ratings for each nursing home in the nation on its "CMS Care Compare" website, which may be accessed at

https://www.medicare.gov/care-compare/. Each Medicare-certified nursing home in the country has an Overall rating, which is based upon its performance in three areas, for which separate ratings are also issued: (1) Health Inspections; (2) Nursing Staffing; and (3) Quality Measures. (*Id*.) The ratings are based on official inspections and required facility-reported data, including but not limited to the data contained in payroll-based journal ("PBJ") records,[15] maintained by CMS and publicly available at https://www.cms.gov/. CMS issues nursing staffing ratings based on ratios of total numbers of staffing hours for RN and Overall nursing staff relative to the number of residents.[16] The ratios, which are issued on a quarterly basis, are expressed as star ratings, with the lowest rating of 1-Star signifying the lowest number of staff per resident, and the highest rating of 5-Star signifying the highest number.

74. My review of the CMS ratings revealed that, although Fulton Commons maintained a 5-Star Overall rating from April 2019 (the second quarter of 2019) until April 2022,[17] its staffing ratings were consistently below average. As depicted in the chart below, Fulton Commons' CMS Staffing rating was 1-Star ("MUCH BELOW AVERAGE") in 2018 and remained 1-Star until April 2019. It then increased to 2-Stars ("BELOW AVERAGE"), where it nearly consistently remained through and after the height of the pandemic.[18] Although the Staffing rating increased to

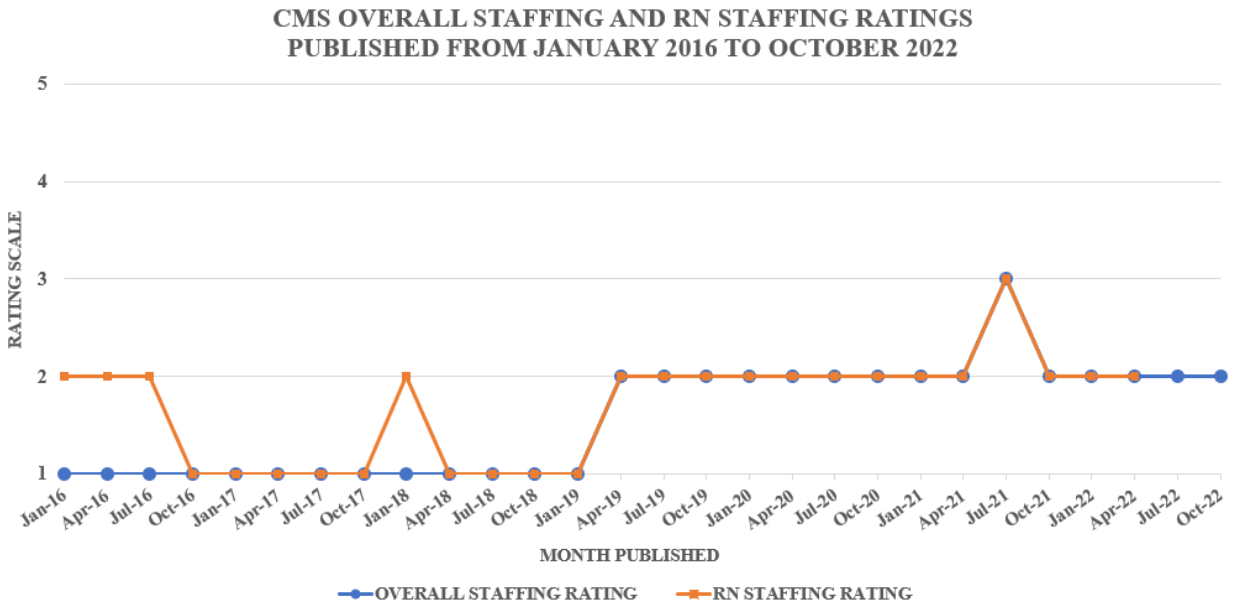
[15] The self-reported PBJ nursing staff hours discloses the number of hours staff are paid to work each day, aggregated by staff reporting category.

[16] At all times relevant hereto, CMS's staffing ratings were based on PBJ data reported by nursing homes from two quarters earlier, i.e., CMS's staffing ratings for the third quarter of 2021 (July 1, 2021 through September 30, 2021) are based on PBJ data from the first quarter of the year (January 1, 2021 through March 31, 2021). The ratings for other facilities owned by various Respondents can also be found in the online CMS system.

[17] Fulton Commons' Overall rating for the first quarter of 2019 was 3-Stars (AVERAGE).

[18] As referenced herein, the height of the pandemic refers to the period of March 1, 2020 through May 31, 2020.

3-Stars ("AVERAGE") for a single quarter beginning in July 2021, it reverted to 2-Stars the following quarter and has remained there since.



B. Fulton Commons' Staffing Levels Were Almost Consistently Below CMS Study Target Range from January 2020 Through January 2022

75. The investigative team has examined the staffing records produced by Fulton Commons to MFCU pursuant to both duly issued subpoenas under Executive Law § 63(12) and official document requests pursuant to 18 NYCRR § 504.3, as well as Fulton Commons' self-reported PBJ records.

76. The investigative team also reviewed Fulton Commons' nursing staffing schedule, daily census, and periodic census reports for January 2020 to May 2020, January 2021 to March 2021, and January 2022 to determine Fulton Commons' monthly average Registered Professional Nurse ("RN") minutes-per-resident day ratio during those time periods. Importantly, Fulton Commons rejected MFCU's lawfully issued Executive Law § 63(12) subpoena that requested staffing records from February 1, 2022 through May 18 2022. (*See* Sekhon Aff. Ex. 3.) Fulton

Commons' rejection obstructed MFCU's attempts to conduct an analysis of its present staffing levels.

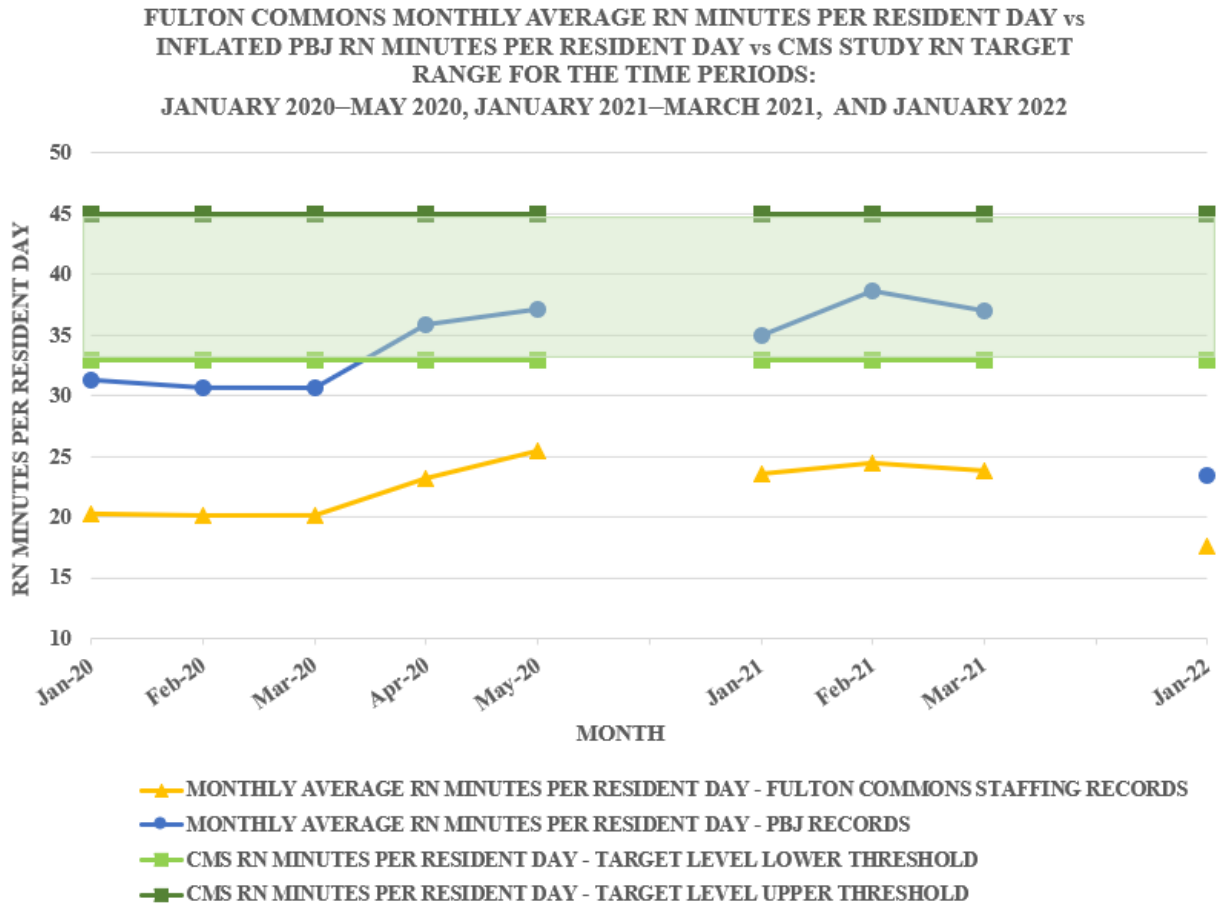
77. The investigative team then compared Fulton Commons' staffing levels, garnered through the above record reviews, to the staffing levels that CMS determined maximized quality of care in nursing homes. CMS identified 4.1 hours of total direct care nursing time for long-stay populations, expressed in terms of nursing hours per resident day ("HPRD"),[19] as the staffing threshold "below which quality of care was compromised." (*See* Sekhon Aff. Ex. 7.)[20] As part of CMS's 2001 study of the impact of nursing home staffing on resident care, CMS noted that the closer a nursing home gets to 4.1 HPRD (2.8 HPRD from Certified Nurse Aides and 1.3 HPRD for licensed nursing staff, specifically including .75 HPRD, which equates to 45 minutes per day, from RNs), the greater the improvements in quality of care. Importantly, the study adjusted these numbers for short-stay populations, finding that quality of care diminished in these populations when RN HPRD decreased below .55 hours, equating to 33 minutes.

78. The line graph below compares Fulton Commons' monthly average RN minutes-per-resident day ratio for the respective time periods below using the internal Fulton Commons records (the yellow line) to the RN minutes-per-resident day ratio using the PBJ data submitted by Fulton Commons to CMS (the blue line). The monthly average RN minutes-per-resident day ratio was calculated by dividing the average total RN hours worked per month by the average census per month. That number was then multiplied by 60 (minutes per hour). The result indicates the average number of minutes an RN could have spent with each resident. This was then compared

[19] HPRD is calculated by dividing total hours staff worked in each day by the number of residents in the facility on that same day.

[20] Exhibit 7 to the Sekhon Aff. is: Marvin Feuerberg, *Centers for Medicare & Medicaid Services [CMS] Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes Phase II Final Report*, Baltimore, MD: CMS; 2001.

to the CMS study target threshold of 33–45 minutes (the shaded green area). Even though the PBJ data that Fulton Commons submitted to CMS suggests that Fulton Commons did reach the CMS study RN target range of 33–45 minutes for five out of nine months reviewed, Fulton Commons' internal staffing records reveal that its actual monthly average RN minutes-per-resident day was consistently well below the CMS study RN target threshold.



79. Fulton Commons' RN minutes-per-resident-day based on the PBJ data are inflated as a result of Fulton Commons' failure to accurately report its staffing data to CMS. Specifically, MFCU's review of Fulton Commons' PBJ data revealed that, until at least October 2021, the nursing home improperly conflated all of its RNs into administrative reporting categories. Although CMS requires that nursing homes report RNs providing direct care separately from RNs

with strictly administrative duties, and also report any such administrative RNs separately from the Director of Nursing ("DON"), Fulton Commons failed to report any direct care RNs until October 2021. Instead, Fulton Commons reported all of its RNs in the administrative RNs and DON category. With no way to distinguish the direct care RNs from administrative RNs (who typically provide no direct care to the nursing home's residents), MFCU was forced to include all the RNs in its analysis above, which resulted in an inflated ratio for the PBJ data.[21] Fulton Commons' conduct in failing to separately report its DON, administrative RNs, and direct care RNs obfuscates its actual level of RN direct care staffing and renders it impossible to accurately calculate its true minutes-per-resident-day and/or HPRD levels through September 2021 using the PBJ data.

80. Moreover, although Fulton Commons' RN minutes increased in April 2020 and May 2020, this is not a result of an increase in staff, but rather a decrease in the resident census. As detailed below in ¶ 113, 92 Fulton Commons residents died from March 1, 2020 through May 31, 2020.

C. Fulton Commons' Insufficient Staffing

81. New York State law requires that nursing home staffing be sufficient to achieve all residents' "highest practicable physical, mental, and psychosocial [levels of] well-being," as assessed in their care plans. (*See* RN Conway Aff. at ¶ 11; 10 NYCRR § 415.13.) In addition to these existing state standards, which are consistent with federal staffing regulations, New York State recently passed Public Health Law § 2895-b, which sets forth a quantitatively expressed

[21] Although Fulton Commons' January 2022 PBJ data does separately report direct care RNs, MFCU had no choice but to include all RNs (direct care, administrative, and DON) into its analysis of that month as well for the sake of continuity.

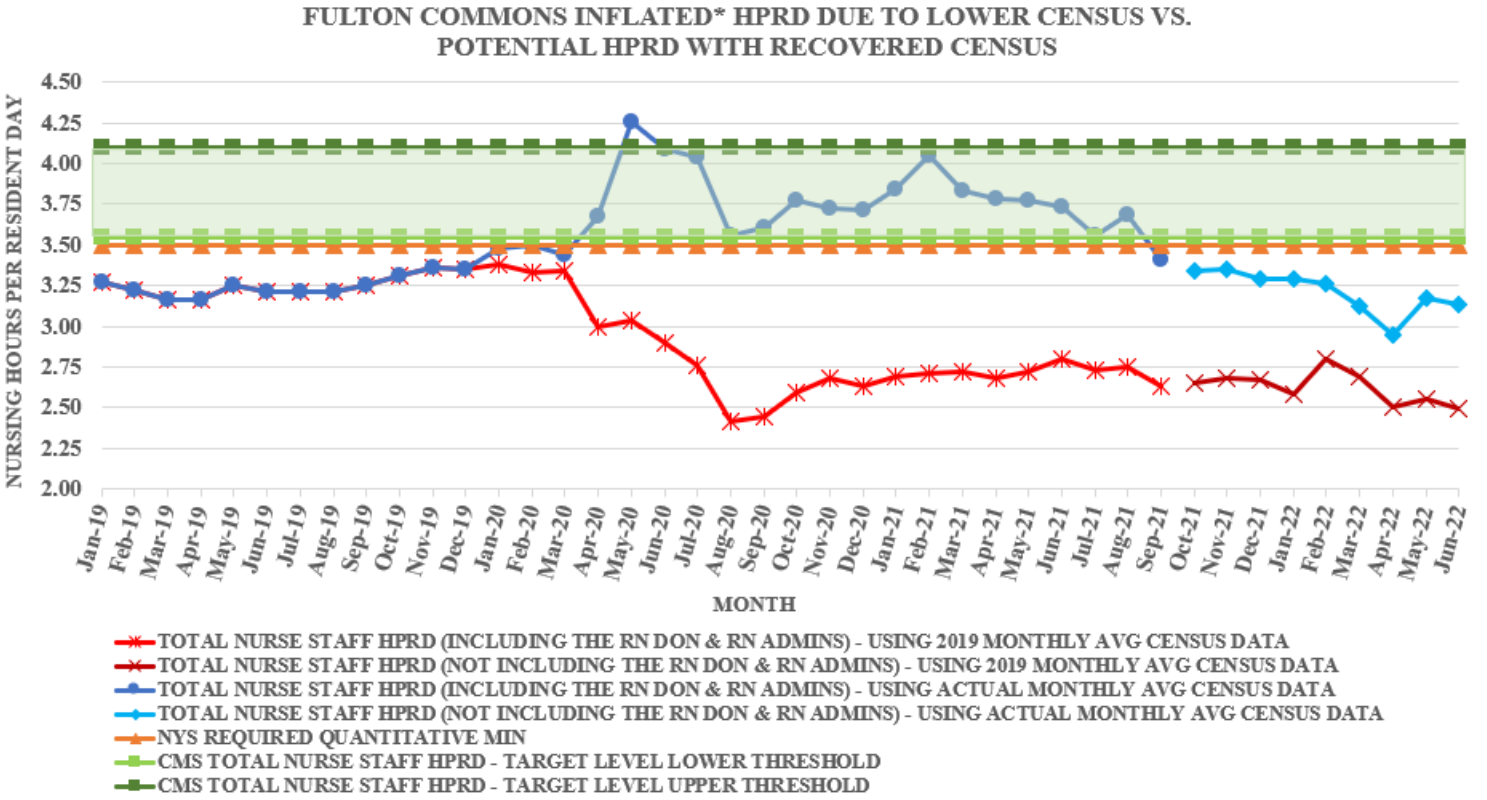
minimum requirement of 3.5 HPRD for nursing staff. Although this requirement, effective April 1, 2022, is lower than the CMS study target level range of 3.55–4.1 HPRD, it is not dispositive of sufficient staffing; namely, this level must be met in addition to the qualitative standard in New York State law that is discussed above. In other words, it is not sufficient that a nursing home achieves the 3.5 HPRD level in Public Health Law § 2895-b if its staffing does not allow for each of its residents to achieve their "highest practicable physical, mental, and psychosocial [level of] well-being." (10 NYCRR § 415.13.)

82. MFCU conducted an analysis of Fulton Commons' PBJ records to determine the nursing home's monthly average HPRD, which is based on RN, licensed practical nurse ("LPN"), and certified nurse aide ("CNA") hours between January 2019 through June 2022.[22] The monthly average nursing HPRD was calculated by averaging Fulton Commons' total nursing hours per month divided by its average census per month. Importantly, the census directly impacts the calculation of HPRD. If the census decreases but staffing remains the same, HPRD increases. As explained in ¶¶ 85 and 113 below, Fulton Commons experienced a significant drop in its resident census in 2020 and 2021. Should Fulton Commons' census have recovered to that which it was in 2019, its HPRD would have been significantly lower.

83. The chart below depicts: (1) Fulton Commons' actual HPRD based on the conflated, and therefore inflated, RN staffing data from January 2019 through September 2021 (the dark blue line with circles); (2) Fulton Commons' actual HPRD from October 2021 through June 2022, after the nursing home stopped conflating its direct care RNs with its administrative RNs (the bright blue line with diamonds); (3) what Fulton Commons' inflated HPRD would have been from January 2019 through September 2021, if its census had recovered to what it was during

[22] The PBJ data reported for December 2021 only includes December 1, 2021 through December 10, 2021.

the same months in 2019 (the bright red line with asterisks); (4) what Fulton Commons' HPRD would have been from October 2021 to June 2022 if its census had recovered to what it was during the same months in 2019 (the dark red line demarcated with the letter "x"); (5) the NYS quantitate minimum of 3.5 HPRD (the orange line with triangles); and (6) the CMS study target level range of 3.55–4.1 HPRD (the green shaded area).

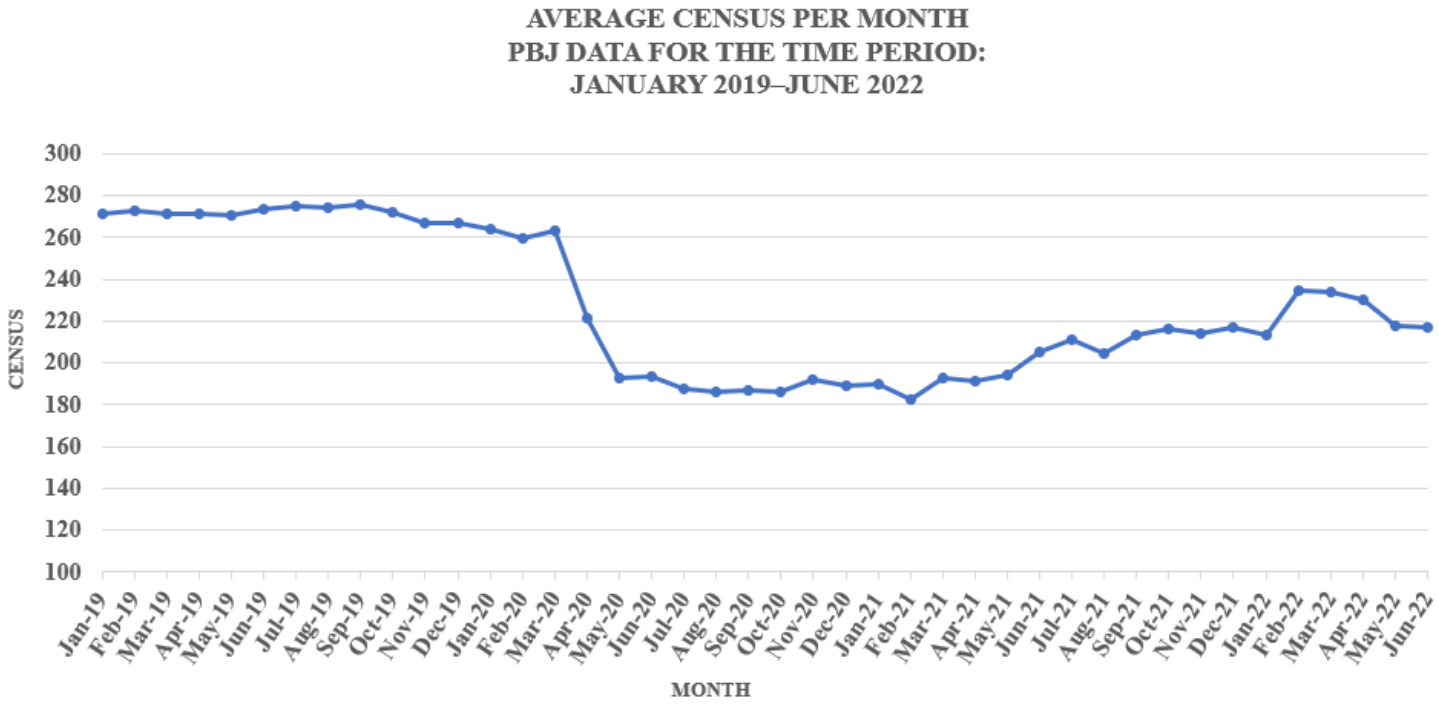


*Fulton Commons HPRD is inflated due to Fulton Commons failure to demarcate its direct care RNs from its administrative RNs for the time period Jan-2019 to Sep-2021.

84. As depicted in the above chart, Fulton Commons' actual monthly average nursing HPRD in 2019 was consistently below the CMS study target HPRD ratio and below the 3.5 minimum level set forth in Public Health Law § 2895-b. Between April 2020 and June 2022, with the exception of May 2020 when Fulton Commons census dropped significantly due to COVID-19 resident deaths (*see* ¶¶ 85, 113 below), the nursing HPRD almost consistently remained lower than the upper CMS study target staffing level of 4.1 HPRD. Moreover, if Fulton Commons'

census recovered to what it was during the corresponding months in 2019, it would have also failed to meet the now required minimum of 3.5 HPRD.

85. The chart below, which is based on Fulton Commons' PBJ records, is the average census per month.[23] Although the chart in ¶ 83 depicts a general increase in HPRD, particularly in May 2020 and February 2021, this increase is not due to an increase in staff; rather, it is due to a lower census in 2020 and 2021, as illustrated below. Further depicted in this chart, Fulton Commons' census began to increase very slowly until it hit a peak of 234 in February 2022, but then began to decrease once again.



[23] The incomplete December 2021 PBJ records, detailed in ¶ 82 n.23 above, were also utilized to perform this analysis.

D. Fulton Commons' Controlling Owner and Operator Focused Only on Its Census

86. During his Executive Law § 63(12) testimony, Respondent Kalter, Fulton Commons' controlling owner, admitted that he focused only on Fulton Commons' census and cash balances.

87. Specifically, as reflected in the below excerpts, Respondent Kalter acknowledged receiving a daily census and testified that the numbers were important to him. Specifically, when asked the following questions, Kalter gave the following answers.

> Q. And how does [Respondent] Weiss keep you apprised of the daily census at Fulton Commons?
>
> A. He sends me a census sheet every morning and every night.
>
> . . .
>
> Q. Other than what we already discussed today, and by that I mean specifically receiving regular updates on census status, do you receive or request any other regular updates about status at Fulton Commons, more generally?
>
> A. Balances.
>
> Q. What do you mean by that?
>
> A. Cash balances in the bank.
>
> . . .
>
> Q. When you reviewed the census daily, what were you looking for in doing that review, what was important to you?
>
> A. Just the numbers.
>
> Q. How would reviewing the daily census effect [sic] your decision making as an owner?
>
> A. It wouldn't effect [sic] any decisions, like I stated before, it's a fact, this is what we have.

(Ex. 1 at 78, 122, 263.)

88. I have also reviewed the transcript of the Executive Law § 63(12) examination under oath of Respondent Weiss, Comptroller of Respondent New Fulton, conducted on March 16, 2021, which is attached hereto as Exhibit 7. As reflected in the below excerpt, Weiss testified that the only conversations he had with Respondent Kalter regarding Fulton Commons' day-to-day operations were about the census and bank account balances. Specifically, when asked the following questions, Weiss gave the following answers.

> Q. So do you talk to [Kalter] every day or once a week or once a month, how involved is he in your work for Fulton Commons?
>
> A. I talk to him every day to give him a census.
>
> Q. So you provide the census to him. Do you discuss the census with him?
>
> A. Briefly.
>
> Q. What kind of things would you discuss with him specific to the census?
>
> A. Just how many vacancies we have.
>
> Q. Aside from discussions about the census, would you discuss any other aspects of the operation of Fulton Commons with Mr. Kalter?
>
> A. No.
>
> Q. So am [I] correct in understanding that your discussions with Mr. Kalter specific to the day-to-day operations of Fulton Commons are specific to the census?
>
> A. Correct.
>
> . . .
>
> Q. How involved is Mr. Kalter in the other facilities, including Midway, Mayfair and Bridge View?
>
> A. Similar to Fulton Commons.

> Q. So would I be correct in understanding that most of his interactions with you in regards to those other facilities is keeping up-to-date on census details?
>
> A. Census and just I would add cash balances in the bank.
>
> Q. And that's for all facilities?
>
> A. Yes.

(Ex. 7 at 68, 72.)

E. Fulton Commons Continued to Admit Residents During Periods of Insufficient Staffing

89. I have reviewed the Cost Reports produced by Fulton Commons for January 2019 through December 2021. Despite its legal duty to admit only the residents for whom it could provide adequate care under 10 NYCRR § 415.26(i)(1)(ii). In 2019, Fulton Commons admitted 546 residents,[24] while maintaining an average census of 271 residents, despite failing to meet even the lower level of the CMS study target HPRD range. Similarly, in 2020, Fulton Commons admitted 762 residents, maintaining an average census of 210 residents, despite failing to meet the upper level of the CMS study target HPRD for eleven months, and in 2021, Fulton Commons admitted 854 residents despite failing to meet the upper level of the CMS target until at least December 2021.

F. Amount of Staffing That $1 Million Could Have Provided to Fulton Commons' Residents

90. The graph in ¶ 92 below indicates how much Fulton Commons' HPRD could have increased with an additional $1 million invested into staffing each year if Fulton Commons' census was what it was in 2019. Specifically, an infusion of an additional $1 million into Fulton Commons in 2020 would have equaled an investment of $3,571.42 per bed, which could have provided

[24] As detailed in this paragraph, the numbers of admissions includes both new admissions and readmissions.

approximately 23,675 additional hours of direct care,[25] including 2,525 RN hours, 4,785 LPN hours, and 16,365 CNA hours, to the vulnerable residents for whom Fulton Commons and Respondent-owners were paid government funds to care for.

91. The calculation of how much HPRD would have improved with a $1 million investment was done by using the costs reported on Fulton Commons' Cost Reports for the years 2019 to 2021 and the PBJ average census for the year 2019. Only the expenditures on RN, LPN and CNA employees were considered to calculate the additional HPRD.[26] The additional HPRD calculated was then added to the potential HPRD with a recovered census.

92. The HPRD with the additional investment, using the 2019 census, was compared to the staffing levels set forth by both Public Health Law § 2895-b and CMS's study target HPRD ratio. As depicted in the graph below, if Fulton Commons' census recovered to that which it was in 2019, a much larger investment would be necessary to even meet the New York State minimum standard HPRD ratio, not to mention the legally required qualitative standard in 10 NYCRR § 415.13.

[25] In 2019, this would have added 24,752 hours, and in 2021 it would have added 18,108 hours.

[26] This was calculated by analyzing Fulton Commons' self-reported 2019 through 2021 Cost Report data related to nursing staff salaries and wages, employee benefits, hours worked, and "full-time equivalents," which is the ratio of hours to shift.

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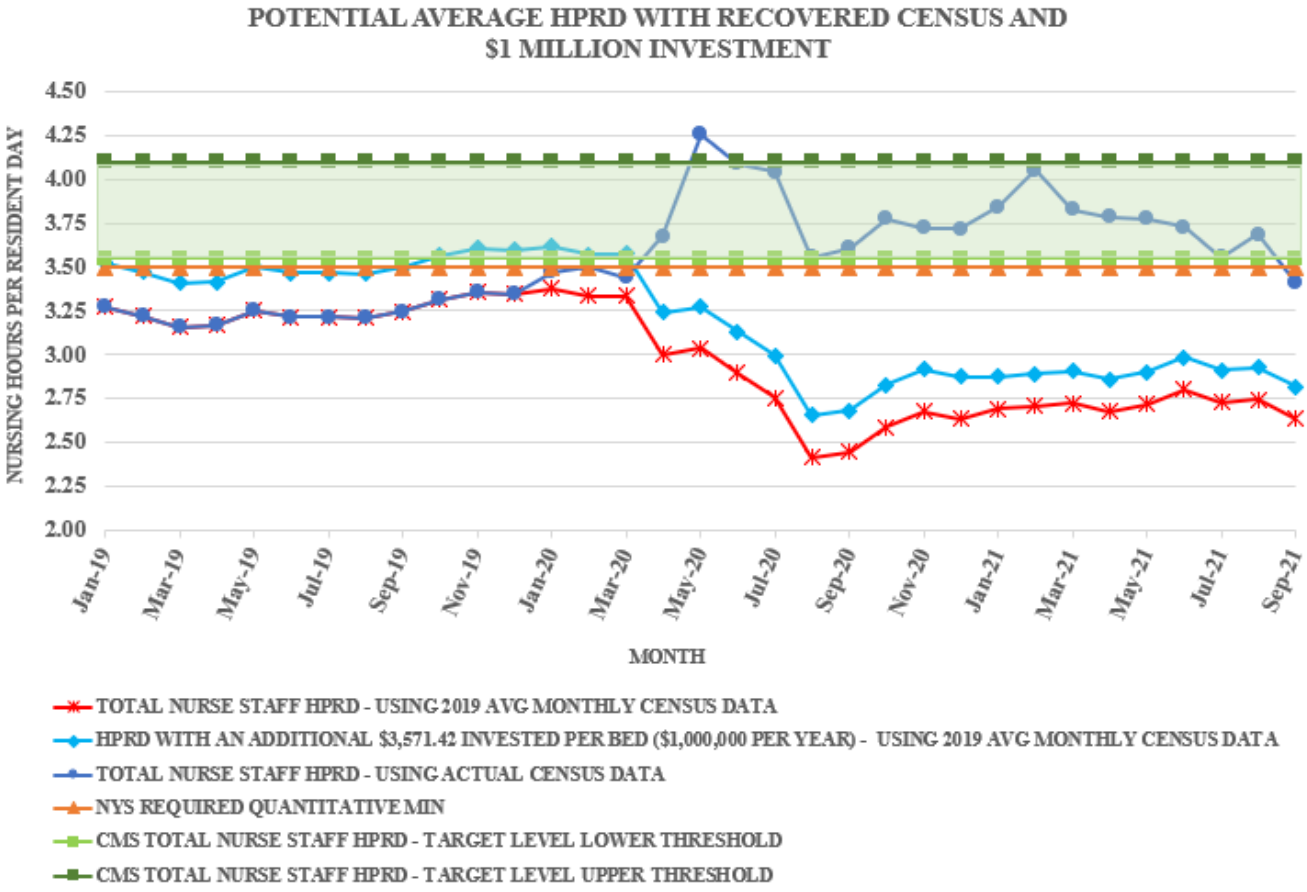

93. Notably, $1 million would not have been a particularly large investment for Respondent-owners. On its Cost Reports, Fulton Commons reported at least $105,834,966 in Medicaid and Medicare revenue for resident care between January 1, 2018 and December 31, 2021. During the same period, Fulton Commons spent only $47,330,226 on direct resident care while spending $34,473,105 on purported rent, of which $14,913,403 was excess rent, and $1,056,990.79 on payments to the Kalter-1% Owners for no-show jobs. If Fulton Commons spent just $1 million more on staffing hours in 2020—a year in which 154 residents died—it would have been able to provide an additional 23,675 hours of direct care to its residents. Such an investment

in staffing could have been made by lowering Fulton Commons' excess rent and by eliminating the Kalter-1% Owners' no-show jobs.

94. Moreover, the chart below illustrates how many additional hours of direct care Fulton Commons could have provided to its residents in 2018, 2019, 2020, and 2021 if the Kalter-1% Owners' annual salaries in the corresponding years had been redirected to invest in staffing.

Additional Direct Care Hours That Could Have Been Paid for With the Kalter-1% Owners' Annual Aggregate Wages				
	2018	**2019**	**2020**	**2021**
Kalter-1% Owners Total Wages	$60,500.00	$170,295.03	$410,875.96	$415,319.80
RN Hours	111	218	1,037	615
LPN Hours	322	910	1,966	1,857
CNA Hours	1,113	3,086	6,724	5,047
Total Additional Hours of Direct Care	**1,546**	**4,214**	**9,727**	**7,519**

III. Fulton Commons Failed to Deliver Adequate Care to Its Residents Before, During, and After the COVID-19 Pandemic

A. Fulton Commons Received Numerous Sanctions for Poor Performance from 2018 to 2022

95. As discussed in ¶¶ 35–36 above, DOH conducts regular on-site inspections at nursing homes. As a result of these surveys, between January 4, 2019 and March 31, 2022, DOH sanctioned Fulton Commons 12 times for violations of New York State nursing home laws, rules and regulations, or violations of Executive Orders issued by the Governor. The respective violations are discussed in the paragraphs that follow.

96. Out of the 12 citations, nine citations were categorized as standard health citations. Standard health citations pertain to quality of care, resident care, staff/resident interactions, environment, and record-keeping. Two of the nine standard health citations related to actual harm or immediate jeopardy. Actual harm, as defined by CMS in a transmittal dated June 10, 2016, which is attached hereto as Exhibit 8, is a negative outcome that has compromised a resident's ability to maintain and/or reach their highest practicable physical, mental, and psychosocial well-being. Immediate jeopardy is defined by DOH as immediate jeopardy to resident health or safety requiring immediate action. (*Id*.)

97. The remaining three citations were categorized as standard life safety code citations. These citations pertain to a wide range of safety code requirements as established by the National Fire Protection Agency ("NFPA"), including construction, protection and operational features designed to provide safety from fire, smoke, and panic.

98. On January 4, 2019, DOH conducted an on-site infection control survey and cited Fulton Commons for five deficiencies. A copy of the SOD is attached hereto as Exhibit 9. Specifically, DOH determined that Fulton Commons failed to: (1) implement a resident's comprehensive care plan by offering a resident a straw with meals despite the resident's care plan indicating that the resident was not permitted straws due to a risk of aspirating; (2) review and revise a resident's care plan for seven months, despite the resident undergoing three assessments during that period; (3) ensure that automatic sprinkler systems were inspected, tested, and maintained; (4) clearly mark fire extinguishers and ensure that they were visible from all angles in the hallway; and (5) ensure that food was stored and handled in accordance with professional standards for food service safety, in that: (i) a CNA served food to two residents that she touched with her bare hands, and (ii) Fulton Commons' dairy walk-in freezer was not maintained at a

freezing temperature, and a dietary supervisor took no corrective action despite a temperature log indicating this was an ongoing issue.

99. On July 30, 2019, Fulton Commons was cited for failure to ensure that the environment remained secure and free of accidents and that residents were adequately supervised, in that a resident with severely impaired cognition and a moderate risk for elopement exited the facility through Fulton Commons' perimeter exit door, which failed to alarm. A copy of the SOD is attached hereto as Exhibit 10. The resident's elopement was unnoticed by Fulton Commons staff for several minutes. The resident was found more than an hour later nearly half a mile away.

100. On May 15, 2020, DOH cited Fulton Commons during a "COVID-19 Focused Infection Control Survey" for failing to ensure an infection control program was maintained to prevent the development and transmission of communicable disease and infection. A copy of the SOD is attached hereto as Exhibit 11. Specifically, certain Fulton Commons staff failed to follow the recommended Centers for Disease Control and Prevention Infection Control transmission-based procedure for residents on precautions. A housekeeper failed to appropriately wear Personal Protection Equipment ("PPE") while cleaning a room in Fulton Commons' COVID-19 designated unit, and a CNA failed to wash her hands in-between transporting two different residents to their rooms.

101. On October 20, 2020, DOH cited Fulton Commons for failing to conform its electrical wiring with NFPA's requirements for health care facilities. A copy of the SOD is attached hereto as Exhibit 12.

102. On July 28, 2021, Fulton Commons was cited for failure to ensure residents were free from significant medication errors for two out of three residents whose records were reviewed. A copy of the SOD is attached hereto as Exhibit 13. Specifically, Fulton Commons staff

failed to properly transcribe the medication orders for two residents who were admitted from hospitals. Upon information and belief, one of said residents was W.V., who was subsequently admitted to a local hospital and received a blood transfusion after Fulton Commons staff failed to administer the proper dosage of medication necessary for W.V. to maintain safe blood oxygen/hemoglobin levels. (*See* Civilian Affidavit of Andrea Doherty.)

103. On January 10, 2022, DOH conducted an on-site survey and held Fulton Commons in "Immediate Jeopardy" ("IJ"). An IJ is issued when an event has occurred that caused or is likely to cause serious injury, harm, impairment, or death to a resident. (*See* Exhibit 8.) A copy of the SOD is attached hereto as Exhibit 14.

104. DOH cited three deficiencies during the survey that resulted in this IJ. First, Fulton Commons failed to ensure its residents were free from abuse and neglect. Second, Fulton Commons failed to report two allegations of sexual abuse to law enforcement. Third, Fulton Commons failed to ensure that two allegations of sexual abuse were thoroughly investigated and reported to DOH within five working days.

105. The sexual abuse allegation that resulted in the above-referenced IJ occurred on December 25, 2021, when a resident with intact cognition reported to an RN supervisor that an LPN inappropriately touched her by placing his hand in the resident's brief and touching her vaginal area. Although this incident was reported to Fulton Commons on December 25, 2021, and the Director of Nursing ("DON") was reportedly made aware, the accused LPN was nonetheless permitted to continue working at the facility and allowed to provide resident care. Fulton Commons did not report the incident to law enforcement or DOH. Subsequently, on January 3, 2022, a second resident reported that on January 2, 2022, the same LPN exposed his genitalia to her. The resident told the LPN to leave, which he did, but the LPN subsequently returned and

stated to the resident, "If you help me, I'll help you." This incident was also not reported to law enforcement. Fulton Commons treated these incidents as "grievances," rather than incidents of abuse, which Fulton Commons' then-DON Carol Frawley stated was facility policy. Fulton Commons' Administrator, Respondent Cathie Doyle, claimed to DOH that treating these incidents as grievances was proper and that law enforcement was not called "because no assaults took place." (Ex. 14 at 6.)

106. DOH lifted the IJ on February 24, 2022, following Fulton Commons' submission of an approved POC, which involved systemic changes to Fulton Commons' policies and procedures, including an update that all allegations of sexual assault (whether witnessed or not) be handled as an accident/incident requiring an immediate investigation and reporting to DOH and local law enforcement, as appropriate. (*Id.* at 7–9.)

107. Following this citation and IJ, Fulton Commons was downgraded by CMS from a 5-Star to a 2-Star facility and was placed on the candidate list of CMS's Special Focus Facility program ("SFF program"). The SFF program was designed to ensure that facilities with a history of "serious quality issues" address "underlying systemic problems that give rise to repeated cycles of serious deficiencies, which pose risks to residents' health and safety."[27] CMS identifies nursing homes for the SFF program based on the number of deficiencies and the scope and severity of those citations. The facilities with the most points in each state, or in other words the worst nursing homes in each state, then become candidates for the SFF program (*Id.*)

[27] CMS, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/downloads/SFFList.pdf [last accessed Dec. 5, 2022].

B. Fulton Commons Put its Residents at Increased Risk of COVID-19 Infections and Underreported COVID-19 Deaths at the Facility

i. The Attorney General's Nursing Home Report

108. The Attorney General ("OAG") issued its Nursing Home Report, entitled *Nursing Home Response to COVID-19 Pandemic*, in January 2021 (the "NH Report"), attached hereto as Exhibit 6, to offer transparency that the public deserves and to spur increased action to protect New York State's most vulnerable residents. (*See* Ex. 6 at 5.) The NH Report contains preliminary findings based on MFCU's investigations of many allegations of COVID-19-related neglect across the state. OAG received more than 770 complaints on its COVID-19 hotline from April 23, 2020 through August 3, 2020, and an additional 179 complaints through November 16, 2020. During this same period, OAG also continued to receive allegations of COVID-19-related neglect of residents through pre-existing reporting systems. (*Id*. at 5, 15.)

109. From March 2020 through August 3, 2020, DOH published that 6,423 New York State nursing home residents died from confirmed or presumed COVID-19. (Ex. 6 at 10.) One of the NH Report findings was that a larger number of nursing home residents died from COVID-19 than DOH-published nursing home data reflected, and such deaths may have been undercounted by as much as 50%. (*Id*. at 12.) On February 4, 2021, DOH published an updated total of COVID-19 nursing home resident deaths of 13,163, which was increased by 420 from the total of 12,743 it had published on January 28, 2021. As of May 9, 2022, the total number of New York State nursing home residents that DOH published as having died from confirmed or presumed COVID-19 is 15,469.[28]

[28] *See* Long Term Care Community Coalition, https://nursinghome411.org/ny-nursinghome-covid-data/ [last accessed Dec. 4, 2022].

110. The NH Report included additional preliminary findings, including that nursing homes that entered the pandemic with low CMS Staffing ratings had higher COVID-19 fatality rates. (Ex. 6 at 22, 28–30.) Pre-existing, insufficient staffing levels put residents and staff at increased risk of harm during the pandemic. (*Id.* at 23.) As nursing home resident and staff COVID-19 infections rose during the initial wave of the pandemic, staffing absences increased at many nursing homes. (*Id*.) As a result, already-low staffing levels decreased even further, to especially dangerous levels in some homes, even as the need for care increased due to the need to comply with COVID-19 infection control protocols and the loss of assistance from family visitors. (*Id.* at 23–25, 27.) Another finding of the NH Report was that nursing homes' lack of compliance with infection control protocols put residents at increased risk of harm. (*Id.* at 17–21.)

111. The NH Report also found that the current state reimbursement model for nursing homes gives a financial incentive to owners of for-profit nursing homes to transfer funds to related parties (ultimately increasing their own profit) instead of investing in higher levels of staffing and PPE. (*Id*. at 6, 63–67.) The NH Report provided examples of law enforcement actions that held nursing home owners and high managerial agents accountable and required restitution where the owner and high managerial agents had transferred exorbitant funds from the facility to themselves and their family members through related party transactions, thereby operating their nursing homes with insufficient staffing that created risks to the residents. (*Id.* at 63–67.)

112. As the pandemic is ongoing, nursing home residents remain at risk of infection and harm, especially in nursing homes such as Fulton Commons, which continues to operate with insufficient staffing, including insufficient RN supervision. (*See* ¶¶ 74–80 above.)

ii. Fulton Commons' Deaths Nearly Doubled in 2020

113. The New York State Death Registry reflects that, in 2020, there were a total of 154 Fulton Commons resident deaths, which is nearly double its 79 resident deaths in 2019. In the period between March 1, 2019 and May 31, 2019, 24 Fulton Commons residents died. Comparatively, between March 1, 2020 through May 31, 2020, 92 Fulton Commons residents died.

iii. Fulton Commons Failed to Report to DOH Nearly Half of Its COVID-19 Deaths

114. Fulton Commons underreported its residents' COVID-19 deaths by more than 45% during the three-month height of the pandemic in 2020. Between March 1, 2020 and May 31, 2020, Fulton Commons reported 40[29] confirmed and presumed COVID-19 resident deaths to DOH on its Health Electronic Response Data System submissions. This reported information was regularly and publicly published by DOH on its website. However, Fulton Commons' records reflect that 74 of its residents died from confirmed and presumed COVID-19 during that same period.

115. Specifically, Fulton Commons' business records, including 24-hour reports, which are shift-by-shift reports that track significant events and changes in residents' conditions (including concerning symptoms, interventions, and some treatment), reflect that Fulton Commons should have reported at least an additional 34 COVID-19 resident deaths during that time period.[30] (*See* RN Conway Aff. at ¶ 100.)

116. Accordingly, Fulton Commons failed to report over 45% of the 74 COVID-19 deaths in that three-month period.

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[29] This number excludes a living resident that Fulton Commons erroneously reported as dead.

[30] These 34 residents include Resident E.B.'s roommate, referred to as Resident #56 for purposes of these papers, who died at the end of April 2020. (*See* Affidavit of Kristin Traina.)

iv. Fulton Commons' Self-Reported COVID-19 Deaths Indicate that Non-COVID Residents' Deaths Increased by 44% from 2019 to 2020

117. Alternatively, if we accept Fulton Commons' reported COVID-19 deaths as accurate, then 35 more Fulton Commons residents died in 2020 from non-COVID causes than in 2019. As noted above, 79 residents died in 2019 while 154 residents died in 2020. Pursuant to Fulton Commons' self-reported data to DOH, only 40 residents died of confirmed or presumed COVID-19 in 2020. Accordingly, Fulton Commons' self-reported data suggests that a total of 114 Fulton Commons residents died of non-COVID causes in 2020—which is an increase of 35 resident deaths from the prior year. This is a 44% increase in deaths from 2019 to 2020, purportedly unrelated to COVID-19.

v. Fulton Commons Moved Asymptomatic Resident into Same Room with Resident Exhibiting Multiple COVID-19 Symptoms

118. Fulton Commons' records reflect that during the first wave of the pandemic, the nursing home moved a resident who exhibited no COVID-19 symptoms into the same room as a resident who had been exhibiting symptoms of COVID-19. Fulton Commons moved the non-COVID-19 resident into this room and filled the vacant bed of a resident who died *earlier that same day* after exhibiting COVID-19 symptoms for several days. This conduct violated DOH Guidance issued March 13, 2020 (attached hereto as Exhibit 15), which required suspected or confirmed COVID-19 residents to be isolated in a separate room with the door closed. Accordingly, this gross deviation of infection control constituted neglect and increased risk to residents. (*See* RN Conway Aff. at ¶¶ 105-106.)

119. MFCU examined various Fulton Commons business and medical records, including 24-hour reports, described above in ¶ 115. Specifically, a review of those 24-hour reports

along with resident room rosters revealed that on March 24, 2020, Fulton Commons Resident #2, who was housed in a two-person room on Unit 3 West, began exhibiting symptoms that included an increased temperature above 101º. Resident #2 had a roommate, resident H.G., who was not exhibiting any symptoms at that time. Fulton Commons treated Resident #2's symptoms with Zithromax, Rocephin, and intravenous hydration. On March 27, 2020, resident H.G. began experiencing leg pain, and by March 29, 2020, H.G. exhibited COVID-19 symptoms, including a fever. Resident H.G. was treated with Zithromax. Resident #2 died and later that day, despite Fulton Commons records depicting that there were other available beds, Fulton Commons moved Resident #4 from Unit 1 East and placed him into a room with symptomatic resident H.G. Resident #4 was not noted as exhibiting any symptoms at this time. Resident H.G. died and that same day, Resident #4 began exhibiting symptoms, including an elevated temperature, and was treated with Zithromax and Plaquenil (commonly known as Hydroxychloroquine), through April 18, 2020. A review of H.G.'s amended death certificate, which is attached hereto as Exhibit 16, disclosed that a significant condition contributing to H.G.'s death was "renal failure COVID-19 pneumonia."

120. I have reviewed Fulton Commons' policies and procedures and a copy of the nursing home's Fever COVID-19 protocol is attached hereto as Exhibit 17. It indicated that, during the height of the pandemic, residents exhibiting symptoms consistent with COVID-19, such as fever, were treated with various evolving protocols that included the use of Zithromax (Azithromycin), Rocephin, and Plaquenil.

121. As noted in the RN Conway Aff., Fulton Commons violated basic infection control by moving non-COVID-19 Resident #4 into a room with H.G., who was exhibiting COVID-19 symptoms and being treated with COVID-19 protocols, particularly when there were other

available beds. (RN Conway Aff. at ¶ 49.) Accordingly, Fulton Commons neglected Resident #4. (*Id*.)

vi. Fulton Commons Failed to Follow DOH Infection Control Guidance to Cohort Staff

122. During the first wave of the pandemic, Fulton Commons repeatedly violated infection control protocols that required nursing homes to reduce their residents' risk of being infected with COVID-19.

123. On March 13, 2020, DOH directed that nursing homes with confirmed cases of COVID-19 cohort residents with COVID-19 with dedicated caregivers and stop floating staff between units. (*See* Exhibit 15.) Subsequent DOH Guidance on March 21, 2020, directed that nursing homes on Long Island, such as Fulton Commons, presume that any febrile acute respiratory illness (or any cluster of respiratory illness, irrespective of fever) was COVID-19 absent a negative COVID-19 test. A copy of the March 21, 2020, DOH Guidance is attached hereto as Exhibit 18. Any such nursing home was directed to follow the March 13, 2020, Guidance. (*Id.*) Accordingly, as of March 21, 2020, Fulton Commons was required to presume that any resident suffering from a respiratory illness and fever was infected with COVID-19, and Fulton Commons was further required to immediately stop floating staff and establish separate staffing teams to care for the presumed COVID-19 and non-COVID-19 residents.

124. My colleagues and I examined Fulton Commons' admissions records, which indicated that, despite establishing Unit 1 East as Fulton Commons' COVID-19 unit by the end of March 2020, Fulton Commons continued to admit COVID-19 positive residents onto non-COVID-19 units. Specifically, between April 17, 2020 and April 29, 2020, Fulton Commons admitted at least six COVID-19 positive residents onto non-COVID-19 units, as detailed in the table below.

This violation of infection control protocols increased the risks to residents. (*See* RN Conway Aff. at ¶ 105.)

Fulton Commons Admitted COVID-19 Positive Residents to Non-COVID-19 Units		
COVID-19 Positive Resident	**Date of Admission**	**Unit**
Resident #6	4/17/2020	3 West
Resident #5	4/17/2020	3 West
Resident #7	4/21/2020	3 West
Resident #8	4/21/2020	3 West
Resident #49	4/24/2020	4 East
Resident #50	4/29/2020	4 West

125. I have also reviewed the transcript of the October 19, 2020 Executive Law § 63(12) examination under oath of Elfa Llorente, the Fulton Commons RN Unit Manager of non-COVID-19 Unit 3 West, which is attached hereto as Exhibit 19. As reflected in the below excerpt, RN Llorente testified that CNAs on Unit 3 West were caring for both COVID-19-positive and non-COVID-19 residents on the same shift. Specifically, when asked the following questions, RN Llorente gave the following answers:

> Q. Was the CNA providing care to [COVID-positive resident] also providing care to non-COVID residents?
>
> A. That's correct.
>
> . . .
>
> Q. Were the CNAs caring for those [COVID-positive] residents also providing care to residents who were non-COVID?
>
> A. Correct.

> Q. Did you have concerns about the fact that CNAs were caring for COVID positive and non-COVID residents?
>
> A. Yes.

(Ex. 19 at 160, 168–169.)

126. MFCU's review of Fulton Commons' admissions records also revealed that, despite establishing Unit 1 East as Fulton Commons' COVID-19 unit by the end of March 2020, the facility continued to admit non-COVID-19 residents to Unit 1 East, as detailed in the table below. Like Fulton Commons' actions described in ¶ 123 above, this violation of infection control protocols also increased the risks to residents. (*See* RN Conway Aff. at ¶ 105.)

Fulton Commons Admitted Non-COVID-19 Residents onto Its COVID Unit	
Non-COVID-19 Resident	**Date of Admission**
Resident #24	4/13/2020
Resident #26[31]	4/21/2020
Resident #13	4/22/2020
Resident #51	4/23/2020
Resident #23	4/24/2020
Resident #22	4/27/2020
Resident #17	4/30/2020

[31] Although Fulton Commons' admissions records indicated that Resident #26 came into the facility with a COVID-19 diagnosis, MFCU's review of Resident #26's records determined that they were not a COVID-19-positive resident (as is supported by their placement into a room with non-COVID-19 Resident #26).

127. I have also reviewed the transcript of the September 30, 2020 Executive Law § 63(12) examination under oath of Latasha Waller, the Fulton Commons RN Unit Manager of COVID-19 Unit 1 East, which is attached hereto as Exhibit 20. As reflected in the below excerpt, RN Waller testified that there were no separate staffing teams assigned on Unit 1 East to care for the COVID-19-positive residents. Specifically, when asked the following questions, she gave the following answers:

> Q. So [CNA] was providing care on the unit to both COVID-negative and to COVID-positive residents, correct?
>
> A. Yes.
> . . .
>
> Q. So on this day in April… these CNAs were providing care to both positive and negative residents on the unit, correct?
>
> A. Yes. I -- can I clarify something?
>
> Q. Well, I just want to first of all, clarification, they were providing care to both COVID-positive and negative residents?
>
> A. Yes.

(Ex. 20 at 221–222, 224.)

128. I have also reviewed the transcript of the Executive Law § 63(12) examination under oath of a Fulton Commons CNA who worked on COVID-19 Unit 1 East, taken on October 20, 2020, which is attached hereto as Exhibit 21. As reflected in the below excerpt, the CNA testified that she was often required to care for both COVID-19-positive and non-COVID-19 residents on the same shift and that, although she often worked on Unit 1 East, she was also floated to non-COVID-19 units. Specifically, when asked the following questions, she gave the following answers:

> Q. So you are saying that when you worked on 1 East during the pandemic, you were providing care on the same shift to both COVID and non-COVID?

A. Yes.
. . .

Q. Are you saying that in the morning you might be caring for a COVID resident and then be sent upstairs to another unit --

A. Yes.

Q. -- and caring for a non-COVID resident?

A. You have to go upstairs. They have COVID and non-COVID mixed upstairs.

Q. So are you saying that COVID and non-COVID were mixed up all through the building?

A. Yes, yes. All over the building, yes.

Q. And when you had this conversation with Ms. Waller, did you explain to her that you thought it was dangerous?

A. She know it is danger, but she couldn't, she didn't do nothing. All she tell me, "Oh, you are the floater." They didn't listen to me, they didn't care. They say I complain too much.
. . .

Q. Did it happen quite often?

A. Every week it going. Like this week it going in the same. Next week it the same thing. Every week it was going things like that, yeah.

(Ex. 21 at 73, 75–76.)

vii. Fulton Commons Increased Risk to Residents by Orchestrating Mass Room Transfers on the Eve of a DOH Survey

129. After receiving a call from DOH on the morning of May 1, 2020 that led Respondent Doyle to suspect that a DOH team would be coming the next day to survey Fulton Commons for infection control compliance, Doyle effectuated mass resident room transfers that afternoon to hide Fulton Commons' violations of infection control protocols. (*See* ¶¶ 130–131 below.) These room transfers included moving residents without a COVID-19 diagnosis off the

designated COVID-19 unit, 1 East, and interspersing them throughout the facility, as well as moving residents with a positive COVID-19 diagnosis out of their rooms on non-COVID-19 units and onto 1 East. In addition, four of the residents with a COVID-19 diagnosis were moved into recently vacated rooms before those rooms were terminally cleaned according to appropriate protocols, placing those residents at risk of contracting other infections or communicable diseases. (*See* RN Conway Aff. at ¶ 48.) This conduct increased risks to residents' health and protected Fulton Commons from potentially being placed in IJ by DOH, as detailed in ¶ 131 below.

130. My colleagues and I examined Fulton Commons e-mails between Respondent Doyle and Fulton Commons Comptroller, Respondent Weiss, dated May 1, 2020, in which Respondent Doyle informed Weiss at 11:57 a.m. that she received a phone call from DOH that day and expected their arrival the next day for an infection control survey. In that e-mail chain, which is attached hereto as Exhibit 22, Respondent Doyle told Weiss, "We will do everything in our power to have them go with no findings." Fulton Commons' documents reflect that, immediately thereafter, Fulton Commons effectuated mass resident room transfers in a manner that violated infection control protocols, as set forth below in ¶¶ 131–135.

131. I have also reviewed the transcript of the Executive Law § 63(12) examination under oath of Carol Frawley, Fulton Commons' former DON, taken on October 15, 2020, which is attached hereto as Exhibit 23. As reflected in the attached transcript, Frawley believed these resident room transfers were connected to the DOH infection control survey, as failure to cohort the residents by COVID-19 status was a violation of Fulton Commons' own infection control policies. (*See* Ex. 23 at 194–196.) Indeed, Frawley acknowledged that this was the largest number of room transfers to ever occur in a single day at Fulton Commons. (*Id*. at 195–196.) Moreover,

Frawley testified that had those transfers not been done prior to DOH's arrival, DOH may have held Fulton Commons in IJ for "serious infection control violations." (*Id*. at 223–224.)

132. My colleagues and I examined Fulton Commons' Patient Activity Logs, daily census sheets, resident room roster logs, and 24-hour reports, which reflected that, on May 1, 2020, 19 residents were relocated to different rooms, including several of the residents detailed above in ¶¶ 124, 126. Specifically, four residents who were admitted with a positive COVID-19 diagnosis were moved off of Unit 3 West and relocated onto Unit 1 East. Additionally, 15 residents who did not have a COVID-19 diagnosis were moved off of Unit 1 East and relocated onto non-COVID-19 units. Although these 15 residents came into the facility without a COVID-19 diagnosis, they were interspersed throughout the facility after being housed on the designated COVID-19 unit and after being cared for by nursing home staff caring for both COVID-19-positive and COVID-19-negative residents, as noted above in ¶¶ 127–128. Moreover, those residents were not tested for COVID-19 prior to being moved off of the designated COVID-19 unit and spread throughout the facility. (*See* Affidavit of Detective John M. Tarpey at ¶¶ 52–57.)

133. Fulton Commons rushed these room transfers without cleaning residents' vacated rooms, even when another resident was immediately moved in. My colleagues and I examined Fulton Commons housekeeping records, specifically, a COVID-19 Terminal Cleaning Log produced by Fulton Commons,[32] that documented all rooms that were terminally cleaned and the dates of such cleanings. Terminal cleaning of a room after a resident is discharged or moved, and before a new resident is moved into that room, is an essential component to proper infection

[32] Fulton Commons' COVID-19 Terminal Cleaning Log was produced by Fulton Commons in response to this Office's subpoena for the complete terminal cleaning log for the relevant time period.

control, especially during a pandemic when infectious disease is present among people living in a nursing home. (*See* RN Conway Aff. at ¶ 48.)

134. Fulton Common's COVID-19 Terminal Cleaning Log reflects that the nursing home failed to terminally clean rooms vacated on May 1, 2020, despite other residents being moved into at least two of those rooms the same day. Specifically, Residents #26 and #51 were moved out of the same room on Unit 1 East and relocated to other units. The same day, COVID-19-positive Residents #7 and #5 were moved into the room Residents #26 and #51 vacated on Unit 1 East. Similarly, Resident #22 was moved from a room on Unit 1 East onto a non-COVID-19 unit, and COVID-19-positive Residents #8 and #6 were moved into that room the same day. Neither room appears on the Fulton Commons COVID-19 Terminal Cleaning Log for that date. Fulton Commons' records reflect that an additional seven rooms were not terminally cleaned following the residents' vacating the rooms, even though other residents were subsequently moved into those rooms in the coming weeks.

135. I have also reviewed the transcript of the Executive Law § 63(12) examination under oath of Michael Andrews, Fulton Commons Director of Housekeeping, taken on November 19, 2020, which is attached hereto as Exhibit 24. As reflected in the attached excerpt, Andrews testified as follows:

> Q. And would you agree with me then that if a room is not listed on the COVID terminal cleaning log, then that room wasn't cleaned?
>
> A. That's fair to say, yes.

(Ex. 24 at 72.)

136. As noted above in ¶ 110, the NH Report found that nursing homes' lack of compliance with infection control protocols put residents at increased risk of harm. (Ex. 6 at 17–21.) Fulton Commons' infection control failures described above in ¶¶ 118–135 are consistent with

this finding, as 72 Fulton Commons residents died of presumed or confirmed COVID-19 prior to DOH's infection control survey on May 4, 2020.

C. Fulton Commons Sent Misleading Robocalls to Residents' Family Members Denying There Was COVID-19 in the Nursing Home After and While Its Staff Treated Symptomatic Residents with COVID-19 Protocols

137. My colleagues and I examined communications between Fulton Commons and residents' family members, including audio recordings and associated documentation of "robocalls," which we obtained through Call-Em-All, LLC, a company that provided Fulton Commons with automated messaging services. A copy of these robocalls is attached hereto as Exhibit 25. This analysis was compared to MFCU's findings regarding Fulton Commons' COVID-19 deaths. (*See* above at ¶ 113.) Although Fulton Commons records reveal that the facility identified suspected COVID-19 cases in the nursing home as early as March 11, 2020, Fulton Commons failed to provide this information to residents' family members. (*See* Ex. 25 [Fulton Commons' internal records of robocalls and COVID-19 announcements to staff, residents, and residents' families].) The review of robocalls revealed that, through March 24, 2020, Fulton Commons falsely told residents' family members that there were no confirmed or suspected cases of COVID-19 at the nursing home.

138. Fulton Commons' robocalls to family members also contradicted its internal medical records of the deaths of its residents. MFCU's analysis of Fulton Commons' COVID-19 deaths determined that there were five suspected COVID-19 deaths as of March 24, 2020, as detailed in the chart below.

Five Fulton Commons Residents Died of Suspected COVID-19 as of March 24, 2020
Resident
Resident #52
Resident #47
Resident #53
Resident #54
Resident #55

139. Of these five deaths, all but resident #52 were listed on an internal Fulton Commons document titled "Residents with COVID-19 List," which tracked residents who were suspected of being infected with COVID-19.[33] In fact, Fulton Commons ultimately reported Residents #47, #54, and #55 to DOH as suspected COVID-19 deaths.

140. Fulton Commons continued to send misleading robocalls to families stating that COVID-19 was not in the nursing home until March 25, 2020, at which point Respondent Doyle sent a robocall to residents' family members advising them that there was one suspected case in the facility. However, later that same day, she sent out another robocall asserting that the resident may have a urinary tract infection or the flu, and that it was not necessarily a case of COVID-19. Moreover, on March 26, 2020, Respondent Doyle sent out a robocall advising families that the suspected case was, in fact, a urinary tract infection and that, "At this time, we have no suspected or confirmed cases of COVID-19 in the facility." It was not until March 30, 2020, that Respondent

[33] This undated document is not being produced to avoid disclosure of HIPAA protected information; however, it is available for an *in camera* review upon request of the Court.

Doyle issued a robocall admitting to families that there were "several residents running a low-grade fever," and not until April 9, 2020, that she issued a robocall admitting, "We are tracking approximately 21 residents at the time for symptoms that could or could not be related to COVID." (Ex. 25.) Yet even that information was misleading. Importantly, as of April 9, 2020:

- 34 Fulton Commons residents had died of confirmed or suspected COVID-19 as indicated by MFCU's review of Fulton Commons' medical and business records, including its 24-hour reports, as detailed in ¶ 115 above;
- 26 of the 34 residents who had died of confirmed or suspected COVID-19 were listed on Fulton Commons' internal document, Residents with COVID-19 List, as mentioned above in ¶ 139;
- Three of the 34 residents who had died of confirmed or suspected COVID-19 ultimately had COVID-19 listed on their death certificates as a contributing factor; and
- Fulton Commons ultimately reported 24 out of the 34 confirmed or suspected COVID-19 resident deaths discussed above to DOH as COVID-19 deaths on April 17, 2020.

IV. Respondent Kalter, as Fulton Commons' Operator, Submitted False Medicaid Certifications to DOH

141. As detailed above in ¶¶ 18 and 27, as the operator of Fulton Commons, Kalter was required to execute and submit to DOH annual Medicaid Certifications, and his name and signature is reflected on all such certifications submitted on behalf of Fulton Commons from as early as 2005 through Fulton Commons' most recent certification dated December 13, 2021. I have

examined these certifications and, because Fulton Commons engaged in various unacceptable practices, as defined in ¶¶ 33–34, and as detailed above, these certifications are false.

Exhibits

142. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Moshe Kalter.

143. Attached hereto as **Exhibit 2** is a true and correct copy of the Operating Certificate and Medicaid Annual Certifications for Fulton Commons.

144. Attached hereto as **Exhibit 3** is a true and correct copy of organization charts for Fulton Commons Care Center Inc. and The New Bridge View Company LLC.

145. Attached hereto as **Exhibit 4** is a true and correct copy of Fulton Commons' Cost Report Certifications and relevant pages.

146. Attached hereto as **Exhibit 5** is a true and correct copy of Fulton Commons' check listings depicting department assignments.

147. Attached hereto as **Exhibit 6** is a true and correct copy of the Office of the Attorney General's Nursing Home Report published in January of 2021.

148. Attached hereto as **Exhibit 7** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Steven Weiss.

149. Attached hereto as **Exhibit 8** is a true and correct copy of the CMS transmittal to Fulton Commons dated June 10, 2016.

150. Attached hereto as **Exhibit 9** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on January 4, 2019.

151. Attached hereto as **Exhibit 10** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on July 30, 2019.

152. Attached hereto as **Exhibit 11** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on May 15, 2020.

153. Attached hereto as **Exhibit 12** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on October 20, 2020.

154. Attached hereto as **Exhibit 13** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on July 28, 2021.

155. Attached hereto as **Exhibit 14** is a true and correct copy of the Statement of Deficiencies issued to Fulton Commons on January 10, 2022.

156. Attached hereto as **Exhibit 15** is a true and correct copy of DOH Guidance issued March 13, 2020.

157. Attached hereto as **Exhibit 16** is a true and correct copy of the amended death certificate of resident H.G.

158. Attached hereto as **Exhibit 17** is a true and correct copy of Fulton Commons' Fever COVID-19 protocol.

159. Attached hereto as **Exhibit 18** is a true and correct copy of DOH Guidance issued March 21, 2020.

160. Attached hereto as **Exhibit 19** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Elfa Llorente.

161. Attached hereto as **Exhibit 20** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Latasha Waller.

162. Attached hereto as **Exhibit 21** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of a confidential Fulton Commons employee.

163. Attached hereto as **Exhibit 22** is a true and correct copy of a chain of e-mails dated May 1, 2020, between Respondents Doyle and Weiss.

164. Attached hereto as **Exhibit 23** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Carol Frawley.

165. Attached hereto as **Exhibit 24** is a true and correct copy of the transcript of the Executive Law § 63(12) examination under oath of Michael Andrews.

166. Attached hereto as **Exhibit 25** is a true and correct copy of the timeline of automated calls placed by Call-Em-All, LLC on behalf of Fulton Commons.

WHEREFORE, based upon the foregoing, I respectfully request that the Court grant the relief described in the Verified Petition.

Kristen Ronan

Kristen Ronan
Senior Auditor-Investigator
New York State Attorney General's Office
Medicaid Fraud Control Unit

Sworn to before me this
7th day of December 2022

John M Tarpey

Notary Public

JOHN M TARPEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01TA6327981
QUALIFIED IN NASSAU COUNTY
MY COMMISSION EXPIRES JUL 20, 2023

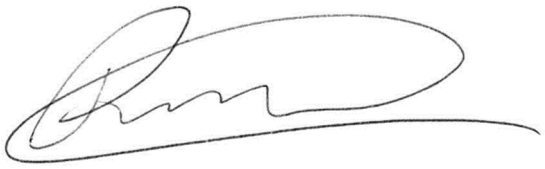
CERTIFICATION PURSUANT TO RULE 202.8-b

I, Prabhjot Sekhon, an attorney duly admitted to practice law before the Courts of the State of New York, hereby certify that this Affidavit contains 17,525 words, excluding the parts of the Affidavit explicitly exempted by Rule, and that Petitioner's request for permission to file an oversize submission as provided in Rule 202.8-b(f) is forthcoming.

Dated: Hauppauge, New York
December 12, 2022

Respectfully submitted,
Letitia James
Attorney General of the State of New York

By:



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NEW YORK STATE ATTORNEY GENERAL'S OFFICE

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In the Matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

VOL. I

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63(12) Examination Under Oath of MOSHE KALTER, taken via WebEx video conference, held on April 7th, 2021, commencing at 10:00 a.m.

Reported by

Stefanie Krut

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
Medicaid Fraud Control Unit
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Attorney General
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225 Broadhollow Road, Suite 301E
Melville, New York 11747
BY: DAVID YAFFE, ESQ.

ALSO PRESENT:
Robert Joyce, Investigator
John Tarpey, Detective
Mary Gail Kowtna, Auditor
Ann Liptak, Paralegal

M O S H E K A L T E R, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

THE WITNESS: I affirm.

EXAMINATION BY

MR. SMITH:

MR. SMITH: Mr. Kalter, just again, I want to make sure you can see me and hear me, okay?

THE WITNESS: Yes, I can.

MR. SMITH: Can you see your attorney, Mr. Yaffe, okay?

THE WITNESS: Yes, I can.

MR. SMITH: So I'm going to ask you right now if you can please state your name for the record.

THE WITNESS: Moshe Kalter.

MR. SMITH: Can you spell that, please?

THE WITNESS: M-O-S-H-E, K-A-L-T-E-R.

MR. SMITH: And what is your address?

M. Kalter

THE WITNESS: [redacted], [redacted].

MR. SMITH: And what city and county are you sitting in at the moment?

THE WITNESS: Kings County, Brooklyn.

MR. SMITH: And are you located currently at home at work or somewhere else?

THE WITNESS: My home office.

MR. SMITH: So at this point I am going to introduce myself again, and we are going to go around and introduce everybody else on this call. I will stay on camera. I will ask you to stay on camera and your attorney as well. Everybody else after they introduce themselves I will ask them to turn off their camera to preserve bandwidth.

So again, good morning, Mr. Kalter, my name is Benjamin Smith. I'm a special assistant attorney general with the New York State Attorneys

General's Office and I am based out of the New York City office, and I will just ask folks to go around and introduce themselves as well.

MS. ZADEK: Good morning, Mr. Kalter. My name is Peter Zadek, I'm a special assistant attorney general in the Attorney General's Office. I work in the Medicaid Fraud Control Unit specifically out of the Hauppauge Regional office.

MS. SEKHON: Good morning, Mr. Kalter. My name Prabhjot Sekhon, I am also a Special Assistant Attorney General in the New York State Attorney General's Office. I also work out of the Medicaid Fraud Control Unit and out of Hauppauge office.

MR. JOYCE: My name is detective Robert Joyce, I am with the Medicaid Fraud Control Unit, out of the Hauppauge office also.

MR. TARPEY: Good morning, sir. My name is detective John Tarpey, I am

M. Kalter

too assigned to the Medicaid Fraud Control Unit in the New York State Attorney General's Office in Hauppauge, Long Island.

MS. KOWTNA: Good morning. My name is Mary Gail Kowtna, I am a senior auditor investigator with the Hauppauge office.

MS. LIPTAK: Good morning, Mr. Kalter. My name is Anne Liptak, I'm a paralegal with the Medicaid Fraud Control Unit in the Hauppauge office.

MR. SMITH: I was mute there. I apologize, Mr. Yaffe, if we can just have your appearance for the record.

MR. YAFFE: Yes, good morning everybody. My name is David Yaffe. I am an attorney with the law firm Hamburger Maxson Yaffe & McNally, 225 Broadhollow Road, Melville, New York 11747.

Q. And again, Mr. Kalter, just to avoid confusion, everybody that you just met is going to remain on this call so they're

M. Kalter

hearing what we say, we are just asking them to turn off their video to preserve bandwidth so they are still with us on this call. We're just keeping it to the three of us to make it easier to hear each other.

Before we get into the actual substance of the questions that we have for you today, I just want to run through some ground rules, so just bear with me, I am going to be sort of speaking at you in paragraph form, but we just want to make sure that you understand the ground rules for the hearing today.

So as you can tell, we are conducting this examination remotely and this is in order to ensure the health and safety of all the participants. This is due to Coronavirus related concerns at the present time.

The examination today will be recorded by stenographic means by a court reporter certified to record the examination in the State of New York, and any exhibits will be presented to you and your

M. Kalter

electronically.

Is Mr. Yaffe your attorney for purposes of this hearing today?

A. Yes.

Q. Your testimony today is being taken pursuant to a subpoena that was issued by the Attorney General's Office, to which I, Mr. Zadek and Ms. Sekhon, as Special Assistant Attorneys General are authorized to take proof and make a determination of the relevant facts in connection with an investigation that deals with the resident care provided by the Fulton Commons Care Center.

We are now going to show you what will be marked as State's Exhibit 1, and this is a copy of the subpoena which was by written consent of your attorney issued and served directly on Mr. Yaffe.

(Subpoena was marked as State's Exhibit 1.)

Q. Have you seen a copy of this subpoena before?

MR. YAFFE: You are going to

M. Kalter

scroll through this document?

MR. SMITH: Sure.

Q. And Mr. Kalter, for your purposes, this is the cover letter that you are seeing so you will see the subpoena momentarily.

So Mr. Kalter, have you seen this document, are you familiar with the existence of this document?

A. Yes, I have seen it.

Q. And so you understand that this subpoena required and compelled you to virtually appear today for this examination, correct?

A. Correct.

Q. So again, before we begin, I would like to take a moment to discuss some of your rights that apply during today's hearing. So pursuant to the Fifth Amendment of the United States Constitution, as well as the New York State Constitution, you have the right to refuse to answer questions if your truthful answer to that question would tend to incriminate you. Do you understand

that?

A. Yes.

Q. Please be aware, however, that should you choose to invoke your Fifth Amendment Right, a negative inference can be drawn against you in any future non criminal proceeding. Do you understand that?

A. Yes.

Q. You also have the right to consult an attorney, and sitting beside you today virtually, of course, is Mr. Yaffe; is that correct?

A. Yes.

Q. Do you understand that your attorney's firm also represents Fulton Commons Care Center, as well as Cathie Doyle and Steven Weiss?

A. Yes.

Q. Do you understand that it is possible that the interest of Fulton Common, Cathie Doyle and Steven Weiss do not align with yours?

A. Yes.

Q. And do you understand that you

have the right to an attorney who does not also represent Fulton Commons, Cathie Doyle and Steven Weiss?

A. Yes.

Q. Are you comfortable answering my questions in front of an attorney who also represents Fulton Commons, Cathie Doyle, and Mr. Weiss?

A. Yes.

Q. With all that said and laid out, do you still wish to proceed today with Mr. Yaffe representing you?

A. Yes.

Q. You took an oath a moment ago to tell the truth, the whole truth and nothing but the truth. Should you intentionally make any false statement during this proceeding, and by that I mean a statement you do not believe to be true, you may be prosecuted for perjury. Do you understand that?

A. Yes.

Q. And I am going to ask you questions that are relevant to the Attorney

M. Kalter

General's investigation into general resident care provided by the Fulton Commons Care Center.

If I say Fulton Commons or Fulton from here on out, will you understand that I am referring to Fulton Commons Care Center?

A. Yes.

Q. As you can see we have Mrs. Krut who is a court reporter or a stenographer with us today, she will be recording a written transcript of this interview. Because of that, it's critical that she hears everything you and I and your attorney say, and what that means primarily, is that we cannot speak over one another, so even if you can anticipate the question I am going to ask or you can see where I am going, I ask you that you allow me to finish it and then begin your answer just to preserve the clarity of the record. Does that make sense?

A. Yes.

Q. It's also important to give verbal responses to my questions so no nod

of the head, shrugs of the shoulder or anything else without an accompanying verbal response. This is especially critical in this sort of odd virtual context we are in, so please make sure your responses to my questions are verbal and can be recorded by Ms. Krut.

If you don't understand a question that I ask, if it's confusing, you are not sure what I am getting at or trying to ask you, please let me know and I can do my best to rephrase it for you.

If you do answer a question, I will assume that you understood it. Along those same lines, if you need to take a break for any reason, whether that's to consult with Mr. Yaffe, go to the restroom, have a drink of water, anything, that's perfectly fine, that's always available, just let me know. The one request I would have of you is if we have a pending question I would ask that we finish that question and then we can take a break, but I just want to make sure you understand we are not going to

M. Kalter

try to go all day and not have any breaks in between, so just let us know how you are doing.

Another critical item is if you answer a question that I pose to you, and at the time you think it's accurate and complete and then over the course of the day you have a different recollection or your memory changes or anything along those lines, that's perfectly fine, just alert me to that and we can revisit that question and address the correction you would like to make, so that's perfectly fine if over the course of the day you would like to change an answer to a question that I ask you. Does that sound fair?

A. Yup.

Q. It's absolutely critical that you understand this proceeding is confidential, neither you nor your attorney are entitled to a copy of the transcript of today's testimony nor any exhibits we present to you today. Do you understand that?

A. Yes.

M. Kalter

Q. In addition, because this is a confidential proceeding, there shall be no recordings made of your testimony, although WebEx does offer recording capabilities, I assure you and give you my assurance that our office is not recording this examination in any way shape or form and also ask that you agree not to record this examination on your end. Is that fair?

A. Yes.

Q. And similarly, due to the nature of this investigation and its confidentiality, we request that you could not discuss this matter your testimony here today or any documents that we may present to you in conjunction with today's testimony without with anyone other than your attorney. Further, unless we are on a break we ask that you have no private communications with anyone aside from Mr. Yaffe. That includes phone calls, passing of notes, texting, e-mailing or any other means of communication that may or may not be visible on camera. Do you understand

that?

A. Yes.

Q. And finally, we ask you, of course, to mute your phone and any other electronic devices that could make noise during the proceeding, and I just want to make sure we have that squared away before we get started.

A. Yes.

Q. So Mr. Kalter, have you taken any drugs or alcohol within the past 24 hours that could impair or may have an impact upon your ability to testify here today truthfully and to the best of your knowledge?

A. No.

Q. Are you aware today of any physical or mental disability or defect that may interfere with your ability to understand my questions or your ability to respond truthfully and completely?

A. No.

Q. Before you appeared here today with us, did you speak with any current or

former Fulton employees about your testimony today?

A. No.

Q. Other than your attorney, Mr. Yaffe, did you discuss the fact that you were subpoenaed here today with anyone else?

A. No.

Q. Did you review any documents to prepare for your testimony here today?

A. No.

Q. Have you ever testified under oath before?

A. Possibly.

Q. When you say that, do you have any specific recollection of what sort of the testimony might have occurred or what context it might have occurred in?

A. I think maybe it was an insurance case.

Q. Okay. Do you recall if you were a participant to a litigation or a fact witness or something else?

A. I'm not sure.

Q. Do you recall anything else about

M. Kalter

that involvement in the case?

A. No.

Q. Do you recall when you may have given that testimony?

A. No.

Q. Any other instances of giving testimony aside from what we just discussed?

A. Not that I remember offhand.

Q. And again, this is a perfect example to illustrate what we just discussed, if you do later on in the day recall another instance of giving testimony, you can obviously raise that to my attention and we can address that, so I don't want you to feel like you are locked into that answer.

Have you ever been involved in a lawsuit or legal proceeding?

A. I'm sure I have.

Q. So let's say in the last five years, have you been involved in a lawsuit or legal proceeding?

A. I'm sure I have.

Q. Do you know if there are

M. Kalter

currently any active lawsuits or legal proceedings that you are a party to?

A. I don't know offhand, but I'm sure there are people suing us.

Q. Do you have any specific details or knowledge of such a lawsuit or legal proceeding?

A. No.

Q. Have you ever appeared as a witness in conjunction with any of these lawsuits or legal proceedings?

A. No, not to the best of my knowledge.

Q. And you just mentioned, I think, there may be people suing us, and I am paraphrasing, when you say that, do you mean you being sued personally or you being sued in some other capacity or something else?

A. Well, I believe we are talking about Fulton, so I'm sure Fulton always has mal practices suits going on.

Q. So outside of that context of Fulton being sued as a corporate entity, have you ever been a personal party to a

lawsuit or legal proceeding?

A. I think I have one lawsuit of an adverse possession case going on right now.

Q. So am I correct in understanding that would be in the real property context ownership of real property?

A. Real property, yes.

Q. Does that have anything to do with Fulton Commons or your other nursing homes?

A. No.

Q. So is it fair to understand that would be in the context of personal realty property?

A. Business real property.

Q. But not one of the nursing homes?

A. No.

Q. Outside of that specific case, are there any other current actions that you can think of right now where you are personally named or personally involved in?

A. No.

Q. What is your cell phone number, Mr. Kalter?

M. Kalter

A. My what?

Q. Your cell phone number.

A. [redacted].

Q. And is that a personal or a business number?

A. Business.

Q. Do you maintain a personal cell phone as well?

A. No.

Q. So would I be correct in understanding that the number you just provided is your sole cell phone number?

A. Yes.

Q. And who is the carrier for that number?

A. I don't know.

Q. Do you know how long you have had that number?

A. I don't know.

Q. Would you say it's more than five years or less than five years?

A. I'm sure it's more than five years.

Q. Is your name on the account or is

M. Kalter

someone else's name on the account?

A. I don't know.

Q. So I want to get into a bit of your background. So where did you go to college?

A. Brooklyn college.

Q. And what years did you attend Brooklyn college?

A. Not sure, sometime in the 70s.

Q. Did you get a degree at Brooklyn college?

A. Yes, I did.

Q. What was that in?

A. Accounting.

Q. Aside from Brooklyn college and your accounting degree, did you complete or undertake any additional schooling?

A. Before college or after college?

Q. Anything before or after is fine.

A. Well, before I, obviously, went to elementary school and high school.

Q. Okay. So let's say after college, were there any additional schooling?

M. Kalter

A. I took the Nursing Home Administrator license course.

Q. Where did you complete that course?

A. I don't remember.

Q. Do you remember what year you completed the course?

A. No.

Q. Would it also have been in the 70s around the time you graduated from Brooklyn college or some later date?

A. I don't know.

Q. Was it more than 20 years ago?

A. I don't know. I don't know when it was. It was, obviously, after the 70s.

Q. But is it within the last 10 years?

A. No.

Q. More than 20 years ago?

A. I don't know. Might have been 20, might have been 25, might have been 15. I don't remember.

Q. Aside from the nursing home administrator license, are there any other

M. Kalter

advanced degrees or certifications that you possess?

A. I think I received a rabbinical certification.

Q. Any other certifications or licenses?

A. Nothing that I can remember other than a driver's license.

Q. Has any, and I am glad you mentioned the driver's license, so excluding that so we are strictly talking about professional licenses or certifications, have has any discipline action ever been taken against one of your certifications or licenses?

A. There is only one license, that's the administrators's license and nothing has ever been taken against me.

Q. Have you ever taught or lectured?

A. No.

Q. Have you ever testified as an expert?

A. No.

Q. Have you ever done any consulting

M. Kalter

outside of the nursing home industry?

A. No.

Q. And what about any consulting within the nursing home industry?

A. No.

Q. Have you always worked in the long-term care industry?

A. I believe so, yes.

Q. So as far as you can recall --

A. Well, maybe I was a counselor in a camp or something.

Q. Okay. As far as you can recall to your best recollection, do you recall holding any positions outside of the long-term care industry aside from maybe a camp counselor position?

A. Well, what do you mean by position, I own other businesses and I don't know if that's a position or not.

Q. Sure. We should get into that. So what I am looking at right now, what I want to talk about right now is businesses or enterprises outside of the nursing home industry, the long-term care industry. So

M. Kalter

do you hold any position or any titles or any interests in businesses or enterprises outside of the long-term care industry?

A. Yes.

Q. Describe those for me.

A. Real estate.

Q. Anything aside from real estate?

A. I don't believe so.

Q. And when you say real estate, give me more detail on that, if you can.

A. I own real estate.

Q. Are you owning undeveloped properties, developed properties or something else?

A. Both.

Q. So the undeveloped properties, describe for me what your business enterprise is on that front.

A. Just vacant lots.

Q. And what do you do with those vacant lots, do you buy them and hold them or something else?

A. Buy them and hold them.

Q. Is that enterprise undertaken

under the auspices of an corporate entity or just personally?

A. I believe it's LLCs.

Q. Do you recall the names of those LLCs?

A. One of them is K&G Reality. Another one is Simpler Realty and another one is Shaman Realty.

Q. And just for clarity, do any of these LLCs that we just discussed own any interest in nursing homes or nursing home property?

A. No.

Q. So these are all completely separate and apart from the long-term care work that you do?

A. Yes.

Q. Do the three entities that you just gave us the names for owned interests or owned developed properties or just undeveloped properties?

A. Both.

Q. Are those used for residential purposes or commercial purposes or both?

M. Kalter

A. Residential.

Q. Do you own any commercial real estate outside of the long-term care industry?

A. I believe -- no.

Q. So aside from everything we just discussed, are there any other corporate endeavors, business enterprises that you are engaged in outside of the nursing home industry?

A. Not that I know right now, no.

Q. And the three entities that we just discussed, do you hold a specific title at those companies?

A. Not really. I don't know.

Q. Would it be fair to describe you as an owner?

A. Yes.

Q. Would it be fair to describe you as the CEO or operator of the corporate entities?

A. I really don't know about the title.

Q. Are you a solo in those endeavors

or do you have partners?

A. I think my wife is a partner in all three.

Q. And what is your wife's name?

A. Frady.

Q. Aside from Frady, does anyone else function as a partner or co owner in those three endeavors?

A. No.

Q. So moving back into sort of your general employment histories, this can include both long-term and non long-term care, describe for me how you got into the industry, how you entered into this line of work.

A. Which line are you talking now specifically?

Q. Sorry, that was a confusing way to phrase that. That's a good point. Let's focus on the long-term care industry. Describe for me how you got into the long-term care industry.

A. I met my wife, I married her and my father-in-law took me into the business.

Q. What is your father-in-law's name?

A. It was Shalom Fogel.

Q. He is passed, I assume?

A. Yes.

Q. So Mr. Fogel, describe for me how he brought you into the business.

A. He -- I went to work for him in the business.

Q. What was your first position for Mr. Fogel?

A. I believe it was purchasing.

Q. And were you assigned to a specific facility or business enterprise or corporate entity, how did that work?

A. I don't remember.

Q. Were you occupying office space in that first position for Mr. Fogel?

A. Yes.

Q. And what office were you working at that time?

A. Bridgeview Nursing.

Q. Were you technically an employee at Bidgeview Nursing Home or something else?

A. An employee.

Q. Do you recall what your title was that first title that you had?

A. I think it was purchasing.

Q. Describe for me your tenure at Bridgeview Nursing Home. Did you move on to other positions after your purchasing position?

A. Yeah, eventually, I guess I became the administrator there for a short time.

Q. Between starting as a purchasing agent and ending up as administrator, did you have intervening positions at Bridgeview Nursing Home?

A. I think assistant administrator.

Q. Any other positions aside from that?

A. I don't remember.

Q. When did you become assistant administrator at Bridgeview?

A. I don't remember.

Q. And I am just asking you generally was it more than 20 years ago or

M. Kalter

less than 20 years ago?

A. I'm sure it was more than 20 years ago.

Q. Was it more than 30 years ago?

A. It might have been.

Q. And how long were you administrator at Bridgeview Nursing Home?

A. I don't remember.

Q. Would it be more than five years or less than five years?

A. I don't remember.

Q. Do you remember when you stopped being administrator at Bridgeview Nursing Home?

A. No.

Q. And I know it's been some time, but describe for me your duties or responsibilities as an administrator at Bridgeview.

A. The responsibilities are dictated by the code, whatever an administrator was supposed to do.

Q. And again, just to the best of your recollection, what do you recall as

M. Kalter

being sort of the primary aspect or primary functions of your job when you were administrator?

A. Making sure the patients are taken care of properly.

Q. Were you involved in creating policies and procedures?

A. I'm sure I was.

Q. Were you involved in ensuring that those policies and procedures were followed by staff?

A. Probably.

Q. Were you tasked or responsible for ensuring that staff satisfied pertinent standards of care at the facility?

A. I'm sure I was.

Q. Would it also be fair to assume that you were responsible for ensuring resident health and safety at Bridgeview?

A. Probably.

Q. So those buckets of things that I just laid out and we just talked about, do you have any specific recollection of carrying those things out or any work tasks

or projects you undertook to make those things happen?

A. No.

Q. And aside from those buckets I just described of responsibilities, were there any other responsibilities that you recall having at Bridgeview?

A. Nothing specifically that I remember.

Q. And why, if you recall, did you stop working at as administrator at Bridgeview?

A. I don't remember.

Q. Do you recall if you took another position or something else?

A. I didn't take another position.

Q. But at some point obviously you did cease functioning as the administrator of Bridgeview?

A. That's right.

Q. Did you ever work as an administrator at any other nursing home?

A. No.

Q. Did you ever hold, and this is

M. Kalter

aside from your ownership interests and functioning as an owner, did you ever hold any other titles at any other nursing homes?

A. No.

Q. As far as you recall and, again, I realize it's been some time, but when you were working as administrator at Bridgeview, did your father-in-law, Mr. Fogel, own any other nursing homes?

A. I believe he did.

Q. Do you recall what those homes were, what their names were?

A. I think he owned Midway Nursing Home.

Q. Any other homes?

A. I don't remember.

Q. Did you do any work for Midway at that time?

A. Probably after I was stopped being administrator I might have done some work for Mr. Fogel there.

Q. Would that have been like in a formal capacity or something more informal?

A. Informal.

M. Kalter

Q. And just so I fully understand the progression of your career, did you go from being administrator of Bridgeview to more of an in-house position with Mr. Fogel or something else?

A. I don't really remember the exact progression.

Q. Did he utilize sort of an overarching structure to manage his homes, was there another business entity that ran the homes at a higher level?

A. No.

Q. Did he operate them sort of directly himself?

A. Pretty much so.

Q. And as far as you recall, was Mr. Fogel the sole owner of Bridgeview or were there other owners involved?

A. I don't remember. I think he was the sole owner.

Q. Okay, that's fine and again, if you don't remember I definitely don't want you to guess, so if you don't remember, that's perfectly fine.

M. Kalter

Did you ever work for a consulting company in the nursing home industry?

A. No.

Q. What about a management company?

A. I don't know. No, definitely not an outside management company.

Q. Thank you for clarifying that, that's what I'm driving at is any outside management company or outside consulting company in the nursing home industry.

A. No.

Q. And then still staying within the nursing home industry, long-term care industry, did you ever hold a position or title at any other type of business or organization?

A. What was the question?

Q. Sorry, I can make that more clear. So we have discussed consulting companies, we have discussed management companies, we have discussed Bridgeview. Did you hold any other titles or positions in any other business organizations or

M. Kalter

entities within the nursing home industry before you took your current position as an owner?

A. No, not that I remember.

Q. Any other prior affiliations that we haven't discussed?

A. No.

Q. And moving into the current time, what is your occupation now?

A. Like I said before, I do real estate and I run the nursing homes. I am the owner. I own the nursing homes.

Q. In the context of your nursing home work, would you say you have an official title or is it more of an informal position?

A. I don't have an official title.

Q. What was your first nursing home acquisition?

A. I don't remember.

Q. Did you do you remember the context of getting into the world of owning and operating nursing homes?

MR. YAFFE: Objection.

M. Kalter

A. What do you mean the context?

Q. So we have discussed your work as an administrator at Bridgeview and, obviously, at some point you moved into more of an ownership role, owning and operating nursing homes. Do you recall how you made that transition?

A. Yeah, I think Mr. Fogel, he gave me I purchased or he gave me as a gift, I don't remember, some shares of Bridgeview Nursing Home.

Q. Do you recall when that happened?

A. No.

Q. Were you still administrator at Bridgeview when that happened?

A. No.

Q. So it was sometime after?

A. Right.

Q. Just trying to ascertain a ballpark period, was this more than 20 years ago?

A. I have no idea, I'm sure it was but I have no idea.

Q. And when you acquired those

shares or that stake in, you said Midway, correct?

A. Bridgeview and Midway.

Q. Bridgeview and Midway.

A. I don't know if it was at the same time.

Q. That's fine. When you acquired those shares or those stakes in those two homes, do you recall what percentage of the ownership take that was?

A. No.

Q. Do you recall if it was a majority take?

A. I don't recall.

Q. Did the percentage of your ownership stake in either of those two homes change over time?

A. Yeah, I guess so.

Q. Let's move back to sort of the early stages of your move into the ownership role into the owner role. So if I'm correct in understanding Mr. Fogel, he at some point gifted you or transferred to you shares in Bridgeview and Midway. Did you ever acquire

M. Kalter

ownership shares in any other nursing homes?

A. Yes.

Q. Describe that process for me.

A. I purchased Mayfair Care Center.

Q. When did you purchase Mayfair Care Center?

A. It was sometime in the 90s.

Q. Okay. Did you, and just for my own clarity, if you purchased it, you did not build it, correct?

A. No, I did not build it.

Q. And just specific to we are talking about Midway, correct?

MR. YAFFE: Mayfair, he said Mayfair.

A. Mayfair.

Q. So specific to Mayfair, when you did purchase it in the 90s, did you have any partners in that venture or was that taken on by yourself or on your own?

A. No, I had a partner.

Q. Who was your partner at that time?

A. I'm not -- I don't remember if

M. Kalter

it's only my brother-in-law, my brother-in-law and his wife, and I am not sure, maybe my wife.

Q. Who was your brother-in-law?

A. Aaron Fogel.

Q. Do you remember how that first purchase of Mayfair was financed?

A. No.

Q. Do you recall what the ownership arrangement was between you and your partners?

A. No. But it hasn't changed. Whatever it is now, that's what it was then.

Q. And do you remember who ran that first nursing home?

A. The director. It has changed because I gave some of the shares to my children.

Q. Okay, that's fine. So let's just rewind back to when you first acquired Mayfair, who ran that first nursing home?

MR. YAFFE: Do you mean administrator or could you clarify your question, please.

M. Kalter

Q. Sure. So we can talk about the administrator first. Did you hire an administrator after you acquired Mayfair?

A. I kept the old administrator.

Q. Was there anyone else involved in the operating of Mayfair, did you participate in that?

A. Well, I was the owner.

Q. Did any of your partners participant in the operating of Mayfair?

A. No.

Q. How would you describe your role in the operating of Mayfair at that time?

A. I am not really sure. I was the owner.

Q. Were you involved in day-to-day decision making or was it less granular?

A. I was not involved in day-to-day decisions.

Q. So we talked about how you got involved in Bridgeview, Mayfair and Midway. Did you acquire ownership interests in any other nursing homes?

A. Yes.

M. Kalter

Q. What nursing home was that?

A. Fulton Commons and River Valley.

Q. Let's started with River Valley. When did you acquire an ownership stake in River Valley?

A. I don't remember.

Q. Is it fair to assume that it was after you acquired your ownership stake in Mayfair?

A. Yes.

Q. Do you remember the context of that acquisition?

A. I remember that there were some people that had a piece of property in Poughkeepsie and wanted to build a nursing home, and they came to me if I want to own the nursing home operation.

Q. And then describe for me how that played out.

A. I entered into a lease with them and we went for certification a license.

Q. And are you still involved in River Valley Nursing Home?

A. Only in the real estate.

M. Kalter

Q. When you say you entered into a lease, describe that for me, did that involve you purchasing property or something else?

A. No. It was a rental. It was a lease.

Q. So you did not own the property on which River Valley sat?

A. No, I did not.

Q. So describe for me your current relationship with River Valley.

A. I own the property and there's somebody else that runs the nursing home, owns the nursing home operation.

Q. At what point did you acquire the River Valley property itself?

A. I don't remember.

Q. So now your only connection to River Valley is, essentially, as a landlord; is that correct?

A. Correct.

Q. Do you have any involvement in the day-to-day operations of the nursing home itself?

A. No.

Q. Just for clarity, do you recall when you stepped back from that more involved role in the operations of the facility?

A. No.

Q. So I believe you also mentioned Fulton Commons. Describe more me how you became involved in Fulton Commons.

A. The same way.

Q. And is that you were approached by the owners at that time?

A. Yes.

Q. And describe me for me the arrangements that you came to with the owners of Fulton Commons.

A. Same arrangement, they own the real estate, I leased the property for the nursing home and got the license.

Q. And at any point did you acquire the real property at Fulton Commons as well?

A. Yes, I did.

Q. And do you recall when that was?

A. No.

M. Kalter

Q. So staying with Fulton Commons, when you acquired your ownership stake in Fulton Commons, did you have partners in that venture?

A. You are talking about the operation?

Q. Just when you very first developed or acquired your ownership interest, so the very beginning, your very first interaction with Fulton Commons, was there a partner working with you at that time?

A. Yes.

Q. Who was that?

A. Mr. Fogel, his wife and my wife.

Q. Just for clarity, this Mr. Fogel is your brother-in-law Aaron Fogel?

A. Yes.

Q. Were there any partners aside from what you just mentioned?

A. No.

Q. How was the acquisition of the ownership interests in Fulton Commons financed?

M. Kalter

A. There was no acquisition. I was just a tenant.

Q. So at that point you did not buy ownership stake or any sort of shares --

A. No.

Q. -- arrangement?

MR. YAFFE: Can we please clarify this a little bit because when you are talking, I just want to make sure the record is clear and it's not confused. You are talking about the nursing home prior to the -- you are talking about the nursing home tenant for which Mr. Kalter testified that he got certification for, and are we talking about, are you asking him questions about the nursing home entity or are you asking him questions about the real estate and the ultimate purchase of the real estate on which the nursing home is located? I just feel like we're moving back and forth between the two and I didn't know if there was a distinction in Mr. Kalter's answer to

M. Kalter

the questions based on which entity you are talking about, so I just wanted to avoid confusion, and I don't mean to interfere with your deposition at all, but.

MR. SMITH: No, that's fair. You anticipated my next question, actually.

Q. So I know with these acquisitions, it seems like it's a step wise process maybe or there's multiple steps so, yes, we are discussing both the real estate and the facility itself.

So Mr. Kalter, if that's ever unclear to you, definitely let me know, but that, actually, was my next question, so it actually sounds like as with maybe with Mayfair, you acquired an interest in or involvement in the facility itself at Fulton Commons, correct?

A. Well, I understood that your questions before were when I got involved in Fulton Commons. At that point I did not get involved in the realty, so my answers were specifically to the nursing home.

M. Kalter

Q. And that's how I understood it.

A. As far as your question now, my acquisition of Mayfair was different than my acquisition of Fulton Commons because my accusation of Mayfair, I bought the operation from somebody else and the realty at the same time.

Q. At the same time, okay, so that's good to clarify. So Mayfair you were involved in the operations of the facility at the same time you acquired the realty property on which Mayfair sat?

A. Correct.

Q. And Fulton, by contrast, you were involved in the operations before you acquired the real property?

A. Correct.

Q. That's good to clarify. So sticking with Fulton Commons specifically, when did you acquire the real property on which Fulton Commons sat?

A. I don't remember.

Q. Do you remember if it was close in time to your involvement in the operation

of the facility or something else?

A. I don't remember.

Q. But for perfect clarity of the record, Mayfair was a different scenario in which you acquired the operational interest and the real property simultaneously?

A. Correct.

Q. And River Valley, just for clarity, was that similar to Mayfair or similar to Fulton?

A. It was Fulton, same as Fulton.

Q. And to be perfectly clear, you were involved in the operational aspect of the facility prior to acquiring an interest or owning the real property on which the facility sat?

A. Yes.

Q. And just to stay with Fulton for a minute more, do you remember if the timeline between your involvement in the operational aspect of the facility and your acquisition of the real property, was that more than five years apart in time or more than that?

A. I don't remember.

Q. Do you remember around what year you acquired the real property at Fulton Commons?

A. No.

Q. So aside from Bridgeview, Midway, Mayfair, River Valley and Fulton Commons, are there any other nursing homes that you have an ownership interest in?

A. Yes.

Q. And what other homes are those?

A. Promenade Care Center.

Q. And where is Promenade located?

A. In the Rockaways.

Q. And describe for me the sequence of your involvement at Promenade. Did you acquire the real property simultaneous to an operational involvement or something else?

A. No, it was separate.

Q. So just describe for me, if you can, that process of your involvement with Promenade.

A. Well, I got an -- I got a percentage of the operation, and later on we

bought the real estate.

Q. And when you say we, did you have partners in that venture?

A. Yes.

Q. And who were those partners?

A. At that time?

Q. Sure.

A. It was, I think it was my mother-in-law, Mrs. Fogel, and my wife's uncle, Mr. Fogel, and I'm not sure if any of his children.

Q. Are you still involved with Promenade?

A. I was never involved. I just own part of it.

Q. Well, assuming that is involvement in the facility itself, are you still an owner of the real property?

A. I believe so.

Q. But for clarity, you do not have any involvement in the operations of the facility itself?

A. No.

Q. And jumping back to your Fulton

M. Kalter

Commons acquisition, did you receive financing for the acquisition of the real property?

A. I don't remember.

Q. Do you remember how that real property was acquired, was it through a cash payment, through a mortgage or something else?

A. I don't remember.

Q. And just specific to Fulton Commons again, did you hire an administrator when you acquired your operational interest or retain the administrator who was there at the time or something else?

A. It was a new facility. There was no administrator there at the time.

Q. So did you hire an administrator?

A. I'm sure I did. I don't remember but I'm sure I did.

Q. Were you involved in the hiring of that administrator, as far as you recall?

A. I don't remember.

Q. Is Fulton Commons unique in your experience, and by that I mean specific to

M. Kalter

the opening of a new facility?

MR. YAFFE: Objection.

Q. You can answer, Mr. Kalter.

A. I don't understand your question.

Q. So and correct me if I'm wrong, my understanding is that many of your other homes were already operating facilities when you became involved, whether through real property or ownership interests in the operations. Is Fulton Commons unique as it appears to have been a nursing home that you started or you were involved in the creation of?

A. It's not unique because River Valley is the same thing.

Q. So River Valley is also a facility that you were involved in the opening of and creation of?

A. Yes.

Q. Aside from River Valley and Fulton Commons, were you ever involved in the creation or opening of a facility new facility?

A. No.

M. Kalter

Q. So just specific to Fulton Commons, do you recall your involvement in the creation and opening of that facility?

A. No.

Q. Do you recall if you were involved in more of the sort of granular day-to-day details of opening facilities?

A. I don't recall.

Q. Do you recall if someone else handled that aspect of the work for you?

A. I don't recall, but it was probably the administrator.

Q. And who was the administrator at Fulton Commons?

A. I don't remember.

Q. When you acquired and operating nursing homes, did you step back from any other positions or affiliations?

A. I didn't have any positions.

Q. So take, for example, your real estate investment and work, were you doing that at the same time as your becoming involved in the nursing home industry?

A. I don't remember, but I believe

so.

Q. Is it fair to say that your real estate investment and work did not change at all prior to your involvement in the nursing home industry?

A. I'm not sure.

Q. Are you paid for your work in the nursing home industry?

A. What do you mean by who pays me.

Q. That would be my next question, if you are paid, who pays you?

A. I'm the owner, so I pay myself.

Q. How are you paid, in what form?

A. I guess, a check.

Q. Any other form or fashion?

A. No.

Q. Does each home in your system and by your system I mean Bridgeview, Midway, Mayfair, Fulton Commons, Promenade, do they each pay you a salary or are you paid individually or just by one home or how does that happen?

A. I only get a salary from Mayfair.

Q. Your only salary is from Mayfair?

A. Yes.

Q. Do you receive a salary or any form of payment from any other nursing home in your system?

A. I don't believe recently I have, no.

Q. When you say recently, did you at one time or at one time receive a salary from another nursing home?

A. Possibly many years ago.

Q. Describe that for me to the extent you can.

A. I got a check.

Q. From what home, if you recall?

A. I don't recall.

Q. And when you say you got a check, was that a regular check, a one-time thing or something else?

A. What's the difference between a regular check and a one-time thing?

Q. By that I mean, you know, receiving a pay check every month or biweekly versus receiving a one-off payment?

A. I don't receive any monthly or

weekly checks.

Q. In the past 10 years were you ever paid a salary by Fulton Commons?

A. I don't remember.

Q. And when we're talking about the potential payments you received from another nursing home, and by that I mean a nursing home other than Mayfair, how was that payment arrived at, how was that payment determined?

A. I just took a salary. I just took a check and it was recorded as a salary.

Q. So just for perfect clarity, Mayfair is the only one that pays you a salary?

A. That's correct.

Q. Aside from your salary, do you receive any bonuses, and by that I mean incentive payments, profit sharing, performance related compensation?

A. No.

Q. Do you receive any fringe benefits like a vehicle, cell phone,

M. Kalter

something along those lines?

A. I have a vehicle, yes.

Q. And is that paid for by Mayfair?

A. No.

Q. Is it paid for by another of your homes?

A. I believe so.

Q. Do you have any idea who does pay for that vehicle?

A. I think Bridgeview.

Q. Just to be clear, Bridgeview does not pay you a salary?

A. I don't have a salary from Bridgeview, no.

Q. Do you receive distributions from the homes?

A. Yes.

Q. Do you receive distributions from every home or just one or a combination?

A. It depends. Sometimes from some, sometimes from none.

Q. Is that a pretty fluid thing or does it change over time?

A. Just happens.

M. Kalter

Q. When you say it just happens, describe that in more detail for me.

A. If there is a, whatever it is, it's a money or whatever, but I don't really believe that we took distributions from the nursing homes recently.

Q. Would you say you have taken a distribution from the nursing home and by that I mean any of the nursing homes within your system within last two years?

A. I don't believe so.

Q. Do you think you have taken a distribution from any of your nursing homes in the last five years?

A. I don't remember, but probably not.

Q. And just to get more into the detail of how these distributions work, is that an automatic thing, is that determined by ownership or something else?

A. It's determined by ownership.

Q. And describe that process for me.

A. I would just say that we're going to take a distribution.

M. Kalter

Q. And when you say we are going to take a distribution, who are you communicating that to?

A. I am not communicating with anybody, I am communicating with myself and the office issues checks.

Q. And who in your system issues the checks?

A. Steven Weiss or wires.

Q. And just for clarity of the record, what office does Mr. Weiss function out of?

A. His physical office is in Bridgeview.

Q. So just to get into a bit more detail on that front, you would reach out to Mr. Weiss and say we are going to take a distribution?

A. Yes.

Q. And because that was something that was sort of generated by yourself, how would you arrive at the determination that a distribution should be taken at the time?

A. I'm not really sure.

M. Kalter

Q. Would that be based off of receiving financials or performance of the homes or something else?

A. I'm not really sure.

Q. Would that be a determination that you would make after reviewing records of the nursing homes's revenue or profit or something else?

A. I don't really know.

Q. Do you have any recollection of the method you would use to arrive at the decision to take a distribution?

A. I think I answered that three times now. I don't know. I don't remember any method that I used.

Q. Are there plans currently or in the future to take a distribution?

A. No.

Q. And just for my own clarity, the decision to not take a distribution, what would that be based on?

A. It wouldn't be based on anything. We just don't really take distributions from the nursing home.

M. Kalter

Q. But am I correct in understanding that approach has changed over time?

A. Possibly, but I don't remember when.

Q. And what I am trying to drive at is why distributions may have been taken in the past but aren't taken anymore. I am wondering if context has changed or the facts have changed or your methods from arriving at that decision has changed?

A. I believe the law has changed.

Q. And what was your understanding of that?

A. There are restrictions on distributions from nursing homes.

Q. Do you know when those distribution restrictions may have come into place?

A. No, I don't.

Q. And what is your technical employment status, and by that I mean are you an independent contractor, W-2 employee or something else?

A. I'm not an employee, I only get a

M. Kalter

check from Mayfair as a W-2.

Q. And from your understanding of the industry, is it typical for a nursing homeowner to be an employee?

A. I would not know.

Q. Do you currently have any other business or professional affiliations aside from the ones we have discussed today?

A. No.

Q. Do you --

A. Well, active stocks.

Q. Okay. And by that do you mean mutual funds, CDs, that kind of thing?

A. No. Stocks.

Q. Stocks in nursing homes?

A. Stocks in businesses on the New York Stock Exchange on the Nasdaq.

Q. So these are publically traded stocks from publically traded companies?

A. Yes.

Q. Okay, that's fine. Anything aside from that and what we have already discussed?

A. Not that I know of.

M. Kalter

Q. Do you hold any positions at any other nursing homes besides those we have discussed?

A. No.

Q. What about an ownership stake, do you hold any other ownership stake in any nursing homes aside from those we just discussed?

A. No.

Q. What about a position at a management or consulting company?

A. We discussed that already. I don't.

Q. Do you have an ownership stake in any other companies that we haven't mentioned at this point?

A. In, I have ownership in companies that do business with the nursing home. They have, I believe we have reality companies I have ownership, I think we discussed that, and I have ownership in companies called New Bridgeview, New midway and New Fulton and New Mayfair.

Q. Aside from those companies and

M. Kalter

the companies we have already discussed, do you have ownership stake in any other companies?

A. I believe there is a management company affiliated with each of the facilities.

Q. And aside from that, do you have ownership stake in any other companies that you have an ownership?

A. I don't believe so.

Q. Do you know who Cathie Doyle is?

A. Yes.

Q. Who is Cathie Doyle?

A. She is the administrator of Fulton Commons Care Center.

Q. How long has she been at Fulton Commons as far as you know?

A. I don't know.

Q. Describe me for me your relationship with Cathie Doyle.

A. I don't have a relationship with her.

Q. Do you supervise Ms. Doyle?

A. No.

M. Kalter

Q. Do you meet with her, talk to her on a regular basis?

A. I don't meet with her or talk to her ever.

Q. Have you ever met her?

A. No.

Q. Have you ever talked to her whether by phone, by e-mail or text?

A. I don't believe so.

Q. And you mentioned Steven Weiss just now, who is Steven Weiss?

A. Steven Weiss is my nephew and his he is my controller.

Q. Did you hire him into the controller position?

A. I don't remember.

Q. Do you remember the context more generally of his hiring?

A. No.

Q. Do you remember when he was hired?

A. No.

Q. And describe for me just specific to your homes what controller means, like

what that position's responsibilities are?

A. Basically he is in touch with the homes on a day-to-day basis and tries to, if the people the administrators have any questions or whatever, they would ask him and he would try to answer them, and he is in charge of the financing finances, and that's about it.

Q. Would you say that you supervise Mr. Weiss?

A. In a certain way, I guess.

Q. Describe that for me in more detail, if you can.

A. Well, if he has any questions or if he would ask me or if I have any questions that I want to know, I would ask him.

Q. Do you meet with him often?

A. Very often.

Q. How often is that, daily, multiple times a day, something else?

A. Well, since Corona, basically we have seen each other all the time.

Q. Is it safe to understand that as

M. Kalter

being potentially multiple times a day?

A. It is multiple times a day during Corona.

MR. YAFFE: Can we just clarify are we talking about "seeing each other in person" or are we talking about telephone, I am a little confused.

MR. SMITH: No, you're fine, you have anticipated my next question again so.

Q. When I ask that meeting, I mean more sort of formalized face to face, my next question is talking by phone or talking by e-mail, how often do you communicate with Mr. Weiss in that fashion?

A. Very often.

Q. Would you say that would be multiple times a day?

A. Yes.

Q. What is your most common method of contact with Mr. Weiss, would that be phone, text or e-mail?

A. Either personally or by phone.

Q. When you say personally, is that

M. Kalter

face to face or?

A. Yes.

Q. Face-to-face?

A. Face-to-face.

Q. And where do you and Mr. Weiss meet face-to-face most commonly?

A. In my home office.

Q. And when you say home office, you actually mean your home; is that correct?

A. That's where I'm sitting right now.

Q. Do you talk to Mr. Weiss on the phone regularly?

A. Yes.

Q. How many times a day?

A. I would say multiple times a day, you asked me.

Q. Sure. How many times a day on average would you say you talk to Mr. Weiss by telephone?

A. I don't know.

Q. Do you ever text with Mr. Weiss?

A. Not too often, no.

Q. Do you ever e-mail with Mr.

Weiss?

A. Occasionally.

Q. What e-mail addresses to you do you say when you do e-mail with Mr. Weiss?

A. The same address I gave you mkalter@pbh.com.

Q. When you talk to Mr. Weiss on the phone, which phone number do you use?

A. My phone number or his phone number?

Q. Yours.

A. I don't know, I have eight lines in my house here in my office, must be one of them.

Q. Okay. When you say eight lines, are those all ground lines?

A. Yes.

Q. Do you ever use your cell phone to communicate with Mr. Weiss?

A. Only when I'm not home.

Q. From your position as an owner how would you describe the chain of command at Fulton Commons?

A. The administrator.

Q. Describe that in more detail for me, if you can.

A. The administrator runs the home.

Q. And is there a hierarchy at Fulton Commons, as far as you understand it?

A. Well, I'm sure there is, the administrator's on top.

Q. And working our way down that chain, who reports to the administrator?

A. I don't really know.

Q. Does the administrator report to anybody?

A. Not really.

Q. Would the administrator and in the context of Fulton Commons, that's Mrs. Doyle, would she report to Mr. Weiss?

A. Only if she has a question or an issue.

Q. Would Mrs. Doyle report directly to you?

A. I already answered that, I never spoke to her, I never e-mailed her.

Q. Do any of your of other administrators directly report to you?

M. Kalter

A. No.

Q. Who would they report to if they needed to communicate an issue to you?

A. Steven Weiss.

Q. In this sort of hierarchy or chain of command that we are talking about at Fulton Commons, where would you fit in?

A. I'm not really sure what that means.

Q. Let's say, could you be overruled on a decision that was being taken at Fulton Commons?

A. I don't know if by law I could be overruled. I mean, somebody is totally responsible.

Q. Do you have involvement in decisions being taken at Fulton Commons?

A. No.

Q. Have you ever directed a certain action to be taken at Fulton Commons?

A. No.

Q. Who is Bruce Zirat?

A. I don't know.

Q. If I told you that he was the

administrator at Fulton Commons between 2015 and 2019, would that refresh your recollection at all?

A. I don't -- no, I don't remember that name.

Q. Do you know who Patrick Russell is?

A. No.

Q. If I told you that he was the administrator at Fulton Commons from 2013 to 2016, would that refresh your recollection?

A. No.

Q. And we briefly touched on this but I want to expand on this. Is there a governing body at Fulton Commons?

A. I'm sure there is.

Q. Describe for me your understanding of the governing body's role at the facility.

A. I think I am the governing body.

Q. Is there any other individual that plays a role in the governing body or is that just you?

A. I would imagine it's just me.

M. Kalter

Q. Does anyone else, is anyone else involved in decisions taken or deliberations had by the governing body, as far as you understand?

A. Not that I know.

Q. Does the governing body ever consult with the medical director?

A. No.

Q. What about the director of nursing services?

A. No.

Q. And what about the administrator?

A. I already said that, no.

Q. And again, just for clarity, are there any other owners of Fulton Commons involved in the work of the governing body?

A. No.

Q. Do you know who Olaf Butchma is?

A. Who?

Q. Olaf Butchma?

A. No.

Q. Do you know who the infection preventionist is at Fulton Commons?

A. No.

M. Kalter

Q. Do you know how many beds Fulton Commons has?

A. I hope so.

Q. Just offhand, I don't want you to guess.

A. Unless you want to know how many are vacant and how many are full, I can tell you.

Q. More generally, do you have a sense of the total bed counts at Fulton Commons, not heads in beds but number of rooms or number of beds?

A. Well, number of certified beds, I don't know how many beds they actually have because I am sure they have spares, but the number of certified beds is 280 at this point.

Q. Do you know how many units Fulton Commons is broken down into?

A. Seven.

Q. Do you know how those are configured physically?

A. I've never been there, I don't know.

M. Kalter

Q. Pre pandemic, so before March of 2020, how many residents would Fulton Commons have at a continue given time?

A. I don't know, I think they would be about '96, '97 percent full, if I remember correctly.

Q. Would that vary over time, and again, this is pre pandemic, so would that be a fluid number or would that stay consistent?

A. Always varies, there's always admissions and discharges.

Q. Were you involved in, again, pre pandemic in discussions about census and census changes?

A. No. I only get reports of the census.

Q. And who provides those reports to you?

A. Steven Weiss.

Q. And how does Mr. Weiss keep you apprised of the daily census at Fulton Commons?

A. He send me a census sheet every

M. Kalter

morning and every night.

Q. And just for clarity, is that the daily census sheet?

A. I don't know what you call it. It just has the census for me. It's a sheet that he sends to me.

Q. How does Mr. Weiss transmit that to you?

A. Usually, by e-mail.

Q. And this is to your [redacted] e-mail?

A. Correct.

Q. And I believe you answered this but I just want to have clarity for the record, do you ever visit Fulton Commons?

A. I've never been there, I said.

Q. When you opened Fulton Commons, like we discussed earlier when you were involved at the creation of the facility, did you visit it during that time during that process?

A. No, I've never been there.

Q. Do you taken any --

A. Oh, I've actually been there

M. Kalter

before we even applied for the application. It used to be a Snapple factory.

Q. I was going to ask you that so there was actually a physical building on the space before you took it over?

A. Not when I was there. When I was there there was just an empty lot with thousands of cases of Snapple over there.

Q. That is a detail I had not anticipated.

A. Well, you can mark it down for the record.

Q. That is good to put, I'm glad we got that on the record that there were many cases of Snapple. I won't ask where those went or who took it.

A. Well, I'm surprised you are not asking me how many.

Q. If you could remember I would be impressed.

So you were there around the time of the acquisition of the real property, but not never --

A. Well, no, no, no. I was there

M. Kalter

when they wanted me to go into the venture with them to run the nursing home. They owned the property. I didn't own it.

Q. Is it fair to understand that that's your only time to the physical real property on which Fulton Commons sits?

A. I believe so. I have passed by a couple of times, but I don't believe I was on the physical property.

Q. Do you maintain any office space on campus at Fulton Commons?

A. I really don't know. There was an office built for me there but I am not sure what they do with it now.

Q. Do you visit any of Fulton's sister facilities?

A. What do you mean sister facilities?

Q. Midway, Mayfair, Bridgeview?

A. Oh, okay, not on a regular basis, no.

Q. Do you maintain any office space at those other facilities?

A. I believe that my office in

Bridgeview was there way back.

Q. Any other office space at the other facilities?

A. I never had any office space in the other facilities.

Q. And does Fulton utilize any management agencies in the running of the facilities?

A. I don't know.

Q. I believe you mentioned an entity called Fulton Commons Management; is that correct?

A. Yes.

Q. Would it be fair to describe as Fulton Commons Management as a consulting or management agency?

A. No.

Q. How would you describe Fulton Commons Management?

A. It's an entity that is really from my understanding at least it's not being used, it just exists for quite a few years.

Q. At any time during its corporate

M. Kalter

existence, did Fulton Commons Management provide any management services to Fulton Commons?

A. I don't remember. It's way back.

Q. Do you remember when that corporate entity was created?

A. No, I don't.

Q. Did it ever have employees?

A. No.

Q. So aside from Fulton Commons Management?

A. Not that I remember, let's put it that way.

Q. That's fine. That's fine. So aside from the Fulton Commons Management entity, did Fulton Commons ever contract or have a relationship with any other companies that might have purported to be management or consulting companies as far as you know?

A. I don't know.

Q. Did Fulton Commons Management at any point in its existence have a contract for services with Fulton Commons?

A. I don't know.

M. Kalter

Q. What, as we sit here today, is your ownership percentage at Fulton Commons?

A. I believe that right now I think I own 52 percent of Fulton Commons. Oh, sorry, no, 42 percent.

Q. And from our discussion so far, is it fair to assume that you are familiar with the other owners of Fulton Commons?

A. I think so.

Q. And we briefly described Aaron Fogel, but just for clarity of the record, am I correct in understanding he is your brother-in-law?

A. Yes.

Q. Do you know what percentage of Fulton's ownership Mr. Fogel holds?

A. I believe it's 30 percent.

Q. Do you ever speak with Mr. Fogel about Fulton Commons?

A. No.

Q. And when you say no, is that never, you never?

A. Not that I remember.

Q. Has that changed at all over

M. Kalter

time? Did you used to speak with him about Fulton Commons or has it always been this way?

A. Always been this way, as far as I remember.

Q. As far as you know from your perspective, does Mr. Fogel make any decisions about the running of Fulton Commons?

A. No.

Q. Do you know if he's ever visited Fulton Commons?

A. I don't know, but he never told me.

Q. Do you know where Mr. Fogel lives?

A. Yes.

Q. And where is that?

A. Jerusalem.

Q. Does he ever travel to the US?

A. Occasionally.

Q. Did he ever live in the US?

A. Yes.

Q. When did he re located to

M. Kalter

Jerusalem, as far as you know?

A. I believe when he got married.

Q. And when was that?

A. I don't know exactly, but I think he has a 30 year-old child already so it's got to be quite a while.

Q. Do you know who how Mr. Fogel became involved in Fulton's ownership?

A. Yeah, I took him in as a partner.

Q. And when was that?

A. At the inception.

Q. So he was one of the original co-owners of Fulton Commons?

A. Correct.

Q. Is Mr. Fogel compensated in any way by Fulton Commons?

A. No.

Q. And as far as you know, does Mr. Fogel do any work for Fulton Commons?

A. No.

Q. And how long have you known Mr. Fogel?

A. Since I got married.

Q. Are there any other owners at

Fulton Commons?

A. Yeah, I think we went through this already, his wife, my wife and some of my children.

Q. That's what I want to dig into a bit more is the wider ownership. So before we get into the children's involvement, do you consult with any of the other owners of Fulton Commons about decision making at Fulton or operations at Fulton?

A. No.

Q. And have any of the other owners ever played a role in decision making or operational work at Fulton Commons?

A. No.

Q. And forgive me if I mispronounce people's names, feel free to correct me. Who is Sheindi Saffer?

A. That's my daughter.

Q. And does your daughter have a role, does Sheindy have a role at Fulton Commons?

A. No.

Q. Does she ever visit the facility?

A. No.

Q. Where does Sheindy live?

A. New Jersey.

Q. And is she compensated in any way by Fulton Commons?

A. Yes.

Q. Do you know how much?

A. No.

Q. And who determines her compensation?

A. I do.

Q. What sorts of process do you use to arrive at that compensation amount?

A. I don't -- I don't remember.

Q. Who is Aryeh Kalter?

A. My son.

Q. And what is Aryeh's role in decision making?

A. Everything, all the answers to those questions would be the same as Sheindy, as Sheindy Saffer.

Q. So bear with me, I will try to go through it. For the record, I want to get people's names on so this will be a little

M. Kalter

bit repetitive, but so is Aryeh involved in decision making in Fulton at all?

A. No.

Q. And where does Aryeh live?

A. New Jersey.

Q. Is he compensated by Fulton Commons?

A. Yes.

Q. And again, is that compensation determined by yourself?

A. Yes.

Q. And who is Mindy Steger?

A. My daughter.

Q. And again, does Mindy play any role in decision making at Fulton Commons?

A. No.

Q. Where does she live?

A. New Jersey.

Q. Is she compensated by Fulton Commons?

A. Yes.

Q. And again, is that compensation determined by yourself?

A. Yes.

M. Kalter

Q. Do you know if Mindy ever visits Fulton Commons?

A. No.

Q. And who is Chana Kanarek.

A. Chana, yes, she is my daughter.

Q. Is Chana involved in decision making at Fulton Commons?

A. No.

Q. Does she ever visit the facility as far as you know?

A. No.

Q. Where does Chana live?

A. New Jersey.

Q. Is she compensated in any way by Fulton Commons?

A. Yes.

Q. And again, that determination is made by yourself?

A. Yes.

Q. Who is Yitzchok Kalter?

A. My son.

Q. And is Yitzchok involved in decision making at Fulton Commons?

A. No.

M. Kalter

Q. Does he ever visit the facility, as far as you know?

A. No.

Q. Where does Yitzchok live?

A. New Jersey.

Q. Is he compensated by Fulton Commons?

A. Yes.

Q. And again, that determination is made by yourself?

A. Yes.

Q. Who is Dovid Kalter?

A. My son.

Q. Is Dovid involved in decision making at Fulton?

A. No.

Q. Does he ever visit the facility?

A. No.

Q. Where does Dovid live?

A. New Jersey.

Q. And is he compensated by Fulton Commons?

A. Yes.

Q. And again, that determination is

made by yourself?

A. Yes.

Q. And who is Sheva Kalter?

A. Sheva is my daughter.

Q. What is her role in decision making at Fulton Commons?

A. None.

Q. Does she visit the facility?

A. No.

Q. Where does she live?

A. In New Jersey.

Q. And again, is she compensated in any way by Fulton Commons?

A. Yes.

Q. And that determination is made by yourself?

A. Yes.

Q. And finally, and again, I appreciate you bearing with me, who is Sara Lieberman?

A. My daughter.

Q. And is Sara involved in decision making at Fulton Commons?

A. No.

M. Kalter

Q. Does she ever visit the facility?

A. No.

Q. Where does Sara live?

A. New Jersey.

Q. And is she compensated by Fulton Commons?

A. Yes.

Q. And finally, that determination is also made by yourself?

A. Yes.

Q. I know it's a lot of individuals and these things change, but are you aware of the current ownership percentage breakdown at Fulton Commons?

A. Yeah, I think we said that already. I think I own 42 percent, Aaron owns 30 percent, his wife owns 10 percent, my wife owns 10 percent, and each of the eight children own one percent.

Q. Has that changed at all over time?

A. That's what it is now.

Q. So in the past has that ownership breakdown changed at all?

M. Kalter

A. Yes.

Q. Let me direct your attention to what's going to be marked as State's Exhibit 2.

(Cost Report 2017 was marked as State's Exhibit 2.)

Q. Mr. Kalter, do you recognize this document?

A. I don't see a document.

Q. There might be a delay.

A. Oh yes, yes.

Q. Do you recognize this?

A. I don't recognize, I don't know where this. Oh, I see what it is. Oh, it says RHCF 4.

Q. Is it fair to say for the record that this is a portion of the Fulton Commons cost report for 2017?

A. That's what it says, yes.

Q. And just for clarity of the record, it's a subset of a larger document so this is just a one-page document. Did you submit this document to DOH, that's the State Department of Health?

M. Kalter

A. I don't believe I submitted it, but I'm sure I signed it.

Q. Would someone summit this to the Department of Health on your behalf?

A. Yes.

Q. Who would that be?

A. Probably the accountants.

Q. Do you keep or hire an accounting firm for these purposes?

A. For all purposes.

Q. What firm is that?

A. Horan Martello.

MR. YAFFE: May I just ask a question?

MR. SMITH: Sure.

MR. YAFFE: This exhibit, are you just marking this page of this exhibit or is this a multi page exhibit? I just wanted whatever record you are compiling to be clear as to whether this is a one-page exhibit that you are showing Mr. Kalter or it's a multi page exhibit and you are only showing him one page of it.

M. Kalter

MR. SMITH: Sure. So this particular one-page exhibit will be marked as State's Exhibit 2, and that's the only way this particular document is going to be presented, a one-page document as marked as State's Exhibit 2.

MR. YAFFE: Thank you for confirming that.

MR. SMITH: Not a problem at all.

Q. To get back to your accounting firm, is there at the particular firm you just mentioned, is there a person who handles these things for you consistently or do you deal with multiple people?

A. I deal with whoever it is, whoever they assign.

Q. Has that tended over time to be the same person or different people?

A. I think it was a few different people.

Q. Do you remember who completed your last cost report for Fulton Commons?

A. I wouldn't know who completes

them.

Q. Do you have a person that you speak with at the accounting firm like a point person, basically?

A. Well, I speak to different people, yeah.

Q. Who do you recall speaking to about this particular task, the completing of cost reports?

A. I don't recall speaking to anybody about it.

Q. Is there an individual at the accounting firm that will go over the cost report with you before it's submitted?

A. Once again, I don't know who exhibits -- who does it. Nobody goes over it with me, if that's your question.

Q. That's my question, is there an individual at the accounting firm --

A. No.

Q. -- that would sit down and explain it to you and walk you through it?

A. No, nobody sits down with me. As a matter of fact, I have never seen any of

them.

Q. You never met with any of them?

A. No.

Q. Are any other of the Fulton Commons ownership involved in the creation of these cost reports?

A. No, they're not involved in anything.

Q. So just looking at this particular one-page document, am I accurate in stating that it shows your ownership percentage at this time as of 2017 as 50 percent and Aaron Fogel as 30 percent?

A. Correct.

Q. And would I be correct in understanding that this ownership breakdown did change over time since 2017?

A. Yes.

Q. Let me direct your attention to what will be marked as State's Exhibit 3. And while that's loading, I will just for the record and for clarity say this is, again, a one-page document, the subset of a larger document, but for the purposes

M. Kalter

immediate here, this is going to be marked as State's Exhibit 3, a one-page document. But you can see, I assume you recognize this document, again, correct?

A. Yes.

Q. This is a one-page excerpt from the 2018 Fulton Commons cost report correct?

A. Right.

(2018 Cost Report was marked as State's Exhibit 3.)

Q. And we can see from looking at this document that the ownership percentages have changed a bit since the prior year, correct?

A. Right.

Q. So it looks like now Mr. Fogel, Aaron, is at 50 percent, you are at 42 percent and there's multiple individuals at one percent, correct?

A. That's obviously a mistake.

Q. Expand on that for me.

A. Mr. Fogel's ownership never changed.

Q. Okay.

M. Kalter

A. And it's, obviously, missing my wife's ownership and Mrs. Fogel's ownership.

Q. Okay, that's actually very helpful, so from your understanding sitting here today, this does not accurately reflect the ownership in 2018?

A. It's not just my understanding, it's not the ownership.

Q. Okay, and just for clarity, this is the 2018 cost report so I don't want to confuse that with the current cost report, but --

A. That's what it says.

Q. So proceeding on this change, would it be accurate to understand that Aaron Fogel did increase his ownership percentage from 2017 to 2018?

A. I just said no.

Q. So explain to me was this cost report amended or is this --

A. I have no idea. This is the first time I've seen this.

Q. So just so we have the record clear, we are not relying on a faulty

M. Kalter

document, in 2018 what was Aaron Fogel's ownership interest?

A. The same as it always was, the same as it is now, 30 percent.

Q. And for clarity, what was your ownership percentage in 2018?

A. That's correct, what it is, 42 percent.

Q. But just so we get your --

MR. YAFFE: And Mr. Kalter, also are you going to ask him you indicated that the wives are missing from this also, are you --

MR. SMITH: Right.

Q. So I want to make sure, this is obviously a document that's filed with the Department of Health so I want to make sure we understand what the actual status was in 2018. So Mr. Kalter, your ownership percentage is correctly reflected here?

A. Well, let me make it clear. My ownership is 42 percent, Aaron Fogel is 30 percent, my eight children here have one percent, Aaron's wife has 10 percent, and my

M. Kalter

wife has 10 percent.

Q. Perfect.

A. And obviously, this document would need to be amended.

Q. Thank you for clarifying that. I want to get into the ownership interest that your children picked up between 2017 and 2018. Can you explain to me why they became involved in Fulton Commons?

A. I gave them one percent.

Q. Was there a particular reason?

A. Yes.

Q. Describe that for me.

A. At that time I was thinking that maybe they would start taking over the business, the operations from me.

Q. And that decision making process happened between 2017 and 2018?

A. I don't remember when, but obviously, that's what happened.

Q. Was there any other reason to include them in ownership?

A. No.

Q. And just so we fully understand

M. Kalter

this document, if we look at the far right-hand column and it's designated as "person affiliated with other RHCF how many" we see that each individual listed here has five indicated in their own respective columns. What does that mean that designation of five?

A. I don't know.

Q. In this?

A. I don't know.

MR. YAFFE: There is a drop down menu. I don't know if you all are seeing that as well on the right-hand side of this exhibit where it says add. Someone just moved that, because I just wanted to see the date of this.

Thank you.

MR. SMITH: No worries. I think that sometimes when you are sharing you can see other things happening on your computer.

Q. So Mr. Kalter, based on our experiences of kind of finding a document here that does not represent your ownership

of the ownership posture, did the ownership posture --

A. It's not my understanding, it's just not correct.

Q. I accept that. Did the ownership posture that we are discussing change from 2018 to the present?

A. Not the one that's on here. The one that I just told you.

Q. Correct, the posture we just laid out, that we just corrected here?

A. No.

Q. Has that changed since 2018?

A. No.

Q. Do you ever report ownership specific information to the Department of Health?

A. Well, you have it right here.

Q. Okay, do you ever report any other ownership specific information to DOH?

A. I think when you make a change in ownership, I think you are required to send a notification, as long as it's below a certain percentage.

M. Kalter

Q. What that sort of notification happens, do you do that or someone does it on your behalf?

A. I am sure someone does that on my behalf.

Q. Do you know who that individual would be?

A. It would probably be someone in the accounting office.

Q. Would Steven Weiss ever be involved in that sort of notification to DOH?

A. No.

Q. And as far as you know, do any of the other owners of Fulton Commons have any background or training in long-term care?

A. Not that I know of.

Q. Do you know if Mr. Fogel maintains an office at Fulton Commons?

A. He doesn't.

Q. What about any of Fulton's sister facilities, does he have a physical office space --

A. No.

M. Kalter

Q. -- in any of those other physical locations?

A. No.

Q. As far as you know, has he ever visited Fulton Commons?

A. I believe you asked me that and I believe I answered no.

Q. What about any of Fulton's other owners, do any of them have office space at Fulton or any of its sister facilities?

A. Not that I know of.

Q. When we were discussing Fulton's ownership and their compensation, would you call their compensation a salary or something else?

A. I don't really know, I'm not the -- I don't really know the exact meaning of these terms.

Q. When the other owners receive the compensation that we have been talking about, is it compensation rendered to Fulton Commons or something else?

A. It's just compensation as owners. We don't render any services to Fulton

Commons.

Q. What services do these other owners render on behalf of Fulton or any of the other sister facilities, and by that I mean do they do work for any facility in this system?

A. They don't render any services to any of these facilities.

Q. Then am I correct in understanding that you were the only owner in this ownership system that renders services to Fulton Commons?

A. I believe that we've answered that question quite a few times. Yes.

Q. And is that true cross account the other facilities in your testimony?

A. We have answered that, too. Yes.

Q. Do all the owners at Fulton Commons receive the same amount of compensation?

A. I don't think so.

Q. And you set the compensation amounts for the ownership, correct?

A. As we stated, yes.

Q. And that compensation varies year to year?

A. Yes.

Q. And what is this variation in year to year compensation based on, is it tied to a specific metric?

A. No.

Q. Is it tied to an owner's ownership percentage?

A. No.

Q. If you can describe the metric used or the method used to determine compensation, what would be that be?

A. There is no method, that's just what I decide to give them.

Q. How are ownership percentages determined within the nursing home system that you run?

A. What does that mean?

Q. Are there shares stocks is there a sort of metric to determine percentages or is it just sort of the percentage are assigned, if that makes sense?

A. I don't really know.

M. Kalter

Q. Maybe to expand on that a bit, if you own 50 percent say, and these are just numbers not tied directly to the facts, and Mr. Fogel owned 30 percent, would he actually own shares in the company or do you break it down that way or do you use another method?

A. I really don't know.

Q. Does an owner buy into your business, can they buy into Fulton Commons?

A. It's not for sale.

Q. How is an ownership interest in Fulton Commons acquired?

A. It's not acquired. Nobody is acquiring it.

Q. So it can't be sold or transferred?

A. Well, it's by -- no, it can't. Not that I know of.

Q. Is there any other basis used in determining compensation other than what we have described so far?

A. Not that I know of.

Q. When the changes to the ownership

percentage occurred, by that I mean the addition of the children, did individuals who gave up a percentage of their ownership also experience a decrease in their compensation or did their compensation stay consistent?

A. As I already stated, the owners are not compensated.

Q. But the owners do receive salary, correct?

A. Only the children, the others do not receive any type of compensation or any type of salary, so why -- it couldn't decrease and it couldn't increase.

Q. Am I correct in understanding, though, that you do receive some form of compensation or salary from one of your homes, correct?

A. Yes, we said that for Mayfair.

Q. So does Mr. Fogel receive any compensation or salary from Mayfair?

A. No other of those previous owners receive compensation.

Q. Mr. Fogel, though, would receive

a distribution from the nursing homes, correct?

A. Yes. If there was one.

Q. Assuming there was a distribution, would Mr. Fogel's distribution have decreased at all in relation to the decrease in his percentage stake in the company?

A. No.

Q. So all that to say when these additional owners came in and took the percentages out of the general pop, let's say?

A. They did not take it out of the general pop.

Q. Well, expand on that for me because if there is 100 percent ownership and eight individuals come in to take one percent each, that's a reduction of somebody's ownership, right?

A. An individual's but not the general.

Q. It's not an infinite amount of ownership, right, so?

M. Kalter

A. Right, it's not the general pop, they take it from -- there is a finite number of percentage which is 100 so you can't take more out of the general pop.

Q. Right. All that to say, when the children were added on, that was accounting or created an eight percent decrease in prior owner's ownership stake and --

A. Not prior owners, let's be specific, my ownership interest.

Q. Okay, did your compensation or salary or distribution experience a reduction to account for the eight percent reduction in your stake?

A. If there would have been a distribution then it would have decreased.

Q. Did your salary decrease at all?

A. I don't have a salary from Fulton, as we said.

Q. But did your salary from Mayfair decrease at all?

A. No.

Q. And just breaking this down a bit further, there is somebody, obviously, a

number of one percent owners of the galaxy of ownership of the homes, do each of those one percent ownerships receive compensation?

A. I think you asked that question twice and I answered no.

Q. And why is that?

A. I don't really know. That's what I decided.

Q. And it's fair to say the compensation that you receive, you would define that as a salary, correct?

A. I don't receive any compensation for Fulton.

Q. From Mayfair.

A. It's a salary, yes, it's a W-2.

Q. And is that salary you receive from Mayfair to compensate you for services rendered to Fulton or something else?

A. No, I don't really know, just for services.

Q. And when we say for services, is that services rendered to the wider group of nursing homes or for one particular --

A. I'm not really sure, it doesn't

work so official.

Q. Do the owners receive any other forms of compensation, anything we haven't discussed so far?

A. They don't receive any other compensation, no.

Q. And do any of the owners receive any distributions tied to their ownership stake in Fulton Commons?

A. If there would be a distribution, they would.

Q. So if there was a distribution, even the one percent owners would receive a distribution?

A. Yes.

Q. You mentioned that Cathie Doyle never deals with you. Would she ever deal with Mr. Fogel?

A. No.

Q. Could Cathie Doyle deal with you if she needed to?

A. I'm not really sure. I mean, my number is listed.

Q. Have you ever received a call

from anyone in leadership in Fulton Commons, by that I mean the director of nursing, director of nursing services, anyone else?

A. Not that I remember.

Q. So it's accurate to understand that Mr. Weiss is the sole intermediary between yourself and the staff at Fulton Commons?

A. Yes.

Q. Has it always been that way?

A. Yes.

Q. As far as you know, do any of Fulton's other owners own or operate any other long-term care centers outside of your group of homes?

A. Not that I know of.

Q. What about any consulting or management companies outside of your group of companies?

A. Not that I know of.

Q. And do you ever, we discussed the submission of cost reports and changes in ownership percentages, aside from those two instances, do you ever deal with the

M. Kalter

Department of Health or any other regulatory entity on behalf of Fulton Commons?

A. I don't deal with the Department of Health at all.

Q. On any circumstance?

A. Well, I don't know, unless I'm subpoenaed, I guess.

Q. So outside the Department of Health, do you ever deal with any other entity, CMS, Department of Health and Human Services on behalf of Fulton Commons?

A. No.

Q. Have you ever completed a CMIR, that's a currency in and monetary instrument report?

A. I don't know what that is.

Q. It's also known as a report of international transportation of currency or monetary instrument. It's a U.S. Treasury form, you fill it out if you fly internationally. Does that sound familiar?

A. If you do what?

Q. If you fly internationally it's a document you are provided with when you

M. Kalter

travel internationally, and it's specific to transporting sums of money in and out of the country?

A. I don't really fly internationally. As a matter of fact, I think the last time I was on a plane was about 20 years ago.

Q. Okay. That makes that easy.

As far as you know, Mr. Kalter, is there a quality assurance team at Fulton Commons?

A. I don't know, but I'm sure there is.

Q. Do you know what that team is called?

A. No.

Q. If I said QAPI, would that refresh your recollection?

A. Not at all.

Q. So is it fair to assume that you have not attended a QAPI meeting at Fulton Commons?

A. I guess that's fair.

Q. Do you know or have any knowledge

about who at Fulton Commons might serve on the QAPI?

A. No.

Q. And do you ever receive QAPI reports?

A. No, I didn't even know they existed.

Q. Do you ever receive quality assurance reports or quality improvement reports about Fulton Commons?

A. No.

Q. So more generally, and this is specific to Fulton Commons, describe for me your responsibilities at Fulton.

A. Owner.

Q. Expand on that for me, if you can?

A. There is no expansion.

Q. Let's take examples. Are you involved in managing the books at Fulton?

A. No.

Q. Do you have any involvement in purchasing?

A. No.

M. Kalter

Q. For Fulton Commons, the accounts payable for Fulton Commons?

A. No.

Q. Fulton Commons's payroll, do you have any involvement in payroll?

A. No.

Q. Do you manage at any staff at Fulton Commons?

A. No.

Q. Do you play any role in the hiring or firing of staff at Fulton Commons?

A. No.

Q. Could you potentially order downsizing of staff, and that means laying off staff at Fulton Commons?

A. I guess by law I could.

Q. Have you ever done that?

A. No.

Q. Could you approve increases to staffing at Fulton Commons?

A. I guess I could.

Q. Do you recall ever doing that?

A. Could be, I believe one time.

Q. Do you have a general sense of

M. Kalter

when that time might have been?

A. A lot of years ago.

Q. So then if that's something you are not as related to or involved in, who at Fulton Commons make makes those sort of downsizing staff positions?

A. You would have to ask the administrator.

Q. Do you know if Mr. Weiss would be involved in that at all?

A. No, he would not.

Q. No, he would not?

A. He would not be. Let me -- he is not authorized to be.

Q. Interesting. So expand on that for me.

A. I don't know what he -- if he ever did anything but I don't think so because he is not authorized to, and I am sure the administrator wouldn't listen to him.

Q. Okay. By not authorized, you mean there is a rule within the company that he can't make shows those sort of decisions

or something else?

A. The rule is that the administrator runs the home.

Q. Is that a rule specific to your group of homes, is that a rule you came up with?

A. I wouldn't know what other people do.

Q. But your understanding is Mr. Weiss would not have the authority to downsize staff or increase staff?

A. Not from me any way.

Q. From your understanding, that would be a decision taken by the administrator of the home?

A. Yes.

Q. Are you involved at all in Fulton Commons's infection control efforts?

A. No.

Q. Do you know if Fulton Commons has a compliance program?

A. I don't know.

Q. Is it safe to assume you were not involved in compliance program efforts, if

they exist?

A. Safe to say.

Q. Other than what we already discussed today, and by that I mean specifically receiving regular updates on census status, do you receive or request any other regular updates about status at Fulton Commons, more generally?

A. Balances.

Q. What do you mean by that?

A. Cash balances in the bank.

Q. Do you receive any updates on resident care at Fulton Commons?

A. No.

Q. By that I mean, --

A. Unless you called, unless you call, sometimes they send me a copy of the inspection reports.

Q. And are those inspection reports done by DOH or something else?

A. They are by DOH or whatever or by your office.

Q. Who send those reports to you?

A. If anybody would sent that to me,

M. Kalter

it would be Steven Weiss.

Q. So would I be accurate in understanding, that's more of an ad hoc reporting thing, correct, in the sense that you would receive a DOH report or Attorney General's report if and when created?

A. I may, yes, I may, no, I don't receive all of them.

Q. What about more regular consistent updates like resident care, that can be number of falls, or infections or updates residents status?

A. No.

Q. Do you receive updates on staffing?

A. No.

Q. And you mentioned cash balances, do you receive updates on revenue, and by that I mean Medicare and Medicaid billing?

A. No. I receive updates on Medicaid and Medicaid checks that are coming in as part of the cash balances.

Q. But not on specific efforts to bill Medicare of Medicaid?

A. No.

Q. Are you responsible in any way for ensuring that Fulton pays its rent?

A. Ultimately, I guess, yeah.

Q. What about more day-to-day in the sense, do you cut the rent check?

A. I don't cut the rent check, no.

Q. Who does cut the rent check?

A. I think it's done by transfer, Steve Weiss transfers the money.

Q. Do you know who that check is made out to?

A. It's not a check, it's a transfer.

Q. Or the transfer.

A. I would imagine it's made out to the realty company.

Q. Is that Fulton Commons Realty?

A. Should be.

Q. Do you know how much the transfer is for?

A. Not offhand, no.

Q. Do you know how often the transfer is made?

M. Kalter

A. Once a month.

Q. Has that changed at all over time?

A. I believe it changes every year.

Q. Does --

A. Or more often if HUD requires different amounts of payment for the mortgage.

Q. Okay. Okay. So it is a variable amount depending on circumstances.

As far as you know, does Fulton Commons have a single operating bank account or more than one bank account?

MR. YAFFE: Which entity are you talking about?

MR. SMITH: This is Fulton Commons Care Center.

MR. YAFFE: Okay.

A. I'm not sure if they have one or two.

Q. But they have at least one?

A. Yes.

Q. And whose names are on Fulton Commons Care Center's bank account or

M. Kalter

accounts?

A. What do you mean by names?

Fulton Commons.

Q. Are there any individuals listed?

A. As owners of the account?

Q. Sure.

A. No.

Q. Who has access to those accounts?

A. I do.

Q. Anyone else?

A. I don't believe so. It's possible that my wife is authorized signer just in case emergency purposes.

Q. Okay, but --

A. None of the other owners are authorized signers.

Q. Perfect. What banks are those bank accounts with?

A. I think it's with Signature bank.

Q. And I think you already answered this, but just for clarity, can anyone else write a check off the Fulton Commons Care Center bank account?

A. No.

M. Kalter

Q. Other than you?

A. No. Well, they can write the check but I sign it. They have to use my name to sign it.

Q. Is Steven Weiss authorized to write checks out of the account to sign for them?

A. No.

Q. From your understanding in the nursing home industry how is facility's rent determined?

A. Usually by negotiation.

Q. So when you are negotiating a rent, what kind of, and this I just mean hypothetically but we will make it specific to the nursing home industry, when the rent in a facility is being negotiated, what sort of factors would you look to to make the determination on how much that rent would be?

A. Based on how they -- how the nursing home is operating, how much money it's making, fair market value.

Q. Would you look at a number of

M. Kalter

beds, would that be relevant?

A. Usually, because that's a factor in the cost to the building.

Q. What about the size of the campus or physical plant?

A. Probably be a factor, too.

Q. And the location of the campus?

A. Also.

Q. Any other factors that would be relevant in that sort of negotiation that we haven't discussed?

A. I don't know.

Q. Were you involved in the creation or execution of Fulton Commons's current mortgage?

A. You mean with HUD?

Q. Well, sure. We can sort of dig in a bit deeper there, but whatever recollection you have of the creation of the mortgage, please, yeah, expand on that for me.

A. No, because I wasn't -- the mortgage would be from the landlord. I was not the landlord.

M. Kalter

Q. At the creation of Fulton Commons?

A. Right.

Q. At any point did you become landlord of Fulton Commons?

A. Yes. We already said that.

Q. Right, but you were not involved in the creation of the mortgage assigned to the Fulton Commons real property?

A. Well, when I bought the property I must have been involved in the transfer of the mortgage because HUD requires an official transfer of the mortgage.

Q. So it's accurate to understand that you, at one point, took on the mortgage for the Fulton Commons real property?

A. Fulton Commons Realty took it over.

Q. Were you involved in that transfer process?

A. I'm sure I was.

Q. Was anyone else?

A. No. Well, maybe my accountants.

Q. And this is the same firm we just

discussed?

A. Yes.

Q. Do you know the details of Fulton Commons's mortgage?

A. No.

Q. Do you know when it was created?

A. When, at the inception of the nursing home.

Q. And what year was that, if you recall?

A. I don't remember. It was about 2000, maybe.

Q. Do you remember how much the mortgage was initially?

A. No.

Q. Do you know how much is remaining?

A. No.

Q. Are you familiar with the terms of the mortgage?

A. Not really.

Q. And you mentioned HUD's involvement, does HUD own the mortgage or does somebody else own the mortgage?

M. Kalter

A. I think HUD doesn't own mortgages, they have third-party people or whatever.

Q. Does HUD provide mortgage insurance coverage?

A. I don't know.

Q. Am I correct in understanding that a different party, a third-party would be the actual holder of the mortgage?

A. I would imagine so.

Q. Do you know who that is?

A. No, I don't remember.

Q. Who signed for the mortgage?

A. I'm sure I did.

Q. Do you remember signing for it?

A. No.

Q. Do you handle the making of payments on the mortgage?

A. No, they're automatic.

Q. But would you be involved in arranging the automatic wire transfer or transfer?

A. No.

Q. Who does that?

M. Kalter

A. Steven Weiss.

Q. Has that always been the case?

A. I believe so.

Q. So from your experience in the industry, how does the amount of Fulton's rent compare to other Long Island facilities?

A. I really don't know. I wouldn't know.

Q. To drill down a bit further, how does Fulton Commons rent compare against your other facilities?

A. It's much higher.

Q. Expand on that for me.

A. It's just much higher.

Q. Higher by what metric?

A. I don't know the metric, exactly.

Q. Has it always been much higher than the sister facilities?

A. I believe so.

Q. What is your understanding of why Fulton's rent is much higher than its sister facilities?

A. Well, first of all, the other

M. Kalter

facilities don't have mortgages. And second of all, it's a much more expensive facility. And it's a much bigger facility.

MR. SMITH: I can break here. This is a good time, actually. Does that work for everybody to take a quick restroom break?

THE WITNESS: Well, how much longer are we going? If we're going much longer, then maybe we should break for lunch.

MR. SMITH: I think we are making good progress, but I do think this is probably going to be an all day event, so if everybody is ready for lunch, that's fine with me, if that works for the rest of the group here.

THE WITNESS: Okay, I would like to break for lunch, if we can.

MR. SMITH: Sure. Well, how much time is enough for everybody, would a half hour, I don't want to keep us too long, so would a half hour be workable or is that too little time?

M. Kalter

THE WITNESS: I would prefer 45 minutes.

MR. YAFFE: I think that's better.

MR. SMITH: So let's just say we will come back at 12:45. Does that work for everybody?

MR. YAFFE: That's fine with me.

THE WITNESS: Fine with me.

MR. SMITH: So Mr. Kalter, we are going to mute you, but you can also turn off your incoming video if you like that way we can't see in your room. The one thing I would say is don't sign out of this meeting, so you don't have to closeout, you can just turn off your video and we will mute your audio, and if that works for everybody, we will see everybody back at 12:45.

MR. YAFFE: Just so we're clear, so you just press the stop video button at the bottom of the screen.

MR. SMITH: Yes. We will mute

M. Kalter

you. You can make sure you are muted by looking for the little red microphone, and then if you want to stop the video, just make sure you don't leave the meeting which is that red X circle.

MR. YAFFE: Okay.

MR. SMITH: Thanks so much, we will see everybody at 12:45.

THE WITNESS: Thank you.

MR. SMITH: Thank you.

(A recess was taken.)

MR. SMITH: So after taking a short lunch break we are back on the record. We have done role call and everybody that was present at the beginning of the session is here again now.

Q. So Mr. Kalter, I want to get back into something we were talking about when we broke for lunch.

A. Okay. I just have one comment that I was thinking about while I was at lunch.

Q. Sure.

A. I'm not sure exactly where these questions came in about other companies that I have or whatever, but somehow or other, two particular companies slipped my mind. One company is called Professional Healthcare Associates, which I believe I am the owner, and the other company is called MK Healthcare Associates.

Q. Okay. And what does the first company do, as far as you understand?

A. I'm not really sure. I'm not really sure. If I remember correctly they were set up as just a mirror image of me for tax purposes of some kind, but I'm not really sure what they do.

Q. And are you an owner or a registered -- how do you appear in that entity's corporate structure?

A. I don't know. I think they're LLCs but I am pretty sure that I am the owner.

Q. Do you know if there's any employees of the Professional Healthcare

company?

A. There are no employees.

Q. And you also mentioned MK Healthcare?

A. Right, right.

Q. Same question, are there employees of MK Healthcare?

A. No, no. And there's also FK Healthcare, which I believe is owned by my wife but I may own a couple of percent but I don't really know, but it's also the same type of company.

Q. When you say same type of company, MK Healthcare, FK Healthcare, what do they do?

A. They don't do anything, they were just something set up for tax purposes, I don't really know.

Q. So would it be correct to say that all three entities that we discussed, Professional Healthcare, MK Healthcare and FK Healthcare are all of the same, they don't have employees, they don't provide services but they exist?

M. Kalter

A. Right. Correct.

Q. Any other entities aside from those three?

A. Right now I don't remember any, but you know, subject to change if I do remember, but I don't think so.

Q. That's fine, and that's exactly what we want you to do is if you think of something differently or remember something differently, you can always go back and revisit that, okay.

So we will continue on with the questions that we had just started when we went on our lunch break, which is about Fulton's rents. And I don't think we got into this question, and I wanted to ask you how Fulton's rent compared against the other facilities in your group?

A. I think we did answer that question quite extensively and we said that it was higher.

Q. And did you provide your sense of why that was, why Fulton's rent was higher than the sister facilities?

M. Kalter

A. Yeah, we went through a whole bunch of reasons, size of the facility, size of the campus, bed size, age of the facility, so on and so forth.

Q. So I'd like to quickly walk through some data, and this is data that's publically available on the Department of Health's website and it is data specific to Fulton Commons rent, and correct me if this doesn't sound correct to you, but from this publically available data, Fulton Commons rents in 2018 was around eight million. Does that sound right now?

A. Could be, I don't know.

Q. And we discussed earlier Fulton Commons bed size is about 280 beds; is that correct?

A. Yes.

Q. So in that same year 2018 Bridgeview paid around 1.3 million in rents; is that correct?

A. Yes.

Q. And Bridgeview has about 200 beds, does that sound correct?

A. Yes.

Q. And again, same year, 2018, the facility in your group Midway paid around 750,000 in rent, does that sound about right?

A. I'm not sure, but it could be.

Q. And Midway has about 200 beds; is that correct?

A. Right.

Q. In that same year, again, 2018, Mayfair paid 350,000 in rent, does that sound about right?

A. Could be.

Q. And Mayfair, like Midway has about 200 beds; is that correct?

A. Right.

Q. So when we discussed the factors that you just brought up about how rent varies, do those factors to you explain the difference between eight million dollars in rent for Fulton Commons, and I think, what, $350,000 in rent for Mayfair, can that explain that range?

A. There was one other factor that

M. Kalter

you were not mentioning that we discussed and that's the mortgage.

Q. And explain to me as a layperson how that how the mortgage would factor into the rent determination?

A. The mortgage in Fulton is more than half the rent.

Q. And by that you mean paying the principle or interest of the mortgage?

A. Principal, interest, whatever there is, debt service.

Q. So debt service explains half of Fulton's rent?

A. At least half.

Q. And then what is the other half governing covering?

A. The other half just covers fair market value.

Q. And how is fair market value determined?

A. It's just determined what we think the fair market value is, what the landlord and the tenant decide is fair market value.

M. Kalter

Q. Is that a determination that's arrived at in negotiations between the landlord and the tenant commonly?

A. Usually.

Q. What factors effect "fair market value?"

A. What the fair market value is on the fair market.

Q. So just in this scenario, you have done this before, obviously, in your experience where you are negotiating a rent, what factors do you look at when you are -- excuse me, I will withdraw that whole question. So in your experience you have negotiated rent before, correct?

A. Right.

Q. When you are negotiating rent and you are specifically looking at fair market value, what factor do you look at to determine fair market value?

A. Everything that we discussed before, the bed size, campus size, quality of the home, age of the home, profitability of the home, so on and so forth.

M. Kalter

Q. Was it your understanding or is it your understanding as one of Mayfair's owners that that rent is low because there is no mortgage and fair market value considerations?

A. Mayfair's rent, I believe is much higher now, and those are the considerations. Mayfair has been, what's the right word to describe it, is pretty much a losing facility for years.

Q. And what do you mean by losing facility?

A. It's been, you know, its expenses are way over its revenues. And it can't afford any rent.

Q. Does that effect fair market value?

A. Yes.

Q. So the profitability or potential profitability of a facility would be a factor that would be relevant in determination fair market value?

A. Definitely.

Q. So I want to look at another

M. Kalter

metric and that's facility revenue. And facility revenue is a metric most commonly provided in the context of a cost report. Does that sound about right, from your experience?

A. I really don't know I am not familiar with revenue.

Q. Do you keep track of your facilities revenues?

A. No, I don't.

Q. So we discussed earlier about the concept of you following and keeping up with cash flows at your facilities, correct?

A. Right.

Q. Would it be fair to understand that you don't pursue that just beyond checking what's in the bank account, you don't pursue it to what a facility's revenue is at any given time?

A. No, I don't. No, I don't check. The purpose of checking the cash flow is to make sure we have enough money to pay the payroll.

Q. Do you ever receive reports on

M. Kalter

revenue status?

A. No.

Q. Who, at Fulton Commons would follow revenue or keep up with revenue issues?

A. Nobody.

Q. There is no one at Fulton Commons who is tasked with making sure revenue is consistent stable or if it's fluctuating?

A. No.

Q. So using this metric revenue which is often a metric that appears in the cost reports, I want to show you what will be marked as State's Exhibit 4, and this is a document, I think you will be familiar with. This is the full cost report for Mayfair in 2018. This is a 123-page document.

A. The which cost report?

Q. The 2018 cost report for Mayfair Care Center.

A. Okay.

(2018 Cost Report for Mayfair Care Center was marked as State's

Exhibit 4.)

Q. So you will see the 123-page document, so this is the entire cost report for Mayfair for 2018, and I believe for clarity of the record, this would be a document prepared for you, by your accountant firm, correct?

A. Probably, yeah.

Q. Does this document appear familiar just from looking at what we are showing here on the screen?

A. Not at all.

Q. We can maybe scroll down a bit, and this first page is blank but just to get some context, so we see there towards the top of the page it looks like it was prepared by Joseph Martello. Is that one of your accountants?

A. Yes.

Q. And the firm there is noted as HMM?

A. Right.

Q. Do you recall did Joseph Martello discuss this 2018 cost report for Mayfair

with you at any point in time?

A. No, he didn't.

Q. So we are going to go down to page 25 of this document. So if I'm correct and this is towards the bottom of the page here, page 25, the document indicates Mayfair's 2018 revenue roughly just over 19 million dollars, does that look correct?

A. I wouldn't know if it's correct, but that's what it says.

Q. And if we recall Mayfair's rent that same year was $350,000, correct?

A. Right.

Q. So if we do the math on that, we are looking at a ratio of rent to revenue about two percent, does that sound roughly correct --

A. I don't know. I don't really know.

Q. Accepting the two percent knowledge of rent to ratio, does that seem something consistent to the industry to you or something else?

A. I have no idea.

M. Kalter

Q. So let's go now to what will be marked as State's Exhibit 5, and this is another 123-page document. This is the entire Fulton Commons Care Center report for 2018?

(2018 Cost Report for Fulton Commons Care Center was marked as State's Exhibit 5.)

Q. You can see in the upper left-hand corner, it identifies the Center and the time period. Again, do you have any recollection of working on or being advised about this cost report?

A. No.

MR. SMITH: Anne, let's scroll down just a bit to page two or maybe three. Sorry.

Q. But we can see, again, here that it appears to have been prepared by Joseph Martello from HMM?

A. Right.

Q. So let's jump down to page 25 of this document, and again, towards the bottom of that page we see Fulton Common's total

M. Kalter

operating revenue for 2018 as over 38 million, almost 39 million. Does that look direct?

A. That's what it says.

Q. And if we recall, Fulton Commons rent for that same year 2018 was around eight million, correct?

A. Right. That's what you said.

Q. So if we do the math on that, again, as we just did with Mayfair, that's a rent to revenue ratio of about 22 percent. How can we explain this discrepancy of Fulton's rent to revenue ratio of 22 percent and Mayfair's rent to ration revenue of two percent. Is that a discrepancy that can be explained by factors?

A. I believe we already explained it straight from the beginning, I don't think there is a relationship between rent to revenue.

Q. But if I recall, and correct me if I'm wrong, you mentioned that Mayfair is "a money losing facility" correct?

A. That's a ratio between rent and

profitability and losses, not revenue.

Q. And correct me, again, if I'm wrong with when we discuss fair market value, revenue is a relevant consideration when assessing fair market value, correct?

A. No, it's not, I said profitability.

Q. Would profitability be a component of a revenue?

A. No.

Q. So the facility's revenue is high as compared to its costs, that would not have a factor or an effect on --

A. No.

Q. -- profitability?

A. The facility could have a high revenue and high expenses, and it wouldn't be worth anything.

Q. So if Mayfair's revenue to rent ratio was two percent, that would seem to indicate, at least on one level, that there's a decent amount of profitability there, correct?

A. No, no. Not at all. It would

M. Kalter

indicate that it was running tremendous losses and had no money to pay rent.

You can't get, you know, the blood out of stone if there's no money, there's no rent.

Q. And if Mayfair's rent was such a small percentage of its revenue comparatively, that, to you, does not indicate that there was maybe more cushion in the Mayfair books?

A. More what?

Q. There would have been more cushion in the Mayfair books?

A. Not at all. I mean, we keep going back to the same thing. It doesn't indicate what the expenses of Mayfair are. You showed me that the Mayfair's revenue was 18 million dollars or 19, what did you show me?

Q. We can actually go back. That's page 25 of Exhibit 5, I believe. Exhibit 4. Sorry. I think their revenue was 19 million, almost 20 million.

A. For all I know, the expenses

M. Kalter

could have been 23 million.

Q. Was that your understanding of Mayfair's situation at the time?

A. Yes.

Q. Let's go back.

MR. YAFFE: Was what his understanding, I mean, he threw out a number, he said, for all I know. You're not binding him to that "for all I know number," right?

MR. SMITH: Correct. We are not binding him to the number. I guess what I'm looking for is, if it was Mr. Kalter's understanding that Mayfair was generating even at a loss.

THE WITNESS: Right.

MR. YAFFE: Okay.

Q. Was it your understanding that in 2018 Mayfair could have been or was operating at a loss?

A. Yes. Mayfair was the facility that was constantly borrowing money from other facilities.

Q. What's your understanding why

Mayfair was borrowing money from other facilities?

A. It was just a hard facility, it's a very old building, the physical plant is very old. It has, it's one of the only facilities that I have that have loads of three and four bed rooms and had a lot of vacancies prior to Covid, and it was just a tough facility.

Q. And was Fulton a different scenario?

A. Yes.

Q. Explain that for me, how Fulton compared to Mayfair.

A. We explained that already, Fulton was operating at approximately 96 percent prior to Covid.

Q. You mean, when you say 96 percent, you are referring to census?

A. Occupancy.

Q. Does that necessarily indicate profitability?

A. Well, it's definitely one of the factors of profitability. The reimbursement

on the rent from Medicaid is based on the number of patients, you have vacancies, you don't get reimbursed for the rent.

Q. And just so I understand, one of the factors that I think we discussed for fair market value was the presence or absence of a mortgage, correct?

A. Well, whatever it is the mortgage has to be added.

Q. So a facility not carrying a mortgage would by necessity increase its profitability potential at least, right?

A. No, because they wouldn't get reimbursed for the mortgage from the Department of Health.

Q. Explain that for me. That's not something I know.

A. Well, Fulton Commons mortgage of $4 million is reimbursed by the Department of Health so the Department of Health gives them that money. Mayfair has no mortgage so they don't get that money from the Department of Health.

Q. So would I then be correct in

M. Kalter

understanding that carrying a mortgage could actually increase your revenue flow?

A. Yeah, it could if it's approved by the Department of Health, yes, it would increase your revenue flow.

Q. And explain that a bit further to me. Is the Department of Health actually cutting a check to the facility for the amount of its mortgage?

A. Well, they cut it every week in the week in the rent, the check, yeah.

Q. And what does that looks like, is that a check that's covering the rental payment of the facility to its landlord?

A. No, it's included in your rate.

Q. Just for perfect clarity, Mr. Kalter, the mortgage in light of this DOH program would not necessarily reduce profitability at its facility?

A. Correct.

Q. But at the same time not carrying a mortgage, at least based on our discussion earlier, would also be a factor in considering fair market value, correct?

M. Kalter

A. Not really because the mortgage is a non factor because it's reimbursed. If you have an approved mortgage it's reimbursed, so it would be like net out.

Q. So Fulton Commons carrying a relatively large mortgage, at least by comparison to its sister facilities, would not necessarily reduce its fair market value?

A. No, it wouldn't.

Q. Were you involved in negotiating or setting the terms of Fulton's lease?

A. Yes.

Q. Was anyone else involved in the setting of the terms or negotiating the lease?

A. No.

Q. So would it be accurate to say that you negotiated the terms of the lease with yourself?

A. Correct.

Q. Is there a written lease?

A. No.

Q. So there is not a physical

manifestation of the lease agreement?

A. Not that I know of.

Q. So we've discussed Fulton Commons Realty a bit before, I want to kind of spend a little more time discussing the entity itself. Describe for me what services Fulton Commons's Realty provides to Fulton Commons Care Center?

A. They provide them with a building.

Q. Beyond the actual physical space, physical plant, are there any sort of ancillary services that Fulton Commons Realty provides?

A. No.

Q. Would it be fair to describe Fulton Commons Realty as sort of a passive corporate entity that does not provide active or affirmative services to Fulton Commons Care Center?

A. That's correct, it's a triple net lease.

Q. So you anticipated one of my questions, describe for me what a triple net

lease is.

A. Triple net lease, I mean, I don't know the exact term, but it means that the tenant pays all the expenses.

Q. So when you say all expenses, what does that mean?

A. It means all the expenses.

Q. Would that include utilities?

A. I imagine so.

Q. Would that include mortgage insurance?

A. I don't know. Mortgage insurance is part of the rent, I think.

Q. And, again, who owns Fulton Commons Realty?

A. I own it and Mr. Fogel, and I'm not sure if our wives own it or not. They probably do.

Q. So would you know enough to give me the ownership breakdown of that entity?

A. Well, if I own it and Mr. Fogel owns it, then it would be 60/40. If our wives own it then it would be 50 for me, 10 for my wife, 30 for Mr. Fogel, and 10 for

his wife.

Q. Does Fulton Commons Realty have any employees?

A. No.

Q. What about the physical office space, does Fulton Commons Realty maintain any physical office space anywhere?

A. No.

Q. Does anyone aside from yourself participant in the running of Fulton Commons Realty?

A. No.

Q. Do you know if Fulton Commons Realty utilizes the service of any management or consulting companies?

A. It doesn't.

Q. Has it?

A. No.

Q. Were you aware that in 2018 Fulton Commons Realty paid in excess of three million dollar for consulting?

A. Yup.

Q. Let's take a look to discuss that in more detail. Let's take a look at, we

M. Kalter

will go back to State's Exhibit 5, and this is the Fulton Commons 2018 cost report. And we are going to jump to page 58, and again, this is a 123-page document, so this is page 58 of 123.

And as you can tell, Mr. Kalter, this is part three of the report that's "related company financial data payments to related companies" this particular company is identified as Fulton Commons Realty located at 60 Merrick Avenue in East Meadow. Does this all look correct to you in as far as identifying the company itself?

A. Yeah.

Q. So let's jump down now to page 71. Towards the bottom of the page, line 35 so you can see line 35 which is titled "Management Consultant" indicates that 3.2 million dollars was paid to a management consultant?

A. Right.

Q. Fulton Commons Realty in 2018?

A. Right.

Q. Who were these fees paid to?

A. Me.

Q. Who cut the checks?

A. It was probably a wire transfer.

Q. And were those fees paid out of a bank account?

A. I am sure they were.

Q. Would that be Fulton Commons Realty's bank account?

A. Yes, probably.

Q. And where would they have gone to?

A. Probably Professional Healthcare.

Q. Okay. And before earlier you said when I asked who the fees were paid to, you said me, correct?

A. Well, I am Professional Healthcare. Like I said, Professional Healthcare was set up for tax purposes.

Q. So if you recall, that's great, and correct me if I'm wrong, would you understand that there this transfer of 3.2 million dollars would have been from Fulton Commons Realty to Professional Healthcare?

A. That's what I think, yeah.

M. Kalter

Q. Is that probably what the wire would have reflected?

A. I'm not sure if it was one wire, it could have been several.

Q. But would it be your understanding that those wires would have been originating out of Fulton Commons Realty and depositing into Professional Healthcare?

A. That's what I would understand.

Q. And for what services were these payments made?

A. For the work that I do.

Q. And this is the work that you do on behalf of what entity?

A. Fulton Commons Realty.

Q. Is it compensation for any other work done for any other entity?

A. Not that I know of.

Q. How would you describe the work you do for Fulton Commons Realty?

A. Well, I acquired the whole place.

Q. And by the whole place, what do

you mean?

A. The building, the facility, the mortgage I got.

Q. Sorry, I think I might have dropped you for a second. Am I correct in understanding that this would be compensation for your acquisition of the real property?

A. I would imagine so, part of the acquisition part for just having it.

Q. Aside from compensation for the acquisition of the real property, would these payments be compensating you for any other services rendered to Fulton Commons Realty?

A. I don't really know, whatever needs to be done at Fulton Commons Realty, that's what I'm there for.

Q. How would you describe your day-to-day work in Fulton Commons Realty?

A. There is no day-to-day work, it's only when things come up.

Q. And what is that, like, what is when things come up?

M. Kalter

A. Like, I don't know like several years ago probably around that time we re negotiated the mortgage with HUD reducing -- reducing the interest rate and saving the State $350,000 a year, I believe.

Q. Are there other transactions like that along those same lines?

A. I don't remember.

Q. Was there a contract between Professional Healthcare and Fulton Commons Realty for these services?

A. No.

Q. So there is no physical manifestation of an agreement between Fulton Commons Realty and Professional Healthcare?

A. Not that I know of.

Q. So let's look next at what will be marked State's Exhibit 6, and this is the 2019 Fulton Commons cost report, so the next year's cost report. And again, this is a 123-page document. This is the entire cost report for Fulton Commons for 2019.

(2018 Fulton Commons Cost Report was marked as State's Exhibit 6.)

M. Kalter

Q. We are going to jump to page 58 of that document. And as with the prior version, the 2018 cost report, you see here this is part three "Related company financial data payments to related companies" and again, we see Fulton Commons Realty, 60 Merrick Avenue. Does that all look correct to you?

A. Yup.

Q. So we are going to jump down to page 71 of this document. At the bottom of the page we see line 35, which also bears the designation management consultants and we see that in 2019 Fulton Commons Realty paid a management consultant over 3.4 million dollars. Does that look accurate?

A. That's what it says.

Q. So this is an increase of nearly 200,000 from the prior year, correct?

A. Something like that.

Q. And would it be fair to understand that these payments are similar to the payments we just discussed from the prior year?

A. Yes.

Q. Any variation or the exact same?

A. Not that I know of.

Q. So as far as you understand, the 3.428 million dollars would have gone to Professional Healthcare?

A. Probably. Maybe it went to MK Healthcare also, I really don't know.

Q. Just for clarity of the record, if these payments were going to the three companies that we discussed earlier, that's Professional Healthcare, MK Healthcare, FK Healthcare, would they have gone to any of other entities or just those three?

A. I don't think so.

Q. Sorry, I gave you a --

A. I don't think so.

Q. That's my fault, I gave you a compound question because I asked you two things. Would that have gone to any other company other than the three we discussed?

A. I don't believe so.

Q. And again, this next year 2019 at this point was there a contract between

M. Kalter

Fulton Commons Realty and any of the three entities that we just discussed?

A. No, not that I know of.

Q. So staying within the same exhibit, are you aware if Fulton Commons Realty carried a negative capital balance?

A. No, I'm not aware.

Q. Let's jump to page 67 of this page document. Scroll down just a bit. Maybe you can explain this for me. It may be my own ignorance but in the middle of the page, beginning balance appears to be negative 3.9 million, at the bottom of the page balance period is negative 5.8 million, is that indicative of a negative balance being carried by the entity or something else?

A. I don't know, but maybe. I have no idea what that means.

Q. If we are understanding it as a negative balance, why would Fulton Commons Realty carry such a substantial negative balance?

A. I'm not sure what the

M. Kalter

significance is of that.

Q. Would the accountants that filled out this report understand what these numbers mean?

A. I understand what these numbers mean, I'm saying I am not sure what the significance is of carrying a negative balance.

Q. So would I be correct in understanding that this does indicate a negative balance, though?

A. It looks that way, but again, I don't know why there would be a problem, if there would be a problem, with a negative balance.

Q. So moving on what can --

MR. YAFFE: What page is this of this hundred something, what page of the document?

MR. SMITH: Sure. This is page 67 of 123, and this is the 2019 Fulton Commons Cost Report.

THE WITNESS: By the way, this negative balance that you are showing

M. Kalter

here has nothing to do with the consultant fee, there is a withdrawal of capital here and that's why it increased from the beginning to the end, which is not the same thing as the consultant fee.

Q. Right, I was hoping we could explain or figure out why the entity would carry a pretty substantial negative balance just in any fashion, but am I correct in understanding your testimony is that you're not sure from a business perspective you're not sure why that would be the case?

A. I'm not sure from a business perspective and it possibly has something to do with depreciation of the building, which is not a cash factor.

Q. So just for my own clarity, that would be reflecting the depreciation of the real property, not an actual deficit in a line of credit or a bank account or something along those lines?

A. Well, obviously, you couldn't take out the money if there was no money

there.

Q. So I want to discuss Commons Realty bank account. Could funds be withdrawn from Fulton Commons Realty's bank account?

A. Yeah.

Q. Do you know what bank Fulton Commons Realty banks request?

A. Signature bank.

Q. And who are or what name is on that account?

A. Same as all the other accounts, I'm on there and possibly my wife for emergency purposes.

Q. Would the account also carry the name Fulton Commons Realty?

A. Yes.

Q. So it would be the corporate entity's name and then yours and potentially your wife's?

A. As signatories.

Q. Okay, perfect. I think we answered that question, but who controls that account?

A. I do.

Q. So we are going to stay here with Exhibit 6 but we are going to move to page 68, the next page, and I want to look at line 12 column E, and that column is titled "Withdrawals or dividend distributions." Can you tell how much money was withdrawn from Fulton Commons Realty's account in 2019 according to this document?

A. A million eight-fifty-seven. The same number as was on the other page.

Q. So explain that for me if you can.

A. It's a -- it's a distribution.

Q. And a distribution to whom, if you can tell?

A. If it's a distribution, it would be to all the partners.

Q. It would be to the owners of what entity, Fulton Commons Realty?

A. Fulton Commons Realty.

Q. Would it be a distribution to anyone else?

A. Not that I know of.

M. Kalter

Q. So that distribution, that 1.8 million would be distributed to the owners of the Fulton Commons Realty entity?

A. Correct.

Q. And who would authorize those distributions?

A. I would.

Q. Again, what kind of decision making process would lead to a distribution decision?

A. No decision process, just I would distribute.

Q. Would all partners receive the same amount or an amount tied to their percentage ownership or some other consideration?

A. Exact amount tied to percentage ownership.

Q. Do you know if money was ever taken out of the Fulton Commons Realty bank account and loaned to anyone?

A. It's possible.

Q. Do you have any specific memory of that sort of event happening, a loan to

someone out of the Fulton Commons Realty bank account?

A. I don't, but it's possible.

Q. Who would authorize such a loan?

A. I would.

Q. But again, you don't have recollection of ever doing that specifically?

A. I said it's possible, I don't know. Could be.

Q. But I guess what I'm getting to is, do you have any recollection of a specific event where you authorized a loan?

A. Not offhand, but if there would have been a loan, it would have been only to me.

Q. So the loan would not go to anyone that you know aside from yourself?

A. No, nobody.

Q. In the event of a loan authorized out of the Fulton Commons Realty bank account, would that go to you or to you via Professional Healthcare or some other scenario?

M. Kalter

A. I really don't know. Either one of those two, either to me directly or to Professional Healthcare.

Q. So jumping back to State's Exhibit 5.

A. That would probably be indicated on the RHCF if there was such a loan.

Q. Would it indicate to who the loan was given?

A. I'm sure it would, it would probably indicate to partners.

Q. So let's jump back to Exhibit 5, and this is the Fulton Commons 2018 cost report, so the prior year cost report, and we are going to go to page 112 of this document, and I want to scroll down to line 13. And on 13, we can see the New Bridgeview; is that correct?

A. Yes.

Q. And it looks like in 2018 $241,000 were paid as a fee to New Bridgeview; is that correct?

A. That's what it says.

Q. Do you have a recollection or any

M. Kalter

knowledge as to what this fee was for or about?

A. I don't have recollection, but I could probably say exactly what it was about.

Q. Okay.

A. You want me to say it?

Q. Yeah, sure, go ahead, absolutely.

A. Oh, okay. Bidgeview's, the accounting, I mean the bookkeeping offices for all the facilities are in Bridgeview and paid out of Bridgeview. Salary, everything else. And the accountant apportioned that all those costs of the bookkeeping office to all the facilities that they service, which is my facility, in order to comply with Medicaid regulations.

Q. So this would be, essentially, operating costs reimbursed to Bridgeview from Fulton Commons?

A. Correct to New Bridgeview.

Q. New Bridgeview. Thank you.

We are going to jump back to Exhibit 6. This is the 2019 cost report for

M. Kalter

Fulton Commons, and we will go to page 112 of this document, and we will just look specifically at line 11, and we see the New Bridgeview Co., and a fee paid to New Bridgeview of $271,000. Would this be the same idea, the same reimbursement for services?

A. I would imagine so.

Q. Do you know if Fulton Commons Realty ever re negotiated its mortgage?

A. I believe I answered that.

MR. YAFFE: Asked and answered.

A. I said that before that it re negotiated a mortgage saving the Health Department a few hundred thousand dollars.

Q. Do you recall when that was?

A. No.

Q. And correct me if I'm wrong, I think you mentioned that the mortgage was refinanced, correct?

A. That's the same thing, re financed and re negotiated.

Q. Was that refinancing backed by a lender?

A. It was a HUD, same thing.

Q. And same idea, was it HUD via a third-party or just a direct?

A. Yeah, same third-party as existed before.

Q. And we mentioned a few details about Fulton's lease but I have a few more questions for you about that. Do you know if Fulton's lease has an escalator clause?

A. I don't believe there is, we mentioned that there is no official lease.

Q. The agreement between Fulton Commons and Fulton Commons Realty, do you know if that agreement whether verbal or written or otherwise includes an escalator clause?

A. I believe it does.

Q. Do you know what the terms of that clause are?

A. Yeah, evaluate new fair market value.

Q. And that's including the whole analysis of factors that we have been discussing today, correct?

M. Kalter

A. Correct.

Q. In this same vain, does Fulton's rent increase year every year?

A. That's the escalator clause.

Q. Is that tied to a set increase or is that just a thing that's determined by variables in the market?

A. Variables in the market.

Q. And I believe you mentioned before that Fulton Commons does pay for its utilities, correct?

A. Yes, they do.

Q. Do they also pay for their property taxes?

A. I believe they do.

Q. And just for clarity of the record, the mortgage maintenance costs, does Fulton Commons pay for those or Fulton Commons Realty or something else?

A. I don't know what mortgage maintenance costs are.

Q. What about more mortgage insurance?

A. You asked me that already, I said

M. Kalter

I don't know.

Q. Do you know if Fulton Commons Realty has ever taken any out any other loans related to Fulton Commons Care Center?

A. Fulton Commons Realty is not allowed to take any out any loans because they have a HUD mortgage, it's against the law.

Q. And that's loans to any other corporate entity, correct?

A. Any entity, they are not allowed to take out any loans.

Q. Do you know if Fulton Commons Realty has ever cut checks to any members of Fulton's ownership out of any of Fulton Commons bank accounts?

A. What's the question?

Q. I can rephrase that.

MR. YAFFE: Yeah, be more precise when you're asking, don't use a shorthand, if I may don't use a shorthand Fulton Commons when you are talking about Realty and the nursing home because then it creates a muddle,

M. Kalter

give the full name.

Q. Mr. Kalter, if you're ever confused about the entity I am referring to, just let me know because I know, obviously, these entities also share most of the same name. So yeah, to revisit that question, have checks or would checks ever be cut out of a Fulton Commons Care Center bank account to any members of Fulton Commons Care Center's ownership?

A. Only if they were the same owners that owned Fulton Commons Care Center.

Q. But a check could be cut out of the Fulton Commons Care Center bank account to a Fulton Commons Care Center owner?

A. To a Fulton Commons Care Center owner, yes, if there would be a distribution.

Q. What about in any other context?

A. If they would ever pay a salary.

Q. And aside from a distribution and a salary, could a check ever be cut to an owner from a Fulton Commons Care bank account?

M. Kalter

A. I don't believe so.

Q. Has a check ever been cut to you out of a Fulton Commons Care Center bank account?

A. I don't know, I don't remember.

Q. Are funds held in any of Fulton Commons Care bank account ever disbursed or withdrawn as loans?

A. I don't know. It's possible.

Q. Okay.

A. I think you asked me that already. I think it's possible.

Q. Well, I don't want to mischaracterize my questions or your testimony, so we will stick with this line but there's, obviously, a few entities that we are dealing with so right now we are drilling down on Fulton Commons Care Center and its bank accounts.

A. Right.

Q. Has a loan to anyone ever been disbursed out of one of those bank accounts?

A. It's possible. If it would have been disbursed, it probably would have been

M. Kalter

disbursed to me and if it was disbursed to me, it would be indicated on this RHCF.

Q. Do you have any specific recollection of any disbursements or loan like we're discussing here being given out?

A. No, I don't have a recollection.

Q. And what is the New Fulton Commons company?

A. The New Fulton Commons company is basically a company that provides the staffing for Fulton Commons, and also does the purchasing for Fulton Commons.

Q. And does it have employees?

A. They have all the employees.

Q. Okay.

A. Fulton Commons Care Center does not have employees.

Q. So would I be correct in understanding that the New Fulton Commons company employee based would be comprised of both clinical staff and office staff?

A. Office staff, maintenance staff, cleaning staff, kitchen staff, so on and so forth. The administrator works for New

Fulton Commons.

Q. Does Mr. Weiss?

A. He works for New Bridgeview.

Q. Does New Fulton Commons company have physical office space?

A. No, not really.

Q. Do you know when it was created?

A. No, I don't.

Q. Who is the entity registered to?

A. What do you mean by registered to?

Q. So it's a corporate entity, right, so it would be have to be registered as a corporate entity. Do you know whose name appears on its registration?

A. I don't believe it's not a corporation, I believe it's an LLC.

Q. Do you know who was involved in creating the LLC?

A. I was involved in creating the LLC.

Q. Do you ever cut checks to New Fulton Commons company on behalf of Fulton Commons Care Center?

M. Kalter

A. I don't do it, but they're done all the time.

Q. And who would do that?

A. Steven Weiss.

Q. And who or for what services would he be cutting checks to New Fulton Commons company?

A. For all the services we mentioned before, for the payroll, for the utilities, for the purchasing, so on and so forth.

Q. And just for my own understanding, because this exhibit is still up, we look at the New Bridgeview receiving compensation in two consecutive years for administrative services, operational services, is that the same idea here with New Fulton Commons company?

A. No.

Q. How are they different?

A. New Fulton Commons only does business for Fulton Commons. New Bridgeview basically does the same like New Fulton does, the bulk of its business for Bridgeview Nursing Home but they also have

M. Kalter

one portion which is the bookkeeping office that is shared by all facilities.

Q. So the New Bridgeview does bookkeeping for all the facilities in your group?

A. Yes.

Q. And that's what the sum of money we are looking here on the cost report that that's reflecting those compensation for services?

A. Correct, as we said.

Q. Do you know how much Fulton Commons paid the New Fulton Commons company in 2020?

A. I have no idea.

Q. And again, irrespective of the number, whatever payments were paid by Fulton Commons Care Center to Fulton Commons would be for salary; is that correct?

A. No.

Q. What else would it cover?

A. It would cover real estate taxes, not real estate taxes -- yeah, it would cover real estate taxes, it would cover

M. Kalter

utilities, it would cover purchases, it would cover whatever expenses they had, they did. Nursing home, whatever expenses the nursing home needed, the maintenance, repairs.

Q. So then correct me if I'm wrong, Fulton Commons Care Center would be reimbursing New Fulton Commons for utilities and those sorts of operational costs?

A. For all expenses that Fulton Commons Care Center needed they would go through New Fulton, and New Fulton Commons Care Center would reimburse them, and they would give them a little profit too also, I don't know, a few hundred dollars a year from Fulton.

Q. And that would be sent to New Fulton Commons, correct?

A. Right.

Q. Those profits?

A. Right.

Q. How is that arrived at, the arrangement to split profits in Fulton Commons, is that consistent across all

M. Kalter

facilities in your group?

A. It's not splitting profits, it's a few hundred dollars.

Q. So we discussed Fulton Commons Management a bit earlier in it the day. Do each of Fulton's sister companies or the companies within your group, the facilities within your group have similar associated management companies?

A. Yes.

Q. Is that true for all homes in the group?

A. All of my homes in the group, yeah.

Q. Are any of the management companies associated with their other homes in a similar situation to New Fulton Commons, excuse me, are any of the managing companies associated with your sister homes in a similar position similar to Fulton Commons Management company?

A. What do you money by a similar position?

Q. By that I mean, I think you

M. Kalter

stated earlier today that Fulton Commons Management company doesn't provide services to Fulton Commons; is that correct?

A. Yes.

Q. Are the other associated management companies in your group of homes similarly situated?

A. Yes.

Q. Has that always been the case?

A. No.

Q. What changed?

A. They just, we just stopped using them.

Q. And when did that change?

A. I don't remember.

Q. Was it around the same time for all homes or did it vary?

A. I don't remember.

Q. So I want to direct your attention to what's going to be marked as State's Exhibit 7, and so this is a series of -- this is a five-page series of documents. We can just slowly scroll through so you can see all five, that won't

M. Kalter

take long.

(Organizational Charts were marked as State's Exhibit 7.)

Q. Mr. Kalter, do those appear to be organizational charts for New Bridgeview Nursing Home, Midway Nursing Home and Fulton Commons?

A. I have no idea what these are.

Q. So you have never seen these documents before?

A. No, I haven't.

Q. I want to note quickly for the record these documents are dated in the upper left-hand side corner from 2016 and 2017.

Even though you have not seen these documents before, Mr. Kalter, do they accurately reflect the corporate structure of your homes as you understand it?

A. Can you --

MR. YAFFE: We can go back to.

MR SMITH: We can start back at page one.

MR. YAFFE: Rather than tell him

M. Kalter

it's a five-page document.

THE WITNESS: I would have to see one at a time.

Q. Sure, let's go back to page one. So we can see here this is Mayfair Care Center identified in the upper left-hand corner organizational flow chart. Mr. Kalter, just looking at the specific flow chart for Mayfair Care Center, does this accurately reflect your understanding of the corporate structure?

A. Yeah, it looks like it. Looks like what we spoke about.

Q. Okay, and so we can just go to page two. That would be Bridgeview Nursing Home and, again, just looking at this operational flow charted for Bridgeview, does this look consistent with your understanding of the corporate structure?

A. New Bridgeview, business related party, what does that say, business related party nursing homes, oh, okay, that's what it is. Yeah.

Q. Then we can go to the next page

M. Kalter

which would be Midway Nursing Home and again, I just want to ensure this accurately reflects your understanding of the corporate structure?

A. It looks correct.

Q. And the fourth page which is for Fulton Commons and, again, I just want to ensure that this accurately reflects your understanding of the organizational structure?

A. That looks correct.

Q. So from your reviewing these four organizational charts, it looks like each four homes has its own management company, correct?

A. Correct.

Q. As the owner of these facilities, do you know if similar checks for management services were rendered to each of these management companies at any point in time?

A. I'm sure they were, but a long time ago.

Q. And by long time ago, again, is there any sense you have of how long ago

that was?

A. No.

Q. When checks were being cut when services were being rendered, what kind of services were those?

A. I don't remember.

Q. And who owns each of these associated management companies?

A. It would be the same owners as the nursing home.

Q. And same idea, would any of these associated management companies have employees?

A. No.

Q. Back when they were provided services?

A. Let me just correct that one thing. It would be the same owners as the nursing home prior to when I gave shares to my children.

Q. Okay. Thank you for that.

When these management companies were providing services to the nursing homes, what kind of services were those?

M. Kalter

A. I don't know, I don't remember. I don't. I'm not sure if there was any really method to this. I have a feeling that it was, again, something done for tax purposes.

Q. Do you remember, to that end, do you remember consulting with an accountant or CPA about setting these structures up?

A. I don't remember, but I'm sure we did.

Q. To your best recollection, would that conversation have been with someone, an accountant from HMM?

A. Could have been, could have not been, I don't know.

Q. So we also note going through these flow charts that each nursing home has its own associated realty company. Does that sort of accurately reflect your understanding of the corporate structure?

A. Yeah, I already indicated that these are accurate.

Q. And each of those realty companies is the owner of the real property

M. Kalter

for that facility; is that correct?

A. Correct.

MR. YAFFE: Was there a fifth page to this?

MR. SMITH: There is. We can look at that. It's more of just a --

MR. YAFFE: I mean, I just didn't know.

MR. SMITH: Yeah, we can take a look at that. It's not relevant to my questioning, but if you want to take a look just for completeness, yeah.

MR. YAFFE: Okay, fine.

MR. SMITH: I think this fifth page sort of describes the New Bridgeview acquisition, which may not be accurate any more.

THE WITNESS: I don't know anything about this.

Q. Yes, this is, I would imagine, no longer accurate because it's a few years old, but so Mr. Kalter, do the sister facilities in your group, and that includes Fulton, New Bridgeview, Mayfair, Midway, do

M. Kalter

they loan each other money?

A. I think we discussed that already and I said yes.

Q. And for what purposes would they loan each other money?

A. And we discussed that also and my answer was that if it's a facility was short on cash to meet its payroll, we would take money as a loan from one of the other facilities that had cash.

Q. So outside of the context of making payroll or meeting payroll, would there ever be another scenario where one home would loan money to another home?

A. Not that I'm aware of.

Q. How often would this --

A. Let me clarify that.

Q. Sure.

A. So since we have so many companies here, I am not sure which one you are referring to and which one I am referring, I don't believe there would be ever be a loan from one nursing home to another nursing home, from one system to

another system. If there would be a loan, it would be from one of the new companies to the other new company.

Q. That's a good clarification, I appreciate that. So for clarity of the record, Fulton Commons Care Center would not under your understanding lend money to Mayfair Care Center?

A. I doubt it, unless maybe the loan came through for accounting purposes from one nursing home to the other and then went to the new company, but the purpose of the loan would always be for the new company to be able to meet the payroll because the Care Center did not have enough money to pay the new company.

Q. Okay, but New Fulton Commons could lend money to New Mayfair?

A. They could, but I don't know if they did. Again, I'm saying I am not sure if Fulton -- I know there was a loan from one of the Fulton entities to the Mayfair entity to cover the payroll or maybe more than once, but I'm not sure of the exact

direction of that loan. It's possible it went from Fulton Commons Care Center to Mayfair Care Center and then to New Mayfair as a payment of expenses from Mayfair Care Center to New Mayfair or it's possible that it went directly from New Fulton Commons to New Mayfair.

Q. Okay, and just for clarity, these type of loans between and amongst the entities would be for payroll purposes, would they ever be for capital improvements or?

A. Yeah.

Q. Improvements to the physical plant?

A. When I said payroll purposes, I didn't only mean payroll, I meant whatever expenses the nursing home needed and were paid for through the new company. It could be repairs and so on and so forth.

Q. So if Fulton Commons Center needed to make a repair to a boiler, theoretically, Mayfair or New Mayfair Care Center could float that money to New Fulton

Commons Care Center?

A. No, no, it would technically go through New Fulton first, but if New Fulton did not have the cash or whatever reason if Fulton did not have the cash to pay New Fulton for that money, then New Fulton had to get the money from someplace else, otherwise, the vendor wouldn't do the repair, so possibly Mayfair would lend the money to New Fulton so that they can get that repair done.

Q. And for clarity, when you say Mayfair, you mean New Mayfair, and not Mayfair Care Center?

A. As I said, I am not sure exactly how the loans went. If they went from the nursing home to the nursing or home or from the New to the New or from the nursing home directly to the New, but for accounting purposes and RHCF purposes, they would all be combined.

Q. Okay, that makes sense.

Whenever these loans would happen in whatever iteration or form the loan would

M. Kalter

take, were there repayment terms?

A. Not -- no, I mean, they were eventually repaid or should have been repaid or need to be repaid.

Q. Along those same lines, were there contracts?

A. No.

Q. Are these intra entity loans recorded in any way?

A. They're recorded on the books.

Q. And by that you mean the books at which entity?

A. Both.

Q. Would they be also reflected on the books at New Bridgeview secondary to New Bridgeview's function as sort of the umbrella office?

A. New Bridgeview is not the umbrella office, it just provides bookkeeping services.

Q. That's what I mean. Would they ultimately be reflected on New Bridgeview's books due --

A. No, they have nothing to do with

New Bridgeview.

Q. But is it your testimony that New Bridgeview is sort of a centralized bookkeeping and accounting?

A. They do the bookkeeping, but each facility has their own books.

Q. So then would I be understanding correctly that an intra entity r intra facility loan would not be reflected on New Bridgeview's books.

A. Well, let's clarify that. In other words, New Bridgeview's bookkeeping office, if there was a loan from New Fulton Commons to Mayfair Care Center, New Bridgeview's bookkeeping office would record that loan on Fulton Commons books and on Mayfair's books.

Q. Okay, that clarifies.

Who directs these sort of intra facility or intra entity loans?

A. You are looking at him.

Q. Is anyone else involved in that?

A. Nope.

Q. So Mr. Weiss would not be

involved in this decision making?

A. No. I mean, he might tell me that there's no money.

Q. But you make the decision?

A. Right.

Q. Do you know if any of your facilities currently owe any of your other facilities?

A. I think, I think probably Mayfair owes something.

Q. Do you know who to who?

A. Not sure, could be Fulton.

Q. Do you know for what?

A. What do you mean for what, for the same things we just spoke about, they were probably short on cash and didn't have money to pay.

Q. But you don't know if it's specific to payroll, capital improvement or something along those lines?

A. I would never know that. Expenses are always ongoing. There's always accounts payable, payroll, and repairs, short on cash is short on cash.

M. Kalter

Q. Staying along the same line of questioning but moving into maybe a different zone, we were discussing loans just now. Is money ever moved for more informal reasons or more informal ways?

A. You want to explain that, I don't know what that means.

Q. Maybe an easier way to approach it, would there ever be a scenario where money was moved between and amongst the facility or entities that wasn't a loan for payroll or capital improvements or repairs?

A. Well, what would be moved, what would be it be?

Q. Anything you could think of.

A. I'm not sure I understand. Like what?

Q. I think we want to narrow it down to would an intra facility or intra entity loan or moving of money only be in the context of a loan for payroll or for capital improvements or for repairs?

A. No, we also said that they would be for reimbursement of expenses like to New

Bridgeview.

Q. Okay. Any other contexts?

A. I don't know. I mean, it's possible something was bought by mistake and billed to Fulton instead of Bridgeview, so when Fulton paid for it they would have to pay them back, if such a thing ever happened.

Q. Okay, any other possible scenario?

A. I don't really know.

Q. Do the facilities ever owe payment to their associated New entities, and by that I mean would Fulton Commons Care Center ever owe money to New Fulton?

A. Yeah, I'm sure they would.

Q. And what manifestation could that take, how would that present?

A. If there would be expenses on, let's say, purchases for goods and services, let's say that New Fulton bought for Fulton Commons and Fulton Commons didn't pay them yet for it, there would be -- they would owe them money.

M. Kalter

Q. In that context, would there be a written agreement or terms of repayment or anything formalized in that fashion?

A. No.

Q. And similarly, similar to intra facility or intra entity loans, who was the ultimate decider on those matters, would that be you or Mr. Weiss or some combination of both?

A. No combination, just me.

Q. Just you, okay, would there be a scenario where a facility like Fulton Commons Care Center could owe money to a New entity like New Mayfair, could Fulton Commons Care Center owe money to New Mayfair?

A. To New Bridgeview, they could.

Q. So specifically, I know New Bridgeview plays a different role in this world, so let's take that example of Fulton Commons Care Center, could they ever owe money to New Mayfair or New Midway?

A. If there was a loan or somehow or other that went through to them as we

discussed before, I am not sure of the direction of the loan. If there was a loan that came there from New Mayfair to Fulton Commons Care Center, then they would owe them money.

Q. So just to be perfectly clear, I think we sort of discussed this so my apologies if it's a bit redundant, but would a facility, say Fulton Commons Care Center every loan money to a member of ownership in the group?

A. To what?

Q. To a membership of ownership in a group.

A. What do you mean by member or ownership?

Q. Could Fulton Commons Care Center loan money to Aaron Fogel?

A. I think we discussed this at length and I told you that it's possible they would lend money to me, but I don't think any of the other partners.

Q. Has there been a scenario where an entity, Fulton Commons Care Center and

M. Kalter

Mayfair Care Center, any of your actual nursing homes lent money to you that was used as a loan to a member of ownership?

A. To a different member?

Q. Correct.

A. No.

Q. And I think we have discussed the management entities that we see on those organizational charts at a bit of length so I don't want to spend more time there than needed, but are there any other consulting or management groups other than the entities that we have discussed and we see in those org charts?

A. To who?

Q. Well, to be more clear, you know we see those management entities reflected in the org charts, we discussed those at length, we also discussed Professional Healthcare and MK Healthcare and FK Healthcare, are there any other associated management or consulting entities that we haven't discussed?

A. Well, I think to just go back on

M. Kalter

it, we discussed, you had asked me if the nursing homes had any consultants and I told you I don't know, that would be up to the administrator.

Q. Are you familiar with an entity called AFNH Realty?

A. No.

Q. And an entity called PHFO Inc. What is that?

A. PH?

Q. FO Incorporated?

A. I don't know.

Q. Would that be Professional Healthcare or no?

A. Probably, I'm not sure why it would be PHFO, but it's possibly one of the previous generations of Professional Healthcare, I don't know.

Q. We have been discussing Professional Healthcare. Just for the clarity of the record, is that Professional Healthcare Management of Nassau or something else?

A. Oh, that's probably what it is.

M. Kalter

There was a different Professional Healthcare before that and now it's Professional Healthcare of Nassau.

Q. And just for clarity, those are the Professional Healthcare entities we have been discussing today?

A. Right.

Q. So I want to back up a bit. In 2019, do you know if Fulton Commons Management company billed Fulton Commons Care Center for any services?

A. I don't know, but I don't think so.

Q. So let's go to what will be marked as State's Exhibit 8. This is the 2018 2019 financial statements for Fulton Commons Management Company; is that correct?

A. Yes.

Q. This is a seven-page document.

(Fulton Commons Management Company 2018/2019 Financial Statement was marked as State's Exhibit 8.)

Q. Have you seen this before?

A. Probably, but I'm not -- I'm not

so familiar with it.

Q. Okay, do you know if you were involved in the preparation of this document?

A. I was not.

Q. Who would prepare this sort of document, would that be you or somebody else?

A. Accountant.

Q. So I want to scroll down to page four of this document. So we see management fee income there towards the top of the page, correct?

A. Yup.

Q. And that indicates for the year 2019, ending December 31st, 2019 zero. Is this reflecting, essentially, what we have been discussing that Fulton Commons Management ceased providing services to Fulton Commons sometime in this zone or maybe before?

A. I don't know if it would be accurate to say ceased providing services because I am not really sure what services

M. Kalter

they ever provided, but it would be accurate to say that they pretty much ceased.

Q. Do you know if Fulton Commons Management Company owns Fulton Commons Care Center any money?

A. I have no idea.

MR. YAFFE: Can I just note that this document has references to the year 1900. I don't know if that --

MR. SMITH: I noticed the same thing. I don't want to throw any accountants under the bus, so this is the document we received it so I will ask you about that January 001900.

Q. But mainly just want to confirm that this does indicate to you, Mr. Kalter, that there were not management fees paid to Fulton Commons Management?

A. Yeah, but it's probably the same accountant that prepared that ownership thing the 2018 RHCF.

Q. So I will not throw them under the bus, but maybe you will.

A. I will for sure. Unless maybe I

am not allowed to discuss that with him, I just thought of it now.

Q. In the context of what we're discussing today that's a great question, we would ask you not to discuss this with them because it falls under the purview of the investigation, but obviously you still have to do business with them, but specific to things we are discussing, documents we are showing you, testimony you are giving, that all remains confidential so please do not discuss that with them.

A. In other words, to clarify, to clarify just for the record, you are telling me not to have them re file the RHCF for 2018 to correct the ownership?

Q. So I can't give you legal advice on the record, I can tell you we would ask you not to -- we would very strongly advise you telling against telling your accountants that you in the context of being deposed by the Attorney General's Office noticed some inconsistencies in your cost reports. If you can do that in a way that does not

M. Kalter

involve referencing this do deposition or documents we saw, that we can't speak to but we can ask you strongly not to discuss the subject matter of what we are discussing today or the presented documents in the context of this deposition.

A. Yeah, but --

MR. YAFFE: If I may just clarify based on what you just said because we need to be clear that Mr. Kalter is not to discuss anything that was discussed at today's ongoing deposition or hearing, however, you characterized it with anybody, but he is able to contact his accountants to point out something that he sees in an RHCH 4 form, for example, that may need to be amended in a filing with the State of New York.

MR. SMITH: So I can't give legal advice.

MR. YAFFE: I know that, but I --

MR. SMITH: Right, I understand that is absolutely more your purview than mine. I would say the Attorney

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General's Office would strongly advise Mr. Kalter against going to his accountants and saying I was deposed today by the Attorney General's Office, I was presented with these documents, I learned these documents, if there is another way to amend these things without referring to our investigation, I would leave him to his own recognizance there, but we are asking for his confidentiality about our investigation about the documents you are seeing. Beyond that, I defer to you, Mr. Yaffe.

MR. YAFFE: I understand.

THE WITNESS: I understand, but you know, the tables are reversed now. Let me clarify now.

MR. SMITH: Okay.

THE WITNESS: If there is no other way other than telling him that I was deposed by the Attorney General, are you telling me not to re file the RHCF? I want that to go into the

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record because I don't want to be brought up on this.

MR. SMITH: No, I am not giving you advice on what you should or shouldn't do.

THE WITNESS: You are not giving me advice, you are telling me what I can't do.

MR. SMITH: I am saying you can't go to your accountants and say I was deposed by the Attorney General's Office and I learned that these things are inaccurate.

THE WITNESS: Let me just put it on the record that that means I can't re file the RHCF until I get permission from you because my accountants are not stupid. They know I don't go through RHCFs just on the glance and know they're wrong.

MR. SMITH: I would strongly disagree with the way you are presenting this. There are other ways to advise documents other than telling

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your accountants or someone else how you learned about the mistakes or things that you want to correct. I would absolutely not agree with your presenting of this. We are not telling you not to re file, we are not telling you to re file. What you do with your documents that you submit to DOH is entirely up to you. What we are telling you, strongly advising you is to keep the context of this confidential, so we would tell you strongly you would be violating your confidentially to go to your accountants and say I was deposed today or yesterday by the Attorney General's Office and I found these documents they presented were not accurate.

Now, if we can find, if you can just tell them something else that doesn't violate confidentiality, that is completely up to you.

THE WITNESS: I understand that and that's not what I'm saying, but I

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am not going to take that as an answer and get into trouble about it later, so bottom line is, if I tell them that I noticed this mistake in there and they are going to told me you are full of hot air because you don't look at whatever, then I am okay with that. As long as I'm not the one that tells them that I was deposed.

MS. SEKHON: Can I just interject for a moment. I just want to clarify, Mr. Kalter and Mr. Yaffe, we cannot direct you not to disclose any information that comes out during this testimony. We are asking that you keep it confidential, but we do not have the authority to specifically tell you that you are required to keep it confidential. We are making the request that you keep it confidential and whatever you do hereafter with regards to any documents that may need amending, that is a conversation you should have with Mr. Yaffe.

M. Kalter

THE WITNESS: Okay. Thank you for that clarification. I think that's very helpful.

MR. YAFFE: Yes, thank you.

MS. SEKHON: Sure.

MR. SMITH: So we can close that chapter and move on?

MR. YAFFE: If you say we can.

Q. So Mr. Kalter, who manages Fulton's contracting and procurement?

A. You have to be a little bit more specific than that.

Q. Who is responsible for handling contracting and procurement in Fulton Care Center?

A. That's really the same thing, I am not understanding what you are saying.

Q. Is there an individual that makes contracts on behalf of Fulton Commons Care Center?

A. The administrator.

Q. Anyone else?

A. I don't know, possibly Steven Weiss.

M. Kalter

Q. Aside from Mr. Weiss and Ms. Doyle, who else potentially would handle contracted on behalf of Fulton Commons?

A. Nobody that I know of.

Q. What about procurement, and by that I mean for goods, services, things along those lines?

A. The administrator.

Q. Anyone else aside from the administrator?

A. Probably Steven Weiss.

Q. Do you have any involvement in contracting or procurement for Fulton Commons?

A. Not on an ongoing basis.

Q. Does that mean you would occasionally be involved in contracting and procurement work?

A. If they asked me my opinion about something, I would be, you know, if I know something, I would give them the information.

Q. How often would you say you are involved in procurement and contracting?

M. Kalter

A. Very infrequently.

Q. What kind of decisions would you be brought in on?

A. I don't know, if they want to redecorate the whole facility.

Q. So would it be fair to understand that in saying larger scale decisions?

A. Yes, not larger scale, very large scale.

Q. And are decisions for procurement and contracting, as far as you understand, are made on a facility by facility basis or are orders made for all of the facilities at once? And maybe an example to clarify would be if you are buying paper towels, would they be contracted directly by Fulton Commons or all sister facilities?

A. It would be contracted, everything would be contracted by New Bridgeview for the specific facility.

Q. Okay.

A. So in other words, to clarify, Fulton Commons would need 10 paper towels, and Mayfair needed 10 cases, they would give

that to New Bridgeview and New Bridgeview would buy 10 cases specifically for Fulton Commons and 10 cases specifically for Mayfair.

Q. And who would pay for those cases?

A. New Mayfair would pay for theirs, and New Fulton would pay for theirs.

Q. Would they pay for them directly or would they reimburses New Bridgeview?

A. They would pay for them directly.

Q. Do you know if the facilities ever lend each money intra facility loans for the purpose of procurement?

A. I think we have discussed that quite a few times, if there is no cash they would lend money.

Q. But that could be for the purposes of acquiring equipment or paper towels?

A. Right, any expenses.

Q. Do you know if anyone at Fulton Commons works on procurement or contracting aside from Mrs. Doyle?

A. I have no idea. I would imagine that she has other departments telling her how many potatoes they need.

Q. It's safe to assume you are not involved in that?

A. I am not involved in that.

Q. So in all of your sister facilities across your entire system, how are vendors chosen?

A. I have no idea.

Q. Are you ever involved in what vendors are chosen for which particular service?

A. Not really, no.

Q. Do you know if Fulton ever contracted with any vendors that are owned in whole or in part by anyone in Fulton ownership?

A. The people in Fulton's ownership don't own any companies like that.

Q. Has Fulton ever contracted any vendors in whole or in part of friends of Fulton's ownership?

A. Not that I know of.

M. Kalter

Q. Have you ever directed at any time the use of a particular vendor for any goods or services?

A. Not that I know of.

Q. To your knowledge, has Mr. Fogel ever directed that a particular vendor be used for goods or services?

A. No, definitely not.

Q. Do all procurement and contracting decisions have to be run by you or is there a threshold that has to be met before it comes to your attention?

A. Practically none of them are run by me. Basically, they're all ongoing. They buy milk from the milk company, bread from the bread company, so on and so forth. I mean, these things don't change, they have been going on for years.

Q. Do you ever cut checks to any of Fulton's vendors?

A. I don't cut any checks.

Q. So let me direct your attention to what will be marked as State's Exhibit 9.

(E-mail chain was marked as

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State's Exhibit 9.)

Q. So for clarity, this is a one-page document, e-mail chain, you are not a recipient of this e-mail exchanges so I am going to read portions of the e-mail. So let me just read the highlighted portions here. This is an e-mail, let's identify it as bookkeeping, to Steven Weiss copying Cathie Doyle, title is Fulton Commons past due and the e-mail author writes, "We can't continue to service Fulton Commons if we do not get paid for the work we perform. I don't understand why we have to demand payment every few months. The account is now overdue by 14,000."

And if you go down a bit on this e-mail, we can just see it's from Martin Marcus at GFS Fire Systems.

What is being discussed in this e-mail, as best you can tell?

A. That they didn't get paid, that Fulton Commons owes them $14,000.

Q. So it's just referencing chronically overdue bills?

A. That's what it says.

Q. These pertain to the vendor Fire Safety, correct?

A. I have no idea who this is.

Q. Do you have any sense of why these bills aren't being paid on time?

A. I am not sure that it's not on time, just because he says so doesn't mean that it's not on time.

Q. As far as you know, was it common for Fulton to have issues like this with paying issues bills?

A. I am not sure this is an issue. Just because he says so, I don't know the details, I don't know what's going on.

Q. The accounting firm that you employ for those purposes Horan Martello Morrone, do you remember when you hired them?

A. No.

Q. And they provide accounting services for all the sister facilities, correct?

A. Yes.

M. Kalter

Q. Your involvement as an owner obviously spreads across all the facilities that you have an ownership stake in. With that being understood, what is your percentage of time devoted to Fulton Commons?

A. There is no way to know, I have no way to know.

Q. Would you say that you divide your time evenly amongst all the facilities or does it vary?

A. I have no way of knowing, I don't log it.

Q. Would your general sense be that one facility takes more of your time than another?

A. I have no way to know.

Q. What is CMI?

A. CMI?

Q. Case mix index, does that sound familiar?

A. Oh, yeah, I know what that is.

Q. Describe your understanding of that for me.

M. Kalter

A. That's what the average scores are of the patient's, whatever it is, MDS or PRIs, I don't know which one they're using today.

Q. What is your understanding of the role that CMI plays in the industry?

A. That's how Medicaid pays you.

Q. Is that a metric you use in your work as owner?

A. What do you mean by a metric, I use for what?

Q. Would the metric CMI influence your decision making about any of your homes?

A. I'm not sure what you mean by that.

Q. Well, let's say you discussed earlier today looking at census, looking at the different metrics you look at when you perform your functions as the owner of these facilities. Would CMIs ever be relevant to your work as an owner?

A. I am not sure what you are saying. CMI is a fact, it's not something

M. Kalter

you make a decision on.

Q. Sure, but I think you can imagine a scenario would where it would influence your decision making about a particular facility, correct?

A. No, I can't.

Q. So I guess then it's fair to say CMI is not part of your decision making about your homes?

A. I am not sure what kind of decision you can make on CMI.

Q. I mean, if it's not something that's relevant to your process as owner when you review the items you review in regards to your homes, then that's perfectly fine, that's all we are looking at.

Let's move on. So let's rewind back to early 2020.

When, Mr. Kalter, did you first become aware of Covid-19?

MR. YAFFE: You mean as a human being as just as a person?

MR. SMITH: As a human being in the world, yes.

M. Kalter

MR. YAFFE: Whether he reads news or not?

MR. SMITH: However, yes, as a human being in the world experiencing the onset of Covid-19.

Q. When did you become aware of the disease?

A. I'm not sure.

Q. When you did become aware of it, did you discuss it with any administration or clinical staff at Fulton Commons?

A. I never spoke to them about anything.

Q. Did you discuss it with Mr. Weiss?

A. I don't remember.

Q. What is your recollection of what Fulton Commons did to prepare for the arrival of Covid at the facility?

A. I don't know. I think they followed whatever directives came on an hourly basis from the Department of Health and whatever changes kept coming every 20 minutes.

M. Kalter

Q. When did these preparations start, as far as you understand?

A. As soon as they, you know, they heard about Covid.

Q. Do you have a sense of when that was?

A. No, I don't.

Q. Do you know if policies and procedures at Fulton Commons were reviewed around the time of the onset of Covid?

A. I don't know, but I'm sure there were.

Q. You were not involved in that process at all?

A. No, I wasn't.

Q. Do you know if there were attempts at Fulton Commons to obtain PPE at the beginning of the pandemic?

A. Yes.

Q. Describe your knowledge of those efforts to me.

A. Steven Weiss told me that they're, you know, trying to buy as much as they can.

M. Kalter

Q. Were you involved in any of those efforts beyond that conversation?

A. I don't really have any capabilities of obtaining PPE.

Q. Did you discuss any other preparations for Covid aside from what we have just gone over?

A. When?

Q. Let's go to the onset of the pandemic, so February 2020, March 2020, did you have any discussions beyond those we just covered?

A. Occasionally, I must have spoke with Steven Weiss, you know, how the facility is standing, if it effected us yet or didn't effect us yet, or you know, anything like that.

Q. I know you didn't speak to Mrs. Doyle, did you speak with any of your other facility administrators in February 2020 and March 2020 about the onset of Covid?

A. No.

Q. Did you, yourself in your

personal capacity or in your capacity as an owner review any of the Covid specific state or federal guidance or directives during the early months of the pandemic?

A. Whatever I saw in the paper.

Q. Do you recall where those guidances were from, who issued them?

A. They were being issued by anybody who just wanted to issue them.

Q. You mentioned coming across items in the paper, would you take any other efforts to review directives or guidances, and by that I mean going to an official website or reviewing notices of the state, government, anything of that nature?

A. I don't know, I don't remember if I did or not.

Q. As owner, do you have responsibilities for disseminating these sorts of guidances and directives to staff or leadership at Fulton Commons?

A. No.

Q. Were you ever asked by anyone at Fulton to interpret or explain the

government guidance or directives?

A. No.

Q. Do you know who managed resident admissions at Fulton Commons in the months of January 2020 through June 2020?

A. Did I what?

Q. Do you know who managed resident admission at Fulton Commons from January 2020 to June 2020?

A. No.

Q. Are you involved at all in the resident admission process?

A. No.

Q. If a resident admission was presented to you, could you overrule the administrator or the medical directors on that specific admission decision?

A. I imagine as an owner I could.

Q. But that never presented itself?

A. No.

Q. As the pandemic escalated, so March 2020, April 2020, did you ever consider stopping new admissions to Fulton Commons?

M. Kalter

A. I would not be capable of doing that decision. It would have to follow the directives of the Health Department.

Q. Was that sort of stopping of admissions at Fulton Commons ever recommended to you by anyone in leadership at Fulton Commons?

A. I don't believe so, no.

Q. Did you have any discussions with anyone about stopping admissions?

A. No. Maybe, I did. I think on the first weekend when we had 60 deaths in the facility, I think I discussed that with Steve. My first question was do we have enough staff, is the staff effected, make sure we get staff from anywhere we can, and then he told me that there was a directive from the governor that we have to take Covid patients no matter what.

Q. Let's dig in a little bit on that. You mentioned 60 deaths in the facility that first weekend, so first of all, what weekend are we talking about?

A. It was towards the end of March.

M. Kalter

Q. And when you say 60 deaths, is that at one facility or multiple facility?

A. Multiple facilities together.

Q. Is that across your group, your whole group?

A. Yes, yes.

Q. Do you remember there being more deaths at one facility over another?

A. I don't know. I don't remember.

Q. Do you recall how many deaths happened at Fulton Commons in that time --

A. No.

Q. -- frame?

A. No, I don't and that 60 may be not an accurate number, that's just what I remember, it was somewhere around there.

Q. I understand. Was there ever a time during the pandemic when you thought that Fulton was not prepared or equipped to admit residents?

A. Never.

Q. And when you discussed those deaths in late March that we're discussing with Steven Weiss, what was the sort of the

substance and contents about that discussion with Mr. Weiss?

A. Discussion was to make sure to have appropriate and capable staff no matter what the cost is.

Q. Anything else?

A. That's it.

Q. Do you know if more staff were hired after that discussion?

A. I have no idea.

Q. Would you agree with the idea that a nursing home should not accept a new admission unless a facility is capable of providing safe and adequate care to that incoming resident?

A. I am really not capable of making that decision, I mean, that's something the Department of Health would tell us what to do.

Q. As a former nursing home administrator, though, you have experience in the industry, would you agree that a nursing home should not accept a new admission until the facility is capable of

providing safe care to that resident?

A. Again, the only thing I agree is that the nursing home should follow all guidelines and rely on their professional staff.

Q. In your position and your former service as an administrator, would you have admitted a resident to the facility that you thought was not prepared to provide care to them?

A. I don't know what I would have done.

Q. Would you agree that a nursing home should not accept a new admission if it will endanger the health and safety of the residents in that facility?

A. Once again, the nursing home is required to follow all guidelines and that's what they have to do.

Q. As an administrator, would you have had concerns about admitting a resident to your facility if they were to endanger the health and safety of other residents at your facility?

M. Kalter

A. Again, I don't know what I would have done. It would be a decision at the time.

MR. SMITH: Okay. I think we are at a decent breaking point if that works for everybody to just take a quick break or maybe water.

Would everybody be able to return in 10 minutes, say 2:40?

MR. YAFFE: That's okay for me. Do you have an approximate how much longer?

MR. SMITH: You know we're doing pretty well, so I definitely think we can wrap this by five, hopefully, before, but I think we are making good progress, so I see it being done by the end of the day, by that I mean five.

MR. YAFFE: Okay.

MR. SMITH: Does that work, a quick break everybody or does that work for nobody, I guess hearing no objections I will assume it's okay.

MR. YAFFE: Okay.

M. Kalter

MR. SMITH: So 2:40 we will see you again. Remember to mute your camera, your microphone.

There we go. Perfect. Thank you.

(A recess was taken.)

MR. SMITH: After taking a quick recess we are now back on the record. We have taken a role call, everybody from the prior session of the day is here again so we will recommence.

Q. So Mr. Kalter, obviously, you have a background formerly as an administrator, you have you have been in this industry a long time. Define for me your understanding of nursing home policies and procedures.

A. My understanding is that policies and procedures are like internal regulations of the nursing home on how to operate the nursing home based on federal and state guidelines.

Q. And what can policies or and procedures pertain to?

M. Kalter

A. Everything.

Q. Does that include resident care?

A. Yes.

Q. Housekeeping?

A. Yes.

Q. Dietary?

A. Yes.

Q. Infection control?

A. Yes.

Q. And before we get too much into this, if I occasionally call these documents P&Ps, you will understand I am referring to policies and procedures, correct?

A. Okay.

Q. Do you know who creates policies and procedures at Fulton Commons?

A. No.

Q. Do you have any role in that process?

A. No.

Q. Are you ever consulted?

A. No.

Q. Do you know who approves each P&Ps at Fulton before it's put into place?

A. No.

Q. Do you know if Fulton Commons occasionally guess through and revises and updates their policies and procedures?

A. Don't know.

Q. Based on your experience in the industry, is it important that caregivers adhere to facility policies and procedures when providing care to residents?

A. I don't know. You know, I don't really have an opinion on that. They do whatever they have to do.

Q. When you say you don't have an opinion, let's rewind back to when you were an administrator, if you had and staff had not adhered to that, how would you have taken to that?

A. I really can't answer hypothetical questions, when and if it would happen, I would have to decide based on whatever there is on how to take care of it.

Q. During your time as administrator were the facilities P&Ps ever violated by staff?

M. Kalter

A. I don't remember.

Q. Do you remember ever having to taken action, whether disciplinary or otherwise related to the violations of P&Ps?

A. I don't remember.

Q. Would you agree that staff adherence to P&Ps is important for the functioning of the facility?

A. Again, I don't really operate any facilities at this point on a day-to-day basis, and I leave that to the people in charge of the facility to make decisions on what's important and what's not.

Q. If facilities in your group were not following their P&Ps, if staff were commonly violated P&Ps, is that something you would be concerned about?

A. Again, that would be up to the administrators if they're concerned or not concerned about it.

Q. If the administrator brought to you evidence of violations of P&Ps of a facility, would that be something that would concern you?

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A. I would not be concerned. I would give it to her and tell her do what you have to do, whatever you want to do, whatever you think is important to do, whatever the directive is or whatever the right thing is to do. It would not be my decision or my opinion or my thoughts.

Q. As a former administrator and as a long-time fellow operator in this industry, would you agree that it's important for facility staff to follow facility policies and procedures?

A. I believe you asked me that question and I answered it. I will answer it again, that it's up to the administrators to make sure or to not make sure or to decide how much they should follow policy and procedure, how much they should not or if they should or if they should not.

Q. So if you learned of a facility administrator that was not mandating adherence to P&Ps, that would be something that would concern you or not concern you?

A. If I learned of such a thing I

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would ask the administrator, you know, I might ask the administrator what the story was or whatever, and then would, you know, let them do according to the medical and professional opinion of what was necessary.

Q. And based on your experience in the industry and administrator, a former administrator, could a caregiver, a clinical staffer's failure to follow infection and control policies and procedures endanger the well-being of a resident?

A. I really don't know the specifics so I can't really answer that. I mean, you know, anybody's negligence could endanger whether it's a visitor or whether it's anybody else could endanger the health and welfare of a patient.

Q. Would you agree that the policy and procedures specific to infection control would in most cases in the ideal case be representing federal or state directives or guidance about maintaining infection control at a facility?

A. I really don't know because I

don't know what the policies and procedures are, and I don't know what the federal and state mandates are.

Q. But what is your understanding of what a policy and procedure does at a facility?

A. It makes regulations, we said that already, it makes internal regulations in the facility.

Q. And then you would agree that it's important for clinical staff to adhere and follow those regulations?

A. Once again, I am not capable of making that decision. Those would be a decision up to the medical staff and the administration of the facility.

Q. But as a former administrator, would it have been a concern to you if policies and procedures which you have defined as internal regulations were not being followed by clinical staff?

A. Once again, I can't answer what would have been or what could have been.

Q. So with your experience as an

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administrator cannot comment on staff at your facility violating internal regulations would have been a concern to you as an administrator?

A. Once again, that would be and up to the administrator to make those decisions with the medical director, those are the people that I hired and those are the people that are capable of making these decisions.

MR. YAFFE: Objection.

Q. Based on your experience in the industry, could a caregiver's failure to follow infection control policies and procedures result in neglect of a nursing home resident?

A. I believe you asked me that question already and I answered it. If we could read back the answer, I would refresh my memory.

Q. Well, I think Mr. Kalter, it's not quite the same question. The question before I asked was could failure to follow policies and procedures endanger the well-being, now I am asking you could it

result in neglect, which I think you would agree are two different concepts, correct?

A. Not really because neglect could be endangering.

Q. Okay, well then following on that same idea would you --

A. Same answer.

Q. Who at Fulton Commons in your understanding is responsible for ensuring that caregivers properly follow P&Ps?

A. The administrator.

Q. And would it be accurate in understanding that you have never discussed the P&Ps with Ms. Doyle?

A. It would be accurate. The accuracy remains as of the morning, but I have never spoken to Ms. Doyle.

Q. Has Mr. Weiss ever reported to you potential violations or suspected violations of policies and procedures at Fulton Commons?

A. Not that I know of.

Q. I would like to direct your attention to what will be marked as State's

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Exhibit 10.

(7-page Covid-19 Policy was marked as State's Exhibit 10.)

Q. Do you recognize this document?

A. I don't see it yet.

Q. You could just let me know when you can see it.

A. I see just the first three lines.

Q. So we will scroll down a bit. This is a seven-page document titled policy name Covid-19. Does that look correct?

A. What do you mean does it look correct?

Q. Am I correctly stating it that it's policy for Covid-19?

A. It says policy name Covid-19.

Q. Have you ever seen this policy before?

A. No.

Q. So we are going to jump down to page two of this document. Do you see where the document reads, "The facility will cohort confirmed positive residents in the same" I can highlight it for you. So this

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P&P reads, "The facility will cohort confirmed positive residents in the same room or area --

A. I'm not sure where you are reading, I don't see what.

Q. Sure. This is page two, bullet point five, middle of the page.

A. It says "If logistically feasible."

Q. Correct, so I am skipping to the second clause in that sentence, so it says, "The facility will cohort confirmed positive residents in the same room or area of a unit as much as possible."

MR. YAFFE: Well, I mean, this is like the second amendment, you know, well-regulated Army and, you know, the right to bear arms. Why don't you read him the whole sentence rather than taking just a portion of it.

Q. So Mr. Kalter, if it would clarify for you I will let you read that other clause that Mr. Yaffe is pointing out.

A. Which other clause are you

talking about?

Q. So built point five is one sentence consisting of two clauses.

A. Bullet point five, I don't understand the English in it. If you can understand it to me.

Q. Sure, explain the English?

A. "If logistically feasible and will not" I am not sure what that means. Oh, "And will not put other residents or staff at risk for exposure, the facility will cohort confirmed positive residents in the same room or area of the unit as much as possible." Okay. Great.

Q. Do you know if or when Fulton Commons began cohorting confirmed positive residents?

A. I have no idea.

Q. We are going to jump down to page three of the same document. If we go down just a bit further.

This is the section identified as "Confirmed Covid-19 unit" one floor of the facility has been designated to care for

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residents with confirmed Covid-19 admissions. It is the intent of this unit to ensure the safety of all residents and staff.

And along the same lines of what I just asked you, do you know when or if such a confirmed Covid-19 unit was created at Fulton Commons?

A. No.

Q. Did you ever have discussions with anyone at Fulton Commons about the creation of a confirmed Covid-19 unit?

A. Once again, I never had discussions with anybody at Fulton Commons in relation to anything.

Q. When I ask that, though, I do mean also Mr. Weiss who is controller of Fulton Commons, did you ever have a discussion with Mr. Weiss about a designated Covid-19 unit?

A. No.

Q. Do you know at any point in time Fulton Commons' effort to cohort or quarantine residents changed at all over the

M. Kalter

course of the pandemic?

A. I have no idea.

Q. So we're going to move next to what will be marked as State's Exhibit 11, and this is a one-page document titled Fulton Commons Care Center Nursing Department Protocol for residents with suspected Covid as well as residents admitted from hospital with confirmed Covid?

(One-page document Fulton Commons Protocol was marked as State's Exhibit 11.)

Q. Mr. Kalter, have you ever seen this policy and procedure?

A. No.

Q. Let's look at the section that reads, and I will read it, "It is the policy of FCCC to ensure all residents are maintained is in an isolated area once identified as a presumed Covid or is admitted to the facility from a hospital setting with a confirmed diagnosis of Covid." So there's, obviously, of a typo there, grammar English, grammar mistake.

M. Kalter

Did I read that correctly as you understand it?

A. You read it correctly as it says, but I'm not sure I understand it what they want to do.

Q. Would you agree that it seems to indicate an intent to create an isolated area for presumed Covid within the facility?

A. It seems that way.

Q. So a bit further down the page the protocol provides for "Protocol for in-house residents with a suspected Covid diagnosis."

Below that the policy and procedure states that "Resident will be transferred to the designated unit unless they are in a private room."

Did I read that correctly?

A. I'm not sure where you are reading so.

Q. So the second sentence in bold.

MR. YAFFE: Bullet point one.

Q. Bullet point number one, it's highlighted there for you.

M. Kalter

A. Yup.

Q. As far as you understand was this the same designated unit discussed in the policy and procedure we just looked at?

A. I have no idea.

Q. Let's go back to Exhibit 10 briefly. That's the Covid-19 policy and procedure. Okay, so we are going to go to page four, so there is a bullet here that reads, directs that, this is bullet point three, "As best as possible, exercise consistent assignment or have separate staffing teams on the confirmed Covid-19 unit."

What is your understanding as a former administrator as someone who worked in this industry for a long time as to why these follows and procedures are directing the facility to isolated units quarantining staff and quarantining residents, what is your understanding of the these policies and procedures?

A. I really don't know.

Q. Do you have any sense as to why

M. Kalter

these policies and procedures would direct the facility to set up isolated units for Covid-19 presumed or positive residents?

A. I imagine to stop the spread, but I don't know.

Q. The same idea, do you have any sense as to why these policies and procedures would direct the facility to cohort staff or quarantine staff that were assigned to covering the confirmed Covid cases?

A. I don't know but probably the same reason.

Q. And that's to stop the spread of the disease, correct?

A. If possible.

Q. And from your position as the owner and someone with a lot of experience, what is your understanding of why it's important for staff in a residential care setting like this to not provide care to both Covid positive and non Covid residents on the same shift?

MR. YAFFE: Objection.

M. Kalter

Q. You can answer.

A. We just said that, to stop the spread.

Q. Based on that understanding, would you agree that if a nurse or nurse's aid had been providing care to Covid and non Covid residents during their shift, they would be violating basic infection controls protocols?

A. I really don't know, I am not capable of answering that question.

Q. But to return to your prior answer, you do understand these policies and procedures to carry out quarantine and cohorting of residents and staff to prevent the spread, correct?

A. I don't understand that, I am guessing that that's why it is.

Q. And what is your guess based on?

A. What I thought, I don't know, I have no idea no knowledge. I do know that all of these have been reviewed by four or five infection control inspections, and so I don't think anybody told me anything

M. Kalter

different than that.

Q. When you say four or five infection control inspections, what are you referring to?

A. Department of Health inspections.

Q. Did you learn about those at some point during the pandemic?

A. I don't remember exactly when.

Q. How did you come to learn about those inspections?

A. Steven Weiss must have told me about it.

Q. Do you recall what information he would give you when he told you about the inspections?

A. He told me that they passed the, they had an inspection infection control, it was one day or two days or whatever and they passed all the inspections or whatever, except I think one time they got one deficiency for some type of housekeeping staff that wasn't wearing proper PPE or whatever it was.

Q. Would you ask for those updates

from Mr. Weiss about infection control inspections or something else?

A. No, I wouldn't.

Q. So he would just sort of provide these on his own recognizance, essentially?

A. I don't know, maybe there was a discussion or something about Covid and he told me that we had an inspection.

Q. Was it your custom and practice to ask about the status of Fulton's efforts to control the spread of Covid-19?

A. No, I just told him to make sure everything is under control.

Q. And we have looked at these policies and procedures about creating a designated unit or isolated unit for Covid-19 residents or suspected or presumed Covid-19 residents. Do you know if at any time such a designated unit was set up at Fulton Commons?

A. I don't know.

Q. Were you ever consulted or asked if such a unit should be created at Fulton Commons?

M. Kalter

A. No.

Q. In any of your discussions with Mr. Weiss about the infection control surveys or general infection related information at Fulton Commons, did you ever discuss the designated Covid unit or any designated Covid unit?

A. There was no discussion about surveys, it was just a report that we had a survey.

Q. In the context of discussing those reports, I am assuming there was some discussion about the reports themselves or the inspections themselves?

A. No, there wasn't.

Q. So what would he told you?

A. He told me that we had a survey and we got no deficiencies.

Q. There would be no other discussion?

A. No.

Q. You mentioned just now I think conversations with Mr. Weiss where you told him, essentially, I am paraphrasing, to do

what needed to be done to control the spread; is that right?

A. Yes.

Q. In the context of those discussions, would you ever discuss a quarantined unit or an isolated unit or designated unit for Covid-19?

A. Those were not discussions, they were just orders, make sure everything is okay.

Q. Would I be correct in understanding that Mr. Weiss never responded to those orders with any sort of discussion of a designated Covid-19 unit?

A. He never responded to the orders, he just he said will take care of it, he will do it, he will tell them.

Q. Did he ever report back to you on his efforts to carry out your orders?

A. No.

Q. Between February 2020 and June 2020, were you aware of Covid being present on any unit in Fulton Commons?

A. On a particular unit, no.

M. Kalter

Q. When did you become aware of Covid being presented at Fulton Commons, generally?

A. I think I answered that already, at the end of March, I believe it was.

Q. That was the first time you became aware of Covid at Fulton?

A. It was after the governor's directive for us to take Covid patients.

Q. Do you know if any of Fulton's sister homes, that's Mayfair, Midway, Bridgeview ever had a designated Covid unit?

A. I don't know.

Q. So we have discussed briefly DOH infection control surveys, do you know more specifically if DOH conducted a survey in the early days of May 2020?

A. I don't know.

Q. Did you ever have discussions with Mr. Weiss about an infection control survey performed by DOH in the first week of May 2020?

A. No.

Q. The reports that we just

M. Kalter

discussed where he reported back to you about the conclusions or the results of the DOH survey, do you recall if he ever made such a report in early to mid May 2020?

A. I don't recall.

Q. And we discussed Fulton's resident census a bit earlier today, corrects?

A. Right.

Q. Am I correct in defining census nursing home is the total resident count in a facility at any given time?

A. Yes.

Q. Does census take any other data into account?

A. What do you mean?

Q. Is it as simple as just the number of residents in a facility or is there anything else that would come into a census calculation?

A. Census is a census. There is all kinds of census. There is a patient census, there is a private census --

(Inaudible.)

M. Kalter

Q. Mr. Kalter, I'm sorry, I think you broke up a good bit there, we couldn't hear you. I don't know if you can try that answer again.

A. Okay, can you hear me now?

Q. Yes.

A. Okay. I think I said there is a private census, there's Medicaid census, there is a Medicare census.

Q. And just to drill down on that, when you say private census, Medicare census, Medicaid census, is that simply just head in beds, that's just the number of people in a facility at any given time?

A. A private census would be the number of people in the facility that are private patients.

Q. And you mentioned that Mr. Weiss would update you daily on the census of Fulton Commons, correct?

A. Correct.

Q. And in the context of his daily reports, would he break down the census like you are describing?

M. Kalter

A. No, only the Medicare census.

Q. Okay, but you would, in fact, you would see the total census as well, correct?

A. Correct.

Q. When you reviewed the census daily, what were you looking for in doing that review, what was important to you?

A. Just the numbers.

Q. How would reviewing the daily census effect your decision making as an owner?

A. It wouldn't effect any decisions, like I stated before, it's a fact, this is what we have.

Q. And do you recall if 1 East, the 1 East unit at Fulton Commons had any occupants on May 1st, 2020?

A. I would not know the occupancy of any unit.

Q. So when you reviewed census, it was for the total census and the Medicare census as you described?

A. Correct.

Q. So let's take a quick look at

M. Kalter

what will be marked as State's Exhibit-12.

(Resident Listing was marked as State's Exhibit 12.)

Q. Mr. Kalter, do you recognize this documents?

A. I don't see it yet.

Q. Okay, my apologies.

A. I don't.

Q. It's a five-page document. The heading is Resident Listing, and would I be correct in describing this as what appears to be an alphabetical listing of residents with their ID numbers and their bed locations?

A. Seems that way.

Q. Is this the kind of document you would review in doing your census review?

A. No.

Q. So were you consulted at all on room transfers during the pandemic?

A. No.

Q. Who made room transfer decisions, as far as you know?

A. I don't know.

M. Kalter

Q. And just for clarity, as far as you know, were any room transfers made on May 1st, 2020?

A. I don't know.

Q. Let me direct your attention to what will be marked as State's Exhibit 13. Can you see this document yet?

A. Not yet.

(Fulton Commons Care Center Patient Activity Log was marked as State's Exhibit 13.)

A. Now I can see it.

Q. Do you recognize this document?

A. No, I don't.

Q. So is it fair to understand this is not the sort of document you would consult when you would do your census reviews?

A. No.

Q. This is a two-page document entitled Fulton Commons Care Center Patient Activity Log for the period May 1st, 2020 to May 1st, 2020 is; that correct?

A. That's what it says.

M. Kalter

Q. Now, there is a time stamp for this document in the upper left-hand side corner that says June 11th 2020; is that correct?

A. Right.

Q. But the activity being tracked here is for May 1st, 2020; is that correct?

A. Right.

Q. And I know you haven't seen this before, but what kind of activity does this document appear to reflect?

A. I'm not really sure.

Q. So we can just scroll through, you can see starting from the top first person Resident #12 it says bed transfer. The next person bed transfer, and so if we look at the action being taken, and you can correct me if I'm wrong, but it would appear to reflect bed transfers of residents?

A. That's what it says, bed transfer.

Q. I'm sure you haven't been counting, but we can go through and count, if you like, but this document we are

showing you now reflects 18 bed transfers occurring on May 1st, 2020. Does that appear correct from your review of the document? I know we're scrolling through.

A. Whatever the count is, I have no idea.

Q. Does seeing this document, reviewing this document refresh your recollection about bed transfers being made own or around May 1st 2020?

A. No.

Q. Let's move now to State's Exhibit 14. Can you see this documented yet, Mr. Kalter?

A. Not yet. I see it now.

Q. Okay. Is this the document you are familiar with?

A. No.

Q. For the record, it's a one-page document entitled Fulton Commons Care Center Daily Census Sheet for Friday May 1st, 2020.

(Fulton Commons Daily Census Sheet was marked as State's Exhibit 14.)

M. Kalter

Q. And again, for clarity, this is not the type of document you would use to complete your census reviews?

A. No.

Q. With that cleared up, I still would refer you to a box in the middle left-hand section of that page that reflects or we can actually just go back up, sorry, it's the top section there, census count. Go to the right of the box, total census count, down to the bottom you see total as 198; is that correct?

A. Yes.

Q. So would I be correct in understanding that on May 1st, according to this document, the census is 19, eight?

A. Seems to be that way.

Q. And based on the patient activity log we just looked at the reflected 18 residents being moved on May 1st and this document that shows 198 residents in house on May 1st, that would reflect that roughly 10 percent of Fulton's population was moved on or around May 1st, 2020, correct?

M. Kalter

A. Not necessarily.

Q. Explain.

A. I am not sure where these documents are, if this document is a closing census, and opening census, or an in-between census. There may have been more than 198 patients there in the morning, so I don't know exactly what this reflects.

Q. Okay. I think what I'm driving at is if we assume these as being accurate and there had been a move that magnitude, would that be something that you would be alerted to?

A. I really don't know. I have no idea. You can assume that's being correct and then you can assume it's not a lot. I don't really know, if we're assuming.

Q. Well, would you just generally, would your custom and practice be to become involved in large transfers of residents within the facility?

A. No.

Q. Is that something you would be alerted to after the fact, potentially?

A. No.

Q. Is there a threshold in this period patient transfers, is there a threshold that you would be alerted as to?

A. No.

Q. And going over these documents does not refresh your recollection about transfers on or around May 1st; is that correct?

A. I have nothing to do with it.

Q. Do you know, and as far as you can recall, if there were large transfers of residents within your other facilities, including Midway, Bridgeview, Mayfair?

A. I wouldn't know.

Q. Did Fulton, as far as you know, ever offer incentives to staff to come to work during the pandemic?

A. I don't know.

Q. From your perspective as an owner of the facility, do you think incentives of this nature would have been effective in getting staff to come to work?

A. I really cannot say what would

have been or should have been or would have been.

Q. Were proposals for incentives to staff ever brought to your attention?

A. No.

Q. Did you ever learn after the fact that staff incentives had been provided?

A. I didn't learn.

Q. And as far as you knew, over the course of the entire pandemic were incentives ever offered to staff in any form or fashion?

A. I think if I remember correctly they offered staff to be able to get paid for their unused vacation and unused sick time.

Q. And when did that happen?

A. It happened, I believe sometime in May or the end of -- in May, I believe going into June, I think, but the union made them stop it.

Q. When you say the union made them stop, what was your understanding of that --

A. They told me that they sent --

the union sent them a letter. Steve told me that the union sent them a letter that we have no right to offer any type of benefits or any type of incentives to any of the employees because we are in violation of the contracts with the union if we do such a thing, and we should cease and desist immediately otherwise they would take us to court.

Q. Aside from this particular instance, were there any other staff incentives whether monetary or anything else over the course of the pandemic, as far as you know?

A. I believe that at a certain point or maybe more than one point I gave the administrators bonuses.

Q. Anything else beyond those two items we just discussed?

A. I don't remember.

Q. From your position as owner, if incentives were given to staff, who would authorize that?

A. I don't know.

M. Kalter

Q. Do you know if that would be a Steven Weiss decision or a Cathie Doyle decision or it would be --

A. It would be an administrator's decision.

Q. Do you know if any staff were disciplined at Fulton Commons during the pandemic?

A. I don't know.

Q. As far as you know in the early weeks of the pandemic, so let's say February 2020 and March 2020, did Fulton Commons prohibit staff that had recently traveled abroad from reporting to work?

A. I don't know.

Q. You mentioned keeping up with guidances as they become public and I wonder if you are familiar with the Department of Health's March 13th guidance regarding cohorting of staff if there are confirmed cases in the facility. Is that familiar?

A. No, I'm not familiar with it.

Q. So let's take a quick look at what will be marked as State's Exhibit 15.

M. Kalter

You see this document?

A. Not yet.

Q. Okay.

A. Okay, I see it now.

Q. All right. Is this familiar to you seeing it now?

A. No.

Q. Am I correct in describing it as a Department of Health directive from March 13th of 2020?

Yeah, that's what it says.

(DOH Directive was marked as State's Exhibit 15.)

Q. So let's go down and take a look at built point number five on page two and that's page two of two. So the bullet point reads "Do not float staff between units, cohort residents with Covid-19 with dedicated HCP" that's healthcare provider "and other direct care providers, minimize the number of HCP and other direct care providers entering a room."

Does that refresh your recollection as to directives coming from

M. Kalter

the State about cohorting residents and staff?

A. There is nothing to refresh, I haven't seen any directives.

Q. And the bullet point below number six reads, "In nursing homes, all residents on effected units shall be placed on droplet and contact precautions regardless of the symptoms and regardless of Covid-19 status."

I assume the concept is the same it's not an idea you were exposed to?

A. I wouldn't know even know what it means.

Q. From reading this here today, would I be accurate in describing this as a directive from the State for nursing homes to cohort staff and, specifically staff that are caring for Covid positive or suspected residents in the facility?

MR. YAFFE: Objection.

Q. You can answer.

A. It seems from those two paragraphs, it seems that's what it says but I don't know what the rest says and I am

M. Kalter

really not sure what it means.

Q. And again, as we have been talking, do you have any recollection of Fulton Commons taking efforts to cohort residents during the pandemic?

A. I wouldn't know.

Q. On those same lines, did you ever become aware of Fulton Commons cohorting staff during the pandemic?

A. I don't know.

Q. What about staff floating in between Covid and non Covid residents?

A. I don't know, I didn't hear, I don't know anything about it.

Q. Were you involved at any time during the pandemic with decisions about whether or not to admit outside patients into the facility?

A. No.

Q. As far as you understand, who at Fulton Commons made those decisions?

A. I don't know who made them.

Q. Is it fair to understand that you were not ever consulted on any decision in

that vain?

A. Right.

Q. And from your understanding as owner, who at Fulton Commons would make the decision where a resident went at the facility?

A. I don't know.

Q. From your perspective as the owner, did Fulton Commons have sufficient PPE in March and April of 2020?

A. I wouldn't know, but I imagine they did.

Q. Did you receive reports from Steven Weiss about PPE at Fulton Commons in March and April of 2020?

A. Not that I remember.

Q. And did you play any role in ensuring that Fulton Commons had adequate PPE in March and April of 2020?

A. Only by telling Steven Weiss to make sure to spend whatever it takes to get whatever they need.

Q. Let me direct your attention to what will be marked State's Exhibit 16. So

M. Kalter

this is a one-page document comprised of an e-mail chain between various of your employees.

(E-mail chain was marked as State's Exhibit 16.)

Q. So you are not involved, you are not on this e-mail chain but it is between and amongst Steven Weiss and Cathie Doyle and other Bridgeview staff, so I am going to ask Annie to scroll to the bottom of this chain and I am going to read the highlighted portion. "Hi, Marina, can you please try and get us gowns, more face shields and masks? We are admitting Covid-19 patients and really need them." And this is from Cathie Doyle, the administrator at Fulton Commons.

As far as you can tell, Mr. Kalter, what's being discussed here?

A. PPE.

Q. Would you also agree that it's the admission, it's PPE needs in the context of admitting Covid-19 patients to the facility, correct?

M. Kalter

A. Yeah, it's dated March 31st, that's after the governor's directive.

Q. Do you see anything here that would indicate to you a shortage of PPE?

A. No.

Q. Let's go next to what will be marked as State's Exhibit 17. And again, this is a two-page document comprised of an e-mail chain, you are not are a recipient on this chain but it is between and amongst Fulton Commons employees.

(E-mail chain was marked as State's Exhibit 17.)

Q. We're going to scroll down a bit, I am going to read from a section of the e-mail from M. Andrews who is a Bridgeview employee to another Bridgeview employee copying Cathie Doyle, the administrator of Fulton Commons, and the e-mail reads, "We are not receiving the amount we are ordering, therefore, it is running out. We have no gloves left and need them ASAP."

This is June 2nd, 2020. And we will scroll up a bit. This is an e-mail

from Cathie Doyle, the administrator at Fulton Commons, June 2nd, 2020 that reads, "We are also completely out of alcohol pads, rubbing alcohol, fanny cloth wipes both red and purple tops which we need all of desperately. Is there any way to get gloves sooner than next week, we are out."

Reading from these -mails, does this indicate to you a potential shortage of PPE at Fulton Commons?

A. It indicates that they were trying to get them, yeah.

Q. Let's move next to what will be marked as State's Exhibit 18.

A. I don't believe that the potential shortage of PPE was related strictly to Fulton Commons, I think it was all over the papers.

Q. Right, and we are zeroing in on Fulton Commons right now. So we have another e-mail, can you see?

A. Yes.

Q. And this is an e-mail chain involving Susan O'Connor who is one of your

M. Kalter

employees and Cathie Doyle, the administrator of Fulton Commons. This is from April 13th, 2020. And it reads, "I ordered 600 rain ponchos last week in anticipation of running out of gowns which I run out of tomorrow, but they will not be here for at least another week. Tomorrow I will begin using think black garbage bags until the ponchos arrive. OEM basically told me last week that I am on my own and to think creatively."

(E-mail was marked as State's Exhibit 18.)

Q. We will scroll down a little further on the same page. So Mr. Kalter, looking at that highlighted section that I just read to you, does that, to you indicate a shortage of PPE at Fulton Commons?

A. What that really indicates to me that Office of Emergency Management threw in the towel.

Q. Well, what I want to look at specifically is, you have one of your employees writing "In anticipation of

running out of gowns, which I run out of tomorrow but they will not be here for another week" and also references to say using black garbage bags and ponchos, to you does that indicate a shortage of PPE at Fulton Commons?

A. I understand, but what I am looking at is the end of that, OEM basically told me last week I am on my own and think creatively.

Q. Causes are --

A. And I'm sure and that's what they did.

Q. So OEM aside, what I am really wanting to know is to you, does this show or evidence a shortage of PPE at Fulton Commons?

A. I really don't know. I don't know. I can't see what this says. It's very clear that OEM says you are on your own and think creatively.

Q. And aside from OEM's involvement or not involvement, does this reference to be running out of gowns and using garbage

bags as gowns evidence a shortage of PPE at Fulton Commons?

A. I don't know, maybe OEM is telling them that garbage bags are PPE.

Q. Do you see any evidence of that in this e-mail?

A. Well, they say think creatively, that's what they say. It's in quotes.

Q. Would you agree that running out of gowns on the following day from this e-mail would indicate a shortage of PPE?

A. It wouldn't be something I would know the following day, they are using garbage bags, maybe that's acceptable, maybe not, I really don't know.

Q. So --

A. I'm sure they were doing whatever everybody else was doing.

Q. All of that aside, what I am locking at specifically is sufficiency of PPE at Fulton Commons at this time, and is it your testimony that running out of gowns and using black garbage bags indicates sufficient PPE?

M. Kalter

MR. YAFFE: Objection.

A. My testimony is that I don't know that they ran out of anything, they say they are going to.

Q. So it's your testimony that we can't confirm whether they ran out of gowns or not?

A. That's correct.

MR. YAFFE: You are asking him to make suppositions based on an e-mail he's never seen before he is not a recipient of, he's testified he is not involved in conversations about this and you are trying to draw all sorts of conclusions from him, basically, as a layperson to interpret words written by somebody else, and not knowing facts on the grounds of what's at the facility. I mean, I have been quiet as you have gone over this 10 different ways, but you know, I object to further questioning about this or questioning of like this of other e-mails that Mr. Kalter has no involvement in.

M. Kalter

MR. SMITH: So that's duly noted, Mr. Yaffe. I understand your point there and I would just respond to that by point out that first of all, Mr. Kalter is anything but a layperson, he is a former administrator, has been in this industry for decades, owns multiple homes, comprising a significant number of beds and these e-mails we're discussing are in and amongst his administrators or the high level operators and, essentially executives in his company --

MR. YAFFE: I think at some point you are still asking him to interpret what these people wrote to each other, what they meant, what the true facts were on the ground, and he has no information or knowledge about that, that's what he testified to.

MR. SMITH: I think I've got the answer I need. If Mr. Kalter's testimony is that this e-mail is not clear as to the shortage of PPE then we

M. Kalter

will take that as he provides it and we can move on to the next question.

Q. Mr. Kalter, from your understanding as owner, who was responsible at Fulton for procuring PPE?

A. The administrator.

Q. That's Mrs. Doyle?

A. Yes.

Q. And who does Mrs. Doyle report to again?

A. She doesn't report to anybody.

Q. Aside from what we've discussed, were there any efforts that you were involved in to acquire PPE later in the pandemic, so say summer 2020 into fall 2020?

A. I have no capabilities of providing PPE, I have no way to get them.

Q. From your perspective as owner, did Fulton have the money to acquire PPE during the pandemic?

A. Yes.

Q. Did it have the available funds?

A. Yes.

Q. From your perspective, from your

understanding, was there ever a time that Fulton didn't have money to acquire PPE?

A. There was never such a time.

Q. Was there ever a time during the pandemic from your perspective when you thought Fulton Commons might not have enough PPE?

A. I never knew that, no.

Q. As far as you know, was PPE ever shared between and amongst the sister facilities?

A. I don't know.

Q. So as far as you know, Mr. Kalter, in March 2020, did Fulton test any residents that were presumed to be Covid-19 positive to determine if that presumption was accurate?

A. I don't know.

Q. Do you know if the approach of testing at Fulton Commons changed at all in April of 2020?

A. I don't know.

Q. And what about M of 2020, did Fulton Commons begin testing at that time?

M. Kalter

A. I don't know.

Q. Over the course of the entire pandemic, were you involved at all about with discussions about testing?

A. Know.

Q. Were you involved at all in discussions about acquiring testing kits or testing supplies?

A. No.

Q. From your perspective, would testing residents at Fulton Commons have been helpful in responding to the pandemic?

A. I really don't know, I leave that to the experts.

Q. Did you ever suggest as owner to anyone in Fulton' leadership, including Ms. Doyle, Mr. Weiss, anyone that residents should be tested?

A. It would not be something that I would be able to suggest.

Q. What do you mean by that?

A. Because it would be based, they would have to do whatever the Health Department directs.

M. Kalter

Q. On that front, do you know if DOH ever offered to assist with testing Fulton's residents?

A. I don't know, I remember hearing that all that DOH came out with a requirement that you have to test twice a week.

Q. Aside from the directive to test, do you know if DOH ever offered to assist with that testing?

A. I don't know.

Q. Do you know if Fulton staff was ever tested?

A. I think there also was a directive at some point to test the staff.

Q. Was it your understanding that Fulton came into compliance with those two directives about testing residents and testing staff around the times of the directives?

A. I'm sure they did.

Q. Did you ever get reports from Mr. Weiss about that?

A. No.

M. Kalter

Q. Was it custom and practice for Mr. Weiss to report back to you about these sorts of compliance issues?

A. No.

Q. So I want to direct your attention to what will be marked as State's Exhibit 19. Can you see this yet, Mr. Kalter?

A. Yes, I can.

(E-mail chain was marked as State's Exhibit 19.)

Q. So this is a series of e-mails, an e-mail chain, one-page long between the controller of Fulton Commons, Mr. Weiss, Carol Frawley, director of nursing services, Olaf Butchma, the medical director, and Cathie Doyle, the administrator, so these are high level leadership individuals at Fulton Commons. Let's go scroll down and start from the bottom of this chain.

So this first e-mail from Mrs. Doyle on May 15th is to Steven Weiss and she's requesting, "One week for Fulton I am estimating at 180 swabs assuming 40

percent test positive, I would like to order two weeks for Centers now at 36,000" from looking at this e-mail, Mr. Kalter, would it be your understanding this is Mrs. Doyle asking for permission from Mr. Weiss to purchase testing samples or testing supplies?

A. I don't know if asking for permission or asking him to do it or whatever.

Q. From your understanding of the chain of command, who would make this sort of decision?

A. What sort of decision, what?

Q. A decision like this to purchase testing supplies?

A. She would.

Q. What would Mr. Weiss' role be here?

A. To get it done or if she needed him to do it.

Q. And would this kind of discussion or decision making ever make it its way up to you?

A. No.

Q. Let's scroll up just a bit in this e-mail chain and I want to read the highlighted response from Mr. Weiss. "Why can't we ask for one week, everything is so fluid now, let's see what happens."

And then we will go up just a bit to Mrs. Doyle's response to Mr. Weiss, "Okay, I am just afraid if they run out we will not be able to get more, I will order for one week."

So from our review of this e-mail chain, would you agree that this appears to be Steven Weiss pushing back a bit on Mrs. Doyle's request to order testing supplies?

A. No.

Q. How would you characterize it?

A. I would characterize it as the prudent thing to do, to see -- to order what we need right now and make sure that nothing changes in the directive so we didn't get stuck with $20,000 worth of swabs to go in the garbage.

M. Kalter

Q. At this time and this is according to the e-mail of May 2020, did Fulton Commons have the money to acquire sufficient Covid testing?

A. Yes.

Q. From your understanding, was there ever a time when Fulton did not have the funds to require sufficient Covid testing?

A. No.

Q. What is a certificate of compliance?

A. I don't know.

Q. Have you ever heard that term before?

A. I don't recall.

Q. Let's take a look at what will be marked as State's Exhibit 20.

(Certificate of Compliance was marked as State's Exhibit 20.)

Q. Can you see this document yet, Mr. Kalter?

A. Not yet.

Q. Okay?

A. Now I can.

Q. Does seeing this document refresh your recollection at all?

A. How many pages is it?

Q. It's just one page, we can scroll to the bottom.

A. Okay. Yeah.

Q. And by yeah, do you mean does this refresh your recollection about certificates of compliance more generally or do you recall seeing this document or something else?

A. I recall seeing this document.

Q. Does looking at this reflect --

A. Yes.

Q. Withdrawn. Does seeing this document refresh your recollection about certificates of compliance more generally and what they do?

A. No, not generally, I just know this one.

Q. What is your recollection of this particular document?

A. That I remember Steven telling me

M. Kalter

that we need a certificate of -- this certificate of compliance signed and submitted to the Health Department.

Q. So is it fair to understand that you went over this document with Mr. Weiss?

A. I didn't go over it with Mr. Weiss, no.

Q. Did he explain it to you in some other fashion?

A. No, he didn't explain it to me.

Q. Did you end up signing this document.

A. Yes, my signature is there.

Q. Did you review the document before you signed it?

A. Yes.

Q. What was your understanding of what this certificate of compliance applied to?

A. To the testing of whatever had to be done.

Q. During the course of the pandemic, did you sign any other similar certificates of compliance?

M. Kalter

A. I don't know, but I see -- I know I signed this document, and I only signed it after the administrator signed it.

Q. And I guess just looking at this document now, does it refresh you at all as to potentially other certificates of compliance you may have filled out during the course of the pandemic?

A. I think I already answered that, only this one.

Q. And again, you mentioned Mr. Weiss. He would not walk you through these documents; is that correct?

A. No, I know how to read English.

Q. Do you recall if you consulted with Mr. Weiss about what the certificate of compliance meant or these three provisions that it applied to?

A. No, it's very clear what it means and I told him that I really don't know if we're in compliance, I hope we are but I see the heading is administrator/operator certificate of compliance, therefore, I think the administrator should sign it and

M. Kalter

certify it and send it in because they are the ones who know.

Q. Okay.

A. And he told me okay, so they did that, and it was rejected and they said that the operator has to sign. So once I knew that the administrator signed it, then I knew that we were in compliance.

Q. And when you reviewed these three, let's just take this specific certificate of compliance. You said you reviewed these three provisions here. The first is about restricting visitation to residents, the second is about notifying family members about Covid related developments in the facility, and the third is about the May 11th directive from the Department of Health about discharges or admissions to nursing homes.

When you reviewed those three provisions yourself, did you take any steps or actions to confirm compliance with those three items or something else?

A. I think I just answered that. I

M. Kalter

told you that I had to the administrator sign it and submit it first so I knew that they were in compliance.

Q. Well, I understand that you had Mrs. Doyle sign it first, did you take any steps beyond that to confirm compliance with these three provisions?

A. There wouldn't be any other steps that I could take.

Q. By that what do you mean?

A. I have no personal knowledge of anything that's going on in the nursing home.

Q. Would you agree that you could reach out to various staffers at Fulton Commons to confirm Fulton's compliance?

A. No, that would it be violating the chain of command.

Q. Could you confirm with Mr. Weiss whether there was compliance with these three provisions?

A. Like I said, I confirmed by the fact that Cathie Doyle signed it.

Q. So I'm correct in understanding

there were no other steps taken to confirm compliance with this?

A. Not that I can remember.

Q. So just for completeness of the record, this is the only certificate of compliance you recall signing during the pandemic; is that correct?

A. I think so.

Q. So Mr. Kalter, are you aware or do you recall if Fulton received any federal support payments during the pandemic?

A. I think they did.

Q. Do you know what payments or from what agency?

A. No, not offhand.

Q. Do you recall if Fulton received money from the Federal Provider Relief Fund?

A. I am not sure which funds that is.

Q. Okay. Do you know assuming that Fulton received payments from the Federal government and you can correct me if you don't think they did, but if they did --

A. I think I said they did.

M. Kalter

Q. I apologize, I didn't want to assume your statement or knowledge --

A. I just don't know your name about Federal Relief Fund.

Q. Okay, so preceding with the fact that Fulton received federal support payments, do you know why the payments were provided to Fulton Commons?

A. For I guess to make up for some of the things that they had to do extra.

Q. Any other sense of why those payments were provided or was that it?

A. Well, maybe to make up for the loss of census of patients and revenue.

Q. Do you know if Fulton Commons applied for those funds?

A. I don't think they did.

Q. So the safe to assume if there was an application, that was not something you were involved in?

A. I don't believe there was any applications for federal funds, I think they just came.

Q. Was there ever a time where you

had to complete an attestation about receipt of federal funds from the government?

A. I don't know, I am not aware of it.

Q. Would that be something that you would be involved in, would be attesting to receipt of federal funds or would somebody else handle that?

A. I wouldn't be involved in that.

Q. Who do you think would?

A. Probably Steven Weiss.

Q. And again, preceding with the idea that Fulton Commons received federal money, how many payments do you think Fulton Commons received from the Federal government between February 2020 and December 2020?

A. I have no idea.

Q. Do you have any sense of how much total money or support Fulton Commons received from the Federal government?

A. I don't know.

Q. Do you know if there were any reporting requirements attached to the these support payments?

M. Kalter

A. I'm sure there are, they never give you money without reporting.

Q. And is that something you would be involved in within complying with reporting requirements?

A. No.

Q. Who would handle that?

A. Probably the accountants.

Q. And that's HMM?

A. Yes.

Q. What about performance requirements, do you know if there were performance requirements attached to these federal funds?

A. I don't know.

Q. If there were performance requirements would that be something that you would be involved in confirming?

A. No.

Q. Who would handle that?

A. I'm not really sure.

Q. Do you have any sense of how these federal funds were used at Fulton Commons, specifically?

A. No.

Q. Do you know if Fulton Commons received any State support during the pandemic?

A. The State doesn't give us any money. They take it.

Q. Are you familiar with --

A. Let me just go back for a second. You asked me about how the money was used.

Q. Correct.

A. That was your previous question.

Q. The federal money, how was the federal money used?

A. I don't believe that that would be anything that anybody would know because there was no requirements of segregation of those funds.

Q. I follow that, that makes sense. What I'm wondering is if there were any specific projects used or specific uses that money was applied to that you were aware of?

A. I am saying that there would not be because the money would be commingled with all your other money.

M. Kalter

Q. Right, that makes sense on a technical front. I'm wondering if hypothetically you received 150 million dollars from the Federal government, it would be conceivable that that money could be devoted to capital project or paying off the mortgage or something specific, does that make sense?

A. No, because I'm sure there are going to be requirements where you have to report what you spent the money on whatever you spent that amount of money, doesn't have to be those funds, but that amount of money you would have to report that.

Q. So if we assume reporting requirements then you would need to keep track specifically of what that money went to, correct?

A. I would not keep track of it, and it may not be that particular money, I am sure they would have to keep track of money spent in those categories.

Q. So it's your understanding money would have been utilized for specific

purposes, they would then need to be reported to the Federal government, correct?

A. Not a particular money, but money would have to be reported to the Federal government that money was used for those purposes.

Q. And who at Fulton Commons would be responsible for keeping track of those usages and reporting to the Federal government?

A. The accountant.

Q. Would Steven Weiss be involved in that at all?

A. I'm sure he would.

Q. Would you be involved in that at all?

A. No.

Q. Do you know if the administrator would be involved in that at all?

A. No, they wouldn't.

Q. So safe to assume they would be either Steven Weiss and or the accountants at HMM?

A. Yes.

M. Kalter

Q. And just for clarity, after discussing the discussing the federal funds, you are not aware of any State support monies paid out during the pandemic?

A. No.

Q. Aside from the Federal Provider Relief Funds, do you know if Fulton received any federal payments from any other programs during the pandemic?

A. Again, I think you mentioned, I just want to clarify, we are talking about Fulton or we are talking about Fulton Commons Care Center?

Q. Well, actually in this context I am talking about the entire galaxy of Fulton Commons entities, so if you can differentiate, that's fine, but if we can talk about --

A. What's your question?

Q. Did any of those entities received federal funding or support during the pandemic?

A. No, I believe federal funding was only directly to the nursing home.

M. Kalter

Q. Okay, and now that we have had that clarification, do you recall any specific programs like the Federal Provider Relief Funds that provided support to Fulton Commons Care Center?

A. Well, I don't think they were support payments, I think they were loans.

Q. Do you have a recollection of such a loan being given to Fulton Commons Care Center?

A. No, none to Fulton Commons Care center.

Q. Were they given out to other facilities in your group?

A. None of the care centers got loans.

Q. Who in your group got loans?

A. I think the New companies got loaned.

Q. Would that include New Fulton Commons?

A. Yes.

Q. And do you know what federal program gave funds to Fulton Commons?

A. PPE.

Q. Do you know if Fulton Commons or New Fulton Commons applied for a PPE loan?

A. If they got it, they had to apply.

Q. Were you involved in that application?

A. No.

Q. Who would handle that application?

A. Accountants with Steven Weiss.

Q. Were you ever asked any questions or consulted at all in that process?

A. I don't know, I don't have a recollection.

Q. Do you know if Fulton did, in fact, end up receiving a PPE loan?

A. I did say that New Fulton received it.

Q. Do you know if New Fulton utilized that PPE loan for any specific purpose?

A. I'm sure they utilized it for the purpose that it was given, otherwise, they

M. Kalter

have to pay it back.

Q. And what is your understanding of what use is a PPE loan can be applied to?

A. I believe payroll, rent, utilities.

Q. Would it be your understanding that that money was, in fact, applied to those categories?

A. I don't know, I don't think the accounting has been done on that yet.

Q. Were you ever consulted about that PPE money being used for specific purposes?

A. It's not something somebody consulted. It's whatever your expenses are, they are, you have to send it in.

Q. And who at Fulton Commons would be responsible for determining how the PPE money was spent?

A. There was nobody, there is nothing to determine how the PPE money was spent. You only spend it on payroll or the required things, whatever else you spent does not go in for credit against the PPE.

M. Kalter

It's not like you get a certain amount of money, you have to make sure to spend it.

Q. Right, what I'm wondering is a specific dollars was given and there's specific qualified uses and a choice could be made of which of those uses to apply that money towards, would somebody at Fulton Commons make that determination?

A. No, you don't spend extra money, you spend money that you need to spend and then it has to fall into the categories.

Q. So who at Fulton Commons would make the decision which of those categories to apply those the money to it?

A. They wouldn't make a decision, there is no decision to be made. When you are going to have to file the application you have to put down all the money you spent on those categories and then you see if you qualify or you don't qualify.

Q. So is it your understanding that the application is asking for reimbursement of already spent money?

A. It's not asking for

M. Kalter

reimbursement, the PPE as you well know is for forgiveness of the loan.

Q. Correct, but the loan is provided in advance of the disbursement of those funds, correct?

A. The loan is provided as a loan and then it's forgiven if you used it for the right purposes and the right amounts, and if not, you have to pay it back.

Q. Understood. I think what I am getting at is when the money is received from the Federal government, I assume somebody at Fulton Commons was responsible for determining whether that money went to payroll or?

A. No, no, no, that money is not segregated, you are misconstruing the facts. The money goes into the account and money is spent as we go on on all the expenses, and proper expenses will go into the application for the forgiveness. Not proper expenses will not go into that application, and if there are not enough proper expenses, we would have to pay back the loan.

M. Kalter

Q. Who would keep track of the "proper expenses?"

A. Eventually the accountants when they fill out the forgiveness loan.

Q. Would Steven Weiss be involved in that at all?

A. Yes.

Q. Do you know if Fulton Commons ever laid off employees during the pandemic?

A. I have no idea.

Q. Would you be consulted in a decision to lay off employees?

A. No.

Q. Let's take a look at what's going to be marked as State's Exhibit 22.

Mr. Kalter, can you see the documents?

A. Not yet.

Q. Okay.

A. There it is.

Q. Great, so this is an e-mail of June 16th 2020 from Cathie Doyle to Steven Weiss.

(E-mail dated 6/16/20 was marked

M. Kalter

as State's Exhibit 22.)

Q. Ms. Doyle writes "VP of union just asked me why are we doing layoff's when we got money to avoid them for Covid, just an FYI I think they may try and fight these layoffs."

Does this refresh your recollection at all about decision being made to lay off --

A. Obviously, my name is not on here, I have nothing to do with this.

Q. And this is not a decision you would be consulted with?

A. No.

Q. In reading this does that refresh your recollection as to whether or not this actually came to pass, whether employees were actually laid off?

A. No, I don't know.

Q. When Ms. Doyle refers to "When we got money to avoid them" by them she means layoffs, is she referring to PPE?

A. I really don't know, I have no idea what she's referring to. If she's

M. Kalter

referring to PPE it's not to avoid layoffs so I don't know what she's done. PPE money was not given to avoid layoffs.

Q. What was your understanding of PPE in the context of staffing and employment?

A. Just to continue payroll.

Q. Would continuing payroll related to layoffs?

A. Yes and no, I mean, it depends.

Q. And expand on that for me.

A. PPE was not given to have employees sitting on a unit that has no patients.

Q. Was it your understanding that PPE was being provided to employ or to continue the employment of employees, correct, though?

A. Continue the employment of people that you need.

Q. Was it your understanding that you could receive PPE loans and still lay employees off?

A. I don't see why not. I don't see

why that would be as long as if you lay them off and you don't use any money, you just have to give it back.

Q. Would it be your understanding that if PPE funds were used for any of the accepted purposes and staff was still laid off, that they would have to give some of that money back?

A. Possibly.

Q. Do you know if Fulton Commons will be doing that?

A. I have no idea, the reports haven't been filed yet, but I doubt it.

Q. Over the course of the pandemic, did Medicare at any point begin covering costs associated with caring for Covid-19 residents at Fulton Commons?

A. I don't know.

Q. Let's look at what will be marked as State's Exhibit 23. This is another e-mail exchange. It's one page, comprised of an e-mail chain between Cathie Doyle, the administrator of Fulton Commons, Steven Weiss, the controller at Fulton Commons, and

M. Kalter

let's scroll down just a bit.

(E-mail chain dated 6/15 was marked as State's Exhibit 23.)

Q. Ms. Doyle here on June 15th refers to picking up 10 cases under code U071 and if we scroll up just a bit, Mr. Weiss responds "Are you sure all of all others in the past were picked up" and for clarity, the line subject line of this e-mail is Covid/Part A, and if we go all the way to the top Mr. Weiss responds to Mrs. Doyle, "Please send me a list of all Covid and suspected Covid residents that we had in Fulton."

Mr. Kalter, would your understanding be here that Mrs. Doyle and Mr. Weiss were discussing picking up Part A residents at Fulton Commons, and by Part A I'm referring to Medicare?

A. Yeah, that's what it seems like.

Q. Does that refresh your recollection as to at any point in time whether Medicare began covering the treatment of Covid-19 patients at Fulton

Commons?

A. I didn't say that they didn't cover them. Your question was if they gave us money for Covid patients -- for Covid expenses.

Q. Sure. I can rephrase that question if you would like, what I'm driving at is whether at any point Medicare started covering costs associated with Covid-19 residents at Fulton Commons?

A. Oh, that was your question and my answer was that the answer is no, they were not covering for costs, they are paying you for caring for patients, it's not really cost, they gave you a flat right.

Q. But Medicare was picking up, if you want to use that term, residents that were Covid-19 positive at Fulton Commons, correct?

A. That's correct, I can go along with that.

Q. Do you know when that coverage by Medicare started?

A. No, I don't know.

M. Kalter

Q. Are you familiar with the code that I read in the e-mail chain U0710?

A. No.

Q. Were you consulted at all by Mr. Weiss or anyone else at Fulton Commons about Medicare picking up coverage of Covid-19 residents?

A. What would he have to consult me about?

Q. Could be any number of things, just whether you were consulted at all about that.

A. Well, I mean, like what, can you be more specific.

Q. Well, we can see here in the e-mail chain Mr. Weiss refers to either creating a list or providing a list of all Covid and suspected Covid residents at Fulton Commons which would imply an effort to make sure or to maximize capture of that treatment. Would you be consulted on something like that?

A. No, because to me this would imply that they're just following Medicaid

M. Kalter

guidelines, Medicaid requires Medicare maximization.

Q. And do you know going back to this list referred to here in Mr. Weiss's e-mail, do you know if a list like this was created of all Covid and Covid suspected patients residents at Fulton Commons?

A. I have no idea.

Q. Would that be a list you would look at if it did exist?

A. If I would get it I would look at it but I don't think I would get it.

Q. Do you recall ever receiving a list like this at any time?

A. No. No.

Q. As far as you know, was every Fulton resident who had been designated as Covid positive or presumed or suspected eventually billed under this Medicare code?

A. I would hope so.

Q. Did you ever follow up with Mr. Weiss to ensure that this program was being utilized or maximized?

A. What do you mean by follow up?

M. Kalter

Q. When you became aware of this program, did you ever discuss with Mr. Weiss taking all efforts or making all efforts to --

A. No, it's no different than all Medicare patients, we have to maximum Medicare utilization, that's the code.

Q. Did you have discussions with Mr. Ways about this particular program maximizing capturing this program?

A. Why would I have? I wouldn't have a discussion about this program in particular, it's a Medicare program.

Q. Jumping back to a discussion we had about your review of census, you mentioned, I believe, that you would get a census breakdown of total census and Medicare census; is that correct?

A. That's correct.

Q. Do you remember at any time if that census breakdown for Medicare started including residents covered under this new program for Covid coverage?

A. It's not specific to why they're

covered.

Q. Did you notice at any time that the roster of your Medicare residents expanded?

A. It's fluctuating all the time.

Q. Do you remember when this Medicare program started?

A. No, I believe you asked me that already, I don't know.

Q. If I told you April 2020, would that refresh your recollection?

A. No.

Q. Going back to that time when you were receiving your Medicare census breakdown, do you recall that census expanding around May or April of 2020?

A. I think you asked me that and I told you that the census varies every day.

Q. When you say varies, how significant or dramatic can that be?

A. I really don't know, just fluctuates on a daily basis.

Q. Are you familiar with the nursing home quality pool or NHQE program operated

M. Kalter

by the State Department of Health?

A. No.

Q. Let me direct your attention to what will be marked as State's Exhibit 24, and for the record, this is a two-page document. It's a note or letter from the Department of Health dated January 31st, 2020, and we can sort of slowly scroll so you can get a chance to read it.

(Letter dated 1/31/20 of the Department of Health was marked as State's Exhibit 24.)

Q. I want to see if this refreshes your memory at all about this program.

Mr. Kalter, I know this is pretty dense going here, so let me ask if this is something that's completely foreign or if it does trigger your memory?

A. Foreign.

Q. So is it fair to understand would you have any knowledge about whether Fulton Commons qualified for this program or received payments through this program?

A. No, I don't know.

M. Kalter

Q. Do you know, and this is to the best of your recollection, in March 2020 if residents' family members and healthcare agents were kept apprised of Covid related developments at Fulton Commons?

A. I don't know.

Q. Were you involved at all in efforts to keep updated residents' family members and agents updated as to Covid in the facility?

A. No.

Q. Did you ever hear of a family member or healthcare agent complaining about lack of information and or updates specific to Covid?

A. In Fulton?

Q. Correct.

A. No.

Q. Moving into April 2020, how did Fulton ensure that family members and agents were kept apprised of Covid related developments at the facility?

A. I don't know.

Q. So is it safe to understand you

M. Kalter

were not involved in those sort of efforts at that time?

A. Pretty safe to understand that.

Q. In April of 2020, did you ever hear of a family member or healthcare agent complaining about lack of information and updates specific to Covid at Fulton Commons?

A. Was that different than the previous question you asked me?

Q. It's the next month, April 2020 as opposed to --

A. Oh, okay, so no, I didn't in April, either.

Q. Let's take a quick look at what will be marked as State's Exhibit 25.

(E-mail dated 4/20/20 was marked as State's Exhibit 25.)

Q. So this is a one-page document. It's e-mail from Cathie Doyle, the administrator at Fulton Commons to, I think the administrators of your three other homes, Carlton Williams, Sabrina Charles and Susan O'Connor. She writes on April 20th, 2020, "Do we beat the press to the punch and

M. Kalter

alert families as to the number of deaths we have had in each facility."

Mr. Kalter, from reading this e-mail, what do you think Mrs. Doyle is talking about here?

MR. YAFFE: Objection.

Q. You can answer.

A. I have no idea.

Q. Was this sort of consideration ever passed up the chain to you?

A. No.

Q. As far as you understand and Mr. Weiss is on this e-mail chain, did Mr. Weiss ever discuss this sort of approach to you?

A. No. I am not sure what approach you are talking about, but he never discussed this with me.

Q. I guess the idea of "Beating the press to the punch and alerting families."

A. I really don't know what they are referring to. Do you know what press to the punch is? Press come there or whatever, I don't know.

Q. Were you ever aware of at any

time of press coverage at Fulton Commons during the pandemic?

A. Not offhand, but it's possible.

Q. Did you follow press reports specific to Fulton Commons during the pandemic?

A. Let me rephrase that. I think there was some type of a New York Times article about four, five, six weeks ago.

Q. Okay.

A. About national problem in nursing homes and it also referenced Fulton Commons, I think I saw that article.

Q. Aside from that recent New York Times article, were there any other instances of press coverage at Fulton commonly?

A. I don't recall.

Q. That you remember?

A. I don't remember.

Q. During the pandemic and so we will go back to March 2020 through December 2020, did you follow Fulton Commons in the press, did you search for articles referring

M. Kalter

to Fulton Commons in the press?

A. No.

Q. Looking at this e-mail here, does this to you imply that Cathie Doyle or Fulton Commons had been misrepresenting the number of deaths in the facility to family members?

MR. YAFFE: Objection.

A. I told you, I don't know what this means, I have no idea.

Q. Do you know at this time, this is April 2020, was Fulton informing family members and healthcare agents about deaths in the facility?

A. I don't know.

Q. Did you follow press coverage at any of your other facilities during the pandemic?

A. No.

Q. And again, aside from the New York Times report which I believe was last month, were there any other coverage from any other sources that you became aware of at any time during the pandemic?

M. Kalter

A. Not that I remember.

Q. In the New York Times piece you just referred to, what specifically was that referring to, if you recall?

A. I don't know, something about accidents or something, I think. Well, I think it was referring to accidents with five star ratings in facilities, I'm not really sure what they meant.

Q. And upon seeing this coverage or reading of this coverage at Fulton Commons, did that change your approach to your decision making at Fulton Commons or the way you ran your facility?

A. We don't run our facility based on the press.

Q. So would I be correct in understanding that after receiving these reports covering Fulton, no measures had been taken to respond to that coverage?

A. Again, we don't respond to press and we don't run our facilities by press.

Q. Then would you find Mrs. Doyle's statement there about "Beating the press" to

M. Kalter

be in conflict with your idea?

A. Once again, I don't know what she's talking about.

Q. Would you be involved at all in making any decisions on transferring residents from the facility to the hospital?

A. I believe we went through this. No.

Q. Well, before we were talking about residents being transferred from outside the facility to the facility and now I am reversing that, I'm asking if there was going to be a transfer outside to the outside, would that be something you would be involved in?

A. No.

Q. And I'm assuming you would not be consulted on that front, either?

A. No.

Q. Mr. Kalter, I am sure you have heard the expression "The buck stops here." Correct?

A. Right.

Q. So from your perspective as an

M. Kalter

owner, where does the buck stop at Fulton Commons on the front of complying with and ensuring compliance with State and Federal guidelines about resident care and resident safety?

A. What do you mean by that?

Q. Well, is there someone at Fulton Commons who is the final sort of stop for ensuring compliance amongst staff as to following policies and procedures, adhering to State and Federal directives about standards of care, who at Fulton would be responsible for that?

A. That would be the administrator.

Q. Is there anybody else at Fulton Commons that shares that responsibility or is that just with her?

A. I don't know, she can delegate things to people, but I don't really know.

Q. Is there anybody above her that would be responsible for that role?

A. There is nobody above her, period.

Q. Well, I guess by that I mean

M. Kalter

Steven Weiss, would Steven Weiss have a role in ensuring that policy and procedure and safety guidelines were being adhered to?

A. No, I think I answered that, Steven Weiss don't doesn't override Cathie Doyle.

Q. So along the same lines, where does the buck stop at Fulton Commons on the front of it ensuring that infection control guidelines and directives are followed by clinical staff?

A. Once again, the administrator.

Q. And would you agree, and this is based on your experience as an administrator and spending decades in this industry, would you agree via the quality of resident care and resident safety is dependent on staff following infection control guidelines and mandates?

A. I think we went through that and I told you I am not qualified to answer that. The administrator would make decisions with the medical experts on it.

Q. And again, even assuming that you

are not qualified now, at one point you were an administrator of which I would assume you would have considered yourself qualified at that time to make these considerations or assessments?

A. I guess. I don't know. I don't know if I considered myself qualified. Whatever it is, I had a license.

Q. Well, based on the education and training you received in the context of being a nursing home administrator, would you agree that residents care and safety is dependent upon staff following infection control mandates?

A. Again, I answered that several times, that would be up to the administrator and medical staff, it would not be something that I would agree not agree or have an opinion about.

Q. Well, I am asking you in this context as someone who has not only administrator training and certification and licensure but administrator experience at a large home, would this be something you

M. Kalter

agree with that resident care and safety is dependent based upon staff following guidelines?

A. I can't answer that question on what I would agree, what I wouldn't agree. It's things that you decide on the spot when you are in that situation, if you are qualified.

Q. And what do you mean decide on the spot?

A. When things happen and you are responsible for deciding, you do that. You don't -- you can't pass judgments on things that you don't know.

Q. So would you say it's a relative thing whether adhering to infection control guidelines is important --

A. It's a situation thing.

Q. So it's situational?

A. Yeah.

Q. So there could be situations where staff failing to adhere to infection control guidelines would not be a problem?

A. Could be, could be such a thing.

M. Kalter

MR. YAFFE: Objection.

Q. Based on your experience in the industry and as an owner of multiple facilities, I assume you're aware that neglect as defined by New York State Law is a failure to render timely consistent safe adequate appropriate services treatment and or care to a resident, correct?

A. Well, I am not familiar with the verbatim of the definition, but I understand what neglect means.

Q. Would you agree that failing to properly cohort Covid and non-Covid residents puts any non-Covid residents at risk of contracting Covid?

A. Again, I don't know, I am not qualified to answer that question.

Q. Would you agree that failing to cohort staff and that's primarily allowing staff to care for both Covid and non-Covid residents puts non-Covid residents at risk of contracting Covid?

A. Once again, I am not qualified to answer that question.

M. Kalter

MR. SMITH: At this time I am going to ask for a short break, take a five or 10 minute break. I think we are very, very close to the end, so let's break until 4:30. Does that work for everybody, and we can come back an wrap this up.

THE WITNESS: Okay, very good for me.

MR. SMITH: We will see you at 4:30 in 10, 12 minutes and wrap this up.

MR. YAFFE: Yes.

THE WITNESS: Okay. Thank you.

MR. SMITH: Thanks so much.

(A recess was taken.)

MR. SMITH: We will go back on.

So Mr. Kalter, after a brief recess, we have done a quick role call, everyone is present, that is all the questions we have for you today. We are releasing you from the subpoena.

Again, we would like to reiterate the importance of confidentiality about

M. Kalter

these proceedings, so we ask you to not relay the information that we have discussed today, documents we have discussed today to anyone outside of your attorney. It's a confidential proceeding conducted by the Attorney General's Office so we just want to remind you of that, otherwise, we have nothing more for you.

We appreciate your time. I know it's a long day, so we appreciate your patience and giving us answers to all the questions we put to you, so if you don't have questions for us.

THE WITNESS: I was just going to ask you is it my turn for questions now, do I get equal time?

MR. SMITH: I am experiencing bandwidth issues at this point, so.

THE WITNESS: Oh, I see. We're off the air, huh?

MR. SMITH: If you have nothing more for us we appreciate your time and thank you for sitting with us all

today.

THE WITNESS: Did you say I'm released from the subpoena?

MR. SMITH: You are released from the subpoena. You are free to go.

THE WITNESS: Thank you very much and nice to meet everybody.

Thank you.

(TIME NOTED: 4:35 p.m.)

INDEX TO TESTIMONY

INDEX TO EXHIBITS

CERTIFICATION

I, Stefanie Krut, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of April, 2021.

Stefanie Krut

2950317N

PFI NO. 6312

CERTIFIED BEDS:

02204108

10/18/01

0
2
0
2
2

PERMANENT BED CAPACITY
RHCF 40

RESIDENTIAL HEALTH CARE FACILITY

NONE

FULTON COMMONS CARE CENTER INC

60 MERRICK AVE
EAST MEADOWS NY 11554

OPERATOR PROPRIETARY CORPORATION
FULTON COMMONS CARE CENTER INC

HAS BEEN GRANTED THIS OPERATING CERTIFICATE PURSUANT TO ARTICLE 28
OF THE PUBLIC HEALTH LAW FOR THE SERVICE(S) SPECIFIED:

BASELINE SERVICES
****

****

****

40 beds added

prd date

Facility Id. 6312
Certificate No. 2950317N

Certified Beds - Total 280
RHCF 280

State of New York
Department of Health
Office of Health Systems Management

OPERATING CERTIFICATE

Effective Date: 01/05/2009
Expiration Date: NONE

Residential Health Care Facility - SNF

Fulton Commons Care Center Inc
60 Merrick Ave
East Meadows, New York 11554

Operator: Fulton Commons Care Center Inc
Operator Class: Proprietary Business Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Baseline

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

20081231

15216.9918.020

E21355.0008.055

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE)

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/02/2021**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; I (or the entity) have adopted and implemented, where applicable, an effective compliance program pursuant to New York State Social Services Law section 363-d, and have satisfied the requirements of Title 18 of the New York Codes, Rules and Regulations Part 521; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/13/2021

(9) (Print Name and Title) Moshe Kaltar, President

(10) (Telephone #) 718/961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Queens (12)

On this 13th day of December, 2021, before me personally came

Moshe Kaltar, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

ALICE WEINBERG
NOTARY PUBLIC, State of new York
No. 01WE6096316
Qualified in Queens County
Commission Expires July 28, 2023

_____
NOTARY PUBLIC

EMEDNY-490601 110/20

CERTIFICATION STATEMENT INSTRUCTIONS

A Certification Statement must be completed:

1. When you are applying for an Electronic/Paper Transmitter Identification Number (ETIN) for the electronic or paper submission of New York Medicaid data. At least one Certification Statement must accompany the ETIN Application Form. If you have multiple providers that you want linked to the new ETIN, you must complete and notarize a Certification Statement for each provider that is to be linked to the new ETIN, and send the Certification Statement(s) along with the ETIN Application Form.

2. When you are adding a provider ID number to an existing ETIN, you must complete and notarize a Certification Statement for the provider ID to be added, and indicate the ETIN in the top left corner of the form.

In both instances above, if you want the provider/ETIN combination to receive remittances electronically, you must also complete an Electronic Remittance Request form for the provider(s) and ETIN you are certifying. You must do this each time you link a new provider to your ETIN. Failure to do so will result in a paper, rather than electronic, remittance for that provider/ETIN combination.

NOTE: YOU MUST BE ENROLLED IN EITHER EMEDNY EXCHANGE OR FTP PRIOR TO REQUESTING ELECTRONIC REMITTANCE. ALL DOCUMENTS PERTAINING TO ELECTRONIC REMITTANCE CAN BE FOUND AT WWW.EMEDNY.ORG OR BY CALLING THE EMEDNY CALL CENTER AT: 1-800-343-9000.

Certification Statements remain in effect and apply to all claims until superseded by another properly executed Certification Statement. You will be asked to update your Certification Statement on an annual basis.

Please DO NOT use white-out or red ink on these forms, as they are imaged.

The numbered fields on the Certification Statement correspond with the explanations given below. Any changes to fields 1-12 must be initialed by the provider.

Field 1: ETIN (Electronic/Paper Transmitter Identification Number) If you are using this form to obtain an ETIN, leave this field blank. If you wish to add a provider ID number to an existing ETIN, please indicate the ETIN in the top left corner of the form.

Field 2: BILLING SERVICE NAME If applicable, enter the name of the billing service that the provider is enrolled with. If you are not using a billing service, leave this field blank.

Field 3: DATE Enter the date the Certification Statement is submitted to the fiscal agent.

Field 4: PROVIDER NAME Enter the name of the provider whose signature is being notarized, or name of organization.

Field 5: 10-Digit National Provider Identifier (NPI) Enter the NPI, unless exempted from NPI.

Field 6: 8-Digit Medicaid Provider ID Number Enter the Medicaid Provider ID number if NPI exempt.

Field 7: SIGNATURE Enter the signature of the individual indicated in Field 4. This must be an original signature.

Field 8: DATE Enter the date the Certification Statement was signed and notarized.

Field 9: NAME AND TITLE Print the name and the title of the person whose signature appears in Field 7.

Field 10: TELEPHONE # Enter the telephone number of the person whose signature appears in Field 7.

Field 11: EMAIL ADDRESS (If Available) If available, enter the email address of the person whose signature appears in Field 7.

Field 12: NOTARY PUBLIC To be completed and signed by the Notary Public. The fiscal agent cannot accept Certification Statements that are not notarized. In addition to the notary signature, NYSDOH requires a notary seal or stamp on this document. The notary's commission expiration date/year must be entered and legible. This information may be hand-written if it does not appear on the stamp/seal. The provider's name must be entered as the person who personally came before the notary.

Please mail original (FAX copies are not acceptable) completed Certification Statements to:

eMedNY
ATTN: Enrollment Support
PO Box 4614
Rensselaer, NY 12144-8614

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) 10/19/21 MP

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

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will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; I (or the entity) have adopted and implemented, where applicable, an effective compliance program pursuant to New York State Social Services Law section 363-d, and have satisfied the requirements of Title 18 of the New York Codes, Rules and Regulations Part 521; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/15/20

(9) (Print Name and Title) Moshe Kahler, President

(10) (Telephone #) [redacted] (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 15th day of December, 20 20, before me personally came

Moshe Kahler, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

STEVEN WEISS
(SEAL) NOTARY PUBLIC, State of new York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, ~~2019~~ 2023

_____
NOTARY PUBLIC

EMEDNY-490601 (10/20)

[redacted]

E19365 .0006 .045

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) 12/02/2019, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

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I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/16/2019

(9) (Print Name and Title) Moshe Kalter, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Queens (12)

On this 16th day of December, 2019, before me personally came Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL) ALICE WEINBERG
NOTARY PUBLIC, State of new York
No. 01WE6096316
Qualified in Queens County
Commission Expires July 28, 2023

Alice Weinberg
NOTARY PUBLIC

E19004.0005.037

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

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(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

MW 12/18

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/18/2018

(9) (Print Name and Title) Moshe Kalter President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

ALICE WEINBERG
NOTARY PUBLIC, State of new York
No. 01WE6096316
Qualified in Queens County
Commission Expires July 28, 2019

On this 18th day of December, 2018, before me personally came Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

Alice Weinberg
NOTARY PUBLIC

12/18/18 E17354.0008.0008

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) 12/02/2017, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/11/17

(9) (Print Name and Title) MOSHE KALTER, PRESIDENT

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 11th day of December, 2017, before me personally came Mosh Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of new York
No. 01WE6057588
Qualified in Kings County
Commission Expires April 23, 2019

_____
NOTARY PUBLIC

6L0 '5000 '595T3

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/01/2016**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (9 digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/19/16

(9) (Print Name and Title) Moshe Kalter, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 14th day of December, 2016, before me personally came

Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL) STEVEN WEISS
NOTARY PUBLIC, State of new York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2019

_____
NOTARY PUBLIC

E16363-000 EMEDNY 490501 9/12/16)

E15349 0006 020

(1) ETIN 48H 12/11/15 (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/02/2015**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duty considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/7/15

(9) (Print Name and Title) Moshe Kalter

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 7th day of December, 20 15, before me personally came

Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of new York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2019

_____
NOTARY PUBLIC

E14351.0005.015 fy 12115

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/02/2014**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity s) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/8/14

(9) (Print Name and Title) Moshe Kahler, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings (12)

On this 8th day of December, 20 14, before me personally came

Moshe Kahler, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2015

_____
NOTARY PUBLIC

E13357.0001.046

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE)

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) 12/02/2013, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/09/13

(9) (Print Name and Title) Moshe Kalfer, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings (12)

On this 9th day of December, 2013, before me personally came

Moshe Kalfer, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL) STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2015

_____
NOTARY PUBLIC

E13357.0001.046

PR15200-R1117 (Rev. 12/2010)

E12346.0003.063

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

JG 12/10/12

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) 12/01/2012, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/5/12

(9) (Print Name and Title) Moshe Kalfer

(10) (Telephone #) 718961-1228 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 6th day of December, 2012, before me personally came

Moshe Kalfer, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2015

_____
NOTARY PUBLIC

E12346.0003.063

PR15200-R1117 (Rev. 12/2010)

900 7000 15E113

LY 12-28-11

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/16/2011**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

(6) (8-digit Medicaid Provider Number -- If NPI exempt) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/22/11

(9) (Print Name and Title) Moshe Kalter, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 22nd day of December, 20 11, before me personally came

Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2015

NOTARY PUBLIC

E11363.0004.006

PR15200-R1117 (Rev. 12/2010)

 E10350.0004.048

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) 12/02/2010, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER (5) (8-digit Medicaid Provider Number -- REQUIRED) **02204108**

(6) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/7/10

(9) (Print Name and Title) Moyle Kahn, President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings (12)

On this 7th day of December, 2010, before me personally came Moyle Kahn, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL) STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2011

_____
NOTARY PUBLIC

PR15200-R1117 (Rev. 6/20/2008)

E10350.0004.048

E09357.0004.050

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

12/21

(3) As of (date) **12/02/2009**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER (5) (8-digit Medicaid Provider Number -- REQUIRED) **02204108**

(6) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/8/09

(9) (Print Name and Title) Moshe Kalter, President

(10) (Telephone #) 718-951-1111 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings (12)

On this 8th day of December, 20 09, before me personally came

Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

STEVEN WEISS
(SEAL) NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2011

_____
NOTARY PUBLIC

E08352 0016 002

(1) ETIN 48H (2) BILLING SERVICE NAME (IF APPLICABLE) _____

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/01/2008**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER

(5) (8-digit Medicaid Provider Number -- REQUIRED) **02204108**

(6) (10-digit National Provider ID (NPI) -- REQUIRED unless exempted from NPI) **1225029234**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient. the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

PLEASE DO NOT STAPLE OR WRITE IN BAR CODE AREA

(7) (Signature) _____ (8) (Date) 12/5/08

(9) (Print Name and Title) Moshe Kalter President

(10) (Telephone #) 718-961-1212 (11) (eMail, if available) _____

STATE OF New York
COUNTY OF Kings

(12)

On this 5th day of December, 2008, before me personally came

Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL) STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2011

_____
NOTARY PUBLIC

E08352.0016.002

PR15200-R1117 (Rev. 6/20/2008)

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

12/19

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID

(3) As of (date) **12/03/2007**, all claims submitted electronically or on paper to the State's Medicaid fiscal agent, for services or supplies furnished (4) by (provider name) FULTON COMMONS CARE CENTER (5) (8-digit Medicaid Provider Number - REQUIRED) **02204108**

(6) (10-digit National Provider ID (NPI) - REQUIRED unless exempted from NPI) 1225029234

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL CLAIMS SUBMITTED ELECTRONICALLY OR ON PAPER, USING MY (OR THE ENTITY'S) NPI OR MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

(7) (Signature) _____ (8) (Date) 12/14/07

(9) (Typed Name and Title) Moshe Kalfer

STATE OF New York
COUNTY OF Kings (10)

On this 17th day of December, 2007, before me personally came Moshe Kalfer, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2011

_____
NOTARY PUBLIC

E08151.0012.030

E08151.0012.030

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

NM 12/8/06

eMedNY/MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER UTILIZING ELECTRONIC BILLING

(3) As of (date) **12/02/2006**, all claims electronically submitted to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER (5) (provider number) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the eMedNY Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; **ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE FINED UP TO A MAXIMUM OF $2,000.00 PER CLAIM AND/OR PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY VIOLATION OF THE TERMS OF THIS CERTIFICATION, INCLUDING BUT NOT LIMITED TO FALSE CLAIMS, STATEMENTS OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT**; taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local Department of Social Services, the State Department of Health, the Office of the Medicaid Inspector General, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Health and the Office of the Medicaid Inspector General as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including eMedNY Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL ELECTRONIC CLAIMS SUBMITTED, USING MY (OR THE ENTITY'S) MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

(6) (Signature) _____ (7) (Date) 12/7/06

(8) (Typed Name and Title) Moshe Kalter

STATE OF New York
COUNTY OF Kings

(9)

On this 7th day of December, 20 06, before me personally came Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23, 2007

_____
NOTARY PUBLIC

(1) ETIN 48H

(2) BILLING SERVICE NAME (IF APPLICABLE) _____

AM 12/28/05

MEDICAID MANAGEMENT INFORMATION SYSTEM

CERTIFICATION STATEMENT FOR PROVIDER UTILIZING ELECTRONIC BILLING

(3) As of (date) **12/16/2005**, all claims electronically submitted to the State's Medicaid fiscal agent, for services or supplies furnished

(4) by (provider name) FULTON COMMONS CARE CENTER (5) (provider number) **02204108**

will be subject to the following certification.

I am (or the business entity named in this form of which I am a partner, officer, or director is) a qualified provider enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this claim; the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services; I have reviewed these claims; I (or the entity) have furnished or caused to be furnished the care, services, and supplies itemized and done so in accordance with applicable federal and state laws and regulations; I have read the Medicaid Management Information Systems Provider Manual and all revisions thereto; all claims are made in full compliance with the pertinent provisions of the Manual and revisions; all claims for care, services and supplies provided at the order of another professional have to the best of my knowledge been ordered by that professional in bona fide compliance with the procedures set forth in the manual and revisions. All care, services and supplies for which claim is made are medically necessary for the treatment of the named recipient, the amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any other source other than the Medical Assistance Program; payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and supplies itemized has been submitted or paid; **ALL STATEMENTS, DATA AND INFORMATION TRANSMITTED ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED; I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL, STATE AND LOCAL PUBLIC FUNDS AND THAT I MAY BE PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT;** taxes from which the State is exempt are excluded; all records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and such records and information regarding these claims and payment therefor shall be promptly furnished upon request to the local or State Departments of Social Services, the State Medicaid Fraud Control Unit or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion; I agree (or the entity agrees) to comply with the requirement of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to (1) make administrative corrections to claims submitted under this agreement to enable its automated processing, subject to reversal by the provider, and (2) accept the claim under this agreement as original evidence of care, services and supplies furnished.

In submitting claims under this agreement I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes and procedures of the New York State Department of Social Services as set forth in title 18 of the Official Compilation of Codes, Rules and Regulation of New York State and other publications of the Department, including Medicaid Management Information System Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of the law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or my entity's) past, present or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I UNDERSTAND THAT MY SIGNATURE HEREON THE ABOVE CERTIFICATION WILL APPLY TO ALL ELECTRONIC CLAIMS SUBMITTED, USING MY (OR THE ENTITY'S) MEDICAID PROVIDER IDENTIFICATION NUMBER. THIS CERTIFICATION REMAINS IN EFFECT AND APPLIES TO ALL CLAIMS UNTIL SUPERSEDED BY ANOTHER PROPERLY EXECUTED CERTIFICATION STATEMENT.

(6) (Signature) _____ (7) (Date) 12/23/05

(8) (Typed Name and Title) Moshe Kalter, President

STATE OF New York
COUNTY OF Kings (9)

On this 23rd day of December, 2005, before me personally came Moshe Kalter, to me know and known to me to the individual described in and who executed the foregoing instrument, and (s)he acknowledge to me that (s)he executed the same.

(SEAL)

STEVEN WEISS
NOTARY PUBLIC, State of New York
No. 01WE6057566
Qualified in Kings County
Commission Expires April 23,2007

_____
NOTARY PUBLIC

484

MAGNETIC INPUT SUPPLIER NUMBER APPLICATION

To apply for your Magnetic Input Supplier Number, which is required in order to be able to submit magnetic input for the processing by the New York State MMIS, please complete the items below and forward to:

Computer Sciences Corporation
800 North Pearl Street
Albany, New York 12204
Attn: EDP Liaison - 1st Floor

1. PROVIDER NAME BRIDGE VIEW NURSING HOME

2. PROVIDER ADDRESS 143-10 20 Avenue
(STREET)

Whitestone (CITY) New York (STATE)

11357 (ZIP CODE) (718) 961-1212 (TELEPHONE NUMBER) (EXT.)

3. Machine Manufacturer Name: WANG Model #. VS 5000

4. Submission will be on Tape [ ] Diskette [X] (check one)

5. If Submission is on diskette, indicate the following:

8" diskette [ ] 5 1/4" diskette [XX] (check one)

Singlesided [ ] Doublesided [XX] (check one)

Density Double

6. ADMINISTRATOR'S NAME Ralph Newman

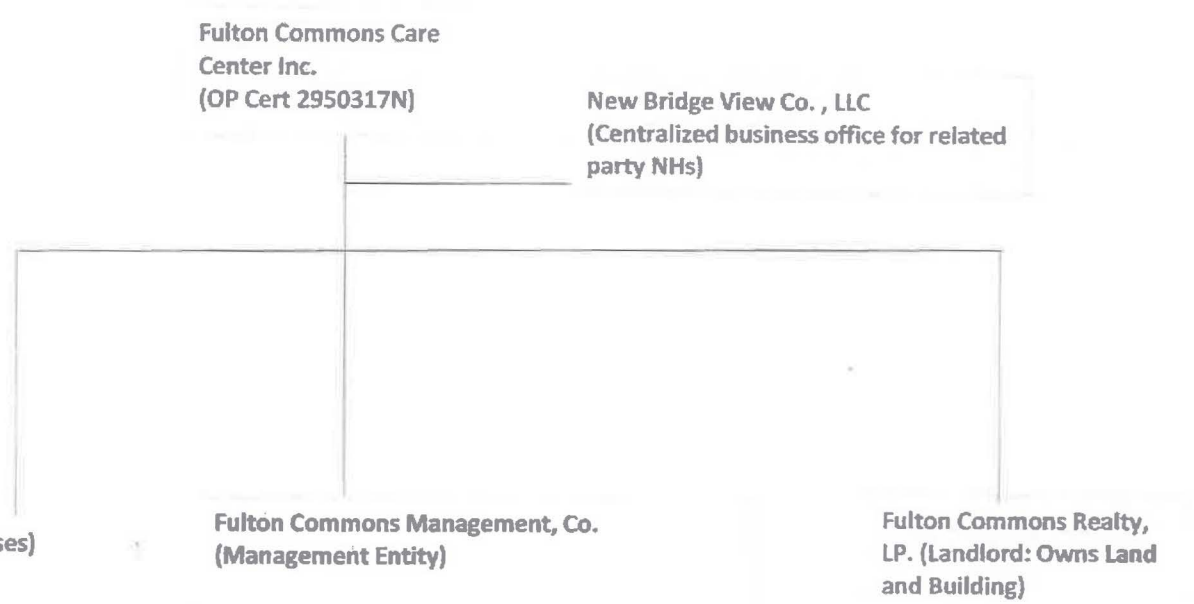
7. CONTACT PERSON'S NAME Boruch Golembo

. TELEPHONE NUMBER (718) 961-1212, Ext. 120

8. ESTIMATED MONTHLY CLAIM VOLUME (LINE ITEMS) 800

9. MMIS PROVIDER NUMBER(S) 00308778

Fulton Commons Care Center Inc.
Operational Flow Chart
Year Ended December 31, 2016 and 2017



Notes:

Corporate Officers

Moshe Kalter (Shareholder)
Frady Kalter (Shareholder)
Aaron Fogel (Shareholder)
Esther Fogel (Shareholder)

Chief Financial Officer(CFO)

Steven Weiss

Administrator

Cathie Doyle

New Bridge View Co.
Operational Flow Chart
Year Ended December 31, 2016 and 2017

Related Party Nursing Homes: Bridgeview NH, Midway NH, Mayfair NH, Fulton Commons NH.

New Bridgeview Company — Moshe Kalter, Owner — Steven Weiss, CFO

- Marina Rakhaman, Accounts Payable
- Lisa Hynoski, Accounts Receivable
- Lorraine Rasado, Accounts Receivable
- Aliza Weinberg, Accounts Recievable
- Tatiana Titona, Payroll

Notes:

Corporate Officers
Moshe Kalter (Member)
Frady Kalter (Member)
Chief Financial Officer(CFO)
Steven Weiss

New York State Department of Health
Bureau of Long Term Care Reimbursement
Division of Finance and Rate Setting

Oct 20, 2021 11 00 AM

Back | Nursing Home Cost Report >> Nursing Home Certification Submission System

Nursing Home Certification Submission System

NEW YORK STATE DEPARTMENT OF HEALTH
OFFICE OF HEALTH SYSTEMS MANAGEMENT
RHCF-4 (4/06) DOH-490

FACILITY: Fulton Commons Care Center

OPERATING CERTIFICATE NUMBER: 2950317N

REPORT FOR THE PERIOD ENDED: 12/31/2018

DECLARATION CONTROL NUMBER (DCN): 92051238

Operators Certification

The following statement must be read and a certification of such be signed pursuant to Part 86-2.6(a). This subpart states "The Financial and statistical reports shall be certified by the operator of a proprietary medical facility, an officer of a voluntary facility or the public official responsible for the operation of a public medical facility". Please enter only one signature.

Certification Statement

Misrepresentation or falsification of any information contained on this form may be punishable by fine and / or imprisonment under New York State Law and Federal Law.

Certification of Operator

I hereby certify that I am the Owner and have read the above statement and I have examined and compared the information contained in the RHCF -4 report file with the information provided in my electronically transmitted Department of Health file, DCN identified above, and that to the best of my knowledge and belief, they are true and complete and that these files are identical.

I also certify that Parts I and II were completed in accordance with the RHCF - 4 instructions and that Part IV was completed in accordance with the residential Health Care Facility Accounting and Reporting Manual (RHCFARM). I also certify, the Part(s) III, if required to be filed as part of this report, was (were) completed in accordance with RHCFARM and the information called for in Part III has been reported for each lender or organization related to the provider as defined in Schedule 16 of Part II.

I also certify that all salary and non-salary expenses presented in the RHCF - 4 (with the exception of those expenses attributable to Research, Physicians Offices and other Rentals, Gift Shop, Public Restaurant, Fund Raising and Sold Services) considering the adjustments contained in the Part II and the recoveries of expense detailed in Exhibit I of the Part IV were incurred to provide patient care in the facility.

JUL 24 2019 01 42 51 PM	hpnmxk34
Date	Signature
	Moshe Kalter
	Owner

DOH 490 (4/06)

**** End of Certification ****

DCN 92051238 was previously certified by HCS ID hpnmxk34.

Moshe Kalter , Owner for Fulton Commons Care Center.

Continue

Nursing Home Cost Report Main Page

December 31, 2017 Recurring fair value measurements		
Municipal Bonds	$1,502,911	$1,502,911
Total Recurring fair value measurements	$1,502,911	$1,502,911

The market approach was used for Level 1 inputs. Fair value for assets in Level 1 are calculated using observable markets from registered brokers/dealers, publications, and market exchanges.

(11) Loans and Exchanges

The Company advances monies to the shareholders for use in related entities' operations. There are no repayment terms and the balances do not accrue interest. Loans and exchanges amounted to $8,770,380 and $8,969,097 at December 31, 2018 and 2017, respectively.

(12) Accrued Expenses

The New York State Department of Labor has completed the examination of the Company's records for the years ended December 31, 2014, 2015 and 2016, and has proposed additional liabilities of $800,000. The Company is reviewing the proposed deficiency and estimates that the ultimate deficiency, which is expected to be assessed within the next year, will be no more than $1,600,000 and no less than $800,000. Provision for the minimum expected deficiency of $800,000 has been made in the financial statements for the year ended December 31, 2017 in accrued expenses. At December 2018, the Company settled for less than the minimum liability and is currently making installment payments.

(13) Contingencies

The Company files annual cost reports with National Government Services as fiscal intermediary for the Medicare Program and New York State Department of Health, for the development of Medicare and Medicaid payment rates. Revenues received under cost reimbursement agreements are subject to audit and retroactive adjustment. Provisions have not been made in the accompanying financial statements for the effect of such adjustments, if any, relating to this matter.

(141) Summary of significant accounting policies

Description of Operations - The New Fulton Commons Co., LLC (the Company) is the management company for Fulton Commons Care Center, Inc, a 280 bed nursing facility located in East Meadow, New York. The Company provides all the necessary management and staff for Fulton Commons Care Center, Inc.

Basis of Accounting - The Company's financial statements are prepared in accordance with accounting principles generally accepted in the United States of America.

Use of Estimates - The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenue and expenses during the reported period. Actual results could differ from those assumptions and estimates.

Cash and Cash Equivalents - Cash and cash equivalents consists of cash held in checking and money market accounts and certificates of deposits with original maturities of three months or less.

Concentration of Credit Risk - Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalent accounts in financial institutions. These amounts from time to time may exceed the Federal Depository Insurance Coverage limit. The Company has not experienced any losses in such

New York State Department of Health
Bureau of Long Term Care Reimbursement
Division of Finance and Rate Setting

Dec 9, 2021 2 00 PM

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Nursing Home Certification Submission System

NEW YORK STATE DEPARTMENT OF HEALTH
OFFICE OF HEALTH SYSTEMS MANAGEMENT
RHCF-4 (4/06) DOH-490

FACILITY: Fulton Commons Care Center

OPERATING CERTIFICATE NUMBER: 2950317N

REPORT FOR THE PERIOD ENDED: 12/31/2019

DECLARATION CONTROL NUMBER (DCN): 11721411

Operators Certification

The following statement must be read and a certification of such be signed pursuant to Part 86-2.6(a). This subpart states "The Financial and statistical reports shall be certified by the operator of a proprietary medical facility, an officer of a voluntary facility or the public official responsible for the operation of a public medical facility". Please enter only one signature.

Certification Statement

Misrepresentation or falsification of any information contained on this form may be punishable by fine and / or imprisonment under New York State Law and Federal Law.

Certification of Operator

I hereby certify that I am the Owner and have read the above statement and I have examined and compared the information contained in the RHCF -4 report file with the information provided in my electronically transmitted Department of Health file, DCN identified above, and that to the best of my knowledge and belief, they are true and complete and that these files are identical.

I also certify that Parts I and II were completed in accordance with the RHCF - 4 instructions and that Part IV was completed in accordance with the residential Health Care Facility Accounting and Reporting Manual (RHCFARM). I also certify, the Part(s) III, if required to be filed as part of this report, was (were) completed in accordance with RHCFARM and the information called for in Part III has been reported for each lender or organization related to the provider as defined in Schedule 16 of Part II.

I also certify that all salary and non-salary expenses presented in the RHCF - 4 (with the exception of those expenses attributable to Research, Physicians Offices and other Rentals, Gift Shop, Public Restaurant, Fund Raising and Sold Services) considering the adjustments contained in the Part II and the recoveries of expense detailed in Exhibit I of the Part IV were incurred to provide patient care in the facility.

JUN 21 2021 03 48 27 PM	hpnmxk34
Date	Signature
	Moshe Kalter
	Owner

DOH 490 (4/06)

**** End of Certification ****

DCN 11721411 was previously certified by HCS ID hpnmxk34.

Moshe Kalter , Owner for Fulton Commons Care Center.

Continue

Nursing Home Cost Report Main Page

purchasing or subscribing for such security.

(13) Related Party Transactions

The Company receives and provides money from related parties for the use in operations. The Company also receives fiscal services from The New Bridgeview Co., LLC. Fiscal services provided for the years ended December 31, 2019 and 2018 were $271,276 and $241,311, respectively. Amounts due to the New Bridgeview Co., LLC at December 31, 2019 and 2018, was $113,022 and ($5,254), respectively. Amounts due from Mayfair Care Center Inc. December 31, 2019 and 2018,was $3,414,676 and $3,134,339, respectively. There are no repayment terms and the balances do not accrue interest.

(14) Loans and Exchanges

The Company advances monies to the shareholders for use in related entities' operations. There are no repayment terms and the balances do not accrue interest. Loans and exchanges amounted to $15,416,823 and $15,407,823 at December 31, 2019 and 2018, respectively.

(15) Accrued Expenses

The New York State Department of Labor has completed the examination of the Company's records for the years ended December 31, 2014, 2015 and 2016, and has proposed additional liabilities of $800,000. The Company is reviewing the proposed deficiency and estimates that the ultimate deficiency, which is expected to be assessed within the next year, will be no more than $1,600,000 and no less than $800,000. Provision for the minimum expected deficiency of $800,000 has been made in the financial statements for the year ended December 31, 2017 in accrued expenses. At December 2018, the Company settled for less than the minimum liability.

(16) Retirement plans

The Company maintains a 401(k) profit sharing plan (the Plan) covering substantially all of its employees not subject to collective bargaining agreements. Each year, the employees make contributions to the Plan. The Company does not make any contributions to the Plan. For the years ended December 31 2019 and 2018 the administrative costs expensed in the accompanying Financial Statements for this Plan was $0 and $0, respectively.

Union Pension - The Company contributes to a multiemployer defined benefit pension plans under the terms of collective bargaining agreements that cover its union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in the following aspects:

a. Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers.

(16) Retirement plans (continued)

b. If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.

c. If the Company chooses to stop participating in some of its multiemployer plans, the Company may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

The Company's participation in these plans for the annual period ended December 31, 2019, is outlined in the table below. The "EIN/Pension Plan Number" column provides the Employee Identification Number (EIN) and the three-digit plan number, if applicable. Unless otherwise noted, the most recent Pension Protection Act (PPA) zone status available in 2019 and 2018 is for the plan's year-end at December 31, 2018, and December 31, 2017, respectively. The zone status is based on information that the Company

New York State Department of Health
Bureau of Long Term Care Reimbursement
Division of Finance and Rate Setting

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Nursing Home Certification Submission System

NEW YORK STATE DEPARTMENT OF HEALTH
OFFICE OF HEALTH SYSTEMS MANAGEMENT
RHCF-4 (4/06) DOH-490

FACILITY: Fulton Commons Care Center

OPERATING CERTIFICATE NUMBER: 2950317N

REPORT FOR THE PERIOD ENDED: 12/31/2020

DECLARATION CONTROL NUMBER (DCN): 12251501

Operators Certification

The following statement must be read and a certification of such be signed pursuant to Part 86-2.6(a). This subpart states "The Financial and statistical reports shall be certified by the operator of a proprietary medical facility, an officer of a voluntary facility or the public official responsible for the operation of a public medical facility". Please enter only one signature.

Certification Statement

Misrepresentation or falsification of any information contained on this form may be punishable by fine and / or imprisonment under New York State Law and Federal Law.

Certification of Operator

I hereby certify that I am the Owner and have read the above statement and I have examined and compared the information contained in the RHCF -4 report file with the information provided in my electronically transmitted Department of Health file, DCN identified above, and that to the best of my knowledge and belief, they are true and complete and that these files are identical.

I also certify that Parts I and II were completed in accordance with the RHCF - 4 instructions and that Part IV was completed in accordance with the residential Health Care Facility Accounting and Reporting Manual (RHCFARM). I also certify, the Part(s) III, if required to be filed as part of this report, was (were) completed in accordance with RHCFARM and the information called for in Part III has been reported for each lender or organization related to the provider as defined in Schedule 16 of Part II.

I also certify that all salary and non-salary expenses presented in the RHCF - 4 (with the exception of those expenses attributable to Research, Physicians Offices and other Rentals, Gift Shop, Public Restaurant, Fund Raising and Sold Services) considering the adjustments contained in the Part II and the recoveries of expense detailed in Exhibit I of the Part IV were incurred to provide patient care in the facility.

Aug 13 2021 4:37 PM	hpnmxk34
Date	Signature
	Moshe Kalter
	Owner

DOH 490 (4/06)

*** * * * End of Certification * * * ***

I am Moshe Kalter , Owner for Fulton Commons Care Center.

Certify Cancel

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New York State Department of Health
Bureau of Long Term Care Reimbursement
Division of Finance and Rate Setting

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Nursing Home Certification Submission System

2950317N 12251501 Fulton Commons Care Center

Certified by hpnmxk34 on Aug 13 2021 4:37 PM .

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Nursing Home Cost Report Main Page

purchasing or subscribing for such security.

(12) Related Party Transactions

The Company receives and provides money from related parties for the use in operations. The Company also receives fiscal services from The New Bridgeview Co., LLC. Fiscal services provided for the years ended December 31, 2020 and 2019 were $293,390 and $271,276, respectively. Amounts due to the New Bridgeview Co., LLC at December 31, 2020 and 2019, was $102,412 and $113,022, respectively. Amounts due from Mayfair Care Center Inc. December 31, 2020 and 2019,was $3,414,676 and $3,414,676, respectively. There are no repayment terms and the balances do not accrue interest.

(13) Loans and Exchanges

The Company advances monies to the shareholders for use in related entities' operations. There are no repayment terms and the balances do not accrue interest. Loans and exchanges amounted to $15,416,823 and $15,416,823 at December 31, 2020 and 2019, respectively.

(14) Accrued Expenses

The New York State Department of Labor has completed the examination of the Company's records for the years ended December 31, 2014, 2015 and 2016, and has proposed additional liabilities of $800,000. The Company is reviewing the proposed deficiency and estimates that the ultimate deficiency, which is expected to be assessed within the next year, will be no more than $1,600,000 and no less than $800,000. Provision for the minimum expected deficiency of $800,000 has been made in the financial statements for the year ended December 31, 2017 in accrued expenses. As of December 2020, the Company settled for less than the minimum liability.

(15) Retirement plans

The Company maintains a 401(k) profit sharing plan (the Plan) covering substantially all of its employees not subject to collective bargaining agreements. Each year, the employees make contributions to the Plan. The Company does not make any contributions to the Plan. For the years ended December 31 2020 and 2019 the administrative costs expensed in the accompanying Financial Statements for this Plan was $0 and $0, respectively.

Union Pension - The Company contributes to a multiemployer defined benefit pension plans under the terms of collective bargaining agreements that cover its union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in the following aspects:

a. Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers.

b. If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.

c. If the Company chooses to stop participating in some of its multiemployer plans, the Company may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

The Company's participation in these plans for the annual period ended December 31, 2020, is outlined in the table below. The 'EIN/Pension Plan Number' column provides the Employee Identification Number (EIN) and the three-digit plan number, if applicable. Unless otherwise noted, the most recent Pension Protection Act (PPA) zone status available in 2020 and 2019 is for the plan's year-end at December 31, 2019, and December 31, 2018, respectively. The zone status is based on information that the Company received from the plan and is certified by the plan's actuary. Among other factors, plans in the red zone are generally less than 65 percent funded, plans in the yellow zone are less than 80 percent funded, and plans in the green zone are at least 80 percent funded. The 'FIP/RP Status Pending/Implemented' column indicates plans for which a financial

New York State Department of Health
Bureau of Long Term Care Reimbursement
Division of Finance and Rate Setting

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Nursing Home Certification Submission System

NEW YORK STATE DEPARTMENT OF HEALTH
OFFICE OF HEALTH SYSTEMS MANAGEMENT
RHCF-4 (4/06) DOH-490

FACILITY: Fulton Commons Care Center

OPERATING CERTIFICATE NUMBER: 2950317N

REPORT FOR THE PERIOD ENDED: 12/31/2021

DECLARATION CONTROL NUMBER (DCN): 21941449

Operators Certification

The following statement must be read and a certification of such be signed pursuant to Part 86-2.6(a). This subpart states "The Financial and statistical reports shall be certified by the operator of a proprietary medical facility, an officer of a voluntary facility or the public official responsible for the operation of a public medical facility". Please enter only one signature.

Certification Statement

Misrepresentation or falsification of any information contained on this form may be punishable by fine and / or imprisonment under New York State Law and Federal Law.

Certification of Operator

I hereby certify that I am the Owner and have read the above statement and I have examined and compared the information contained in the RHCF -4 report file with the information provided in my electronically transmitted Department of Health file, DCN identified above, and that to the best of my knowledge and belief, they are true and complete and that these files are identical.

I also certify that Parts I and II were completed in accordance with the RHCF - 4 instructions and that Part IV was completed in accordance with the residential Health Care Facility Accounting and Reporting Manual (RHCFARM). I also certify, the Part(s) III, if required to be filed as part of this report, was (were) completed in accordance with RHCFARM and the information called for in Part III has been reported for each lender or organization related to the provider as defined in Schedule 16 of Part II.

I also certify that all salary and non-salary expenses presented in the RHCF - 4 (with the exception of those expenses attributable to Research, Physicians Offices and other Rentals, Gift Shop, Public Restaurant, Fund Raising and Sold Services) considering the adjustments contained in the Part II and the recoveries of expense detailed in Exhibit I of the Part IV were incurred to provide patient care in the facility.

JUL 15 2022 01:36:30 PM	hpnmxk34
Date	Signature
	Moshe Kalter
	Owner

DOH 490 (4/06)

*** * * * End of Certification * * * ***

DCN 21941449 was previously certified by HCS ID hpnmxk34,

Moshe Kalter , Owner for Fulton Commons Care Center.

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(13) Related Party Transactions

The Company receives and provides money from related parties for the use in operations. The Company also receives fiscal services from The New Bridgeview Co., LLC. Fiscal services provided for the years ended December 31, 2021 and 2020 were $294,213 and $293,390, respectively. Amounts due to the New Bridgeview Co., LLC at December 31, 2021 and 2020, was $229,625 and $102,412, respectively. Amounts due from Mayfair Care Center Inc. December 31, 2021 and 2020,was $3,414,676 and $3,414,676, respectively. There are no repayment terms and the balances do not accrue interest.

(14) Loans and Exchanges

The Company advances monies to the shareholders for use in related entities¡¦ operations. There are no repayment terms and the balances do not accrue interest. Loans and exchanges amounted to $15,816,823 and $15,416,823 at December 31, 2021 and 2020, respectively.

(15) Retirement plans

The Company maintains a 401(k) profit sharing plan (the Plan) covering substantially all of its employees not subject to collective bargaining agreements. Each year, the employees make contributions to the Plan. The Company does not make any contributions to the Plan. For the years ended December 31 2021 and 2020 the administrative costs expensed in the accompanying Financial Statements for this Plan was $0 and $0, respectively.

Union Pension - The Company contributes to a multiemployer defined benefit pension plans under the terms of collective bargaining agreements that cover its union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in the following aspects:

a. Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers.

b. If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.

c. If the Company chooses to stop participating in some of its multiemployer plans, the Company may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

The Company's participation in these plans for the annual period ended December 31, 2021, is outlined in the table below. The 'EIN/Pension Plan Number' column provides the Employee Identification Number (EIN) and the three-digit plan number, if applicable. Unless otherwise noted, the most recent Pension Protection Act (PPA) zone status available in 2021 and 2020 is for the plan¡¦s year-end at December 31, 2020, and December 31, 2019, respectively. The zone status is based on information that the Company received from the plan and is certified by the plan¡¦s actuary. Among other factors, plans in the red zone are generally less than 65 percent funded, plans in the yellow zone are less than 80 percent funded, and plans in the green zone are at least 80 percent funded. The ¡$FIP/RP Status Pending/Implemented¡¨ column indicates plans for which a financial improvement plan (FIP) or a rehabilitation plan (RP) is either pending or has been implemented. The last column lists the expiration date(s) of the collective-bargaining agreement(s) to which the plans are subject. There have been no significant changes that affect the comparability of 2021, 2020 and 2019 contributions.

	Pension					Expirati-

01/01/2019-12/31/2019

ID	EMPLOYEE NAME	SOC-SEC #	FICA WAGE	MC WAGE	FED.GROSS	FICA	FEDERAL	STATE	CITY	DSBLTY	OT.WAGES	NET
60002	KALTER,ARYEH	- [redacted]	8000.00	8000.00	8000.00	612.00	668.68			31.20	-12.16	6675.96
60003	KALTER,DOVID	-	14400.00	14400.00	14400.00	1101.60	45.24			31.20	-21.96	13200.00
60004	KALTER,YITZCHOK	-	14400.00	14400.00	14400.00	1101.60	645.12			31.20	-21.96	12600.12
60005	KANAREK,CHANA	-	25793.78	25793.78	25793.78	1973.22	267.83	357.03		31.20	-39.38	23125.12
60006	LIEBERMAN,CHAYA S	-	6541.56	6541.56	6541.56	500.40				31.20	-9.96	6000.00
60001	SAFER,SHEINDY	-	46840.00	46840.00	46840.00	3583.26		1293.22		31.20	-627.48	41304.84
60007	STEGER,MINDY	-	48319.69	48319.69	48319.69	3696.48	1406.13	1139.07		31.20	-583.57	41463.24
60008	TREFF,SHEVA	-	6000.00	6000.00	6000.00	459.00	101.76			31.20	-7.92	5400.12
TOTALS			170295.03	170295.03	170295.03	13027.56	3134.76	2789.32	249.60		-1324.39	149,769.40

		GROSS/NET ANALYSIS TOTAL	REGULAR	3RD PARTY
WAGES SUBJECT TO FICA		170,295.03	170,295.03	
WAGES SUBJECT TO SOC.SEC.		170,295.03	170,295.03	
WAGES SUBJECT TO MC PART		170,295.03	170,295.03	
WAGES OVER LIMIT				
FICA TAXABLE GROSS*EMPLOYEE RATE	(6.20000	10,558.29	10,558.29	
	(1.45000	2,469.28	2,469.28	
Total FICA Payable		13,027.57		
FICA WITHHELD		13,027.56	13,027.56	
DIFFERENCE		.01	.01	
EMPLOYER CONTRIBUTION				
FICA TAXABLE GROSS*EMPLOYER RATE	(6.20000	10,558.29	10,558.29	
	(1.45000	2,469.28	2,469.28	
FICA DEPOSIT				
Withheld + Employer Contribution		26,055.13	26,055.14	
FEDERAL TAXES WITHHELD		3,134.76	3,134.76	
TOTAL DEPOSITORY		29,189.89		
GROSS WAGES SUBJECT TO FUTA		170,295.03		
LESS WAGES OVER LIMIT		115,753.47		
TAXABLE FUTA		54,541.56		
FUTA TAXABLE GROSS * FUTA RATE	(.00600	327.24		
GROSS WAGES SUBJECT TO SUI		170,295.03		
LESS WAGES OVER LIMIT		92,753.47		
TAXABLE SUI		77,541.56		
SUI TAXABLE GROSS * SUI RATE	(			

Employees Paid wages on 12th of Month

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TTL
Male													
Female													
ALL													

Hours where pay period includes 12th of Month

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TTL
Male													
Female													
ALL													

Employees Paid wages During Month

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TTL
8	8	7	5	8		8	8	8		8		68

OTHER WAGES SUMMARY

NYPFL CODE	-250.40
NEW JERSEY STATE TAX	1073.99

CHECK LISTING
01/01/2019 - 12/31/2019

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
DEPARTMENT: 0030.0000 DIRECTOR														
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 01/02/19 F		000037
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 02/01/19 F		000046
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 03/01/19 F		000055
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	1.83FL			X				PAY DATE 04/01/19 F		000064
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3446.20
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 05/01/19 F		000072
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				-46.33NJ	-1.83FL			V				PAY DATE 05/16/19 F		000064
REG			-3900.00					-3900.00	0.00	-298.35	-104.69	.00	-2.60	-3446.20
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 05/16/19 F		000080
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 05/31/19 F		000085
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 07/01/19 F		000093
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 08/01/19 F		000101
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 08/30/19 F		000109
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 09/27/19 F		000117
REG			3900.00					3900.00	0.00	298.35	104.69	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 11/01/19 F		000125
REG			3920.00					3920.00	0.00	299.88	123.16	.00	2.60	3442.07
60001 SAFER,SHEINDY				46.33NJ	5.96FL							PAY DATE 11/29/19 F		000133
REG			3920.00					3920.00	0.00	299.88	123.16	.00	2.60	3442.07
60001 SAFER,SHEINDY				46840.00GR	.00FED	3583.26FICA	1293.22ST		.00CTY	31.20DIS		41304.84NE		
REG	.00	.0000	46840.00				555.96NJ	71.52FL						
DEPARTMENT: 0070.0000 CONTROLLER														
60002 KALTER,ARYEH				.91FL								PAY DATE 01/02/19 F		000038
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 02/01/19 F		000047
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 03/01/19 F		000056
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 04/01/19 F		000065
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 05/01/19 F		000073
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 05/31/19 F		000086
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 07/01/19 F		000094
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 08/01/19 F		000102
REG			600.00					600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL								PAY DATE 08/30/19 F		000110

CHECK LISTING
01/01/2019 - 12/31/2019

DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
REG			600.00									600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				.91FL											PAY DATE 09/27/19 F			000118
REG			600.00									600.00	50.75	45.90	0.00	.00	2.60	499.84
60002 KALTER,ARYEH				1.53FL											PAY DATE 11/01/19 F			000126
REG			1000.00									1000.00	80.59	76.50	0.00	.00	2.60	838.78
60002 KALTER,ARYEH				1.53FL											PAY DATE 11/29/19 F			000134
REG			1000.00									1000.00	80.59	76.50	0.00	.00	2.60	838.78
60002 KALTER,ARYEH				8000.00GR		668.68FED		612.00FICA				.00ST		.00CTY		31.20DIS		6675.96NE
REG	.00	.0000	8000.00										12.16FL					
DEPARTMENT: 0090.0000 HEAD BOOKKEEPER																		
60003 KALTER,DOVID				1.83FL											PAY DATE 01/02/19 F			000039
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 02/01/19 F			000048
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 03/01/19 F			000057
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 04/01/19 F			000066
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 05/01/19 F			000074
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 05/31/19 F			000087
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 07/01/19 F			000095
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 08/01/19 F			000103
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 08/30/19 F			000111
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 09/27/19 F			000119
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 11/01/19 F			000127
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				1.83FL											PAY DATE 11/29/19 F			000135
REG			1200.00									1200.00	3.77	91.80	0.00	.00	2.60	1100.00
60003 KALTER,DOVID				14400.00GR		45.24FED		1101.60FICA				.00ST		.00CTY		31.20DIS		13200.00NE
REG	.00	.0000	14400.00										21.96FL					
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 01/02/19 F			000040
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 02/01/19 F			000049
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 03/01/19 F			000058
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 04/01/19 F			000067
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 05/01/19 F			000075
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83FL											PAY DATE 05/31/19 F			000088
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 07/01/19 F			000096
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 08/01/19 F			000104
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 08/30/19 F			000112
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 09/27/19 F			000120
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 11/01/19 F			000128
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				1.83	FL										PAY DATE 11/29/19 F			000136
REG			1200.00									1200.00	53.76	91.80	0.00	.00	2.60	1050.01
60004 KALTER,YITZCHOK				14400.00	GR	645.12	FED	1101.60	FICA			.00	ST	.00	CTY	31.20	DIS	12600.12	NE
REG	.00	.0000	14400.00										21.96	FL				
60005 KANAREK,CHANA				2.60	FL										PAY DATE 01/02/19 F			000041
REG			1700.00									1700.00	49.91	130.05	14.83	.00	2.60	1500.01
60005 KANAREK,CHANA				2.57	FL										PAY DATE 02/01/19 F			000050
REG			1685.00									1685.00	40.02	128.90	10.90	.00	2.60	1500.01
60005 KANAREK,CHANA				.21	FL										PAY DATE 02/01/19 F			000054
REG			135.58									135.58	0.00	10.37	0.00	.00	0.00	125.00
60005 KANAREK,CHANA				2.86	FL							X			PAY DATE 03/01/19 F			000059
REG			1870.00									1870.00	37.36	143.06	59.11	.00	2.60	1625.01
60005 KANAREK,CHANA				2.86	FL							X			PAY DATE 04/01/19 F			000068
REG			1870.00									1870.00	37.36	143.06	59.11	.00	2.60	1625.01
60005 KANAREK,CHANA				2.86	FL							X			PAY DATE 05/01/19 F			000076
REG			1870.00									1870.00	37.36	143.06	59.11	.00	2.60	1625.01
60005 KANAREK,CHANA				-2.86	FL							V			PAY DATE 05/16/19 F			000059
REG			-1870.00									-1870.00	-37.36	-143.06	-59.11	.00	-2.60	-1625.01
60005 KANAREK,CHANA				-2.86	FL							V			PAY DATE 05/16/19 F			000068
REG			-1870.00									-1870.00	-37.36	-143.06	-59.11	.00	-2.60	-1625.01
60005 KANAREK,CHANA				-2.86	FL							V			PAY DATE 05/16/19 F			000076
REG			-1870.00									-1870.00	-37.36	-143.06	-59.11	.00	-2.60	-1625.01
60005 KANAREK,CHANA				3.40	FL										PAY DATE 05/16/19 F			000081
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
comment: MARCH 19																		
60005 KANAREK,CHANA				3.40	FL										PAY DATE 05/16/19 F			000082
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
comment: APRIL 19																		
60005 KANAREK,CHANA				3.40	FL										PAY DATE 05/16/19 F			000083
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
comment: MAY 19																		
60005 KANAREK,CHANA				3.40	FL										PAY DATE 05/31/19 F			000089
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				3.40	FL										PAY DATE 07/01/19 F			000097
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				3.40	FL										PAY DATE 08/01/19 F			000105
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				3.40	FL										PAY DATE 08/30/19 F			000113
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60005 KANAREK,CHANA				3.40	FL											PAY DATE 09/27/19 F		000121
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				3.40	FL											PAY DATE 11/01/19 F		000129
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				3.40	FL											PAY DATE 11/29/19 F		000137
REG			2227.32									2227.32	17.79	170.39	33.13	.00	2.60	2000.01
60005 KANAREK,CHANA				25793.78	GR	267.83	FED	1973.22	FICA	357.03	ST	.00	CTY	31.20	DIS			23125.12 NE
REG	.00	.0000	25793.78							39.38	FL							
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 01/02/19 F		000042
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 02/01/19 F		000051
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 03/01/19 F		000060
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 04/01/19 F		000069
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 05/01/19 F		000077
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 05/31/19 F		000090
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 07/01/19 F		000098
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 08/01/19 F		000106
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 08/30/19 F		000114
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 09/27/19 F		000122
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 11/01/19 F		000130
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				.83	FL											PAY DATE 11/29/19 F		000138
REG			545.13									545.13	0.00	41.70	0.00	.00	2.60	500.00
60006 LIEBERMAN,CHAYA S				6541.56	GR	.00	FED	500.40	FICA	.00	ST	.00	CTY	31.20	DIS			6000.00 NE
REG	.00	.0000	6541.56							9.96	FL							
60007 STEGER,MINDY																PAY DATE 01/01/19 F		000045
REG			1082.84									1082.84	0.00	82.84	0.00	.00	0.00	1000.00
60007 STEGER,MINDY				37.66	NJ	5.04	FL									PAY DATE 01/02/19 F		000043
REG			3300.00									3300.00	0.00	252.45	78.23	.00	2.60	2924.02
60007 STEGER,MINDY				43.67	NJ	5.50	FL									PAY DATE 02/01/19 F		000052
REG			3600.50									3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67	NJ	5.50	FL									PAY DATE 03/01/19 F		000061
REG			3600.50									3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY																PAY DATE 03/13/19 F		000063
REG			4331.35									4331.35	0.00	331.35	0.00	.00	0.00	4000.00
60007 STEGER,MINDY				43.67	NJ	5.50	FL					X				PAY DATE 04/01/19 F		000070
REG			3600.00									3600.00	127.83	275.40	96.44	.00	2.60	3048.56
60007 STEGER,MINDY				43.67	NJ	5.50	FL									PAY DATE 05/01/19 F		000078
REG			3600.50									3600.50	127.83	275.44	96.44	.00	2.60	3049.02

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60007 STEGER,MINDY				-43.67NJ	-5.50FL			V			PAY DATE 05/16/19 F			000070
REG			-3600.00					-3600.00	-127.83	-275.40	-96.44	.00	-2.60	-3048.56
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 05/16/19 F			000084
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 05/31/19 F			000091
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 07/01/19 F			000099
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 08/01/19 F			000107
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 08/30/19 F			000115
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 09/27/19 F			000123
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				5.50NJ	43.67FL						PAY DATE 11/01/19 F			000131
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				43.67NJ	5.50FL						PAY DATE 11/29/19 F			000139
REG			3600.50					3600.50	127.83	275.44	96.44	.00	2.60	3049.02
60007 STEGER,MINDY				38.17NJ	-38.17FL						PAY DATE 11/29/19 F			000140
								0.00	0.00	0.00	0.00	.00	0.00	0.00
60007 STEGER,MINDY				48319.69GR	1406.13FED	3696.48FICA		1139.07ST		.00CTY	31.20DIS			41463.24NE
REG	.00	.0000	48319.69					518.03NJ		65.54FL				
60008 TREFF,SHEVA				.66FL							PAY DATE 01/02/19 F			000044
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 02/01/19 F			000053
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 03/01/19 F			000062
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 04/01/19 F			000071
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 05/01/19 F			000079
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 05/31/19 F			000092
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 07/01/19 F			000100
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 08/01/19 F			000108
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 08/30/19 F			000116
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 09/27/19 F			000124
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 11/01/19 F			000132
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				.66FL							PAY DATE 11/29/19 F			000141
REG			500.00					500.00	8.48	38.25	0.00	.00	2.60	450.01
60008 TREFF,SHEVA				6000.00GR	101.76FED	459.00FICA		.00ST		.00CTY	31.20DIS			5400.12NE
REG	.00	.0000	6000.00					7.92FL						
GRAND TOTAL ======>				170295.03GR	3134.76FED	13027.56FICA		2789.32ST		.00CTY	249.60DIS			149769.40NE

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
REG	.00	.0000	170295.03										1073.99NJ	250.40FL				

Processed 105 Checks For 8 Employees (Excluding Void And 3rd Party Checks)

STATE, CITY & LOCAL: 2789.32

DEPOSITORY: 29189.88 FEDERAL: 3134.76 FICA : 21116.54 MEDICARE: 4938.58

TOTAL FICA EMPLOYEE 13027.56
TOTAL FICA EMPLOYER 13027.56

ID	EMPLOYEE NAME	SOC-SEC #	FICA WAGE	MC WAGE	FED.GROSS	FICA	FEDERAL	STATE	CITY	DSBLTY	OT.WAGES	NET
60002	KALTER,ARYEH	- [redacted]	33699.16	33699.16	33699.16	2578.01	1546.70	2077.98		28.60	-966.78	26501.09
60003	KALTER,DOVID	-	34469.66	34469.66	34469.66	2636.91	2515.00	1731.67		28.60	-720.22	26837.26
60004	KALTER,YITZCHOK	-	36473.92	36473.92	36473.92	2790.22	2486.90	1635.15		28.60	-858.72	28674.33
60005	KANAREK,CHANA	-	44988.51	44988.51	44988.51	3441.59	2140.40	2263.20		28.60	-826.82	36287.90
60006	LIEBERMAN,CHAYA S	-	19192.13	19192.13	19192.13	1468.17	1636.30	1314.58		28.60	-251.08	14493.40
60001	SAFER,SHEINDY	-	101013.82	101013.82	101013.82	7727.55	5954.40	5878.90		28.60	-2561.16	78863.21
60007	STEGER,MINDY	-	87714.70	87714.70	87714.70	6710.18	6752.00	5187.20		28.60	-2132.12	66904.60
60008	TREFF,SHEVA	-	23348.13	23348.13	23348.13	1786.13	1935.00	1627.02		28.60	-374.46	17596.92
TOTALS			380900.03		380900.03		24966.70				-8691.36	
				380900.03		29138.76		21715.70		228.80		296,158.71

		GROSS/NET ANALYSIS TOTAL	REGULAR	3RD PARTY
WAGES SUBJECT TO FICA		380,900.03	380,900.03	
WAGES SUBJECT TO SOC.SEC.		380,900.03	380,900.03	
WAGES SUBJECT TO MC PART		380,900.03	380,900.03	
WAGES OVER LIMIT				
FICA TAXABLE GROSS*EMPLOYEE RATE	(6.20000	23,615.80	23,615.80	
	(1.45000	5,523.05	5,523.05	
Total FICA Payable		29,138.85		
FICA WITHHELD		29,138.76	29,138.76	
DIFFERENCE		.09	.09	
EMPLOYER CONTRIBUTION				
FICA TAXABLE GROSS*EMPLOYER RATE	(6.20000	23,615.80	23,615.80	
	(1.45000	5,523.05	5,523.05	
FICA DEPOSIT				
Withheld + Employer Contribution		58,277.61	58,277.70	
FEDERAL TAXES WITHHELD		24,966.70	24,966.70	
TOTAL DEPOSITORY		83,244.31		
GROSS WAGES SUBJECT TO FUTA		380,900.03		
LESS WAGES OVER LIMIT		324,900.03		
TAXABLE FUTA		56,000.00		
FUTA TAXABLE GROSS * FUTA RATE	(.00600	336.00		
GROSS WAGES SUBJECT TO SUI		380,900.03		
LESS WAGES OVER LIMIT		288,100.03		
TAXABLE SUI		92,800.00		
SUI TAXABLE GROSS * SUI RATE	(			

Employees Paid wages on 12th of Month

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	TTL
Male												
Female												
ALL												

Hours where pay period includes 12th of Month

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	TTL
Male												
Female												
ALL												

Employees Paid wages During Month

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	TTL
8	8		8	8	8	8		8	8		64

OTHER WAGES SUMMARY

NYPFL CODE	-522.88
NEW JERSEY STATE TAX	8168.48

CHECK LISTING
01/01/2020 - 11/30/2020

DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
DEPARTMENT: 0030.0000 DIRECTOR																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 01/02/20 F		000142
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY																PAY DATE 01/03/20 F		000150
REG			2707.09									2707.09	0.00	207.09	0.00	.00	0.00	2500.00
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 01/31/20 F		000153
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 02/28/20 F		000161
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 04/01/20 F		000169
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 05/01/20 F		000177
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 06/01/20 F		000185
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 07/01/20 F		000193
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 07/31/20 F		000201
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 09/01/20 F		000209
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				242.19	NJ	11.81	FL									PAY DATE 10/01/20 F		000217
REG			9067.72									9067.72	595.44	693.68	579.89	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY				21.16	FL											PAY DATE 10/30/20 F		000225
REG			7629.53									7629.53	0.00	583.66	80.00	.00	2.60	6942.11
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60001 SAFER,SHEINDY			101013.82	GR	5954.40	FED	7727.55	FICA	5878.90	ST	.00	CTY	28.60	DIS	78863.21	NE		
REG	.00	.0000	101013.82								2421.90	NJ	139.26	FL				

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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
DEPARTMENT: 0070.0000 CONTROLLER																		
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 01/02/20 F		000143
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 01/31/20 F		000154
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 02/28/20 F		000162
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 04/01/20 F		000170
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 05/01/20 F		000178
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 06/01/20 F		000186
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 07/01/20 F		000194
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 07/31/20 F		000202
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 09/01/20 F		000210
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11	NJ	3.85	FL									PAY DATE 10/01/20 F		000218
REG			3103.63									3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				7.18	FL											PAY DATE 10/30/20 F		000226
REG			2662.86									2662.86	0.00	203.71	40.18	.00	2.60	2409.19
60002 KALTER,ARYEH				33699.16	GR	1546.70	FED	2578.01	FICA	2077.98	ST		.00	CTY	28.60	DIS		26501.09	NE
REG	.00	.0000	33699.16							921.10	NJ	45.68	FL					
DEPARTMENT: 0090.0000 HEAD BOOKKEEPER																		
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 01/02/20 F		000144
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 01/31/20 F		000155
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 02/28/20 F		000163
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 04/01/20 F		000171
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 05/01/20 F		000179
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
60003 KALTER,DOVID				62.46	NJ	3.79	FL									PAY DATE 06/01/20 F		000187
REG			3065.63									3065.63	215.24	234.52	181.06	.00	2.60	2365.96
60003 KALTER,DOVID				69.98	NJ	8.77	FL									PAY DATE 07/01/20 F		000195
REG			3312.35									3312.35	305.89	253.39	143.42	.00	2.60	2528.30
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60003 KALTER,DOVID				69.98	NJ	8.77	FL									PAY DATE 07/31/20 F		000203

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DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				69.98NJ	8.77FL							PAY DATE 09/01/20 F		000211
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				69.98NJ	8.77FL							PAY DATE 10/01/20 F		000219
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				7.72FL								PAY DATE 10/30/20 F		000227
REG			2826.48					2826.48	0.00	216.23	71.63	.00	2.60	2528.30
60003 KALTER,DOVID				34469.66GR	2515.00FED	2636.91FICA	1731.67ST		.00CTY	28.60DIS				26837.26NE
REG	.00	.0000	34469.66					654.68NJ	65.54FL					
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 01/02/20 F		000145
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
** AMOUNT OF CHECK EXCEEDS FLAG **														
60004 KALTER,YITZCHOK												PAY DATE 01/03/20 F		000151
REG			270.71					270.71	0.00	20.71	0.00	.00	0.00	250.00
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 01/31/20 F		000156
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 02/28/20 F		000164
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
** AMOUNT OF CHECK EXCEEDS FLAG **														
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 04/01/20 F		000172
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 05/01/20 F		000180
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 06/01/20 F		000188
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 07/01/20 F		000196
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 07/31/20 F		000204
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 09/01/20 F		000212
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ	3.06FL							PAY DATE 10/01/20 F		000220
REG			3330.63					3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				7.82FL								PAY DATE 10/30/20 F		000228
REG			2896.91					2896.91	0.00	221.61	80.85	.00	2.60	2584.03
60004 KALTER,YITZCHOK				36473.92GR	2486.90FED	2790.22FICA	1635.15ST		.00CTY	28.60DIS				28674.33NE
REG	.00	.0000	36473.92					820.30NJ	38.42FL					
60005 KANAREK,CHANA				76.27NJ	5.41FL							PAY DATE 01/02/20 F		000146
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
** AMOUNT OF CHECK EXCEEDS FLAG **														
60005 KANAREK,CHANA				76.27NJ	5.41FL							PAY DATE 01/31/20 F		000157
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
60005 KANAREK,CHANA				76.27NJ	5.41FL							PAY DATE 02/28/20 F		000165
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
60005 KANAREK,CHANA				76.27NJ	5.41FL							PAY DATE 04/01/20 F		000173
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90

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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 05/01/20 F		000181
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 06/01/20 F		000189
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
		** AMOUNT OF CHECK EXCEEDS FLAG **																
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 07/01/20 F		000197
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
		** AMOUNT OF CHECK EXCEEDS FLAG **																
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 07/31/20 F		000205
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
		** AMOUNT OF CHECK EXCEEDS FLAG **																
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 09/01/20 F		000213
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
		** AMOUNT OF CHECK EXCEEDS FLAG **																
60005 KANAREK,CHANA				76.27	NJ	5.41	FL									PAY DATE 10/01/20 F		000221
REG			4127.62									4127.62	214.04	315.76	214.64	.00	2.60	3298.90
60005 KANAREK,CHANA				10.02	FL											PAY DATE 10/30/20 F		000229
REG			3712.31									3712.31	0.00	283.99	116.80	.00	2.60	3298.90
60005 KANAREK,CHANA				44988.51	GR	2140.40	FED	3441.59	FICA	2263.20	ST		.00	CTY	28.60	DIS		36287.90 NE
REG	.00	.0000	44988.51									762.70	NJ	64.12	FL			
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 01/02/20 F		000147
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 01/31/20 F		000158
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 02/28/20 F		000166
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
		** AMOUNT OF CHECK EXCEEDS FLAG **																
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 04/01/20 F		000174
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 05/01/20 F		000182
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 06/01/20 F		000190
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 07/01/20 F		000198
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 07/31/20 F		000206
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 09/01/20 F		000214
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88	NJ	1.78	FL									PAY DATE 10/01/20 F		000222
REG			1753.24									1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				4.48	FL											PAY DATE 10/30/20 F		000230
REG			1659.73									1659.73	0.00	126.97	26.28	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				19192.13	GR	1636.30	FED	1468.17	FICA	1314.58	ST		.00	CTY	28.60	DIS		14493.40 NE

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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
REG	.00	.0000	19192.13										228.80NJ		22.28FL			
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 01/02/20 F		000148
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY																PAY DATE 01/03/20 F		000152
REG			1115.32									1115.32	0.00	85.32	0.00	.00	0.00	1030.00
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 01/31/20 F		000159
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 02/28/20 F		000167
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 04/01/20 F		000175
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 05/01/20 F		000183
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 06/01/20 F		000191
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 07/01/20 F		000199
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 07/31/20 F		000207
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 09/01/20 F		000215
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				201.23NJ		10.14FL										PAY DATE 10/01/20 F		000223
REG			7977.64									7977.64	675.20	610.29	489.58	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				18.42FL												PAY DATE 10/30/20 F		000231
REG			6822.98									6822.98	0.00	521.96	291.40	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				87714.70GR		6752.00FED		6710.18FICA		5187.20ST		.00CTY		28.60DIS		66904.60NE		
REG	.00	.0000	87714.70										2012.30NJ		119.82FL			

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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 01/02/20 F			000149
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 01/31/20 F			000160
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 02/28/20 F			000168
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
** AMOUNT OF CHECK EXCEEDS FLAG **																		
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 04/01/20 F			000176
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 05/01/20 F			000184
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 06/01/20 F			000192
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 07/01/20 F			000200
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 07/31/20 F			000208
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 09/01/20 F			000216
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67	NJ	2.30	FL								PAY DATE 10/01/20 F			000224
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				4.76	FL										PAY DATE 10/30/20 F			000232
REG			1765.13									1765.13	0.00	135.03	23.02	.00	2.60	1599.72
60008 TREFF,SHEVA				23348.13	GR	1935.00	FED	1786.13	FICA	1627.02	ST		.00	CTY	28.60	DIS		17596.92 NE
REG	.00	.0000	23348.13									346.70	NJ	27.76	FL			
GRAND TOTAL ======>				380900.03	GR	24966.70	FED	29138.76	FICA	21715.70	ST		.00	CTY	228.80	DIS		296158.71 NE
REG	.00	.0000	380900.03									8168.48	NJ	522.88	FL			

Processed 91 Checks For 8 Employees (Excluding Void And 3rd Party Checks)

STATE, CITY & LOCAL: 21715.70

DEPOSITORY: 83244.22 FEDERAL: 24966.70 FICA : 47231.50 MEDICARE: 11046.02

TOTAL FICA EMPLOYEE 29138.76
TOTAL FICA EMPLOYER 29138.76

CARES DEFERRED 6.20% FICA MATCH (excludes COVID FICA/MC) 16929.29

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
DEPARTMENT: 0030.0000 DIRECTOR														
60001 SAFER,SHEINDY				242.19NJ	11.81FL							PAY DATE 06/01/20 F		000185
REG			9067.72					9067.72	595.44	693.68	579.89	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				242.19NJ	11.81FL							PAY DATE 07/01/20 F		000193
REG			9067.72					9067.72	595.44	693.68	579.89	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				242.19NJ	11.81FL							PAY DATE 07/31/20 F		000201
REG			9067.72					9067.72	595.44	693.68	579.89	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				242.19NJ	11.81FL							PAY DATE 09/01/20 F		000209
REG			9067.72					9067.72	595.44	693.68	579.89	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				242.19NJ	11.81FL							PAY DATE 10/01/20 F		000217
REG			9067.72					9067.72	595.44	693.68	579.89	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				21.16FL								PAY DATE 10/30/20 F		000225
REG			7629.53					7629.53	0.00	583.66	80.00	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				21.16FL								PAY DATE 12/01/20 F		000233
REG			7629.53					7629.53	0.00	583.66	80.00	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	22.93FL							PAY DATE 01/04/21 F		000241
REG			8995.37					8995.37	605.24	688.15	723.05	.00	0.00	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL							PAY DATE 01/29/21 F		000249
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL							PAY DATE 03/01/21 F		000257
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL							PAY DATE 04/01/21 F		000265
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL							PAY DATE 04/30/21 F		000273
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL							PAY DATE 06/01/21 F		000281

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 07/01/21 F			000289
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 07/30/21 F			000297
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 09/01/21 F			000305
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 10/01/21 F			000313
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 11/01/21 F			000321
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 12/01/21 F			000329
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 01/03/22 F			000337
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60001 SAFER,SHEINDY				13.89NJ	20.33FL						PAY DATE 02/01/22 F			000345
REG			8995.37					8995.37	605.24	688.15	723.05	.00	2.60	6942.11
			** AMOUNT OF CHECK EXCEEDS FLAG **											
TOTAL FOR DEPT 0030.0000 ----->			186532.84GR	11450.56FED	14269.82FICA	13182.15ST	.00CTY	52.00DIS	145784.31NE					
REG		.00	.0000	186532.84				1405.41NJ	388.59FL					
Processed 21 Checks For 1 Employees (Excluding Void And 3rd Party Checks)														
DEPARTMENT: 0070.0000 CONTROLLER														
60002 KALTER,ARYEH				92.11NJ	3.85FL						PAY DATE 06/01/20 F			000186
REG			3103.63					3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11NJ	3.85FL						PAY DATE 07/01/20 F			000194
REG			3103.63					3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11NJ	3.85FL						PAY DATE 07/31/20 F			000202
REG			3103.63					3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11NJ	3.85FL						PAY DATE 09/01/20 F			000210
REG			3103.63					3103.63	154.67	237.43	203.78	.00	2.60	2409.19
60002 KALTER,ARYEH				92.11NJ	3.85FL						PAY DATE 10/01/20 F			000218
REG			3103.63					3103.63	154.67	237.43	203.78	.00	2.60	2409.19

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60002 KALTER,ARYEH				7.18FL							PAY DATE 10/30/20 F			000224
REG			2662.86					2662.86	0.00	203.71	40.18	.00	2.60	2409.19
60002 KALTER,ARYEH				7.18FL							PAY DATE 12/01/20 F			000234
REG			2662.86					2662.86	0.00	203.71	40.18	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	7.47FL						PAY DATE 01/04/21 F			000242
REG			2990.95					2990.95	87.54	228.81	241.26	.00	0.00	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 01/29/21 F			000250
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 03/01/21 F			000258
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 04/01/21 F			000266
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 04/30/21 F			000274
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 06/01/21 F			000282
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 07/01/21 F			000290
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 07/30/21 F			000298
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 09/01/21 F			000306
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 10/01/21 F			000314
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 11/01/21 F			000322
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 12/01/21 F			000330
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 01/03/22 F			000338
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
60002 KALTER,ARYEH				16.68NJ	4.87FL						PAY DATE 02/01/22 F			000346
REG			2990.95					2990.95	87.54	228.81	241.26	.00	2.60	2409.19
TOTAL FOR DEPT 0070.0000 ----->			62717.17GR	1998.91FED	4797.91FICA	4476.90ST	.00CTY	52.00DIS	50592.99NE					
REG	.00	.0000	62717.17					694.07NJ	104.39FL					
Processed 21 Checks For 1 Employees (Excluding Void And 3rd Party Checks)														
DEPARTMENT: 0090.0000 HEAD BOOKKEEPER														
60003 KALTER,DOVID				62.46NJ	3.79FL						PAY DATE 06/01/20 F			000187
REG			3065.63					3065.63	215.24	234.52	181.06	.00	2.60	2365.96
60003 KALTER,DOVID				69.98NJ	8.77FL						PAY DATE 07/01/20 F			000195
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
** AMOUNT OF CHECK EXCEEDS FLAG **														
60003 KALTER,DOVID				69.98NJ	8.77FL						PAY DATE 07/31/20 F			000203
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				69.98NJ	8.77FL						PAY DATE 09/01/20 F			000211
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				69.98NJ	8.77FL						PAY DATE 10/01/20 F			000219
REG			3312.35					3312.35	305.89	253.39	143.42	.00	2.60	2528.30
60003 KALTER,DOVID				7.72FL							PAY DATE 10/30/20 F			000227
REG			2826.48					2826.48	0.00	216.23	71.63	.00	2.60	2528.30

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60003 KALTER,DOVID				7.72FL												PAY DATE 12/01/20 F		000235
REG			2826.48									2826.48	0.00	216.23	71.63	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		8.18FL										PAY DATE 01/04/21 F		000243
REG			3209.81									3209.81	218.95	245.55	194.94	.00	0.00	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 01/29/21 F		000251
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 03/01/21 F		000259
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 04/01/21 F		000267
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 04/30/21 F		000275
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 06/01/21 F		000283
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 07/01/21 F		000291
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 07/30/21 F		000299
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 09/01/21 F		000307
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 10/01/21 F		000315
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 11/01/21 F		000323
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 12/01/21 F		000331
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 01/03/22 F		000339
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60003 KALTER,DOVID				13.89NJ		5.58FL										PAY DATE 02/01/22 F		000347
REG			3209.81									3209.81	218.95	245.55	194.94	.00	2.60	2528.30
60004 KALTER,YITZCHOK				82.03NJ		3.06FL										PAY DATE 06/01/20 F		000188
REG			3330.63									3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ		3.06FL										PAY DATE 07/01/20 F		000196
REG			3330.63									3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ		3.06FL										PAY DATE 07/31/20 F		000204
REG			3330.63									3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ		3.06FL										PAY DATE 09/01/20 F		000212
REG			3330.63									3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				82.03NJ		3.06FL										PAY DATE 10/01/20 F		000220
REG			3330.63									3330.63	248.69	254.79	155.43	.00	2.60	2584.03
60004 KALTER,YITZCHOK				7.82FL												PAY DATE 10/30/20 F		000228
REG			2896.91									2896.91	0.00	221.61	80.85	.00	2.60	2584.03
60004 KALTER,YITZCHOK				7.82FL												PAY DATE 12/01/20 F		000236
REG			2896.91									2896.91	0.00	221.61	80.85	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ		8.24FL										PAY DATE 01/04/21 F		000244
REG			3234.72									3234.72	189.22	247.46	191.88	.00	0.00	2584.03
60004 KALTER,YITZCHOK				13.89NJ		5.64FL										PAY DATE 01/29/21 F		000252
REG			3234.72									3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ		5.64FL										PAY DATE 03/01/21 F		000260
REG			3234.72									3234.72	189.22	247.46	191.88	.00	2.60	2584.03

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 04/01/21 F			000268
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 04/30/21 F			000276
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 06/01/21 F			000284
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 07/01/21 F			000292
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 07/30/21 F			000300
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 09/01/21 F			000308
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 10/01/21 F			000316
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 11/01/21 F			000324
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 12/01/21 F			000332
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 01/03/22 F			000340
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60004 KALTER,YITZCHOK				13.89NJ	5.64FL						PAY DATE 02/01/22 F			000348
REG			3234.72					3234.72	189.22	247.46	191.88	.00	2.60	2584.03
60005 KANAREK,CHANA				76.27NJ	5.41FL						PAY DATE 06/01/20 F			000189
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
** AMOUNT OF CHECK EXCEEDS FLAG **														
60005 KANAREK,CHANA				76.27NJ	5.41FL						PAY DATE 07/01/20 F			000197
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
** AMOUNT OF CHECK EXCEEDS FLAG **														
60005 KANAREK,CHANA				76.27NJ	5.41FL						PAY DATE 07/31/20 F			000205
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
** AMOUNT OF CHECK EXCEEDS FLAG **														
60005 KANAREK,CHANA				76.27NJ	5.41FL						PAY DATE 09/01/20 F			000213
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
** AMOUNT OF CHECK EXCEEDS FLAG **														
60005 KANAREK,CHANA				76.27NJ	5.41FL						PAY DATE 10/01/20 F			000221
REG			4127.62					4127.62	214.04	315.76	214.64	.00	2.60	3298.90
60005 KANAREK,CHANA				10.02FL							PAY DATE 10/30/20 F			000229
REG			3712.31					3712.31	0.00	283.99	116.80	.00	2.60	3298.90
60005 KANAREK,CHANA				10.02FL							PAY DATE 12/01/20 F			000237
REG			3712.31					3712.31	0.00	283.99	116.80	.00	2.60	3298.90
60005 KANAREK,CHANA				17.76NJ	9.66FL						PAY DATE 01/04/21 F			000245
REG			4164.14					4164.14	256.48	318.56	262.78	.00	0.00	3298.90
60005 KANAREK,CHANA				17.76NJ	7.06FL						PAY DATE 01/29/21 F			000253
REG			4164.14					4164.14	256.48	318.56	262.78	.00	2.60	3298.90
60005 KANAREK,CHANA				17.76NJ	7.06FL						PAY DATE 03/01/21 F			000261
REG			4164.14					4164.14	256.48	318.56	262.78	.00	2.60	3298.90

CHECK LISTING
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DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 04/01/21 F			00026
REG			4483.44					4483.44	276.48	342.98	312.78	.00	2.60	3498.9
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 04/30/21 F			00027
REG			4483.44					4483.44	276.48	342.98	312.76	.00	2.60	3498.9
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 06/01/21 F			00028
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.9
		** AMOUNT OF CHECK EXCEEDS FLAG **												
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 07/01/21 F			00029
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.9
		** AMOUNT OF CHECK EXCEEDS FLAG **												
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 07/30/21 F			00030
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.9
		** AMOUNT OF CHECK EXCEEDS FLAG **												
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 09/01/21 F			000309
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
		** AMOUNT OF CHECK EXCEEDS FLAG **												
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 10/01/21 F			000317
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 11/01/21 F			000325
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 12/01/21 F			000333
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 01/03/22 F			000341
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
60005 KANAREK,CHANA				28.80NJ	20.90FL						PAY DATE 02/01/22 F			000349
REG			4483.42					4483.42	276.48	342.98	312.76	.00	2.60	3498.90
60006 LIEBERMAN,CHAYA S				22.88NJ	1.78FL						PAY DATE 06/01/20 F			000190
REG			1753.24					1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88NJ	1.78FL						PAY DATE 07/01/20 F			000198
REG			1753.24					1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88NJ	1.78FL						PAY DATE 07/31/20 F			000206
REG			1753.24					1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88NJ	1.78FL						PAY DATE 09/01/20 F			000214
REG			1753.24					1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				22.88NJ	1.78FL						PAY DATE 10/01/20 F			000222
REG			1753.24					1753.24	163.63	134.12	128.83	.00	2.60	1299.40
60006 LIEBERMAN,CHAYA S				4.48FL							PAY DATE 10/30/20 F			000230
REG			1659.73					1659.73	0.00	126.97	26.28	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				4.48FL							PAY DATE 12/01/20 F			000238
REG			1659.73					1659.73	0.00	126.97	26.28	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	4.48FL						PAY DATE 01/04/21 F			000246
REG			1998.74					1998.74	144.51	152.90	183.56	.00	0.00	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL						PAY DATE 01/29/21 F			000254
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL						PAY DATE 03/01/21 F			000262
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 04/01/21 F		00027(
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.4(
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 04/30/21 F		00027(
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.4(
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 06/01/21 F		00028(
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.4(
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 07/01/21 F		000294
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 07/30/21 F		000302
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 09/01/21 F		000310
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 10/01/21 F		000318
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 11/01/21 F		000326
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 12/01/21 F		000334
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 01/03/22 F		000342
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60006 LIEBERMAN,CHAYA S				13.89NJ	1.88FL							PAY DATE 02/01/22 F		000350
REG			1998.74					1998.74	144.51	152.90	183.56	.00	2.60	1499.40
60007 STEGER,MINDY				201.23NJ	10.14FL							PAY DATE 06/01/20 F		000191
REG			7977.64					7977.64	675.20	610.29	489.58	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY				201.23NJ	10.14FL							PAY DATE 07/01/20 F		000199
REG			7977.64					7977.64	675.20	610.29	489.58	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY				201.23NJ	10.14FL							PAY DATE 07/31/20 F		000207
REG			7977.64					7977.64	675.20	610.29	489.58	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY				201.23NJ	10.14FL							PAY DATE 09/01/20 F		000215
REG			7977.64					7977.64	675.20	610.29	489.58	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY				201.23NJ	10.14FL							PAY DATE 10/01/20 F		000223
REG			7977.64					7977.64	675.20	610.29	489.58	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY				18.42FL								PAY DATE 10/30/20 F		000231
REG			6822.98					6822.98	0.00	521.96	291.40	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														
60007 STEGER,MINDY					18.42FL							PAY DATE 12/01/20 F		000239
REG			6822.98					6822.98	0.00	521.96	291.40	.00	2.60	5988.60
** AMOUNT OF CHECK EXCEEDS FLAG **														

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT CD	AMNT CD	AMNT CD	AMNT CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
60007 STEGER,MINDY				13.89NJ	20.88FL							PAY DATE 01/04/21 F		000247
REG			7769.55					7769.55	598.78	594.37	553.03	.00	0.00	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 01/29/21 F		000255
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 03/01/21 F		000263
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 04/01/21 F		000271
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 04/30/21 F		000279
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 06/01/21 F		000287
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 07/01/21 F		000295
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 07/30/21 F		000303
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 09/01/21 F		000311
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 10/01/21 F		000319
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 11/01/21 F		000327
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 12/01/21 F		000335
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **											
60007 STEGER,MINDY				13.89NJ	18.28FL							PAY DATE 01/03/22 F		000343
REG			7769.55					7769.55	598.78	594.37	553.03	.00	2.60	5988.60

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#/ NET
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60007 STEGER,MINDY				13.89NJ		18.28FL												PAY DATE 02/01/22 F 000351
REG			7769.55									7769.55	598.78	594.37	553.03	.00	2.60	5988.60
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60008 TREFF,SHEVA				34.67NJ		2.30FL												PAY DATE 06/01/20 F 000192
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67NJ		2.30FL												PAY DATE 07/01/20 F 000200
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67NJ		2.30FL												PAY DATE 07/31/20 F 000208
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67NJ		2.30FL												PAY DATE 09/01/20 F 000216
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				34.67NJ		2.30FL												PAY DATE 10/01/20 F 000224
REG			2158.30									2158.30	193.50	165.11	160.40	.00	2.60	1599.72
60008 TREFF,SHEVA				4.76FL														PAY DATE 10/30/20 F 000232
REG			1765.13									1765.13	0.00	135.03	23.02	.00	2.60	1599.72
60008 TREFF,SHEVA				4.76FL														PAY DATE 12/01/20 F 000240
REG			1765.13									1765.13	0.00	135.03	23.02	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		10.20FL												PAY DATE 01/04/21 F 000248
REG			2007.24									2007.24	101.59	153.55	128.29	.00	0.00	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 01/29/21 F 000256
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 03/01/21 F 000264
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 04/01/21 F 000272
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 04/30/21 F 000280
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 06/01/21 F 000288
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 07/01/21 F 000296
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 07/30/21 F 000304
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 09/01/21 F 000312
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 10/01/21 F 000320
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 11/01/21 F 000328
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 12/01/21 F 000336
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
			** AMOUNT OF CHECK EXCEEDS FLAG **															
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 01/03/22 F 000344
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72
60008 TREFF,SHEVA				13.89NJ		7.60FL												PAY DATE 02/01/22 F 000352
REG			2007.24									2007.24	101.59	153.55	128.29	.00	2.60	1599.72

CHECK LISTING
06/01/2020 - 02/01/2022

DESC	HRS	RATE	AMOUNT	AMNT	CD	AMNT	CD	AMNT	CD	AMNT	CD	GROSS	FED	FICA	STATE	CITY	DIS	CK#, NET
TOTAL FOR DEPT 0090.0000 ----->				469310.18	GR	30267.52	FED	35902.09	FICA	29471.62	ST		.00	CTY	312.00	DIS	368515.63	N
REG	.00	.0000	469310.18							3770.16	NJ	1071.16	FL					
Processed 126 Checks For 6 Employees (Excluding Void And 3rd Party Checks)																		
GRAND TOTAL =======>				718560.19	GR	43716.99	FED	54969.82	FICA	47130.67	ST		.00	CTY	416.00	DIS	564892.93	N
REG	.00	.0000	718560.19							5869.64	NJ	1564.14	FL					
Processed 168 Checks For 8 Employees (Excluding Void And 3rd Party Checks)																		

STATE, CITY & LOCAL: 47130.67

DEPOSITORY: 153656.63 FEDERAL: 43716.99 FICA : 89101.80 MEDICARE: 20837.84

TOTAL FICA EMPLOYEE 54969.82
TOTAL FICA EMPLOYER 54969.82

CARES DEFERRED 6.20% FICA MATCH (excludes COVID FICA/MC) 14499.35

New York State Office of the Attorney General Letitia James

Nursing Home Response to COVID-19 Pandemic

Revised January 30, 2021

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Executive Summary

This report is based on preliminary findings of the Office of Attorney General Letitia James (OAG)[1] from a review of information available through November 16, 2020. The report includes facts from the OAG's preliminary investigations of allegations of COVID-19-related neglect of nursing home residents across New York state and health data maintained as a matter of law by nursing homes and the New York State Department of Health (DOH).

In early March,[2] OAG received and began to investigate allegations of COVID-19-related neglect of residents in nursing homes. On April 23, OAG set up a hotline to receive complaints relating to communications by nursing homes with family members prohibited from in-person visits to nursing homes.[3] OAG received 774 complaints on the hotline through August 3 (an additional 179 complaints were received through November 16). OAG also continued to receive allegations of COVID-19-related neglect of residents through pre-existing reporting systems. During this time, OAG received complaints regarding nursing homes across the state, with a greater volume of complaints regarding nursing homes in geographic areas with higher rates of community-based transmission of COVID-19.

OAG is conducting ongoing investigations into more than 20 nursing homes across the state whose reported conduct during the first wave of the pandemic presented particular concern. Other law enforcement agencies also have ongoing investigations relating to nursing homes. Under normal circumstances, OAG would issue a report with findings and recommendations after its investigations and enforcement activities are completed. However, circumstances are far from normal. DOH data reports over 6,645 resident deaths as of November 16, with the vast majority (over 6,420) of those deaths occurring as of August 3. The COVID-19 health crisis is continuing and projected to worsen in the coming winter months. Infection rates are rising across the state, and across states nationwide, following increased travel and social gatherings over the holiday season. Inconsistent public compliance with face mask wearing, social distancing, and hand washing persists — despite orders and scientific guidance that shows these practices reduce the risk of COVID-19. Under these circumstances, nursing home residents remain especially vulnerable to transmission of COVID-19.

Attorney General James is issuing this report including findings based on data obtained in investigations conducted to date, recommendations that are based on those findings, related findings in pre-pandemic investigations of nursing homes in New York, and other available data and analysis thereof. Attorney General James offers this information to the public in the interest of increasing transparency and awareness and encouraging collective action by our state's residents to protect each other and our state's vulnerable nursing home residents. In addition, this information may be useful to other decision-makers for their consideration as they continue to respond to the ongoing pandemic.

OAG's preliminary findings are:

» A larger number of nursing home residents died from COVID-19 than DOH data reflected.

» Lack of compliance with infection control protocols put residents at increased risk of harm during the COVID-19 pandemic in some facilities.

» Nursing homes that entered the pandemic with low U.S. Centers for Medicaid and Medicare Services (CMS) Staffing ratings[4] had higher COVID-19 fatality rates than facilities with higher CMS Staffing ratings.

» Insufficient personal protective equipment (PPE) for nursing home staff put residents at increased risk of harm during the COVID-19 pandemic in some facilities.

» Insufficient COVID-19 testing for residents and staff in the early stages of the pandemic put residents at increased risk of harm in some facilities.

» The current state reimbursement model for nursing homes gives a financial incentive to owners of for-profit nursing homes to transfer funds to related parties (ultimately increasing their own profit) instead of investing in higher levels of staffing and PPE.

» Lack of nursing home compliance with the executive order requiring communication with family members caused avoidable pain and distress; and,

» Government guidance requiring the admission of COVID-19 patients into nursing homes may have put residents at increased risk of harm in some facilities and may have obscured the data available to assess that risk.

To address the report's findings, a summary of recommendations follows below.

Recommendations:

» Ensure public reporting by each nursing home as to the number of COVID-19 deaths of residents occurring at the facility — and those that occur during or after hospitalization of the residents — in a manner that avoids creating a double-counting of resident deaths at hospitals in reported state COVID-19 death statistics.

» Enforce, without exception, New York state law requiring nursing homes to provide adequate care and treatment of nursing home residents during times of emergency.

» Require nursing homes to comply with labor practices that prevent nursing homes from pressuring employees to work while they have COVID-19 infection or symptoms, while ensuring nursing homes obtain and provide adequate staffing levels to care for residents' needs.

» Require direct care and supervision staffing levels that (1) are expressed in ratios of residents to Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistants; (2) require calculation of sufficiency that includes adjustment based on average resident acuity; (3) are above the current level reflected at facilities with low CMS Staffing ratings; and, (4) are sufficient to care for the facility's residents' needs reflected in their care plans.

» Require additional and enforceable transparency in the operation of for-profit nursing homes, including financial transactions and financial relationships between nursing home operators and related parties, and relatives of all individual owners and officers of such entities with contractual or investor relationships with the nursing home. Through a variety of related party transactions and relationships, owners and investors of for-profit nursing homes can exert control over the facility's operations in a manner that extracts significant profit for them, while leaving the facility with insufficient staffing and resources to provide the care that residents deserve.

» Ensure that nursing homes invest sufficiently in effective training so staff can fully comply with infection control protocols. Hold operators accountable for failure to have clinically appropriate policies in place and to effectively train staff to comply with them.

» Support manufacturing of PPE to facilitate sufficient supply of PPE for purchase by nursing homes. Enforce requirements that nursing homes have sufficient inventory of PPE for all staff to be able to follow infection control protocols.

» Ensure that adequate COVID-19 testing is available to nursing home residents and employees and enforce requirements that nursing homes test residents and staff in accordance with DOH and the Centers for Disease Control and Prevention (CDC) evidence-based guidelines.

» Eliminate the recently enacted immunity provisions that can provide financial incentives to for-profit nursing home operators to put residents at risk of harm by refraining from investing public funds to obtain sufficient staffing to meet residents' care needs, to purchase sufficient PPE for staff, and to provide effective training to staff to comply with infection control protocols during pandemics and other public health emergencies.[5]

» Formally enact and continue to enforce regulatory requirements that nursing homes communicate with family members of residents promptly, but not later than within 24 hours of any confirmed or suspected COVID-19 infection and of any confirmed or suspected COVID-19 death.

» Increase staffing at DOH to ensure sufficient skilled resources for oversight, complaint assessment, surveys, inspections, and immediate responses to information requests from state agencies in support of health care and law enforcement efforts.

» Ensure that nursing homes engage in thoughtful planning regarding post-mortem care needs and implement and train staff on policies for dignified care of the remains of deceased residents.

» Urge families to consult the CMS Care Compare online database (medicare.gov/care-compare), ask questions of nursing homes relating to staffing, policies, procedures, and recent and current COVID-19 infections of staff and residents, and to obtain information relevant to their current or future long-term care decisions for their loved ones. Where possible, visit family member residents in person and through "window" visits and videocalls even if resident is unable to communicate, to provide emotional support and to enable observation of the resident's physical appearance and condition. Ensure family members know to report suspected neglect or abuse to DOH and OAG.

Timeline

On January 31, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency for the United States to aid the nation's health care community in responding to COVID-19. The emergency declaration gave state, tribal, and local health departments more flexibility to request that HHS authorize them to temporarily reassign personnel to respond to COVID-19.[6] While everyone is at risk of getting COVID-19, older adults and people of any age who have serious underlying medical conditions are at higher risk for more severe illness. In early February, DOH issued specific correspondence to health care facilities in New York directing them to plan for COVID-19. In early March, travel-related cases and community contact transmissions of COVID-19 were documented in New York. On March 7, Governor Andrew Cuomo declared a COVID-19 Disaster Emergency, declaring that a "disaster is impending in New York State, for which the affected local governments are unable to respond adequately."

New York took the brunt of the initial wave of COVID-19 infections from March through May, as reflected in the high number of COVID-19 infections and deaths. As reported in numerous sources, the New York City metropolitan area received the bulk of travelers from Europe prior to federal closure of international airports. From March through August 3, DOH reported a total of 6,423 resident deaths in nursing homes due to COVID-19, including 3,640 confirmed COVID-19 deaths and 2,783 presumed[7] COVID-19 deaths.[8] These reported deaths are based on data reported by New York's 619 nursing homes to DOH through its Health Emergency Response Data System (HERDS). As reported by *The New York Times*, there were 422,296 COVID-19 infections and 32,422 COVID-19 deaths in New York state as of August 4:[9]

Effect on Nursing Home Residents

A. Facility-Reported Deaths

In New York state, the first wave of the COVID-19 pandemic impacted many of the residents and staff of the 304 nursing homes located within the nine downstate counties in the New York City metropolitan area.[10] Within these counties, according to DOH, there were 2,567 confirmed COVID-19 resident deaths and 2,687 presumed COVID-19 resident deaths, for a total of 5,254 resident deaths in nursing homes from March through August 3. Of the total 6,423 reported resident deaths in nursing homes statewide as of August 3, 81 percent occurred in facilities in these nine downstate counties. (Through November 16, reports total 6,645 resident deaths due to COVID-19.)

Western, Northern, and Central New York also experienced COVID-19 infections in nursing homes during this time. According to DOH, from March through August 3, nursing homes upstate reported 1,169 resident deaths, including 1,073 confirmed COVID-19 deaths and 96 presumed COVID-19 deaths. The state's peak of nursing home resident COVID-19 reported deaths occurred on April 8.[11]

1. A Larger Number of Nursing Home Residents Died from COVID-19 Than Public DOH Data Reflected

Preliminary data analysis obtained from OAG inquiries to a portion of nursing homes during the pandemic suggests that many residents died from COVID-19 in hospitals after being transferred from their nursing homes.

OAG asked 62 nursing homes for information about on-site and in-hospital deaths from COVID-19 for the week of March 1 to the date of the facility's response, which varied from the week of April 12 to July 19. This sample of facilities – approximately 10 percent of the number of nursing homes in New York – was not randomly selected. OAG investigation teams requested data regarding resident deaths during the course of its preliminary investigations.[12]

Using the data from these 62 nursing homes, OAG compared: (1) in-facility deaths reported to OAG to in-facility deaths publicized by DOH, and (2) total deaths reported to OAG to total deaths publicized by DOH.[13]

The first comparison raised some questions, as shown on the chart below:

Deaths at Facilities – Comparison of Reports to OAG and DOH

Facility Deaths Reported to OAG	1,266
Facility Deaths Publicized by DOH	1,229
Difference	(37)
Over/Under Percentage	-3.01%

Although the calculated discrepancy of 3.01 percent may seem relatively low under the circumstances, closer analysis revealed that some facilities reported the location of the person at the time of death inconsistently. The discrepancies raise concerns because, when the data is removed for seven facilities that reported differing locations of death yet had a consistent total death count, the difference in reporting of deaths at the remaining 55 facilities jumps as publicized by DOH to **18.66 percent**. The DOH reporting system explicitly requires facilities to correct inaccurate reporting. Either such correction was not made by a number of facilities, or data were not reflected in DOH's published data for other reasons.

Total Deaths Reported to OAG (incl. residents sent to hospitals) vs. Publicized by DOH

Facility Deaths Reported to OAG	1,914
Total Deaths Publicized by DOH	1,229
Difference	(685)
Over/Under Percentage	-55.74%

The examples below illustrate that discrepancies remain even when the data reported to OAG is compared to data published by DOH as of later time periods through August 3:

» A facility reported 11 confirmed COVID-19 deaths at the facility, one suspected COVID-19 death at the facility, and four hospital deaths to DOH as of May 2020, and reported the same data to OAG. However, DOH published only one confirmed COVID-19 death at the facility until July 31, when its publication reflected eleven confirmed in-facility deaths -- a discrepancy of five deaths from what was reported to DOH by the facility. [14]

» A facility reported one confirmed and six presumed COVID-19 deaths at the facility as of August 3 to DOH. However, the facility reported to OAG a total of 31 COVID-19 suspected deaths at the facility as of April 18 – a discrepancy of 25 deaths.

» A facility reported five confirmed and six presumed COVID-19 deaths at the facility as of August 3 to DOH. However, the facility reported to OAG a total of 27 COVID-19 deaths at the facility and 13 hospital deaths – a discrepancy of 29 deaths.

Applying the data that these 62 nursing homes reported to OAG, which includes resident deaths occurring in the facility and in the hospital after transfer, shows a significantly higher number of resident COVID-19 deaths can be identified than is reflected in the deaths publicized by DOH.

OAG is investigating those circumstances where the discrepancies cannot reasonably be accounted for by error or the difference in the question posed.

In conclusion, this preliminary data for the 62 facilities and time periods noted above suggests that COVID-19 resident deaths associated with nursing homes in New York state appear to be undercounted by DOH by approximately 50 percent. [15]

2. High Numbers of Deaths at Nursing Homes During the Pandemic Exceeded Morgue Capacity and High Volumes of Deaths Citywide Exceeded Capacity of County Medical Examiners and Funeral Homes

OAG preliminary investigations indicate that in April, six New York City nursing homes experienced resident death numbers that exceeded the facilities' onsite morgue capacity. In each of those instances, the facility appropriately contacted funeral homes or the medical examiner's office. However, the high numbers of COVID-19 deaths across New York City had filled the capacity of local medical examiners and funeral homes. As a result, there were times when several days passed before remains could be transported out of the facilities.[16] Media reports in New York City during the peak of the first wave of the pandemic contained allegations that bodies of deceased residents were "piling up"[17] [18] inside a number of nursing homes. OAG investigated these allegations.

OAG determined that the allegations were unfounded with respect to two of the six nursing homes. In three for-profit facilities, OAG determined that the remains awaiting transfer were stored in accordance with accepted industry practice, which is to place the bodies in unoccupied patient rooms with the air conditioning on full power and with doors sealed. In an investigation of one not-for-profit facility, OAG determined that deceased residents' bodies awaiting transfer were appropriately stored in rented refrigerated trucks in the parking lot of the facility.

Under the circumstances, the preliminary investigations indicate no violation of law or industry practice in the storage of the remains of deceased residents. These incidents raise the question of whether the facilities engaged in enough planning. Relatedly, some staff conveyed surprise and shock at the discovery of onsite storage of remains other than in the morgue, indicating internal communication and training lapses.

Guidance Issued by Federal and State Governments

Federal and state agencies issued and updated guidance from January to May as evidence and knowledge about COVID-19 developed. During the pandemic, Governor Cuomo issued many executive orders in an effort to flatten the rising curves of COVID-19 infection and death rates, including directing New York to be "On Pause," and requiring the public to wear masks and practice social distancing. In addition, CDC, CMS, and DOH issued guidance relative to COVID-19. As the virus spread through New York and other states and countries, more information was promulgated about COVID-19 infection, illness, and treatment, prompting federal and state health agencies to issue updated guidance. Much of this information contained reminders and updates about best practices for containment and control of respiratory viruses – a disease vector well understood in health care facilities. This guidance also reflected updates on evolving medical knowledge about COVID-19.

A chronology of key guidance and directives issued by CDC, CMS, DOH, and Governor Cuomo that relates to nursing homes appears in the table in Appendix A.

* * *

With these health care directives as background, OAG conducted the investigations described in the following sections.

Methodology: Phase One Investigations, Hotline Reports, and Data Analysis

OAG used three investigative approaches for this report. First, OAG opened a hotline to receive reports of violations of executive orders concerning communications with families, which expanded to receive reports of abuse and neglect. Second, OAG analyzed data from CMS and DOH for correlations between COVID-19 outcomes and CMS facility ratings. Third, OAG followed up on direct or media reports of potential abuse or neglect due to COVID-19. OAG conducted preliminary, or phase one, investigations of many nursing homes, and has continued and expanded investigations with respect to a number of them.

Except where noted, this preliminary report excludes information from enforcement investigations, and, where such information is set out, portions were redacted or paraphrased to protect the investigation or privacy of individuals not accused of wrongdoing. Names of individuals or business entities have been redacted, unless the person was convicted of criminal conduct or named in public filings such as settlement agreements or Assurances of Discontinuance under Executive Law § 63(12).

A. Phase One Investigations of Nursing Homes Conducted by OAG During the First Wave of the Pandemic

Based on allegations of COVID-19 related neglect received as of August 9, OAG conducted phase one investigations into 174 nursing homes statewide. Preliminary findings in this report are based on information obtained in the investigations, and the other data referenced herein. The data obtained during these investigations includes interviews conducted by telephone, documents obtained from nursing homes and third parties, and surveillance conducted. These complaints and investigations included facilities everywhere in the state. Based on the preliminary investigations, OAG is continuing investigations of over 20 facilities in greater depth.

Upon receipt of these allegations, OAG investigative teams followed up with complainants and promptly contacted the nursing home in question to determine whether substandard infection prevention and control practices existed at the reported home that could endanger residents, or if critically low staffing existed to the same effect. In the vast majority of these instances, the subject nursing homes cooperated fully. The primary goal of the initial inquiries was to determine whether, among other things, each facility reported having PPE and proper infection control protocols in place, and whether, based on the staffing and other conditions reported, the residents appeared to be in danger. If OAG concluded that alleged circumstances at a facility presented likely and significant risks of harm to the residents, OAG referred those facilities to DOH for immediate action. DOH responded to such facilities, including with onsite teams. A DOH referral does not mean that OAG closed its own investigation.

B. Attorney General James' COVID-19 Hotline

OAG opened a dedicated internet and telephone hotline on April 23, to address public and inter-agency concerns about a lack of prompt and effective compliance with Executive Orders 202.18 (April 16) and 202.19 (April 17) concerning communications with family members. The executive orders require nursing homes and assisted living facilities to notify "family members or next of kin of residents" within 24 hours when a resident of the facility either tests positive for COVID-19 or suffers a COVID-19-related death.

Earlier DOH guidance that was issued on April 4 similarly encourages a broader range of communication with families, including notifying families of all residents when anyone who has been in the facility has actual or suspected COVID-19, and encouraging frequent communication through direct and internet means on the status of prevention efforts in the facility. The guidance applies to all facilities and provides communications best practices for facilities with and without COVID-19 cases. CDC issued similar guidance on March 13.

Immediately before opening the hotline, OAG received numerous reports that nursing homes across New York were doing a poor job of such communication. The most concerning reports indicated some families were not even informed that their family member was ill prior to hearing of their death. The reports also suggested that some facilities were extremely insensitive in their communications.[19]

As only a violation of the executive orders were immediately sanctionable, which could not be accomplished in the short-run, OAG's main goals were to:

» Identify facilities doing a poor job of compliance with, or violating, the executive orders;

» Communicate with facilities and require them to change practices immediately; and,

» Communicate with DOH, if necessary, to solve these and other problems.

OAG employees responded to each caller, and, with the information from such discussions, often made further contact directly with facility administration. From April 23 through November 16, the hotline received 953 contacts, the vast majority of which were received through August 3 (774 complaints). Of the complaints received through August 3, 653 related to identifiable facilities in the state. In those communications, 276 different facilities were named. Notably, these facilities were located throughout the state and were not over-represented in the areas initially hardest hit by COVID-19 deaths. This wide geographic distribution strongly indicates that even though some of the facilities were not immediately challenged by extremely ill residents, they were nonetheless unprepared to handle relatively basic communication issues. (While a few calls also named hospitals or assisted living facilities, they do not significantly alter the numbers or distribution.)

MFCU Nursing Home COVID-19 Hotline Intake by Region 4/23/2020 – 8/3/2020 [20]

New York Region (with Counties of Facilities Subject of Intakes)	Number of Intakes
Capital Region *Albany, Columbia, Greene, Rensselaer, Schenectady, Warren, and Washington*	68
Central New York *Cayuga, Madison, and Onondaga*	24
Finger Lakes *Livingston, Monroe, Orleans, and Wayne*	35
Long Island *Nassau and Suffolk*	130
Mid-Hudson *Dutchess, Orange, Rockland, Sullivan, Ulster, and Westchester*	104
Mohawk Valley *Fulton, Herkimer, Montgomery, Oneida, and Otsego*	16
New York City *Bronx, Kings, New York, Queens, and Richmond*	196
Southern Tier *Broome, Chemung, and Steuben*	24
Western New York *Erie and Niagara*	56
Total	653

OAG staff were able to address the bulk of these hotline contacts through a variety of interventions, including:

» Direct communication to facilities, with verbal or written warnings in some instances;

» Direct communication to facilities, identifying weaknesses and connecting people;

» Referrals to OAG investigation teams for longer-term follow-up;

» Comfort and clarity to family members who were not well informed of their options and avenues for communications.

While the executive orders and DOH guidance used the non-specific term "family," most facilities keep contact information and privacy authorizations for "designated representatives" or "next of kin." Given the wide variety of human relationships, the phrases can indicate different individuals within a given family or other individuals acting pursuant to a resident's designation. Greater precision as to such legal terms in future guidance would help clarify expectations of family members in their communications with facilities.

Preliminary Findings from OAG Investigation and Data Analysis

OAG's investigations conducted during and in the aftermath of the first wave of the pandemic reflect preliminary findings as to factors that increased risks of COVID-19 transmission to nursing home residents.

A. Lack of Compliance with Infection Control Protocols Put Residents at Increased Risk of Harm During the COVID-19 Pandemic in Some Facilities

During phase one investigations, OAG received multiple reports through the COVID-19 hotline and direct communications to OAG that several nursing homes failed to implement proper infection controls to prevent or mitigate the transmission of COVID-19 to vulnerable residents. Among those reports were allegations that, despite medical best practices, existing regulations, and specific COVID-19 guidance from CDC, CMS, and DOH, several nursing homes in all regions of the state failed to plan and take proper infection control measures, including:

» Failing to properly isolate residents who tested positive for COVID-19;

» Failing to adequately screen or test employees for COVID-19;

» Demanding that sick employees continue to work and care for residents or face retaliation or termination;

» Failing to train employees in infection control protocols; and,

» Failing to obtain, fit, and train caregivers with PPE.

1. Pre-Existing Infection Control Requirements for Nursing Homes

Infection prevention and control has long been a fundamental aspect of basic nursing home care. Nursing homes are expected to take all reasonable steps to avoid the transmission of disease. Never was this obligation more important than during the early stages of COVID-19, nor will it be less important as we continue to navigate through this global pandemic. Nursing home infection control regulations, which have been in effect for years, require every nursing home to maintain an infection control program with policies designed to provide a safe, sanitary, and comfortable environment in which residents vulnerable to infection reside (and where their health care providers work).[21] A facility is required to have an infection control program in which the facility: (1) investigates, controls, and takes action to prevent infections in the facility; (2) determines what procedures, such as isolation, should be utilized for an individual resident to prevent continued transmission of a disease; and, (3) maintains a record of incidence and corrective actions related to infections. Nursing homes are required to isolate residents and properly sterilize and store all equipment to prevent the spread of infection. Facilities are required to mandate basic infection control practices including ensuring staff wash their hands after each direct resident contact and properly handle and store linens.[22]

2. Health Oversight Agencies Directed Nursing Homes to Strengthen Pre-Existing Infection Control Policies at the Onset of the COVID-19 Pandemic

On March 11, DOH issued COVID-19 guidance to nursing homes setting forth the facts of the virus as known at the time, DOH's expectations of nursing homes during the pandemic, and applicable infection control procedures that each facility was required to follow to ensure the safety of residents and staff during the COVID-19 outbreak. Citing the nationally reported COVID-19 outbreak at the Life Care Center nursing home in the state of Washington in late February, DOH warned New York nursing homes that the "potential for more serious illness among older adults, coupled with the more closed, communal nature of the nursing home environment, represents a risk of outbreak and a substantial challenge for nursing homes." DOH noted that it was "essential" that all nursing homes "maintain situational awareness about the disease, its signs and symptoms, where cases and outbreaks are occurring, and necessary infection prevention and control procedures by regularly visiting" CDC and DOH websites to review the most up-to-date information. DOH advised nursing homes that they "must review and reinforce their policies and procedures with all staff, residents, and visitors regarding infection prevention and control."[23]

In addition to DOH's continuing COVID-19 guidance and pre-existing New York nursing home regulations mandating strict infection controls, federal health oversight agencies also issued guidance and directives to the nursing home sector to tighten infection control measures to protect nursing home populations. As early as February 6, CMS issued guidance noting that "[b]ecause coronavirus infections can rapidly appear and spread, facilities must take steps to prepare, including reviewing their infection control policies and practices to prevent the spread of infection."[24] On March 13, CMS issued directives to nursing homes nationally to prevent the further spread and transmission of the virus to "America's seniors, who are at highest risk for complications from COVID-19," including:

» Restricting all visitors except for compassionate care, such as end-of-life situations;

» Restricting all volunteers and nonessential personnel;

» Canceling all group activities and communal dining; and,

» Screening residents and personnel for fever and respiratory symptoms.

In conjunction with CMS's directives, CDC issued several notices including a coronavirus "Preparedness Checklist for Nursing Homes and other Long-Term Care Settings," as "one tool in developing a comprehensive COVID-19 response plan."[25] The checklist identified key areas that long-term care facilities should consider in their COVID-19 planning. It also included several key planning recommendations, such as incorporating COVID-19 into written emergency plans[26] and instructions on infection control policies.

3. Examples of Preliminary Findings Regarding Infection Control Practices

Below is a representative factual summary of some of the allegations received by OAG from March 11 to June 30 regarding infection control. Given that this is a preliminary report, the sources of the information and the subject nursing homes will remain confidential to protect the identity of witnesses and the integrity of ongoing investigations.

These factual summaries are not meant to convey legal conclusions. The examples laid out represent facilities that are under investigation that could result in legal action, facilities that are no longer under investigation due to lack of evidence or confirmed wrongdoing, and facilities that OAG is continuing to closely monitor.

Starting in March, OAG received several reports from concerned staff and family members that nursing homes failed to ensure proper infection prevention and control practices. In OAG's COVID-19 rapid-response model, investigative teams followed up on these reports, interviewed key staff at the subject nursing homes, and, if necessary, reviewed records produced by the facilities either voluntarily, pursuant to OAG's authority to demand the production of records under 18 NYCRR § 504.3 or by subpoena pursuant to New York Executive Law § 63(12). OAG determined that several of these reports required additional investigation or referral to DOH.

CMS Star Ratings – Staffing versus Overall

The CMS Staffing rating is a separately published rating for each facility. It is also a component of the rating published as the Overall rating of a facility, along with two other separate ratings. The Staffing rating specifically reflects the number of staffing hours in the nursing department of a facility relative to the number of residents. This ratio is expressed as a star rating, with the lowest rating of 1-Star signifying the lowest number of staff per resident, and the highest rating of 5-Star signifying the highest number of staff per resident.

On March 1, 21 percent of New York's 619 nursing homes had very low Staffing and/or Overall ratings, as shown in this chart:

Category	Number of New York State Nursing Homes
CMS 1-Star Staffing rating *(22 of which has 1-Star Overall ratings)*	75
CMS 2-Star Staffing rating and 1-Star Overall rating	58

a. Failure to Isolate COVID-19 Residents Put Residents and Staff at Increased Risk of Harm

OAG received several credible reports from concerned staff and family members that nursing homes failed to promptly isolate residents who they knew or presumed to have had COVID-19. For example, in early April, a Certified Nursing Assistant (CNA) from a for-profit nursing home in New York City with CMS 2-Star Staffing and 4-Star Overall ratings reported that residents who tested both positive and negative for COVID-19 were simply treated with Tylenol, without isolation, or any other specific respiratory care. A few days later, OAG received a report from a member of the family council of the same nursing home alleging several concerns about how the facility responded to the COVID-19 pandemic. Among the complaints was that the facility was not properly sanitizing rooms of residents after they were transferred from the rooms.

Early in the COVID-19 pandemic, OAG began a preliminary investigation into a for-profit nursing home in New York City due to indications of neglect, including: a high number of resident deaths, poor performance during past DOH inspections, and the lowest possible CMS ratings (1-Star Staffing and 1-Star Overall). OAG received reports of multiple problems at the facility, including failure to isolate residents who tested positive for COVID-19. CDC and DOH conducted an infection control survey and found that the facility, while in need of policy changes, was in compliance with New York and federal infection control guidelines.

In mid-May, OAG received an anonymous call to the hotline in which the caller indicated that COVID-19 positive residents at a for-profit nursing home north of New York City with CMS 3-Star Staffing and 3-Star Overall ratings were intermingled with the general population for a period of time that allegedly ended in mid-May, when the facility started using its first floor as the designated COVID-19 floor. During an interview conducted by OAG investigators shortly thereafter, the administrator stated that the facility had not yet created a "COVID-19 only" unit but that it had placed COVID-19 positive residents in private rooms. He indicated at that time that the facility was planning on using one floor or part of a floor just for those residents.

b. Continued Communal Activities, Including Communal Dining, Put Residents and Staff at Increased Risk of Harm

In late April, weeks after communal activities, including communal dining, were restricted by CMS and DOH, OAG received an allegation from a family member of a resident that a for-profit Long Island nursing home with CMS 2-Star Staffing and 3-Star Overall ratings was still operating communal dining. OAG investigators promptly contacted the facility staff who admitted to OAG investigators that "aspiration precaution"[27] dementia residents were still being brought into the dining room for meals irrespective of COVID-19 status. They stressed that social distancing was observed and that only one resident would be allowed to sit at a table that typically would accommodate six residents. They explained that the decision to continue communal dining was made given the elevated levels of supervision required for residents at risk of aspirating. This purported safety concern directly implicates staffing. Aspiration precautions requires fewer staff if done in a group setting. After the OAG interview, the facility reportedly changed its policy and ensured that all residents would take meals in the rooms under appropriate supervision depending on each resident's care plan.

c. Lax Employee Screening Put All Residents and Staff at Increased Risk of Harm

OAG received reports that nursing homes did not properly screen staff members before allowing them to enter the facility to work with residents. Among those reports, OAG received an allegation that a for-profit nursing home north of New York City with CMS 2-Star Staffing and 4-Star Overall ratings failed to consistently conduct COVID-19 employee screening. It was reported that some staff avoided having their temperatures taken and answering a COVID-19 questionnaire at times when the facility's front entrance screening station had no employee present to conduct the screening, and when staff entered through a back entrance to the facility.

d. DOH Inspections Increased Facility Compliance with Infection Control Protocols

During an inquiry at a for-profit Western New York facility with CMS 1-Star Staffing and 1-Star Overall ratings, a Registered Nurse (RN) reported to OAG that immediately prior to the facility's first DOH inspection in late April, a nurse supervisor had set up bins in front of the units with gowns and N95 masks to make it appear that the facility had an adequate supply of appropriate PPE for staff. The RN alleged that the nurse supervisor came in to work unusually early at 5:30 AM the day of the first inspection and brought out all new PPE and collected all of the used gowns. Although the initial DOH survey conducted that day did not result in negative findings, DOH returned to the facility for follow-up inspections, issued the facility several citations, and ultimately placed the facility in "Immediate Jeopardy." "Immediate Jeopardy" means a deficiency has resulted in the provider's noncompliance, "has caused or is likely to cause serious injury, harm, impairment or death to the residents" and immediate action is necessary to address it.[28]

It was also reported to OAG that at a for-profit nursing home on Long Island with CMS 2-Star Staffing and 5-Star Overall ratings, COVID-19 patients who were transferred to the facility after a hospital stay and were supposed to be placed in a separate COVID-19 unit in the nursing home were, in fact, scattered throughout the facility despite available beds in the COVID-19 unit. According to the report, this situation was resolved only after someone at the facility learned of an impending DOH infection control survey scheduled for the next day, before which those residents were hurriedly transferred to the appropriate designated unit.

CMS and DOH conducted onsite infection control surveys at nursing homes statewide, which helped decrease risks to residents.[29] DOH provided infection control support in an effort to enforce compliance with regulations and guidance designed to protect residents. While these efforts helped, OAG's preliminary investigations indicate that nursing homes' lack of compliance with infection control protocols resulted in increased risks to residents at a number of facilities.

B. Nursing Homes with Low CMS Staffing Ratings Had Higher COVID-19 Fatality Rates

Most of the state's nursing homes are for-profit, privately owned and operated entities. There were 401 for-profit facilities, 189 not-for-profit facilities, and 29 government facilities statewide as of June 1. Not-for-profit facilities operate for the charitable purpose set forth in their charters. Government facilities have a public service mission. For-profit facilities are, by definition, operated with a goal of earning profit. Of the 401 for-profit facilities, more than two-thirds have the lowest possible CMS Staffing rating of 1-Star or 2-Stars. Similarly, of the 100 facilities in New York state with a CMS 1-Star overall rating, 82 are for-profit facilities.

While New York has minimal staffing level requirements for nursing homes, nursing homes require sufficient staffing levels on a daily basis and over the long haul in order to be able to provide the care required by New York law, including by individualized resident care plans. The main direct caregivers in a nursing home are, in order of training, CNAs, Licensed Practical Nurses (LPN), and RNs. These staffers are the bulk of the caregivers in a facility and have primary, daily contact with residents. CNAs provide assistance with activities of daily living, such as ambulation, transfers to/from bed, feeding, hygiene, toileting, bathing, dressing, bed cleaning and adjustments, turning and positioning of immobile patients, and other care and comfort. LPNs primarily focus on medication administration, monitoring vital signs, and providing certain treatments. RNs primarily focus on acute care needs, complex treatments, compliance with medical orders, communication with physicians and specialists, record-keeping, and complex health assessments.

Data presented in Appendix B hereto reflects that financial incentives within the current system result in a business model in too many for-profit nursing homes that: (1) seeks admission of increased numbers of residents to reach census goals; (2) assigns low numbers of staff to cover the care needs of as many residents as feasible; and, (3) transfers facility funds to related parties and investors that the home could otherwise invest in staffing to care for residents – essentially taking profit prior to ensuring care. In this model, hiring additional staff above the numbers set in low staffing models, and/or offering a higher wage in order to obtain more employees in the current labor market, are viewed as optional and unnecessary expenses. OAG's past cases and ongoing investigations reflect that this business model too often also includes extracting and transferring revenue received by for-profit nursing homes to related parties in a manner that enriches entities and individuals who have control over the nursing home, as well as their family members and business associates, at the expense of resident care and safety. These transfers of funds from such for-profit nursing homes occur through a variety of complex contractual relationships and transactions between private parties in order to enhance profit for owners, investors, landlords, and other private parties with relationships to the nursing home owners and operators, even though New York regulations prohibit directly extracting capital from a facility unless certain criteria are met. Notably, almost all revenue for nursing homes is from public funds — Medicare, Medicaid, and other state and federal programs — as well as funds such as retirement-benefit health insurance. Before the pandemic, OAG investigations, prosecutions, and civil actions reflected that this low staffing business model had created conditions of systemic causes of resident neglect and abuse at a number of facilities. *See, e.g.,* Appendix B, B-1, and B-2 below, for an illustration of this business model.

Given the complaints of neglect received during the COVID-19 pandemic[30] and the OAG investigation findings to date, the pandemic has laid bare the risks to vulnerable nursing home residents that are inherent in a low staffing business model.

Pre-existing insufficient staffing levels in many nursing homes put residents at increased risk of harm during the COVID-19 pandemic. As nursing home resident and staff COVID-19 infections rose during the initial wave of the pandemic, staffing absences increased at many nursing homes. As a result, pre-existing low staffing levels decreased further to especially dangerous levels in some homes, even as the need for care increased due to the need to comply with COVID-19 infection control protocols and the loss of assistance from family visitors.

1. Preliminary Investigative Findings Regarding Low Staffing Levels

COVID-19 and Staffing Shortages: OAG's preliminary investigations reflect many examples where for-profit nursing homes' pre-pandemic low staffing model simply snapped under the stress of the pandemic:

» OAG received a complaint from a resident's son about a for-profit nursing home in New York City with CMS 2-Star Staffing and 5-Star Overall ratings. The complaint alleged critically low staffing levels at the facility and the resident's son voiced concern about the care his mother was receiving. His mother was never tested for COVID-19, but later died while exhibiting COVID-19 symptoms. For several weeks, the facility was short of caregivers due to COVID-19 illness and quarantine, and most of its management was either out ill or working remotely. During one period of time between late March and early April, the director of nursing, the assistant director of nursing, and the medical director were all out ill and the administrator was working from home, leaving onsite management of the entire facility in the hands of just two nurse supervisors. Two to three weeks later, residents started dying from COVID-19. During the week of April 5, 33 residents died – 15 percent of all the patients in the facility. In mid-April, the administrator was overwhelmed and stated that the facility's greatest need was staffing.

» A for-profit facility in Western New York with CMS 1-Star Staffing and 1-Star Overall ratings was named in multiple reports from employees for having insufficient staffing, especially on the weekends. One CNA reported that on a day in late March, for at least a few hours, there was only one CNA in the entire building of approximately 120 residents. She also reported that on a day in mid-April, there was one CNA on each hall, one RN to cover the Rehabilitation and Dementia units, and one supervisor performing double duty by dispensing medication from two medicine carts. An RN stated that during a weekend late in May, during the day shift, one nurse called out and another nurse was a "no call no show," leaving one nurse for the entire building. The same RN stated that on a later day in May, she worked an overnight shift for which she was the only nurse for three units. Facility records indicate that only one nurse was on duty during the day shift the following day. Another employee alleged that the staffing levels at the facility were so low that CNAs, rather than nurses licensed to do so, were dispensing medications to residents. According to various staff members, the facility required staff who were not licensed clinicians to take an eight-hour temporary CNA course and to cover shifts working as CNAs.[31]

» A for-profit nursing home in New York City with CMS 2-Star Staffing and 5-Star Overall ratings indicated that in late March and early April, the facility's low staffing levels were decreased further due to staff illness and quarantine from COVID-19. A nursing supervisor alleged in mid-April that she had been working for 21 days straight, 14 hours per day, and described a facility stretched to the absolute limit to care for its residents. The following week, the nurse and the administrator conveyed that staffing levels had improved and that staff who had been out sick and quarantined were returning to work, staff were working extra shifts, and the facility used agency staffing of direct caregivers to supplement care provided by facility employees. The facility reported to OAG that it had 32 COVID-19 deaths during the three-week period with decreased staffing.

Preliminary investigations also indicate that residents at a number of facilities with pre-existing low CMS Staffing ratings faced other, predictable, increased risks. As nursing home resident and staff COVID-19 infections rose during the first wave of the pandemic, staffing absences increased at many nursing homes. Often, as health care workers became infected with COVID-19, they were either asymptomatic and continued working, or became ill and/or were required to self-quarantine under CDC and DOH guidance. When low staffing levels dropped further due to staff COVID-19 illness or quarantine, there were even fewer staff available to care for residents' needs at these facilities. At the same time, when residents had COVID-19, their individual and collective care needs increased due to the need to comply with COVID-19 infection control protocols. This need increased the workload for the remaining staff providing direct care in several respects, even as low staffing numbers dropped further. These decreases in staffing levels occurred at the same time that necessary visitation restrictions removed the supplemental caregiving provided pre-pandemic by many family visitors at low staff facilities.

In addition, preliminary investigations indicate that when there were insufficient staff to care for residents, some nursing homes pressured, knowingly permitted, or incentivized existing employees who were ill or met quarantine criteria to report to work and even work multiple consecutive shifts, in violation of infection control protocols. Thus, poor initial staffing before the pandemic meant even less care for residents during the pandemic: subtraction of any caregivers from an already under-staffed facility results in increased interaction among possibly infectious staff and residents, with less time for the staff to adhere to proper infection control precautions.

In addition to the examples discussed below, during an investigation of an upstate for-profit facility with CMS 2-Star Staffing and 2-Star Overall ratings, a manager said the facility had 14 known staff members who tested positive for COVID-19 and was following all CDC guidelines before allowing COVID-19 positive staff members to return to work, which had made staffing an issue. A CNA alleged that it was common to have only one or two CNAs per unit since the COVID-19 pandemic started. The CNA added that prior to this, there were "some" staffing issues but it "was not this bad." The CNA alleged residents are "lucky" to "get toileted and cleaned up once a shift…there is not enough time in the day to do it more than that." According to a nurse manager, the facility used DOH's database to hire more CNAs, which led to an improvement in staffing.

DOH Staffing Portal Helped: As reflected in the example above, during the COVID-19 pandemic, DOH referred facilities to an online staffing portal to help provide temporary assistance when they were experiencing staffing shortages due to staff illness and quarantine. This resource helped several nursing homes address staffing problems.

Multiple Complaints of Insufficient Staffing: OAG received several other complaints and allegations of insufficient staffing due to COVID-19 in facilities that had pre-pandemic low CMS Staffing ratings:

» The daughter of a resident at a for-profit facility north of New York City with CMS 2-Star Staffing and 5-Star Overall ratings reported that the facility experienced even lower staffing in May. The daughter said that the facility was short-staffed and that employees said the facility "forgot" to call her for about a week to inform her that her father tested positive for COVID-19.

» Complaints regarding a for-profit nursing home in New York City with CMS 1-Star Staffing and 1-Star Overall ratings claimed the facility experienced staffing absences early in the pandemic, but reportedly addressed these shortages by contracting or hiring additional staff.

» An employee complained that a for-profit nursing home on Long Island with CMS 2-Star Staffing and 5-Star Overall ratings had an insufficient number of staff due to staff being out sick. The facility reportedly tried to fill vacant positions by using staffing agencies but said there was a limited pool of personnel from which it could hire. It later reportedly supplemented staffing with agency staffing.

» A staff member at a for-profit nursing home on Long Island with CMS 2-Star Staffing and 3-Star Overall ratings alleged low staffing levels. Facility management acknowledged that low staffing levels had decreased from the pre-pandemic level to an insufficient level due to staff being out sick or being unable to work due to the need to care for the staff's family members. The facility sought to address the vacancies by incentivizing staff to work additional shifts, specifically by paying bonuses and by paying "hazard pay," which is additional pay above the employee's salary to compensate for working in an environment where COVID-19 infection exists and therefore presents increased health risks to the employee.

» A staff member at a for-profit nursing home on Long Island with CMS 4-Star Staffing and 4-Star Overall ratings alleged, and the facility acknowledged, that low staffing levels had decreased from the pre-pandemic level to an insufficient level, due to staff being out sick or being unable to work due to the need to care for the staff's family members. The facility sought to address the vacancies by paying $2 per hour more in hazard pay to incentivize staff to work additional shifts and by utilizing staffing agencies to provide per diem staff.

» Management at a for-profit nursing home in New York City with CMS 1-Star Staffing and 3-Star Overall ratings admitted that the facility experienced a shortage of staff below pre-pandemic levels from the end of March to the beginning of April. At the time of the preliminary investigation, the facility stated that its employees were stepping up and working double and triple shifts, with managers helping as well by distributing medications and filling in to help with some of the tasks that needed to be done to care for the residents.

OAG's phase one investigations also found that under conditions of pre-existing low staffing levels that were exacerbated by COVID-19, many nursing homes placed frontline health care workers under incredibly challenging and exhausting circumstances for extended periods of time, where they pushed themselves to the brink physically and emotionally. While working in an environment in which they knew COVID-19 was present and posed health risks to themselves and their families, many direct care staff worked multiple double shifts, repeatedly and over extended periods of time, doing incredible and compassionate work in attempt to care for the needs of many isolated, vulnerable, and ill residents. OAG heard many reports of direct care workers pushing themselves under extremely challenging circumstances of insufficient staffing — to the point of exhaustion, serious illness, and in some cases, the ultimate sacrifice of their own lives.

Many nursing homes mandated or encouraged health care workers to work multiple double shifts, repeatedly and over extended periods of time, because their pre-pandemic low staffing levels decreased further during the pandemic. Preliminary investigations illustrate that a number of health care workers believed that unless they worked under these strenuous conditions to provide necessary care to the residents, their needs would otherwise have gone unmet, in light of the nursing home's decisions on staffing levels.

When staffing levels decreased in low staffed facilities, the workload of RNs, LPNs, and CNAs increased in volume in four ways: (1) workers had to perform extra steps in caring for residents that were required to comply with COVID-19 infection control protocols; (2) workers' duties to provide more care to residents also increased as residents became ill with COVID-19; (3) workers' assignments also changed as staffing levels dropped and they were required to provide care to an increased number of residents in a single shift; and, (4) workers also often had to work a higher total number of hours per day or week when they were mandated or volunteered to work multiple shifts to cover for call-outs or other staff absences. The stress on direct care providers working under these circumstances for a prolonged period of time predictably took a heavy toll on their health and well-being. It also imposed a practical limit on the number of hours of caregiving these individuals could work over a sustained period of time. While the owners of for-profit nursing homes that operate in a low staffing business model have the power to change this dynamic, OAG's investigations reflect that they lack the motivation to do so. The results are tragic and, at this point, predictable, even as the second wave of COVID-19 continues.

Staffing Shortages Impacted Infection Control Compliance: As previously discussed, preliminary investigations indicate that infection control within nursing homes was a significant problem during the pandemic. At the same time that nursing homes with pre-pandemic low staffing levels were experiencing decreased staffing due to COVID-19, the staff's capacity to provide care to residents decreased because complying with infection control protocols required investing additional time in their duties. Reports also reflect instances where low staffing levels resulted in staff perceptions that the facility pressured them to work in violation of infection control protocols and other guidance that was designed to protect residents.

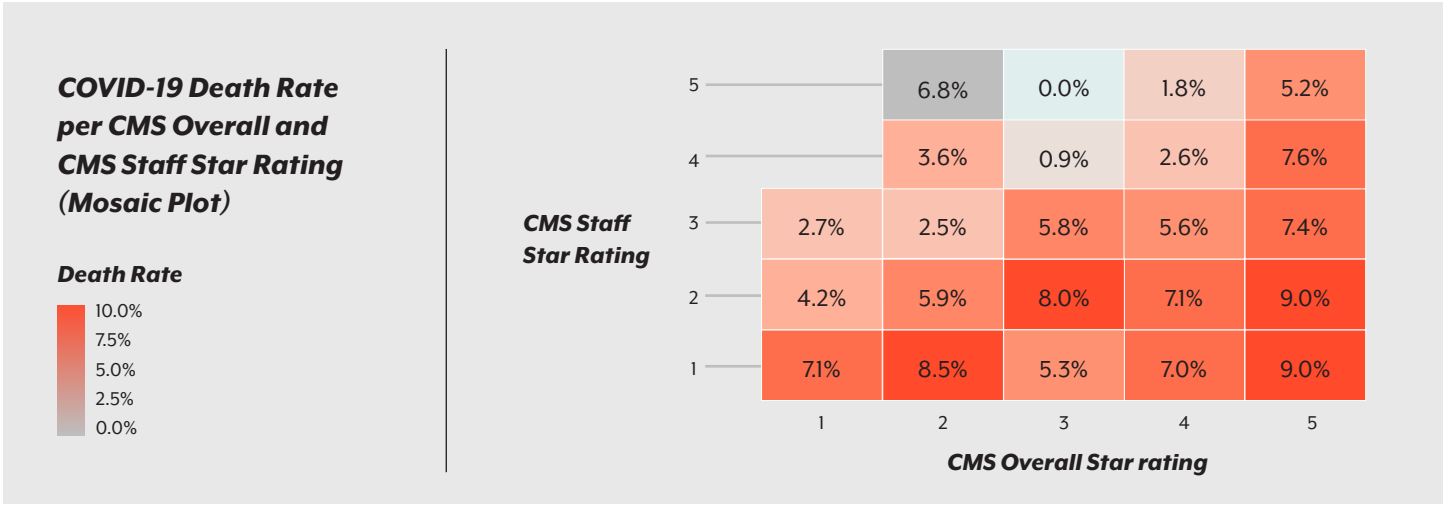
2. CMS Staffing Ratings Correlate More Strongly with COVID-19 Death Rates than CMS Overall Ratings

OAG's preliminary analysis, based on DOH's published[32] statistics of deaths in nursing homes from confirmed COVID-19 cases and presumed COVID-19 cases, shows a strong correlation to the CMS Staffing rating.[33] Nursing home residents died at a higher rate – deaths per average population of residents — in facilities that entered the COVID-19 pandemic with low CMS Staffing ratings. This data reflects that facilities with the highest CMS Staffing ratings had much lower death rates.

OAG's data analysis set forth in this preliminary report relies primarily on two data sources: the data made available through the "CMS Care Compare" website and DOH's daily reports of nursing home COVID-19 deaths. The New York state data, "Nursing Home and ACF COVID Related Deaths Statewide", are a publication by DOH of statistics self-reported by nursing homes and adult care facilities to DOH during the COVID-19 pandemic. As previously noted, OAG found discrepancies between COVID-19-related death data publicized by DOH and information reported to OAG during investigations. For the death data analysis below, OAG used the DOH-published figures, except where noted. The analysis revealed that most nursing home residents live in a CMS 1-Star or 2-Star Staffing rated facility. To avoid skewing the rate of COVID-19 deaths, OAG divided the total COVID-19 death count in each facility by the total resident count in each facility. This calculation results in a direct comparison across all facilities, which produces a COVID-19 death rate uninfluenced by the census of CMS 1-Star and 2-Star Staffing rated facilities.

With the exception of certain combinations of data points, the death rate increases as the CMS Staffing rating decreases, regardless of the CMS Overall rating. Thus, nursing home facilities with CMS 5-Star Overall ratings still saw the highest death rates if they had CMS 1-Star or 2-Star Staffing ratings. Indeed, facilities with 3-Star Overall ratings evinced lower death rates if their base staffing levels were high.

In the chart below, facilities with CMS 5-Star Overall ratings had an observed death rate of nine residents out of every 100 when their CMS Staffing rating was 1-Star or 2-Star. That rate dropped nearly by half, to five out of 100, if the facility had a CMS 5-Star Staffing rating.[34] Relatedly, facilities with low CMS Staffing ratings had higher death rates than similar CMS Overall rated facilities.[35] The chart includes all deaths from March 1 to November 16.



a. The Majority of the COVID-19 Reported Nursing Home Deaths Occurred in CMS 1-Star and 2-Star Staffing Rated Homes

As of November 16, DOH reported 6,645 nursing home COVID-19 resident deaths (confirmed and presumed). Nursing homes with CMS 1-Star or 2-Star Staffing ratings represented an outsized number of deaths, as compared to nursing homes with higher CMS Staffing ratings.

Table A — Distribution of Nursing Home Deaths as of November 16 by CMS Staffing Rating

CMS Staffing Rating as of 6/1	Number of Facilities	Percentage of Total Facilities	Total COVID Deaths 11/16	Percentage of Total	Total Average Census 6/1	Death rate per Resident
1	77	12.44%	975	14.67%	13,671	7.13%
2	266	42.97%	3426	51.56%	49,542	6.92%
3	169	27.30%	1611	24.24%	28,975	5.56%
4	68	10.99%	478	7.19%	9,329	5.12%
5	31	5.01%	97	1.46%	1,965	4.94%
NO RATING	8	1.29%	58	0.87%	600	9.67%

Of the state's 401 for-profit facilities, over two-thirds – a total of 280 – entered the COVID-19 pandemic with CMS 1-Star or 2-Star Staffing ratings.[36] As of November 16, 3,487 COVID-19 resident deaths (over half of all deaths) occurred in these 280 facilities. Also concerning has been the recent trend observed by OAG of for-profit owners buying not-for-profit nursing homes in transactions that result in more for-profit facilities.[37]

b. Staffing Was More Determinative of Death Rates Than "COVID-19 Geography" During the Initial Wave of the Pandemic

As noted by DOH, the harshest impact of the first wave of COVID-19 was in New York City and neighboring counties, which reflect eight of the ten highest populated counties in the state. Those counties also host the greater number of CMS 5-Star Staffing rated facilities as well as the greatest number of CMS 5-Star Overall rated facilities. As DOH noted, even 5-Star Overall rated facilities in those counties had high death rates.[38]

However, OAG found that when controlling for geographic variance among nursing facilities, CMS 5-Star Staffing rated facilities nonetheless suffered a lower death rate compared to facilities with low CMS Staffing ratings.[39] Thus, a resident anywhere in New York was likely to face roughly half the risk of death from COVID-19 if cared for in a CMS 5-Star Staffing rated facility.

Weighted Death Rate Controlled for Geographic Variance, by CMS Staffing Stars

Star Rating	*Overall weighted death rate*	*Staffing weighted death rate*
1	5.56%	6.03%
2	5.59%	6.94%
3	6.89%	7.56%
4	5.83%	6.07%
5	6.60%	2.97%

C. Lack of Sufficient PPE for Nursing Home Staff Put Residents at Increased Risk of Harm During the COVID-19 Pandemic in Some Facilities

New York state and federal laws and guidance require nursing homes to follow infection control protocols, which include obtaining sufficient infection control supplies such as PPE to provide to staff and residents to protect them from the risk of infection from transmissible disease, including COVID-19. Science, common sense, and OAG's preliminary findings following initial COVID-19 investigations indicate that a nursing home's lack of sufficient PPE and failure to comply with CDC and DOH guidance increased the risk that COVID-19 spread to other residents and staff within the facility. Conversely, OAG's preliminary investigations indicate that residents had better health outcomes in nursing homes that had trained staff and plans in place to obtain sufficient PPE.

OAG received multiple reports that during the first wave of the pandemic, several nursing homes across the state had woefully inadequate PPE to prevent the transmission of COVID-19. OAG received allegations that due to PPE shortages, facilities violated basic infection control practices by requiring staff to re-use PPE or to clean used PPE. OAG received a report that in a for-profit facility in Western New York with CMS 2-Star Staffing and 2-Star Overall ratings, there was a lack of PPE for staff use until the first resident with suspected COVID-19 went to the hospital, and that an LPN at the facility was allegedly forced to resign after she questioned inadequate PPE policies and refused to work under conditions where staff and residents would not be safe. In early April, OAG heard from several other employees of that same nursing home who advised OAG that the staff at the facility allegedly were not provided adequate PPE for several weeks at the beginning of the pandemic and were forced to share gowns, which were kept hanging in hallways on hooks. OAG also heard that, in addition to not having adequate PPE, the facility allegedly violated basic infection control protocols by allowing communal dining, contrary to government-issued guidance, until the first resident went to the hospital in late March. Another LPN at this facility reported that she cared for a COVID-19 positive resident with only sanitizer and gloves because that was all that was available at the time and facility management told her and other staff members that they would have to make do with what they had. According to the LPN, there were not enough surgical masks to change between COVID-19 positive and negative residents and staff were instructed to make surgical masks last as many days as possible. She reported that the facility did not have N95 masks or face shields and that staff resorted to using surgical masks or homemade cloth masks, gloves, and "contaminated" shared gowns.

Regarding a for-profit nursing home in Western New York with CMS 1-Star Staffing and 2-Star Overall ratings, OAG received a report from a nurse manager that the owner of the facility directed staff not to wear masks and that it would be "business as usual" because the facility did not have sufficient PPE. This nurse manager allegedly went directly to the New York State Office of Emergency Management (OEM)[40] to attempt to obtain additional PPE for her staff. The same nurse manager reported that inexplicably her decisions were continually undermined by ownership. For example, after the nurse manager allegedly attempted to stop communal dining after CDC guidance restricting communal activities, ownership reversed her decision days later and resumed communal dining. Another RN supervisor at this facility resigned when she began to feel like continuing to work was putting her license at risk due to inadequate PPE at the facility. A CNA from this facility also reported that "masks were optional" even after visitors were barred from the facility and there was no quarantining of residents until weeks into the pandemic.

Though these reports allege that these facilities did not have adequate PPE during the first few months of the pandemic, and investigations are ongoing, OAG has been assured that each of these facilities now has an adequate supply and is appropriately distributing PPE to staff.

In another continuing investigation into a different for-profit Western New York nursing home with CMS 1-Star Staffing and 1-Star Overall ratings, OAG heard from an aide who reported that between mid-March and early April, she asked the nurse supervisor of the facility for her own gown. The nurse supervisor replied to the aide that she cannot pass out PPE "willy nilly" and that gowns were only for those "on the front line," even though the aide was very much on the front line and providing direct care to residents. The aide alleged that she was eventually given a gown but told she had to reuse it every day. She noted to OAG investigators that over time those gowns became visibly soiled, such that she and her fellow caregivers threw them out and resorted to simply wearing a regular sleeping gown over their clothes when tending to residents. Some of the aide's statements were corroborated by a funeral director who reported to OAG that when he entered the facility in mid-April to retrieve a deceased resident, he observed staff wearing PPE that was only in the forms of gowns, regular surgical masks, and gloves. He stated staff did not take his temperature when he entered the facility, nor was he asked to fill out a health questionnaire. He also stated that he observed used gloves strewn on the floor of the facility.

As widely reported in the media and confirmed by OAG in its preliminary investigations, many health care institutions faced challenges to acquire and compile sufficient PPE to meet the demands placed on institutions during the COVID-19 pandemic. PPE was most scarce during the first few months of pandemic, but ultimately became more available due to the efforts of DOH, OEM, and county and local governments. New York state also coordinated with other states and worked to secure additional PPE. During preliminary investigations, OAG learned of several facilities that had dangerously low stockpiles of PPE but received additional supplies from DOH or OEM, including two for-profit facilities in New York City, one with a CMS 2-Star Staffing rating and one with a CMS 1-Star Staffing rating, and two other facilities on Long Island, both CMS 2-Star Staffing rated facilities. DOH and OEM's provision of PPE to nursing homes helped decrease risks of infection and harm to residents in many facilities.

On February 6, DOH issued a guidance to the health care industry reminding facilities to "be ready and equipped" to "manage patients presenting to their facility with the potential of being infected with [COVID-19]." The guidance reminded institutions that shortages of PPE may occur and of the importance to strictly adhere to the latest guidance from CDC. DOH instructed all facilities to compare their existing inventories of PPE against the expected rate of use of these items under a surge situation and to determine the quantities needed to be on hand. Facilities that identified a shortage of PPE were directed to use existing vendors and to activate mutual aid agreements to obtain available support if needed. If the facility was unable to obtain needed PPE from those sources, facilities were instructed to notify their local emergency management agency, DOH or, if necessary, OEM. OAG observed that many facilities that had dangerously low inventories of PPE ultimately received PPE from either DOH, OEM, their local government, or other sources, including donations from the public. On April 2, DOH issued another advisory to the health care industry noting that New York state continued to fulfill requests for PPE, as available, and that health care entities should continue to submit requests for PPE through their local emergency management agency.

OAG observed that many institutions were making good faith efforts to purchase sufficient PPE but were hampered by several external factors, including supply chain issues. OAG's preliminary findings appear to show that many nursing homes, consistent with their obligation to ensure emergency preparedness, made admirable efforts to get needed PPE in time to protect residents and health care workers. At the same time, timing and expenditure levels of effort and funds made by nursing homes to obtain PPE appear to have varied. OAG will continue to investigate whether those facilities that failed to obtain adequate supplies of PPE made good faith, but ultimately unsuccessful, efforts or whether facilities that failed to provide PPE to their staff and their residents did so due to their lack of responsible planning, their refusal to purchase critically needed PPE through available vendors, or similar conduct relating to their operations.

D. Lack of COVID-19 Testing for Residents and Staff in Early Stages of the Pandemic Put Residents at Increased Risk of Harm in Many Facilities

During a pandemic, the federal government plays a key role in the ability of states' access to testing for new viruses. In February, CDC's work to develop the first COVID-19 test failed, resulting in a critical delay of several weeks before CDC developed an effective test. By the time CDC sent the new test kits out to the states, COVID-19 had spread within the United States, including to New York. Afterward, CDC encouraged the Food and Drug Administration (FDA) to allow hospitals and commercial labs to produce tests for sale faster. Additional delays occurred when the FDA took weeks to begin issuing emergency authorizations for other tests.

In March, COVID-19 testing capacity in New York state was limited. New York state agencies took action that helped protect nursing home residents, including working to obtain the ability within the state to conduct increased COVID-19 testing. At the same time, OAG's preliminary investigations indicate that nursing homes had varying degrees of access to COVID-19 testing early in the pandemic, with many lacking access to sufficient testing in March and April. Some facilities reported that once receiving test kits, the turnaround time on test results was lengthy. One facility reported that it transferred patients to the hospital because there was no other means to get testing.

After testing became increasingly available, Governor Cuomo issued an executive order requiring COVID-19 testing by nursing homes of their staff, which helped protect residents from the risk of infection and harm. DOH tested nursing home residents at various facilities, which also helped protect residents.

While testing of staff is now regular and mandatory, and testing availability has improved significantly, the preliminary investigations reflect insufficient availability of COVID-19 testing for residents and staff of nursing homes in the early stages of the pandemic. The lack of testing increased the risk of COVID-19 infection of residents and staff. If residents and staff are not tested for COVID-19, they may be infected yet asymptomatic, and unknowingly transmit the virus to others through informal contact when they otherwise would be isolated or quarantined under CDC guidance. In addition, a lack of readily available testing for residents and staff also can hinder their ability to obtain prompt and specific medical treatment for those who become symptomatic and ill.

DOH guidance issued on March 21 directed downstate nursing homes, which were in areas of high community-based transmission, to treat all residents who exhibited COVID-19 symptoms as if they had been diagnosed with COVID-19 for purposes of infection control protocols. However, if a nursing home lacked access to testing, it is possible that asymptomatic residents who were not tested and who were unable to communicate symptoms they were experiencing might not be readily apparent to staff for a period of time before symptoms were identified. Under those circumstances, those residents are at greater risk of harm from not receiving treatment and/or close monitoring for changes in condition. In addition, the circumstances create an increased risk of transmission to others in the facility.

For example, OAG received a credible allegation from the daughter of an asymptomatic nursing home resident about a for-profit upstate facility with CMS 2-Star Staffing and 1-Star Overall ratings. She alleged that the facility responded that due to the limited number of test kits at the facility, it could only test her father if he exhibited symptoms. He later exhibited symptoms, including a high fever, and was sent to the hospital where he tested positive for COVID-19.

OAG's preliminary investigations also provide anecdotal support that staff infected with COVID-19 in certain instances worked within nursing homes during periods that they were undiagnosed and asymptomatic, thereby increasing the risk of infection and harm to residents. CDC guidance provides that when a health care provider is infected with COVID-19, "Anyone who had prolonged close contact (within 6 feet for at least 15 minutes) with the infected health care provider might have been exposed." CDC guidance also states that "if the provider had COVID-19 symptoms, the provider is considered potentially infectious beginning 2 days before symptoms first appeared." If the provider was asymptomatic and the date of exposure to COVID-19 infection can be identified, the provider should be considered potentially infectious beginning 2 days after the exposure. CDC guidance also states that the infectious period for COVID-19 is generally accepted to be 10 days after onset of the infection.

As one example, in a large not-for-profit nursing home in New York City with CMS 2-Star Staffing and 3-Star Overall ratings, a facility manager indicated that an experienced LPN worked on a unit with over 40 residents until March 14, when he stopped working, was diagnosed with COVID-19, and later died. By March 21, the facility reported 20 percent of its staff were out sick. The facility reported no COVID-19 resident deaths up to that date. From March 22 to March 29, the facility reported seven COVID-19 resident deaths, including two within the facility and five after transfer to the hospital. From March 29 to April 4, the facility reported 26 COVID-19 resident deaths, including 18 within the facility and eight after transfer to the hospital. The facility management stated that in early stages of the pandemic, DOH's Wadsworth lab was the only lab doing COVID-19 testing, and then others started, including the facility's own lab. In April, the facility stated that getting COVID-19 test results took 36 hours.

More nursing homes tested residents in April and May as testing capacity increased in the state, including in the months that followed.

1. Testing Requirements Helped Facilities Identify Residents and Staff Who Were Infected with COVID-19

Governor Cuomo issued Executive Order 202.19 on May 17 for DOH to establish a "statewide coordinated testing prioritization process" for all laboratories in the state, both public and private, for conducting COVID-19 diagnostic testing. Executive Order 202.30, issued May 10, required nursing homes to test full time staff twice a week for COVID-19.[41] These measures, along with the increased testing capacity, helped facilities identify residents and staff who were infected with COVID-19 and decrease the risk of transmission of infection and illness to nursing home residents and staff. Testing staff enables facilities to identify asymptomatic individuals who can then quarantine until they can safely return to work to provide care to residents. Testing residents enables facilities to identify asymptomatic individuals who can then remain isolated from non-infected residents. A lack of testing of health care workers who are at risk of COVID-19 infection increases the risk of transmission to residents when COVID-19 is present in the surrounding community.

OAG's investigations indicate that, absent Executive Order 202.30, many staff would not have been tested by the nursing homes. For example, one for-profit upstate nursing home with CMS 1-Star Staffing and 1-Star Overall ratings referred its staff to their primary physicians[42] to obtain COVID-19 testing in the earlier stages of the pandemic. However, the facility reported that after COVID-19 testing was required, it tested staff weekly. Similarly, a for-profit nursing home in New York City with CMS 1-Star Staffing and 3-Star Overall ratings reported that it had started testing residents in late March. The facility also reported that staff were tested, and that after Executive Order 202.30 providing testing guidelines, they were adhering to them.

This, and other information, indicates that absent an obligation to test staff, many nursing homes would not have tested staff for COVID-19, and many staff could not have obtained testing frequently on their own, unless testing was otherwise easily available and free.

2. DOH Testing Protected Residents

The preliminary investigations reflect that DOH tested many residents and staff at nursing homes later in the pandemic. For example, at a for-profit nursing home in New York City with CMS 2-Star Staffing and 1-Star Overall ratings, the administrator indicated that DOH provided facility testing and more PPE, and tested the entire facility, including residents and staff. Similarly, a for-profit facility in Western New York with CMS 2-Star Staffing and 2-Star Overall ratings that had reported a lack of testing ability, stated that its testing issues had been resolved through apparent facility-wide testing conducted by DOH. Relatively shortly thereafter, the facility reported it was COVID-free.

E. Lack of Nursing Home Compliance with Executive Order Requiring Communications with Family Members Caused Avoidable Pain and Distress

OAG took immediate and direct action with respect to a number of facilities regarding communication with family members. The most formal actions consisted of written warnings and cease & desist notices. Most communication issues were rapidly solved with less formal contact by OAG staffers with the facility and/or families. Three facilities were given such formal warnings, and ten facilities were advised orally that there was credible information that they were failing to comply with executive orders and action would be taken if not promptly resolved. (As noted elsewhere, roughly half of the intakes involved allegations of further or other problems at facilities.)

F. Government Issued Guidance May Have Led to an Increased Risk to Residents in Some Facilities and May Have Obscured the Data Available to Assess the Risk

While government-issued guidance from CDC and DOH based on updated information relating to COVID-19 helped protect many New York residents, nursing home implementation of some guidance may have led to an increase risk of fatalities in some facilities and may have obscured data reported by nursing homes.

1. At Least 4,000 Nursing Home Residents Died After DOH's March 25 Guidance on Admission Practices

On March 25, DOH issued guidance providing that "[n]o resident shall be denied re-admission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19. Nursing homes are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or re-admission."[43] The guidance was rescinded on May 10 in Executive Order 202.30. From March 25 to May 8, 6,326 hospital patients were admitted to 310 nursing homes. The peak of these admissions was the week of April 14.[44] The peak single day in reported resident COVID-19 deaths was April 8, with 4,000 reported deaths occurring after that date.

Many nursing home industry and other commentators have criticized DOH's March 25 guidance as a directive that nursing homes had to accept COVID-19 patients who were infectious.[45] At the same time, the March 25 guidance was consistent with the CMS guidance on March 4 that said nursing homes should accept residents they would have normally admitted, even if from a hospital with COVID-19, and that patients from hospitals can be transferred to nursing homes if the nursing homes have the ability to adhere to infection prevention and control recommendations. It was also consistent with CDC Published Transmission-Based Precaution (T-BP) guidance, which was referred to in CMS's March 4 guidance, and which stated that if T-BP were still required for a patient being discharged to a nursing home, the patient should go to a facility with an ability to adhere to infection prevention and control recommendations for the care of residents with COVID-19. *See* Appendix A.

It is worth noting that to the extent New York hospitals had capacity concerns due to the pandemic, the March 25 guidance would have been helpful to communities where those facilities were experiencing longer COVID-19 patient stays due to delays in receiving testing results, and were at or exceeding acute care capacity while they simultaneously were anticipating more new patients in need of acute care.[46] This is because many hospitals in areas of high COVID-19 infection rates in some other states reported that "post-acute facilities were requiring negative COVID-19 tests before accepting patients discharged from hospitals."[47] This practice meant that some patients who no longer required acute care were occupying valuable hospital beds while waiting to be discharged.[48]

DOH has said that nothing in the guidance stated that a facility should accept patients who could not be safely cared for. As to whether the March 25 guidance affected risks to residents, DOH presented data[49] reflecting the spike in health care worker infection and the later spike in deaths as circumstantial support for the position that the guidance did not contribute much to resident risks or deaths. Criticism since then notes that there has been no presentation of additional evidence as to whether the admission of patients from hospitals to nursing homes may have contributed to COVID-19 transmission or COVID-19 related deaths of nursing home residents. DOH states CDC says COVID-19 positive patients cannot likely transmit the virus after nine days of infection, and that patients are most infectious within two days after symptoms appear.[50] CDC guidance also says there is uncertainty on this. DOH says the median hospital stay was nine days.

Data linking the number of nursing home deaths to the admissions policy contained in the March 25 guidance is obscured by that same guidance, which also prohibited nursing homes from requiring COVID-19 testing as a criterion for admission. This phenomenon was compounded by both the March 21 directive that largely paused the testing of downstate residents, and the under-reporting of nursing home deaths generally (as previously discussed). OAG's investigation to date has not revealed an admission from any nursing home operator that they could not care for referred residents. However, using the DOH publicized data, over 4,000 nursing home deaths occurred after the issuance of the March 25 guidance.[51] While additional data and analysis would be required to ascertain the effect of such admissions in individual facilities, these admissions may have contributed to increased risk of nursing home resident infection, and subsequent fatalities (whether due to actual transmission of infection from new residents to incumbent residents, or due to the facilities' poor self-assessment during the admission process that was followed by failure to provide appropriate care to that patient or other residents.)

2. DOH's March 21 Guidance on Testing Practices Obscured the Data

As previously discussed, OAG's preliminary investigations reflect that COVID-19 testing availability for nursing homes downstate was limited in March and April, and fraught with delays. In this context, OAG preliminary investigations reflected that in the nine downstate counties that experienced higher community-based transmission of COVID-19, some facilities stopped testing residents for COVID-19 after the March 21 guidance was issued. For example, the administrator of a for-profit facility in New York City with CMS 1-Star Staffing and 1-Star Overall ratings alleged in April that the facility was not currently testing residents for COVID-19. He alleged that DOH told the facility to stop testing at some point in March. He alleged that prior to that, the facility was conducting testing through a lab. Similarly, the administration of a for-profit facility on Long Island with CMS 3-Star Staffing and 2-Star Overall ratings alleged that the facility originally tested seven residents and had suspended the testing of residents following the DOH "directive" that tests were not required. The facility alleged that it understood that all parties should be considered infected and treated as such. A for-profit facility in New York City with CMS 3-Star Staffing and 2-Star Overall ratings alleged that while it did not have access to COVID-19 testing, it was relying on DOH guidance issued March 21 for not testing.

G. Immunity Provisions May Have Allowed Facilities to Make Financially-Motivated Decisions

Due to several recent changes in law, it is unclear to what extent facilities or individuals can be held accountable if found to have failed appropriately to protect the residents in their care. On March 23, Governor Cuomo issued Executive Order 202.10, which created limited immunity provisions for health care providers relating to COVID-19.

The specific statute, the Emergency Disaster Treatment Protection Act (EDTPA), was enacted on April 6, and provides immunity to health care professionals from potential liability arising from certain decisions, actions and/or omissions related to the care of individuals during the COVID-19 pandemic retroactive to Governor Cuomo's initial emergency declaration on March 7. The legislation created a new Article 30-D of the Public Health Law. The legislature noted that the purpose of the EDTPA was to "promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency."[52]

The original form of the EDTPA,[53] in effect during the time period of this report, provided that:

> *Any health care facility or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care services, if: (a) the health care facility or health care professional was providing health care services in accordance with applicable law, or where appropriate pursuant to a COVID-19 emergency rule; (b) the act or omission occurs in the course of providing health care services and the treatment of the individual is impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and, (c) the health care facility or health care professional is providing health care services in good faith.*[54]

There is an exception, but it comes with a potential loophole:

> "[Immunity] shall not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm. . . *provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage* [emphasis added] shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm."[55]

The EDTPA is silent as to whether the safe-harbor for "resource or staffing shortage" is to be assessed only based on conditions that arose as a result of the COVID-19 emergency or whether it intended to include such shortages existing prior to the emergency period. As seen in this report, pre-pandemic staffing shortages are associated with deaths from COVID-19. Therefore, the question of the scope of immunity is important in determining remedies.

To the extent that the executive order and/or EDTPA were interpreted by any nursing homes as providing blanket immunity for harm to residents other than intentional harm, even if the harm was related to intentional resource and staffing allocations, Attorney General James disagrees with such an interpretation as illogical, contrary to public policy, and contrary to the law's intent. The intent was to support health care professionals making impossible health care decisions in good faith during this unprecedented crisis. As exemplified in subsections below, the preliminary investigations illustrate instances of facility decisions that relate to or affect resident care that are financially motivated, rather than clinically motivated. OAG investigations will continue as to acts both prior to, and after, the August 3 amendments to Public Health Law Article 30-D.

Admissions Decisions and Staffing Decisions: A facility's decision to admit new residents is also a staffing decision because it requires a facility to assess whether its staffing level is sufficient to provide care to meet the needs of the existing residents and any proposed new residents. When a for-profit nursing home has an empty bed, it has a financial motivation to increase its census by admitting residents in order to obtain the daily rate of reimbursement offered by the resident's payor – Medicaid, Medicare, other federal health insurance, or private insurance.[56]

During the pandemic, many facilities experienced empty beds as residents died from COVID-19 or other causes. Some families took their loved ones to a family member's home. A decrease statewide in elective surgeries at hospitals reportedly stopped a regular flow of patients to nursing homes for rehabilitation. As discussed above, many facilities also experienced staffing reductions due to COVID-19 illness and quarantine, which necessarily decreased the facility's capacity to provide care for its residents, and, as the examples discussed herein reflect, resulted in exacerbated staffing problems.

The preliminary investigations indicate that nursing homes took a variety of approaches to decisions to admit residents during the COVID-19 pandemic, even as they were experiencing staffing shortages due to staff illness from, or otherwise inability to work due to, COVID-19. The approaches suggest admissions decisions were affected to varying degrees by financial motives, and by clinical and administrative evaluations of the facility's ability to provide appropriate care to its residents. OAG received information during its investigations that some facilities decided that the safest course was to stop admitting residents for periods of time while their staffing was low. For example, a not-for-profit nursing home in New York City with CMS 2-Star Staffing and 3-Star Overall ratings that experienced staffing shortages due to COVID-19 infection reported that it stopped admissions on March 21 due to 20 percent of staff calling in sick. In addition, to improve staffing, the facility brought in agency staff home health aides and restructured the staff.

In contrast, a for-profit nursing home in Western New York with CMS 1-Star Staffing and 1-Star Overall ratings indicated it took a different approach to admissions. Managers at that facility alleged that as of the end of April, the facility continued to accept new residents despite ongoing staffing difficulties, having nine out of 126 residents who tested positive for COVID-19, five residents dying from confirmed COVID-19, and five staff testing positive for COVID-19.

A for-profit facility in Western New York with CMS 2-Star Staffing and 2-Star Overall ratings indicated it also accepted new patients in April, but only admitted residents if they had recovered from COVID-19. However, as of April 30, according to a nurse supervisor, the facility was not taking admissions for at least a week due to the "state of the facility." The investigation reflected that the "state of the facility" included unstable conditions as alleged by staff:

» A high rate of COVID-19 positive cases, with 33 out of 59 residents testing positive;

» The facility had tested less than half of the residents;

» The facility did not have enough tests to test the remaining residents, and was trying to get more;

» 14 positive staff members and 12 more pending staff tests;

» Staffing shortages;

» The facility administrator was out sick.

As of mid-May, the nurse supervisor asserted that staffing had improved, with most staff who were out sick or quarantined returning to work. As of the following week, the acting administrator advised that staffing issues were continuing to improve, testing issues had been resolved, and facility had been COVID-19 free for two weeks, and facility expected to be taken "off precautions" from DOH shortly. The facility provided documentation indicating it had passed DOH infection control surveys in early May and mid-May.

Financial Incentives Illustration — Admissions: As illustrated in the example below, the preliminary investigations reflect how the financial incentives within the current system resulted in pressure by some for-profit owners to push staff to admit increased numbers of residents from hospitals in order to reach census goals, regardless of whether the facility had sufficient staff to care for them. Specifically, in one for-profit facility in New York City with CMS 2-Star Staffing and 1-Star Overall ratings, an administrator reported communications with an owner about hospital admissions. The facility interpreted DOH's March 25 guidance not to deny admission of residents from the hospital solely on the basis of a COVID-19 positive diagnosis as "they were to admit COVID-19 residents from the hospital." The facility admitted five hospital patients on March 26, but the owners wanted to admit more. The administrator alleged that there were arguments with the owners over how many residents they could safely care for. According to the administrator, every new admission from the hospital was a patient who was "COVID positive."[57]

Incentive Pay and Bonuses to Staff: Preliminary investigative findings also reflected a range of sizes of financial investment that facilities and/or owners were willing to make for short periods of time during the pandemic to provide monetary incentives to health care workers in order to retain staff, to attract new staff as full-time employees or as temporary agency staff, and to encourage staff to work additional shifts at the facility. Facilities' reported choices in providing financial incentives to increase staffing reflect different perspectives on what level of expenses were determined to be necessary versus optional. Some facilities paid small bonuses to staff for each additional shift they took, with some limiting the bonus to shifts involving work with COVID-19 positive residents. Other facilities paid generous salary increases per hour for hazard pay. Still other facilities paid staff both salary increases and bonuses per extra shift worked. Some offered hazard pay for a few weeks, while others offered it for longer periods of time. Some paid agency staff extra, while others did not.

H. Ongoing Investigative Work

Following the first wave of COVID-19 in New York, OAG has continued to conduct in-depth investigations involving the COVID-19 impact at over 20 facilities, and to monitor and follow up as needed with the facilities that were the subject of initial investigations. During this time, OAG has received new allegations of neglect and abuse connected with COVID-19 conditions, as well as reports of neglect and abuse of nursing home residents seemingly unrelated to COVID-19, and conducted additional investigative work. OAG continues to investigate and to find and follow the facts in order to serve its mission to protect nursing home residents from abuse and neglect, and to protect Medicaid from provider fraud. OAG will continue these investigations, without fear or favor, and make recommendations regarding remedies, when and where appropriate.

COVID-19 is continuing to spread from person to person throughout our communities, bringing more illness and untimely death in our state, as well as in our nation and our world. This preliminary report serves to increase transparency and awareness of preliminary findings from the first wave in New York state, including the conditions and risks that many nursing home residents faced. This information will help to identify challenges we face together and potential solutions, and to encourage collective action by our state's residents to protect each other, and our state's vulnerable nursing home residents. The recent advent of the COVID-19 vaccine is a welcome development that will help save lives as it is distributed, providing additional protection to health care workers, nursing home residents, and, eventually, everyone. At the same time, it is not a panacea. More action is needed to protect nursing home residents, and to provide them with the care and dignity that they deserve while living in the skilled nursing facilities that are their homes.

Regulatory Framework

A. New York State Law on Nursing Home Requirements to Provide Care and Staffing to Meet Resident Needs

New York law explicitly recognizes that for the vast majority of nursing home residents, "the nursing home will be their last home." Accordingly, a license to operate a nursing home carries with it "a special obligation to the residents who depend upon the facility to meet every basic human need."[58] New York law recognizes that "*nursing homes should be viewed as homes as much as medical institutions* [emphasis added]."[59] Each nursing home is required to give each resident "the appropriate treatment and services to maintain or improve his or her abilities" and provide each resident with "the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care subject to the resident's right of self-determination."[60] A nursing home is required to "accept and retain only those residents for whom it can provide adequate care."[61]

New York state's current minimum nursing home staffing standards require one RN for eight consecutive hours every day of the week, plus one RN or one LPN as a "Charge Nurse" 24/7 (or one charge nurse for each unit or "proximate" units for each tour of duty). This is proximate to the federal Medicaid/Medicare minimum standard. A facility must have a full-time employee RN as director of nursing who counts towards the staffing formula.

New York law requires nursing homes to provide "sufficient nursing staff and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being."[62] State law also provides that homes, in conjunction with a physician, describe each resident's needs in a "Comprehensive Care Plan," which identifies health concerns and directs particular courses of treatment, specifying, among other things, medications, assisted movement, skin care, bowel and bladder care, and nutrition needs.[63]

B. New York State Law on Nursing Home Duties to Residents

Nursing home residents in New York have basic protections and legal rights to ensure that they are afforded their right to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs, and communication with and access to persons and services inside and outside the facility.[64] Among those rights are adequate and appropriate medical care, and the right to be fully informed by a physician in a language that the resident can understand, using an interpreter when necessary, of their total health status, including but not limited to, their medical condition including diagnosis, prognosis, and treatment plan. Each resident or their representative has the right to ask questions and have them answered, be fully informed in advance about care and treatment, and of any changes in that care or treatment that may affect the resident's well-being.

Each nursing home has a legal obligation to communicate important information to the resident or the resident's representative. Every resident has the right to name an agent or "health care proxy" to act as their designated representative. The designated representative shall receive any written and oral information required to be provided to the resident and participate in decisions regarding the care, treatment and well-being of the resident if such resident lacks the capacity to make such decisions.[65] Each facility is required (except in a medical emergency) to notify the resident's physician and designated representative within 24 hours when there is an accident involving the resident, which results in injury requiring professional intervention; a significant improvement or decline in the resident's physical, mental, or psychosocial status; a need to alter treatment significantly; or a decision to transfer or discharge the resident from the facility.

C. Federal Law on Nursing Homes

Nursing homes must comply with certain requirements under federal statutes and regulations in order to participate in the Medicare and Medicaid programs.[66] The Nursing Home Reform Act, updated in 2016, contains a broad mandate that nursing homes "must provide [each resident with] the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care."[67] The law also prioritizes individualization of care plans and the primacy of resident autonomy and choice.[68] The regulation states that "[a] facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality."[69] Following this aim, residents have the right to: participate in their treatment; receive all services included in their plan of care; be free from any physical or chemical restraints that are not required to treat medical symptoms and are imposed for purposes of discipline or convenience; express grievances and have them addressed; and, engage in choice (as to activities, schedules, visitors, etc.).[70] Residents also have the right to be free from abuse, neglect, misappropriation of property and exploitation, and the facility must ensure these resident rights are upheld and report any instances where these rights have allegedly been violated to applicable state officials.[71]

Nursing homes are also specifically required to ensure residents "[m]aintain[] acceptable parameters of nutritional status, such as usual body weight" and receive "sufficient fluid intake to maintain [their] proper hydration and health."[72] Nursing homes must also develop personalized plans of care for each resident and conduct periodic assessments of each resident, at which point personal plans are "reviewed and revised."[73] The goals of the resident are also to be included in their personal care plans, and the complete interdisciplinary care team must help prepare the care plan, including the resident's attending physician, registered nurse, nurse aid, and a nutrition staff member.[74]

Nursing homes must also provide necessary services "to ensure that a resident's abilities in activities of daily living do not diminish" unnecessarily.[75] This means the facility must give residents the appropriate treatments and services so that residents can perform daily living activities (*e.g.*, personal hygiene, mobility, dining, communication) on their own. For those residents who are unable to accomplish daily living activities on their own, the facility must provide services to maintain good nutrition, grooming, and hygiene.[76] In addition, nursing homes must ensure an ongoing program of both group and individual activities based on each resident's care plan, that ensures the "well-being of each resident, [and] encourage[s] both independence and interaction in the community."[77]

Every resident must be in the care of a physician who must visit them once every 60 days and more often in the first three months of a resident's stay.[78] Nursing homes must also have "sufficient nursing staff with the appropriate competencies and skills sets…to assure resident safety" and the total "well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population."[79] Each facility must also employ sufficient staff for food and nutrition services, and the staff must possess appropriate competencies "taking into consideration resident assessments, individual plans of care and the number, acuity and diagnoses of the facility's resident population."[80]

Among other things, facilities must also provide or obtain dental services, laboratory services, radiology services, and other diagnostic services to meet residents' needs.[81] Similarly, residents requiring physical therapy, speech-language pathology, occupational therapy and/or rehabilitative services for mental disorders and intellectual disability, must be provided with such services.[82] Facilities must also "operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility."[83] The facilities must comply with all HHS regulations, including those relating to nondiscrimination, confidentiality of health information, fraud, and abuse.[84] Operationally, they must maintain medical records containing residents' assessments, care plans, diagnostic results, and other progress notes.[85] They must also develop a quality assurance and performance improvement (QAPI) program that collects and reviews data, as well as resident and staff complaints, in order to facilitate facility improvement.[86] They are required to have a compliance program to prevent and detect criminal, civil, and administrative violations, and promote quality of care.[87]

1. Federal Law for Nursing Homes Especially Pertinent to the COVID-19 Pandemic

Some federal requirements are very pertinent in the COVID-19 pandemic. Nursing homes must conduct "a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies." The assessment must be updated at least annually and whenever there is a "change that would require a substantial modification to any part of this assessment."[88] Additionally, nursing homes must develop, maintain and update an emergency preparedness plan. This plan must be a "facility-based and community-based risk assessment, utilizing an all-hazards approach."[89] They must complete annual emergency preparedness training based on their plan.[90]

The regulations also require facilities to have an infection prevention and control program "to help prevent the development and transmission of communicable diseases and infections."[91] The program must include "a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services;" and "precautions to be followed to prevent spread of infections."[92] The plan must be reviewed annually and updated as necessary and the facility must hire an infection preventionist who is responsible for the infection control plan.[93] Finally, the regulation outlining infection control was updated on May 8, 2020 to include specific reporting and communication requirements relating to COVID-19.[94]

2.2019 Changes to Federal Nursing Home Regulations

In 2019, CMS made changes to nursing home regulations, including the elimination of the ban on binding arbitration agreements between facilities and residents. In July 2019, CMS rolled back regulations that had prohibited pre-dispute arbitration agreements between facilities and residents. Under the new rules, facilities are able to enter into binding arbitration agreements with residents at any point prior to a dispute, including prior to the resident living in the facility.[95] This change means that many residents will not have the ability to sue their facilities in court. It also shields nursing homes from legal accountability for their actions.

3.CMS's 2019 Proposed Changes to Nursing Home Regulations

In July 2019, CMS proposed sweeping changes to long-term care facility regulations, citing an interest in minimizing facilities' obligations.[96] Attorney General James submitted comments objecting to this proposal, urging CMS to prioritize resident well-being and facility accountability. Some of the regulations, especially a proposal to lessen infection control requirements, likely would have caused more resident morbidity and mortality had they been finalized before the COVID-19 pandemic. Some of the proposed changes that are most pertinent to the COVID-19 pandemic are described below.

Reducing Infection Control Requirements: CMS's proposed regulations would change infection preventionists' required work duration from "at least part time" to "sufficient time … to meet the objective's [sic] set forth in the facility's [infection prevention and control program]."[97] CMS correctly noted in its proposal that infection is the leading cause of morbidity and mortality in nursing homes, yet still made this proposal to alleviate "excessive administrative burden."[98] The ongoing pandemic and mounting toll of COVID-19 resident deaths nationwide underscore the importance of more stringent infection control protections.

Decreasing Frequency of Facility Assessments: The existing regulations require facilities to conduct an annual facility assessment to determine what resources are needed to care for residents in the ordinary course, and in emergencies. The 2019 proposed rule relaxes the current annual safety assessment requirement and replaces it with the need for the facility to conduct such assessments only biennially.[99] Decreasing the frequency of the assessment would allow safety hazards to go unnoticed, changes in staffing and resident populations to remain unconsidered, and evolving resident health acuity and morbidity to continue unaddressed.

Reducing Requirements of Quality Improvement Programs: CMS's 2019 proposed rules also remove most of the elements required for QAPI programs.[100] The effect of this is to render the proposed regulation too vague to be useful. CMS justifies deleting the QAPI required elements by stating, "the level of specificity and detail in the QAPI requirements... may limit a facility's ability to design their QAPI program to fit their individual needs."[101] However, the required QAPI elements are all broad and leave plenty of room for facility customization of their QAPI plans.

Reducing Public Transparency: Current CMS guidance is that facility compliance survey results should not be included in the Certification and Survey Provider Enhanced Reports (CASPER) system before the conclusion of any informal dispute resolution, which prevents the results from being incorporated in facilities' CMS Quality Measures rating. CMS proposes to incorporate this guidance as a new regulation.[102]

Removing Residents' Rights-Medical Providers: CMS proposed to only provide residents with their primary physician's name and contact information, removing the current requirement that facilities ensure residents remain informed of the names of all primary care professionals involved in their care.[103] The proposed change would make it difficult for patients to learn about and make changes to their broader medical team and services, and in some cases, effectively prevent them from exercising any control over their medical team and services.

Removing Residents' Rights-Grievance Process: The proposed regulations contain a provision that distinguishes between resident "feedback" and resident "grievances" and suggests different treatment for each, at the expense of residents' rights.[104] With facilities' power to determine the definition of a "grievance," they are also empowered to determine which complaints will undergo a full grievance investigation. This proposed change would likely result in a lack of accountability for facilities and a corresponding lack of support for residents.

Decreasing Review of Anti-Psychotic Drug Prescriptions: The proposed regulations remove the requirement that Pro re Nata (PRN or "as needed") prescriptions for anti-psychotic drugs can only be renewed after the physician re-evaluates the patient for the drug's continued appropriateness.[105] This proposal removes vital patient protections. Given the past abuse of these drugs as a means of physical control of residents and their potential danger, a close monitoring of anti-psychotic prescriptions must remain in place. Evidence shows that antipsychotics are associated with increased cerebrovascular morbidity and mortality among patients with dementia. Multiple government agencies and medical associations have taken notice of the overprescribing of antipsychotics to nursing home residents with dementia. Removing review requirements for anti-psychotic drug prescriptions places patients at health risk that might be further exacerbated during a pandemic.

Recommendations

Ensure public reporting by each nursing home as to the number of COVID-19 deaths of residents occurring at the facility — and those that occur during or after hospitalization of the residents — in a manner that avoids creating a double-counting of resident deaths at hospitals in reported state COVID-19 death statistics.

As detailed in the report, discrepancies remain over the number of New York nursing home residents who died of COVID-19. Data obtained by OAG shows that DOH publicized data vastly undercounted these deaths. Ensuring standardized public reporting will alleviate these discrepancies and provide needed transparency.

Enforce, without exception, New York state law requiring nursing homes to provide adequate care and treatment of nursing home residents during times of emergency.

As detailed in the report, too many nursing home residents did not receive the adequate care and treatment to which they are entitled. While the COVID-19 pandemic put undue stress on many of our nation's systems, nursing homes must be prepared for these types of outbreaks.

Require nursing homes to comply with labor practices that prevent nursing homes from pressuring employees to work while they have COVID-19 infection or symptoms, while ensuring nursing homes obtain and provide adequate staffing levels to care for residents' needs.

There were too many instances of employees being pressured to work while contagious to ensure higher staffing levels. This put all residents and employees of the nursing home at risk. Employees should be encouraged to promptly report to DOH and OAG when owners or managers require, encourage, or knowingly permit staff to work when they are have a COVID-19 diagnosis or symptoms.

Require direct care and supervision staffing levels that: (1) are expressed in ratios of residents to RNs, LPNs, and CNAs; (2) require calculation of sufficiency that includes adjustment based on average resident acuity; (3) are above the current level reflected at facilities with low CMS Staffing ratings; and, (4) are sufficient to care for the facility's residents' needs reflected in their care plans.

Before considering any increases in Medicaid reimbursement rates to nursing homes, the state should require specified direct care and supervision staffing levels above the current level reflected at facilities with low CMS Staffing ratings and that are sufficient to care for residents' needs, and enact effective laws and regulations requiring nursing homes to provide complete disclosure of all monies transferred to related parties and the salaries, compensation, and distributions made to their owners, officers, directors and investors, and all loans made to and from any nursing home, and the repayment thereof.

Most states' standards include minimum levels for both total nursing hours and staffing levels in specific categories, without reference to the staffer's experience, familiarity with the residents or consistency of care. For example, the California standard is 3.2 hours per resident per day (HPRD) of total nursing care. Vermont requires 3 HPRD of total nursing care including an average of 2 HPRD of CNA care. Ohio requires average total care of at least 2.75 HPRD, including 0.2 HPRD of RN care and 2 HPRD of nurse aide care. Some states mix these requirements with other ratios (e.g., 1:15 staff to patient ratio) or include other staff hours (e.g., nutritionists, physical therapists). New Jersey recently enacted a minimum staffing law that requires, among other things, one CNA per eight residents (day shift); one direct caregiver per 10 residents (evening); one caregiver per 14 residents (night).

Changes in regulations regarding staffing should also address different categories of caregivers, each of which provide a different kind of care, and that accounts for the caregivers' experience and familiarity with the residents, on a 24/7 basis.

Require additional and enforceable transparency in the operation of for-profit nursing homes, including financial transactions and financial relationships between nursing home operators and related parties, and relatives of all individual owners and officers of such entities with contractual or investor relationships with the nursing home. Through a variety of related party transactions and relationships, owners and investors of for-profit nursing homes can exert control over the facility's operations in a manner that extracts significant profit for them, while leaving the facility with insufficient staffing and resources to provide the care that residents deserve.

Through a variety of related party transactions and relationships — including between owners, investors, corporate parents, landlords, purported management companies, consultants, vendors, service provider, charities and owner's family members,— owners and investors of for-profit nursing homes can exert control over the facility's operations in a manner that extracts significant profit for them, while leaving the facility with insufficient staffing and resources to provide the care that residents deserve.[106]

Before providing any supplemental funding to nursing homes, the state should require transparency, accountability and complete disclosure of the disposition of all funds received by the facilities. As a condition of payment of public funds to the nursing homes, the state should also require operators to execute monthly certifications affirming that staffing is sufficient to meet residents' needs.

Ensure that nursing homes invest sufficiently in effective training so staff can fully comply with infection control protocols. Hold operators accountable for failures to have clinically appropriate policies in place and to effectively train staff to comply with them.

Clearly, some facilities were not prepared to handle outbreaks through early and effective training or staffing. Rising COVID-19 infection rates in multiple areas of the state and a concerning number of nursing homes within those communities underscore the need for effective training in infection control protocols.

Support manufacturing of PPE to facilitate sufficient supply of PPE for purchase by nursing homes. Enforce requirements that nursing homes have sufficient inventory of PPE for all staff to be able to follow infection control protocols.

Many nursing homes severely lacked PPE for workers. In some instances, nursing home owners forewent infection control protocols, telling staff that masks and other PPE were not mandatory because they did not have enough supplies. In other cases, re-use of PPE may have contributed to the spread of infection. Nursing homes should be required to have a sufficient inventory of PPE in case of a future outbreak.

Ensure that adequate COVID-19 testing is available to nursing home residents and employees and require nursing homes to test residents and staff in accordance with CDC and DOH evidence-based guidelines.

Insufficient testing in the early days of the pandemic undoubtedly led to spread of COVID-19 by asymptomatic patients and staff. With regular testing for residents and employees, nursing homes will be much better able to contain future COVID-19 outbreaks.

Eliminate the recently enacted immunity provisions that can provide financial incentives to for-profit nursing home operators to put residents at risk of harm by refraining from investing public funds to obtain sufficient staffing to meet residents' care needs, to purchase sufficient PPE for staff, and to provide effective training to staff to comply with infection control protocols during pandemics and other public health emergencies.

The state's immunity laws were designed to provide necessary protection to frontline health care workers who placed their lives on the line during the pandemic, managers who are faced with impossible choices in caring for patients with COVID-19 in circumstances that are not of their own making, and facilities whose processes led to those decisions in good faith. These circumstances can include shortages of ventilators, respirators, medicine, other equipment, or available beds or services. As written, the immunity laws could be wrongly used to provide any individual or entity from liability, even if those decision were not made in good faith or motivated by financial incentives.

Formally enact and continue to enforce regulatory requirements that nursing homes communicate with family members of residents promptly, but not later than within 24 hours, of any confirmed or suspected COVID-19 infection, and of any COVID-19 confirmed or suspected death.

Too many facilities failed to appropriately communicate with families about COVID-19 infections and deaths. Existing requirements that nursing homes communicate with family members within 24 hours of COVID-19 infections and deaths must be enforced. Nursing homes should utilize technology, including their websites, to communicate efficiently with families in compliance with confidentiality laws regarding the presence of COVID-19 infection within the facility, as well as on updates on scheduling visitation. Additionally, nursing homes must ensure that only trained staff engage in complex and compassionate communications with families.

Increase staffing at DOH to ensure sufficient skilled resources for oversight, complaint assessment, surveys, inspections and immediate responses to information requests from state agencies in support of health care and law enforcement efforts.

DOH faced an unprecedented challenge: an agency staffed to visit each nursing facility once per year, under stable conditions, was called upon to visit nearly every facility in barely two months, under emergency conditions. In addition, the preliminary investigations indicate that facilities often misreported basic information to DOH. The agency's enforcement and referral programs should be strengthened through additional staff.

Ensure that nursing homes engage in thoughtful planning regarding post-mortem care needs and implement and train staff on policies for dignified care of the remains of deceased residents.

Facilities should have clear policies that set forth protocols for the dignified treatment of remains. Staff should be effectively trained on the facility's policies and protocols for dignified treatment of remains while they are onsite, including emergency situations; and, ensure timely communication between management and staff as to the facility's active implementation of these measures, including informing staff of pre-designated alternative morgue locations.

Urge families to CMS Care Compare online database, ask questions of nursing homes relating to staffing, policies, procedures, and recent and current COVID-19 infections of staff and residents, and to obtain information relevant to their current or future long-term care decisions for their loved ones. Where possible, visit family member residents in person and through "window" visits and videocalls even if resident is unable to communicate, to provide emotional support and to enable observation of the resident's physical appearance and condition. Ensure family members know to report suspected neglect or abuse to DOH and OAG.

Before deciding on a nursing home, families should consult CMS ratings, and be armed with the appropriate questions to ask potential facilities. Additionally, nursing homes should facilitate communication with family members, either through window visits, video calls, or phone calls so that family members can provide emotional support to their loved one and observe the conditions in the facility.

Conclusion

This report provides an overview of OAG's preliminary investigative findings into the response by New York's nursing homes to the COVID-19 pandemic, and the heartbreaking reality that over 6,600 New Yorkers have died in nursing homes from complications related to COVID-19. OAG's investigations are ongoing. Attorney General James will continue to follow the facts, diligently and impartially, wherever they lead. In the meantime, given the ongoing COVID-19 pandemic and the risks to the state's estimated 90,000 nursing home residents as reflected by the data herein, systemic changes are warranted now. This report provides an overview of the recommended primary systemic reforms, as well as other measures that we believe will address the public's widely reported concerns about the pandemic's tragic impact on nursing home residents. As detailed in the report, nursing homes have a special obligation to the residents who depend upon the facility to meet every basic human need in what is for many, probably their last home. New York needs to ensure that nursing homes take care of our seniors and our most vulnerable residents with dignity, respect and the sufficient care that the law requires — and that the public primarily funds.

Attorney General Letitia James continues to encourage all residents, family members of residents and all caregivers to contact MFCU at (800) 771-7755 or at ag.ny.gov/nursinghomes if they believe that a patient in a residential health care facility has been neglected, abused, or mistreated.

Acknowledgments & MFCU Mission Statement

New York State's Medicaid Fraud Control Unit (MFCU) is a bureau within the Criminal Justice Division of the Office of the Attorney General of the State of New York. The Division of Criminal Justice is led by Chief Deputy Attorney General for Criminal Justice José Maldonado and overseen by First Deputy Jennifer Levy. MFCU's mission is to protect the public from all forms of fraud against the Medicaid program and to protect the state's vulnerable nursing home residents from exploitation, neglect, and abuse by unscrupulous providers. MFCU investigates and brings criminal prosecutions and civil actions to stop Medicaid provider fraud, to protect vulnerable residents, and to protect Medicaid program integrity.

This report is the collective product of investigative work undertaken since March 2020 by MFCU's 275 attorneys, forensic auditors, police investigators, medical analysts, data scientists, electronic investigation team, legal assistants, and support staff in eight offices across New York.

MFCU receives 75 percent of its funding from the U.S. Department of Health and Human Services under a grant award totaling $60,071,905 for Federal fiscal year (FY) 2019-20, of which $45,053,932 is federally funded. The remaining 25 percent of the approved grant, totaling $15,017,973 for FY 2019-20, is funded by New York state. Through MFCU's recoveries by means of law enforcement actions and civil enforcement actions, it regularly returns more to the state than it receives in state funding.

APPENDIX A (referenced on p. 9)

Table of Key Federal and State Guidance

Date	Federal	New York
1/21/20	CDC confirmed and announced the first case of COVID-19. cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html	
1/31/20	HHS Secretary declared a public health emergency for the US, giving state, tribal, and local health departments flexibility to request HHS authorization to temporarily reassign personnel to respond to COVID-19. hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html	
2/6/20		DOH issued a letter to nursing homes and hospitals, asking "all facilities to compare their existing inventories of PPE, such as face shields, gowns, gloves, masks, N95 respirators, against the expected rate of use of these items under a surge situation, to determine the quantities needed to be on hand" and then to coordinate with existing vendors and local offices of emergency management to procure additional PPE. coronavirus.health.ny.gov/system/files/documents/2020/03/2020-02-06_ppe_shortage_dal.pdf
2/7/20	CDC's Morbidity and Mortality Weekly Report stated, "CDC is working closely with state and local health partners to develop and disseminate information to the public on general prevention of respiratory illness, including [COVID-19]. This includes everyday preventive actions such as washing your hands, covering your cough, and staying home when you are ill," and referred readers to CDC's website. It noted, "[t]hese measures are being implemented based on the assumption that there will be more U.S. [COVID-19] cases occurring with potential chains of transmission, with the understanding that these measures might not prevent the eventual establishment of ongoing, widespread transmission of the virus in the [U.S.]. It is important for public health agencies, health care providers, and the public to be aware of [COVID-19] so that coordinated, timely, and effective actions can help prevent additional cases or poor health outcomes."[107] cdc.gov/mmwr/volumes/69/wr/mm6905e1.htm	

3/4/20	**CMS published to State Survey Agencies a Guidance for Infection Control and Prevention of COVID-19 in Nursing Homes**, with information on (1) screening and, if necessary, restricting visitors to nursing homes; (2) screening and, if necessary, restricting employees with signs or symptoms of COVID-19 from working in the facility; (3) when to transfer residents to the hospital; and, (4) when a nursing home should accept a resident diagnosed with COVID-19 from the hospital. It stated that "a nursing home can accept a patient with a COVID-19 diagnosis who is still under Transmission-Based Precautions "as long as it can follow CDC guidance for [T-BP]. If a nursing home cannot, it must wait until precautions are discontinued." (See Transmission-Based Precautions Guidance from CDC.) The CMS guidance stated that nursing homes should admit any individuals that they would normally admit, including from hospitals where a case of COVID-19 was present. cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and/qso-20-14-nh.pdf	
3/4/20	CMS published guidance to State Survey Agency Directors on, among other things, discharging patients with COVID-19 diagnoses to subsequent care facilities. CMS instructed that the decision to discharge a patient transfer should be based on clinical considerations of the patient, and that if T-BP must be continued, the receiving facility must be able to implement all recommended infection prevention and control recommendations. Medicare hospital planning required all medically necessary information, including communicable diseases, be provided to post-acute care providers for COVID-19, prior to discharge. cms.gov/files/document/qso-20-13-hospitalspdf.pdf-2	

3/7/20	CDC issued "Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel (HCP) with Potential Exposure in a Healthcare Setting." The guidance states that "contact tracing, monitoring, and work restrictions. . . includ[ing] allowances for asymptomatic HCP who have had an exposure to a COVID-19 patient to continue to work after options to improve staffing have been exhausted and in consultation with their occupational health program." It stated that asymptomatic staff exposed to COVID-19 were "not restricted from work." fluxguard.com/coronavirus/site/331dd37e-f2af-4323-9424-0e0cc4dee8aa/session/9cf5a974-73a6-4fcf-a397-9d68cf59342d/page/a0400044-4df1-47b2-ae8d-f318b3c27c5c/txtview?actionId=6564a241-1186-4b51-8185-9cc4da76263f&captureId=1583805385934	Governor Cuomo declared a Disaster Emergency due to COVID-19, state that a "disaster is impending in New York State, for which the affected local governments are unable to respond adequately." Executive Order 202 governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york

3/11/20		DOH issued guidance to nursing home owners/ operators and administrators regarding "precautions and procedures nursing homes must take to protect and maintain the health and safety of their residents and staff during" the COVID-19 outbreak. The guidance noted that it was essential that all nursing home owner/ operators, administrators, and clinical staff maintain situational awareness about the disease, its signs and symptoms, and necessary infection prevention and control procedures and review the most up-to-date information for health care providers. The guidance still permitted visitation but required screening of visitors and recommended modified hours. It also required employee screening and that staff showing symptoms "not be permitted to remain at work" and "not return to work until completely recovered." It required 14-day voluntary or mandatory quarantine for an asymptomatic staff person who had potential exposure to COVID-19 following the exposure. It required a mandatory 14-day quarantine for symptomatic staff following the date of onset of symptoms. It provided information on conserving PPE, but specifically instructed that facilities' controls should not discourage the use of masks when indicated for patient care. It emphasized the need to reinforce infection control regulations at 10 NYCRR § 415.19 and noted that residents suspected of infection with COVID-19 should be given a surgical or procedure mask (not an N95) and that while awaiting the transfer, the resident must be isolated in a separate room with the door closed. DOH also (1) restricted visitation in nursing homes; (2) provided information on conserving PPE but specifically instructed that facilities' controls should not discourage the use of masks when indicated for patient care; and, (3) set forth practices to prevent the spread of COVID-19. It described the symptoms of COVID-19 and conveyed the obligation and need to often check for updates on CDC, and DOH Health Commerce System websites for situational awareness, symptoms, and infection control. It emphasized the need to reinforce infection control regulations 10 NYCRR § 415.19 and noted that residents suspected of infection with COVID-19 should be given a surgical or procedure mask (not an N95) and that while awaiting the transfer, the resident must be isolated in a separate room with the door closed. coronavirus.health.ny.gov/system/files/ documents/2020/03/nursing_home_guidance.pdf

3/13/20		**DOH issued updated COVID-19 Health Advisory Guidance** to nursing homes and adult care facilities suspending all visitation, except where it was medically necessary or for imminent end-of-life situations.[108] The advisory also required facilities to immediately implement health checks for all HCP before each shift and require that all HCP wear a facemask while within six feet of residents. If there were confirmed cases of COVID-19, the advisory required nursing homes and adult care facilities to (1) notify the local health department and DOH if not already involved; (2) monitor all residents on affected shifts; (3) assure that all residents in affected units remained in their rooms to the extent possible; (4) require residents to wear facemasks when HCP entered their rooms, unless resident could not tolerate facemasks; (5) preclude "floating" staff between units, minimize staff entering rooms, and cohort positive residents with dedicated providers; (6) place residents on affected units on "droplet and contact precautions"; and, (7) required re-testing immediately residents who initially tested negative, if they developed symptoms consistent with COVID-19. If there were suspected cases of COVID-19, residents were to be given a facemask and isolated in a separate room with the door closed. The advisory required that staff should wear full PPE and maintain social distancing of at least six feet from resident except for "brief, necessary interaction." coronavirus.health.ny.gov/system/files/documents/2020/03/acfguidance.pdf

3/16/20	CDC issued updated guidance on time tables for HCP with confirmed or suspected COVID-19 to return to work, instructing officials to use one of two strategies. Under the "test-based strategy," CDC advised that HCP should be excluded from work until (1) resolution of fever without the use of medication; (2) improvement in respiratory symptoms; and, (3) after at least two negative test results taken at least 24 hours apart. Under the "non-test-based strategy," CDC advised that symptomatic HCP should be excluded from work until (1) "at least 3 days (72 hours) have passed since recovery (defined as resolution of fever without the use of medication), (2) "improvement of respiratory symptoms," and (3) "at least 7 days have passed since symptoms first appeared." It acknowledged that appropriate state and local authorities "might determine that the recommended approaches cannot be followed due to the need to mitigate HCP staffing shortages." phdmc.org/program-documents/healthy-lifestyles/gumc/emergency/covid-19/physicians-healthcare-providers/1449-return-to-work-criteria-for-healthcare-workers/file	DOH issued updated guidance advising that "facilities may allow HCP exposed to or recovering from [COVID-19]" to work if: • Furloughing such staff would result in shortages that adversely impact the operation of the facility; • HCP who had contact with confirmed or suspected cases are asymptomatic; • Symptomatic HCP with confirmed or suspected COVID-19 isolated for at least 7 days after illness onset and were fever-free at least 72 hours with other symptoms improving. • HCP who were asymptomatic after contact with confirmed or suspected cases were directed to self-monitor twice a day (temperature, symptoms), and undergo temperature monitoring and symptom checks at the beginning of each shift and at least every 12 hours. • Staff who recovered from COVID-19 were directed to wear a facemask until 14 days after onset of illness if mild symptoms persisted but were improving. • Staff who were asymptomatic after contact were directed to wear a facemask while working until 14 days after the last high-risk exposure. Staff working under these conditions were to be assigned to patients at lower risk (on COVID-19 units) as opposed to severely immunocompromised or elderly patients. If staff developed symptoms, they were directed to immediately stop work and isolate at home. Testing was prioritized for hospitalized health care workers. All staff with symptoms consistent with COVID-19 were assume they were COVID-19 positive regardless of the availability of test results. nyshfa-nyscal.org/files/2020/03/Advisory-HCP-return-to-work-20200316-final.pdf

3/18/20		Executive Order 202.5 allowed transfer to Article 28 facilities and suspended regulations: • 10 NYCRR § 400.12 to the extent necessary to allow patients affected by the disaster emergency to be transferred to receiving Article 28 facilities; • 10 NYCRR § 415.15 to the extent necessary to permit facilities receiving individuals affected by the disaster emergency to obtain physician approvals for admission as soon as practicable or to forego such approval for returning residents; and, • 10 NYCRR § 415.26 to the extent necessary to permit facilities receiving individuals affected by the disaster emergency to comply with admission procedures as soon as practicable after admission or to forego such approval for returning residents. governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency
3/21/20		DOH issued guidance with different testing protocols for facilities within New York City, Long Island, Westchester, and Rockland Counties – which had "sustained community transmission" of COVID-19 – and for facilities located in the rest of the state. It stated that in the nine downstate counties, "testing of residents and [HCPs] with suspect COVID-19 is no longer necessary and should not delay additional infection control actions" for any resident with symptoms of a febrile respiratory illness, and that such residents should be presumed to be COVID-19 positive. Facilities outside of these nine counties "should continue to pursue testing for residents and health care workers with suspect COVID-19 to inform control strategies." coronavirus.health. ny.gov/system/files/documents/2020/03/22-doh_covid19_nh_alf_ilitest_032120.pdf
3/23/20	CDC published Transmission-Based Precautions (T-BP) and Disposition of Patients with COVID-19 in Healthcare Settings (Interim Guidance) stating that "a patient can be discharged from the healthcare facility whenever clinically indicated: If discharged to a long-term care or assisted living facility," and T-BP were still required, the patients "should go to a facility with an ability to adhere to infection prevention and control recommendations for the care of residents with COVID-19." The guidance indicated that preferably, the patient would be placed in a location "designated to care for COVID-19 residents." If T-BP had been discontinued, the patient does not require further restrictions, based upon their history of COVID-19 infection. hsdl.org/?view&did=836726	Executive Order 202.10 included specified immunity for health care providers, including from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the state's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional. The executive order relieved health care providers of certain record keeping requirements to the extent necessary for them to perform tasks as necessary to respond to the COVID-19 outbreak and provided them immunity from liability for failure to comply with recordkeeping requirements if they acted reasonably and in good faith. governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency

3/25/20		DOH issued guidance to nursing home administrators, directors of nursing and hospital discharge planners stating, "No resident shall be denied re-admission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19. NHs are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or re-admission." It also provided information on how to request PPE from DOH. (On May 26, DOH removed this guidance from its website.) skillednursingnews.com/wp-content/uploads/sites/4/2020/03/DOH_COVID19__NHAdmissionsReadmissions__032520_1585166684475_0.pdf
3/31/20		DOH issued guidance on April 1, dated March 31, entitled "Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure or Infection." coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_essentialpersonnelreturntowork_rev2_033120.pdf
4/3/20	HHS-Office of Inspector General issued "Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020," OEI-06-20-00300, noting CDC delay in producing COVID-19 test, and hospital reports of need for PPE, testing, staffing, supplies and equipment, delays waiting for test results and challenges maintaining or expanding their facilities' capacity to treat patients with COVID-19.[109] oig.hhs.gov/oei/reports/oei-06-20-00300.asp	
4/6/20		The Emergency Disaster Treatment Protection Act was enacted to "promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency." PHL § 3080. (See Section VI(G) above for the statute's text.) nysenate.gov/legislation/laws/PBH/A30-D

4/13/20	CDC issued updated guidance entitled "Return to Work for Healthcare Personnel with Confirmed or Suspected COVID-19" to express a preference for the test-based strategy for HCP to return to work, if feasible, yet still accepted the non-test based model. According to the guidance, asymptomatic staff who tested positive COVID-19 "should be excluded from work until 10 days after the date of their first positive COVID-19 diagnostic test" if they have remained asymptomatic throughout that time. web.archive.org/web/20200417191400/https:/www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html	
4/16/20		Executive Order 202.18 required nursing homes to notify family members within 24 hours of a resident COVID-19 diagnosis or death. governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency
4/17/20		Executive Order 202.19 directed DOH to establish "a single, statewide coordinated testing prioritization process" that required all laboratories in the state, both public and private, to coordinate with the DOH and prioritize COVID-19 testing. governor.ny.gov/news/no-20219-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency
4/29/20		DOH issued a letter to nursing home administrators stating that the state would no longer adhere to CDC's "shorter" standard on HCP returning to work as set forth in CDC's interim guidance. DOH required that a nursing home HCP who tested positive for COVID-19 but remains "asymptomatic" not return to work "for 14 days from [the] first positive test date in any situation." It stated, "symptomatic nursing home employees may not return to work until 14 days after the onset of symptoms, provided at least 3 days (72 hours) have passed since resolution of fever without the use of fever-reducing medications and respiratory symptoms are improving." It invited "nursing homes facing staffing difficulties" to use DOH's online staffing portal, noting 200 facilities used it as of April 29. coronavirus.health.ny.gov/system/files/documents/2020/05/nh-letterregardingemployees-4.29.20.pdf

5/10/20		Executive Order 202.30 required nursing homes to make arrangements for COVID-19 testing of all personnel twice per week and report any positive test to DOH the next day. It also required the operator and the administrator of each home to provide to DOH a certification of compliance with the Executive Order and "directives of the Commissioner of Health." governor.ny.gov/news/no-20230-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency
6/10/20		Executive Order 202.40 continued the directives of EO 202.30 yet modified them to require nursing homes to make arrangements for COVID-19 testing of all employees, contract staff, medical staff, operators and administrators once per week for all nursing homes and all adult care facilities that are located in regions that have reached Phase Two of New York state's reopening plan.
6/17/20		Public Health Law § 2803(12) requires residential health facilities to submit to DOH an annual "Pandemic Emergency Plan" by 9/15/20. nysenate.gov/legislation/laws/PBH/2803#:~:text=(a)%20The%20commissioner%20shall%20have,including%20health%2Drelated%20service%2C%20system

APPENDIX B

An Illustration of the Too Prevalent "Low Staffing for Profit" Model of Exploitation Through Insufficient Staffing, Lack of Transparency, and Financial Incentives: a Pre-Pandemic OAG Investigation, Findings, and Prosecution

The 2018 investigation described below is relevant to the COVID-19 pandemic because the operating model for staffing that led to systemic abuse and neglect at this facility remains prevalent in too much of the for-profit sector of the nursing home industry in New York. Of the state's 619 total nursing homes, 401, or 61 percent, are for-profit entities. The chronic staffing failures caused neglect throughout the facility even without a severe external strain such as COVID-19.

Most nursing homes operate on a model that essentially seeks 100 percent resident capacity at the facility every day, because billing and insurance payments are per-day, per-patient. Each empty bed is lost potential revenue. Conversely, from too many facilities' perspectives, each additional resident does not require additional staffing if the time and labor of the staff already on-duty can be stretched and shifted to assign coverage for the care needs of the patients. Every facility has some financial incentive to avoid hiring additional staff, because each staffer's pay, and benefits (if any), are an expense. However, if a nursing home stretches that staffing model to assign employees to cover the care needs for too many residents – with insufficient numbers of appropriate employees – the model snaps.

1. OAG Pre-Pandemic Investigation of Focus at Otsego Nursing Home

OAG conducted an investigation of allegations of neglect of residents in Focus Rehabilitation and Nursing Center at Otsego (Focus), a 174-bed nursing home in Cooperstown, New York, after a number of earlier incidents that resulted in arrests of several health care workers for offenses including neglect of residents and falsification of medical records to conceal neglect. In one incident of neglect, a 94-year old resident was left in a recliner in a common living room area of the facility for approximately 41 hours during a holiday weekend without appropriate care, treatment, or service. The investigation included an inquiry into systemic causes of neglect of Focus residents. To obtain the facts that resulted in the investigative findings, OAG conducted extensive forensic accounting investigation and detailed analysis of medical and staffing records relating to the Focus nursing home. This work was required to bring transparency to what happened to millions of Medicaid reimbursement dollars that went through many financial transactions from the facility to related parties. (See Appendix B at B-1, Funding Flow Through chart). It also included significant investigation and analysis of records of staffing levels.

2. Findings: Chronic Insufficient Staffing Increased Resident Neglect and Harm; Lack of Transparency in Profit-taking

The findings of this investigation included that the owners and management of Focus cut staffing at the facility in late 2014 in order to increase their personal profit, through a variety of financial transactions with related parties.[110] The cuts in staffing at Focus resulted in:

- Neglect and injury to residents of the facility;
- Increased risk of injury to residents of the facility;
- Very challenging working conditions for the direct care staff whose responsibilities included providing care for the residents in accordance with their plans of care;
- Resignations of direct care staff members in frustration after unsuccessful warnings to owners and management that the insufficient staffing levels created risks for the residents and untenable working conditions;
- Refusals by the operator, 99 percent owner, and manager to increase the facilities' budget and reverse insufficient staffing levels at Focus;
- Use of staff from a "temporary agency staffing" company owned by a party to the defendant manager, in lieu of hiring full time staff; and,
- Failure to maintain staff even at the level deemed "critical" by other licensed managers.

Routine reliance on temporary agency staff in lieu of full-time employees to fill budgeted staffing levels resulted in staffing that met fewer residents' care needs. Agency staff, who are sent to any nearby facility to work any shift on any assignment within the facility, are usually less familiar with each of the resident's care needs, facility protocols, facility resources, medical professional resources, and therefore, less effective in delivering care. Agency staff must often familiarize themselves with each resident's chart and care plan in order to provide appropriate care. Agency staff also often have less familiarity with facility policies, operations, and personnel, which can result in the need for more time to complete work.[111]

3. Prosecution, Convictions, and Civil Remedies

Prosecution: Based on relevant aspects of these findings, in May 2018, OAG filed criminal charges against the entity that held the operator's license for, and controlled, Focus, an individual who was the 99 percent owner of Focus, and an individual who was the owner's business partner in other ventures while acting as a high level manager for Focus, for their conduct between October 14, 2014 to December 31, 2017. The charges included three felony counts of Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree, in violation of Penal Law § 260.25, a Class E felony: one count as to all residents of the facility from October 14, 2014 to November 29, 2016, and two counts as to two specific residents who each suffered injury. The charges against each defendant also included two misdemeanor counts of Endangering the Welfare of an Incompetent or Physically Disabled Person in the Second Degree in violation of Penal Law § 260.24 ("Misdemeanor Endangering") as: one count as to all residents of the home from May 26, 2016 to November 29, 2016, and one count as to a specific resident from May 28, 2016 to June 1, 2016; and, two misdemeanor counts of Willful Violation of Health Laws, in violation of Public Health Law §§ 12-b(2), 2803-d(7), and 10 NYCRR §§ 81.1, 415.11 and 415.12(c)(2): one count for the neglect of all the residents of the home from May 26, 2016 to November 29, 2016, and one count for the neglect of a specific resident from May 28 to 30, 2016.

Convictions and Assurance of Discontinuance: In September 2018, the corporate operator's 99 percent owner and its manager both pleaded guilty to misdemeanor Endangering, and also entered a civil Assurance of Discontinuance under Executive Law § 63(15) in which they agreed to repay $1 million to the New York State Medicaid program, and to be voluntarily excluded from Medicaid and from operating health care businesses in New York state for 5 years. The corporate operator pleaded guilty to felony Endangering and was dissolved. Absent OAG's investigation, findings, prosecution, and civil remedy of an Assurance of Discontinuance, it is most likely that the owner, manager, and Focus corporate operator would have been operating the Focus nursing home during the COVID-19 pandemic with levels of staffing that were insufficient to meet the pre-pandemic needs of the residents for care and services. Fortunately, this result and its predictable negative outcomes were prevented.

4. Law Enforcement Resource Investment

Conducting the investigation regarding the Focus nursing home noted above, and reflected in part in Appendix B-1, required a significant amount of OAG resources and expertise. Many law enforcement agencies lack the resources to conduct such comprehensive investigations of the financial transactions and records that identify and address what can be a root cause of incidents of neglect – i.e., insufficient staffing.[112] A more efficient way to address the problem of chronic insufficient levels of staffing in for-profit nursing homes is to require effective minimum staffing levels and transparency in financial relationships with all related parties.
(See Recommendations D and E in Section VIII)

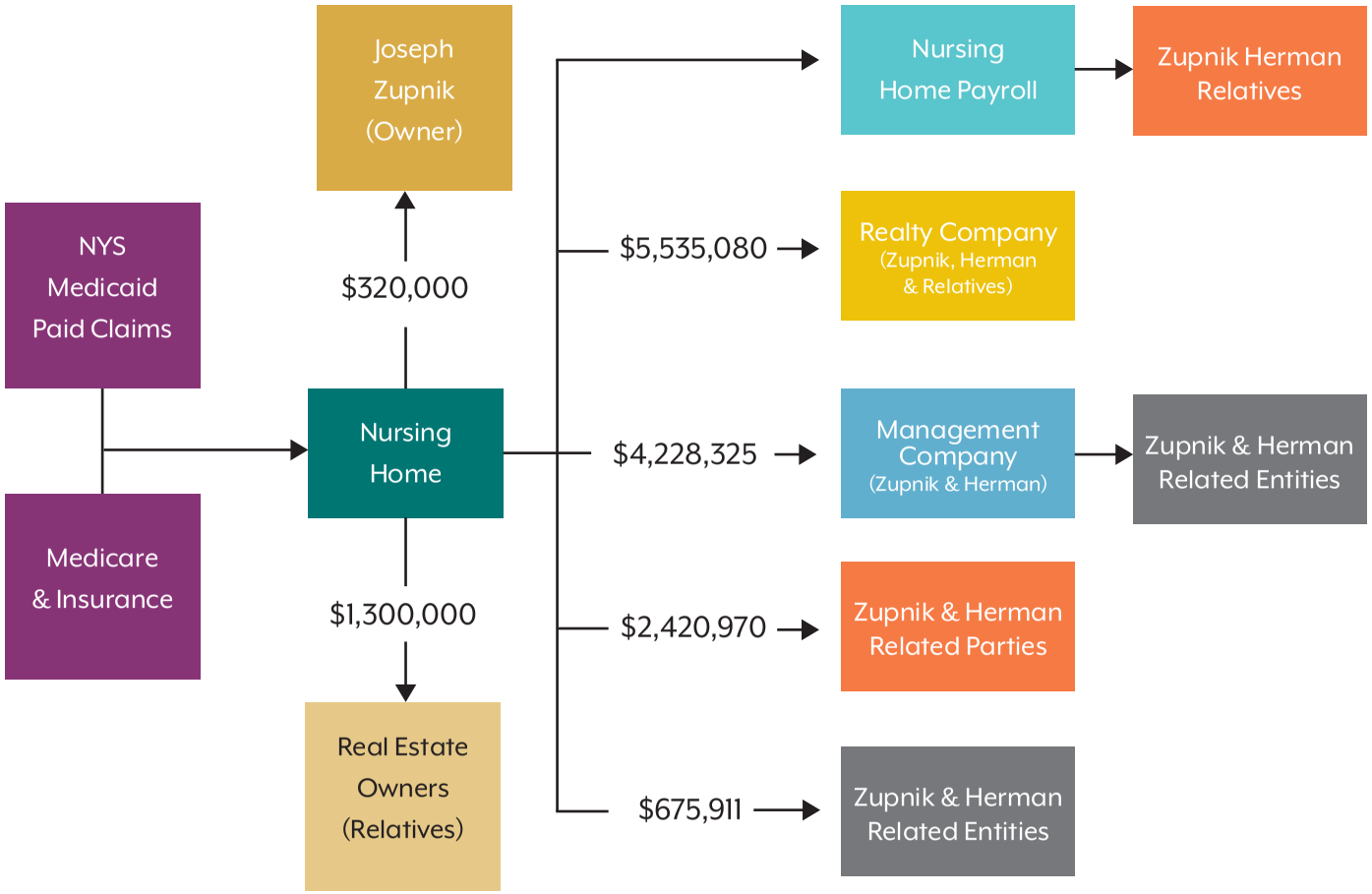
5. Similar Findings Regarding Lack of Transparency in Operation of Some For-Profit Nursing Homes

News organizations and advocacy groups have published findings about the ways in which too many for-profit nursing homes operate – specifically by extracting money from the facility and transferring it to investors, owners and related parties through divided ownership interests, mortgages, leases,[113] contracts and arrangements for services, such as management services, agency staffing, rehabilitation services, laundry and food services. Against the backdrop of lack of transparency regarding the related party financial transactions, members of the for-profit nursing home industry have claimed government reimbursement rates are "too low." As shown in the chart attached hereto as Appendix B-1, self-dealing obscures the true net revenue of such operations. Such transactions create a balance sheet that may suggest the facility is running even or at a loss, when in fact the owners are taking out profits as "fees", salaries for low-activity positions, or revenue to affiliated businesses.[114] The question whether reimbursement rates should be increased to enable for-profit nursing homes to provide care they are obligated to provide cannot be answered without full transparency into the facilities' mortgages, leases, management and "consulting" companies, contracts and arrangements for services.

Appendix B-1

Related Party Transactions at a Nursing Home

October 2014 - December 2017 Funds Directly Paid to Related Parties



Appendix B-2

The Nursing Care Center [redacted]
Sunday April 12, 2020

Census: 289	0Facility	1B	1C
7a-7p			
3p-11p (60 min)			
3p-11p (45 min)			
7p-7a			Nurse

Notes

Page 1

The Nursing Care Center [redacted]
Sunday April 12, 2020

Census: 289	2A	2B	2C
7a-7p			
3p-11p (60 min)	Nurse	Nurse	Nurse
3p-11p (45 min)			
7p-7a			

Notes

Page 2

DATE: Friday, [redacted]uary 13,2017 [redacted] Rehabilitation and Nursing C[redacted]ter Daily Nursing Staff Sheet

DAYS		EVENINGS		NIGHTS	
RN SUP/		RN SUPERVISOR:		RN SUPERVISOR:	
UNIT 2		UNIT 2		UNIT 2	
NURSES	C.N.A.	NURSES	C.N.A.	NURSES	C.N.A.
L.Garner 1/9	[redacted]	[redacted]	N.Schmidt 1/27	[redacted]	[redacted]
[redacted]	[redacted]	N.Humphries 0/27	[redacted]	[redacted]	[redacted]
N.Humphries 1/	J.Banks 1/7	[redacted]	S.Lee 0/25	[redacted]	[redacted]
0/27	K.Torres 1/8	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	J.Banks 1/7		
		[redacted]	M.Bryan 1/9		
UNIT 3		UNIT 3		UNIT 3	
RN SUPERVISOR:	[redacted]				
NURSES	C.N.A.	NURSES	C.N.A.	NURSES	C.N.A.
D.Kalzenberg 1/9	M.Southard 1/3	D.Kalzenberg 1/7	M.Burrows 1/13	N.Agyeman 0/27	J.Zanelli 1/3
N.Kanis 1/7	[redacted]	[redacted]	A.Sanders 0/26		A.Stewart 0/27
	T.Hamilton 1/8	Kanis 0/27	B.Bailey 1/7		
	M.Contreras 0/25		C.Gildea 1/9		
	A.Pentino 0/27		K.Toro 0/25		

Endnotes

[1]The investigation was conducted by the Medicaid Fraud Unit (MFCU), a federally funded, multi-disciplinary unit within the OAG that serves a dual mission to investigate Medicaid provider fraud and the abuse and neglect of patients in residential health care facilities, and bring civil and/or criminal remedies to address wrongdoing.

[2]All dates are in the year 2020 unless otherwise specified.

[3]This was following an Executive Order issued by Governor Andrew Cuomo relating to communications between nursing homes and family members.

[4]On September 3, CMS launched Care Compare, a redesign of eight existing CMS health care compare tools that were available on Medicare.gov, including Nursing Home Compare, which previously contained CMS's ratings for each nursing home in the four categories of Overall, Staffing, Infection Control and Quality of Care. medicare.gov/care-compare

[5]The legislature enacted, and the governor signed, amendments to Public Health Law §§ 3081-82 effective August 3, limiting the scope of immunity to acts relating to the "diagnosis or treatment of COVID-19" or "the assessment or care of an individual as it relates to COVID-19, when such individual has a confirmed or suspected case of COVID-19," and eliminating a clause concerning care of any other individuals. However, the potential defenses as to resources or staffing shortages were not amended.

[6]hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html

[7]CDC issued guidance for uniform reporting of COVID-19 vital health statistics: deaths of people whose laboratory tests resulted in a COVID-19 positive diagnosis and where COVID-19 played a role in the death should be reported as "confirmed" COVID-19 deaths. The guidance also provides that where a definite COVID-19 diagnosis cannot be made but is suspected or likely given the circumstances, a COVID-19 death may be reported as "presumed." cdc.gov/nchs/data/nvss/vsrg/vsrg03-508.pdf

[8]health.ny.gov/statistics/diseases/covid-19/fatalities_nursing_home_acf.pdf

[9]"New York Coronavirus Map and Case Count," *The New York Times*, nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html

[10]Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester counties.

[11]As of August 3, nursing home deaths due to COVID-19 were reported in 40 counties: Albany, Bronx, Broome, Chenango, Columbia, Dutchess, Erie, Fulton, Greene, Herkimer, Kings, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Putnam, Queens, Rensselaer, Richmond, Rockland, Schenectady, Steuben, Suffolk, Sullivan, Tioga, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates.

[12]The data has not yet been verified against other data sources.

[13]The DOH data used for 58 of the 62 facilities was the data published on the date that matched the end of the timeframe of the data reported by each facility to OAG, or if DOH had not published data on that day, the data published on the following date. For four facilities reporting data to OAG for a timeframe ending prior to May 3, the DOH data published as of that date was used. This is because the data DOH published before May 3 for those facilities reflected no or few deaths, whereas the data DOH published as of May 3 reflected an increase in deaths at those facilities and was expressly stated as including presumed and confirmed COVID19 deaths.

[14]Through July 16, DOH reported one confirmed death at the facility, and as of July 30, DOH reported 11 confirmed deaths at the facility.

[15]At the same time, to the extent that the discrepancy results from the omission in DOH published data of resident deaths that occurred in hospitals, the under-counting of nursing home resident COVID-19 deaths does not reflect under-counting of total NYS COVID-19 deaths.

[16]The New York State Cemetery Board issued emergency crematory regulations adopted by the New York State Cemetery Board on May 1, 2020 that permitted funeral homes to transfer deceased awaiting cremation to crematories with ready capacity. With this change, for which Attorney General James advocated and her designee to the Cemetery Board voted, funeral directors, with the consent of the family of the deceased, have been able avoid significant delays by manually correcting cremation authorization forms rather than needing to create a new form and obtain another physical signature from the person arranging the funeral.

[17]Meaghan. McGoldrick, "Staffers say that bodies at Brooklyn nursing home are 'piling up'," *amny*, April 14, 2020

[18]"Coronavirus Deaths: Officials Told 'Bodies Being Piled Up In Nursing Homes' As Desperate Families Face Silence," CBS New York, April 14, 2020

[19]OAG's hotline reflected instances where residents' families were contacted by, or were only able to contact, nursing home employees unprepared to deliver such news, without the training, knowledge, and expertise to provide the appropriate end of life communications usually performed by experienced licensed nurses and social workers. In others, upon making inquiry as to their loved ones' mortal health risks, families were told that authorized persons were unreachable due to personal religious observances or days off and that their call would have to wait.

[20] The analysis focuses on the data through August 3, because this was the period of the first wave, when infection and death rates were concentrated downstate.

[21] 10 NYCRR § 415.19.

[22] Failure to have robust infection prevention and control policies could constitute resident neglect for failing "to provide timely, consistent, safe, adequate and appropriate services, treatment, and/or care to a patient or resident of a residential health care facility." 10 NYCRR § 81.1(c). "Willful" neglect is a misdemeanor punishable by imprisonment not exceeding one year, a $10,000 fine or both. Public Health Law § 12-b(2).

[23] DAL NH 20-04 COVID-19 Guidance for Nursing Homes – Revised, Mar 11, 2020, coronavirus.health.ny.gov/system/files/documents/2020/03/nursing_home_guidance.pdf

[24] Information for Healthcare Facilities Concerning 2019 Novel Coronavirus Illness (2019-nCOV), Feb 6, 2020. cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/information-healthcare-facilities-concerning-2019-novel-coronavirus-illness-2019-ncov

[25] Coronavirus Disease 2019 (COVID-19) Preparedness Checklist for Nursing Homes and other Long-Term Care Settings, Mar 13, 2020, cdc.gov/coronavirus/2019-ncov/downloads/novel-coronavirus-2019-Nursing-Homes-Preparedness-Checklist_3_13.pdf

[26] New York nursing homes are required to have a written "disaster and emergency preparedness" plan, updated at least twice a year, with procedures to be followed for the proper care of residents and personnel in the event of "an internal or external emergency resulting from natural or man-made causes." 10 NYCRR § 415.26(f).

[27] Aspiration precautions are taken for residents at high risk of choking during self-feeding, with a staff member staying nearby to watch.

[28] health.ny.gov/facilities/nursing/about_nursing_home_reports.htm#comdefrr

[29] DOH spearheaded 1,300 onsite infection control inspections, including of every nursing home and adult care facility, and initiated its own administrative enforcement actions against a number of nursing homes for violations of infection control protocols, of HERDS data reporting requirements, and of Executive Order 202.18 communication requirements.

[30] OAG continues to receive complaints of neglect of residents that occurred during the pandemic in New York.

[31] Some staff reassignment was permissible under emergency COVID "scope of practice waivers" issued by DOH, such as shifting clerical or food service staffers to work as CNAs. Those emergency waivers were to offset the already-critical staffing crisis, not new employment opportunities.

[32]*Nursing Home and ACF COVID Related Deaths Statewide* (web-published daily by NYS DOH), accessed daily, using data published through 11/16/20. The published data notes, "This data captures COVID-19 confirmed and COVID-19 presumed deaths within nursing homes and adult care facilities. This data does not reflect COVID-19 confirmed or COVID-19 presumed positive deaths that occurred outside of the facility. Retrospective data reporting dates back to March 1, 2020."

[33]This analysis utilized the CMS quarterly metrics from June. Although CMS waived certain reporting requirements in 2020 at various times and held certain data points constant, there is no reason to believe that staffing and outcomes improved during the waiver periods. CMS has stated that it will resume calculating nursing homes Health Inspection and Quality Measure ratings on January 27, 2021.

[34]As noted in DOH Revised Report (7/20/20) and consistent with OAG analysis, this drop is despite the location of most CMS 5-Star Overall rated facilities in the hardest-hit counties.

[35]OAG continues to explore the anomalous rate shown by CMS 5-Star Staffing and 2-Star Overall rated facilities. There are few facilities in this group, and perhaps other poor practices result in little net difference from the COVID-19 death rate for a CMS 1-Star Staffing and 1-Star Overall rating combination. (There are no data points for CMS 1-Star Staffing and 4- or 5-Star Overall rated facilities, as the CMS methodology does not permit those combinations.)

[36]medicare.gov/nursinghomecompare/search.html

[37]skillednursingnews.com/2018/11/new-york-officials-call-greater-scrutiny-non-profit-nursing-home-sales

[38]DOH Revised Report 7/20/20 at pp. 23-24.

[39]OAG also accounted for a sample that ensured that at least one facility at each star level was in the county.

[40]The New York State Office of Emergency Management (OEM) is an office within the division of the NYS Division of Homeland Security and Emergency Services (DHSES).

[41]Executive Order 202.40, issued June 10, 20, continued this testing requirement yet modified it to a once a week testing requirement for nursing homes in areas in the second phase of the State's multi-tiered reopening plan.

[42]This approach of placing to onus on staff to obtain testing is less likely to result in staff being tested because many staff Statewide have low salaries and lack health insurance.

[43]DOH, Advisory: Hospital Discharges and Admissions to Nursing Homes, March 25, 2020

[44]DOH Revised Report at pp. 4-5.

[45]While some commentators have suggested DOH's March 25 guidance was a directive that nursing homes accept COVID-19 patients even if they could not care appropriately for them, such an interpretation would violate statutes and regulations that place obligations on nursing homes to care for residents. For example, New York law requires a nursing home to "accept and retain only those residents for whom it can provide adequate care." See 10 NYCRR § 415.26(i)(1)(ii). Preliminary findings show a number of nursing homes implemented the March 25 guidance with understanding of this fundamental assessment.

[46]U.S. Dep't of Health and Human Services Office of the Inspector General, "Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020," OEI-06-20-00300 dated April 2020. The HHS-OIG report's key findings included hospitals reporting that "their most significant challenges centered on testing and caring for patients with known or suspected COVID-19 and keeping staff safe." Hospitals also reported challenges maintaining or expanding their facilities' capacity to treat patients with COVID-19, and frequently waiting seven days or longer for COVID-19 test results. Hospitals reported that as "patient stays were extended while awaiting test results, this strained bed availability, [PPE], supplies, and staffing." In addition, "acute care capacity concerns emerged as hospitals anticipated being overwhelmed if they experienced a surge of patients" who may require special beds and rooms to treat and contain infections.

[478]ibid.

[48]ibid.

[49]*See* DOH Revised Report at 25.

[50]*See* DOH Revised Report at 19-20.

[51]*See* DOH published nursing home death data as of August 8. *An earlier version of this report suggested a number of facilities that had potentially not been exposed to COVID-19 prior to the March 25th guidance. That number has been removed, but the overall findings remain unchanged.

[52]PHL § 3080

[53]Though amendments were enacted to Public Health Law §§ 3081-82 effective August 3, limiting the scope of immunity to acts relating to the "diagnosis or treatment of COVID-19" or "the assessment or care of an individual as it relates to COVID-19, when such individual has a confirmed or suspected case of COVID-19," and eliminating a clause concerning care of any other individuals, the potential defenses as to resources or staffing shortages were not amended.

[54]Public Health Law § 3082.

[55]ibid.

[56]Very few nursing home residents are completely "self-pay," without some form of private or public insurance.

[57]Notably, OAG investigations have revealed different structures and power balances between licensed administrators and owners in other for-profit facilities, compared to the above example. NYS Nursing Home regulations do not mention "owners" as part of the admissions process. 10 NYCRR § 415.26(i).

[58]10 NYCRR § 415.1(1)(a)(1).

[59]10 NYCRR § 415.1(1)(a)(5)

[60]10 NYCRR § 415.12

[61]10 NYCRR § 415.26(i)(1)(ii)

[62]10 NYCRR § 415.13

[63]10 NYCRR § 415.11(c)

[64]10 NYCRR § 415.3(a)

[65]10 NYCRR § 415.2(f)

[66]42 C.F.R. § 483.1.

[67]42 C.F.R. § 483.24

[68]42 C.F.R. § 483.25 ("Based on the comprehensive assessment of a resident, the facility must ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices…").

[69]42 C.F.R. § 483.10; *See also* 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[70]42 C.F.R. § 483.10; 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[71]42 C.F.R. § 483.12.

[72]42 C.F.R. § 483.25.

[73]42 C.F.R. § 483.20; 42 C.F.R. § 483.21; *See also* 42 C.F.R. § 483.21; 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[74]42 C.F.R. § 483.21; 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[75]42 C.F.R. § 483.24.

[76]ibid.

[77]ibid.

[78]42 C.F.R. § 483.30; 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[79]42 C.F.R. § 483.35; *See also,* 42 U.S.C. § 1395i-3.

[80]42 C.F.R. § 483.60; *See also,* 42 U.S.C. § 1395i-3.

[81]42 C.F.R. § 483.50; 42 C.F.R. § 483.55; *See also* 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[82]42 C.F.R. § 483.40; *See also,* 42 U.S.C. § 1395i-3.

[83]42 C.F.R. § 483.70; *See also,* 42 U.S.C. § 1395i-3.

[84]ibid.

[85]ibid.

[86]42 C.F.R. § 483.75; 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[87]42 C.F.R. § 483.85.

[88]42 C.F.R. § 483.70(e).

[89]42 C.F.R. § 483.73. *See also* 10 NYCRR § 415.26(f).

[90]ibid.

[91]42 C.F.R. § 483.80; *See also* 42 U.S.C. § 1396r; 42 U.S.C. § 1395i-3.

[92]42 C.F.R. § 483.80.

[93]ibid.

[94]Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program, 85 FR 27550-01. The additional requirements include the reporting of COVID-19 information, including deaths, suspected and confirmed infections, PPE supply, ventilator supply; access to testing; and staffing shortages to CDC on at least a weekly basis. The changes also include a requirement for facilities to inform residents and their families each time there has been a confirmed infection of COVID-19, or when three or more residents or staff display newly-onset respiratory symptoms within 72 hours of each other. They must inform residents and their families and representatives of such occurrence by 5pm the next calendar day and must provide cumulative updates at least weekly. 42 C.F.R. § 483.80(g).

[95]42 C.F.R. § 483.70(n).

[96]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34737.

[97]ibid.

[98]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34747, 34746.

[99]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34738, 34745.

[100]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34748, 34745-6.

[101]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34745.

[102]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34749-50. These survey reports are the product of required state surveys of facilities that seek to assess compliance with statutes and regulations that facilities have notice of and are required to follow. Permitting facilities to wait to upload the data onto the CASPER system until a pending dispute resolution process has concluded would deprive residents and consumers of vital information that is accurate and relevant to their healthcare decisions, including which facility to reside in, or entrust a loved one to.

[103]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34740.

[104]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34737, 34740-41.

[105]Medicare and Medicaid Programs, 84 Fed. Reg. 138 at 34738, 34743-4.

[106]*See* Sections VI(A), (B), and (G), and Appendix B, B-1, and B-2.

[107]Patel A, Jernigan DB. Initial Public Health Response and Interim Clinical Guidance for the 2019 Novel Coronavirus Outbreak — United States, December 31, 2019–February 4, 2020. MMWR Morb Mortal Wkly Rep 2020;69:140–146. DOI: cdc.gov/mmwr/volumes/69/wr/mm6905e1.htm

[108]DOH issued new guidance effective September 17, 2020 that permitted nursing homes that have been without COVID-19 infection for at least 14 days to resume limited visitation under restrictions designed to keep residents safe from infections of COVID-19. This was a revision to the 28-day guidelines previously set by CMS, which also issued guidance regarding the 14-day period following any COVID-19 infection in the facility.

[109]The HHS-OIG report was issued on April 3 by Principal Deputy Inspector General of HHS OIG Christi A. Grimm, who was also serving as Acting Inspector General of HHS-OIG at the time. The President reportedly sought to remove Grimm from the latter position after he expressed displeasure on April 6 at the report's findings. On May 26, Acting Inspector General Grimm testified before Congress, emphasizing "the importance of independent oversight from the nation's watchdogs." pbs.org/newshour/politics/watch-live-hhs-watchdog-testifies-on-trump-administrations-response-to-covid-19

[110]For the purpose of this discussion, "related party" means entities controlled by the owners or controlled by other individuals who have family relationships or joint ownership of other business ventures with the facility owners.

[111]Among guidance issued in March, CDC noted that agency staffers, working in multiple location, are higher risk as disease vectors. "Facilities should identify staff that work at multiple facilities (*e.g.,* agency staff, regional or corporate staff, etc.) and actively screen and restrict them appropriately to ensure they do not place individuals in the facility at risk for COVID-19." CDC, *Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes (REVISED)*, March 13, 2020.

[112]In order to enable OAG to investigate the financial transactions, related-party relationships and staffing levels in all of the facilities where insufficient staffing may be a root cause of neglect, MFCU's funding would need to be increased by over 300 percent. Such a budget increase is not one of this report's recommendations. It would be far more efficient to address the identified problem by implementing the recommendations of requiring mandatory, sufficient, defined staffing and supervision levels and more transparency in transactions between nursing homes, related parties and investors.

[113]*See, e.g.,* media reports such as projects.newsday.com/long-island/coronavirus-cold-spring-hills-nursing-home

[114]Such practices also have tax implications.

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

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In the Matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

----------X

63(12) Examination under oath of STEVEN WEISS, taken via WebEx video conference, held on March 16, 2021, commencing at 10:15 a.m.

Reported by

Stefanie Krut

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
Medicaid Fraud Control Unit
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Hauppauge, New York 11788
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Special Assistant Attorney General
PRABHJOT SEKHON,
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Attorneys for Steven Weiss and Fulton Commons Care Center
225 Broadhollow Road, Suite 301E
Melville, New York 11747
BY: DAVID YAFFE, ESQ.

ALSO PRESENT:
Robert Joyce - Investigator,NYS Attorney General
Mary Gail Kowtna - Senior Auditor Investigator, NYS Attorney General
Anne Liptak - Paralegal, NYS Attorney General

S. Weiss

S T E V E N W E I S S, having first been duly affirmed by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. SMITH:

Q. Mr. Weiss, please state your full name for the record.

A. Steven Weiss.

Q. What is your address?

A. My home address.

Q. Correct?

A. [redacted]

Q. And what city and county are you sitting in right now?

A. In [redacted] in [redacted] [redacted].

Q. And are you currently located at home at a work location or somewhere else?

A. At home.

Q. So we are go.

MR. SMITH: Ing to quickly go around in the digital room and introduce everyone get everyone's

appearance for the record, so Mr. Weiss, my name is Benjamin Smith. I am a Special Assistant Attorney General at the New York Attorney General Office, I am based out of the New York City office, and I guess if we can just go around and have everybody introduce themselves, and I will also ask if you can deactivate your camera to save bandwidth, excluding Mr. Yaffe and Mr. Weiss, of course.

MR. ZADEK: So this is Peter Zadek, I am also a Special Assistant Attorney General. I work in the Medicaid Fraud Control Unit out of the Hauppauge Regional Office.

Good morning.

MS. SEKHON: My name is Prabhjot Sekhon, also working out of the Medicaid Fraud Control Unit in Hauppauge, New York.

Good morning.

MR. JOYCE: This is Detective Robert Joyce from the Medicaid Fraud

S. Weiss

Control Unit. I am out of the Hauppauge unit, also.

MS. JOWTNA: I am a Principal Auditor Investigator, also in Hauppauge.

MS. LIPTAK: I am Anne Lipak, paralegal, in our Hauppauge office.

MR. SMITH: And Mr. Yaffe, if you don't mind giving name, firm and address please?

MR. YAFFE: My name is David Yaffe from the firm of Hamburger Maxson Yaffe & McNally, 225 Broadhollow Road, Melville, New York 11747, and I am here on behalf of the witness and upon behalf of the nursing home.

MR. SMITH: Okay, thank you. So Mr. Weiss, we are going to run through some background information, just sort of lay the ground rules for the hearing before we get into questioning, so if you will just bear with me, we are going to run through some basic information for you and sort of lay out

the rules of deposition itself.

So we are conducting, obviously, this examination remotely. This is in order to ensure the health and safety of all the participants due to the coronavirus related concerns at play at this time.

The examination will be recorded by stenographic means by a court reporter, that's Ms. Krut, she is certified to record the examination in the State of New York and any exhibits will be presented electronically to you.

Is Mr. Yaffe your attorney for the purposes of this hearing today?

MR. YAFFE: Yes.

MR. SMITH: So your testimony today is being taken pursuant to a subpoena that was issued by the Attorney General's Office pursuant to which I, Mr. Zadek, and Mrs. Sekhon as Special Assistant Attorneys General are authorized to take proof and make a

determination of the relevant facts in connection of an investigation where the resident care provided by the Fulton Commons Care Center.

Q. So I am now going to show you what will be marked as State's Exhibit 1, and this is a cover letter and a subpoena which was by written consent of your attorney issued and served directly on Mr. Yaffe. Have you seen a copy of this subpoena before?

A. Yes.

(Cover letter and Subpoena was marked as State's Exhibit 1.)

Q. This subpoena required and compelled you to virtually appear for an interview today, correct?

A. That's my understanding.

Q. And do you understand that your virtual appearance here today is pursuant to this subpoena, which we are showing you now which compels you to appear and give testimony?

A. Yes.

Q. And before we begin, I would like to take a quick moment to discuss some of your rights today pursuant to the Fifth amendment of the United States Constitution, as well as the New York State Constitution. You have the right to refuse to answer questions if your truthful answer to that question would tend to incriminate you. Do you understand that?

A. Yes.

Q. Please be aware, however, that should you choose to invoke your Fifth Amendment Right a negative inference can be drawn against you in any future non-criminal proceedings. Do you understand?

A. Yes.

Q. You also have the right to consult an attorney, and sitting here beside you today is Mr. Yaffe. Do you understand that your attorney's firm also represents Fulton Commons Care Center, as well as certain Fulton Commons employees?

A. Yes.

Q. And do you understand that it is

also possible that the interests of Fulton Commons and those certain Fulton Commons employees could not potentially align with yours?

A. I don't understand the question or the statement.

Q. In other words, do you understand that when an attorney represents multiple parties, those individual parties interests could potentially not align?

A. Okay, yes.

Q. And do you understand that you have the right to an attorney who does not also recommend other parties to the investigation?

A. Yes.

Q. With that thought, are you comfortable answering questions in front of an attorney who represents other parties to the investigation?

A. Yes.

Q. And I assume that you still wish to proceed with Mr. Yaffe as your attorney for this hearing; is that correct?

A. Yes, I do.

Q. You took an oath a moment ago to tell the truth, the whole truth and nothing but the truth. Should you intentionally make any false statements during this proceeding today, and by that I mean a statement that you do not believe to be true, you may be prosecuted for perjury, do you understand that?

A. Yes.

Q. I am going to ask you questions today that are relevant to the Attorney General's investigation into general resident care provided by the Fulton Commons Care Center. If I say Fulton Commons or Fulton from here on out today, would you understand I am referring to Fulton Commons Care Center?

A. Yes.

Q. Just a few more ground rules before we begin your questions. As you will see, we have Mrs. Krut who is a court stenographer with us today. She will be recording a written transcript of this

interview, it is, therefore, very important that she hears everything that you say. What that means is that we cannot speak over one another. I also ask that you allow me to finish asking questions before you begin to answer even if you can anticipate what I'm going to ask, even if it's a stupid question, please just let me finish so we can get it on the record, and then you can provide a response.

It's also important to give verbal responses to the my answers, so any nods of the head, shrugs of the shoulder, any hand gestures should be accompanied by verbal response as well.

If you don't understand a question I ask, please let me know, I will do my best to rephrase it for you. If you do answer my question, I will assume you understood it as asked. Along those same lines, if you need to take a break at any time, please just let me know, that can be for restroom, refreshments, or anything else. You can also consult your attorney at

any time, just let us know if you need one of those sorts of breaks and we will take the time.

One thing I do ask is if we have a pending question if you do think you need to take a break, finish that question and we will take a break after that question is finished. Do you understand the instructions so far?

A. Yes.

Q. At times today there may be a time when you give an answer as fully as you can recall, give a complete answer as completely as you can, however, if over the course of the day you remember something directly differently or your recollection of that events changes you can, of course, alert me to that fact and we can go back and address that issue. So in other words, if you give an answer this morning and by the afternoon you realize that was maybe not entirely accurate, just let me know and we will go back and revisit that.

Very important item is that this

proceeding is confidential. This investigation is confidential. Along those lines, neither you or your attorney Mr. Yaffe are entitled to a copy of the transcript of today's testimony or any exhibits that we will show you today. Do you understand that?

A. Yes.

Q. In addition, because this is a confidential proceeding there shall be no recordings made of your testimony, although Webex does offer recording capabilities, I give you my assurance that this examination is not being recorded by the Attorney General's Office via WebEx platform /do you agree on your end not to record this examination in any way?

A. Yes, I agree.

Q. And similarly, due to the confidentiality of this proceeding, we request that you do not discuss this matter, your testimony here today, other any documents that you may be shown today in connection with today's testimony with

anyone aside from your attorney. Does that make sense?

A. Okay.

Q. Okay. And further, unless we are on a break, there should be no private communication with anyone, that includes no phone calls, passing of notes or any means that may not be visible on camera. Does that make sense?

A. Yes. May I ask, I have a piece of paper and pens in front of me, can I take notes?

MR. YAFFE: I would advise you not to do that because any notes you take, the Attorney General can request, and I would advise you not to take notes.

A. There goes that. I just put away my paper.

MR. SMITH: Okay, that solves that.

Q. And one final sort of just logistical issues, we just ask that you mute your phone turn off, any other device that

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may beep or bing or make a sound during the hearing. Does that make sense?

A. Okay.

Q. Okay.

MR. YAFFE: May I just make a request, assuming you are done with your introductory comments.

MR. SMITH: Sure, go ahead.

MR. YAFFE: I attended a prior deposition or hearing or however you characterize these which was conducted by some of your colleagues who are on this Zoom or this virtual meeting today, and in the course of those proceedings a number of exhibits were shown to the witness in that matter, and it was my observation that documents were shown very quickly scrolled very quickly and the witness, my observation had difficulty following because of the speed rapidity with which documents were plastered across the screen, so I would ask you to please keep in mind the fact that this

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is a virtual deposition, the witness does not have any of these documents in front of them. He does not have the ability to peruse them, so please keep that in mind as documents are presented.

MR. SMITH: Okay. Duly noted, counsel.

Q. Mr. Weiss, to that end, if we will, obviously, try to go slowly through documents, make sure you understand them and recognize them, but to that end, if you do feel we are moving quickly, please just let us know. We are not going to show you hundreds of pages of long document and ask you to summarize them by looking at one page, but that will rely on you so we are relying on you to let us no know if it's going too quickly or you don't understand the document, okay?

A. Okay.

Q. So Mr. Weiss, have you taken any drugs or alcohol within the past 24 hours that could potentially impair or impact your

ability to testify here today truthfully and to the best of your knowledge?

A. No.

Q. Are you aware at this time of any physical mental disability or defect that may interfere with your ability to understand my questions or to respond completely and truthfully?

A. No.

Q. Before you appeared for today's testimony, did you speak with any current or former Fulton employees about today's hearing?

A. Yes.

Q. And who were they?

A. Kathy Doyle.

Q. Did you speak with anyone else aside from Kathy Doyle about today's testimony?

A. Yes.

Q. Okay, so we will just start with Kathy Doyle. What was the nature and substance of your conversation with Kathy Doyle about today's testimony?

A. Just mentioned that I have a deposition today and nothing else. She told me we can't discuss anything further so we didn't.

Q. When did that interaction occur?

A. A couple of weeks ago. Don't remember. I don't recall, exactly.

Q. Would you say that it was in February or March?

A. I don't recall.

Q. Was it around the time you became aware of receiving a subpoena or something else?

A. Yes.

Q. And did you reach out to Mrs. Doyle or did she reach out to you?

A. I don't recall.

Q. Was it in an in-person conversation, over the phone or something else?

A. Over the phone.

Q. So you stated that you alerted Mrs. Doyle to the fact that you had been subpoenaed, correct?

A. Yes, we talk often about all sorts of things. I just happened to mention in passing that I will be taking the deposition.

Q. And what was her response, to the best of your recollection, to that statement?

A. Just said okay, I can't discuss it further, and I said great, no more discussion.

Q. And is that the only time you have spoken to Mrs. Doyle about today's testimony?

A. Yes.

Q. And you mentioned, I believe, that you had spoken to other Fulton employees. Who were those individuals?

A. I didn't say Fulton employees, I think you asked me other individuals.

Q. Okay. So other individuals aside from Kathy Doyle, who else did you discuss the subpoena with?

A. My attorney, David Yaffe.

Q. And aside from Mr. Yaffe, and

this is probably a good time to bring this up, I will absolutely try to avoid asking you questions that would get into the zone of asking you about conversations you had with Mr. Yaffe, you are absolutely not required to answer questions that would get into discussions you had with your attorney, so I am not asking about that. Aside from conversations with Mr. Yaffe, did you discuss your subpoena with anyone else?

A. Yes.

Q. And who was that?

A. Mr. Kalter.

Q. And when did you speak to Mr. Kalter about the subpoena?

A. Approximately the time that I received the subpoena.

Q. And tell me, to your best recollection, what that conversation entailed?

A. That I received a subpoena and that David Yaffe is going to be representing us and that was the end of the conversation.

Q. Okay, at that time had Mr. Yaffe

already been retained to represent you?

A. I don't recall, exactly.

Q. Did Mr. Kalter inform you that Mr. Yaffe would be representing you or something else?

A. No.

Q. So expand on that for me. Did you already know Mr. Yaffe was going to be representing you?

A. Mr. Yaffe has been representing us in the past, he represents Kathy Doyle, so when I got the subpoena as well, actually I think I was informed about the subpoena from David Yaffe, and so we just continued our relationship.

Q. Okay, so the conversation with Mr. Kalter happened after you had already spoken with Mr. Yaffe about the subpoena?

A. I believe so.

Q. Do you remember the details of your conversation with Mr. Kalter?

A. There were no details, just mentioning that we have a deposition.

Q. Did you discuss what the

deposition could be about or what it could involve?

A. No.

Q. Any other conversations aside from that conversation with Mr. Kalter about the subpoena?

A. No.

Q. And did you discuss the subpoena with anybody else that we haven't talked about yesterday?

A. Let me just backtrack that last question. Obviously, I speak to Mr. Kalter all the time so I had to remind him a few times that today I will not be available to speak to him, my phone will be off, my e-mail will be off, so I will not be able to communicate with Mr. Kalter today.

Q. So aside from logistics conversations about the subpoena and today's hearing with Mr. Kalter, did you ever discuss the substance of today's testimony, what the potential substance of today's testimony could be.

A. No.

Q. So aside from the individuals we have discussed, and I believe that was Mrs. Doyle and Mr. Kalter, did you discuss today's hearing or the subpoena with anyone else?

A. No.

Q. Did you review any documents in preparation for today's hearing?

A. No.

Q. Have you ever testified under oath before?

A. Yes.

Q. In what context?

A. Once as related to some PRI audit a couple of years ago, and once in related to an insurance claim unrelated to this business.

Q. So let's start with the PRI audit, just give me background on that to the extent you can recall.

A. I don't recall anything about it.

Q. But it's fair to say or understand that you appeared at a deposition and testified under oath in the context of

that audit?

A. Correct.

Q. Was that a litigation or just an audit?

A. I don't -- I don't know the actual details of that, I don't know.

Q. And the second item that we discussed, am I correct in understanding that was an insurance claim, you said?

A. Correct.

Q. And give me more background on that to the extent you can recall.

A. There was a -- we had an insurance claim and, again, nothing to do with the nursing home. Insurance claim on a fire and they asked me all sorts of questions about who owns the house and the sort.

Q. So am I correct in understanding this is a personal matter about your personal residence or something else?

A. No, a business. A business.

Q. But it did not involve any of the nursing homes that you work for?

A. Correct.

Q. The first item, the audit, did that involve any of the nursing homes that you work for?

A. Yes.

Q. Did it involve one or more nursing homes?

A. I honestly don't recall.

Q. In the audit itself, can you recall what year that was?

A. No, I do not. I can't.

Q. Was it more than 10 years ago, you think?

A. Perhaps around 10 years.

Q. And the insurance claim, was that more than 10 years ago or less?

A. Less.

Q. Within the last five years?

A. Yes.

Q. So aside from those two depositions you have been that you provided, have you ever testified under oath in any other context?

A. Not that I can recall.

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Q. Have you ever been involved in a lawsuit or local proceeding aside from the two items that we just discussed.

A. Not that I can recall.

Q. Have you ever been a named party in a litigation or lawsuit?

A. Not that I can recall.

Q. Have you ever testified as a fact witness in a litigation or lawsuit?

A. Not that I can recall.

Q. What is your cell phone number?

A. [redacted].

Q. And who is the carrier for that number?

A. Verizon Wireless.

Q. How long have you used that number or had that number?

A. I don't know.

Q. Has it been more than 10 years or less?

A. More than 10 years.

Q. And is your name on the account for that cell phone number?

A. No.

Q. Whose name is?

A. New Bridge View Company.

Q. So it's fair to say that's a work cell phone number?

A. Correct.

Q. Do you have any other cell phone numbers?

A. No.

Q. So I'm correct in understanding you maintain one cell phone or use one cell phone and it's one we just discussed?

A. Correct.

Q. Has that been true for the last five or so years or more?

A. Yes.

Q. So I want to ask you some questions just about your background in general, so we will start with your education. Did you go to college?

A. Yes.

Q. When and where?

A. I went to Touro College, I graduated, I believe, in June of '94.

Q. And what degree did you obtain at

Touro?

A. Business management.

Q. Did you do any additional schooling after that?

A. Yes.

Q. Describe that for me.

A. I took a few courses on graduate degree level at CW Post LIU.

Q. And when was that?

A. I don't recall, exactly.

Q. But after Touro, of course?

A. Yes.

Q. Did you obtain degrees in that coursework?

A. No.

Q. Any certifications?

A. I think it's -- no, I don't think it's called a certification.

Q. Was it something else, was it a professional certificate or some other sort of license or something along those lines that you obtained?

A. Not directly as a result of those courses, but I had to take those courses in

order to get a license.

Q. And what kind of license are you referring to?

A. Excuse me, I'm sorry, I didn't hear you.

Q. No, you're fine. What license are you referring to?

A. Administrative license.

Q. And is that a nursing home administrator's license?

A. Yes.

Q. When did you begin that nursing home administrator's license?

A. I don't recall, exactly.

Q. Has it been more than five years?

A. Yes.

Q. More than 10 years?

A. Yes.

Q. More than 15 years?

A. Probably around there.

Q. Where did you obtain your nursing home administrator's license?

A. By New York State, I'm not sure exactly which department it's called.

Q. Any other licenses or certifications that we haven't discussed?

A. Yes. I am a notary.

Q. Aside from that, any other certifications or licenses?

A. No.

Q. So specific to your nursing home administrator's license, has any disciplinary action ever been taken against that license?

A. No.

Q. Has it been limited in any way or abridged in any way?

A. No.

Q. Do you do any teaching or lecturing?

A. No.

Q. Have you ever testified as an expert in a legal proceeding?

A. No.

Q. We will, of course, get into your work for the different companies that you work for, but aside from those companies, do you do any consulting, so let's say

consulting outside of the nursing home industry?

A. No.

Q. And aside from the companies that we will discuss later that you worked for some time, what about consulting within the nursing home industry?

A. No.

Q. Have you always worked in the long-term care industry?

A. Mostly, no. No.

Q. So what other positions or jobs have you held that were outside of the long-term health care industry?

A. I worked for a couple of months out of school at a family business.

Q. Is this right after graduating undergraduate?

A. Yes.

Q. What kind of business was that?

A. It's an insurance examination, examining business.

Q. And I am I correct in understanding it was owned by a family

member?

A. Yes.

Q. Who was that?

A. My father.

Q. How long were you there?

A. Approximately, two months.

Q. And then from there where did you go?

A. My next job was this current position I'm in.

Q. And so what brought you to the long-term care industry, what led to that shift?

A. I don't recall, honestly. Just looking for a job.

Q. Were you asked to take that job or were you looking for that job or how did that move end up transpiring?

A. I was looking for something that would sustain me long-term.

Q. Is it fair to understand were you looking for a career change or just sort of a better paying job?

A. Both. I was just starting out in

life, I was 21 years-old out of college and I was just temporarily working at a family business, but that was never going to be my calling.

Q. And who do you work for now?

A. Moshe Kalter.

Q. And is there a corporate entity or business that you work for?

A. Yes.

Q. And what else that called?

A. New Bridge View Company.

Q. And New Bridge View, correct me if I'm understanding, New Bridge View is the job you came to from your father's business, correct?

A. Correct.

Q. How did you get that job at New Bridge View, who hired you?

A. Mr. Kalter.

Q. And who is Mr. Kalter?

A. He is the owner of the company.

Q. Do you have a family connection to Mr. Kalter?

A. Yes, I do.

Q. Who is he in your family?

A. Mr. Kalter is my uncle.

Q. When you very first started at New Bridge View, what was your title?

A. I don't believe I was given a title.

Q. Do you remember what kind of tasks you were given or what kind of work you did?

A. Yes.

Q. Describe that for me.

A. I was a payroll clerk, I guess you would describe me as.

Q. And obviously, it's fair to assume that when you took the New Bridge View job you resigned or gave up your job at your father's company, correct?

A. Yes.

Q. When you very first joined New Bridge View, what was your salary at that time?

A. I don't recall.

Q. And I'm assuming that salary has changed over time, correct?

A. Yes.

Q. What is your current salary at New Bridge View?

A. I don't know, honestly. Don't know.

Q. Are you paid biweekly, weekly, monthly or something else?

A. Weekly.

Q. Do you recall your weekly pay?

A. My net pay I recall.

Q. Sure, your net pay, that's good?

A. Approximately $2,100.

Q. So that's $2,100 per week?

A. Approximately.

Q. And that's paid out by New Bridge View?

A. Yes.

Q. Do you recall receive any bonus or any incentives or performance-related compensation from New Bridge View?

A. No.

Q. Do you get any fringe benefits?

A. Yes.

Q. I know we discussed the cell

phone, I'm assuming does New Bridge View cover the cost of your cell phone?

A. Yes.

Q. Any other fringe benefits aside from that?

A. Yes.

Q. Describe those for me.

A. I get medical insurance coverage, I have use of a car.

Q. So a work vehicle?

A. Yes.

Q. How long has that been the case?

A. The work vehicle?

Q. Correct.

A. Approximately, 10 years. I'm not a hundred percent sure of the timeframe.

Q. Were you provided the work vehicle upon obtaining a certain position at New Bridge View or something else?

A. No.

Q. So just so I'm clear, you were given the vehicle, did you achieve a certain status in the company when you got the vehicle or something else?

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A. It was no particular event that happened.

Q. So aside from the vehicle, the work phone and, obviously, your health benefits, are there any other fringe benefits you receive from New Bridge View?

A. Not that I'm aware of, no.

Q. What is your technical employment status at the company, are you an independent contractor like a 1099 employee or a W-2 employee?

A. W-2 employee.

Q. Is that the typical payment arrangements in your experience in the industry for individuals in similar positions as yourself?

A. I wouldn't know the rest of the industry.

Q. So aside from your position at New Bridge View, do you currently have any other bills or professional affiliations?

A. No.

Q. Do you hold any positions at any other nursing homes aside from New Bridge

View?

A. No.

Q. What is your title at New Bridge View, again?

A. Comptroller.

Q. Are you comptroller for any other facility in the area?

A. Just this group.

Q. And by this group, expand on that for me.

A. Mr. Kalter owns four nursing homes, so I'm -- we run the business out of one facility and I am the comptroller of that facility.

Q. So let's explore that a little bit, so the group of homes that Mr. Kalter owns, can you name these for me?

A. Yes. Bridge View Nursing Home, Midway Nursing Home, Mayfair Care Center and Fulton Commons Care Center.

Q. And Mr. Kalter is owner at least in part in all four of those facilities, correct?

A. Yes. Excuse me, m I take a

drink, is that allowed while I --

Q. Yes, please.

A. Okay.

MR. SMITH: I don't know what Mr. Yaffe told you but we will allow to you to hydrate, we will not limit your intake of water or bathroom breaks, this is not a torture session.

THE WITNESS: I appreciate that.

Q. So let's explore those homes a homes a little bit. So you said your title is the same at each facility, correct?

A. Yes.

Q. So you are comptroller at Fulton, Midway, Bridge View and Mayfair, correct?

A. Yes.

Q. Are you paid separately by each facility or do you receive one paycheck for all your work at all those facility?

A. I receive one paycheck.

Q. Does that paycheck come from New Bridge View?

A. Correct.

Q. Do you receive any separate bonus

or incentives or fringe benefits for any of those other homes?

A. No.

Q. Do you hold a position or title at any management or consulting companies?

A. Not that I -- no, no.

Q. Have you ever held a title or position at a management or consulting company?

A. No.

Q. Do you have an ownership stake in any companies?

A. Yes.

Q. Describe those for me.

A. Completely unrelated business.

Q. We'll explore that in a little bit of detail. When you say completely unrelated business, what are you referring to.

A. The business that my father used to own.

Q. And this is the insurance business we discussed?

A. Correct.

Q. What is the nature of your ownership stake in that company?

A. I'm not sure what you mean by ownership, what the name is?

Q. Is it fair to assume you just own shares in that company or some percentage of the company itself?

A. Right, I own shares of the company, it's a small family business.

Q. Aside from your ownership in that company, is there any other ownership interest that you maintain at any other companies?

A. No.

Q. Are you familiar with the facility called River Valley Care Center?

A. I'm sorry, excuse me?

Q. Are you familiar with a facility called River Valley Care Center?

A. Yes.

Q. What is that?

A. That's a nursing home that Mr. Kalter used to own and has since been leased out to a different operator, so Mr. Kalter

does not operate that anymore.

Q. Did you used to work at River Valley?

A. Yes, it was one at that time instead of being four facilities we were five facilities.

Q. And in what capacity did you work at River Valley?

A. Comptroller.

Q. Do you recall when you served as Comptroller at River Valley?

A. Whatever timeframe Mr. Kalter owned it, I don't know exactly what that timeframe was.

Q. When did this association with Mr. Kalter' other homes end, do you recall?

A. I'm sorry?

Q. Do you recall when River Valley left the group that Mr. Kalter owns?

A. I don't remember, exactly.

Q. Would it be more than five years ago?

A. I don't know, I don't recall, exactly.

Q. Do you remember the context of River Valley leaving the group that Mr. Kalter's homes?

A. I'm not sure what you mean by could be context.

Q. Why was River Valley no longer one of the homes operated by Mr. Kalter?

A. I don't know, I don't get. I am not involved in that.

Q. From your understanding, did Mr. Kalter own part of River Valley or something else?

A. Yes, he owned part of River Valley.

Q. And was it your understanding that he sold that or does he still maintain that?

A. He still maintains the ownership.

Q. But you said he leased it out to a different operator; is that correct?

A. Yes.

Q. And when we say lease it out to a different operator, Mr. Kalter still owns a portion of River Valley but he is just

allowing someone else to operate the facility in his place; is that correct?

A. I'm not sure of the technical details of how that works technically.

Q. But is it your understanding that Mr. Kalter is not involved in the day-to-day operation of River Valley at this time?

A. Yes.

Q. And does the same apply to you, do you do any work for River Valley?

A. No.

Q. Do you know Kathy Doyle?

A. I didn't hear that, I'm sorry.

Q. Do you know Kathy Doyle?

A. Yes.

Q. And who is she?

A. She is the administrator at Fulton Commons Care Center.

Q. Did you hire her?

A. Yes.

Q. Describe for me the context of her hiring, timing, why you hired her, those sorts of things.

A. I don't remember in terms of

timing, I don't remember. It's been a few years. Context, her predecessor was retiring and we were looking for a replacement and Kathy Doyle got the job.

Q. So am I correct in understanding that she was hired into the administrator position directly?

A. Yes.

Q. Describe your relationship, your working relationship with Kathy Doyle.

A. I call her from time to time to see what's doing.

Q. Do you call her every day or a couple of times a week or something else?

A. I would say it's almost every day.

Q. So has that changed over time like during the pandemic months was there more common contact with Mrs. Doyle or less time in contact?

A. I would say no noticeable difference.

Q. So during the months of, say, March 2020 through June 2020, your

interactions with Mrs. Doyle remained pretty consistent?

A. Yes.

Q. What is your, aside from just regular contact, how would you describe your working relationship with Mrs. Doyle?

A. I'm not sure. Could you rephrase that, please?

Q. Sure. Do you find that you have a close working relationship with her, is it an easy relationship or something else?

A. I think we have a very good relationship.

Q. Has that been consistent since she joined Fulton Commons?

A. From my perspective, yes.

Q. Would you say that you supervise Mrs. Doyle?

A. No.

Q. Describe the nature of the relationship as far as that goes the hierarchy of Fulton Commons, where does Mrs. Doyle sit relative to you?

A. Well, Mrs. Doyle is

administrator at Fulton Commons, and she is in charge, she is the boss. Where I fit in is, I would be, I guess the proper would word would be liaison between the administrator and the owner.

Q. So you would not describe yourself as Mrs. Doyle's boss?

A. No. Well, excuse me, one second, in the sense I did hire -- I did hire the administrator, but on a day-to-day as far as boss, no, I would not describe -- I would not describe it like me.

Q. When you do meet or talk with Mrs. Doyle, what is the most common method of carrying out those communications, is it by phone, text or e-mail?

A. I would say a it's a combination of the three.

Q. Is there one more common than the others?

A. I wouldn't know exactly. I never studied that.

Q. Would you say you talk to her on the phone every day?

A. I would say almost every day, I think.

Q. Do you meet in person ever?

A. Ever? Yes.

Q. How often would you say you meet in person?

A. Not often at all, I don't think I've met her at least in three years.

Q. So am I correct in understanding that was not affected by the pandemic?

A. No.

Q. How would you describe the chain of command at Fulton?

A. I'm not sure what you mean by that question.

Q. So the hierarchy of Fulton, sort of who runs it, who's responsible for what function. What is your understanding of that aspect of things at Fulton Commons?

A. You would really have to discuss that with Mrs. Doyle, she is the administrator or she is the boss. I don't know who reports to her and who she works with over there.

Q. How would you define your place in that chain of command?

A. I wouldn't even put myself in the chain of command, I would just give some information to the owner, as I stated before.

Q. So would you describe yourself as being involved in the day-to-day decision making at Fulton Commons?

A. No.

Q. Are you ever asked to make decisions for Fulton Commons?

A. From time to time she would brainstorm with me about some things.

Q. What kind of things would she brainstorm with you?

A. She ran just random ideas and but ultimately, you know, whatever decision is, it's her decision.

Q. Would she present, say, two options to you and would you ever be responsible for choosing between those two options?

A. No.

Q. Did you make final decisions or determinations for Fulton Commons?

A. No.

Q. If you made a recommendation about something at Fulton Commons, could you be overruled by a Fulton Commons employee?

A. Sure, yes.

Q. In other words, could Mrs. Doyle overrule a recommendation by you?

A. Yes.

Q. Could anyone else at Fulton Commons like the director of nursing or medical director overrule a recommendation from you?

A. I wouldn't have gone that direction, I don't speak with them, that wouldn't happen.

Q. Who is Bruce Zarett?

A. Bruce Zarett, oh, he was an administrator at Fulton Commons at some point.

MR. SMITH: I will spell that for the record, Z-a-r-e-t-t.

Q. Is that correct?

S. Weiss

A. I don't know.

Q. When was he administrator at Fulton?

A. I don't know. I don't remember.

Q. Would it be within the last five years or longer?

A. I really don't remember.

Q. Do you recall why he was let go or why he left Fulton?

A. I don't remember.

MR. YAFFE: Objection. How is this -- this seems far afield of your investigation. Is Mr. Zarett involved in some aspect of your investigation, a prior administrator?

MR. SMITH: Well, Mr. Yaffe, that's something I wouldn't provide to either you or Mr. Weiss.

MR. YAFFE: Obviously, but my point is, I don't see how this has any relevance whatsoever to your investigation period.

MR. SMITH: Your objection is noted. I don't think that's an

objection that is going to keep the witness from answering.

Q. So Mr. Weiss, we will return to this. Do you recall why Mr. Zarett was let go or why he left Fulton Commons as administrator?

A. No.

Q. Do you recall who made that decision?

A. I don't remember.

Q. Do you recall being consulted on that decision at all?

A. I don't remember.

Q. And who is Patrick Russell?

A. He was an administrator at Fulton Commons at some point.

Q. Did he precede Mr. Zarett or was he administrator after Mr. Zarett?

A. I don't even remember.

Q. Do you remember why he left Fulton Commons?

A. I don't remember.

MR. YAFFE: Same objections.

Q. You can answer, Mr. Weiss.

A. I don't remember.

Q. Were you involved in that decision or consulted in that decision?

A. I don't remember.

Q. So Mr. Weiss, is there a governing body at Fulton Commons?

A. I'm not sure what you mean. What is a governing body?

Q. Is there a collection of individuals at Fulton Commons who are responsible for making larger scale decisions involved in the running of Fulton Commons?

A. What do you mean by larger scale decisions?

Q. So is there a collection of individuals at Fulton Commons who makes decisions about the direction of the facility, whether the facility is, you know, achieving standards, satisfying requirements, state and federal requirements, are you aware of a body at Fulton Commons responsible for ensuring these things?

A. No.

Q. So it's safe to assume you were not involved in the governing body at Fulton Commons?

A. No.

MR. YAFFE: Objection. He didn't say that there was one. Look, I'm largely quiet here, but don't put words in the witness's mouth. He did not say there was a governing body, and now you're implying that there is and putting words in his mouth about there being one.

MR. SMITH: Well, I think, counsel, it's safe to assume if there is not a governing body then he would not be a part of it, so I don't think I'm testifying or supplying statements to the witness but we can come at it a different way.

Q. Mr. Weiss, are you aware of something called a governing body existing at Fulton Commons?

A. No.

Q. So I am safe in understanding you would not be a part of it if it did exist?

A. No, I am not aware of it.

Q. Do you know Olaf Butchma?

A. I have heard his name.

Q. Do you know who he is?

A. I think so.

Q. What is your understanding of the role Mr. Butchma or Dr. Butchma?

A. I believe he is the medical director at Fulton Commons or was.

Q. Is it your understanding that he no longer serves as the medical director at Fulton Commons?

A. I don't know.

Q. Did you hire Dr. Butchma?

A. No.

Q. Did you play any role in hiring him, deciding to hiring him, choosing him?

A. No.

Q. Am I safe in understanding that you don't deal with Dr. Butchma regularly?

A. Correct.

Q. Do you ever communicate with him?

A. Never. To the best of my knowledge, never.

Q. Do you recall any communication with him?

A. I don't.

Q. Who is the infection preventionist at Fulton Commons?

A. I don't know.

Q. Did you play any role in hiring an infection preventionist at Fulton Commons?

A. To the best of my knowledge, no.

Q. Do you know or understand what an infection preventionist would do at a long-term care facility?

A. No.

Q. Do you interact with the infection preventionist at Fulton Commons at all?

A. No, I don't even know who that is or if there is one.

Q. How many beds does Fulton Commons have?

A. What do you mean by that?

Q. Just the total bed count of the facility.

A. Two certified beds, 280.

Q. How many units at that facility?

A. I believe there are eight. I don't know.

Q. That's fine, and again, I don't think I mentioned this at the top, we don't want you to guess, so if you are not sure, it's perfectly fine just to tell me that, that you do not know, so you do not need to guess on any of these questions.

Along those lines, and this is to your knowledge, pre pandemic, how many residents would Fulton Commons have at any time given time, what would the census at Fulton be?

A. I don't know.

Q. Were you involved in discussions about census or census changes at any time?

A. Yes.

Q. Describe those interactions for me or discussions.

A. Every day I get the census sent

to me, how many vacancies they have in the morning and in the evening how many, you know, admissions and or discharges they got that day.

Q. So it's fair to understand you receive regular updates on census status at Fulton?

A. Yes.

Q. Go ahead.

A. I'm sorry, I meant to wait until the end of your question and I meant to say yes.

Q. No worries, my apologies there. Who sent those census updates to you?

A. Either admissions coordinator or the administrator.

Q. Who is the admissions coordinator at Fulton?

A. I don't recall.

Q. When they would provide the census update to you, is that by text message, e-mail, phone or something else?

A. Either text message and or e-mail.

Q. And am I correct in understanding you would get those updates at least twice a day?

A. That's what I ask for, yes, it doesn't happen every day like that, but that's what I ask for.

Q. And what would you do when you received those census updates?

A. I would mark it on my list.

Q. And how did those updates inform your decision-making?

A. It didn't.

Q. So am I correct in understanding that was just sort of you keeping record just to understand where the facility was or something else?

A. No, yeah, just want to know where we're going, where we're headed.

Q. Did you maintain any sort of schedule at Fulton Commons, did you come to Fulton Commons, the physical place or something else?

A. No.

Q. Would you ever go to Fulton

Commons?

A. Can you please rephrase that question.

Q. Sure. Would there ever be a time when you would work out of Fulton Commons?

A. No.

Q. So am I correct in understanding you did not have an office space at Fulton Commons?

A. Correct.

Q. Do you maintain your office space somewhere else?

A. Yes.

Q. Where is that?

A. When, what timeframe are you referring to?

Q. Let's just use the 2020 period, so we will say January 2020 to December 2020.

A. Okay. So I was in Bridge View until the pandemic started.

Q. And then when the pandemic started, did you relocate to a different location?

A. Yes.

Q. Where is that?

A. My home office.

Q. So you were remote working once the pandemic started?

A. Yes.

Q. Are you still remote working or has that changed?

A. No. I'm still remote working.

Q. Do you ever go into the office or are you doing 100 percent of your work from home?

A. One hundred percent from home.

Q. So let's use that period of time before the pandemic started and before you went to remote work, would 100 percent of your work be completed at Bridge View?

A. Yes.

Q. So even though you operated your office out of Bridge View, would you make site visits to the various homes?

A. Extremely rare.

Q. And by extremely rare, what do you mean that, what kind of number could you

put on that?

A. Less than once a year, less than twice a year perhaps. Excuse me, let me correct that. Less than once a year or less than once in two years.

Q. Is that consistent across all the four facilities?

A. Yes, more or less. Well, except Bridge View, which I was there every day.

Q. But at Mayfair, Midway, Fulton Commons, you were visiting once every year or once every two years?

A. If -- yeah, perhaps. Not more frequently.

Q. Understood. Does Fulton, as far as you know, utilize any consulting or management agencies?

A. I don't know.

Q. Are you familiar with an entity called the Fulton Commons Management Company or Fulton Commons Management Inc.?

A. Fulton Commons Management Company, yes.

Q. That's familiar to you?

A. Yes.

Q. What is your understanding of what Fulton Commons Management Company does?

A. I really don't know.

Q. Do you deal with them at all?

A. No.

Q. Do you understand who owns Fulton Commons Management Company?

A. No. I think so.

Q. What is your understanding of the ownership?

A. The same ownership as Fulton Commons Care Center.

Q. Does Fulton Commons Care Center pay Fulton Commons Management Company for services?

A. I don't believe so.

Q. From your position as comptroller, what services do you understand Fulton Commons Management Company to provide to Fulton Commons Care Center?

A. I don't -- I don't know.

Q. So aside from Fulton Commons Management Company, are there any other

consulting or management agencies that provide services to Fulton Commons that you're aware of?

A. A related entity called the New Bridge View Fulton Commons Company.

Q. What is the New Bridge View Fulton Commons Company?

A. The company that all the employees work for and all the purchasing gets done through.

Q. And when you say all the employees, is that Fulton Commons nursing staff, clinical staff, administrative staff?

A. All the W-2 employees.

Q. So every W-2 employee of Fulton Commons Care Center is paid by New Fulton Commons?

A. That's correct.

Q. And what other services does New Fulton Commons provide to Fulton Commons Care Center aside from maintaining payroll?

A. And doing the purchasing form whatever their they need.

Q. So New Fulton Commons completes

procurement and contracts on behalf of Fulton Commons Care Center?

A. Yes.

Q. Do you know who operates New Fulton Commons?

A. What do you mean by operates?

Q. Is there an individual or entity that runs New Fulton Commons?

A. That would be my office.

Q. Your office is the operational part of New Fulton Commons?

A. The business office, yes, the business office of the four nursing homes is partially New Fulton Commons.

Q. As far as you understand it, is New Fulton Commons a separate business organization or entity unto itself?

A. It's a legal separate entity, yes.

Q. Do you know who owns New Fulton Commons?

A. Yes.

Q. Who is that?

A. Moshe Kalter.

S. Weiss

Q. Does anyone else?

A. Yes.

Q. Who else is involved?

A. Frady Kalter.

Q. And aside from Mr. And Mrs. Kalter, anyone else?

A. No.

Q. Does Fulton Commons Care Center pay New Fulton Commons for these services?

A. I'm not sure how that works.

Q. And are you involved at all in the ownership aspect of New Fulton Commons?

A. No.

Q. And I'm correct in understanding you do not receive a paycheck from New Fulton Commons, correct?

A. Correct.

Q. So aside from New Fulton Commons and Fulton Commons Management Company, does Fulton Commons Care Center utilize the services of any other management or consulting services that you know of?

A. Not that I know of.

Q. I know we have discussed the

Kalter a bit, I would like to explore that in a bit more detail, so just for clarity of the record, who are the owners of Fulton Commons from your understanding?

A. Of which entity are you asking?

Q. Fulton Commons Care Center.

A. Moshe Kalter, Frady Kalter, Aaron Fogel and Esther Fogel.

Q. And let's start with Moshe Kalter, what percentage of Fulton Commons ownership does Mr. Kalter maintain?

A. Fifty percent.

Q. And is he your primary contact?

A. Yes.

Q. And by that I mean the carrying out of your professional obligations, he is your primary contact?

A. Yes.

Q. Is Mr. Kalter closely involved in the operation of Fulton Commons Care Center?

A. No.

Q. Describe for me the extent of his involvement in the operations of Fulton Commons Care Center.

A. I don't know how to describe that. What do you mean by that?

Q. So do you talk to him every day or once a week or once a month, how involved is he in your work for Fulton Commons?

A. I talk to him every day to give him a census.

Q. So you provide the census to him. Do you discuss the census with him?

A. Briefly.

Q. What kind of things would you discuss with him specific to the census?

A. Just how many vacancies we have.

Q. Aside from discussions about the census, would you discuss any other aspects of the operation of Fulton Commons with Mr. Kalter?

A. No.

Q. So am I'm correct in understanding that your discussions with Mr. Kalter specific to the day-to-day operations of Fulton Commons are specific to the census?

A. Correct.

Q. And just for my clarity, correct me if I'm wrong, do you speak to Mr. Kalter daily?

A. Yes.

Q. And what is your most common form of contact with Mr. Kalter, is that phone, text, e-mail, something else?

A. All the above.

Q. Of those of phone, texts and e-mail, what is your primary mode of contact with Mr. Kalter?

A. Phone.

Q. How often would you say that you text with Mr. Kalter?

A. A couple of times a day.

Q. What about e-mailing, is that a consistent mode of contact with Mr. Kalter?

A. Yes.

Q. Do you use any messaging services like What's Ap or Telegraph?

A. Not with Mr. Kalter.

Q. Do you use those sorts of messaging services with any other employees of Fulton Commons or New Fulton Commons?

A. Not to the best of my knowledge.

Q. When you communicate with Mr. Kalter by phone, do you use the telephone number we just talked about earlier today?

A. Yes.

Q. And what e-mail address do you use when you interact with Mr. Kalter?

A. My e-mail address?

Q. What is the e-mail address that you e-mail him from, correct.

A. [redacted].

RQ:

MR. SMITH: So Mr. Yaffe, we will follow up on this front but I am going to now on the record just ask that you ensure that your client preserves any messages between himself and Mr. Kalter. I will relay the same request to you, Mr. Weiss, just preserve any e-mail messages and text messages between yourself and Mr. Kalter.

We will follow up for production of those later, but just we ask that you do not delete, destroy or alter any

communications preserved in e-mail or text messages between you and Mr. Kalter. Does that make sense?

THE WITNESS: Okay.

MR. YAFFE: This instruction is as of today. Was there a prior instruction in this regard?

MR. SMITH: There have been requests for production of documents in the past that would have potentially applied to some of these things we have been discussing, but we will just go ahead and do a blanket sort of preservation request now for maybe other items that haven't been caught up in those prior requests.

MR. YAFFE: So please just put those in writing exactly what your request is.

MR. SMITH: We will indeed.

MR. YAFFE: Thank you.

MR. SMITH: No worries.

Q. So Mr. Weiss, did the frequency of your contact with Mr. Kalter change at

all over the course of the pandemic?

A. No.

Q. How involved is Mr. Kalter in the other facilities, including Midway, Mayfair and Bridge View?

A. Similar to Fulton Commons.

Q. So would I be correct in understanding that most of his interactions with you in regards to those other facilities is keeping up-to-date on census details?

A. Census and just I would add cash balances in the bank.

Q. And that's for all facilities?

A. Yes.

Q. Would it be fair to say to understand that Mr. Kalter is the ultimate decision-maker at Fulton?

A. Could you rephrase that, please.

Q. Sure. So would I be correct in understanding that Mr. Kalter would be the final decision-maker for larger scale decisions pertaining to Fulton Commons?

A. What would you consider larger

scale decisions?

Q. So we're not talking about, you know, obviously, putting a resident in bed two instead of bed one or maybe even how much of a certain supply to buy, but larger scale decisions about hiring an administrator, firing an administrator or staffing changes, those sort of larger issues, would he be very involved in those sorts of decisions?

A. No. Only hiring or and or firing an administrator.

Q. So specifically to hiring and firing, it was just administrators that he would be involved in?

A. Yes.

Q. Would he make decisions about any contracting or procurement matters?

A. To the best of my knowledge, no.

Q. Any other issues that he would get involved in specific to decision-making for Fulton Commons?

A. No, not to the best of my knowledge, no.

S. Weiss

Q. And it's safe to say due to the familiar connection, that you have known Mr. Kalter your whole life; is that correct?

A. Correct.

Q. Who is Aaron Fogel?

A. One of the owners at Fulton Commons.

Q. And do you know what his percentage of ownership is at Fulton Commons?

A. Thirty percent.

Q. Would I be correct in understanding that he would be a secondary contact after Mr. Kalter or something else?

A. No.

Q. Do you have much contact with Mr. Fogel specific to the running of Fulton Commons?

A. No.

Q. Do you ever deal with Mr. Fogel about Fulton Commons?

A. Not at all.

Q. So I'm safe in understanding that there's zero contact with Mr. Fogel about

Fulton Commons?

A. Correct.

Q. Do you ever deal with Mr. Fogel about any other homes?

A. No.

Q. Do you ever speak with Mr. Fogel?

A. Occasionally.

Q. When you speak to him, is it about Fulton Commons?

A. No, it's personal.

Q. Personal, okay. Does Mr. Fogel make any decisions about the operations or running of Fulton Commons?

A. No.

Q. Does he ever visit Fulton Commons?

A. No.

Q. Do you know where he lives?

A. Yes.

Q. Where is that?

A. In [redacted], Israel.

Q. How long has he lived in [redacted], Israel?

A. I don't know.

Q. Do you know if Mr. Fogel receives a salary from Fulton Commons or New Fulton Commons?

A. Yes.

Q. Do you know how much salary he receives from Fulton Commons or New Fulton Commons?

A. He doesn't receive salary. You asked me if I know if he receives.

Q. I can rephrase that. Does he receive a salary from Fulton Commons?

A. No.

Q. Has he ever received a salary from Fulton Commons?

A. No, not to the best of my knowledge, no.

Q. And as far as you know, does Mr. Fogel do any work for Fulton Commons?

A. To the best of my knowledge, no.

Q. And do you know if Mr. Kalter and Mr. Fogel are related in any way?

A. Yes.

Q. What is that relation?

A. Mrs. Kalter and Mr. Fogel are

siblings.

Q. Understood, okay. Are there any other owners at Fulton aside from Mr. Fogel and Mr. Kalter?

A. Yes.

Q. Do you know what that percentage breakdown for that ownership is?

A. Yes.

Q. So I can sort of walk through, it might be easier for us to walk through the owners at Fulton, so do you know Sheindy Saffer?

A. Yes.

MR. SMITH: I can spell that, S-h-e-i-n-d-y, S-a-f-f-e-r.

Q. Do you know Sheindy?

A. Yes.

Q. What is their role in Fulton Commons's decision-making?

A. No, there is no -- they don't have a role in the decision-making.

Q. Do they ever visit Fulton Commons?

A. No.

Q. Do you know where Sheindy lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. Does Sheindy, as far as you understand, receive a salary from Fulton Commons?

A. Yes.

Q. Do you know what that salary is?

A. No.

Q. Do you cut that check?

A. Yes.

Q. But at least at this time as we sit here today, you are not aware of it?

A. I am not responsible, my office is responsible to cut that check.

Q. So you don't personally sign it or fill it out or that sort of thing?

A. Yes.

Q. Do you know Aryeh Kalter?

A. Yes.

MR. SMITH: And again, I will spell that for the record, it's A-r-y-e-h.

Q. How would you describe Aryeh's role at Fulton Commons?

A. He doesn't have any role whatsoever.

Q. Does he ever visit Fulton?

A. No.

Q. Do you know where Aryeh lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. And from your understanding does Aryeh receive a salary from Fulton Commons?

A. Yes.

Q. Do you know what that salary is?

A. No.

Q. But am I correct in understanding that that salary would be disbursed from your office?

A. Yes. Can I just clarify one item?

Q. Absolutely?

A. You asked if they receive salary from Fulton Commons. They receive salary from the New Fulton Commons, both Sheindy

Saffer and Aryeh Kalter.

Q. Thank you for that correction, so if I'm being unclear, I know it can be confusing for me and I'm assuming for you jumping between the different entities that share a common name, so please correct there and so we will try to refer to New Fulton Commons but correct me if I make a mistake there. Sorry, I appreciate that.

Do you know Mindy Steger, correct me if I am pronouncing the name wrong?

A. Steger.

Q. And that's M-i-n-d-y, S-t-e-g-e-r. Do you know what Mindy's role is at Fulton Commons, if any?

A. She does not have a role at Fulton Commons.

Q. Does she ever visit Fulton Commons?

A. No.

Q. Do you know where Mindy lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. Does Mindy receive a salary from New Fulton Commons?

A. Yes.

Q. And do you know how much that is?

A. No.

Q. And do you know who Chana Kanarek is?

A. Yes.

MR. SMITH: And again, for the record, that's C-h-a-n-a, K-a-n-a-r-e-k.

Q. Do you know what Chana's role is at Fulton Commons?

A. She doesn't have a role at Fulton Commons.

Q. And again, do you know if Chana ever visits Fulton Commons?

A. No.

Q. Do you know where she lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. And does Chana receive a salary from Fulton Commons?

A. Yes.

Q. Do you know how much that is?

A. No.

Q. Let me move on to, do you know Yitzchok Kalter?

A. Yes.

MR. SMITH: For the record, that's Y-i-t-z-c-h-o-k, K-a-l-t-e-r.

Q. And what is Yitzchok's role at Fulton, if any?

A. He doesn't have a role at Fulton Commons.

Q. Does he ever visit the facility?

A. No.

Q. Do you know where Yitzchok lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. Does Yitzchok receive a salary from Fulton Commons?

A. Yes.

Q. Are you aware of how much that salary is?

A. No.

S. Weiss

Q. We will move on to are you familiar with Dovid Kalter?

A. Yes.

Q. Do you know what Dovid's role is at Fulton Commons, if any?

A. He doesn't have a role at Fulton Commons.

Q. Where does Dovid live?

A. [redacted], New Jersey.

Q. Do you know if Dovid receives a salary from Fulton Commons?

A. Yes.

Q. Do you know how much that is?

A. No.

Q. Are you familiar with Sheva Treff?

A. Yes.

MR. SMITH: S-h-e-v-a, T-r-e-f-f.

Q. Does Sheva have a role in decision-making at Fulton Commons?

A. No.

Q. Does Sheva ever visit the facility?

A. No.

Q. Do you know where Sheva lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. Does Sheva receive a salary from New Fulton Commons?

A. Yes.

Q. Do you know how much that is?

A. No.

Q. And finally, are you familiar with Sara Lieberman?

A. Yes.

Q. Again, as with all these individuals does Sara have a role in the decision-making process of Fulton Commons?

A. No.

Q. Do you know where Sara lives?

A. Yes.

Q. Where is that?

A. [redacted], New Jersey.

Q. And does Sara receive a salary from New Fulton Commons?

A. Yes.

Q. Are you aware of how much that

is?

A. No.

Q. So all these individuals we just talked about, Mr. Weiss, am I correct in understanding that they are all at least partial owners in Fulton Commons Care Center?

A. Yes, and I have to correct a statement I made before.

Q. Absolutely.

A. I said that Moshe Kalter was a 50 percent owner, I forgot about his children so he is a 42 percent owner, not a 50 percent owner.

Q. So Moshe owns 42 percent and what is Aaron's Fogel percentage again?

A. Thirty percent.

Q. And do these individuals that we just listed out, do they own the remainder of the percentage of ownership?

A. No.

Q. There are other individuals?

A. Yes.

Q. And who are those?

A. Frady Kalter, I mentioned before and Esther Fogel.

Q. Okay, and what are Frady Kalter and Esther Fogel's percentage of ownership?

A. Ten percent for Frady Kalter, 10 percent for Esther Fogel.

Q. So these individuals we just walked through here would own the remaining ownership; is that correct?

A. Combined, yes.

Q. Do you know the individuals and about that I mean Sheindy, Aryeh, Mindy, Chana, Yitzchok, Dovid, Sheva and Sara, do you know the percentage of each those of those individuals owns?

A. Yes.

Q. What is that?

A. One percent each.

Q. Has this percentage breakdown of ownership changed at all over your time at Fulton?

A. Yes.

Q. Describe that for me to the best you can recall.

A. What do you want me to describe?

Q. Just how the percentage ownership has changed over time, if someone has given up some, taken on more or left of the partnership completely.

A. Mr. Kalter used to own 50 percent and he gave one percent to each of his eight children.

Q. When did he do that?

A. I don't recall.

Q. Has it been within the last five years or more than five years?

A. I don't recall.

Q. Any other changes to the ownership percentages aside from what you just detailed for me?

A. Not that I can think of.

Q. And am I correct in understanding you don't report to the list of individuals we just walked through the children?

A. No.

Q. Do you know if any of the owners, and we will make this specific to Mr. Kalter, to Moshe and to Aaron Fogel, have

any background or change in long-term care?

A. Yes.

Q. Describe that for me.

A. Well, Mr. Kalter used to have an administrators's license.

Q. Was he an administrator of the facility?

A. Yes.

Q. Do you know how long he was engaged in that work?

A. Many years ago, before my time.

Q. Do you know if he did it for a long time or brief period of time?

A. I don't know.

Q. What about Mr. Fogel, does Mr. Fogel have a background in long-term health care?

A. Not to the best of my knowledge, no.

Q. As far as you know, does Mr. Kalter maintain an office space at Fulton Commons?

A. He has an office, I think that's designated for him, but to the best of my

knowledge he's never been in the building.

Q. What about the other facility, Midway, Mayfair, Bridge View, does he maintain an office space at any of those facilities?

A. Yes.

Q. Does he maintain an office at each facility or something else?

A. No, only at Bridge View.

Q. So he, as far as you know, has an office at Bridge View and Fulton Commons?

A. Yes, but whereas Fulton Commons he's never been in the facility I don't believe ever, Bridge View he hasn't been in the facility for at least the last 10 years.

Q. And where does Mr. Kalter live?

A. In [redacted].

Q. What about Mr. Fogel, does he maintain an office at Fulton Commons?

A. No.

Q. Does he maintain an office at any of the other sister facilities?

A. No.

Q. And you testified just now that

Mr. Fogel lives in Israel, correct?

A. Yes.

Q. Do you know if he's ever been to Fulton Commons?

A. I don't know. He's not been to Fulton Commons, to the best of my knowledge.

Q. What about all the other owners that we walked through, do you know if any of those individuals have office space at Fulton Commons?

A. None of the individuals have office space at Fulton Commons.

Q. As far as you understand, does Kathy Doyle ever deal with ownership?

A. No, to the best of my knowledge, no.

Q. Could she if she needed to or would all of those sort of interactions be dealt well through you?

A. No, it would come through me to the best of my knowledge.

Q. Understood. Again, to the best of your knowledge, does anyone else at Fulton ever have contact with ownership?

A. Not that I know of.

Q. Has that arrangement always been that way since you started at Fulton Commons?

A. Yes.

Q. So aside from the sort of family of homes we've discussed, including Fulton, Mayfair, Bridge View, Midway, do the owners primarily Mr. Kalter and Mr. Fogel own any other long-term care facilities?

A. No, not to the best of my knowledge.

Q. Do you know if Mr. Fogel or Mr. Kalter own any consulting or management companies?

A. Not that I'm aware of.

Q. Do you ever deal with the State Department of Health or any other regulatory entity on behalf of Fulton's ownership?

A. I'm not -- what do you mean by deal with?

Q. Would you ever interact with DOH or CMS, and by that I mean the Center for Medicaid Services, would you ever deal with

any of those regulatory entities on behalf of Fulton Commons ownership?

A. Not that I'm aware of.

Q. Okay, perfect. Along those same lines, have you ever submitted documents to the Department of Health attesting to the ownership breakdown of Fulton Commons?

A. I don't recall that.

Q. So I am going to direct your attention now to what we marked as State's Exhibit 2.

(Cost Report 1/17 through 12/18 was marked as State's Exhibit 2.)

Q. Do you recognize this document?

A. I don't recognize it but based on the heading I can see what it is.

Q. And based on the heading, am I correct in stating that this is a portion, it's only a one-page document, so this is a portion of the Fulton Commons Care Center Cost Report for the period from January 2017 to December 2017?

A. That's what it appears to be.

Q. Do you remember ever submitting

this document to the Department of Health?

A. No.

Q. And as far as you can tell from looking at this document today, what does this document represent the ownership breakdown at Fulton to be?

A. It lists Moshe Kalter 50 percent. You want me to read what it says over there?

Q. Would I be correct in understanding this document to show Moshe Kalter as being a 50 percent owner, Aaron Fogel as 30 percent, Frady Kalter as 10 and Esther Fogel as 10 percent?

A. That's what this document appears to say, yes.

Q. So would I be correct in understanding the percentage shifts that we discussed just now happened after this?

A. Apparently so.

Q. When the percentage ownership changes occurred, did you ever submit a document to DOH reflecting that change?

A. I don't believe I submitted such a document.

S. Weiss

Q. So let's look next at what will be marked as State's Exhibit 3. Do you recognize this document?

A. Yes.

Q. And again, based on the heading, would this be fair to understand that this is the Fulton Commons Care Center Cost Report for the period of January 2018 through December of 2018?

A. Yes.

(Cost Report 1/18 through 12/18 was marked as State's Exhibit 3.)

Q. We can see here that the ownership percentages have changed since the 2017 cost report, correct?

A. Yes.

Q. And more specifically, Aaron Fogel has increased his share by 20 percent, right, from 30 percent to 50 percent.

A. I see that. I don't know how that -- this is not a document that I prepared. I see that.

Q. Okay, and along those same lines, Moshe Kalter decreased his share by eight

percent, correct, from 50 percent to 42 percent?

A. Yes.

Q. Do you have any understanding as to why this shift happened, were you involved in the decisions to make this change?

A. No.

Q. Along those same lines were you involved in discussions between and amongst the ownership about this change?

A. Not that I can recall.

Q. What was your understanding of why all these one percent owners came along at this time?

A. I don't know. I don't get involved in these things, he doesn't tell me these things.

Q. So I want to direct your attention to the far right-hand side column. Do you know what that number indicates in that column?

A. No.

Q. It's a series of fives.

A. Well, okay.

Q. What is your understanding of what that column indicates?

A. I don't know.

Q. Since this cost report in 2018, has the ownership at Fulton Commons changed at all?

A. Not that I'm aware of.

Q. So to revisit in the chance that this refreshes your recollection, did you ever report these kind of ownership changes to the Department of Health?

A. I don't believe I did.

Q. So let's look next at what will be marked as State's Exhibit 4, and this is a two-page document, so we can absolutely scroll to the bottom, if you would like, we are going to focus on the top portion, but we will scroll down so you can see.

A. I don't know which way you're scrolling.

Q. We are scrolling down, but we will focus on the top portion of this document but I just wanted you to see the

whole thing for context.

A. Okay.

Q. We can scroll back up to the top and if you can so at the very top this is an e-mail from yourself to Kathy Doyle on June 4th, 2020, correct?

A. Yeah, I see that.

(E-mail dated 6/4/20 was marked as State's Exhibit 4.)

Q. Does this appear to be a breakdown of Fulton Common's ownership percentages?

A. That's what it appears to be.

Q. Do you remember sending this e-mail?

A. No, I don't.

Q. Would I be correct in understanding these percentages we are looking at here are more reflective of the 2017 ownership breakdown?

A. Yes, based on what you -- based on what you showed me, yes.

Q. Okay. Do you have any sense of why there is a discrepancy between this

e-mail from 2020 and the actual ownership posture at the time at Fulton Commons?

A. I just think it's a simple error.

Q. As far as you know, is there a quality assurance team at Fulton Commons?

A. Not that I know of. I am not aware of it.

Q. Are you familiar with the term QAPI?

A. Somewhat.

Q. What does that mean to you?

A. Some sort of quality assurance at the facility.

Q. Have you ever attended a QAPI meeting at Fulton Commons?

A. No.

Q. Do you know who the members of the QAPI committee are?

A. No.

Q. Is it your custom and practice to attend QAPI meetings at any of your other facilities?

A. I am not aware of their existence to the best of my knowledge.

S. Weiss

Q. That's fair. Do you ever relay QAPI findings or reports to ownership?

A. Not that I'm aware of.

Q. Does Kathy Doyle ever report QAPI proceedings to you?

A. She may send me some e-mails on it.

Q. Do you have any specific recollection of those e-mails what they're about?

A. When I got get it I skimmed through it perhaps and that's about it.

Q. Would I be correct in understanding that you then do not relay that QAPI information to ownership?

A. To the best of my knowledge, no. Again, perhaps in passing some information but nothing in detail.

Q. Do you have any specific recollection of forwarding a QAPI report to ownership or reporting QAPI information to ownership?

A. I don't believe I did. To the best of my knowledge I didn't.

Q. So I know we have talked a bit about what you do at Fulton Commons and New Fulton and Bridge View, I want to get into a bit more detail as that so as best you can, and you be very general just describe your responsibilities to me as comptroller at Fulton Commons.

A. I am responsible for the business office and the business office is responsible for accounts receivable, accounts payable, purchasing and payroll, primarily.

Q. So aside from purchasing, payroll, accounts receivable, is there anything else you are responsible for?

A. Accounts payable you missed.

Q. Okay. What about keeping up-to-date on standards of care, clinical standards of care, do you have any function or role in that world?

A. No.

Q. Do you participate at all in staff education about clinical standards?

A. No.

Q. Do you manage or interact with clinical staff at all in Fulton Commons?

A. No.

Q. We discussed a bit the hiring and firing of administrators, do you have any role in the hiring and firing of other staff at Fulton Commons?

A. No, not in particular.

Q. Could you, if needed or if it was deemed appropriate, could you order staffing downsizing or the adding of additional staff, is that a decision that you would be involved in?

A. No.

Q. Who would make that sort of larger scale staffing decision?

A. It would have been a discussion that Ms. Doyle perhaps would have -- would have with me and then she would do what she recommends to do.

Q. Would that sort of discussion ever make its way up to ownership or would that be made without ownership being apprised of it?

A. To the best of my knowledge, no, just in passing, perhaps.

Q. So ultimately, it would be your understanding that Mrs. Doyle would make decisions about staffing levels, whether reducing or decreasing them?

A. To the best of my knowledge, yes.

Q. As far as you know, does Fulton Commons have a compliance program?

A. I don't know.

Q. Are you responsible in your function as comptroller for ensuring that Fulton pays its rent?

A. Yes.

Q. And do you or your office cut that rent check?

A. Yes. It's wire transfer, a bank transfer, yes.

Q. Who is that check made out to?

A. Fulton Commons Realty Company LP.

Q. And do you know for how much?

A. I don't know offhand.

Q. Do you know how often that wire transfer is made?

A. It should be monthly.

Q. Has the regularity changed at all over time?

A. Not that I'm aware of.

Q. And from your position as comptroller, does Fulton Commons have a single operating bank account or more than one bank account?

A. Which entity?

Q. Well, we will start, let's start with Fulton Commons Care Center, the facility itself, does that facility, does that entity maintain an operating bank account?

A. Yes.

Q. Is it more than one bank account or just one?

A. Yes, it's more than one.

Q. Do you know how many?

A. I believe two.

Q. Do you know whose names are on those bank accounts?

A. Sorry, please rephrase what do you mean by names.

Q. Sure. So if we went to the bank, would there be names on the bank account beyond just the organizational name or is it just the organizational name?

A. Fulton Commons Care Center Inc.

Q. So there is no individuals' names on those bank accounts?

A. No, not to the best of my knowledge.

Q. Who has access to Fulton Commons Care Center's two bank accounts?

A. Me and Mr. Kalter.

Q. Anyone else?

A. Not that I know of.

Q. Do you know what banks those accounts are held with?

A. Yes.

Q. What is that?

A. Signature bank is the regular operating account and Morgan Stanley would be its investment account.

Q. So aside from you and Mr. Kalter, could anyone else if they needed to write a check out of either of those accounts?

A. Not that I -- well, write a check, yes, the business office, but approve and sign the check, no.

Q. And let's run through the same set of questions for New Fulton Commons, does New Fulton Commons have a single operating bank account or more than one?

A. Two, they have two.

Q. Same idea, do individuals' names appear on those bank accounts or is it just the entity New Fulton Commons?

A. No, just the entity.

Q. And who has access to those two bank accounts?

A. Me and Mr. Kalter.

Q. And who are those two bank accounts held with?

A. Signature bank, both of them Signature bank.

Q. Both with Signature, okay. So aside from New Fulton Commons and Fulton Commons Care Center, are you aware of any other bank accounts existing in connection with those two entities?

A. Yes.

Q. Describe those for me.

A. The realty company has a bank account as well.

Q. Just one account or more than one?

A. It has two bank accounts to the best of my knowledge, two.

Q. That's perfectly fine. Do you know what two banks those two accounts are held with?

A. Yes.

Q. What is that?

A. Signature bank and Morgan Stanley.

Q. Same idea as before, the realty company's bank accounts, who has access to those accounts?

A. I do and Mr. Kalter does.

Q. Do any individuals' names appear in those accounts or is it just the realty company?

A. To the best of my knowledge, just the company name.

Q. Any other accounts that we haven't talked about?

A. Yes, I have to go back, Fulton Commons Care Center has two accounts at Signature.

Q. So those two accounts at Signature, one at Morgan Stanley?

A. Two at Signature, to the best of my knowledge, one at Morgan.

Q. And so aside from all these bank accounts we have just discussed, are there any other bank accounts tied to the entities that you are aware of?

A. Not that I can think of at the moment.

Q. So from your understanding, you have been doing this for some time now, in the nursing home industry how are the facility's rents determined?

A. I'm not involved in that, I don't know.

Q. Are you involved at all in the negotiation of rents or anything to do with deciding a rent number?

A. No.

Q. And just backing up to sort of a larger more make macro view of things, do you have an understanding of having worked in this industry for some time as to how the number is arrived at, is that something that you kind of getting a sense of after doing this for some time?

A. I wouldn't know that, no.

Q. Were you involved at all in the creation or execution of Fulton mortgage?

A. Yes.

Q. Describe that for me.

A. I you have to -- could you ask me more specific questions?

Q. Sure, sure. So were you there at the beginning when the mortgage was taken out; was that something you were involved in?

A. Involved with on the paperwork level, yes.

Q. What about on the negotiation level, did you negotiate the terms of the mortgage?

A. No, not to the best of my knowledge, no.

Q. When you say on the paperwork level, does that mean -- describe that for me.

A. Perhaps getting documents together.

Q. Did you have dealings with the entity who provided the loan on behalf of Fulton?

A. Yes.

Q. Do you know when the mortgage was created, when it came into existence?

A. I don't, no.

Q. I know it's been some time, do you recall how much the mortgage was initially?

A. No, I don't recall.

Q. Are you aware of how much remains in the mortgage, how much remains to be paid?

A. No, I don't.

Q. Are you aware of or are you familiar with the terms of the mortgage?

A. No.

Q. Do you know what bank entity owns the more gauge? I can rephrase that. Sorry, that was a bit awkward. Do you know what bank entity holds the mortgage?

A. Again, I'm not sure what -- I'm not sure what that -- no, I don't know.

Q. Would it sound familiar if I told you that HUD is involved in the mortgage?

A. Yes, I know HUD is involved in the mortgage, I don't deal with HUD.

Q. So your understanding of HUD's involvement in the mortgage is not detailed?

A. Not detailed, no.

Q. Do you know who signed for the mortgage on behalf of Fulton?

A. I don't know, sir.

Q. Are you involved at all in making payments on the mortgage?

A. Yes.

Q. Describe that for me.

A. The mortgage is held by Berkadia and I make sure there's money in the account in order to pay it when it gets directed out

of the account.

Q. And when you were making sure the mortgage gets paid, who are you doing that on behalf of?

A. Mr. Kalter.

Q. Are you doing that on behalf of the realty company or something else?

A. It's coming out of the realty company account, bank account.

Q. So would it be your understanding that when you make sure those mortgage payments are made on time and you facilitate that process, you are doing that on behalf of the realty company, correct?

A. Yeah, yes.

Q. Is there anything else we haven't discussed about the mortgage that you have involvement in or recollection of?

A. No recollection, no. Where are we going here? I don't know.

Q. I understand. These things, it's it's just an investigation into the facility, obviously, so it's going to touch on a bunch of different things, and the

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position, you said of the facility is, you know, a higher one, your position, so I apologize if some of these may not seem to connect but we are going somewhere in particular, we are exploring so, we appreciate your patience in answering to the best you can.

MR. YAFFE: I think the witness meant where are you going with that question, are you aware, I mean, the question was so broad and out there, I think that was the issue not where are you going, he is not asking you what you are investigating.

Q. Well, so Mr. Weiss, then I can maybe clarify that for you. Is there a point of confusion or would you like me to ask you a more question specific question?

A. I mean, I believe I answered the question you have asked unless you have more questions.

Q. I think you have, and I apologize if that was vague, we have discussed different aspects of the mortgage, specific

details and I was wondering if there was any other item that we might have passed by without discussing about the mortgage?

A. Not that I'm aware of.

Q. So let's talk about Fulton's rent from your time in the industry from being in this industry for a while, and especially serving as comptroller for several homes, how does Fulton's rent compare to other Long Island facilities in your experience?

A. I don't know.

Q. How does Fulton's rent compare against the three sister facilities you serve as comptroller for?

A. What do you mean how does it compare.

Q. Correct.

A. No, how do you mean by how does it compare, what's the question?

Q. If you're just putting up the simple number what Fulton pays in rent, how does that compare against the other three facilities?

A. It's more, it's more than the

other three facilities.

Q. Substantially more, close, how would you describe it?

A. I'm not sure how you would describe substantially more.

Q. Is it twice as much or half as much?

A. I am not exactly sure how much the rent is.

Q. So I want to briefly walk through some publically available data. This comes from the Department of Health's website and this is going to be specific to rent information, so starting with Fulton Commons, in the year 2018, the facility paid over eight million dollars in rent. Does that sound correct from your recollection?

A. I don't recall that.

Q. I know we discussed bed counts. Fulton Commons does have 280 beds, correct?

A. Yes.

Q. Do you know how much Bridge View paid in rent that same year, 2018?

A. No, I don't know.

Q. If I told you 1.3 million, would that refresh your recollection?

A. Perhaps, that's possible.

Q. And how many beds does Bridge View have?

A. Two hundred beds.

Q. Staying in the year 2018, do you know how much Midway paid in rent?

A. No.

Q. Would it refresh your recollection if I said $750,000?

A. Perhaps.

Q. And?

A. I don't -- I am not aware of the number.

Q. How many beds does Midway have?

A. Two hundred beds.

Q. So finally, and this is still in 2018, Mayfair paid roughly $350,000 in rent, does that sound correct?

A. I am not aware of the number.

Q. Do you know how many beds Mayfair has?

A. Yes.

Q. How many is that?

A. Two hundred beds.

Q. So these numbers we have gone through, this is for 2018, pretty wide range Fulton paying eight million dollars in rent in 2018, Mayfair being 350,000 in rent in 2018. What factors, from your understanding from having experience in this field, could explain that disparity in rental payments?

A. It's not -- it's not a question for me. I don't know the answer to that question. I am not involved in it.

Q. Could you explain that difference as comptroller between these facilities; can you explain that difference in rents?

A. I can't, I just said no, I don't know. I'm not involved in that.

Q. Who is involved in that?

A. Mr. Kalter.

Q. Anyone else?

A. Not to the best of my knowledge.

Q. So let's quickly look at another metric and this is facility revenue and facility revenue, as you know, is data

provided in a facility's cost report. And do you submit cost reports on behalf of your facilities?

A. It's prepared by our accountants, and yeah.

Q. Sorry, I didn't mean to interrupt, sorry.

A. It's prepared by our accountants and gets uploaded and then Mr. Kalter signs off on it.

Q. And who are you accountants?

A. Horan, Martello & Morrone.

Q. How long have they done this work for you?

A. As far as I can remember.

Q. So that entity submits cost reports to the Department of Health on your behalf; is that correct?

A. They prepare the cost report.

Q. Who submits the cost report?

A. You're asking about uploading? I'm not exactly sure what you mean by submitting.

Q. Uploading, sure, submitting it,

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uploading it to the Department of Health?

A. So to the best of my knowledge, they upload and it Mr. Kalter has to certify it.

Q. And by "they" you mean your accounting firm?

A. Yes.

Q. So let me direct your attention to what will be marked as State's Exhibit 5. And leading back to an item Mr. Yaffe mentioned earlier, this is a 123-page document. We can scroll through that if you would like. I can tell and you can see now on the screen, it is the healthcare cost report for Mayfair.

Mr. Weiss, unless you want us to scroll through, we will probably not do that, it would take a bit of time, but you are familiar with cost reports, correct?

A. Yes.

Q. Does this one look familiar to you, the reporting period of time January 2018 to December 2018 for Mayfair Care Center?

S. Weiss

A. I wouldn't know exactly the details, but it looks generally familiar.

(Mayfair Cost Report 1/18 through 12/18 was marked as State's Exhibit 5.)

Q. So let's go down to page 25. I want to look specifically for the revenue section and that's towards the bottom of the page, total operating revenue, and so am I correct in understanding this document tells us that in 2018 Mayfair's total revenue was over 19 million dollars?

A. I wouldn't know that number offhand, but that's what the documents says.

Q. And if we recall, Mayfair paid around $350,000 in rent that same year, correct?

A. That's what you mentioned earlier.

MR. YAFFE: Can I just get clarification, this is an HRCF report for the Midway Nursing Home, this 128 pages is just for one nursing home?

MR. SMITH: This is for Mayfair Care Center.

S. Weiss

MR. YAFFE: Okay.

MR. SMITH: Right.

Q. So just to back up a bit, we are looking at the bottom of page 35, there are 19.6 million dollars in operating revenue for Mayfair Care Center in 2018, and in that same year Mayfair paid $350,000, correct, in rents?

A. You said that before, I don't know that to be true. I don't have anything to do with that.

Q. Accepting those numbers, if we do the math on this, Mayfair in 2018, Mayfair's rent to revenue ratio was about two percent, would that be correct, would that sound correct for you?

A. I am not using a calculator.

Q. If you accept those numbers, would you find that rent to revenue ratio around two percent to be common in the industry or something else?

A. I would have no idea.

Q. So we are going to move next to what we marked as State's Exhibit 6, and

this is another cost report, so another 123-page document, and this is the 2018 cost report for Fulton Commons Care Center.

(Fulton Commons Cost Report 2018 was marked as State's Exhibit 6.)

Q. We will go down to page 25 again, so same format, same layout, this time for Fulton Commons we see at the bottom left-hand column a total operating revenue of 38.6 million dollars; is that correct?

A. That's what it says over there.

Q. And if we recall, Fulton's rent in 2018 was around eight million dollars; is that correct?

A. I don't know what you said before, but I don't know that to be what the rent is.

Q. If we take this operating revenue which is 38.6 and compare it to eight million dollars in rent, we come to a rent to revenue ratio of nearly 22 percent based on that, does that sound about right?

A. Perhaps, I'm not, you know, I don't know, I don't have a calculator in

front of me.

Q. So from your perspective as comptroller at these two facilities, can we explain Fulton's 22 percent rent to revenue ratio against Mayfair's two percent rent to revenue ratio?

A. The rent is not something that I set. I don't know the answer to your question.

Q. Okay, what I want to get is your perspective as comptroller, so you are very closely engaged in the operating of the finance of the operations of the facility, if you saw a 22 percent rent to revenue ratio at your one of your homes, and a two percent rent to revenue ratio at another of your homes, would that be an unusual thing for you, a thing to investigate further or something else?

A. They're two different facilities, they're completely different buildings, different patients, what's the word, patient population, type of care, that would be my best explanation.

Q. Would that be your understanding of why these numbers would look the way they do is patient base or other things?

A. I don't know.

Q. And you mentioned also different facilities, the differences in the facilities potentially accounting for these difference in rent to revenue ratio. Expand on that for me, if you can.

A. Mayfair Cc are Center building was built in approximately, to the best of my knowledge, 1968 '69, something like that, to the best of my knowledge, and Fulton Commons Care Center's building was built, to the best of my knowledge, in 2001, so not only 280 beds compared to 200 beds, it's just a much larger, more modern facility.

Q. Okay, and from your perspective as comptroller, those factors could account for higher rent payments?

A. Perhaps.

Q. Is there anything else you would see as potentially explaining this discrepancy in rent to revenue ratio?

A. Not from my perspective.

Q. Along these lines, were you involved in at all in negotiating Fulton's lease with the realty company?

A. No.

Q. Who did negotiate that lease with the realty company?

A. I'm not clear, I'm not sure.

Q. Who, from your understanding as comptroller, would bear the responsibility for negotiating something like leases with a realty company?

A. Mr. Kalter.

Q. As far as you know, is there a written lease between Fulton Commons Care Center and Fulton Commons realty?

A. I'm not, I don't know.

Q. So is it safe to assume you have not seen the lease?

A. I don't recall.

Q. Aside from cutting checks to pay the rent, do you have any other responsibilities on behalf of Fulton Commons Care Center?

A. No, not to the best of my knowledge.

Q. And correct me if I'm wrong, and just for clarity of the record, Mr. Kalter owns Fulton Commons Realty, correct?

A. He is one of the owners.

Q. There are other owners?

A. I believe so.

Q. What is your understanding of who the owners are?

A. This Aaron Fogel is an owner.

Q. Were you aware that in both 2018 and 2019, Fulton Commons Realty paid in excess of $3 million for consulting services?

A. I am not aware of that.

Q. So you have no knowledge as to who received those fees, correct?

A. I am not aware of that.

Q. And am I correct in understanding you did not cut the check for those fees?

A. To the best of my knowledge, no.

Q. Do you work in any capacity for Fulton Commons Realty?

A. If you can clarify the question, I am not sure how to answer that.

Q. Sure. Do you have a title at Fulton Commons Realty?

A. I call myself comptroller of the entities. I don't know how --

Q. No, that's fine, we can drill down on that. If you are comptroller of the entities, would you also consider yourself as comptroller of Fulton Commons Realty?

A. Yes.

Q. From your understanding, is that a title you physically or technically possess?

A. Yes.

Q. But I'm correct in understanding that you do not receive a paycheck or reimbursements from Fulton Commons Realty, correct?

A. Correct.

Q. When you serve as comptroller to Fulton Commons Realty, what is your understanding of what that entails; what are your responsibilities as comptroller to

Fulton Commons Realty?

A. There is no specific job description.

Q. Do you balance the books at Fulton Commons Realty?

A. No.

Q. Are you responsible for accounts receivable or accounts payables at Fulton Commons Realty?

A. There is no -- there is nothing, there is no accounts receivables, as far as I know.

Q. Well, maybe that's a good direction to go. What is your understanding of the sort of organizational structure at Fulton Commons Realty, if it has one?

A. I don't believe it has one.

Q. Do you know Fulton Commons Realty ever re negotiated or refinanced the mortgage?

A. I don't recall.

Q. Do you know if Fulton Commons Realty ever carries a negative balance sheet, are they ever in debt?

A. That's something that I don't deal with.

Q. Do you know who would deal with that?

A. If what you said is true or not true, it's dealt with by the accountants.

Q. As far as you understand, does Mr. Kalter have regular responsibilities in the operations of Fulton Commons Realty?

A. I don't know.

Q. Do you know if Fulton Commons Realty has any employees as such aside from yourself?

A. No.

Q. Are you familiar with the details of Fulton's lease?

A. No.

Q. Would you be familiar with, have you ever heard the term escalator clause in the context of leasing?

A. I have never heard that before.

Q. Do you know if Fulton Commons Care Center pays for its utilities usage, is that a bill or a cost that Fulton Commons

Care Center pays?

A. No.

Q. Do you know who does pay that utilities cost?

A. Yes, New Fulton Commons.

Q. Okay, what about property taxes, does Fulton Commons Care Center pay for property taxes?

A. The property taxes gets paid for, I believe get paid for through the mortgage escrow.

Q. Okay, and just for my own, that's in my own ignorance, does that mean the Fulton Commons Realty is paying the property taxes or something else?

A. I guess Fulton, yes, I guess you don't want me to guess. I don't remember. The real estate taxes get paid by the mortgage company.

Q. Okay, understood. What about other sort of common expenses in relation to a mortgage like mortgage maintenance or mortgage insurance, do you know who pays for those costs?

A. I don't know.

Q. Does the term net lease sound familiar to you?

A. I'm not familiar with that.

Q. So as far as you understand, would Fulton Commons have a net lease with the realty company?

A. I am not familiar with that term.

Q. Do you ever cut checks to Fulton's ownership on behalf of either Fulton Commons Care Center or New Fulton Commons?

A. Yes.

Q. And to whom do you cut checks?

A. I wouldn't know offhand.

Q. Would you cut a check potentially to Mr. Kalter on behalf of New Fulton Commons or Fulton Commons Care Center?

A. I don't believe I ever did.

Q. What about Mr. Fogel?

A. Also not. Excuse me, can I just go back two questions?

Q. Absolutely, sure.

A. I believe you asked would I cut

checks for any of the owners, from which entity would you be referring to?

Q. Sure, I can rephrase that, offer it a different way to you.

So would you, in your position or capacity as comptroller, ever cut a check to any member of Fulton's ownership on behalf of either Fulton Commons Care Center or New Fulton Commons?

A. Perhaps.

Q. Do you have any specific recollection of cutting checks like I'm describing?

A. The way we discussed before about those individuals that get payroll checks.

Q. And to be more specific, you mean the salaries that are paid to the ownership?

A. Yes.

Q. So aside from that, aside from this sort of regular salary checks that the ownership gets paid, would there be any more sort of ad hoc type checks cut to ownership for specific instances, if that makes sense?

A. What timeframe are you referring

to?

Q. Let's take 2018 to present, the last three years.

A. I don't recall anything being paid.

Q. What is your understanding of what New Fulton Commons does aside from maintain payroll, is there another function they serve?

A. We discussed that before. Yeah, they supply, they purchase items that Fulton Commons Care Center would need.

Q. And by that, do you mean sort of everything from paper products to cleaning products to beds to oxygen; is that correct?

A. Correct.

Q. And aside from what we're discussing here, is there anything else that New Fulton Commons does for Fulton Commons Care Center?

A. To the best of my knowledge, no.

Q. Do you know when New Fulton Commons was created?

A. No.

S. Weiss

Q. Do you know if it has an ownership structure; is it an owned company by private individuals?

A. Are we referring to New Fulton Commons?

Q. Correct.

A. Yes.

Q. Do you know who owns New Fulton Commons?

A. Yes.

Q. Who is that?

A. Mr. Kalter.

Q. Anyone else?

A. Yes.

Q. Who else owns?

A. Mrs. Kalter.

Q. Anyone aside from the Kalters?

A. I don't believe so.

Q. Do you ever cut checks to New Fulton Commons on behalf of Fulton Commons Care Center?

A. I don't recall.

Q. Would there be a scenario where the Care Center would need to, in some way,

pay for something or send reimbursements to New Fulton Commons?

A. You are asking how Fulton Commons gives money to New Fulton Commons to pay for whatever they need, is that what?

Q. Correct, trying to understand how that process works.

A. Okay. So the bank automatically pulls, if you will, money from Fulton Commons Care Center to pay everything that comes in New Fulton.

Q. So the bank will do transfers from Fulton Commons Care Center to New Fulton Commons?

A. Yes, they have what's called I think a zero balance account in New Fulton Commons, and every time money comes into New Fulton Commons, it takes the funds to cover it from Fulton Commons Care Center.

Q. And then how are the numbers arrived at that would lead to that debit, are those numbers that are input by staff in your office or something else?

A. Whatever checks happen to come in

that day to the bank.

Q. And would New Fulton Commons make a contract, say, with a paper towel provider on behalf of Fulton Commons?

A. Yes, that's how it's supposed to go, yes.

Q. So New Fulton Commons would make a contract with the provider of some service on behalf of Fulton Commons Care Center?

A. Yes.

Q. And then when an invoice was received for those services or for those goods, would that invoice be delivered to New Fulton Commons?

A. Yes.

Q. And then what would happen, would Fulton Commons submit that invoice to Fulton Commons Care Center or something else?

A. No, New Fulton Commons would pay that invoice, that's it.

Q. And then New Fulton Commons would submit that cost to the Fulton Commons Care Center account?

A. New Fulton Commons, the money

would hit our bank, New Fulton Commmons would have zero dollars in the bank so it would take that money from Fulton Commons Care Center to cover that cost.

Q. Understood. And is that the same across the facilities in your group?

A. Yes.

Q. So it sounds like we're dealing here with a lot more sort of an automated system that's based on procurement, contracting and goods provided, outside of that context, would there ever be a time where you would need to cut checks to New Fulton Commons on behalf of Fulton Commons Care Center?

A. Not that I'm aware of. Excuse me, let me rephrase that.

Q. Sure.

A. Let me say that more clearly. When we have to pay the rent for the money that has to go into realty, to the Fulton Commons Realty Company, it goes from Fulton Commons Care Center, I transfer the money to New Fulton Commons Company and New Fulton

Commons Company pays Fulton Commons Realty Co.

Q. So the lease is paid by New Fulton Commons on behalf of Fulton Commons Care Center?

A. You mentioned lease, I don't know about the lease, but the money goes from New Fulton to New Fulton Commons Care Center.

Q. Am I correct in understanding that Fulton Commons Care Center receives reimbursements for care rendered by Medicaid, Medicare and private insurance?

A. Yes.

Q. So when Fulton Commons Care Center provides a medical service or care service, that reimbursement is paid directly to Fulton Common Care Center's account, correct?

A. Yes.

Q. And those bank accounts will be debited by New Fulton Commons to sort of carry out the operations of the facility?

A. Yes.

MR. SMITH: Is everybody okay

S. Weiss

with taking a quick break?

THE WITNESS: It's fine by me. What does a quick break mean?

MR. SMITH: Well, it is 12:15. Again, I apologize for the late start, I will obviously take a lunch break if everybody wants that, we can do that later, take a quick break now and do lunch later in the day, it depends on where folks are.

I would be fine to do a five, ten minute bathroom break and do lunch later in the day, if that works for everybody.

MS. SEKHON: Ben, that sounds good to me.

MR. SMITH: I was going to say hearing no objections I will go with that option.

How about we come back at 12:25, just take eight minutes.

(A recess was taken.)

MR. SMITH: We can go back on the record.

S. Weiss

So we are back on the record returning after a short break we did a role call and everybody is back on the role call.

Q. Mr. Weiss, I wanted to double-back to a quick thing we had talked about briefly, and that was sort of in your role as comptroller of Fulton Commons Realty, would you make payments on non mortgage related items on behalf of Fulton Commons Realty?

A. Not to the best of my knowledge.

Q. And maybe I can parse that a little more, make it a little more clear, so Fulton Commons Realty would make mortgage payments to the mortgage holder; is that correct?

A. Yes.

Q. Right, okay, so any other sort of payments, would that be something you would do as comptroller?

A. If there were, yes.

Q. So if Fulton Commons Realty had made payments to another entity, that would

be something you would handle as comptroller?

A. Yes.

Q. Along those same lines, do you recall making payments to any consulting or management companies on behalf of Fulton Commons Realty?

A. As distributions, are you referring to distributions?

Q. Could be distributions, payments, anything, any sort of disbursement out of Fulton Commons Realty to a management or consulting company.

A. Distributions, yes.

Q. Describe those for me, what kind of distributions were made on behalf of Fulton Commons Realty?

A. Distributions to the owner.

Q. And by that you mean Mr. Kalter?

A. The multiple, the many, the various owners.

Q. So we are talking about thee owners of Fulton Commons Care Center?

A. No, I thought you asked me about

Fulton Commons Realty.

Q. We are talking about Fulton Commons Realty, so what is the ownership posture at Fulton Commons Realty?

A. Moshe Kalter and Aaron Fogel, to the best of my knowledge.

Q. So you would make distributions out of Fulton Commons Realty's bank to Mr. Fogel and Mr. Kalter?

A. To the best of my knowledge, yes.

Q. What was your understanding of what those distributions were for?

A. I don't know.

Q. Would you make those distributions on a regular basis or was it more sort of random?

A. I would classify them as random.

Q. Was it once a month, once every few months, once a year, what kind of regularity were you making those disbursements?

A. To the best of my knowledge, I just recall once in a while, more than once a year, but not once a month.

Q. And was that the same for both Mr. Kalter and Mr. Fogel, they would each receive a distribution every once in a while?

A. To the best of my knowledge, yes.

Q. Do you remember or recall how much these distributions would be?

A. No.

Q. And again, just to be clear on the record, you are not clear as to what the distributions were for?

A. No.

Q. So aside from all these things we talked about, did you ever make payments or disbursements to any consulting or management companies?

A. To the best of my knowledge, no.

Q. So we will stay along this line of questions for just a bit longer, so are you familiar with an entity called Fulton Commons Management?

A. Yes, we discussed that earlier.

Q. And that was one of the consulting or management companies that

provided services to Fulton Commons Care Center, correct?

A. I'm not sure what that relationship is.

Q. Is that a relationship that does not exist anymore?

A. I'm not aware of it, I haven't heard of it in a long time.

Q. When is the last time you recall, you remember Fulton Commons Management being an entity that provided services or dealt with Fulton Commons Care Center?

A. I don't know, it was quite some time ago.

Q. More than five years?

A. I would say more than five years, yes.

Q. What about more than 10, has it been that long?

A. Perhaps. I don't know. I don't recall.

Q. When the relationship with Fulton Commons Management changed, did another management company step in and take its

place?

A. Not that I'm aware of.

Q. Who were those services just not provided anymore, the services that Fulton Commons Management had been providing, did Fulton Commons Care Center receive those services from anyone else?

A. I am not aware about anything from Fulton Commons Management, I don't know what it was.

Q. Did you have any understanding of what it did?

A. No.

Q. On behalf of Fulton Commons Care Center?

A. No.

Q. So it's fair to understand or correct me if I'm wrong in understanding, did you cut checks to Fulton Commons Management ever during your tenure as comptroller?

A. I don't recall.

Q. Are there any other consulting or management companies aside from Fulton

Commons Management that ever provided services to Fulton Commons Care Center during your tenure as comptroller?

A. Not that I recall.

Q. And I know this is some time ago, but did you understand who owned Fulton Commons Management?

A. I don't know. I don't remember.

Q. Do you recall ever dealing with the ownership at Fulton Commons Management?

A. I don't remember.

Q. And did Fulton Commons Management have a physical location, as far as you know?

A. I don't remember anything about Fulton Commons Management.

Q. And again, just for the clarity of the record, when the Fulton Commons Management relationship ended, no other management or consulting company stepped in to fill its place?

A. I am not aware that it ended, I'm not aware that it did not. I don't believe anything sold -- I'm not aware of it at all.

S. Weiss

Q. So let's talk about what New Fulton Commons does on behalf of Fulton Commons Care Center, do they provide any sort of management or consulting services to the Care Center, as far as you understand it?

A. No.

Q. Because correct me if I'm wrong, but my understanding of our discussion so far is that Fulton Commons provides operational support, right, and the idea of completing payroll, hiring and firing, making sure supplies are there, that kind of thing, correct?

A. I would exclude hiring and firing from there but, yeah, payroll, and we do payroll and purchasing and pay the bills, accounts payable for Fulton Commons care supply.

Q. So excluding those things or outside of those things, does New Fulton Commons provide any other consulting or management type services to Fulton Commons Care Center?

A. Not that I'm aware of.

Q. Does New Fulton Commons provide supportive services to Kathy Doyle as administrator?

A. I'm don't understand that question.

Q. In the sense would anyone at New Fulton Commons assist Kathy Doyle in her job function as an administrator at Fulton Commons Care Center?

A. She works for New Fulton Commons.

Q. Okay. Would I be correct in stating that she is a W-2 employee of New Fulton Commons?

A. Yes.

Q. So New Fulton Commons appears on her paycheck, not Fulton Commons Care Center?

A. Correct.

Q. Is that true for all staff at Fulton Commons Care Center?

A. Correct, to the best of my knowledge, Fulton Commons Care Center does not provide a W-2 to anybody.

S. Weiss

Q. So we have been talking a bit about Fulton Commons Management. Do all the sister facilities in your group have a similar management company associated with the care facility?

A. I don't know about the Fulton Commons Management Company or any company like that for any of the other facilities.

Q. Let me direct your attention now to what will be marked as State's Exhibit 7. So you can see this is a five-page document. We will walk through it, but just to get a sense of the document, maybe, Anne, if you don't mind taking us through so Mr. Weiss can get a sense of the total documents.

And Mr. Weiss, have you ever seen these documents or this total document before?

A. I don't recall.

(Organizational Chart was marked as State's Exhibit 7.)

Q. From looking at the documents now, would these appear to you to be organizational charts for an order at

S. Weiss

Mayfair, Bridge View, Midway and Fulton Commons?

A. Yes, but you went through too quickly.

Q. We can go through again.

A. Okay.

Q. Okay, so and again, for clarity, you have not seen this document before or created this document yourself?

A. I don't remember seeing such a document.

MR. YAFFE: How much pages is this document.

MR. SMITH: It's five pages total, so it's one page for Mayfair, one page for Bridge View, one page for Midway, one page for Fulton Commons, and then a final page that shows an operational flow chart.

MR. YAFFE: So if you're just if you're asking the witness a question about a particular page, can you just identify it so that the record is clear, like identify it as I see there

S. Weiss

are Bates-stamp numbers at the bottom of at least this page that's on the screen now.

MR. SMITH: Right, we will walk through it so we will do a breakdown page by page.

Q. What I want to just right out of the gate get clear, though, Mr. Weiss, you have not seen these documents before, any of these documents?

A. Not that I remember. I was going to ask you who prepared them but I don't remember seeing it. Perhaps I did but I don't remember this.

Q. That's fine. So just for context I want to note that in the upper left-hand corner of these documents are dated to the years 2016 and 2017.

Let's go back to page one, if you don't mind. So page one is identified as the Mayfair Care Center Operational Flow Chart 2016 2017. Looking at this particular page, Mr. Weiss, does this organizational flow chart represent the Mayfair system as

it's constituted now or has it changed at all?

A. With the exception of Mayfair Management Company that I said I don't know exactly what they do or who they are, yeah, just looking at it now, except for -- I didn't realize I was promoted to CFO, but other than that, I would -- I believe this is accurate.

Q. And let's drill down on the Mayfair Management Company, is the scenario here similar to the one we have been discussing with Fulton Commons Management?

A. I would assume so, but again, I don't know what that Mayfair Management or Fulton Commons Company Management is there or does.

Q. So it's safe to understand that you do not serve any role in the operations of Mayfair Management Company?

A. No, not to the best of my knowledge, no.

Q. Do you recall ever cutting checks or making disbursements to Mayfair

Management Company?

A. No.

Q. By the same token, do you recall every receiving payments to either New Mayfair Company or Mayfair Care Company from Mayfair Management?

A. Not that I recall.

Q. So we can go to the next page. And this upper left-hand side corner is identified as Bridge View Nursing Home Operational Flow Chart 2016 and 2017 again, and again, you have received a promotion to CFO, but I wonder if this sort of orientation of Bridge View's system has changed at all since this time?

A. I would say more or less it's accurate. I am looking at it quickly. Yeah, except the management company I don't know what they do, the Bridge View Realty Company, if I were creating the chart I would probably put Bridge View Realty Co below Bridge View, but I am not familiar with these charts. I don't know how this would work. And same with the previous

S. Weiss

screen on Mayfair Realty.

MR. YAFFE: Can we just go to the previous screen for a second.

MR. SMITH: Sure, we can go back to page one.

THE WITNESS: So Mayfair Realty on the right, again, I'm not sure how these get created. I would put it below New Mayfair, but perhaps I'm wrong. I don't know.

Q. Okay.

A. But yeah, correct.

Q. And the flow chart for my purposes, I am just looking at understanding what each of these entities does, so I don't want you to worry about where they sit on the chart or where they are on the flow chart, so we are just more looking at what each actual entity does.

So if we can jump back to page two. So we see again here Bridge View Management Company, similar discussion with Fulton Commons and the prior one we just discussed, is this a similar scenario, are

you familiar with Bridge View Management Company?

A. I have heard of them years ago, I don't know what they did what they do or if they're still around, I don't know.

Q. So similar line of questions, have you ever made disbursements or cut checks to Bridge View Management Company on behalf of any home in the system?

A. To the best of my knowledge, no.

Q. And we can go to the next page three, and this is for Midway Nursing Home, year 2016 2017. Again, I don't want to worry about the position of different companies, but again, wondering about Midway Management Company, is this the same idea, do you deal at all with this company?

A. No.

Q. And same question, have you received a disbursement or made a disbursement from Midway or to Midway Management Company?

A. Not to the best of my knowledge, no.

Q. So let's go to the next page, page four, and this is for Fulton Commons Care Center Operational Flow Chart, years 2016 2017, and just for my own clarity, so we see New Bridge View Company that has appeared in each one of these flow charts, so New Bridge View, like you said, would provide the same sort of payroll, accounts receivable services to each of those homes in the system, correct?

A. Yes.

Q. And that's consistent across all the facilities, correct?

A. Correct.

Q. So kind of drilling into the idea behind a management company, each of these homes based on these flow charts, at least in 2016 and 2017 had a relationship with a management company, does that appear to be correct?

A. I don't know who created the flow charts, and I don't know anything about the management companies.

Q. But at least based on these flow

charts, each home in the system would appear to be assigned a management company with the name of the home in the title of the management company, correct?

A. Again, I'm not familiar with it. That's what it says on the paper.

Q. And again, you are not familiar with the ownership of any these of these management companies?

A. No.

Q. And I guess we are now talking about all the homes in the system, not just Fulton Commons. Are you aware if any of these management companies have any physical office space at any of the facilities in your system?

A. That I don't know. To the best of my knowledge, no.

Q. To the best of your understanding, do any of these management companies have employees?

A. I don't know anything about the companies. I know they existed. Let me just clarify something. I know they existed

at some point. I don't know what they did at some point, I don't know if they're still in existence, I have heard the names before but I don't know anything about it.

Q. Would it be fair to say that you have heard the names and is that about the extent of your exposure to the management companies?

A. To the best of my knowledge, yes.

Q. So in addition to each of these homes and, again, based on this flow chart, in addition to each of those homes having a management company, we see it each has its own realty company; is that correct?

A. Yes.

Q. And its own operating entity; is that correct?

A. What do you mean by operating entity?

Q. Correct me if I'm wrong, but that would be the New Fulton Commons or New Midway or New Mayfair?

A. You characterize it as operating, I don't know what I would call it, but yes,

each facility does have a New company.

Q. And along those lines, like you said, each facility has its own quote unquote "New" entity associated with it, correct?

A. Yes.

Q. And correct me if I'm wrong, you serve as comptroller in each of these quote unquote "New" entities, correct?

A. Yes.

Q. Aside from clinical staff, do these New entities maintain other employees?

A. Yes.

Q. And again to clarify, and I'm excluding nurses, doctors, nurse practitioners, the staff that's providing clinical service, we are not talking about those, I am thinking about office staff. Do each of those New entities maintain a roster of office staff?

A. The office staff is part of the operation of that particular nursing home, yes.

Q. What do those office staff do,

like who are they, if you have titles?

A. I wouldn't, I have no idea.

Q. Is there an HR person in each New entity?

A. No.

Q. Is there a housekeeping services person at each New entity?

A. So maybe, can I explain in my words, if you will.

Q. That would be great, sure.

A. Each facility, all of their employees, be it a nurse or a housekeeper, all W-2 employees are employees of that New company, New Fulton, New Fulton Commons, New Bridge View and so on.

Q. And thank you for that clarification, that's kind of what I'm getting at is, am I correct in understanding that the quote unquote "New" entity is really just encompassing the staff that are actually at the nursing home itself?

A. Correct.

Q. And that includes clinical staff, housekeeping staff, food services staff,

those types of folks?

A. Correct.

Q. So am I also correct in understanding that all the sort of business operational staff are operating out of the New Bridge View office?

A. Correct.

Q. So New Bridge View Company provides operational staff and operational services for all the homes in the system; is that correct?

A. Correct.

Q. So there would be nobody at New Fulton Commons who would be engaged in procurement or contracting or accounts payable?

A. Correct.

Q. That person would be at New Bridge View Company?

A. Correct. They would request what they need from us at New Bridge View, I'm quoting us as business office who paid for it at New Bridge View, and we would provide it.

Q. Okay, perfect, thank you for clarifying that for me.

Do you know from your position as comptroller, do you know if the sister facility within the system ever loans each other money?

A. Perhaps.

Q. Is that something you have ever been involved in?

A. From time to time.

Q. Describe that for me, expand on that idea for me.

A. I don't have details of that.

Q. Well, let's say, what would be a common scenario where one home, say Fulton Commons would lend money or be lent money from, say, Mayfair?

A. I don't know the answer. If they were short on money, perhaps, I don't know.

Q. Is that something that happens from time to time in your experience?

A. It has happened in the past, I believe.

Q. Do you have any recollection of

that scenario?

A. No.

Q. So let's just play out an idea. Would New Fulton Commons or could New Fulton Commons borrow money from Mayfair if they couldn't make payroll in a month?

A. Perhaps.

Q. Is that a thing that happens from what you recall, like making payroll issues with making payroll?

A. Perhaps.

Q. How often would an interest facility loan like this happen in your experience?

A. Oh, I don't know, I don't recall.

Q. To drill on that a bit further, if you don't recall is it safe to understand that it's not something that happens regularly?

A. I don't want to characterize it as that, I don't recall.

Q. Can you recall the last time that it might have happened?

A. No.

Q. When these sort of intra facility loans happen, are they formal in the sense of is there a written agreement between the facilities about payment terms, contracts, something long these lines?

A. Not that I'm familiar with.

Q. So when these intra facility loans would happen, it would be more informal; would that be correct?

A. That's what I would -- yeah, I don't know.

Q. If an intra facility loan happened, who would be the point person for that, would that be something that you would be involved in or would that go up to ownership?

A. No, that would be something I would be involved in.

Q. Would that discussion involve ownership or is that something that you would just handle?

A. It would be mine. It would be mine.

Q. As far as you're aware, are there

any pending or current intra facility loans at this time?

A. I am not familiar with it.

Q. And during the pandemic were there any intra facility loans for any purposes during the pandemic?

A. I don't believe so.

Q. Could ownership direct you to do a loan between or amongst facilities?

A. Yes.

Q. Has that ever happened to your recollection?

A. I don't remember.

Q. So the line of questioning I was just engaged in there was more loans being made between Fulton Commons Care Center and Mayfair Care Center or Midway Care Center or New Bridge Care Center so I was looking specifically at the Care Centers, could there ever be loans between Fulton Commons Care Center and New Fulton Commons?

A. I don't think -- no, I don't know. I don't know the answer to that.

Q. Is that something you have ever

dealt with in your recollection, a loan between the Care Center itself and one of its associated entities?

A. No.

Q. Could New Fulton Commons --

A. Well, to the best of my knowledge, no.

Q. To expand on that a bit, could New Fulton Commons loan or be loaned money from New Bridge View?

A. Perhaps, I understood that's what you were referring to two minutes ago.

Q. My apologies if that wasn't clear. What I was looking at before was the Care Centers loaning money between and amongst themselves, so, for example, could Fulton Commons Care Center loan money to Mayfair Care Center?

A. It's really the same answers, I don't -- I am not aware.

Q. And then to sort of expand on that, could New Fulton Commons loan money to New Mayfair?

A. Again, I'm -- perhaps.

Q. Do you have a recollection of that sort of transaction ever happening?

A. I don't recall offhand.

Q. And now to expand a bit further, could New Mayfair loan or be loaned money from Fulton Commons Care Center, in other words, could the Care Center loan or be loaned money to a New entity that is not associated with that Care Center?

A. It shouldn't -- no, that shouldn't happen.

Q. So if there are loans, they should happen between and amongst either the Care Centers directly or within the cluster of the Care Centers and its associated entities?

A. Perhaps.

Q. And again, just for clarity, do any of these scenarios I have laid out, do you recall any of these sort of the loans happening?

A. From time to time in the past.

Q. Describe to me what you can remember. That could be very general.

A. I can't remember any details.

Q. But you do remember such a loan happening?

A. Vaguely.

Q. Has it been within the last five years or more than that?

A. I don't know.

Q. Do you know if the facility or any of their associated entities have ever loaned money to anyone in ownership?

A. I don't know.

Q. Is that something that could be done?

A. I don't know.

Q. And so looking at the flow charts here again, we have the Fulton Commons org chart up in front of us now. Am I correct in understanding that at least according to this org chart, Fulton Commons Care Center would be receiving management services from Fulton Commons Management Company and New Bridge View Company?

A. I don't know what Fulton Commons Management Company is.

S. Weiss

Q. So as far as you understand, there are no management services being rendered to Fulton Commons Care Center from Fulton Commons Management?

A. I don't even know what it is.

Q. Is the arrangement we are looking at here on the flow chart, on the org chart industry standard from your understanding as comptroller who has been doing this work for a long time?

A. I don't know what goes on by other facilities.

Q. Do other facilities ever consult with you or do you ever consult with other facilities about setting up organizational structures like this?

A. No.

Q. Are there any other consulting or management groups at Fulton that we haven't discussed?

A. Not that I'm aware of.

Q. So I want to give you a couple of names and just see if they're familiar to you, if not, perfectly fine. Are you

familiar with PHFO Incorporated?

A. Maybe.

Q. What can you?

A. Vaguely, vaguely. I think I remember such a name.

Q. What does that mean now what does that name mean to you?

A. I don't know.

Q. Any specific idea what it is or what they do?

A. I'm not -- no.

Q. What about an AFNH Realty?

A. AFNH Realty, I don't think I ever heard of that. Let's go back to PHFO, please.

Q. Sure, absolutely.

A. PHFO, I believe is a company that's run by Aaron Fogel, I think. Perhaps. It's a company that's run by Aaron Fogel to the best of my knowledge.

Q. Do you have any sense or understanding of what that PHFO does?

A. No.

Q. Do you know if PHFO provides any

services to any of the homes in your system?

A. Not that I'm aware of.

Q. What about FK Healthcare Management Corporation?

A. What's the question?

Q. Are you familiar with that name, does that name mean anything to you?

A. Yes.

Q. Just tell me what you know about FK Healthcare Management Corporation.

A. It's a company that that's run by Frady Kalter.

Q. What does this company do, as far as you know?

A. I'm not familiar with it.

Q. Do they provide any services to the homes in your system that you know?

A. I don't know, I believe they get distributions from the nursing homes.

Q. And by that you mean does New Bridge cut the checks?

A. No.

Q. Or?

A. No. One second. I don't know.

I don't remember.

Q. When you say that you think that FK Healthcare Management gets distributions what do you mean there, more specifically?

A. I'm not sure for that answer.

Q. We can drill down a bit more. Would that involve Fulton Commons Care Center making a distribution to FK Healthcare or New Fulton Commons making a distribution or something different?

A. I'm really not sure. I'm really not sure off happened.

Q. But am I correct in understanding that you do recall at least at some level FK Healthcare Management receiving some sort of distribution from some entity within the system?

A. Yes.

Q. Do you recall when that happened?

A. No.

Q. And finally, what about MK Healthcare Management Corporation?

A. Yes.

Q. And what does that mean to you,

what do you understand them to do?

A. It's a company run by Moshe Kalter.

Q. And what are the --

A. Distributions just like the FK Healthcare.

Q. Do you have any specific recollection of what distributions MK Healthcare received?

A. I'm not familiar with that, no.

Q. Do you recall the last time MK Healthcare would have received a distribution?

A. No.

Q. But we are safe in understanding that at some point some entity within the system made a distribution to MK Healthcare?

A. Yes.

Q. And these distributions to FK Healthcare and MK Healthcare, did you cut those checks or have someone in your office cut those checks, as far as you recall?

A. I would have made the either bank transfer or wire transfer.

S. Weiss

Q. And do you recall what amounts those distributions were in?

A. No.

Q. So we're going to back up just a bit to 2019, and in that year do you recall, and I know you don't have much recollection of this entity, but do you recall if Fulton Commons Management Company billed Fulton Commons Care Center for any services?

A. I don't know anything about Fulton Commons Management Company.

MR. SMITH: So let me direct your attention and, Mr. Weiss, and Mr. Yaffe both, I will let you know this exhibit is going to follow a bit out of order so we will get back on track after this one, but this will be marked as State's Exhibit 33.

(Fulton Commons Management Company Financial Statements were marked as State's Exhibit 33.)

Q. This is a seven-page document, and we can stroll down just a bit, so we see there it says Fulton Commons Management

Company financial statements years ended December 31st, 2019 and 2018; is that correct?

A. That's what it says.

Q. I know this is just the first page, but have you seen this document before, does this refresh your recollection at all?

A. Our accountants -- this is the HMM's financial statements format, so they must have prepared that.

Q. Do you recall if you assisted in the preparation of this particular document?

A. I don't believe I did.

Q. Let's scroll down to page four. So this page is titled Statements of Income and Members Equity for the years 2019, and it says 1900, but I assume that's not accurate, so let's scroll down just a bit and we see management fee income there towards the top of the page, and what is indicated here for management fee income?

A. I don't see anything here on my screen.

Q. Zero, correct?

A. Zero, correct, okay, yes.

Q. Would this it be consistent with your understanding that Fulton Commons Management Company was not providing services, at least as early as 2018 2019?

A. I don't know anything about the Management Company, and I don't know anything about this document.

Q. So in your job as comptroller, you managed Fulton's contracting and procurement, correct?

A. Yes.

Q. And was this for both goods and services?

A. I'm not understanding what that means.

Q. Well, in other words, would you contract, do contracting or procurement for material goods, so say cleaning supplies or stretchers or medicine and also services, which could be, you know, any number of services that you would contract with a vendor for, does that clarify?

A. Yeah, my office would do that, we would buy the beds and things like that, yes.

Q. When you're engaged in this specific function of your job, do you make purchasing decisions facility by facility or do you order for multiple facilities or all the facility at once?

A. It's generally facility by facility.

Q. Do you know if the facility lends each other money to cover these sorts of procurement or services costs?

A. I don't know.

Q. And along the same lines, do you know if the facilities ever commingle funds?

A. I don't know commingle, what does commingle funds mean?

Q. In a sense would there ever be a shared bank account between a facility?

A. No, there are no shared bank accounts.

Q. Would there ever be shared bank account between entities in the same group,

by that I mean Fulton Commons Care Center and New Fulton Commons or Fulton Commons Realty?

A. To the best of my knowledge, there are no shared bank accounts.

Q. And specific to contracting and procurement for goods and services, are you the only person doing this work on behalf of Fulton Commons?

A. My office does it, yes.

Q. Are there other individuals in your office that do this specific procurement work?

A. Well, I am not understanding procurement, actually buying the product, you mean?

Q. Sure, I can use a different word, just contracting, generally.

A. I'm still not understanding. I apologize. I just want to answer the question correctly.

Q. Absolutely.

A. Ask.

Q. So by contracting and procurement

S. Weiss

I mean you are engaged in acquiring goods and services for Fulton Commons.

A. Yes.

Q. How many individuals in your office work on procuring goods and services?

A. Approximately, two.

Q. Is that yourself and one other person or three people total?

A. No, it wouldn't be -- I wouldn't include myself in that.

Q. So you do not engage in goods and services procurement?

A. Not in detail.

Q. Do you sign-off on those deals?

A. Perhaps sometimes.

Q. If 10 deals are made, how many deals would you be involved in and sign-off on?

A. You have to -- I'm sorry, you have to be more specific in deals, what do you mean by deals?

Q. So if you were looking to retain an oxygen supplier, would that be a deal that you would sign-off on making an

agreement with an oxygen supplier to supply oxygen to a facility?

A. Perhaps, but not necessarily.

Q. What would influence that decision whether you were involved or not?

A. It depends what kind of, you know, that I consider on the purchasing level, you know, the purchaser would find the company and then hey, and you know, get their services.

Q. So it doesn't rise quite to the level that you would be involved in; is that correct?

A. Yes.

Q. And so if we're assuming that there is a threshold where you would get involved in a decision on whether to make a contract or an agreement with a vendor, what is that threshold, like at what point would you get involved or what would trigger you getting involved?

A. There is no specific number.

Q. So it's not a valuation of contract, it's not a money number?

A. No.

Q. Along those same lines, how are vendors chosen at Fulton Commons?

A. If you can supply the product, we try to find best price to supply the product.

Q. So do you put out or does your office put out a request for goods or, you know, that sort of thing or is it something else?

A. It's a very general question. If you can be more specific, please.

Q. Sure. So using the oxygen example, if you needed to get a new oxygen vendor, would you put out a request for bids from multiple oxygen vendors or go specifically to one person or how would you go about it?

A. I would try to get a couple of names, the administrators will try to get a couple of names, you know, word of mouth and from that point, you know, they would contact them and see what, who's offering us the best deal.

Q. And as far as you know, has Fulton ever contracted with any vendors that are owned in whole or in part by the Fogels?

A. Not to the best of my knowledge.

Q. Has Fulton ever contracted with any vendors owned in whole or in part that are friends and family of the Fogels?

A. Not that I'm aware.

Q. Were you ever directed by the Kalters or Fogels to use a particular vendor for anything?

A. Not that I'm aware of.

Q. And I think you answered this already, but just to be perfectly clear, what sorts of decisions in the goods and services realm have to be run by ownership, if any?

A. Non. The ownership does not get involved in purchasing product, they just want to know that it's done.

Q. Did your work in this zone in contracting in goods and services change at all during the pandemic?

A. No.

Q. Do you or your office cut the checks to vendors that provide services to Fulton?

A. Yes.

Q. Are you the one who cuts the check or someone else in your office does that?

A. Someone else does that.

Q. So let me direct your attention to what will be marked State's Exhibit 8. So you were not a recipient, we will go to the bottom of this page here, so I want to look at the --

A. Can you scroll down, please.

Q. Sure, sure. We will just look here, so I am going to read the highlighted portions of this e-mail, and this is an e-mail from a man named Martin Marcus. Is that man familiar to you?

A. I am not familiar with him.

(E-mail dated 4/15/20 was marked as State's Exhibit 8.)

Q. This is an e-mail April 15th, 2020 from Martin Marcus to you copying Kathy

Doyle. I am going to read the highlighted portions. "We can't continue to service Fulton Commons if we do not get paid for the work we perform. I don't understand why we have to demand money every few months. The account is now overdue by 14K." Do you recall receiving this e-mail from Mr. Marcus?

A. I don't recall but I see I received the e-mail, and what this says to me is the person, company wasn't getting paid, hadn't gotten paid, I don't know why, and I would gather that after if we got this e-mail we probably paid them. I don't know where it would have gotten lost in the payment section, but.

Q. And I want to scroll done just a bit so we can see Mr. Marcus works for GFS Fire Systems, Inc., and so that is the fire safety vendor at Fulton Commons, correct?

A. I am not aware of that but, yes, I guess so.

Q. So from your recollection as far as you know, were these sorts of like

chronically overdue bills common at Fulton Commons?

MR. YAFFE: Objection.

Q. You can answer.

A. Not that I'm aware of. I mean, I don't know.

Q. And do you know or would you have an explanation for why this particular bill was not paid on time?

A. No, I don't.

Q. At this time so we are looking in April of 2020, did Fulton Commons have the reserve on or cash on hand to pay this bill?

A. Yes, we did.

Q. And going back out to your duties as comptroller to multiple facilities, just giving a ballpark figure, what percentage of your time, say from January 2020 to December of 2020, for that whole year of 2020 was devoted to Fulton Commons, work on Fulton Commons?

A. I can't answer that, I don't know the answer.

Q. Is there a facility that takes

more of your time of the four or less of your time?

A. No, no, there is no facility that would take more in a particular day.

Q. During the pandemic, so say from March 2020 to June 2020, during the height of the pandemic, was there a facility that took up more of your time?

A. No.

Q. Do you try to district your time evenly among the four facilities?

A. Yeah, yeah, that's because we operate equally in all four facilities.

Q. Does your role in any of the sister facilities differ from your role at Fulton Commons?

A. No.

Q. Does Horan Martello Morrone, do they provide accounting services to all the facilities in the group or just Fulton?

A. All the facilities.

Q. Are you familiar with the term case index or CMI?

A. Yes.

Q. What does that mean to you in the context of the nursing home industry?

A. That's a judgment of how -- of the level of care needed for each resident.

Q. And is that a metric that you use in your daily work as comptroller?

A. No.

Q. Does it factor in your work at all?

A. I mean, ultimately it tells -- it shows our what our Medicare rates are going to be.

Q. Who generates this metric, is it somebody at Fulton?

A. Yes.

Q. Do you know who that is?

A. I don't.

Q. And if at all, how would the CMI at Fulton influence your decision-making at Fulton Commons?

A. It doesn't, it doesn't influence it at all.

Q. When did you first become aware of Covid-19?

A. I don't remember.

Q. Do you remember having discussions with any of the clinical or administrative staff at Fulton Commons about the onset of Covid-19?

A. Yes.

Q. Describe those for me, who did you talk to, what did you talk about.

A. I only spoke with the administrator, to the best of my knowledge, Kathy Doyle.

Q. Do you recall what those conversations were about in those early days of the pandemic?

A. Just general discussions about, about what's coming or what we feared was coming.

Q. Did you get into discussions about planning or preparation?

A. Perhaps.

Q. Do you have any specific recollection of those conversations?

A. I'm pretty sure that Ms. Doyle was very, you know, early in trying to

stockpile PPE for our facility.

Q. Outside of the PPE, were there any other preparations made at Fulton Commons in the early days of the pandemic?

A. You would have to ask Ms. Doyle.

Q. Aside from stockpiling PPE, do you know what else Fulton Commons did to prepare for Covid in the facility, specifically?

A. No.

Q. Would you be involved in review or revision of policies and procedures at the facility?

A. No, I would not.

Q. Would you be involved in attempts to obtain PPE for the facility?

A. Yes.

Q. Describe your involvement in that specific function.

A. I was to instruct -- I did instruct my office to do whatever we need to do to provide as much PPE as we can for the facility, whatever they're asking for we should provide.

Q. Anything beyond that?

A. No. To the best of my knowledge, no.

Q. We talked about having discussions with Mrs. Doyle, did you ever discuss Covid's onsite with Dr. Butchma or Carol Frawley, the director of nursing?

A. I don't believe I ever spoke with Dr. Butchma. Perhaps in passing, perhaps, I don't believe so. And my involvement with the director of nursing, I maybe spoke to a couple of times in her employment there, so you know.

Q. Do you remember if those interactions with Mrs. Frawley were about Covid or can you recall what those were about?

A. No, I don't remember.

Q. Did you ever discuss the onset of Covid or Covid preparations with ownership?

A. Yes.

Q. Describe those conversations for me.

A. Just as you might imagine, what's

going on and, how the facility wants to prepare for it, how we want to buy PPE, prices were crazy, we had full green light to purchase whatever we needed to get our hands-on from wherever so that we can be stocked as best as possible.

Q. And just for your own purposes as comptroller, during the onset of Covid, did you review any state or federal guidance about responding to Covid or dealing with Covid in nursing homes?

A. I don't believe I did directly.

Q. Were you consulted on those sort of directives either by Mrs. Doyle or somebody else?

A. I wasn't consulted. They consulted me. They told me what they need and what they require.

Q. Okay, so your involvement on that specific front was Mrs. Doyle coming to you with specific needs?

A. Yes. To the best of my knowledge, yes.

Q. And was that specific to PPE or

staffing or something else?

A. Whatever it may have been.

Q. Are you involved at all in the residents admission process, and by that I mean admitting residents to the facility itself?

A. No.

Q. So you would not be involved in accepting a resident or rejecting a resident or any sort of transfer of residents?

A. No.

Q. Was there ever a time during the pandemic where you thought Fulton was not prepared or equipped to admit residents from outside the facility?

A. No.

Q. By that same token, would you agree that a nursing home should not accept a new admission unless the facility is providing safe adequate care of the incoming resident?

A. It's not my place to agree or not agree, it's my place that the Department of Health's directives are followed.

Q. But was it your understanding that it was important to follow those directives because they related to resident safety?

A. That's what the administrators, yes, they told me about.

Q. And I want to just be clear for the record and for my own understanding, how involved are you in the policy and procedure process at Fulton Commons?

A. I'm not at all.

Q. Do you review policies and procedures?

A. No.

Q. Are you consulted on the creation or revision of policies and procedures?

A. Perhaps from time to time they would tell me what they're doing, but I am not involved in making those decisions at all.

Q. Do you ever see the policies and procedures of Fulton Commons, would you ever review those just yourself?

A. No, to the best of my knowledge,

no.

Q. From your understanding as a comptroller from having worked in the industry for a long time, is it important for nursing staff and clinical staff to follow the facility's policies and procedures?

A. Are you asking my opinion?

Q. Based on your experience as a comptroller as somebody in management in the industry, is that something that you would agree is important for clinical staff to follow facility policies an procedures?

A. Yes, I assume is run by directives of the Department of Health and we have -- we obviously have to follow the directives.

Q. And do you know who creates the policies and procedures at Fulton Commons?

A. No.

Q. Is it fair to understand that Kathy Doyle does not ask you for sign-off on policies and procedures?

A. That would be correct.

Q. Based on your experience in the field, you know, having done this for a long time, being in a management position in the industry, would you agree that a caregivers failure to follow a nursing home's policy and procedure could potentially endanger the resident's well-being in that facility?

A. It's not my opinion or not, we just have to follow the directives as best as possible.

Q. But understanding those directives to relate to patient care, would you agree that a breach of following those directives or a failure to follow those directives could potentially endanger a resident?

A. It's not for me to agree or not agree, we follow the directives as best as we can. That's what the administrator is there to oversee.

Q. But the importance of following them is resident safety; is that correct?

MR. YAFFE: Objection.

A. You would have to ask them. You

would ask have to ask the administrator.

Q. So along that line, who at Fulton Commons is responsible for ensuring that staff follows policies and procedures?

A. Kathy Doyle, I would assume.

Q. Is there anyone else involved in that process, as far as you know?

A. No one that I know.

Q. So do you know if Fulton Commons during the pandemic, so from March 2020 until say June 2020, ever created a designated Covid unit?

A. I am not aware of that.

Q. Were you involved in any discussions about cohorting residents during the pandemic?

A. Just a mention that was at some point the directive, I don't know if it's still a directive, but I do remember hearing something about that and the administrators said that they were handling it properly.

Q. Specific to Fulton Commons, did you ever have discussions with Kathy Doyle about the creation of a designated Covid

unit?

A. Perhaps. I don't recall for sure.

Q. And do you recall a Covid unit ever being created in any part of the Fulton Commons?

A. I don't, I am not aware of that.

Q. Are you aware of any of your other facilities, so Midway, Bridge View, Mayfair creating any designated Covid unit?

A. I am not aware of any of that.

Q. Do you recall having discussions with any of the administrators of those other nursing homes about the creation of a designated Covid unit?

A. Not to the best of my knowledge.

Q. Would you be involved in decisions at Fulton Commons to open or close a specific unit at the facility?

A. In a discussion perhaps, but ultimately it's the administrator's decision.

Q. Do you recall Kathy Doyle ever making a decision to open or close a

specific unit at Fulton Commons between March 2020 and June of 2020?

A. I don't remember specifics, no.

Q. Do you have a recollection of units at Fulton Commons being closed during the pandemic?

A. I remember something like that, yes.

Q. What was that, what's your recollection of that?

A. I don't remember. I know that at some point Ms. Doyle decided that it would be the correct thing to close the unit.

Q. Do you recall what that was about, like what led her to make that recommendation?

A. I don't recall.

Q. Was it ever your understanding during the pandemic that housing Covid and non Covid residents on the same unit potentially violated infection control protocols?

A. Could you repeat that, you got disconnected and I lost track.

Q. Sure. So during the pandemic, so let's say from March 2020 to June 2020, was it ever your understanding that housing Covid and non Covid residents on the same unit could be a violation of infection control protocols?

A. It's not something I deal with, I don't know.

Q. What about the concept of cohorting staff, and by that I mean having designated staff that would care for Covid patients versus staff that would care for non Covid patients, was that a conflict that you were ever exposed to?

A. I am not aware of that to the best of my knowledge.

Q. Do you know if Fulton Covid had any policies and procedures about the cohorting of staff?

A. Not that I'm aware of -- I don't believe. To the best of my knowledge, I am not aware of it.

Q. What about Fulton Commons having a policy or procedure about the cohorting of

residents?

A. I am not aware of any.

Q. Do you know if Fulton Commons ever used or deployed a tracking tool in the facility to track Covid in the facility?

A. I don't get involved in that, I don't know.

Q. Were you ever kept apprised of developments in the facility specific to Covid, and by that I mean number of residents testing positive for Covid or presumed or suspected Covid residents?

A. Perhaps I was told but I am not intimately involved. I don't know.

Q. And, again, as far as you understand, was a Covid unit, a designated Covid unit ever identified at Fulton Commons over the course of the pandemic?

A. Not that I'm aware of.

Q. Between February 2020 and June 2020, were you aware of Covid being present on any units in Fulton Commons, by that I mean Fulton Common residents testing positive or being presumed or suspected

positive?

A. Nothing specific.

Q. Is that something that you would be apprised of by administrator or staff at Fulton Commons?

A. Generally, the administrator would let me know about it.

Q. Do you recall ever being notified by Kathy Doyle about the status of Covid residents or suspected Covid residents at Fulton Commons?

A. I don't recall specifics about it.

Q. I want to direct your attention to what we have marked as State's Exhibit 12. This is an e-mail from Kathy Doyle to yourself on June 15th, 2020. It's titled Positive Covid Residents. Do you recall receiving this e-mail?

A. I don't recall but I see that I did.

(E-mail dated 6/15/20 was marked as State's Exhibit 12.)

Q. So I will just read it quickly.

"We have 10 residents that tested positive for Covid so far that need to be moved to unit 1 East."

Does that refresh your recollection at all, do you recall this interaction with Ms. Doyle?

A. I don't recall getting it, the e-mail. It's here. I am not saying I didn't get it, I just don't recall getting it.

Q. Would she send you these kind of e-mails regularly when she says specifically here she identifies for you there are 10 residents who testified for Covid. Is that the kind of update you would get regularly from Mrs. Doyle?

A. Yeah, perhaps.

Q. Did that remain consistent throughout the pandemic?

A. I wouldn't know if it was consistent or not consistent. No.

Q. And for your purposes as comptroller, how would this information influence how you did your job?

A. It would not influence at all.

Q. And then I want to look specifically at the end of this sentence here where she says, "Need to be moved to 1 East," what does that reference mean to you, the reference to unit 1 East?

A. I'm not sure. You are asking me what I know now or you're asking me what I knew in June of '20?

Q. Let's start with what you know now. What would this mean to you now?

A. I would assume that she's moving them -- 10 residents that tested positive to 1 East.

Q. And at that time in June what it that mean to you, if you can recall?

A. I wasn't paying attention because Ms. Doyle was taking care of these things.

Q. At this time in June of 2020, did you understand 1 East to be the designated Covid unit at Fulton Commons?

A. Not that I recall.

Q. Do you recall sitting here now is unit 1 East the designated Covid unit at

Fulton Commons?

A. I am not aware of that. She may have sent me e-mails to that effect, but I am not aware of it.

MR. SMITH: We are at a decent stopping point if you want to take a quick lunch. Does that sound reasonable to people? I think we are making good progress, if we take a quick lunch break we can finish this afternoon or forge ahead, it's up to you, Mr. Weiss, specifically.

THE WITNESS: I'm all right. How much longer do you think forging ahead until when? If you tell me it's another 45 minutes then forme ahead, if you tell me five o'clock we can break for lunch.

MR. SMITH: I think conservatively another maybe two hours. It could be faster. It would probably be in that ballpark so that's why I'm wondering if maybe taking a quick break might be good, take a break, eat some

food, if we come back at two we can be done by four, maybe.

THE WITNESS: That's fine by me.

MR. SMITH: It's 1:30. We can come back at two o'clock.

Does that work for the rest of the folks on the call?

MS. SEKHON: Works good.

MR. SMITH: We will take a break, we will deactivate your cameras and mute everybody and we will try to be back here at two o'clock.

Thank you.

(A recess was taken.)

MR. SMITH: And after taking a short break, we did a role call. Everybody is present and accounted for so we will begin questioning again.

Q. So Mr. Weiss, I know I'm asking you to go a bit back in time, but do you recall if you were at Fulton Commons on Monday, May 4th of 2020?

A. I don't recall.

MR. YAFFE: I think he said that

he hasn't been at the facility in quite a while, right.

MR. SMITH: So you anticipated my next question. We will get into that.

Q. Mr. Weiss, I know you stated before that your visits were infrequent, I want to make sure that one of them didn't happen to happen that weekend or in this period of time we are looking at, so Friday May 1st, Monday May 4th, do any of those days sounds familiar as days you might have been at Fulton last year?

A. No, I don't believe I was at Fulton.

Q. Do you keep a journal or a calendar at all that would signify when you may have made site visits to any of your facilities?

A. No, I don't.

Q. Are you aware if the State Department of Health conducted a survey at Fulton Commons on Monday may 4th, 2020?

A. I know they were in many times, I don't know that date particularly, no.

Q. So is it accurate to say you have no recollection of them being there on that specific day?

A. That's correct.

Q. Did you participate at all in the Department of Health's surveys of your various facilities during the pandemic?

A. No, I did not.

Q. Did you have any interactions with Department of Health personnel specific to their infection control surveys at your facilities?

A. No, I did not to the best of my knowledge, no.

Q. When the Department of Health does surveys, they usually request documents in relation to that survey, is that a thing you are familiar with?

A. When it pertains to financially, perhaps, it's not something I get involved in.

Q. Specific to infection control surveys, do you ever get involved in the document production work done in response to

those surveys?

A. No.

Q. So I would like you to take a look at what will be marked as State's Exhibit 13. Have you ever seen is this documents before?

A. To the best of my knowledge, no.

Q. So just for clarity of the record, I will read it into the record. The title is Fulton Commons Care Center Breakdown of Residents from April 1st through May 1st 2020.

(Breakdown of Residents document was marked as State's Exhibit 13.)

Q. Do you see that middle of the page a little bit down, the document identifies the number of Covid deaths in the facility within this timeframe, do you see that number?

A. I do.

Q. And is that 28?

A. That's what it says.

Q. Were you familiar or did you keep up with the numbers of Covid deaths in the

facility at this time during the pandemic?

A. I probably asked about it.

Q. And when you say asked about it, would you ask Kathy Doyle or someone else?

A. Kathy Doyle.

Q. What would you ask for, just numbers or breakdown of numbers or something else?

A. Just I would assume that I've asked for, you know, how many people died. Yeah, I don't know. I don't recall for sure but that's what I would suspect.

Q. Would you ever receive a document like this one from Kathy Doyle?

A. She may have sent it to me.

Q. So now I would like to direct your attention to what will be marked as State's Exhibit 14.

A. And.

Q. And have you ever seen this document before?

A. Not that I recall.

Q. Just for clarity of the record, in the upper left-hand corner of the

document it says May 1st 2020, below that "Please note that as of today Fulton Commons has NO SUSPECTED CASES of Covid 19 in the facility."

(Document dated 5/1/20 was marked as State's Exhibit 14.)

Q. Would you receive a document like this from Kathy Doyle as an update?

A. She may have sent it to me, I'm not -- I don't remember.

Q. If we compared this document, Exhibit 14, against the document we just looked at, Exhibit 13, this document says there are no suspected cases of Covid in the facility, the prior exhibit said that there were 25 suspected Covid deaths between April 1st and May 1st, so quite a separation between the two. Which of those two documents better represents your understanding of what was happening at Fulton Commons during this time?

A. I have no idea at all.

Q. Do you have any recollection of the status of Fulton Commons's residents

specific to Covid in May of 2020?

A. No.

Q. And by that I mean, did you have any sense of the numbers, total numbers of Covid deaths or Covid cases at the facility at that time?

A. It's possible she send it, Ms. Doyle sent it to me from time to time, but I don't recall any.

Q. In the course of keeping up with the census and getting your regular census updates from Mrs. Doyle, did you have any sense around May 1st, 2020, if there were residents on 1 East at Fulton Commons?

A. I don't recall.

Q. Well, let me direct your attention to what will be marked as State's Exhibit 15.

A. Before you do that, I would like to just mention one thing.

Q. Sure, absolutely.

A. That I thought over lunch your question you asked me a few times about if I'm aware. I think you called it a Covid

unit at Fulton Commons.

Q. Right.

A. So I don't know. I mean, I was thinking what you were you are referring so the one thing I do know about, perhaps that's what you were referring to, is that at some period of time, and I don't know if it's still going on, at some period of time any admission that came from the outside from the hospital or elsewhere had to be placed on a separate unit, and I believe it was a period of 14 days, but I'm not sure and then after perhaps they did test again, I am not sure exactly what the requirements were. After those 14 days, again, if they met certain standards or approved requirements I'm not exactly sure of the details, at that point they moved into the general population, so if that's what you meant by a Covid unit, then I did know that such a unit did exit for a period of time or maybe it still does exist.

Q. Let's get into that a little bit. When was your first sense of a unit like

this existing at Fulton Commons?

A. I don't recall.

Q. Did this unit exist in May of 2020?

A. I don't recall the timing.

Q. And this unit that we are talking about, were you involved in the plans or the operations to create that unit to bring that unit into being?

A. No.

Q. So you're not involved at all?

A. No, I'm not involved at all. I was probably told about it, but I'm not involved.

Q. So it's your recollection you would have learned about it?

A. Either that or it was on the way of being set up, to the best of my knowledge.

Q. And is it accurate to say that your understanding of that unit was a place residents came once they came transferred in from outside to the facility to do the quarantine in the facility?

A. That's what I understood. Perhaps it was not limited to that, I don't know the answer. That's more Ms. Doyle's question.

Q. Over the course of this unit's existence, would you be consulted at all or would you have discussions with Mrs. Doyle about the status of the unit that you recall?

A. Perhaps I asked how many people there are on the unit at a given time, just because I was interested to know what was going on, but not clinically what they decided to do about it I had nothing to do.

Q. So in inquiring about head count would your interactions about this unit be limited?

A. Yes.

Q. Do you recall where this unit was located at Fulton Commons?

A. I don't.

Q. Do you recall if this unit was ever moved from one unit to another or was it your understanding that it always stayed

in the same location?

A. I don't know. It may have moved, it may have not moved, I don't know.

Q. Was it your understanding that this unit could accept transfers from residents from within the facility or the only for residents being brought in from outside the facility?

A. I am not aware that was a decision, that is a decision Mrs. Doyle would have been involved with.

Q. I think you may have answered this already, but does this unit still exist to your understanding?

A. Perhaps, perhaps not. I don't know.

Q. And the e-mail you looked at from June, did that sort of refresh your recollection of this potential unit or just something else?

A. Which e-mail are you referring to?

Q. The June 15th e-mail where Kathy Doyle refers to moving 10 Covid patients to

1 East. We can bring that back up if you want.

A. I know which e-mail now that you mention that, I know which e-mail you are referring to, I don't know if that's what jogged my memory or not. Perhaps you just mentioning over and over again the Covid unit I was thinking what are you referring to so, you know, that's what I came up with perhaps that's what you were referring to. This e-mail did not jog that memory.

Q. Okay, and while we're revisiting this topic, do you recall now having taken a break, memory comes back to you sometimes in bit and pieces, did other facilities within your group of facilities have a similarly designated unit?

A. Perhaps. From what I understood that was a requirement at some point or maybe it's still a requirement by the State and we were following regulations.

Q. Do you have any specific knowledge of a unit existing at a specific facility or location?

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A. No, I don't.

Q. Are you satisfied there with the correction too because I don't want to move on if there's or other things you want to get into?

A. No, I believe I just wanted to clarify that one particular point.

Q. I appreciate that, so I think we are going to jump back to what's going to be marked as State's Exhibit 15.

Have you ever seen this document or a document like this before?

A. Perhaps.

Q. Would I be accurately or fairly representing it as a resident listing?

A. I can only see the -- that's what it says.

MR. YAFFE: We can only see the first 18 lines.

MR. SMITH: We can scroll down. It's a five-page document. The title is resident listing. And just for the record, it's sort of sequentially lists residence by alphabetical last name and

their unit location.

(Resident Listing was marked as State's Exhibit 15.)

Q. So while we're scrolling Mr. Weiss, is this the sort of documents you would consult when you were doing your census checks or when you were checking in on the status or the status of Fulton Commons?

A. No, not necessarily on a regular basis.

Q. So this sort of document is not familiar to you?

A. Yeah, not on a regular basis. Perhaps she sent me an e-mail with this document once or twice, but not that I recall at all.

Q. So we will move on now. After reviewing that to State's Exhibit 16. Do you recognize this document or this type of documents?

A. No, I don't.

Q. And this is just a one-page document. For the record, it's also a

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sequential listing entitled a bed listing. It's 24 residents, Fulton Commons dated Friday May 1st, 2020.

(Bed Listing was marked as State's Exhibit 16.)

Q. So Mr. Weiss, just looking at this document, and I am particularly looking at the far right-hand side column titled bed, do you see a commonality between all of these residents in that column?

A. It appears that they're all on unit 1 East.

Q. So it would be fair to describe this as a bed listing of the residents of 1 East on May 1st, 2020 based on the time stamp in the upper left-hand side corner?

A. I never saw this document before, I don't know who made it, I don't know where it came from, but yeah, based on that's what it's saying here that's what it appears to be.

Q. And just for clarity, you did not have an understanding at this time that unit 1 East was being used for a specific purpose

at Fulton Commons?

A. I don't remember when I heard about it.

Q. And we talked about hospital admissions, I want to get specifically to intra facility transfers so that's transfers within the facility. Were you ever consulted on that type of resident movement?

A. No, not to my knowledge.

Q. Were you ever brought in on conversations between Ms. Doyle, Dr. Butchma, Ms. Frawley about where residents should be located within the facility and or moving residents within the facility?

A. Not to my knowledge, no.

Q. And jumping back to May 1st of 2020, were you aware at that time of any residents being moved within Fulton Commons for any reason?

A. Not that I'm aware of.

MR. YAFFE: Objection.

Q. Do you recall being made aware of an impending DOH survey by either Mrs. Doyle

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or Mrs. Frawley, and by that I mean, did Mrs. Doyle or Mrs. Frawley reach out to you and let you know that DOH might be coming to the facility imminently?

A. Not that I would be aware of. I mean, perhaps. I don't know. Not that I'm aware.

Q. Let's look at what will be marked as State's Exhibit 17. There's quite a bit of highlighting. This is a two-page documents. Let's scroll down to the bottom. This is an e-mail from Kathy Doyle to Susan O'Connor, Subrina Charles, Carlton Williams with yourself copied on May 1st, 2020, correct?

A. That's what it says.

(E-mail dated 5/1/20 was marked as State's Exhibit 17.)

Q. It says, "Last evening a friend told me that DOH was calling facilities to get policies, census, etcetera. The day before they were entering for the survey today (inaudible) I got my call so I expect they will be here tomorrow." And if we

scroll up just a bit you respond two minutes later, "Good luck. I know that we are in good hands." That applies to all of you and that's from you to Mrs. Doyle, correct?

A. That's pretty good, yes.

Q. Does this refresh your recollection at all about Friday May 1st and whether DOH was coming to survey the facility?

A. I mean, I don't recall before you showed me the e-mail but, obviously, now that there is an e-mail that you are showing me, I see that she informed me, and I was encouraging her that she's doing a great job along with the other administrators, yes.

Q. Do you recall were there any other conversations following this e-mail exchange that you recall?

A. No, not that I know of.

Q. So you never got on the phone with Mrs. Doyle after this e-mail to discuss the survey anything of that nature?

A. I don't know, no, not that I remember.

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Q. Do you know if Mrs. Doyle was at Fulton Commons over the subsequent weekend, that would be Saturday, May 2nd and Sunday, May 3rd?

A. I do not know offhand. I don't know.

Q. Let's look at what will be marked as State's Exhibit 18. Have you ever seen a document like this before?

A. Yes.

Q. How would you describe this document?

A. This is a document that gets printed out of our computer system, and as you see, it's a patient activity log and I see that there's a whole bunch of transfers being done from one facility to from one room to another.

(Patient Activity Log was marked as State's Exhibit 18.)

Q. And just for clarity, it's entitled Fulton Commons Care Center Patient Activity Log 5/1/2020 to 5/1/2020 but there is a time stamp in the upper left-hand

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corner of June 11th, 2020, correct?

A. That's what it says.

Q. But if we look at the far left-hand side corner, it looks like all these transfers occurred on May 1st, 2020, correct?

MR. YAFFE: Can you scroll down, you are only showing the first four people.

MR. SMITH: We will scroll all the way down.

MR. YAFFE: The document speaks for itself, obviously, but it's hard to answer the question when you are being asked four things and being asked when the transfers occurred.

MR. SMITH: Absolutely.

Q. Mr. Weiss, for our purposes, just keep track of the date that all these transfers are occurring on, that's what we are going to get into.

A. Yeah.

Q. Okay. So we are at the bottom of this list. Does it appear to you, Mr.

Weiss, that all these transfers are being marked here as occurring on May 1st, 2020?

A. That's what it looks like, yes.

Q. You mentioned this earlier but I want to make it clear for the record, what type of activity does this document appear to be describing?

A. A transfer from one bed into another.

Q. And I know that was a quick scroll, but can you count how many transfers are identified on this document?

A. No, I can't.

Q. If I told you 18, would that seem reasonable based on what we scrolled through?

A. I wouldn't know. You can count it if you want.

Q. No, it's okay. According to this document there are 18 transfers on May 1st. Does seeing this document refresh your recollection about transfers happening on May 1st or on the weekends of May 2nd and 3rd at Fulton Commons?

A. No, it doesn't refresh my recollection of what happened. I'm looking at it, they did happen, but I do not know.

Q. Would you receive this type of document in your regular or daily check-in with Ms. Doyle, is this what she would use to update you on census?

A. No.

Q. But you have seen this document before?

A. If I printed it out, I would see it, yes.

Q. You would have the ability to print this yourself?

A. Yes.

Q. And does every facility within the group use the same sort of, I'm assuming this is software that creates this document?

A. Yes.

Q. Let's turn now to what will be marked as State's Exhibit 19. Now, this is clearly a one-page handwritten document.

(Room Changes document was marked as State's Exhibit 19.)

Q. Have you seen this document before?

A. No.

Q. But it's titled Fulton Commons Room Changes 5/1/20; is that correct?

A. That's what it says.

Q. And then it proceeds to show a list of residents and what would appear to be demarcation of their room changes; is that correct?

A. That's what it appears.

Q. Were you ever sent this document by Mrs. Doyle or Mrs. Frawley or anyone else?

A. I don't believe so.

Q. Let's go next to what will be marked as State's Exhibit 20.

(Daily Census Sheets was marked as State's Exhibit 20.)

Mr. Weiss, have you seen a document like this before?

A. Yes.

Q. And what is this from your understanding?

A. This is a daily census sheet that Fulton Commons prepares every day.

Q. Now, is this the kind of document Ms. Doyle would send you to update you on census data?

A. Yes.

Q. Earlier today when we talked about you getting daily or twice daily sometimes update, this is the item she would use to update you?

A. Either this or this as an attachment or simple typing in the bold of the e-mail what's going on.

Q. And in that context, in the context of her you forwarding you data about the census, would it always be via e-mail or would she use other methods like text, phone or something else?

A. I always request that e-mail happens every day in the morning and the evening, sometimes it comes by text and sometimes it's by phone as well.

Q. Now, this particular document we are looking at is identified as the daily

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census sheet for Friday, May 1st, 2020, correct?

A. Yes.

Q. So according to this document, what is the total census on May 1st, 2020?

A. It's 198.

Q. Now, if we scroll down a bit, do you see any transfers happening inside the facility on May 1st as identified in this document?

A. No.

Q. You do note that one person Resident #1 appears to have died at the facility [redacted] but, otherwise, there are no transfers identified in this document, correct?

A. Correct. I just wanted to clarify something. That section that you are in now, when it refers to transfers to means transfers to the hospital or to another facility, it doesn't mean bed transfers.

Q. Okay. So expand on that for me. Would there be a section of this document

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that would reflect intra facility transfers?

A. Yes, the bottom right over there where you are seeing room transfers.

Q. So room transfers bottom right would be where you would see people being moved from the first floor to the third floor or something like that?

A. Yes.

Q. And in that section it's blank, correct?

A. Yes.

Q. Now, Mr. Weiss, I know some of these documents you are seeing for the first time, but based on your position as comptroller, this document from May 1st identifies no transfers occurring on May 1st and the documents we just looked at, two documents we just looked at showed nearly 20 happening on that same day. How would you explain that discrepancy between the documentation?

A. You would have to ask Ms. Doyle that. If you are asking me my opinion, which I know you don't want to ask my

opinion but I will give you one, there's not too much room here. Chances are, I don't know this, they attached the other document to this document and sent it but I don't know that. That question would be for Ms. Doyle.

Q. And maybe a related question for you from your position as a lead, as an executive leader is, if we accepted 18 or 19 people were transferred out of nearly 200 in the census on one day, would a transfer of nearly 10 percent of Fulton's residents be something that would come to your attention, would that be something you would be involved in or not?

A. No, not at all.

Q. Who else would be involved in a movement of patients that large at Fulton Commons aside from Mrs. Doyle?

A. I wouldn't know.

Q. So along these same lines and as far as you know, Mr. Weiss, were similar large transfers of residents in a short period of time done at any of your other

facilities during the pandemic?

A. I'm not aware of any.

Q. Do you know if Fulton ever offered incentives to staff to come to work during the pandemic?

A. Please explain.

Q. Sure. So was there ever a time during the pandemic, so let's say from March 2020 to June 2020, that you were involved in or aware of incentives being offered to Fulton Commons staff to come to work, whether that be cash or gift cards or anything?

A. Perhaps there was, I don't recall clearly.

Q. Do you have any recollection of that sort of thing happening?

A. Perhaps we offered to pay doubletime, that could have happened. I'm not 100 percent sure.

Q. Let's take a look at what will be marked as State's Exhibit 21, an e-mail. This is a two-page document, so we will start at the bottom, if you don't mind, and

we will scroll down to the second page. So the first e-mail in this chain appears to be from Kathy Doyle to you on March 31st, 2020, correct?

A. Yes.

(E-mail dated 3/31/20 was marked as State's Exhibit 21.)

Q. And the e-mail says, and I will quote, "As expected, we are admitting our first Covid-19 patient today. Any consideration to incentivizing the staff monetarily to come to work?" Does that refresh your recollection at all about a conversation to offer to staff?

A. Not this one but the one a little higher up as you were scrolling.

Q. Sure. So we can scroll up. And it appears you responded where necessary, correct?

A. Yes.

Q. And we can scroll up a bit more. Does this continue to appear be a continuation of the exchange between yourself and Mrs. Doyle about offering

payment incentives to staff?

A. Yes.

Q. And if we go all the way up to the top, do you recall how this proposal played out?

A. I don't.

Q. We can keep scrolling. So it looks like Mrs. Doyle recommends a $25 a day stipend and there's some back and forth there. Does any of this refresh your recollection?

A. Yeah, I mean, again, going back a year but, yes, now I'm refreshed with what happened, yeah.

Q. Let's look next at what would be marked as State's Exhibit 22, and this is an e-mail exchange from the day prior, so that's March 30th, 2020.

(E-mail dated 3/30/20 was marked as State's Exhibit 22.)

Q. Again, this is a one-page document. Ms. Doyle appears to reach out to you. There is mention here be Mrs. Doyle of a 10 percent raise across the board. Do you

recall that interaction with Mrs. Doyle, that recommendation?

A. No, I don't recall that, but I see it.

Q. So Ms. Doyle proposed a 10 percent for aides, housekeeping and dietary be $15 a day, nurses $30 a day, and then standard $25 a day for everyone else.

Do you recall if this particular proposal was put into effect at Fulton Commons?

A. No, I don't.

Q. Do you recall any incentives like this being put into place at Fulton Commons during the pandemic?

A. I don't remember. I don't recall clearly.

Q. Can you recall any other incentives being discussed or proposed?

A. Perhaps you will show me something that will jog my memory, but I don't remember now.

Q. No, that's fine, it's only if you have a specific recollection of anything.

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Do you know if any staff were disciplined at Fulton for any reason during the pandemic?

A. I do not know.

Q. Is that something you would be involved in, do you partake in staff discipline in any function?

A. No.

Q. As far as you know, in the early weeks of the pandemic, so we will say February 2020 to March 2020, did Fulton Commons prohibit staffers who had recently traveled abroad from reporting to work?

A. I don't know.

Q. Were those sorts of conversations, types of conversations you would be involved in?

A. She may, Ms. Doyle may have mentioned something to me, but no, I wouldn't be involved.

Small office, I've got to get some air in here.

Q. Fine, if you need to take a break, we can, it's completely up to you. So I touched on this briefly earlier today,

but I want to get into more specific detail. During the pandemic, was it your custom and practice as comptroller to keep up-to-date with developing state and federal guidance about responding to the pandemic?

A. Only through the administrators.

Q. And by that you mean what?

A. The administrators would call me about something and tell me what's going on and they would implement what they're supposed to do.

Q. Now in those conversations, were you giving advice or directives or how did you operate in that exchange?

A. It was probably more I would call brainstorming, but I left the decisions always up to the administrators.

Q. And would you, yourself, review the state and federal guidances?

A. I may have looked at some of the memos, I assume I did, but I wouldn't get deep into it because I didn't implement them.

Q. Are there any particular state or

federal guidances that you can recall here today that you recall with specificity?

A. Only the one that's been in the news all over the place.

Q. Which one is that?

A. That one from March 25th.

Q. Is that about the transferring of outside patients into the nursing homes?

A. I believe so, but that, again, that I would know from it the news, not from my position.

Q. Aside from that directive or guidance, any other state or federal directives or guidance that you remember reading about reading or studying?

A. Not studying, surely not, and administrators would have discussed things with me, but that's it.

Q. Were you involved at all in decisions to admit outside patients to Fulton Commons?

A. To the best of my knowledge, no.

Q. Do you remember any specific incidents where you were consulted or asked

about the appropriateness of an admission?

A. I do not know remember.

Q. Do you know who at Fulton Commons would make the decision about what floor or unit a new resident would be assigned to?

A. I don't know, I leave that up to Kathy Doyle, I don't know who she assigns that to.

Q. Do you ever get involved in those discussions?

A. Not to my knowledge.

Q. So from your understanding, from your perspective as comptroller, did Fulton Commons have sufficient PPE in March of 2020?

A. Yes.

Q. Specific to you, how would you define sufficient?

A. What the administrators asked for and what we were able to supply them with.

Q. So let me direct your attention now to what will be marked as State's Exhibit 24.

(E-mail dated 3/21/20 was marked

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as State's Exhibit 24.)

Q. So Mr. Weiss, do you remember getting this e-mail from Mrs. Doyle?

A. No, I don't remember getting it but now that I see it, I see that it's here.

Q. So it's from Ms. Doyle to yourself or Marina Rakhman, yourself copied on March 21st, 2020, and who is Marina Rakhman from my purposes?

A. She does our purchasing for us.

Q. Is she an employee of New Bridge View?

A. Correct, yes.

Q. So the e-mail says, "Hi, Marina, can you please try and get us gowns, more face shields and masks. We are admitting Covid-A9," obvious misspelling "patients and really need them." Do you remember that specific request from Mrs. Doyle?

A. No, I don't remember that specific request.

Q. But it does appear to be in the context of admitting Covid patients into Fulton Commons, correct?

A. Yes.

Q. And we can scroll up just a bit. So you respond, "Assume that we cannot get them, ask the state now" and if we can scroll up just a bit more, and Ms. Doyle responds "Will do." Do you remember how this played out -- where the -- go ahead, sir.

A. I'm sorry, go ahead.

Q. Oh no, you're fine. What I was going to ask is at this time end of March, was Ms. Doyle able to acquire gowns and face shields?

A. I don't know specifics, you would have to ask her. The reason why I would have told her here to go ask the State is because Marina was working and trying to get everything, and we were trying to use all sources possible to get whatever we need, so I wanted to work on multiple fronts, and so Marina was working through the normal channels, our normal vendors and the word was that the State was giving, so I didn't want Ms. Doyle to rely on only Marina, go

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after the state also, let's try and get from them.

Q. Okay, so sitting here today looking at this e-mail chain and this exchange between yourself and Mrs. Doyle and Marina, would you interpret this as an implied shortage of PPE at Fulton Commons?

A. No.

Q. And to you especially based on Mrs. Doyle's statement, "Can you please try and get us gowns, more face shields and masks, we are admitting Covid-19 patients and really need them," that does not to you imply the shortage of PPE?

A. No, we are looking ahead. We are admitting patients, we have more coming, so we wanted to keep ahead of the supply chain and make sure we have enough.

Q. So let's move next to what will be marked as State's Exhibit 25, and this is a two-page document e-mail chain.

(E-mail chain was marked as State's Exhibit 25.)

Q. So you are not a recipient in

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this e-mail chain at this point right here, the e-mail we are looking at, but do you know who the sender M. Andrews is?

A. No.

Q. So you don't know what their role is at Fulton, I'm assuming?

A. I don't, no, I don't.

Q. Just for my purposes and the clarity of the record, the sender's e-mail address is [redacted]. Would that BVNH be referring to Bridge View Nursing Home or something else?

A. It would be referring to Bridge View Nursing Home but I note that all our facilities share, as you can see Kathy Doyle's e-mail address is @bvnh as well. M. Andrews is not an employee of New Bridge View Company.

Q. So you anticipated my question. I was wondering if you can determine what M. Andrews works for or what facility?

A. I assume that's New Fulton Commons.

Q. So this e-mail was sent on June

2nd, 2020 from M. Andrews to Marina Rakhman copying Kathy Doyle, it says in part, "We are not receiving the amount we are ordering, therefore, it is running out. We have no gloves left and need them ASAP."

So let's scroll up the document a little bit to the reply. So at this stage we will scroll up just a bit more. So at this stage of the chain you are included, you are copied, still June 2nd, 2020 from Kathy Doyle to Marina Rakhman and Ms. Doyle says, "We are also completely out of alcohol pads, rubbing alcohol, sani cloth wipes, which we all need separately, is there any way to get GLOVES sooner than next week, we are out." And this is a request coming from Kathy Doyle, correct?

A. Yes, that's what it says.

Q. And Mr. Weiss, does this exchange here from June 2nd indicate a shortage of PPE at Fulton Commons?

A. You would have to ask Ms. Doyle.

Q. Sitting here with us today reading this e-mail chain, would this to you

imply that Fulton Commons is running low on PPE?

A. I would say they were nervous about the future and were trying push Marina to get things quicker, which we were doing our best, but I would not characterize this as a shortage as they were short or they were out.

Q. Because the one section I want to drill down on here is where Ms. Doyle says, "Is there any way to get GLOVES sooner than next week, we are out," so at this time stage in June of 2020, it would appear that Fulton Commons was out of gloves, correct?

A. I don't know, you would have to ask Kathy Doyle that.

Q. So let's move next to what will be marked as State's Exhibit 26.

MR. YAFFE: Can you just scroll.

MR. SMITH: We can go back, yeah.

MR. YAFFE: These remote depo's where you yank exhibits away, you only show us parts, I am just curious to see because normally at this kind of a

proceeding even though I am limited to the objections and comments I can make, normally I get to see a copy of the exhibits and here I don't. It's all under your control.

MR. SMITH: Sure. So we will we have the exhibit back up and we will go where you direct, Mr. Yaffe. Where would you like us to scroll down.

MR. YAFFE: Go through the thread. Let's see if there was anything else that was said.

MR. SMITH: So we can scroll up.

MR. YAFFE: Okay, thank you.

MR. SMITH: No worries.

(E-mail dated 4/13/20 was marked as State's Exhibit 26.)

Q. So we will now go to what will be marked State's Exhibit 26. So Mr. Weiss, you are not copied on this exhibit or you are not a recipient of this e-mail chain, so I want to just read the section here. This is an e-mail from Mrs. Doyle to Susan O'Connor on April 13th, 2020. The title is

PPE just venting. Ms. Doyle wrote, "I ordered 600 rain ponchos last week in anticipation of running out of gowns, which I run out of tomorrow, but they will not be here for at least another week. Tomorrow I will begin using thick black garbage bags until the ponchos arrive. OEM" which is the Office of Emergency Management, "Basically told me last week I am on my own and to "think creatively.""

Ms. Doyle then writes, "Have you copied Mr. Weiss on your requests? It helps sometimes." Are you familiar with this particular shortage of PPE, the issue with gowns in April?

A. In a general sense, yes, not this e-mail.

Q. But you recall in April of 2020 there was a shortage in some specific instances of PPE?

A. I wouldn't have called it a shortage, I would have called it something that our administrators were asking for.

Q. When they would ask you for it,

did you sort of triage those requests for PPE?

A. We did everything in our power to get everything timely, including me going directly to the warehouse to go pick them up.

Q. And when I asked about triage, there is undoubtedly preparing and then there's also being out or close to being out of PPE, and I direct your attention to where Ms. Doyle writes, "In anticipation of running out of gowns which I run out of tomorrow" does that imply to you more towards the spectrum of being out of PPE rather than preparing?

A. You have to ask Ms. Doyle, I don't know that.

Q. Were you typically copied on those requests for PPE?

A. I don't know if I was typically copied.

Q. Well, the reason I ask, I can clarify that, is you can see here in the section Ms. Doyle writes, "Have you copied

Mr. Weiss on your request," was it custom and practice to copy you? In other words, were they supposed to copy you?

A. Not necessarily.

Q. When it comes to PPE?

A. Not necessarily.

Q. Were you responsible for procuring PPE at Fulton or was somebody else or was it a joint effort?

A. Joint efforts.

Q. And when we say joint effort, who all does that include?

A. In these times, everyone.

Q. Could that include individuals at New Bridge View as well as individuals at the facility as well as individuals at the associated New entities?

A. Yes.

Q. So it was sort of an all hands-on deck situation?

A. Correct. We were trying to buy stuff from Amazon, anywhere we could find.

Q. And was there anyone, to be specific about the entity, was there anyone

at New Fulton Commons who was responsible for procuring PPE?

A. I wouldn't -- not primarily.

Q. When you say not primarily, do you mean that could have been part of their job duties or something else?

A. No, I don't think it was their job duties. I mean, the job duties would be Ms. Doyle would have helped us in trying to find somewhere, some vendor, somewhere that had anything for us. Primarily, our New Bridge View Marina would be the one that placed the order and made sure we got it received the order.

Q. So would it be accurate to describe the process as an individual at New Fulton or New Midway or New Mayfair would make a request at New Bridge View and New Bridge View would execute on that request or something else?

A. No, that would be the regular line, correct.

Q. Did you ever discuss PPE with anyone at Fulton aside from Ms. Doyle, and

S. Weiss

by that I mean Dr. Butchma, Ms. Frawley, anyone else?

A. As I stated before, I don't think I ever even spoke to Dr. Butchma, Carol Frawley perhaps, but certainly not on a regular basis.

Q. Was there ever a time during the pandemic where the ownership and by that I mean Mr. Kalter and Mr. Fogel primarily were involved in discussions about acquiring PPE?

A. No.

Q. Were Mr. Kalter and Mr. Fogel ever involved in efforts in acquiring PPE?

A. No, not to the best of my knowledge.

Q. Did you deal with clinical staff at Fulton Commons at all, would you talk too a nurse or a doctor or a nurse practitioner?

A. No, I did not.

Q. Do you know in March of 2020 if Fulton Commons was testing any of their residents?

A. I do not know.

THE WITNESS: May I just at some

point maybe we can take a bathroom break?

MR. SMITH: Yeah, would you like to go now?

THE WITNESS: It's not an emergency but I don't know where you're up to.

MR. YAFFE: Why don't you go now.

MR. SMITH: No, I completely agree.

MR. YAFFE: There is not a question pending.

MR. SMITH: It's a good time to stop so now is perfectly fine. It's eight to three, do you want to just come back at three, take eight minutes and come back at three o'clock.

THE WITNESS: That's fine by me.

MR. SMITH: Great, we will see you at two o'clock then. Thanks.

(A recess was taken.)

MR. SMITH: Returning from a short break, we just took a role call and everybody is accounted for so we

will restart.

Q. So Mr. Weiss, I think we might have left one half of a question hanging so I am going to return to that. As far as you know, in March 2020, did Fulton Commons test any residents that were presumed to be Covid positive to determine if that presumption was accurate?

A. I am not aware.

Q. Do you know if Fulton tested any residents in March of 2020?

A. I don't know in March of 2020 if they did or they didn't.

Q. More generally, in the Long Island area, let's say to make it specific, were tests available in March of 2020?

A. I don't know.

Q. Do you know if Fulton Commons was making efforts to acquire tests in 2020, March 2020?

A. I don't know for sure, you would have to ask Ms. Doyle.

Q. Were you involved in those efforts at all?

A. Perhaps they mentioned things to me, but I was not involved.

Q. Do you know if the approach to testing in Fulton Commons changed at all in April of 2020?

A. I would not know that.

Q. And again, do you know if any residents at Fulton Commons were tested in April of 2020?

A. I wouldn't know that.

Q. And again, do you know more generally in the Long Island area were tests available in April of 2020?

A. I don't know.

Q. Do you know were any of your other homes testing in April of 2020?

A. I don't know.

Q. So moving into May, do you know if Fulton Commons was testing residents in May?

A. No.

Q. No, you don't know or no, they weren't?

A. No, I don't know.

Q. And again, referring to the sort of the Long Island area, do you know if any other homes in Long Island were testing residents in May of 2020?

A. I do not know.

Q. What about any of your other homes, Mayfair, Midway, New Bridge View, were they testing residents in May of 2020?

A. I don't know.

Q. Did you ever discuss the issue of testing residents with ownership?

A. Generally.

Q. Describe that for me to the best you can recall.

A. Just on a general basis, if we're supposed to be testing, are we testing, did we test, did we not test.

Q. What was your sense of the state of affairs specific to testing in April of 2020, did you understand that you were supposed to be testing residents or what was your sense?

A. I don't know, that's not my position, Ms. Doyle takes care of that.

Q. When you had these discussions about testing with ownership, did that span the entire pandemic or was that specific to a certain period of time or something?

A. I sorry, I apologize for interrupting, I didn't have any specific discussion, just in the course of conversation we would discuss like I would discuss with my neighbor what's going on in the world. I didn't have any specific discussion with ownership about facility testing or not.

Q. So am I correct in understanding that these discussions with ownership were not of the nature we need to start testing at Fulton or we need to start testing at Mayfair?

A. Not to the best of my knowledge, no.

Q. Was ownership involved at all in efforts to obtain testing supplies?

A. Not that I'm aware of.

Q. Were you involved at all in efforts to obtain testing supplies?

A. Not that I can recall.

Q. Did you ever speak with anybody at the Department of Health about testing Fulton's residents?

A. No.

Q. Are you aware if the Department of Health ever offered to test Fulton's residents?

A. Perhaps administrators may have mentioned to it, may have sent me an e-mail, but I was not involved.

Q. Do you have specific recollection about that, do you remember receiving an e-mail or having a conversation with an administrator about that issue?

A. No.

Q. Do you recall if DOH ever did come into Fulton Commons and test residents?

A. I don't recall.

Q. Do you know if Fulton staff was ever tested over the course of the pandemic?

A. We were required, yes.

Q. Do you remember when that started, staff testing?

A. No.

Q. And is it your understanding that staff testing began at Fulton Commons in response to a state or federal directive?

A. I believe so.

Q. Do you recall if Fulton Commons began testing residents around the same time they were testing staff?

A. I don't recall.

Q. Let me direct your attention to what will be marked as State's Exhibit 27. So this is a one-page document but we will scroll down to the bottom because it's a chain of e-mails, and we can see the first e-mail in this chain is from Kathy Doyle to yourself, copying Carol Frawley and Olaf Butchma, on Friday, May 15th, 2020.

(E-mail dated 5/15/20 was marked as State's Exhibit 27.)

Q. Do you recognize or remember getting this e-mail?

A. Obviously, I got it. No, I don't remember it, but now I see it I obviously got it.

S. Weiss

Q. Can you tell from looking at it today what it is referring to or discussing?

A. Yes, it's referring to try to get tests.

Q. So this is, and correct me if I'm misstating this, but this is Ms. Doyle on May 15th saying, "I would like to order two weeks from Centers now at 36,000 -- I think it is likely we will have a higher rate of positives based on the results of the residents." And we will scroll up the page a bit, and we see your response to Kathy Doyle May 15th, "Why can't we ask for one week, everything is so fluid now, let's see what happens."

Do you recall sending this response to Mrs. Doyle?

A. I don't recall that but before you showed me that I was thinking the same thing just now.

Q. I want to get a sense of what your response was here. What you were thinking, where you were, so expand on that for me, if you can.

A. In those days things were just coming out and everything was so fluid, everything was so fluid and I didn't know what anything was going to be, so do what you think.

Q. Was your response here, did you mean that to give Ms. Doyle some leeway and buy some more testing kits if she thought that was appropriate?

A. I just asked, I don't know what the next e-mail is going to show, but I just asked from what I am seeing here, well, why $36,000, that's a lot of money, I believe. You know, try to save money where you can, you know, obviously, we sent a lot of money on Covid, we didn't hold anything back, and at the time that was my response.

If you ask me now I would have told her don't get two weeks, get four weeks.

Q. So was it your sense that you would offer an alternative, but Ms. Doyle would ultimately make the decision or something else different?

A. I believe, I believed I would have left that to Mrs. Doyle to make the ultimate decision.

Q. So let's just scroll up a little bit, and we can see her response. So Ms. Doyle responded, "Okay. I am just afraid if they run out we will not be able to get more. I will order one week."

Do you recall if Fulton Commons in May of 2020 did have sufficient testing for staff?

A. I don't know, that's Ms. Doyle's call.

Q. Were you ever aware or made aware of Fulton Commons running out of testing at this time in May of 2020?

A. To the best of my knowledge, no, I don't remember it.

Q. Are you familiar with the term or concept of a "Certificate of compliance?"

A. No.

Q. Would it refresh your recollection if I said those are documents that are submitted to DOH in response to

Department directives or guidelines about certain behaviors and the nursing home certifying to compliance with that behavior, is that --

A. Generally, yes, I know what you are saying.

Q. Okay. Did you ever submit certificates of compliance on behalf of Fulton Commons?

A. I don't know.

Q. Do you know if anyone else in the group, whether that's New Bridge, or New Fulton Commons or Fulton Commons Care Center is responsible for filing certificates of compliance on behalf of Fulton Commons?

A. No, I would -- I believe that would be the administrator.

Q. So do you recall submitting any certificates of compliance in May of 2020?

A. No, I don't recall.

Q. Let's take a look at see if we can refresh your recollection. Let's take a look at what will be marked as State's Exhibit 28. This is a one-page document.

S. Weiss

We can scroll down so you can see the whole document.

Do you recognize this particular document?

A. Yes, now I recall what the certificate of compliance was, yes.

Q. Did you complete this particular document, as far as you recall?

A. Well, my handwriting I am writing the word Moshe Kalter.

(Certificate of Compliance was marked as State's Exhibit 28.)

Q. And can you tell there is three bullet points in this certificate of compliance. Can you tell what three things this certificate of compliance pertains to specifically?

A. No. I have to read it carefully.

Q. So I can read bullet point one is pertaining to executive order 202.1 "Directing nursing homes to follow any guidance issued by the Department of Health relating to the visitation restrictions." Second bullet point EO202.18 as amended by

EO2021.19 "Requiring notification to family members or next of kin within 24 hours of a resident testing positive or suffering a Covid-19 related death." And bullet three quote the directive of the Commissioner of Health issued May 11th, 2020 titled "Hospital discharges and admission to nursing homes and adult care facilities." Do you remember those three directives?

A. No. I mean, I'm reading it, you are reading it to me now, but no, I don't remember specifically.

Q. Specific with regard to that second bullet point, and that's the bullet point relating to the notification of family members or next of kin within 24 hours of a resident testing positive or dying of Covid, were you in contact with family members or healthcare agents?

A. No.

Q. So that's not something you would be involved in, resident family contact?

A. No, the administrators took care of that.

Q. Do you recall completing this certificate of compliance?

A. I don't recall it specifically, no. I didn't complete it. I just -- that's not my signature. Mr. Kalter signed it.

Q. But did you mention that that's your handwriting in the print below it?

A. Yes.

Q. Was that kind of your custom and practice to prepare these for Mr. Kalter and Mr. Kalter would sign them, was that the process?

A. Yes. I mean, most of the time, I assume.

Q. And we can confirm today that that is Mr. Kalter's signature from your understanding of his signature?

A. Yes, I believe so, yes.

Q. Do you know if Mr. Kalter would review these certificates of compliance before he signed them?

A. He got them. Chances are he asked me if the administrators, you know, are okay, did we comply with all these

things, and I checked with the administrator, asked in the affirmative and then he probably signed.

Q. Do you recall any specific instances of completing these with Mr. Kalter or consulting with Mr. Kalter about the completion of a COC?

A. Again, only in passing just to get him to sign it.

Q. What I mean is, do you recall the completion of any specifics COCs, recall any conversations about a specific COC with Mr. Kalter?

A. Again, other than him asking if we complied with all the executive orders and me verifying that with our administrators and then him signing.

Q. From your perspective as comptroller, do you recall or are you aware if Fulton ever received any Federal support payments during the pandemic?

A. Yes.

Q. What payments did they receive?

A. I don't know specifics.

Q. Do you recall from what agency they received the payments?

A. No.

Q. Does the Federal Provider Relief Fund sound familiar?

A. Yes.

Q. And do you know if Fulton Commons received a support payment via the Federal provider relief fund?

A. I believe so.

Q. And do you know how much that payment was for?

A. I wouldn't know offhand.

Q. If Fulton Commons received a Federal support payment via the Federal provider relief fund, what bank account would that go to?

A. Signature bank.

Q. Is that the Signature bank account linked to Fulton Commons Care Center or something else?

A. Yes, it would go to Fulton Commons Care Center, correct.

Q. Do you know why the Federal

provider relief fund payments were issued to Fulton Commons?

A. No.

Q. Are you aware if Fulton Commons applied for these relief payments?

A. I don't remember.

Q. Do you recall being involved in completing an application request for Federal fund payments?

A. I don't remember specifically. Maybe I did.

Q. So expanding that to include all the Federal relieve payments, do you know how many payments Fulton Commons received from the Federal government during the pandemic from February 2020 until December 2020?

A. No, I don't.

Q. Do you have any sense of how much money in total Fulton Commons received in support payments from the Federal government?

A. No, I don't know offhand.

Q. Are you aware or were you aware

at the time of any reporting requirements attached to these Federal support payments?

A. I don't remember.

Q. What about performance requirements, were there performance requirements associated with these Federal support payments?

A. I don't remember.

Q. Are you or is anyone else at Fulton Commons or New Bridge View responsible for reporting or attesting to the payments?

A. I would be responsible.

Q. So that would be your role to attest to a payment received from the Federal government?

A. Yes, I -- yes.

Q. Do you have any specific sense of how the Federal support money was used at Fulton during the pandemic?

A. No.

Q. My followup to that would be are you aware of it being used for any specific issue like PPE or staffing or resident care,

anything of that nature?

A. It wasn't used for anything in specific, it was used for all of it.

Q. Along these same lines, do you know if Fulton received any State support payments during the pandemic?

A. I don't recall.

Q. Do you have any sense of Fulton receiving payments from any State program or agency during the pandemic months?

A. I don't recall.

Q. From your understanding and recollection, did Fulton ever apply for a PPE loan, and that's the Paycheck Protection Program?

A. Which company are you referring to?

Q. This could be any of the Fulton related entities or to expand it more broadly, New Bridge View?

A. Okay, New Fulton Commons company LLC applied and received a PPE loan.

Q. So for clarity, New Fulton Commons applied for and received a PPE loan?

A. Yes.

Q. Do you remember in what month that loan was applied for?

A. No.

Q. And do you remember when the funds were received?

A. No.

Q. But is it your recollection that at some point those PPE funds were received by Fulton Commons, by New Fulton Commons?

A. Yes.

Q. But you do not have a sense of when that was?

A. Yes, correct.

Q. So let's take a look at what will be marked as State's Exhibit 29. So this is a one-page document, an e-mail from Kathy Doyle to yourself on June 16th, 2020 titled 1199.

(E-mail dated 6/16/20 was marked as State's Exhibit 29.)

Q. Have you ever seen this e-mail before?

A. Now that you show me, yes.

Q. So the e-mail says, "FYI, VP of union just asked me why are we doing layoffs when we got money to avoid them for Covid. Just an FYI, I think they may try and fight these layoffs."

Mr. Weiss, from your understanding of this e-mail, was Mrs. Doyle responding to PPE loans here or something else?

A. I don't know, you would have to have her.

Q. Do you recall having a discussion with Mrs. Doyle about this particular subject?

A. Probably, yes.

Q. Do you recall the details of that conversation?

A. No.

Q. Do you recall if 1199, in fact, pushed back on these proposed layoffs?

A. I don't know directly.

Q. Do you recall if layoffs did, in fact, occur at Fulton Commons around this time June of 2020?

A. I don't remember.

Q. Do you recall if the PPE loans we were just talking about were, in fact, used to maintain staff once this was done?

A. Yes, best of my knowledge, yes.

Q. Do you know when those efforts were taken by Fulton to keep people on staff?

A. I don't know.

Q. To your recollection, were Fulton Commons staff ever laid off during the course of the pandemic?

A. I don't recall.

Q. Do you recall if Fulton Commons did, in fact, use all of the PPE loans?

A. I believe they did, yes.

Q. Okay.

THE WITNESS: I think we lost you there for a while.

MR. SMITH: You froze for me too.

Q. Did you catch my last question?

A. I don't know if I lost it or not.

Q. So the question, next question would be do you recall if Fulton Commons

did, in fact, layoff staff during May 2020 and June 2020?

A. I don't recall.

Q. Who would be involved in a decision to layoff staff at Fulton Commons?

A. Ultimately, it would be Ms. Doyle but I probably would have been involved in discussing it.

Q. Do you recall having discussions with Mrs. Doyle about laying off staff in June 2020?

A. Vaguely.

Q. Can you explained on that for me, if you can, what recollection do you have discussing that with Ms. Doyle?

A. Just that we --

(Connection was going in and out.)

Q. Correct me if I'm wrong or if I'm misstating your testimony, but I believe you just told us that you and Ms. Doyle may have had conversations about staffing choices, and I was wondering if you had a more specific recollection of the contents of

those discussions?

A. Not specifics.

Q. Would it be fair or safe to assume that you were discussing laying off staff at that time?

A. Perhaps.

Q. And do you recall if staff was, in fact, laid off subsequent to those discussions?

A. No, I don't recall that.

Q. Do you recall if staff was retained via use of PPE loans?

A. I don't recall.

Q. And you mentioned that you and Mrs. Doyle would discuss staffing decisions, would those type of decisions go up to ownership?

A. Again, just on a general level.

Q. So am I correct in understanding that Mr. Kalter would not make staffing decisions but you might just let him know that something had been decided?

A. That's correct.

Q. Over the course of the pandemic,

so from March 2020 until June 2020, did Medicare at any point begin covering costs associated with caring for Covid residents?

A. That's my understanding.

Q. Do you know when Medicare coverage started?

A. No.

Q. Do you understand how that program operated?

A. No.

Q. Would Medicare cover costs associated with caring for all Covid presumed or suspected residents or something else?

A. I don't know.

Q. And do you know if there is a special code used to bill for this care?

A. I don't know.

Q. Do you know if Fulton ever did, in fact, bill the special Medicare code for care rendered to Covid patients at the facility?

A. I would assume so.

Q. Did you have any sense of when

that started?

A. No.

Q. Do you know when Fulton had its first suspected case of Covid?

A. No.

Q. Do you know if a list was ever created of all residents at Fulton billed under the Medicare code for care rendered to Covid patients?

A. Not that I'm aware of.

Q. And as far as you know, was every residents who had been designated as Covid positive presumed or suspected eventually billed under the Medicare code for Covid?

A. I don't know.

Q. So are you familiar, Mr. Weiss, with the nursing home Quality Pool Program operated by the State Department of Health?

A. Somewhat.

(Quality Pool Program document was marked as State's Exhibit 31.)

Q. Maybe to refresh your recollection, let's take a look at what will be marked as State's Exhibit 31. Have you

ever seen this document before?

A. I don't recall seeing is it, but I know generally what it is.

Q. Mr. Weiss, to the extent you understand it and have had experience with it, what is this program meant to do, what does it do?

A. Can I see the full document, please.

Q. Sure, we can scroll down. And if we go quickly back to the top, in the very first sentence this letter refers to a one-percent supplemental payment for nursing homes via this program. Is this a payment you are familiar with?

A. No, I'm not. I am familiar, yes, do I understand it, no, I don't.

Q. It's a complicated thing, no doubt. Do you understand what this program is meant to do?

A. No.

Q. That aside, do you know if Fulton ever received this one-percent supplemental payment in 2020?

A. I assume they did.

Q. Do you have any specific recollection of Fulton receiving a payment through this program, though?

A. Specific, no, I do not have a specific recollection of it.

Q. Do you recall if any of your other facilities received the one-percent supplemental payment through this program in 2020?

A. The same thing, I would assume they did, but I don't have any specific recollection of it.

Q. Are you familiar with Fulton's consistent obligations to report health data to DOH?

A. No. What kind of health data?

Q. Specifically wondering if you are familiar with the HERDS Program, that's the Health Emergency Response Data System?

A. Yes, I have heard of it.

Q. If that was an intended pun, that was a good one.

A. No, it wasn't.

Q. How familiar are you with HERDS, have you ever been trained on the program, do you work on the program at all?

A. No.

Q. Do you ever complete HERDS reporting on approximate behalf of Fulton Commons?

A. No.

Q. Do you ever consult or give advice on what data should be reported to DOH on behalf of Fulton Commons?

A. No.

Q. What is your understanding of who at Fulton has primary responsibility for completing HERDS reporting?

A. I believe it's administrator, but she may have assigned it to someone else, I do not know.

Q. And I'm correct in understanding that during the pandemic you did not have any role in Fulton's reporting to the HERDS system, correct?

A. That's correct.

Q. As far as you know, was anyone at

Fulton Commons, and this is from top to bottom staff, ever directed or asked to change or alter medical records?

A. Not to my knowledge, no.

Q. In March of 2020, were you aware of residents or efforts to keep residents, family members and healthcare agents apprised of Covid related developments at Fulton Commons?

A. I wasn't aware keenly, that's the administrator's job.

Q. Were you ever involved in discussions about how to carry that sort of communication out, how to accomplish that communication?

A. I don't -- perhaps.

Q. Any specific recollections about those discussions?

A. No, none.

Q. Did you in your role as comptroller, do you ever interact with residents, family members or healthcare agents or anything of that nature?

A. No.

Q. Moving into April of 2020 and, again, same questions, what was your sense of Fulton's communication efforts directed to family members and healthcare agents?

A. I didn't have a sense of effort.

Q. Did Kathy Doyle ever report to you about the status of communications with residents' families or healthcare agents?

A. She may have mentioned it to me but I don't know.

Q. Do you have any specific recollection of her discussing that with you?

A. No.

Q. Let's take a look now at what will be marked as State's Exhibit 32.

You are a recipient of this e-mail from April 20th, 2020. Do you recall this e-mail?

A. No, I don't.

(E-mail dated 4/20/20 was marked as State's Exhibit 22.)

Q. So again, this is an e-mail from Kathy Doyle to yourself and other

individuals April 20th, 2020, and Ms. Doyle says, "So do we beat the press to the punch and alert families as to the number of deaths we have had in each facility?" After reading this, do you recall receiving this e-mail from Mrs. Doyle?

A. No, I don't.

Q. What is Ms. Doyle talking about here?

A. I don't know, you would have to ask her.

Q. From your perspective sitting here today, does this e-mail imply that Fulton had been misrepresenting the number of deaths in the facility to healthcare and family?

A. I wouldn't read it that way.

Q. How would you interpret it?

A. I don't know, I don't know, you would have to ask Ms. Doyle.

Q. I just wanted to know your perspective, you were recipient at the time. Did it seem to you that Mrs. Doyle had been implying that some level of misinformation

had been occurring?

A. I would not assume that, no.

Q. From your perspective as comptroller at Fulton, did you have a sense that Fulton Commons administrator, staff leadership were making efforts to communicate with family members and health care agents about developments related to Covid in the facility?

A. That was a very long question, what was the beginning of that question?

Q. From your perspective as comptroller, did you have a sense that staff at Fulton Commons was making efforts to keep family members and healthcare agents aware of Covid developments in the facility?

A. That's what I was told, yes.

Q. And who told you that?

A. I assume, Ms. Doyle.

Q. Do you have specific recollections of being updated about the specific issue?

A. No.

Q. Did you have any role to play in

decisions made about transferring residents out of Fulton Commons to the hospital?

A. No, I didn't.

Q. We had discussed staffing earlier and there was a time during the pandemic that Fulton Commons's census dipped a little bit; is that correct?

A. I wouldn't characterize it as a little.

Q. Correct me if I'm wrong, there was a significant census drop?

A. Yes.

Q. How significant was it, as far as you recall?

A. I can't tell you specifics, I don't know.

Q. Was the decrease in census significant enough that staffing cuts were made, as far as you recall?

A. I don't know if they were made or not.

Q. Do you have any recollection of staff at Fulton Commons being let go or laid off or furloughed as a result of census

dropping at the facility?

A. I don't remember clearly.

Q. Did you have any discussions with Kathy Doyle or anyone else about drops in census requiring adjustments to staffing?

A. Not requiring adjustments to staffing but they definitely discussed perhaps it would be appropriate to change the staffing levels.

Q. And what kind of adjustments were recommended to staffing at that time?

A. I wouldn't -- I don't know.

MR. YAFFE: Is it possible for you to put back Exhibit 32 on the screen?

I just want the record to be clear that you didn't show him the entire document and I didn't see it, I only saw the part that you referred to but not the part that Ms. Doyle, the author of the e-mail, was referring to. Is there something below that?

MR. SMITH: We can scroll down. No, there is nothing there.

S. Weiss

MR. YAFFE: Okay, thanks for at least showing me that there's nothing on there.

MR. SMITH: Yes, I don't want to represent to you anything that's inaccurate, but my understanding is that is a one off e-mail so we are trying to show you everything in context and not just taken out of context but.

Q. So Mr. Weiss, to return to this staffing decisions being made in relation to census dropping, what kind of adjustments were being discussed, if you recall?

A. I don't know, I don't remember.

Q. Do you recall if units at Fulton Commons were closed around this time?

A. It may have been.

Q. And if they were closed, would that staff have been laid off or furloughed?

A. You would have to ask Ms. Doyle.

Q. But as we sit here today, you have no recollection of staffing cuts being made during the pandemic?

A. You asked me for specifics, I don't know specifics, no.

Q. So Mr. Weiss, from your perspective as comptroller, who at Fulton is ultimately responsible for ensuring that government directives of patient health and well-being are carried out effectively?

A. The administrator, Kathy Doyle.

Q. And along those same lines, where does the buck stop on ensuring that Department of Health and Federal directives specific to infection control are followed at the facility?

A. Administrator, I don't know she assigns but the administrator is responsible.

Q. And would you agree and I know this is not your area of expertise, but you have extensive experience in this industry, would you agree that the quality of resident care provided at a facility as well as resident safety is dependent on the staff of that facility following infection control guidelines?

S. Weiss

A. I don't know that there is a relationship, direct relationship between the two.

Q. So would it be your understanding that if staff did not follow or adhere to infection control guidelines, that that would not endanger resident potentially?

A. I wouldn't know, I am not involved in infection control or clinical in any way.

Q. From your perspective as comptroller, and again, I know this is not exactly your field, but you are long-term senior executive in this field, would you agree that a failure to properly cohort Covid and non Covid residents could potentially endanger non Covid residents?

A. I wouldn't know, I'm not -- I'm not involved clinically in any way.

Q. Okay, along those same lines, would a failure to cohort staff that were caring for Covid positive residents and allowing them to care for both Covid and non Covid residents endanger those non Covid

residents?

A. I wouldn't know.

MR. SMITH: And we're coming to the end of the day. I want to reiterate to you that this hearing is confidential, that we mentioned that at the very beginning it remains confidential even after we finish today here in a few moments, it will remain confidential so you can, of course, talk to your attorney, you can consult with Mr. Yaffe, but we are asking you to keep this confidential with any Fulton Commons employees, anyone else in your life, please do not discuss this with anyone outside of your attorney, so the confidential restrictions we talked about earlier apply even when we're done, and I also want to confirm with you and ask you if you will consulted with anyone during any breaks today?

THE WITNESS: I spoke with my attorney.

S. Weiss

MR. SMITH: Did you consult with anyone aside from your attorney today?

THE WITNESS: I didn't consult with anyone.

MR. SMITH: We ask you to continue on that, you can, of course, talk to your attorney but please don't talk to anyone else.

With that we can take a quick break, we will come back in five minutes and then I we can let you go okay.

THE WITNESS: Okay.

MR. SMITH: So let's return at say 3:45.

THE WITNESS: Fair enough.

MR. SMITH: Thank you.

(A recess was taken.)

MR. SMITH: Mr. Weiss, so we have met as a team, we have no more questions for you today so we are going to close the record here shortly.

I just want to reiterate again the importance of confidentiality for

this proceeding so you can, of course, talk to Mr. Yaffe, your attorney, no limitations on that, but we request you not to speak to anyone else, including the ownership your employer or any staff at Fulton Commons or any other associated entities, so with that said, we appreciate your time. Thank you for spending the day with us and answering our questions, and we will follow up, Mr. Yaffe, in writing for the documents we asked for preservation hold on and we will be in touch on that front, otherwise, we are good to go, and have a good rest of the day, Mr. Yaffe, and Mr. Weiss.

MR. YAFFE: I just want to make clear to you that I do not presently represent any of these other entities that you have been discussing today, so to the extent you have some order you want to issue regarding these other entities, I'm not their attorney.

MR. SMITH: That's an absolutely

S. Weiss

fantastic point. I'm really glad you brought up to it up, just to clarify on the record you are representing Fulton Commons Care Center only, not --

MR. YAFFE: Right now, yes, I mean --

THE WITNESS: Well, David, we will talk off line, obviously.

MR. YAFFE: Of course, but I didn't want to leave the impression that I am the attorney for the universe of entities here at the moments.

MR. SMITH: That's good to clarify, I am very glad you brought that up. If that does change, obviously, please let us know, but we will tailor any requests that would be specifically to your orbit as representing Fulton Commons Care Center right now.

With that being said, we will release you, Mr. Weiss, and we appreciate it.

(TIME NOTED: 3:50 p.m.)

INDEX TO TESTIMONY

WITNESS	DIRECT EXAMINATION
S. Weiss	Mr. Smith

INDEX TO EXHIBITS

INDEX TO REQUESTS

CERTIFICATION

I, Stefanie Krut, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 2021.

Stefanie Krut

CMS Manual System

Department of Health & Human Services (DHHS)

Pub. 100-07 State Operations Provider Certification

Centers for Medicare & Medicaid Services (CMS)

Transmittal 156 **Date: June 10, 2016**

SUBJECT: Revisions to the State Operations Manual (SOM) - Appendix P – Survey Protocol for Long Term Care Facilities

I. SUMMARY OF CHANGES: This instruction revises the instructions to surveyors in section IV, subsection E of Appendix P, Psychosocial Outcome Severity Guide, in order to provide additional information to surveyors about assessing for psychosocial harm.

NEW/REVISED MATERIAL - EFFECTIVE DATE: June 10, 2016
IMPLEMENTATION DATE: June 10, 2016

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (*N/A if manual not updated.*)
(R = REVISED, N = NEW, D = DELETED) – (*Only One Per Row.*)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	Appendix P/Survey Protocol for Long Term Care Facilities - Part I/IV Deficiency Categorization/E. Psychosocial Outcome Severity Guide

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	**Manual Instruction**
	Confidential Requirements
	One-Time Notification
	One-Time Notification -Confidential
	Recurring Update Notification

***Unless otherwise specified, the effective date is the date of service.**

IV. Deficiency Categorization
(*Rev.156, Issued: 06-10-16, Effective: 06 -10-16, Implementation: 06-10-16*)

A. General Objective

After the survey team determines that a deficiency (ies) exists, assess the effect on resident outcome (severity level) and determine the number of residents potentially or actually affected (scope level). Use the results of this assessment to determine whether or not the facility is in substantial compliance or is noncompliant. When a facility is noncompliant, consider how the deficient practice is classified according to severity and scope levels in selecting an appropriate remedy. (See §7400 for discussion of remedies.)

Scope and severity determinations are also applicable to deficiencies at §483.70(a), Life Safety from Fire.

B. Guidance on Severity Levels

There are four severity levels. Level 1, no actual harm with potential for minimal harm; Level 2, no actual harm with potential for more than minimal harm that is not immediate jeopardy; Level 3, actual harm that is not immediate jeopardy; Level 4, immediate jeopardy to resident health or safety. These four levels are defined accordingly:

1. Level 1 is a deficiency that has the potential for causing no more than a minor negative impact on the resident(s).

2. Level 2 is noncompliance that results in no more than minimal physical, mental and/or psychosocial discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

3. Level 3 is noncompliance that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. This does not include a deficient practice that only could or has caused limited consequence to the resident.

4. Level 4 is immediate jeopardy, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. (See Appendix Q.)

C. Guidance on Scope Levels

Scope has three levels: isolated; pattern; and widespread. The scope levels are defined accordingly:

I. Scope is isolated when one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, and/or the situation has occurred only occasionally or in a very limited number of locations.

II. Scope is a pattern when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

3. Scope is widespread when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents. Widespread scope refers to the entire facility population, not a subset of residents or one unit of a facility. In addition, widespread scope may be identified if a systemic failure in the facility (e.g., failure to maintain food at safe temperatures) would be likely to affect a large number of residents and is, therefore, pervasive in the facility.

D. General Procedures

After the team makes a decision to cite a deficiency(ies), evaluate the deficient practice's impact on the resident(s) and the prevalence of the deficient practice. Review deficiency statements, worksheets, and results of team discussions for evidence on which to base these determinations. The team may base evidence of the impact or prevalence for residents of the deficient practices on record reviews, interviews and/or observations. Whatever the source, the evidence must be credible.

After determining the severity level of a deficient practice, determine scope. When determining scope, evaluate the cause of the deficiency. If the facility lacks a system/policy (or has an inadequate system) to meet the requirements and this failure has the potential to affect a large number of residents in the facility, then the deficient practice is likely to be widespread. If an adequate system/policy is in place but is being inadequately implemented in certain instances, or if there is an inadequate system with the potential to impact only a subset of the facility's population, then the deficient practice is likely to be pattern. If the deficiency affects or has the potential to affect one or a very limited number of residents, then the scope is isolated.

If the evidence gathered during the survey for a particular requirement includes examples of various severity or scope levels, surveyors should generally classify the deficiency at the highest level of severity, even if most of the evidence corresponds to a lower severity level. For example, if there is a deficiency in which one resident suffered a severity 3 while there were widespread findings of the same deficiency at severity 2, then the deficiency would be generally classified as severity 3, isolated.

E. Psychosocial Outcome Severity Guide

Purpose

The purpose of the Psychosocial Outcome Severity Guide is to help surveyors determine the severity of psychosocial outcomes resulting from the identified noncompliance at a specific F tag. The Guide is used to determine the severity of a deficiency in any regulatory grouping (e.g., Quality of Care, Quality of Life) that resulted in a negative psychosocial outcome.

This Guide is not intended to replace the current scope and severity grid, but rather it is intended to be used in conjunction with the scope and severity grid to determine the severity of outcomes to each resident involved in a deficiency that has resulted in a psychosocial outcome. The team should select the level of severity for the deficiency based on the highest level of physical or psychosocial outcome. For example, a resident who was slapped by a staff member may experience only a minor physical outcome from the slap but suffer a greater psychosocial outcome. In this case the severity level based on the psychosocial outcome would be used as the level of severity for the deficiency.

Overview

Psychosocial outcomes (i.e., mood and behavior) may result from a facility's noncompliance with any regulatory requirement. Although a resident may experience either a negative physical outcome or a negative psychosocial outcome, some may experience or have the potential to experience both types of negative outcomes.

Psychosocial outcomes and physical outcomes are equally important in determining the severity of noncompliance, and both need to be considered before assigning a severity level. The severity level assigned should reflect the most significant negative outcome or highest level of harm/potential harm.

The presence of a given affect (i.e., behavioral manifestation of mood demonstrated by the resident) does not necessarily indicate a psychosocial outcome that is the direct result of noncompliance. A resident's reactions and responses (or lack thereof) also may be affected by pre-existing psychosocial issues, illnesses, medication side effects, and/or other factors. Because many nursing home residents have sadness, anger, loss of self-esteem, etc. in reaction to normal life experiences, the survey team must have determined that the psychosocial outcome is a result of the noncompliance *and not a pre-existing condition for the resident*.

Psychosocial outcomes of interest to surveyors are those caused by the facility's noncompliance with any regulation. This also includes psychosocial outcomes resulting from facility failure to assess and develop an adequate care plan to address a resident's pre-existing psychosocial issues*, leading* to continuation or worsening of the condition.

Instructions

This Guide is designed to be used separately for each resident included in the deficiency. Each resident's psychosocial response to the noncompliance is the basis for determining psychosocial severity of a deficiency. To determine severity, use the information gathered through the investigative process. Compare the resident's behavior (e.g., their routine, activity, and responses to staff or to everyday situations) and mood before and after the noncompliance.

If the survey team determines that a facility's noncompliance has resulted in a negative psychosocial outcome to one or more residents, the team should use this Guide to evaluate the severity of the outcome for each resident identified in the deficiency (in accordance with the instructions at Task 6). The team should determine severity based on the resident's response in the following circumstances:

- If the resident can communicate a psychosocial reaction to the deficient practice, compare this response to the Guide; or

- If the resident is unable to express her/himself verbally but shows a noticeable non-verbal response that is related to the deficient practice, compare the non-verbal response to the Guide.

Application of the Reasonable Person Concept

There are circumstances in which the survey team may apply the "reasonable person concept" to determine severity of the deficiency. To apply the reasonable person concept, the survey team should determine the severity of the psychosocial outcome or potential outcome the deficiency may have had on a reasonable person in the resident's position (i.e., what degree of actual or potential harm would one expect a reasonable person in a similar situation to suffer as a result of the noncompliance).

NOTE: The reasonable person concept described in this Guide is merely a tool to assist the survey team's assessment of the severity level of negative psychosocial outcomes. Although the reasonable person concept is used in many areas of the law, the application of common law defenses to the assessment of severity pursuant to this Guide would be inappropriate and is expressly precluded.

The survey team should use the reasonable person concept when the resident's psychosocial outcome may not be readily determined through the investigative process:

- When there is no discernable response or when circumstances obstruct the direct evaluation of the resident's psychosocial outcome. Such circumstances may include, but are not limited to, the resident's death, subsequent injury, cognitive impairments, physical impairments, or insufficient documentation by the facility. In this situation, the survey team may use the reasonable person concept to evaluate the severity (Level 2, Level 3, or Level 4) of the deficient practice; or

- When the resident's reaction to a deficient practice is markedly incongruent with the level of reaction the reasonable person would have to the deficient practice. In this situation, the survey team may use the reasonable person concept to evaluate the potential severity (Level 2 or Level 4) of the deficient practice.

Clarification of Terms

"Anger" refers to an emotion caused by the frustrated attempts to attain a goal, or in response to hostile or disturbing actions such as insults, injuries, or threats that do not come from a feared

source.[1]

"Apathy" refers to a marked indifference to the environment; lack of a response to a situation; lack of interest in or concern for things that others find moving or exciting; absence or suppression of passion, emotion, or excitement.[2]

"Anxiety" refers to the apprehensive anticipation of future danger or misfortune accompanied by a feeling of distress, sadness, or somatic symptoms of tension. Somatic symptoms of tension may include, but are not limited to, restlessness, irritability, hyper-vigilance, an exaggerated startle response, increased muscle tone, and teeth grinding. The focus of anticipated danger may be internal or external.[3]

"Dehumanization" refers to the deprivation of human qualities or attributes such as individuality, compassion, or civility.[4] Dehumanization is the outcome resulting from having been treated as an inanimate object or as having no emotions, feelings, or sensations.

"Depressed mood" (which does not necessarily constitute clinical depression) is indicated by negative statements; self-deprecation; sad facial expressions; crying and tearfulness; withdrawal from activities of interest; and/or reduced social interactions.[5] Some residents such as those with moderate or severe cognitive impairment may be more likely to demonstrate nonverbal symptoms of depression.

"Humiliation" refers to a feeling of shame due to being embarrassed, disgraced, or depreciated. Some individuals lose so much self-esteem through humiliation that they become depressed.[6]

PSYCHOSOCIAL OUTCOME SEVERITY GUIDE

The following are levels of negative psychosocial outcomes that developed, continued, or worsened as a result of the facility's noncompliance. This Guide is only to be used once the survey team has determined noncompliance at a regulatory requirement. The survey team must have established a connection between the noncompliance and a negative psychosocial outcome to the resident as evidenced by observations, record review, and/or interviews with residents, their representatives, and/or staff.

Areas where the survey team may more likely see psychosocial outcomes when citing a particular deficiency include, but are not limited to, F221/F222, Physical and Chemical Restraints; F223 Abuse; F224 Mistreatment, Neglect, Misappropriation; F225 Investigate and Report Allegations of Abuse; F226 Abuse and Neglect Policies; F241, Dignity; F246, Accommodation of Needs; F248, Activities; F279, Comprehensive Care Plans; F280, Right to Participate in Care Planning; F309, Quality of Care (pain, dementia care); F319, Treatment/Services for Mental/Psychosocial Functioning; F320, No Behavior Difficulties Unless Unavoidable; and F329, Drug Regimen is Free From Unnecessary Drugs. While the survey team may find negative psychosocial outcomes related to any of the regulations, these areas may be more susceptible to a negative psychosocial outcome or contain a psychosocial element that may be greater in severity than the physical outcome.

Severity Level 4 Considerations: Immediate Jeopardy to Resident Health or Safety

Immediate Jeopardy is a situation in which the facility's noncompliance with one or more requirements of participation:

- Has allowed/caused/resulted in, or is likely to allow/cause /result in serious injury, harm, impairment, or death to a resident; and

- Requires immediate correction, as the facility either created the situation or allowed the situation to continue by failing to implement preventative or corrective measures.

Examples of negative psychosocial outcomes as a result of the facility's noncompliance may include but are not limited to:

- Suicidal ideation/thoughts and preoccupation (with a plan) or suicidal attempt (active or passive) such as trying to jump from a high place, throwing oneself down a flight of stairs, refusing to eat or drink in order to kill oneself.

- Engaging in self-injurious behavior that is likely to cause serious injury, harm, impairment, or death to the resident (e.g., banging head against wall).

- Sustained and intense crying, moaning, screaming, or combative behavior.

- Expressions (verbal and/or non-verbal) of severe, unrelenting, excruciating, and unrelieved pain; pain has become all-consuming and overwhelms the resident.

- Recurrent (i.e., more than isolated or fleeting) debilitating fear/anxiety that may be manifested as panic, immobilization, screaming, and/or extremely aggressive or agitated behavior(s) (e.g., trembling, cowering) in response to an identifiable situation (e.g., approach of a specific staff member).

- Ongoing, persistent expression of dehumanization or humiliation in response to an identifiable situation, that persists regardless of whether the precipitating event(s) has ceased and has resulted in a potentially life-threatening consequence.

- Expressions of anger at an intense and sustained level that has caused or is likely to cause serious injury, harm, impairment, or death to self or others.

Severity Level 3 Considerations: Actual Harm that is not Immediate Jeopardy

Severity Level 3 indicates noncompliance that results in actual harm, and can include but may not be limited to clinical compromise, decline, or the resident's inability to maintain and/or reach his/her highest practicable well-being.

Examples of negative psychosocial outcomes as a result of the facility's noncompliance may include but are not limited to:

- Significant decline in former social patterns that does not rise to a level of immediate jeopardy.

- Persistent depressed mood[7,8,9] that may be manifested by verbal and nonverbal symptoms such as:

    - Social withdrawal; irritability; anxiety; hopelessness; tearfulness; crying; moaning;

    - Loss of interest or ability to experience or feel pleasure nearly every day for much of the day;

    - Psychomotor agitation[10] (e.g., inability to sit still, pacing, hand-wringing, or pulling or rubbing of the skin, clothing, or other objects), accompanied by a bothered or sad expression;

    - Psychomotor retardation (e.g., slowed speech, thinking, and body movements; increased pauses before answering);

    - Verbal agitation[11] (e.g., repeated requests for help, groaning, sighing, or other repeated verbalizations), accompanied by sad facial expressions;

    - Expressions of feelings of worthlessness or excessive guilt nearly every day (not merely self-reproach or guilt about being sick or needing care);

    - Markedly diminished ability to think or concentrate;

    - Recurrent thoughts of death (not just fear of dying) or statements without an intent to act (e.g., "I wish I were dead" or "my family would be better off without me").

- Expressions (verbal and/or non-verbal) of persistent pain or physical distress (e.g., itching, thirst) that has compromised the resident's functioning such as diminished level of participation in social interactions and/or ADLs, intermittent crying and moaning, weight loss and/or diminished appetite. Pain or physical distress has become a central focus of the resident's attention, but it is not all-consuming or overwhelming (as in Severity Level 4).

- Chronic or recurrent fear/anxiety that has compromised the resident's well-being and that may be manifested as avoidance of the fear-inducing situation(s) or person(s); preoccupation with fear; resistance to care and/or social interaction; moderate aggressive or agitated behavior(s) related to fear; sleeplessness due to fear; and/or verbal expressions of fear. Expressions of fear/anxiety are not to the level of panic and immobilization (as in Severity Level 4).

- Ongoing, persistent feeling and/or expression of dehumanization or humiliation that persists regardless of whether the precipitating, dehumanizing event(s) or situation(s) has ceased. The feelings of dehumanization and humiliation have not resulted in a life-threatening consequence.

- Apathy and social disengagement such as listlessness; slowness of response and thought (psychomotor retardation); lack of interest or concern especially in matters of general importance and appeal, resulting from facility noncompliance.

- Sustained distress (e.g., agitation indicative of under stimulation as manifested by fidgeting; restlessness; repetitive verbalization of not knowing what to do, needing to go to work, and/or needing to find something).

- Anger that has caused aggression that could lead to injuring self or others. Verbal aggression can be manifested by threatening, screaming, or cursing; physical aggression can be manifested by self-directed responses or hitting, shoving, biting, and scratching others.

Severity Level 2 Considerations: No Actual Harm with Potential for More Than Minimal Harm that is Not Immediate Jeopardy

Severity Level 2 indicates noncompliance that results in a resident outcome of no more than minimal discomfort and/or has the potential to compromise the resident's ability to maintain or reach his or her highest practicable level of well-being. The potential exists for greater harm to occur if interventions are not provided.

Examples of negative psychosocial outcomes as a result of the facility's noncompliance may include but are not limited to:

- Intermittent sadness, as reflected in facial expression and/or demeanor, tearfulness, crying, or verbal/vocal agitation (e.g., repeated requests for help, moaning, and sighing).

- Feelings and/or complaints of discomfort or moderate pain. The resident may be irritable and/or express discomfort.

- Fear/anxiety that may be manifested as expressions or signs of minimal discomfort (e.g., verbal expressions of fear/anxiety; pulling away from a feared object or situation) or has the potential, not yet realized, to compromise the resident's well-being.

- Feeling of shame or embarrassment without a loss of interest in the environment and the self.

- Complaints of boredom and/or reports that there is nothing to do, accompanied by expressions of periodic distress that do not result in maladaptive behaviors (e.g., verbal or physical aggression).

- Verbal or nonverbal expressions of anger that did not lead to harm to self or others.

Severity Level 1 Considerations: No Actual Harm with Potential for Minimal Harm

Severity Level 1 is not an option because any facility practice that results in a reduction of psychosocial well-being diminishes the resident's quality of life. The deficiency is, therefore, at least a Severity Level 2 because it has the potential for more than minimal harm.

ENDNOTES

[1] Gall, S., Beins, B., & Feldman, J. (1996). The Gale Encyclopedia of Psychology. Detroit, MI: Gale Research.

[2] Random House. (1981). The Random House Dictionary of the English Language. New York: Author.

[3] American Psychiatric Association (1994). Diagnostic and statistical manual of mental disorders (Fourth Edition). Washington, DC: Author.

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[5] Minimum Data Set Version 2.0, Section E.

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[7] Alexopolous, G., Abrams, R., Young, R., & Shamoian, C. (1988). Cornell scale for depression in dementia. Biological Psychiatry, 23, 271-284.

[8] Brink, T.L., Yesavage, J.A., Lum, O., Heersema, P., Adey, M., & Rose, T.L. (1982). Screening tools for geriatric depression. Clinical Gerontologist, 1, 37-43.

[9] Warren, W.L. (1994). Revised Hamilton Rating Scale for Depression (RHRSD). Los Angeles, CA: Western Psychological Services.

[10] Cohen-Mansfield, J. (2003). Agitation in the elderly: Definitional and theoretical conceptualizations. In D.P. Hay, D. Klein, L. Hay, G. Grossberg, & J.S. Kennedy (Eds.) Agitation in Patients with Dementia: A Practical Guide to Diagnosis and Management (pp. 1-22). Washington, DC: American Psychiatric Publishing Inc.

[11] Cohen-Mansfield, J. (2003). Agitation in the elderly: Definitional and theoretical conceptualizations.

Fulton Commons Care Center Inc
January 4, 2019 Certification Survey

Standard Health Citations

FF11 483.21(b)(2)(i)-(iii):CARE PLAN TIMING AND REVISION

REGULATION: §483.21(b) Comprehensive Care Plans §483.21(b)(2) A comprehensive care plan must be- (i) Developed within 7 days after completion of the comprehensive assessment. (ii) Prepared by an interdisciplinary team, that includes but is not limited to-- (A) The attending physician. (B) A registered nurse with responsibility for the resident. (C) A nurse aide with responsibility for the resident. (D) A member of food and nutrition services staff. (E) To the extent practicable, the participation of the resident and the resident's representative(s). An explanation must be included in a resident's medical record if the participation of the resident and their resident representative is determined not practicable for the development of the resident's care plan. (F) Other appropriate staff or professionals in disciplines as determined by the resident's needs or as requested by the resident. (iii)Reviewed and revised by the interdisciplinary team after each assessment, including both the comprehensive and quarterly review assessments.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 4, 2019
Corrected date: February 22, 2019

Citation Details	Plan of Correction: ApprovedJanuary 22, 2019
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on record review and interviews during the Recertification Survey the facility did not ensure that Comprehensive Care Plans were reviewed and revised by the interdisciplinary team after each assessment, including both the comprehensive and quarterly review assessments. This was identified for one (Resident # 184) of four residents reviewed for accidents. Specifically, several of Resident # 184's care plans, including but not limited to, Cognitive Loss, Room Change, Discharge Planning, Psychosocial Well Being, Abuse Monitoring, Victimization and Palliative care were not updated or revised since 5/10/18. The finding is: Resident # 184 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. Care plans for Cognitive Loss, Room Change, Discharge Planning, Psychosocial Well Being, Abuse Monitoring, Victimization and Palliative care were reviewed. A review of the care plans revealed updates and/or revisions were last documented as follows: Cognitive Loss on 2/21/18; Palliative Care on 2/21/18; Psychosocial Well Being on 2/21/18; Room change on 5/10/18; Abuse Monitoring on 5/3/18; Victimization on 5/3/18; and Discharge Planning on 5/10/18. The resident's Minimum Data Set (MDS) assessment history was reviewed. MDSs were completed for the following dates: 5/23/18-Quarterly Review; 8/16/18-Quarterly Review; 11/1/18- Significant Change Review. On 01/02/19 at 11:54 AM the resident's Social Worker was interviewed. She stated that it was her responsibility to update the care plans at each assessment and she did not have the chance to do them. The care plans for Cognitive Loss, Room Change, Discharge Planning, Psychosocial Well Being, Abuse Monitoring, Victimization and Palliative care were reviewed. The Social Worker stated the care plans should have been updated at each care plan meeting held. 415.11 (c)(2)(i-iii)	F657 Care Plan Timing and Revision 1. The Social Worker involved in the care of resident #184 was reinserviced on 1/2/19 by the Administrator and Director of Nursing Services as to proper documentation requirements for Care Plans, specifically addressing the documentation requirements for updating said care plans timely. Cognitive Loss, Room Change, Discharge Planning, Psychosocial Well Being, Abuse Monitoring, Victimization and Palliative Care CCPs for Resident #184 were reviewed and updated on 1/2/19 by Social Worker. 2. Administration has identified all residents requiring care plan updates assigned to involved Social Worker as having the potential to be affected. Social Work care plans for all residents assigned to involved social worker were reviewed and updated by the CCP Team as needed on 1/2/19. 3. An Adoc QAPI meeting was held on 1/7/19 during which Social Work care plans were reviewed and revised as appropriate. All Social Workers received inservice education on 1/4/19 from the Administrator and Director of Nursing Services on the CCP requirements with an emphasis on timely updates. The facility created an audit tool on 1/4/19 to be used by Social Workers assigned to alternate units on three (3) random resident each per week for 12 weeks to ensure compliance compliance is maintained with and Care Plans updated timely. 4. Audit results will be given to the Administrator on a weekly basis for twelve (12) weeks. Upon identification of any non-compliance, an adhoc QAPI meeting will be convened for further action if necessary. Results of audits will be presented to the QAPI Committee monthly for three months to ensure P(NAME) effectiveness. The QAPA Committee will add additional actions as necessary to ensure compliance with F657. Responsible Party: Administrator Date for correction: (MONTH) 22, 2019

FF11 483.21(b)(1):DEVELOP/IMPLEMENT COMPREHENSIVE CARE PLAN

REGULATION: §483.21(b) Comprehensive Care Plans §483.21(b)(1) The facility must develop and implement a comprehensive person-centered care plan for each resident, consistent with the resident rights set forth at §483.10(c)(2) and §483.10(c)(3), that includes measurable

objectives and timeframes to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan must describe the following - (i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §483.24, §483.25 or §483.40; and (ii) Any services that would otherwise be required under §483.24, §483.25 or §483.40 but are not provided due to the resident's exercise of rights under §483.10, including the right to refuse treatment under §483.10(c)(6). (iii) Any specialized services or specialized rehabilitative services the nursing facility will provide as a result of PASARR recommendations. If a facility disagrees with the findings of the PASARR, it must indicate its rationale in the resident's medical record. (iv)In consultation with the resident and the resident's representative(s)- (A) The resident's goals for admission and desired outcomes. (B) The resident's preference and potential for future discharge. Facilities must document whether the resident's desire to return to the community was assessed and any referrals to local contact agencies and/or other appropriate entities, for this purpose. (C) Discharge plans in the comprehensive care plan, as appropriate, in accordance with the requirements set forth in paragraph (c) of this section.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 4, 2019
Corrected date: February 22, 2019

Citation Details	**Plan of Correction: ApprovedJanuary 22, 2019**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on observations, record review, and interviews during a Recertification survey, the facility did not implement a comprehensive person-centered care plan for each resident's medical and nursing needs that are identified in the comprehensive assessment. This was noted for one resident (Resident #31) of three residents reviewed for hydration. Specifically, for Resident #31, the facility did not consistently follow the physician's orders [REDACTED]. The finding is: Resident #31 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. A Minimum Data Set (MDS) assessment dated [DATE] documented the resident had severely impaired cognition. The MDS documented the resident required supervision and set up help for eating. A CCP for Nutritional Status dated 6/21/18 included Aspiration Precautions and documented No Straws. A physician's orders [REDACTED]. The resident's Resident Care Profile (RCP), which provides directions for care for Certified Nurses Assistants (CNA), included Aspiration Precaution- No Straw. During a tour of the unit on 12/28/18 at 10:30 AM, Resident #31 was observed in her room with a family member. The resident was seated in a wheel chair and the resident's family member was holding a Capri Sun juice pouch	**NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** F656 Develop/Implement Comprehensive Care Plan 1. The drinks and straws identified in Resident #31's room were immediately removed by the Unit manager on 1/2/19. The husband of Resident #31 was reinserviced on 1/2/19 by Speech Therapist on aspiration precautions in place for Resident #31. The Recreation Assistant and CNA involved in the care of Resident #31 were immediately reinserviced by the RN Unit Manager on 1/2/19 on aspiration precautions in place for Resident #31 and the need to always follow care plans in place for residents, specifically focusing on aspiration precaution care plans. The Attending Physician for Resident #31 ordered on [DATE] a chest x-ray be done to ensure the safety of the Resident - chest x-ray results negative for aspiration. 2. Administration identified all residents on aspiration precautions as having the potential to be affected. An Adhoc QAPI meeting was held on 1/21/18 to review the Aspiration Precautions Policy and Procedure. Said policy was revised to include teaching of family/visitor that wish to be involved in the hands-on feeding/hydrating of their loved one to be reeducated by Speech Therapist in conjunction with MDS updates. 3. All Recreation and CNA staff to be reinserviced on

for the resident to drink. The resident was observed taking three sips of the drink with a straw and coughed after each sip. The family member was asked about the resident's cough associated with drinking and stated that he brings in certain drinks and foods that the resident likes from home and tells the Nurses when he brings the food. The resident's drawer contained 5 Capri Sun juice pouches, two bananas and three individually wrapped Hostess Twinkies. There were also a bunch of straws in the same drawer. During a breakfast observation on unit 4 West Dining Room on 12/31/18, breakfast was served at 8:25 AM. Resident #31 was observed seated at a dining table. The resident's tray items included a carton of milk, a cup of juice and a can of ginger ale. A Recreation Assistant was observed to notice the resident and she brought a straw and placed the straw in the can of ginger ale at 8:40 AM. A Certified Nurses Assistant (CNA) was observed at 8:50 AM to sit down to assist the resident and handed the resident the can of ginger ale with the straw in it. The resident was observed to drink from the straw with intermittent coughing. The resident's tray ticket documented,No straws. The unit charge Registered Nurse (RN) was interviewed on 01/02/19 at 9:22 AM. The RN stated that the resident's family member takes the resident to the room but she was unaware if the family member brings any food or drinks for the resident or if the family member feeds anything to the resident in the room. An observation of resident's drawer, with the RN present, on 01/02/19 at 9:31 AM revealed a bunch of straws, 5 Capri Sun juice pouches, a couple of bananas and 3 individually wrapped Hostess Twinkies. The RN stated these things must have been brought in by the family member. The RN stated that the family member should have been educated about not providing the resident with straws. She stated that the education should have been provided by one of the Nurses. The RN also stated that she personally never educated the family member regarding no straws and never knew the family member had food in the room for the resident. The resident's 7:00 AM-3:00 PM CNA assisting the resident during breakfast on 1/2/19 was interviewed on 01/02/19 at 9:32 AM. The CNA stated that she has been assigned to Resident #31 for 7-8 months and that the resident gets a chopped consistency diet. She also stated that Resident #31's family member visits daily and takes the resident to the dining room, but all of the resident's meals are served in the dining room

Aspiration Policy and Procedure by the Inservice Coordinator or designee with a focus on following care plans established in relation to aspiration precautions. The facility created on 1/21/19 an audit tool to be used by the Speech Therapists to ensure care plans pertaining to aspiration precautions are being implemented and followed for all residents as appropriate. Audits will be conducted three (3) times per week for eight (8) weeks by Speech Therapist on random residents that have aspiration precautions care planned for during varying meals and units to ensure care plans are being followed by staff. 4. Audit results will be given to the Administrator on a weekly basis for eight (8) weeks. Upon identification of any non-compliance, an Adhoc QAPI meeting will be convened for further action if necessary. Results of the audits will be presented to the QAPI Committee monthly for two (2) months to ensure P(NAME) effectiveness. The QAPI Committee will add additional actions as necessary to ensure compliance with F656. Note please that Administrator disagrees with the quote attributed to her in the body of the SOD and recalls stating There is no regulation requiring the re-teaching of family members NOT that it was not necessary to re-educate the family member. Responsible Person: Director of Nursing Date for correction: 02/22/19

with staff present. The CNA stated that the resident will eat but requires encouragement to finish food and the resident is not to have a straw. The CNA further stated she had never given the resident a straw before today, but during breakfast today, she offered her the ginger ale with the straw because she didn't realize that she shouldn't have the it. The Recreation Assistant (RA) helping in the dining room on 01/02/19 was interviewed on 1/2/19 at 9:34 AM. The RA stated that she observes and assists residents during meals on occasions and the resident sometimes also eats and drinks in recreation. The RA stated she was aware of diets regarding thickened or thin fluids, but does not know if no straws are to be given because there are no tray tickets in her recreation programs. The RA stated that she did not know no straws were to be used by Resident #31, she only knew that the resident was not on thickened fluids. She stated when observing the resident during breakfast she noticed that the resident did not have a straw in her can of ginger ale and she provided the resident one without looking at the tray ticket. The unit charge RN was interviewed on 1/2/19 at 9:40 AM and stated that the Recreation staff is educated about diet consistencies, aspiration precautions and no straws precautions. She stated that there was no documented evidence in the medical record that the resident's family member was educated regarding safe feeding. The Speech Therapist (ST) was interviewed on 01/02/19 at 9:45 AM. The ST stated that Resident #31's tray ticket documented no straws and that all residents on aspiration precautions have a Life Saver Magnet on the bedroom door, which means that they need supervision for their meals. She stated that as per ST documentation, the resident and family member were last trained on aspiration precautions and no straws on 11/9/15. She stated that the resident was reassessed on 9/5/18 due to a referral to determine the need for aspiration precautions. The resident had moderate Dysphagia with a mild risk for aspiration. She also stated that all residents on Aspiration Precautions should be eating and drinking only in supervised areas. The unit Registered Dietitian (RD) was interviewed on 1/2/19 at 10:00 AM. The RD stated that the ST should have educated the family member regarding safe feeding precautions and that the resident must be supervised during eating. She further stated that she discussed food preferences with the family member but never discussed aspiration precautions with him. The Administrator was interviewed on 1/4/19 at

3:30 PM and stated that the family member was educated on safe feeding once on 11/9/15 and that it was not necessary to re-educate the family member. 415.11(c)(1)	

FF11 483.60(i)(1)(2):FOOD PROCUREMENT,STORE/PREPARE/SERVE-SANITARY

REGULATION: §483.60(i) Food safety requirements. The facility must - §483.60(i)(1) - Procure food from sources approved or considered satisfactory by federal, state or local authorities. (i) This may include food items obtained directly from local producers, subject to applicable State and local laws or regulations. (ii) This provision does not prohibit or prevent facilities from using produce grown in facility gardens, subject to compliance with applicable safe growing and food-handling practices. (iii) This provision does not preclude residents from consuming foods not procured by the facility. §483.60(i)(2) - Store, prepare, distribute and serve food in accordance with professional standards for food service safety.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 4, 2019
Corrected date: February 22, 2019

Citation Details	**Plan of Correction: ApprovedFebruary 4, 2019**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on observations, record review and staff interviews during a recertification survey the facility did not ensure that food was stored in accordance with professional standards for food service safety. Specifically, 1) the Dairy walk in Freezer was not maintained at freezing temperature (T) as evidenced by the Kitchen tour observation on 12/27/18 and the (MONTH) and (MONTH) (YEAR) Temperature log reviews and; 2) during a lunch meal observation a Certified Nursing Assistant (CNA) was observed handing Resident # 230 and #43's food with her bare hands. The findings are: 1) During initial tour with the Food Service Director (FSD) on 12/27/18 at 9:35 AM the following food items were observed stored in the Freezer which displayed a temperature of 21 degrees Fahrenheit (F) on the external display and 10 degrees F on the thermometer inside the freezer: 4 cases of Chocolate Danish; 4 cases of Cheese Blintzes; 1 case of Fruit Blitzes; 9 cases of Creamer; 3 cases of Egg Plant Rollatini; 5 cases of Cheese Lasagna; 3 cases of Fruit Pancakes; 4 cases of Vegetable Patties; 1 case of Bagels; 3 cases	F812 Food Procurement, Store/Prepare/Serve - Sanitary DAIRY WALK-IN FREEZER 1. The Food Service Director immediately discarded on 12/27/18 all food items in the involved freezer to ensure resident safety. All other freezers and refrigerators in the kitchen were audited on 12/27/18 to ensure proper temperatures and logging of said temperatures - no other issues identified. Company used for freezer repairs (Pro-Tek) was called by the Food Service Director on 12/27/18 for a service call, which was done on the same day and freezer was repaired. Food Service Director immediately on 12/27/18 reinserviced Food Service Supervisor on duty, who is responsible for checking and logging temperatures, as to temperature code and logging requirements. 2. Administration has identified all residents as having the potential to be affected. An Adhoc QAPI meeting was held on 1/2/19 during which the Logging Refrigerator/Freezer Temperatures P&P was reviewed - no revisions required. 3. All Dietary Supervisors involved in checking and logging the temperatures of the freezer were reinserviced by the Food Service Director on 12/27/18 on properly checking and

of Vegetable Links; 3 cases of Vegetable stuffed peppers; 1 case of Vegetable stuffed cabbage; 5 cases of Frozen whole eggs; 3 cases of Frozen low cholesterol eggs; 1 case of Milk shake; 4 cases of pint-sized Ice Cream; and 42 cases of 4 ounce Ice Cream servings. The Ice Cream was observed to be melted and the Danishes were soft to touch. The Dairy walk in Freezer Temperature log sheet for (MONTH) 1st through (MONTH) 30th (YEAR) documented Temperatures higher than freezing (0 F). The AM (morning) inside Thermometer Temperature readings ranged between 6 F to 15 F and the exterior Thermometer documented temperature readings ranging between 6 F to 18 F. The PM (evening) inside Thermometer temperature readings ranged between 0 F to 18 F and the exterior Thermometer documented readings ranging between 14 F to 21 F. The Dairy walk in Freezer Temperature log sheet for (MONTH) 1st through (MONTH) 27th (YEAR) documented the following Temperatures. The AM inside Thermometer temperature readings ranged between 8 F to 18 F and the exterior Thermometer readings ranged between 6 F to 21 F. The PM inside Thermometer temperature readings ranged from 0 F to 18 F and the exterior Thermometer readings ranged between 10 F to 20 F. The FSD and the 6:00 AM-2:00 PM Dietary Supervisor who records the Freezer temperatures were interviewed on 12/27/18 at 11:00 AM concurrently. The FSD stated that she was unaware of the Freezer temperatures being high. She also stated that the Refrigeration preventative maintenance was completed on 11/23/18 and nothing was reported as needing repair. The FSD stated that the Refrigeration Company will be called and the food in the Freezer will be discarded. The Supervisor stated that the morning shift temperatures are obtained between 10:45-11:00 AM. The 2:00 PM- 8:00 PM Dietary Supervisor was interviewed on 12/27/18 at 2:00 PM and stated that the Freezer temperature readings were a little high but she did not do anything. The FSD stated on 12/28/18 at 11:00 that the Refrigeration Company noted the Dairy Freezer to be working at 25 F on the evening of 12/27/18 and repaired it. 2) Resident #230 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. A Quarterly Minimum Data Set (MDS) assessment dated [DATE] documented the resident's Brief Interview for Mental Status was 15 which indicated intact cognition. The resident required supervision with set up help for eating. During a lunch meal observation

recording temperatures including immediately reporting if temperatures are not within requirements to the Food Service Director. The facility developed on 1/2/19 an audit tool to be used by Food Service Director to ensure temperatures and logging of temperatures are in compliance at all times. Audits will be conducted twice weekly by the FSD or designee on all refrigerators and freezers for eight (8) weeks to ensure compliance. 4. Audit results will be given to the Administrator on a weekly basis for eight (8) weeks. Upon identification of any noncompliance, an Adhoc QAPI meeting will be convened for further action if necessary. Results of the audits will be presented to the QAPI Committee monthly for two (2) months to ensure P(NAME) effectiveness. The QAPI Committee will add additional actions as necessary to ensure compliance with F812. Responsible Person: Food Service Director Date for completion: (MONTH) 22, 2019 BREAD HANDLING 1. CNA #4 who was involved in the meal service for Residents #230 and #43 was immediately reinserviced by the RN Staff Educator on 12/28/18 as to safe food handling while serving meals, with a focus on serving bread. 2. Administration has identified all residents that require assistance with meal preparation as having the potential to be affected. An Adhoc QAPI meeting was held on 1/7/19 during which Food Handling During Distribution of Meals P&P was reviewed and revised to include protocol for staff to follow if food item is inadvertently touched during meal service. 3. All CNA's involved in meal passes were reinserviced between 12/28/18 and 1/18/19 by the Infection Control RN or designee concerning safe food handling, especially bread. The facility created an audit tool on 1/22/19 to be used to ensure CNA's serve bread to residents properly and in compliance with Food Handling During Distribution of Meals P&P. Audits will be conducted weekly for eight (8) weeks by the Infection Control RN or designee three times per week, per unit to ensure compliance with Food Handing During Distribution of Meals P&P is maintained at all times. 4. Audits results will be given to the Administrator on a weekly basis for eight (8) weeks. Upon identification of any noncompliance, an Adhoc QAPI meeting will be convened for further action if necessary. Results of the audits will be presented to the QAPI Committee monthly for two (2) months to ensure P(NAME) effectiveness. The QAPI Committee will add additional actions as necessary to ensure compliance with F812.

conducted on 12/28/18 at 11:45 AM in the second floor unit dining room, a Certified Nursing Assistant (CNA #4) was observed to remove a slice of bread from the plastic container with her bare hand. 2b) Resident #43 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. A Quarterly MDS assessment dated [DATE] documented the resident's BIMS Score was 12 which indicated moderate cognitive impairment. The resident required supervision with set up help for eating. During a lunch meal observation conducted on 12/28/18 at 11:50 AM, CNA #4 was observed to remove the plastic wrapping from the resident's sandwich; then with her bare hands, the CNA picked up the bread to apply mustard to the bread. An interview was conducted on 12/28/18 at 11:57 AM with CNA #4. The CNA stated that she should not have touched the bread with her bare hands and that she was inserviced not to handle the resident's food with her bare hands. During an interview conducted on 1/4/19 at 9:36 AM with the Registered Nurse (RN #7) Staff Development Coordinator, he stated the nursing staff was inserviced not to handle resident's food with bare hands. 415.14(h)	Responsible Party: Director of Nursing Services Date for correction: (MONTH) 22, 2019

Standard Life Safety Code Citations

K307 NFPA 101:PORTABLE FIRE EXTINGUISHERS

REGULATION: Portable Fire Extinguishers Portable fire extinguishers are selected, installed, inspected, and maintained in accordance with NFPA 10, Standard for Portable Fire Extinguishers. 18.3.5.12, 19.3.5.12, NFPA 10

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 4, 2019
Corrected date: February 28, 2019

Citation Details	Plan of Correction: ApprovedJanuary 17, 2019
2012 NFPA 101: 19.3.5.12 Portable fire extinguishers shall be provided in all health care occupancies in accordance with 9.7.4.1. 2012 NFPA 101: 9.7.4 Manual Extinguishing Equipment. 2012 NFPA 101: 9.7.4.1* Where required by the provisions of another section of this Code, portable fire extinguishers shall be selected, installed, inspected, and maintained in accordance with NFPA 10, Standard for Portable Fire Extinguishers. 2010 NFPA 10: 6.1.3.10 Cabinets. 2010 NFPA 10: 6.1.3.10.2 The location of fire extinguishers as described in 6.1.3.3.2 shall be marked conspicuously. 2010 NFPA 10: 6.1.3.3 Visual Obstructions. 2010 NFPA 10: 6.1.3.3.1 Fire extinguishers shall not be obstructed or obscured from view. 2010 NFPA 10: 6.1.3.3.2* In large rooms and in certain locations where visual obstructions cannot be completely avoided, means shall be provided to indicate the extinguisher location. Based on observation and staff interview, fire extinguishers were not provided with a means to indicate the extinguisher location. This was noted on two of four floors. The findings are: On 12/27/2018 between 9:25am and 2pm during the recertification survey, fire extinguishers located in recessed cabinets were not marked conspicuously and visible from all angles in the hallway. The fire extinguishers lacked signs. Examples are: 1) 4th floor near stairway five 2) 2nd floor West wing near stairway 4 3) 2nd floor East wing near stairway 3 In the exit interview conducted on 12/28/2018 at approximately 2pm, the Director of Maintenance stated he would be replacing all the signs for cabinets containing the fire extinguishers. 2012 NFPA 101: 19.3.5.12, 9.7.4, 9.7.4.1 2010 NFPA 10: 6.1.3.10, 6.1.3.10.2, 6.1.3.3, 6.1.3.3.1, 6.1.3.3.2 10NYCRR 711.2(a)(1)	**NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** K 355 - NFPA 101 Portable Fire Extinguishers 1. The facility maintenance workers audited all recessed portable fire extinguisher locations on 12/28/18 to ensure proper identification is in place. Audits reveal no other signage changes required. The Director of Maintenance placed an order for [REDACTED]. 2. The Administrator has identified all recessed fire extinguisher locations as having potential to be affected. The Maintenance PM Program was reviewed and revised during an Adhoc QPAI meeting on 1/4/19 to include visual monitoring on a monthly basis by the Maintenance staff of all recessed fire extinguisher locations. 3. All Maintenance staff were inserviced by the Director of Maintenance on 1/9/19 on the revision to the PM Program to now include visual monitoring and documentation of the recessed fire extinguisher locations to ensure proper signage remains in place. 4. Maintenance Director will audit PM Program documentation on a monthly basis for 3 months to ensure inspections are occurring per requirement. An audit form has been created for auditing purposes. Results of audits will be submitted to the QAPI Committee by the Maintenance Director for three months to ensure P(NAME) effectiveness. QAPI Committee will add additional actions as necessary to ensure compliance with K 355. Responsible Party: Director of Maintenance

K307 NFPA 101:SPRINKLER SYSTEM - MAINTENANCE AND TESTING

REGULATION: Sprinkler System - Maintenance and Testing Automatic sprinkler and standpipe systems are inspected, tested, and maintained in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintaining of Water-based Fire Protection Systems. Records of system design, maintenance, inspection and testing are maintained in a secure location and readily available. a) Date sprinkler system last checked _____ b) Who provided system test _____ c) Water system supply source _____ Provide in REMARKS information on coverage for any non-required or partial automatic sprinkler system. 9.7.5, 9.7.7, 9.7.8, and NFPA 25

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 4, 2019
Corrected date: February 28, 2019

Citation Details	Plan of Correction: ApprovedJanuary 17, 2019
2012 NFPA 101: 9.7.5 Maintenance and Testing. All automatic sprinkler and standpipe systems required by this Code shall be inspected, tested , and maintained in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. 2011 NFPA 25: 13.4.2 Check Valves. 2011 NFPA 25: 13.4.2.1 Inspection. Valves shall be inspected internally every 5 years to verify that all components operate correctly, move freely, and are in good condition. 2011 NFPA 25: 14.2 Internal Inspection of Piping. 2011 NFPA 25: 14.2.1 Except as discussed in 14.2.1.1 and 14.2.1.4 an inspection of piping and branch line conditions shall be conducted every 5 years by opening a flushing connection at the end of one main and by removing a sprinkler toward the end of one branch line for the purpose of inspecting for the presence of foreign organic and inorganic material. Based on observation and staff interview, the facility did not ensure that automatic sprinkler systems are inspected, tested , and maintained in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintaining of Water-based Fire Protection Systems in that there was no documentation to indicate: 1) a check valve inspection completed within the last five years; and 2) an internal inspection of sprinkler piping completed within the last five years. The findings are: On 12/28/18 between 9:00am- 1:00pm during the recertification survey, the following was noted: 1) There was no documentation provided regarding a check valve inspection completed within the last five years. 2) There was no documentation provided regarding an internal inspection of sprinkler piping completed within the last five years. In an interview on 12/28/18 at approximately 11:15am, the Director of Maintenance stated that he would call the company and provide the documentation if it was completed. There was no documentation provided by the exit date to indicate that both a check valve inspection and an internal inspection of sprinkler piping was completed within the last five years. 2012 NFPA 101: 9.7.5 2011 NFPA 25: 13.4.2, 13.4.2.1, 14.2, 14.2.1 10NYCRR 711.2(a)(1)	K 353 - NFPA 101 Sprinkler System - Maintenance and Testing 1. The Director of Maintenance called A&F Fire Protection Company on 12/29/18 to make appointments to have the required inspections of check valves and internal piping performed. Tests are scheduled to be performed at the end of January. 2. Director of Maintenance reviewed sprinkler testing requirements during survey on 12/28/18 to ensure compliance with all additional requirements. No other testing required at this time. 3. At an Adhoc QAPI meeting held on 1/4/19, the Maintenance PM Program was revised to include 5-year inspection of sprinkler check valves and internal piping. All Maintenance staff received inservice education on 1/9/19 from the Maintenance Director concerning sprinkler testing requirements, specifically the five-year inspections of the check valves and internal piping. 4. Maintenance Director and the QAPI Committee will ensure that five-year inspections are performed per requirements of K 535 and report results to Committee each five year period. The QAPI Committee will add additional actions as necessary to ensure compliance with K 355. Responsible Party: Maintenance Director

Fulton Commons Care Center Inc
July 30, 2019 Complaint Survey

Standard Health Citations

FF11 483.25(d)(1)(2):FREE OF ACCIDENT HAZARDS/SUPERVISION/DEVICES

REGULATION: §483.25(d) Accidents. The facility must ensure that - §483.25(d)(1) The resident environment remains as free of accident hazards as is possible; and §483.25(d)(2)Each resident receives adequate supervision and assistance devices to prevent accidents.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: July 30, 2019
Corrected date: September 15, 2019

Citation Details	**Plan of Correction: ApprovedAugust 21, 2019**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on interviews and record review during an abbreviated survey (Complaint #NY 648), the facility did not ensure that the environment remained secure and free of accidents for one (Resident #1) of three residents reviewed for elopement. Specifically, Resident #1 who had severely impaired cognition with moderate risk for elopement, exited the facility undetected by the staff. The perimeter exit door did not alarm as intended. The resident was found after one hour and five minutes, 0.4 miles away from the facility in a local bank. The findings were: The facility's policy and procedure titled Missing Resident/Unsafe Wandering, undated, documented all residents of the facility will be maintained in a safe and secure manner and protected from actual harm while encouraging a restraint-free environment. Elopement is defined as residents/patients who slip away secretly, run away, or leave the building without permission or staff knowledge. All exterior doors on the units are equipped with alarms.	F689 Free of Accident Hazards/Supervision/Devices 1. Maintenance Director on (MONTH) 12th immediately tested all alarmed exit doors to ensure proper working order - all doors alarmed properly, including door #3 exit door. Sensor on door #3 was changed as an extra precaution, re-tested and again alarmed properly when the door was opened. Maintenance Log books for weekly check of doors and q 6 month battery checks performed - both in compliance. No door alarm issues identified during any tests. The hospital that resident #1, who was unharmed from the incident, was taken to after being located was immediately informed of resident elopement to ensure resident safety at hospital as NO behavior of elopement was indicated on PRI or in hospital discharge paperwork, nor did family indicate elopement risk to any facility staff prior to admission to Fulton Commons. 2. Administration has identified all severely impaired residents with moderate risk for elopement as having the same potential to be affected. All severely impaired residents

Alarms are tested weekly by the Maintenance to ensure proper working order. All staff is responsible to ensure that doors are not propped open. Resident #1 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum Data Set (MDS-an assessment tool) dated 7/12/19 documented the resident's cognitive skills for daily decision making as severely impaired. She had verbal behavioral symptoms that occurred 1-3 days. The resident required extensive assistance with bed mobility, transfer, toilet use and locomotion on the unit. The Elopement Risk assessment dated [DATE] documented moderate risk for elopement for the resident. The CCP dated 7/9/19 documented the resident was noncompliant with transfers, required extensive assistance of one person for transfers to and from a wheelchair and was aimlessly wandering on the unit. Interventions included-medical management as per the physician's (MD) orders, provide redirection when resident tries to self-transfer and wanders aimlessly on the unit. Provide close supervision. The Nurse's Progress Notes (NPN) from 7/8/19 to 7/11/19 documented resident was verbally abusive, refusing to stay in bed, wandering in other resident's room and hallway looking for her husband, verbalizing wanting to work, and attempting to leave the unit and not easily redirected,. She was redirected by the staff with a fair result. The resident was transferred to another unit for psychosocial well-being on 7/11/19. The NPN dated 7/12/19 at 11 AM documented the resident was alert, interacting with other peers participating in activities in the dining room. The resident was escorted to the bathroom by a CNA. When the CNA returned to take the resident off the toilet, she was nowhere to be seen. The CNA alerted the Registered Nurse Supervisor (RNS). The unit search was initiated and the front desk was called to announce code missing. The CNA Accountability Record dated 7/8/19 lacked documented evidence of the resident's behavior of combativeness, wandering or refusing care. The incident report dated 7/12/19 between 12:50-1:00 PM and an investigation summary dated 7/15/19 at 10:00 AM documented, on 7/12/19 at 12:45 PM, a CNA assisted the resident to the bathroom in her room, she placed her on the toilet and the resident asked for privacy. The CNA closed the door and went to distribute the lunch trays. Approximately 10 minutes later, the CNA returned to assist the resident in the dining room (DR) for lunch. The resident was not in

identified with moderate risk for elopement were reviewed and reassessed on (MONTH) 12th by RN's to ensure proper care plans in place - no changes required for any residents. All exit doors were re-tested by C&H Signal and Maintenance Director on (MONTH) 15th - all in full working order with no issues identified. 3. Maintenance to continue to check all exit doors weekly and increase battery checks on doors from q 6 months to q 3 months. Maintenance staff to be inserviced on battery check frequency change by Maintenance Director. An audit tool was created to be used my Maintenance Director to ensure battery checks are being done q 3 months per maintenance PM program revision. 4. Audit results will be given to the Administrator on a quarterly basis for two quarters. Upon identification of any non-compliance, an Adhoc QAPI meeting will be convened for further action if necessary. 5. Responsible Party: Director of Maintenance Results of audits will be presented to the QAPI Committee to ensure P(NAME) effectiveness. The QAPI Committee will add additional actions as necessary to ensure compliance with F689.

her room or in the bathroom. The CNA checked the unit-unable to locate the resident. The RNS was notified. As CNA was checking the rooms, door alarm for stairwell 3 sounded with an announcement for staff to check the stairwell. The Licensed Practical Nure (LPN) responded by going up the stairwell to the roof and then down the stairwell. No resident was observed in the stairwell. Code M (missing resident) initiated. After 10 minutes of unsuccessful searching, the Police was informed. Silver alert issued by the Police and a helicopter search was initiated. At approximately 1:55 PM, the facility received a call from a (local) bank (approximately ?? mile from the facility) that resident was at the bank and appeared fine. The resident was escorted to the emergency room . Surveillance cameras revealed that the resident exited from the stairwell #3 and the emergency exit door on unit 1 east. The unit 1 east exit door did not alarm. The video surveillance dated 7/12/19 showed Resident #1 exiting the facility exit door at 12:50 PM (actual time). No staff was observed in the vicinity. CNA #1 was interviewed on 7/29/19 at 1:58 PM and she stated that on 7/12/19 she was not the assigned CNA for Resident #1. The RN Unit Manager (RNUM) asked her to toilet Resident #1 at approximately 12:00 PM. CNA #1 was not familiar with Resident #1 and was not aware of any of her behaviors. CNA #1 took Resident #1 to the bathroom in her room. Resident #1 wanted privacy; CNA #1 closed the bathroom door and went to the dining room. After approximately 2 minutes CNA #1 back to check on Resident #1. The resident was not done. Again she went back 2 minutes later and Resident #1 was no longer in the bathroom. CNA #1 noticed the 4th-floor stairwell #3 door was ajar and it did not alarm when she opened it. She looked around but did not see anybody. After a while, she heard to hold off the search because Resident #1 was found at the bank. The Medical Records Staff was interviewed on 7/29/19 at 2:30 PM, she stated that on 7/12/19 she was assigned to cover the front desk from 12 PM -1 PM. Between 12:30-12:45 PM Stairwell #3 4th floor alarm went off. She announced the alarm overhead and instructed the staff to check stairwell #3, 4th floor and to call the front desk. The LPN called her back within3-5 minutes and told her it was all clear. She reset the alarm. There was only one exit door alarm that activated. Approximately 10 minutes later, she was instructed to announce a Code M for missing person. She searched and went to the

perimeter looking for the resident, but they did not find the resident. The 7:00 AM-3:00 PM CNA #2, #3 and #4 and RNUM #1 were interviewed on 7/29/19 and 7/30/19 separately and they stated they were in the dining room serving lunch. They did not hear an exit door alarm on the 4th floor. They also did not hear an overhead page from the Receptionist to check the stairway door. They only heard the page for Code M. The 6:00 AM-2:00 PM CNA #3 was interviewed on 7/29/19 at 3:00 PM and stated she was assigned to Resident #1. The resident was newly transferred from another unit. CNA #3 was not aware of the resident's behaviors or the level of supervision required for the resident. She had toileted the resident earlier and left her by the nursing station at 11:55 AM. The 7:00 AM-3:00 PM LPN was interviewed on 7/29/19 at 4:30 PM and stated he was not aware of Resident #1's behaviors. He last saw the resident when CNA #1 was taking her to the bathroom. 10 minutes later, the LPN was in the dining room passing the tray and he heard the receptionist had paged to check the Stairwell #3. The page was audible. He opened the exit door Stairwell 3; the door was closed and was not alarming. When he opened the stairwell 3, 4th floor door, it did not alarm. He went to the roof, checked the door and went to the 1st floor. He did not see any resident. He did not hear any alarm and no doors were open. He went back to the 4th floor and checked other stairwell doors and did not see anything. The LPN could not recall calling the Receptionist to inform her of all clear status. The Maintenance Director was interviewed on 7/29/19 at 4:09 PM and stated that he conducted a routine check of all the exit doors on 7/8/19. All the doors were working. The east side perimeter door had the battery-operated buzzer. They changed the battery every 6 months and was last changed on 1/21/19. The stairwell door #3 alarmed on the 4th floor because the staff checked and went up and down as he was told. The stairwell #3, 4th floor exit door was also checked and it alarmed. During the incident, he did not know if the 1st-floor perimeter door alarmed but when he checked an hour after the elopement, the door alarmed. He did not hear the 1st-floor exit door was announced. Maintenance Director stated he did not know what happened why the perimeter door did not alarm. The Administrator (ADM) was interviewed on 7/29/19 at 6:16 PM and she stated that the Quality Assurance Committee reviewed the incident. ADM stated that the stairwell #3 (east door) going outside the building did not sound but the 4th-floor exit

door alarmed. The LPN heard the page to check the door, he responded and looked in the stairwell up and down, but nobody was there. Based on the video review, the resident left the building at 12:50 PM, and she was last seen at 12:45 PM. The code was called at 12:50 PM. The maintenance and outside vendor tested the door alarms after the incident, the alarms on all the doors were working. The ADM stated she did not know why the perimeter exit door did not sound. It was an equipment failure. 415.12 (h)(1)	

Fulton Commons Care Center Inc
May 15, 2020 Complaint Survey

Standard Health Citations

FF11 483.80(a)(1)(2)(4)(e)(f):INFECTION PREVENTION & CONTROL

REGULATION: §483.80 Infection Control The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary and comfortable environment and to help prevent the development and transmission of communicable diseases and infections. §483.80(a) Infection prevention and control program. The facility must establish an infection prevention and control program (IPCP) that must include, at a minimum, the following elements: §483.80(a)(1) A system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contractual arrangement based upon the facility assessment conducted according to §483.70(e) and following accepted national standards; §483.80(a)(2) Written standards, policies, and procedures for the program, which must include, but are not limited to: (i) A system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility; (ii) When and to whom possible incidents of communicable disease or infections should be reported; (iii) Standard and transmission-based precautions to be followed to prevent spread of infections; (iv)When and how isolation should be used for a resident; including but not limited to: (A) The type and duration of the isolation, depending upon the infectious agent or organism involved, and (B) A requirement that the isolation should be the least restrictive possible for the resident under the circumstances. (v) The circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease; and (vi)The hand hygiene procedures to be followed by staff involved in direct resident contact. §483.80(a)(4) A system for recording incidents identified under the facility's IPCP and the corrective actions taken by the facility. §483.80(e) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection. §483.80(f) Annual review. The facility will conduct an annual review of its IPCP and update their program, as necessary.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: May 15, 2020
Corrected date: July 1, 2020

Citation Details	**Plan of Correction: ApprovedMay 26, 2020**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY	F880 - Infection Control, Infection Prevention and Control 1. Housekeeper #1 received re-

	Based on observation, record review and interview during a COVID-19 Focused Infection Control Survey (Complaint # NY 940) the facility did not ensure an Infection Control program was maintained to prevent the development and transmission of communicable disease and infection. The staff did not consistently follow the recommended Centers for Disease Control (CDC) Infection Control transmission-based procedure for residents on precautions for three of six residents reviewed for Infection Control. Specifically, Housekeeper #1 was observed inappropriately using Personal Protection Equipment (PPE) while cleaning a room in the COVID-19 designated unit and CNA # 4 did not perform Hand Hygiene in-between transporting two different residents to their rooms. The finding is: The undated COVID-19 Policy documented that Housekeeping staff put appropriate PPE based on precautions in place. The undated Bioterrorism Pandemic/Influenza Policy and Procedure documented that staff should perform hand hygiene after touching contaminated items and between resident contacts. Hand Hygiene includes both handwashing with either plain or antimicrobial soap and water or use alcohol-based products (gels, rinses, foams) that contain an [MEDICATION NAME] and do not require the use of water. In the absence of visible soiling of hands, approved alcohol-based products for hand disinfection are prepared over antimicrobial activity, reduced drying of the skin, and convenience. The updated COVID-19 Hand Washing and PPE Application/Removal lesson plan documented staff were instructed on demonstrating proper technique when performing hand washing, and demonstrate proper technique when donning and removing PPE. The Housekeeping Supervisor was interviewed on 5/4/2020 at 10:20 AM. The Housekeeping Supervisor stated that his staff is expected to wear a white jumpsuit with a yellow gown over the jumpsuit, face mask, N95, and gloves in COVID-19 unit rooms. When leaving any room on the COVID-19 unit, their gloves are to be taken off and the staff should either wash their hands with soap and water or sanitize their hands with the sanitizer from the dispensers on the units. During an observation on 5/4/20 at 12:20 PM Housekeeper #1 was observed on the dedicated COVID-19 Unit entering a resident room with no precautions signage. Housekeeper #1 was wearing a Personal Protective Jumpsuit that was unzippered down to his waist, and the N95 mask was worn with	inservice education on 5/5/20 and 5/22/20 from the Infection Control Practitioner RN on Infection Prevention and Control, with a specific focus on proper wearing of PPE per facility policies and proper handwashing. Post test and competency done on 5/22/20 to ensure understanding of F880 requirements with both passed. CNA #4 received re-inservice education on 5/7/20 and 5/26/20 from the Infection Control Practitioner RN on Infection Prevention and Control with a specific focus on handwashing between resident contacts. Competency Audit conducted 5/26/20 to ensure understanding of requirements of F880 and passed. 2. Administration has identified all residents on the COVID+ Unit (Unit 1 East) as having the potential to be affected. An adhoc QAPI meeting was held on 5/5/20 during which all Infection Control policies with a specific focus on handwashing and proper wearing of PPE were reviewed with no changes deemed necessary. 3. All nursing and housekeeping staff on the COVDI+ Unit (Unit 1 East) received re-inservice education from the Infection Control Practitioner RN on 5/5/20 and 5/7/20 on Infection Prevention and Control with a specific focus on handwashing and proper wearing of PPE. The facility developed on 5/26/20 an audit tool to be used by the Infection Control Practitioner or designee to monitor and ensure that all staff on the COVID+ unit are in compliance with conducting proper handwashing and wearing of PPE. Audits will be visually conducted on three (3) staff members across all three shifts by the Infection Control Practitioner or designee weekly for eight (8) weeks to ensure compliance with F880. 4. Audits will be given to the Administrator on a weekly basis for eight (8) weeks. Upon identification of any noncompliance, as adhoc QAPI meeting will be convened for further action if necessary. Results of the audits will be presented to the QAPI Committee for two (2) months to ensure P(NAME) effectiveness. The QAPI Committee will add additional actions as necessary to ensure compliance with F880. Responsible Party: Director of Nursing Services Date for Correction: (MONTH) 1, 2020

	only one strap around his head and the second strap was not secured and was hanging. Housekeeper #1 was not wearing any gloves. He mopped and cleaned and exited the room without washing his hands. Housekeeper #1 was interviewed on 5/4/2020 at 12:30 PM. He stated that the only time he has to wear a yellow gown, gloves, and N95 mask is for the resident rooms that have a droplet precaution sign outside their doors. He stated that he was never told to wear gloves in the other residents' rooms that did not have signs on their doors. He did open his jumpsuit because he was feeling hot. CNA #4 was observed escorting a resident from the common area to the resident's room on 5/4/20 at 12:50 PM. CNA #4 did not wash her hands and then escorted another resident from the common area to the resident room. CNA #4 was interviewed on 5/4/20 at 1:00 PM. CNA #4 stated that she works on the 7 AM-3 PM shift on the negative COVID-19 unit. She stated that she should have washed her hands but did not because she was rushing to bring the residents back to their rooms. She stated that she was in-serviced about PPE and handwashing by the Infection Control RN. The Infection Control Registered Nurse (RN) was interviewed on 5/4/2020 at 3:15 PM. The Infection Control RN stated that all residents on the COVID-19 unit are on droplet precautions. All other residents in the facility are on contact precautions. Housekeeper #1 should have had his jumpsuit zipped all the way up as it was not appropriate to expose his regular clothes underneath. The RN stated that the Housekeepers should also wear gloves in the residents' rooms, take them off before leaving the rooms, and then sanitize their hands in the hallway. The RN stated that the CNAs should wash and or sanitize their hands after escorting the resident in the hallway. The Infection Control RN stated that Infection Control in-services have been conducted in the facility. The last training was on 5/1/2020 and if an infraction is seen the individual staff person is re-in-serviced. 415.19(a)(1-3) 415.19(b)(4)	

Fulton Commons Care Center Inc
October 20, 2020 Certification Survey

Standard Life Safety Code Citations

K307 NFPA 101:ELECTRICAL SYSTEMS - ESSENTIAL ELECTRIC SYSTE

REGULATION: Electrical Systems - Essential Electric System Categories *Critical care rooms (Category 1) in which electrical system failure is likely to cause major injury or death of patients, including all rooms where electric life support equipment is required, are served by a Type 1 EES. *General care rooms (Category 2) in which electrical system failure is likely to cause minor injury to patients (Category 2) are served by a Type 1 or Type 2 EES. *Basic care rooms (Category 3) in which electrical system failure is not likely to cause injury to patients and rooms other than patient care rooms are not required to be served by an EES. Type 3 EES life safety branch has an alternate source of power that will be effective for 1-1/2 hours. 3.3.138, 6.3.2.2.10, 6.6.2.2.2, 6.6.3.1.1 (NFPA 99), TIA 12-3

Scope: Widespread
Severity: Potential to cause minimal harm
Citation date: October 20, 2020
Corrected date: October 28, 2020

Citation Details	**Plan of Correction: ApprovedNovember 4, 2020**
2012 NFPA 99: 6.5.2.2 Specific Requirements. 6.5.2.2.1* General. 6.5.2.2.1.1 The number of transfer switches to be used shall be based upon reliability, design, and load considerations. 6.5.2.2.1.2 Each branch of the essential electrical system shall have one or more transfer switches. 6.5.2.2.1.3 One transfer switch shall be permitted to serve one or more branches in a facility with a continuous load on the switch of 150 kVA (120 kW) or less. 2012 NFPA 99: 6.5.2.2.2 Life Safety Branch. 6.5.2.2.2.1 The life safety and critical branches shall supply power for lighting, receptacles, and equipment as follows: (1) Illumination of means of egress in accordance with NFPA 101, Life Safety Code (2) Exit signs and exit directional signs in accordance with NFPA 101, Life Safety Code (3) Alarm and alerting	K915 NFPA 101 Electrical Systems - Essential Electrical Systems 1. The electrician was contacted on 10/23/20 by the Director of Maintenance and advised of the issue concerning the Life Safety Branch (LS) wiring not being separated from the Equipment Branch wiring on 3 of the 4 floors inspected for compliance. The electrician submitted a quote on 10/23/20 to correct the identified issues and om 10/28/20 completed necessary modifications to ensure compliance with K915. 2. Electrical panels/branches were reviewed by the electrical contractor and Maintenance Director on 10/28/20 to ensure all requirements met. No further modifications required. 3. Should any changes be made to the electrical lines/circuits/branches in the future, plans will

	systems, including the following: (a) Fire alarms (b) Alarms required for systems used for the piping of nonflammable medical gases as specified in Chapter 5 (4)*Communications systems, where used for issuing instructions during emergency conditions (5) Sufficient lighting in dining and recreation areas to provide illumination to exit ways of a minimum of 5 ft-candles (6) Task illumination and select receptacles at the generator set location (7) Elevator cab lighting, control, communications, and signal systems 6.5.2.2.2.2 No functions, other than those listed in 6.5.2.2.2.1(1) through (7), shall be connected to the life safety. 2012 NFPA 99: 6.5.2.2.3 Equipment Branch. 6.5.2.2.3.1 General. (A) The equipment branch shall be installed and connected to the alternate power source such that equipment listed in 6.5.2.2.3.2 is automatically restored to operation at appropriate time-lag intervals following the restoration of the life safety and equipment branches to operation. (B) The equipment branch arrangement shall also provide for the additional connection of equipment listed in 6.5.2.2.3.3. 6.5.2.2.3.2 AC Equipment for Nondelayed-Automatic Connection. Generator accessories including, but not limited to, the transfer fuel pump, electrically operated louvers, and other generator accessories essential for generator operation shall be arranged for automatic connection to the alternate power source. 6.5.2.2.3.3 Delayed-Automatic Connections to Equipment Branch. The following equipment shall be permitted to be connected to the equipment branch and shall be arranged for delayed-automatic connection to the alternate power source: (1) Task illumination and select receptacles in the following: (a) Patient care rooms (b) Medication preparation areas (c) Pharmacy dispensing areas (d) Nurses' stations (unless adequately lighted by corridor luminaires) (2) Supply, return, and exhaust ventilating systems for airborne infectious isolation rooms (3) Sump pumps and other equipment required to operate for the safety of major apparatus and associated control systems and alarms (4) Smoke control and stair pressurization systems (5) Kitchen hood supply or exhaust systems, or both, if required to operate during a fire in or under the hood 6.5.2.2.3.4* Delayed-Automatic or Manual Connections to Equipment Branch. The equipment in 6.5.2.2.3.4(A) and 6.5.2.2.3.4(B) shall be permitted to be connected to the equipment branch and shall be arranged for either delayed-automatic or manual connection to the alternate power source. (A) Heating	be reviewed to ensure connections are made per all LSC requirements. 4. After any additional work is performed to electrical panels, Director of Maintenance will check all work. Any identified issues will be reported to the Administrator and QAPI Committee for further action as required to ensure compliance at all times. Responsible party: Director of Maintenance Date for Correction: 10/28/20	

Equipment to Provide Heating for General Patient Rooms. Heating of general patient rooms during disruption of the normal source shall not be required under any of the following conditions: (1)*The outside design temperature is higher than ?6.7??C (+20??F). (2) The outside design temperature is lower than ? 6.7??C (+20??F) and, where a selected room(s) is provided for the needs of all confined patients, then only such room(s) need be heated. (3) The facility is served by a dual source of normal power. See A.6.4.1.1.1 for more information. (B)* Elevator Service. In instances where interruptions of power would result in elevators stopping between floors, throwover facilities shall be provided to allow the temporary operation of any elevator for the release of passengers. (C) Optional Connections to the Equipment Branch. Additional illumination, receptacles, and equipment shall be permitted to be connected only to the equipment branch. (D) Multiple Systems. Where one switch serves multiple systems as permitted in 6.5.2.2, transfer for all loads shall be nondelayed automatic. 2011 NFPA 70: Article 517.41 Essential Electrical Systems. (D) Separation from Other Circuits. The life safety branch shall be kept entirely independent of all other wiring and equipment and shall not enter the same raceways, boxes, or cabinets with other wiring except as follows: (1) In transfer switches (2) In exit or emergency luminaires supplied from two sources (3) In a common junction box attached to exit or emergency luminaires supplied from two sources The wiring of the critical branch shall be permitted to occupy the same raceways, boxes, or cabinets of other circuits that are not part of the life safety branch. This requirement is not met as evidenced by: Based on observation, documentation review (i.e., posted electrical panel directories), and staff interview, during the recertification survey the facility was not provided with an NFPA 99 - Health Care Facilities and NFPA 70 - National Electrical Code conforming Type 2 Essential Electrical System in that the Life Safety Branch wiring was not separated from the Equipment Branch wiring. This was noted in the emergency electrical distribution panels on 3 of 4 floors inspected for compliance. The findings are: During the Life Safety Code inspections on 10/16/2020 between 10:00am during the re-certification survey, Review of the POS [REDACTED]. Examples included but are not limited to the following: - 4W and 4E electrical rooms noted with loads from the LSC branch (Fire Alarm Panel, Fire Dampers) and the EB

branch load (Nurse Call) within the same panel. - 3W electrical room noted with loads from the LSC branch (Fire Dampers) and the EB branch load (Nurse Call) within the same panel - 3E electrical room noted with loads from the LSC branch (Fire Alarm Panel, Fire Dampers) and the EB branch load (Nurse Call) within the same panel - 2W electrical room noted with loads from the LSC branch (Fire Alarm Panel, Fire Dampers and Door hold open) and the EB branch load (Nurse Call) within the same panel - 2E electrical room noted with loads from the LSC branch (Fire Dampers) and the EB branch load (Nurse Call) within the same panel In an interview on the same day at approximately 11:15am, the Director of Maintenance stated that the issue would be discussed with Administration. NFPA 99-2012 Standard for Health Care Facilities: 6.5 NFPA 70-2011 National Electrical Code: Article 517.41 10NYCRR 711.2(a)(1)	

Fulton Commons Care Center Inc
July 28, 2021 Complaint Survey

Standard Health Citations

FF11 483.45(f)(2):RESIDENTS ARE FREE OF SIGNIFICANT MED ERRORS

REGULATION: The facility must ensure that its- §483.45(f)(2) Residents are free of any significant medication errors.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: July 28, 2021
Corrected date: December 1, 2021

Citation Details	**Plan of Correction: ApprovedNovember 29, 2021**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on record review and interview during an abbreviated survey (Complaint #NY 105) the facility did not ensure residents were free from significant medication errors for 2 (Resident #1 and Resident #2) of three residents reviewed for Drugs and Medication. Specifically, the facility did not ensure significant medications were accurately transcribed from Hospital Discharge instructions for Resident #1 and Resident #2. Resident #1's Hospital Discharge Instructions documented [MEDICATION NAME] (medication for lung disease and blood cell disorders) 5 mg, 15 mg tablet daily and the Physician order [REDACTED]. Resident #2's Hospital Discharge instructions documented [MEDICATION NAME] (medication for gout) 100 mg, 2 tablets daily and the physician order [REDACTED]. The findings are: The facility's policy titled Transcription of Physician orders [REDACTED]. All orders must be entered via the electronic medical record system using only accepted abbreviations and must contain the	F760 - Residents are Free of Siginificant Med Errors 1. Residents #1 and #2 were safely discharged from the facility prior to receipt of SOD on 11/09/2021 and accordingly, no immedaite actions could be taken. The professional nurses involved in the care of Resident #1 and #2 were immediately inserviced on 07/29/2021, 07/30/2021 and 08/05/2021 on Transcription of Medications Upon Admission/Readmssion P&P, with a specific focus on ensuring accurate transcription of medication orders. 2. Administration has identified all new admssions/readmission with medication orders as having the potential to be affected. The Transcription of Medications Upon Admission/Readmsiion Policy and Procedure was reviewed and revised by the Administrator, DNS and Medical Director on 07/29/2021 to include a three-step process to be followed by professional nurses to ensure all medications are reconciled accurately and in a timely fashion. The DNS reviewed Medication Orders on a total of eight (8) (MONTH)

	date, time and signatures of the person entering the orders. All orders picked by and transcribed by the licensed nurse must be reviewed for accuracy. The following shifts must read, check, sign and date the order. 1) Resident #1 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum Data Set (MDS-an assessment tool) dated 7/2/2021 documented the resident with Brief Interview for mental Status (BIMS) score of 13 indicating intact cognition. The hospital patient discharge instructions obtained from the facility dated 6/25/2021 documented [MEDICATION NAME] 5 mg oral tab, 5 mg by mouth once a day for Interstitial Lung Disease (ILD) with no changes, continue to take medications as prescribed. The hospital labs dated 6/21/21 documented Hgb 8.5 (13-1g/dl), Hct 29 (39-50%), 6/22/21 Hgb 8.0, Hct 27.2, 6/23/21 Hgb 8.0, Hct 26.6, and 6/24/21 Hgb 8.2, Hct 28.5. The Comprehensive Care Plan (CCP) for [MEDICAL CONDITION] (respiratory Therapy) dated 6/28/21 documented resident with breathing problem requiring respiratory treatment, [MEDICAL CONDITION] secondary to [DIAGNOSES REDACTED]. Interventions included assess for shortness of breath, assess lung fields, assess rate of respiration, assess level of anxiety, evaluate and monitor response to Respiratory Therapy, monitor vital signs, provide resp treatment as per MD order, pulse oximetry eval and report to MD any changes in the resident's condition. The CCP titled Cardiovascular/Circulation dated 6/28/21 documented the resident with alteration in cardiovascular status related to Hypertension, CAD, [MEDICAL CONDITION] and [MEDICAL CONDITIONS]. Interventions included administer meds as per MD order, cardiology consult as ordered by MD when indicated and as needed, medical management as per MD order, monitor for effectiveness and side effects of meds and report to MD, accordingly, monitor for signs and symptoms of cardiovascular complications like [MEDICAL CONDITION], shortness of breath, chest pain and abnormal vital signs, monitor vital signs and oxygen sat as indicated and report abnormal findings to MD. The Physician's admission orders [REDACTED]. The order signed by the RN, cosigned by an LPN and signed by MD. The MD progress notes dated 6/27/2021 to 6/29/2021, 7/1/2021 and 7/4/2021 documented resident with dyspnea on exertion (DOE) Oxygen saturation was 92-94%. Lungs were noted with decreased breath sounds. Resident with Interstitial lung disease with acute on chronic resp failure. Resident on Continuous	admissions/readmissions (2 per week) on (MONTH) 29 through (MONTH) 7, 2021 to ensure compete, accurate, timely transcription of medications. No other medication discrepncies identified as a result of audits. 3. All professional nurses received inservice education by the DNS or designee on 07/29/2021, 07/30/2021 and 08/05/2021 on the revised Transcription of Medications Upon Amdission/Readmission P&P with an emphasis on ensuring accurate transcription and reconciliation of all medications. The facility will initiate and audit tool to be used by the DNS or designee to monitor and ensure medication transcriptions on new admissions/readmissions are transcribed accurately and in a timely manner per the revised P&P. Audits will be randomly conducted by the DNS or designee on five (5) new admissions/readmissions per week for a period of eight weeks to ensure compliance. 4. Audit results will be given to the Amdinistrator on a weekly basis for the eight week period. Upon identification of any noncompliance, an adhoc QAPI meeting will be immediately convened for further action if necessary. Results of the audits will be will be presented to the QAPI Committee monthly to ensure P(NAME) effectiveness. The QAPI COmmittee will add addtional actions/interventions as necessary to ensure complince with F760. Responsible Party: Director of Nurses Date for Corrections: (MONTH) 26, 2021

Positive Airway Pressure ([MEDICAL CONDITION])/Oxygen and nebulizer. Resident's DOE was stable. The MD documented the resident was noted with fatigued and dyspneic at times, [MEDICAL CONDITION] follow up as outpatient. The labs dated 6/29/2021 documented Hgb 8.4 (14.7-17.5g/dl), and Hct 30.6 (40.1-51%). On 7/5/2021 Hgb was 8.1g/dl and Hct was 29.5 %. The Medication Administration Record [REDACTED]. The discharge summary from facility to home documented a discharge medication dated 7/8/2021 which included [MEDICATION NAME] 5 mg, 1 tab every day for [MEDICAL CONDITION]. The hospital records obtained from the hospital was received on 9/23/2021 and reviewed on 9/24/2021. The hospital record dated 6/25/2021 documented the discharge medications included [MEDICATION NAME] 5 mg tablet, 15 mg by mouth daily for ILD. The MD discharge note dated 6/25/2021 documented discharge medication reconciliation completed and documented [MEDICATION NAME] 5 mg oral tablet, 15 mg orally once a day. The hospital Pulmonology consult dated 6/22/2021 documented the patient was admitted following a syncopal episode while sitting and caught before falling to the ground. The patient has profound hypoxic [MEDICAL CONDITION] and obesity related to obstructive sleep apnea. Resident also has [MEDICAL CONDITION]. The recommendation was to continue with [MEDICATION NAME] 15 mg daily for [DIAGNOSES REDACTED]. The Heme/Oncology consult dated 6/23/2021 documented patient has a non-immune mediated [DIAGNOSES REDACTED] [DIAGNOSES REDACTED] with Hgb usually on 9mg/dl range. An exhaustive work up was done which were all negative. The resident has been on [MEDICATION NAME] which has decreased packed RBC needs. The plan was for packed RBC as needed and continue [MEDICATION NAME] 15 mg daily as he has been on it for a long time and for [DIAGNOSES REDACTED]. 2) Resident #2 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The MDS dated [DATE] documented the resident with BIMS score of 15 indicating intact cognition. The hospital patient discharge medication list dated 6/23/2021 documented [MEDICATION NAME] ([MEDICATION NAME]) 100 mg, take 2 tablets by mouth. The Physician admission order dated 6/23/2021 documented [MEDICATION NAME] 100 mg tablet, 1 tablet via peg tube

daily for Idiopathic Chronic Gout. The order was signed by RN, cosigned by another nurse and signed by MD. The CCP dated 6/24/2021 documented the resident had a [DIAGNOSES REDACTED]. Interventions included administer medication as per MD order, medical management as per MD order, monitor for signs and symptoms of adverse reaction to medication and report to MD and monitor labs as ordered and report abnormal levels to MD accordingly. The Admission Medical History and Physical dated 6/24/2021 documented [MEDICATION NAME] 100 mg 1 tablet daily via peg for Idiopathic Chronic Gout. The MAR for 06/24/2021 to 7/28/2021 documented [MEDICATION NAME] 100 mg 1 tablet was administered via peg daily at 10:00AM. The RN Unit Manager (RNUM) assigned to Resident #2 was interviewed on 7/28/2021 at 2:53 PM and stated RNUM wrote the admission orders [REDACTED]. RNUM stated she would normally write a note that she reconciled the medications with MD and will write changes on discharge medication list if MD changed the order. RNUM reviewed the medication discharge list which documented [MEDICATION NAME] 100 mg 2 tablets daily. RNUM stated the order she wrote on admission on 6/23/2021 documented [MEDICATION NAME] 100 mg 1 tablet daily. RNUM stated she probably omitted to change in the discharge summary list, but she definitely received an order for [REDACTED]. RNUM stated nobody brought to her attention or questioned the [MEDICATION NAME] order. The RN Supervisor (RNS) was interviewed on 7/2820/21 at 3:18 PM and stated RNS wrote the admission orders [REDACTED]. RNS shown the discharge med list obtained from Resident #1's chart and confirmed that the discharge med list was the list she read to the MD. RNS reviewed the discharge med list and the MD order she wrote on 6/25/2021 and stated all medication orders were the same and there were no changes. The discharge med list documented [MEDICATION NAME] 5 mg tab daily and that is what she told the MD and wrote as order. She stated she did not change/alter anything in the discharge med list. No changes in medications were given by MD. RNS only reviews other parts of hospital record if she had a question. In this case she did not have any question with the discharge medication list. There was nothing brought to her attention about questionable medication dosage. The MD was interviewed via phone on 7/2820/21 at 4:16 PM and stated the nurse usually go over with MD the discharge

medication list on the phone and MD ensure it sounds right. Resident #1 came with a bad [MEDICAL CONDITION] issue, toxic effect on the lungs. MD stated the facility did not have a full record on Resident #1's steroid. Resident #1 was on steroid, but MD could not recall the [MEDICATION NAME] dosage. Resident #1 had been on higher dose of [MEDICATION NAME] prior but received on lower dose. MD came in the next day or morning within 24-48 hours examined the patient and interviewed family. MD reviewed the hospital record. Resident #1 was admitted and went to another unit and another MD might have done the actual admission. MD could not recall if he did the admission. MD stated he could not recall the exact order of [MEDICATION NAME] and he could not recall reviewing the hospital discharge medication list. MD stated the daughter called him after Resident #1 was discharge from the facility and stated Resident #1 was sick again and went back to the hospital. The daughter wondered if Resident #1 should have been given more [MEDICATION NAME] and MD told the daughter that he ordered whatever listed in the hospital discharge summary. There were no changes in [MEDICATION NAME] order during Resident #1's stay. MD stated Resident #1 did not decompensate and able to perform some therapy and his oxygen saturation was ok. Resident #1 was stable. There was no reason for MD to increase [MEDICATION NAME] medication. MD stated he does not recall if there was issue with Resident #1's Hgb level. MD stated Resident #1's Hgb level is very common if he had [MEDICAL CONDITION]. The low dose [MEDICATION NAME] will not affect the Hgb level. MD stated he could not recall the MEDICATION ORDERS FOR [REDACTED]. MD stated sometimes he would order lower the dose of [MEDICATION NAME] if with vital signs issues. MD could not recall if there was issue with Resident #2's vital signs. The difference of 100 mg versus 200 mg is questionable and mild and had no untoward effect. Resident #2 had no gout attacks. Resident #2 had chronic gout disease sometimes careful on dosing and maybe that is why the order was 100 mg. MD could not recall if he changed the dose of the [MEDICATION NAME] and the reason for changing the dose. The Director of Nursing (DON) was interviewed on 7/28/2021 at 4:37 PM and confirmed that the hospital medication discharge list in the chart for Resident #1 was the one that came from the hospital. [MEDICATION NAME] 5 mg by mouth daily was the order written and the

same as the hospital discharge med list documented [MEDICATION NAME] 5 mg 1 tab by mouth once day for Resident #1. DON reviewed discharge orders with MD orders, and she stated that there was no difference. DON stated the discharge med list was not altered. DON stated the Administrator received a phone call from Resident#1's daughter and asked DON to follow up. The DON spoke to Resident #1's daughter who complained that the facility is not giving the right amount of [MEDICATION NAME] meds to Resident #1. DON sent to the daughter the Resident #1's reconciliation (discharge med list) papers. The daughter was not satisfied and stated that the facility supposed to give [MEDICATION NAME] mg daily. DON explained to the daughter that the facility went by what the hospital discharge med list that was sent to them. DON called the hospital and nobody from hospital staff verified to the DON if [MEDICATION NAME] was 5 mg or 15mg. DON went by what she had on hand. The daughter did not state where she got the 15 mg dose. Daughter also told the DON that Resident #1's Hgb was low, and they are bringing Resident #1 back to the hospital if needs blood transfusion. The facility's discharge coordinator called the hospital, and she was informed that the resident went to the hospital but did not get transfusion and was discharge home the same day. DON reviewed the discharge med list for Resident #2 and the admission orders [REDACTED]. DON stated she could not explain the error and she had no idea the error was done. There is nothing on Resident #2's progress notes that there was a change in medications of [MEDICATION NAME]. DON stated she expected the nurse to document the change in medication order was written somewhere. Licensed Practical Nurse (LPN) #1 was interviewed via phone on 9/1/2021 at 3:26 PM and stated she cosigned the medication order that was written by admission nurse. LPN #1 stated she does not usually review the hospital discharge med list. If the medication order is not written properly like order was written milligrams instead of milliliters LPN #1 will check the chart how it was written. LPN #1 could not recall Resident #1 because it was not her regular unit and she does not recall the [MEDICATION NAME] orders. LPN #2 was interviewed via phone on 9/27/2021 at 2:26 PM and stated she could not recall Resident #2. LPN #2 stated if there are orders needs to be cosigned, she will sign off to acknowledge. Sometimes if there is questionable medication order, LPN #2 will go back and check the discharge med list like if

order was written in milliliters instead of milligrams. LPN #2 stated she would not really know if RN wrote an incorrect dosage in the order against the discharge med list because sometimes the MD can change the medication order. LPN #2 stated she could not answer for what happened in the [MEDICATION NAME] order for Resident #2 on admission. 10NYCRR415.12(m)(2)	

Fulton Commons Care Center Inc
January 10, 2022 Complaint Survey

Standard Health Citations

FF11 483.12(a)(1):FREE FROM ABUSE AND NEGLECT

REGULATION: §483.12 Freedom from Abuse, Neglect, and Exploitation The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms. §483.12(a) The facility must- §483.12(a)(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

Scope: Pattern
Severity: Immediate jeopardy to resident health or safety
Citation date: January 10, 2022
Corrected date: February 24, 2022

Citation Details	**Plan of Correction: ApprovedFebruary 4, 2022**
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on observations, interviews and record reviews during an abbreviated survey (Complaint # NY 991) completed on 1/10/22, the resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms. Specifically, after Resident #1, with intact cognition, reported on 12/25/21 to a Registered Nurse supervisor (RNS#1) that LPN#1 inappropriately touched resident #1. LPN#1 continued to work at the facility. On 1/3/22 Resident #2 with intact cognition reported that on 1/2/22 LPN#1 exposed their genitals to Resident#2. Consequently, both residents reported being afraid and not feeling	Directed Plan of Correction F600 The following plan of correction is submitted in accordance with applicable law and regulation and for continued Medicare/Medicaid certification and does not constitute an admission of fault on the part of the facility. Corrective actions for residents identified: 1. The Director of Nursing was made aware of the allegations on 01/03/22. At this time, LPN #1 was suspended and subsequnetly terminated. 2. The Director of Nursing notified the Office of Professional Discipline on 01/07/22 regarding the alleged actions of LPN #1. 3. The Nursing Supervisor who failed to timely report the alleged occurence that was reported to her on 12/25/21 was terminated on 01/06/22. 4. Resident #1: a. Although the alleged incident occurred on 12/25/21 and the RN Supervisor was notified on that date, she failed to act and was subsequently terminated. The Social

safe. Additionally, the facility failed to notify law enforcements and the New York State Department of Health within 2 hours. This resulted in no actual harm with the likelihood for more than minimal harm that is Immediate Jeopardy to resident health and safety. This had the potential to affect all 205 residents in the facility. The finding is: The facility's Policy and Procedure titled Abuse Reporting, (undated), documented sexual abuse was defined as sexual harassment, sexual coercion, and sexual assault with two specific examples given as inappropriate touching of body parts and pestering a resident using sexual language or gestures. The facility's Policy and Procedure titled Accident and Incident Investigation, revised 1/26/07, defined that all accidents and incidents will be investigated, documented and reported to the New York State Department of Health (NYSDOH) as appropriate. It documented that the purpose was to facilitate and enable the facility to complete an investigation and report. The facility Policy and Procedure titled Grievance Reporting and Response, last reviewed 10/2021, documented the Director of Social Services, or designee, will initiate the investigation within 48 hours of receipt of the complaint. Findings and recommendations for corrective action will be submitted to the Administrator or designee. Resident #1 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum Data Set ((MDS) dated [DATE], documented a Brief Interview for Mental Status (BIMS) (tool to measure cognition) of 15, indicating intact cognition. The Comprehensive Care Plan (CCP) titled Abuse dated 12/22/21 documented Resident #1 will remain free from all forms of abuse, neglect, mistreatment, physical, emotional and sexual, daily for 90 days with a target date of 3/22/22. A complaint grievance form dated, 12/27/21 documented that the social worker was notified by the daughter of Resident #1 of an incident that occurred on 12/25/21 between 12:00PM and 2:30PM. Social worker (SW#1) documented being notified on 12/27/21 at 12:00PM and notified the Assistant Director of Nursing (ADON). SW#1 documented a statement taken from Resident #1 on 12/27/21 that the resident rang the call bell for help with a fallen meal tray. An Indian man responded and placed hands in the resident's pull ups. Resident #1 asked LPN#1 to leave the room. LPN#1 stated This was beautiful as he was leaving the room. Also attached to the grievance form was a written statement taken from Resident #1 by

Worker was notified by the family on 12/27/21. When the Director of Nursing was made aware on 01/03/22, LPN #1 was immediately removed from the care of Resident #1. b. Resident #1 immediately received empotionl support on 12/27/21 and daily until her discharge on 01/06/22. Resident had no complaints, issues or concerns. c. Resident's care plans titled Abuse and Psychsocial well-being were reviewed and revised to include the resident's complaint on 12/27/21. 5. Resident #2: a. Resident immediately received emotional support on 01/03/22 and daily until her discharge on 01/13/22. b. Resident was immediately referred to the Psychologist on 01/03/22 for further emotional support. Resident had no complaints, issues or concerns and refused psychological services. c. Resident's care plans titled Abuse and Psychsocial well-being were reviewed and revised to reflect the the resident's complaint on 01/03/22. d. Resident recived a full body examination on 01/07/22. There were no negative findings. 6. Upon notification of the alleged concerns, the Director of Nursing made a report to the Department of Health on 01/03/22. 7. Upon notification of the alleged concerns, the Director of Nursing notified the local police department on 01/06/22. 8. All staff were re-educated by the Staff Development Coordinator with a completion date of 01/10/22 on abuse prevention with an emphasis on sexual abuse and timely reporting. Identification of other residents having the potential to be affcted by thie practice: 1. On 01/07/22, a physical assessment was conducted by RN Supervisor on all residents that were in contact with the accused staff member on dates of 12/25/21, 12/29/21, 12/30/21 and 01/02/22. There were no negative findings or complaints. 2. Since all residents have the potential to be affected by this practice, utilizing the QIS Resident and Interview Observation tool, a full house audit was conducted on 01/07/22 by Social Workers to identify residents at risk for or with any complaints of sexual abuse. There were no negative findings. 3. All grievances for the past three months were reviewed on 01/31/22 by the Administrator to ascertain whether further investigation and reporting is warranted. There were no negative fndings or need for further investigation. Systemic Changes to ensure practice does not recur: 1. An adhoc QAPI meeting was convened on 01/06/22. The Abuse, Neglect and Mistreatment policy and procedure which includes the element of sexual abuse was reviewd and revised to

the Registered Nurse Supervisor (RNS) #1 on 12/25/21. The statement reiterated the same information written by the social worker on 12/27/21. A statement written by Licensed Practical Nurse (LPN) #1 was attached. This statement documented that LPN#1 responded to the resident's room after hearing a loud noise caused by the food tray falling to the floor. LPN#1 stated that the resident was never touched and that no other staff were summoned because they were on their lunch break. LPN#1 stated that the tray items were removed from the room and LPN#1 immediately left the room. Review of the Nursing Progress notes dated from time of admission on 12/21/21 through 1/3/22, had no documented evidence of a resident assessment or investigation related to the 12/25/21 sexual abuse allegation. During an interview with Resident #1 on 1/6/22 at 11:49 AM, the resident stated that an Indian Male Nurse came into the room to respond to the resident triggering a call bell for assistance in going to the bathroom. The nurse responded to the bell and proceeded to remove the left side strap on the resident's pull ups. The nurse then drove a hand into Resident #1's pull ups and vaginal area. The resident screamed for help and the nurse left the room after stating, I thought we had a good thing. Resident #1 reported the incident to RNS#1. The resident stated feeling traumatized, scared, and not feeling safe as a result of the incident. During an interview with Certified Nursing Aide (CNA) #1 on 1/6/22 at 12:10 PM. The CNA stated that the resident appeared sad and nervous during care on 12/26/21. When asked what was wrong, the resident stated that a male staff came into the room the day before and touched them in their crotch as they pushed the male staff's hand away. During an interview with the RNS #2 on 1/6/22 at 3:53 PM, RNS #2 stated that LPN #1 approached RNS #2 on 12/25/21 and stated The same s--t is happening again. People are saying I touched them. People are accusing me of touching them. RNS #2 stated that they informed RNS#1 of the incident because RNS#1 was handling the matter. During an interview with the RNS #1 on 1/7/22 at 9:45 AM, RNS #1 stated that Resident #1 reported to RNS #1 on 12/25/21 that LPN #1 inappropriately touched Resident #1. RNS #1 documented on the grievance form the verbal statement given by Resident #1. RNS #1 stated that a nursing assessment of Resident #1 was not completed. RNS #1 stated an incident/accident investigation was not initiated because the

include reporting timeline requirements to the Department of Health and local authorities. The policy will be further revised by the QAPI Committee to include immediate notification to the Director of Nursing and Administrator of any witnessed and/or reported allegations of abuse, neglect, mistreatment. 2. The facility's grievance policy was reviewed and revised at an adhoc QAPI meeting on 01/06/22 to include the elements of investigating and timely reporting of sexual abuse allegations. The policy will be further revised by the QAPI Committee to include immediate notification to the Director of Nursing and Administrator of any witnessed and/or reported allegations of abuse, neglect, mistreatment. 3. The facility Social Workers will continue the practice of conducting Quality of Life surveys with residents which include interviews and/or observations regarding abuse, neglect, mistreatment and misappropriation. 4. The Director of Nursing will establish a chain of command for use in her absence to review all occurences and determine reporting when necessary. 5. A QAPI meeting will be convened to examine the deficiencies utilizing the root cause analysis method and implementation of systemic changes to prevent reccurence. 6. All staff members will be required to attend inservice which will address abuse prevention with an emphasis on sexual abuse and timely reporting. They will also recieve educational training regarding the chain of command to investigate all occurences, grievances and report when necessary in the absence of the DIrector of Nursing and Administartor. 7. The RN Consultant is responsible for the development and execution of this inservice. Monitoring of corrective action to ensure practice does not recur: 1. The QIS audit which includes Quality of Life Interviews and Observations will be conducted monthly for at minimum of 10% of the residents. The Social Workers will conduct audits to assure that residents are free from abuse, including sexual abuse and are being treated with dignity and respect and feel safe. 2. All completed audits and grievances will be reviewed by the Adminstrator/Designee and immediate follow up action will be taken if needed. 3. Audits will be conducted monthly for six months after which a 10% audit review will be condicted quarterly for one year. Results will be reported to the QAPI Committee for review.

incident was not observed by staff but was reported by Resident #1. RNS #1 stated Resident #1's family also contacted RNS #1 on 12/25/21 regarding the incident. RNS #1 stated that a notification of the event was sent to the Director of Nursing's (DON) phone via text message. RNS #1 further stated that the DON acknowledged receipt of the text message, however, no directives were provided to RNS #1 by the DON. Resident #2 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum Data Set ((MDS) dated [DATE], documented a Brief Interview for Mental Status (BIMS) of 15, indicating intact cognition. The Comprehensive Care Plan (CCP) titled Abuse dated 12/15/21 documented the resident will remain free from all forms of abuse, neglect, mistreatment, physical, emotional and sexual, daily for 90 days with a target date of 3/15/22. A complaint grievance form dated, 1/3/22 documented a statement from Resident #2 that on 1/2/22 an Indian Male Nurse came to the resident's room on several occasions after dispensing medication. On one of these occasions, the nurse exposed genitalia to the resident and subsequently made the statement If you help me, I'll help you before leaving at the request of the resident. A statement written by Licensed Practical Nurse (LPN) #1 was attached to the grievance form. This statement documented that LPN#1 was made aware of an allegation of exposing self to Resident #2. LPN#1 denied knowledge of the incident and stated that they left the unit at the end of their scheduled shift. A statement made by SW#2, signed on 1/3/22 was attached. The statement documented that SW#2 was made aware of the incident by Occupational Therapist (OT#1). The statement documented that police were not notified. A statement made by OT #1, signed on 1/5/22, was attached to the grievance. There was no documentation of resident assessments or identification of the 1/3/22 incident in Resident #2's medical record. A review of the staffing sheets for the Months of (MONTH) 2021 and (MONTH) 2022 documented that LPN#1 worked on the following days: 12/25/21 on Unit1 East; 12/29/21 on Unit 3 East; 12/30/21 Unit 3 East; and 1/2/22 on Unit 1 East. During an interview with Resident #2 on 1/6/22 at 11:15 AM, the resident stated that an Indian male nurse came into the room, unsolicited on several occasions after dispensing medications. On one of these occasions, the nurse exposed their genitalia. Resident #2 stated that they asked LPN#1 to leave the room immediately. The nurse left the room,

only to soon return and make the statement to the resident, If you help me, I can help you. The resident stated that they felt this was a request for inappropriate physical contact. The resident reported the incident to OT#1 on the following day during a rehabilitation session on 1/3/22. Resident #2 stated that they have been experiencing difficulty sleeping as a result of the incident and looking forward to their discharge back to the community. During an interview with the OT#1 on 1/6/22 at 12:00 PM, OT#1 stated that Resident #2 reported to them on 1/3/22, during a rehabilitation session, that a male nurse exposed their genitalia to the resident and made inappropriate comments. OT #1 reported the incident to the OT Supervisor who reported to SW #2 and to RNS#3. OT#1 stated that on 1/5/22, SW #2 requested a statement for the reported 1/3/22 incident. During an interview with the RNS#3 on 1/6/22 at 12:40 PM, RNS#3 stated that the rehabilitation department notified them on 1/3/22 of the incident on 1/2/22 that the resident wished to speak to the supervisor (RNS#3). RNS#3 stated they met with the resident and was told that (LPN#1) entered the room on 1/2/22 shortly after dispensing medication and exposed their genitalia with their pants lowered. RNS#3 stated that an assessment was not conducted because no physical contact was made and that an incident report was not initiated because the matter was being handled as a grievance. During an interview with the Worker (SW#2) on 1/6/22 at 3:30 PM, SW#2 stated that the resident reported the incident on 1/3/22. SW#2 stated that the matter was handled as a grievance because that was how sexual abuse allegations were handled by the facility. During an interview with the Director of Nursing (DON) on 1/6/22 at 8:45AM and 3:00 PM, the DON stated they had not been made aware of the incident which took place on 12/25/21 involving Resident #1 and LPN#1 or the incident on 1/2/22 involving Resident #2 and LPN #1until they returned from their vacation on 1/3/22. The DON reviewed the staffing sheets and reported that LPN #1 worked on 12/25/21 on Unit 1 East, the unit where Resident #1 and Resident #2 resided. LPN #1 also worked on Unit 3 East on 12/29/21 and 12/30/21. LPN #1 returned to work on Unit 1 East on 1/2/22 where both residents resided. The DON stated that the two incidents were handled as grievances because they believed that the allegations were conveyed to the facility by family members, not the residents themselves. The DON stated that it was the facility's policy

to handle sexual abuse allegations as grievances. The DON stated that medical assessments were not conducted but one should have been conducted for Resident #1 because the resident was allegedly touched by the LPN #1. The DON stated that that they had no involvement in the handling of the grievances, grievance policies or any knowledge of the outcomes because grievances are handled by the Administrator and the social work department. The DON stated that the facility policy for abuse included a provision for calling the police within 2 hours of suspicion of abuse. During an interview with the Administrator (Admin) on 1/6/22 at 5:25 PM, the Admin stated that the DON notified the Admin of the two incidents involving Resident #1 and Resident# 2 on 1/3/22. The Admin stated that LPN#1 was permitted to continue working other assignments on 12/29/21, 12/30/21 and 1/2/22 because the alleged incidents were not witnessed. The Admin stated that LPN #1 was later suspended on 1/3/22, as reported by the DON. The Admin stated that the grievance process was appropriate for both incidents. The Admin stated no conclusions were reached for either incidents because both incidents were unwitnessed, however because abuse was suspected, reports were made to the Department of Health and to the Attorney General upon discovery of the incidents on 1/3/22. The Admin stated that no medical assessment was required of Resident #2 because the resident was never touched. The Admin also stated that police were not called because no assaults took place. 415.4(b)	

FF11 483.12(c)(2)-(4):INVESTIGATE/PREVENT/CORRECT ALLEGED VIOLATION

REGULATION: §483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must: §483.12(c)(2) Have evidence that all alleged violations are thoroughly investigated. §483.12(c)(3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress. §483.12(c)(4) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Scope: Isolated
Severity: Potential to cause more than minimal harm
Citation date: January 10, 2022
Corrected date: February 24, 2022

Citation Details	Plan of Correction: ApprovedFebruary 15, 2022
NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on observation, record review and staff and resident interviews during an Abbreviated Survey (Complaint No NY 921) the facility failed to ensure that two allegations of sexual abuse were thoroughly investigated or were reported to the department of health and law enforcement within two hours. This was evident for two of three residents reviewed for sexual abuse. Specifically, resident #1 reported a sexual abuse allegation on 12/27/21 and resident #2 reported a sexual abuse allegation on 1/2/22. There is no documented evidence that an investigation was initiated, law enforcement was notified, or the Department of Health was contacted. Review of an undated Policy & Procedure (P/P) documented that the residents have the right to be free from verbal, sexual, physical, mental abuse, neglect, corporal punishment, exploitation, and involuntary seclusion. All personnel must immediately report any incident, or suspected incident of resident abuse. The P/P also documented that any allegations involving mistreatment, neglect or abuse must be reported to the administrator within twenty-four (24) hours of their occurrence, and an immediate investigation must be made, and the findings of such incident must be reported to the Administrator within three (3) working days of the occurrence. The P/P documented that the incident will be reported to the Department of Health withing five (5) working days of occurrence. Resident #1 is a [AGE] year-old who was admitted to the facility of 12/14/21 with [DIAGNOSES REDACTED]. A Review of the Minimum Data Set Assessment ((MDS) dated [DATE] documented a Brief Interview for Mental Status (BIMS) score of 15 indicating the resident's cognition was intact. Resident #2 is [AGE] year-old with [DIAGNOSES REDACTED]. A Review of the MDS dated [DATE] documented a BIMS score of 15 indicating the resident's cognition was intact. On 12/25/21 resident #1 reported to RNS#1 an allegation of inappropriate sexual contact by Licensed Practical Nurse (LPN). Review of Complaint/Grievance for Resident # 1 documented that the Social Worker (SW) was notified by resident #1's daughter on 12/27/21 of an incident that occurred on 12/25/21 between 12:00 PM and 2:30 PM. The SW notified the Associate Director of Nursing	F610 Corrective actions for Residents identified: 1. The Director of Nursing was made aware of the allegations on 01/03/22. At this time, LPN #1 was suspended and subsequently terminated. 2. The Director of Nursing notified the Office of Proffesional Discipline on 01/07/22 regarding the alleged actions of LPN #1. 3. The Nursing Supervisor who failed to timely report the alleged occurence that was reported to her on 12/25/21 was terminated on 01/06/22. 4. Resident #1: a. Although the alleged incident occured on 12/25/21 and the RN Supervisor was notified on that date, she failed to act and was subsequentyly terminated by the DNS on 01/06/22. The facility Social Worker was notified by the family on 12/27/21. When the DNS was made aware on 01/03/22, LPN #1 was immediately removed from the care of Resident #1. b. Resident immediately received emotional support on 12/27/21 and daily until her discharge on 01/06/22. Resident had no complaints, issues or concerns. c. Residents care plans titled Abuse and Psychosocial well-being were reviewed and revised to include the Resident's complaint on 12/27/21. 5. Resident #2: a. Resident immediately received emotional support on 01/03/22 and daily until her discharge on 01/13/22. b. Resident was immediately referred to the Psychologist on 01/03/22 for futher empotional support. Resdient had no complaints, issues or concerns and refused psychological services. c. Residents care plans titled Abuse and Psychosocial well-being were reviewed and revised to reflect the Resident's complaint on 01/03/22. d. Resident received a full body examination by RN on 01/07/22. There were no negative findings. 6. Upon notification of the alleged concerns, the Director of Nursing made a report to the Department of Health on 01/03/22. 7. Upon notification of the alleged concerns, the Director of Nursing notified the local police department on 01/06/22. 8. All staff were reeducated by the Staff Development Coordinator with a completion date of 01/10/22 on Abuse Prevention with an emphasis on Sexual Abuse and timely reporting. Identification of other residents having the potential to be affected: 1. On 01/07/22, a physical assessment was conducted by the RN Supervisor on all residents that were in contact with LPN #1 on dates of 12/25/21, 12/29/21,

	Services (ADNS). and then the SW was provided with statements by the ADN. The Complaint/Grievance form had no documented evidence that an investigation was initiated or that law enforcement or the DOH was notified. On 1/2/22 resident #2 reported an allegation of an inappropriate sexual incident by LPN #1. A review of Complaint/Grievance form for Resident # 2 documented that on 1/2/22 the SW was made aware by a Rehabilitation Therapist that Resident#2 would like to speak to the SW. Resident#2 reported to the SW that a male nurse exposed his genitals to her and made an inappropriate comment. An interview was held with the SW on 1/6/22 at 3:30 PM. The SW stated that resident #2 reported the allegation on 1/3/22. The SW also stated that the allegation was handled as a grievance because sexual abuse allegations are handled this way by the facility. During an interview with the Director of Nursing (DNS) on 1/6/22 at 8:45AM and 3:00 PM, The DNS stated that the two incidents were handled as grievances and not an investigation because the allegations were by family members, not the residents themselves. The DNS stated that it was the facility's policy to handle sexual abuse allegations as grievances. The DNS stated that medical assessments were not conducted should have been. The DNS stated that she is not involved in the handling of the grievances, grievance policies or any knowledge of the outcomes because grievances are exclusively handled by the Administrator and the social work department. The Administrator was interviewed on 1/6/22 at 5:25 PM. The Administrator stated that law enforcement was not notified because an assault did not occur. The administrator stated that an assault or theft were the only circumstances when law enforcement should be notified within 2 hours.	12/30/21 and 01/02/22. There were no negative findings or complaints. 2. Since all residents that LPN #1 cared for have the potential to be affected by this practice, utilizing the QAPI Resident Interview and Resident Observation Tool, all residents that were cared for by LPN #1 in the last 30 days of his employment were interviewed by Social Workers with a completion date of 01/07/22. No other residents were identified as having complaints of sexual abuse. 3. All grievances for the last threee months were reviewed on 01/03/22 by the Administrator to ascertain whether further investigation and reporting was warranted. There were no negative findings or need for further investigation or reporting. Systemic Changes to ensure the practice does not recur: 1. Upon identification and reporting of any witnessed or unwitnessed allegation of abuse, neglect or msitreatment - including but not limited to sexual abuse - an immediate Accident/Incident investigation will be initiated by the Administrator, Director of Nursing or designee. 2. An adhoc QAPI meeting was convened on 01/06/22. The Abuse, Neglect and Mistreatment policy and procedure which includes the element of Sexual Abuse was reviewed and revised to include reporting timeline requirements to the Department of Health and local authoirities. The policy will be further revised by the QAPI Committee to include immediate notification to the Director of Nursing and Administrator any witnessed and/or reported allegations of abuse, neglect, mistreatment and that an Accident/Incident Investigation report will be imemdaitely initiated. 3. The facility's Grievance policy was reviewed and revised at a QAPI adhoc meeting on 01/06/22 to include the elements of investigating and timely reporting of sexual abuse allegations. The policy will be further revised by the QAPI Committee to include immediate notification to the DNS and Administrator any witnessed and/or reported allegations of abuse, neglect, mistreatment and that upon such notification an Accidnt/Incident Investigation will be immedaitely initiated. 3. The facility Social Workers will continue the practice of conducting Quality of Life Surveys with residents which include interviews and/or observations regarding abuse, neglect, mistreatment and misappropriation. 4. The DNS will establish a chain of commnad to be used in her absence to review all occurences and determine reporting when necessary. 5. A QAPI meeting will be convened to examine the deficiencies utilizing the root cause analysis method and implementation of systemic

	changes to prevent reoccurrence. 6. All staff members will be required to attend inservice which will address abuse prevention with an emphasis on sexual abuse and timely reporting. They will also recieve educational training regaridng the Chain of Command to investigate all occurences, grievances, and reporting when necessary in the absence of the DNS and Administrator. 7. The RN Consultant is responsible for the development and execution of this inservice. Monitoring of corrective action to ensure practice does not recur: 1. The QIS audit which includes QOL interviews and observations will be conducted monthly for 10% of the residents. The Social Workers will conduct audits to ensure that residents are free from abuse, including sexual abuse and are being treated with dignity and respect and feel safe. 2. All completed audits and grievances will be reviewed by the Administrator/designee and immediate follow up action will be taken if needed. 3. Audits will be conducted monthly for six months after which a 10% audit review will be conducted quarterly for one year. Results will be reported to the QAPI Committee for review.

FF11 483.12(b)(5)(i)-(iii):REPORTING OF REASONABLE SUSPICION OF A CRIME

REGULATION: §483.12(b) The facility must develop and implement written policies and procedures that: §483.12(b)(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Act. The policies and procedures must include but are not limited to the following elements. (i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements. (A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility. (B) Each covered individual shall report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury. (ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act. (iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(1) and (2) of the Act.

Scope: Pattern
Severity: Immediate jeopardy to resident health or safety
Citation date: January 10, 2022
Corrected date: February 24, 2022

Citation Details	**Plan of Correction: ApprovedFebruary 4, 2022**

	NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY Based on observations, interviews and record reviews during an abbreviated survey (Complaint # NY 991) completed on 1/10/22, the facility failed to report crimes against a resident or individual receiving care from the facility within prescribed timeframes to the appropriate entities, consistent with Section 1150B of the Act. In addition, the facility failed to report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury. Specifically, after Resident#1, with intact cognition, reported on 12/25/21 to a Registered Nurse supervisor (RNS#1) that LPN#1 inappropriately touched resident #1. LPN#1 continued to work at the facility. On 1/3/22 Resident #2 ,with intact cognition, reported that on 1/2/22 LPN#1 exposed their genitals to Resident#2. Consequently, both residents reported being afraid and does not feel safe. Additionally, the facility failed to notify law enforcements and the New York State Department of Health within the required time frame. This resulted in no actual harm with the likelihood for more than minimal harm that is Immediate Jeopardy to resident health and safety. This had the potential to affect all 205 residents in the facility. The finding is: The facility Policy and Procedure titled Abuse Reporting, (undated), documented sexual abuse was defined as sexual harassment, sexual coercion, and sexual assault with two specific examples given as inappropriate touching of body parts and pestering a resident using sexual language or gestures. It documented that the facility should report all suspected and confirmed cases of abuse, neglect or mistreatment to the state agency and to all other agencies as required and take all necessary corrective actions based on the results of the investigation. The policy and procedure did not specify any instances of when the police need to be notified. The facility Policy and Procedure titled Accident and Incident Investigation, revised 1/26/07, defined that all accidents and incidents will be investigated, documented and reported to the New York State Department Of Health as appropriate (NYSDOH). It documented that the purpose was to facilitate and enable the facility to complete an investigation and report. Resident #1 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum	F608 Immediate Corrective Action: 1. Upon notification of the alleged occurences involving Residents #1 and #2, the Director of Nursing made a report to the Department of Health on 01/03/22. 2. Upon notification of the alleged occurences involving Residents #1 and #2, The Director of Nursing notified the local police department on 01/06/22. 3. Resident #1: a. Although the alleged incident occured on 12/25/21 and the RN Supervisor was notified on that date, she failed to act and was subsequently terminated by the DNS on 01/06/22. The facility Social Worker was notified by the family on 12/27/21. When the DNS was made aware on 01/03/22, LPN #1 was immediately removed from the care of Resident #1. b. Resident immediately received emotional support on 12/27/21 and daily until her discharge on 01/06/22. Resident had no complaints or concerns. c. Residents care plans titled Abuse and Psychosocial Well being were reviewed and revised by SW on 12/27/21 to include the resdident's complaint. 4. Resident #2: a. Resident immediately received emotional support on 01/03/22 and daily until her dicharge on 01/13/22. b. Resident was immediately referred to Psychologist on 01/05/22 for further emnotional syupport. Resdient had no complaints, issues or concerns and refused psychological services. c. Residents care plans titled Abuse and Psychosocial Well being were reviewed and revised by SW on 01/03/22 to include the resdident's complaint. d. Resident received a full body examination on 01/07/22. There were no negative findings. Identification of other residents having the potential to be affected by this practice: 1. All incidents and accidents as well as all grievances for the past three months were reviewed by the Administrator and/or Director of Nursing on 01/31/22 to ascertain suspicion of a crime against any resident. No negative findings. Systemic Changes to ensure the practice does not reoccur: 1. The Abuse, Neglect and Mistreatment policy as well as the Grievance policy was reviewed and revised by the QAPI Committee on 01/06/22 to reflect the appropriate reporting timeframes. 2. The Abuse, Neglect and Mistreatment policy will also be reviewed and revised to include elements of a crime as oultined in Section 1150B of the Social Security Act including but not limited to sexual abuse as a serious bodily injury. 3. All staff members will be required to attend inservice which will address abuse prevention with an emphasis on identification of crimes that require immediate reporting as

Data Set ((MDS) dated [DATE], documented a Brief Interview for Mental Status (BIMS) (tool to measure cognition) of 15, indicating intact cognition. The Comprehensive Care Plan (CCP) titled Abuse dated 12/22/21 documented Resident #1 will remain free from all forms of abuse, neglect, mistreatment, physical, emotional and sexual, daily for 90 days with a target date of 3/22/22. A complaint grievance form dated, 12/27/21 documented that the social worker was notified by the daughter of Resident #1 of an incident that occurred on 12/25/21 between 12:00PM and 2:30PM. Social worker (SW#1) documented being notified on 12/27/21 at 12:00PM and notified the Assistant Director of Nursing (ADON). SW#1 documented a statement taken from Resident #1 on 12/27/21 that the resident rang the call bell for help with a fallen meal tray. An Indian man responded and placed hands in the resident's pull ups. Resident #1 asked LPN#1 to leave the room. LPN#1 stated This was beautiful as he was leaving the room. Also attached to the grievance form was a written statement taken from Resident #1 by the Registered Nurse Supervisor (RNS) #1 on 12/25/21. The statement reiterated the same information written by the social worker on 12/27/21. A statement written by Licensed Practical Nurse (LPN) #1 was attached. This statement documented that LPN#1 responded to the resident's room after hearing a loud noise caused by the food tray falling to the floor. LPN#1 stated that the resident was never touched and that no other staff were summoned because they were on their lunch break. LPN#1 stated that the tray items were removed from the room and LPN#1 immediately left the room. Review of the Nursing Progress notes dated from time of admission on 12/21/21 through 1/3/22, had no documented evidence of a resident assessment or investigation related to the 12/25/21 sexual abuse allegation. During an interview with Resident #1 on 1/6/22 at 11:49 AM, the resident stated that an Indian Male Nurse came into the room to respond to the resident triggering a call bell for assistance in going to the bathroom. The nurse responded to the bell and proceeded to remove the left side strap on the resident's pull ups. The nurse then drove a hand into Resident #1's pull ups and vaginal area. The resident screamed for help and the nurse left the room after stating, I thought we had a good thing. Resident #1 reported the incident to RNS#1. The resident stated feeling traumatized, scared, and not feeling safe as a result of the incident. During

well as the timing of those reports. 4. The RN Consultant is reponsible for the development and execution of this inservice. Monitoring of corrective action to ensure practice does not recur: 1. A monthly audit of all incidents and accidents will be completed by the Director of Nursing to ascertain if there is suspicion of a crime or if the occurence is reportable to the Department of Health. Any negative findings will be immedaitely investigated and reported as necessary. 2. The Administrator will comlpete a monthly audit of all grievances to ascertain the nature of the complaint to determine if there is suspicion of a crime and if reporting is warranted either to local authorities and/or the Departmnet of Health. Any negative findings will be immediately investigated and reported as necessary. 3. Audits will be conduicted monthly for six motnhs after which a 10% audit review will be conducted quarterly for one year. Results will be reported to the QAPI Commitee for review.

an interview with the RNS #1 on 1/7/22 at 9:45 AM, RNS #1 stated that Resident #1 reported to RNS #1 on 12/25/21 that LPN #1 inappropriately touched Resident #1. RNS #1 documented the verbal statement given by Resident #1. RNS #1 stated an incident/accident investigation was not initiated because the incident was not observed by staff but was reported by Resident #1. RNS #1 stated that a notification of the event was sent to the Director of Nursing's (DON) phone via text message. RNS #1 further stated that the DON acknowledged receipt of the text message, however, no directives were provided to RNS #1 by the DON. Resident #2 was admitted to the facility on [DATE] with [DIAGNOSES REDACTED]. The Minimum Data Set ((MDS) dated [DATE], documented a Brief Interview for Mental Status (BIMS) of 15, indicating intact cognition. The Comprehensive Care Plan (CCP) titled Abuse dated 12/15/21 documented the resident will remain free from all forms of abuse, neglect, mistreatment, physical, emotional and sexual daily for 90 days with a target date of 3/15/22. A complaint grievance form dated, 1/3/22 documented a statement from Resident #2 that on 1/2/22 an Indian Male Nurse came to the resident's room on several occasions after dispensing medication. On one of these occasions, the nurse exposed genitalia to the resident and subsequently made the statement If you help me, I'll help you before leaving at the request of the resident. A statement written by Licensed Practical Nurse (LPN) #1 was attached to the grievance form. This statement documented that LPN#1 was made aware of an allegation of exposing self to Resident #2. LPN#1 denied knowledge of the incident and stated that they left the unit at the end of their scheduled shift. A statement made by SW#2, signed on 1/3/22 was attached. The statement documented that SW#2 was made aware of the incident by Occupational Therapist (OT#1). The statement documented that police were not notified. A statement made by OT #1, signed on 1/5/22, was attached to the grievance. The statement documented a report to the therapist from Resident #2. Resident #2 stated that the medication nurse came in and out of Resident #2's room on multiple occasions without apparent reason. On one of the occasions, the nurse exposed their genitalia to the resident and on another occasion the nurse asked for help, interpreted by the resident as a request for inappropriate physical contact. Progress notes from the time of admission on 12/14/21 to 1/5/22 were reviewed. There was no

documented evidence of any assessment or identification of an incident relating to the 1/3/22 abuse care plan evaluation note found in the resident medical records. A review of the staffing sheets for the Months of (MONTH) 2021 and (MONTH) 2022 documented that LPN#1 worked on the following days: 12/25/21 on Unit1 East; 12/29/21 on Unit 3 East; 12/30/21 Unit 3 East; and 1/2/22 on Unit 1 East. During an interview with Resident #2 on 1/6/22 at 11:15 AM, the resident stated that an Indian male nurse came into the room, unsolicited on several occasions after dispensing medications. On one of these occasions, the nurse exposed their genitalia. Resident #2 stated that they asked LPN#1 to leave the room immediately. The nurse left the room, only to soon return and make the statement to the resident, If you help me, I can help you. The resident stated that they felt this was a request for inappropriate physical contact. The resident reported the incident to OT#1 on the following day during a rehabilitation session on 1/3/22. Resident #2 stated that they have been experiencing difficulty sleeping as a result of the incident and looking forward to their discharge back to the community. During an interview with the RNS#3 on 1/6/22 at 12:40 PM, RNS#3 stated that the rehabilitation department notified them on 1/3/22 of the incident on 1/2/22 that the resident wished to speak to the supervisor (RNS#3). RNS#3 stated they met with the resident and was told that (LPN#1) entered the room on 1/2/22 shortly after dispensing medication and exposed their genitalia with their pants lowered. RNS#3 stated that an assessment was not conducted because no physical contact was made and that an incident report was not initiated because the matter was being handled as a grievance. During an interview with the Director of Nursing (DON) on 1/6/22 at 8:45AM and 3:00 PM, the DON stated they had not been made aware of the incident which took place on 12/25/21 involving Resident #1 and LPN#1 or the incident on 1/2/22 involving Resident #2 and LPN #1until they returned from their vacation on 1/3/22. The DON stated that it was the facility's policy to handle sexual abuse allegations as grievances. The DON stated that that they had no involvement in the handling of the grievances, grievance policies or any knowledge of the outcomes because grievances are handled by the Administrator and the social work department. The DON stated that the facility policy for abuse included a provision for calling the police within 2 hours

of suspicion of abuse. During an interview with the Administrator (Admin) on 1/6/22 at 5:25 PM, the Admin stated that the DON notified the Admin of the two incidents involving Resident #1 and Resident# 2 on 1/3/22. The Admin stated that LPN#1 was permitted to continue working other assignments on 12/29/21, 12/30/21 and 1/2/22 because the alleged incidents were not witnessed. The Admin stated that LPN #1 was later suspended on 1/3/22, as reported by the DON. The Admin stated that the grievance process was appropriate for both incidents. No conclusions were reached for either incidents because both incidents were unwitnessed, however because abuse was suspected, reports were made to the Department of Health and to the Attorney General upon discovery of the incidents on 1/3/22. The Admin stated that no medical assessment was required of Resident #2 because the resident was never touched. The Admin also stated that police were not called because no assaults took place. 415.4	

NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

DATE: March 13, 2020

TO: Nursing Homes (NHs) and Adult Care Facilities (ACFs)

FROM: NYSDOH Bureau of Healthcare Associated Infections (BHAI)

Health Advisory: COVID-19 Cases in Nursing Homes and Adult Care Facilities

Please distribute immediately to:
Administrators, Infection Preventionists, Medical Directors, Physicians, Physician Assistants, Nurse Practitioners, Nursing Staff, Risk Managers, and Public Affairs.

COVID-19 has been detected in multiple communities around New York State. Residents of NHs and ACFs are at especially high risk of severe morbidity and mortality. Healthcare personnel (HCP), other direct care providers and visitors who enter NHs and ACFs while symptomatic or asymptomatic with COVID-19 present a high risk for outbreaks. At this time NHs and ACFs statewide are required to take the following actions. This guidance supersedes previous NYSDOH guidance.

To prevent the introduction of COVID-19 into NHs and ACFs

1. Effective immediately, suspend all visitation except when medically necessary (i.e. visitor is essential to the care of the patient or is providing support in imminent end-of-life situations) or for family members of residents in imminent end-of-life situations, and those providing Hospice care.[1] The duration and number of visits should be minimized. Visitors should wear a facemask while in the facility and should be allowed only in the resident's room. Facilities must provide other methods to meet the social and emotional needs of residents, such as video calls. Facilities shall post signage notifying the public of the suspension of visitation and proactively notify resident family members.
2. Immediately implement health checks for all HCP and other facility staff at the beginning of each shift. This includes all personnel entering the facility regardless of whether they are providing direct patient care. Facility staff performing health checks must wear facemasks. HCP and other facility staff with symptoms or with T ≥ 100.0 F should be sent home, and HCP and other facility staff who develop symptoms or fever while in the facility should immediately go home.
3. All HCP and other facility staff shall wear a facemask while within 6 feet of residents. Extended wear of facemasks is allowed; facemasks should be changed when soiled or wet and when HCP go on breaks. Facilities should bundle care and minimize the number of HCP and other staff who enter rooms to reduce the number of personnel requiring facemasks.

If there are confirmed cases of COVID-19 in a NH or ACF

1. Notify the local health department and NYSDOH if not already involved.

[1] Any such visitors shall be checked as if they are staff.

2. In NHs, actively monitor all residents on affected units once per shift. This monitoring must include a symptom check, vitals, lung auscultation, and pulse oximetry.
3. Assure that all residents in affected units remain in their rooms. Cancel group activities and communal dining. Offer other activities for residents in their rooms to the extent possible, such as video calls.
4. Residents must wear facemasks when HCP or other direct care providers enter their rooms, unless such is not tolerable.
5. Do not float staff between units. Cohort residents with COVID-19 with dedicated HCP and other direct care providers. Minimize the number of HCP and other direct care providers entering rooms.
6. In NHs, all residents on affected units should be placed on droplet and contact precautions, regardless of the presence of symptoms and regardless of COVID-19 status. HCP and other direct care providers should wear gown, gloves, eye protection (goggles or a face shield), and N95 respirators (or equivalent) if the facility has a respiratory program with fit tested staff and N95s. Otherwise, HCP and other direct care providers should wear gown, gloves, eye protection, and facemasks. Facilities may implement extended use of eye protection and facemasks/N95s when moving from resident to resident (i.e. do not change between residents) unless other medical conditions which necessitate droplet precautions are present. However, gloves and gowns must be changed and hand hygiene must be performed.
7. For residents who initially test negative, re-testing should be performed immediately if they develop symptoms consistent with COVID-19.

If there are suspected cases of COVID-19 in a NH or ACF

Residents suspected of infection with COVID-19 should be given a facemask to wear, and the facility must immediately contact the NYSDOH. The resident must be isolated in a separate room with the door closed. Staff attending the resident if and until they are transferred should wear gowns, gloves, eye protection (goggles or a face shield), and facemasks and should maintain social distancing of at least six (6) feet from the resident except for brief, necessary interactions. Facilities should bundle care and minimize the number of HCP and other staff who enter rooms to reduce the number of personnel requiring facemasks.

For ACF Resident Access to the Community

In areas of high concentrations of positive coronavirus cases, residents should be encouraged to remain at home. If residents access the community and community transmission is recognized in the area where the ACF is located, the ACF must have staff available to screen residents for symptoms or potential exposure to someone with COVID-19.

Facilities should also refer to the following documents for more information:

- From CDC: https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html
- From CMS: https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf
- From NYSDOH (on Health Commerce): https://apps.health.ny.gov/pub/ctrldocs/alrtview/postings/Nursing_Home_Guidance_3_1583593822992_0.6.20_with_signage.pdf

General questions or comments about this advisory can be sent to icp@health.ny.gov, covidadultcareinfo@health.ny.gov, and/or covidnursinghomeinfo@health.ny.gov.

DOH 1961 (8/2011)

RECORDED DISTR CT 2950

REGISTER NUMBER 01416

NEW YORK STATE DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

131-2020-00031523
STATE FILE NUMBER

NOTE: This certificate is NOT VALID unless it has been signed by the Registrar of Vital Statistics.

DECEDENT

1. NAME: FIRST H.G. MIDDLE LAST

2. SEX: MALE [X] 1 FEMALE [ ] 2

3A. DATE OF DEATH: MONTH 04 DAY 07 YEAR 2020

3B. HOUR: 11:30 PM

4A. PLACE OF DEATH (Check one): HOSP TAL DOA ER [ ] HOSP TAL OUTPATIENT [ ] HOSP TAL INPATIENT [ ] NURSING HOME [X] PRIVATE RESIDENCE [ ] HOSPICE FACIL TY [ ] OTHER (Specify): [ ]

4B. IF FACILITY, DATE ADM TTED: MONTH [redacted] DAY [redacted] YEAR [redacted]

4C. NAME OF FACILITY (If not facility, give address): Fulton Commons Care Center, Inc.

4D. LOCAL TY (Check one and specify): C TY [ ] VILLAGE [ ] TOWN [ ] Hempstead Town

4E. COUNTY OF DEATH: Nassau

4F. MEDICAL RECORD NO.:

4G. WAS DECEDENT TRANSFERRED FROM ANOTHER INST TUTION? (If yes, specify institution name, city or town, county and state): NO [X] YES [ ]

5. DATE OF BIRTH: MONTH [redacted] DAY [redacted] YEAR [redacted]

6A. AGE IN YEARS: [redacted] yrs.

6B. IF UNDER 1 YEAR ENTER: months days

6C. IF UNDER 1 DAY ENTER: hours minutes

7A. CITY AND STATE OF BIRTH (If not USA, Country and Region/Province): [redacted]

7B. IF AGE UNDER 1 YEAR, NAME OF HOSPITAL OF BIRTH:

8. SERVED IN U.S. ARMED FORCES? (Specify years) NO [ ] 0 YES [X] 1

9. DECEDENT OF HISPANIC ORIG N? Check the boxes that best describe whether the decedent is Spanish/Hispanic/Latino.
A [X] No, not Spanish Hispanic/Latino B [ ] Yes, Mexican, Mexican American, Chicano
C [ ] Yes, Puerto Rican D [ ] Yes, Cuban
E [ ] Yes, O her Spanish Hispanic/Latino (Specify)

10. DECEDENT S RACE: Check one or more races to indicate what the decedent considered himself or herself to be:
A [X] White/Caucasian B [ ] Black or African American C [ ] Asian Indian D [ ] Chinese
E [ ] Filipino F [ ] Japanese G [ ] Korean H [ ] Vietnamese
J [ ] Native Hawaiian K [ ] Guamanian or Chamorro M [ ] Samoan
N [ ] American Indian or Alaska Native (specify)
P [ ] O her Asian (specify) R [ ] O her Pacific Islander (specify)
S [ ] O her (specify)

11. DECEDENT S EDUCAT ON: Check the box that best descr bes the highest degree or level of school completed at the time of death.
1 [ ] ≤ 8th grade 2 [ ] 9th-12th grade; no diploma 3 [ ] High school graduate or GED
4 [X] Some college credit, but no deg ee 5 [ ] Associate's degree 6 [ ] Bachelor's degree
7 [ ] Master's degree 8 [ ] Doctorate P ofessional deg ee

12. SOCIAL SECURITY NUMBER: [redacted]

13. MAR TAL STATUS: NEVER MARRIED [ ] 1 MARRIED [ ] 2 W DOWED [X] 3 DIVORCED [ ] 4 SEPARATED [ ] 5

14. SURVIVING SPOUSE: Enter birth name of spouse if married or separated.

15A. USUAL OCCUPATION (Do not enter retired): [redacted]

15B. KIND OF BUSINESS OR INDUSTRY: [redacted]

15C. NAME AND LOCALITY OF COMPANY OR FIRM:

16A. RESIDENCE (State or Country if not USA): NY

16B. County or Region/Province if not USA: [redacted]

16C. LOCALITY (Check one and specify): C TY [ ] VILLAGE [ ] TOWN [ ] [redacted]

16F. IF CITY OR VILLAGE, IS RESIDENCE W THIN C TY OR VILLAGE LIM TS? YES [ ] NO [ ] IF NO, SPECIFY TOWN:

16D. STREET AND NUMBER OF RESIDENCE: [redacted]

16E. ZIP CODE: [redacted]

PARENTS

17. BIRTH NAME OF FATHER / PARENT: FIRST MI LAST [redacted]

18. BIRTH NAME OF MOTHER / PARENT: FIRST MI LAST [redacted]

19A. NAME OF INFORMANT: [redacted]

19B. MAILING ADDRESS (include zip code): [redacted]

DISPOSITION

20A. 1 [X] BURIAL 2 [ ] CREMATION 3 [ ] REMOVAL 4 [ ] HO D 5 [ ] DONAT ON 6 [ ] ENTOMBMENT — MONTH [redacted] DAY [redacted] YEAR [redacted]

20B. PLACE OF BURIAL, CREMATION, REMOVAL OR OTHER DISPOSITION: [redacted]

20C. LOCATION (City or town and state): [redacted]

21A. NAME AND ADDRESS OF FUNERAL HOME: [redacted]

21B. REGISTRATION NUMBER: [redacted]

22A. NAME OF FUNERAL DIRECTOR: [redacted]

22B. S GNATURE OF FUNERAL DIRECTOR: [redacted]

22C. REGISTRATION NUMBER: [redacted]

23A. S GNATURE OF REGISTRAR:

23B. DATE FILED: MONTH DAY YEAR

24A BURIAL OR REMOVAL PERM T ISSUED BY:

24B. DATE ISSUED: MONTH DAY YEAR

ITEMS 25 THRU 33 COMPLETED BY CERTIFYING PHYSICIAN -- OR -- CORONER/CORONER'S PHYSICIAN OR MEDICAL EXAMINER

CERTIFIER

25A. CERTIFICATION: To the best of my knowledge, death occurred at the time, date and place and due to the causes stated.

Certifier's Name: Robert Curran, MD

License No.: 176137

Signature: Robert Curran, MD Electronically Signed

Mon h 04 Day 08 Year 2020

Certifier's Title: 0 [X] Attending Physician 0 [ ] Physician acting on behalf of Attending Physician 1 [ ] Co oner 2 [ ] Medical Examiner / Deputy Medical Examiner

Address: 60 Merrick Ave, Hempstead Town, NY 11554

25B. If coroner is not a physician, enter Co oner's Physician's name & title:

License No.:

Signature:

Mon h Day Year

25C. If certifier is not attending physician, enter Attending Physician's name & title:

License No.:

Address:

26A. Attending physician attended deceased: FROM Mon h 04 Day 17 Year 2019 TO Mon h 04 Day 07 Year 2020

26B. Deceased last seen alive by attending physician: Month 04 Day 01 Year 2020

26C. Pronounced Dead ON Month 04 Day 07 Year 2020 AT Time 11:30 PM

27. MANNER OF DEATH: NATURAL CAUSE [X] 1 ACCIDENT [ ] 2 HOMICIDE [ ] 3 SU CIDE [ ] 4 UNDETERMINED CIRCUMSTANCES [ ] 5 PENDING INVEST GATION [ ] 6

28. WAS CASE REFERRED TO CORONER OR MED CAL EXAMINER? 0 [X] NO 1 [ ] YES

29A. AUTOPSY? NO [X] 0 YES [ ] 1 REFUSED [ ] 2

29B. IF YES, WERE FINDINGS USED TO DETERMINE CAUSE OF DEATH? 0 [ ] NO 1 [ ] YES

CONFIDENTIAL **SEE INSTRUCTION SHEET FOR COMPLETING CAUSE OF DEATH** **CONFIDENTIAL**

CAUSE OF DEATH

30. DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (A), (B), AND (C).)

APPROX MATE INTERVAL BETWEEN ONSET AND DEATH

PART I. IMMEDIATE CAUSE:
(A) Cardiac Arrest — immediate

DUE TO OR AS A CONSEQUENCE OF:
(B) Atherosclerotic Heart Disease — years

DUE TO OR AS A CONSEQUENCE OF:
(C) Arteriosclerosis — years

PART II. OTHER S GNIFICANT COND TIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (A): Renal Failure Covid 19 Pneumonia

DID TOBACCO USE CONTRIBUTE TO DEATH? 0 [X] NO 1 [ ] YES 2 [ ] PROBABLY 3 [ ] UNKNOWN

31A. IF INJURY, DATE: MONTH DAY YEAR HOUR:

31B. INJURY LOCALITY: (City or town and county and state)

31C. DESCR BE HOW INJURY OCCURRED:

31D. PLACE OF INJURY:

31E. INJURY AT WORK? NO [ ] 0 YES [ ] 1

31F. IF TRANSPORTATION INJURY, SPECIFY: 1 [ ] Driver/Operator 2 [ ] Passenger 3 [ ] Pedest ian 4 [ ] OTHER (specify)

32. WAS DECEDENT HOSPITALIZED IN LAST 2 MONTHS? NO [X] 0 YES [ ] 1

33A. IF FEMALE: 0 [ ] Not preg ant within last year 1 [ ] P egnant at time of death 2 [ ] Not pregnant, but p egnant wi hin 42 days of dea h 3 [ ] Not pregnant, but p egnant 43 days to 1 year befo e dea h 4 [ ] Unknown if p egnant wi hin past year

33B. DATE OF DELIVERY: MONTH DAY YEAR

Cause of Death-Other Significant Conditions- amended on Jun-02-2021; formerly Renal Failure;

FULTON COMMOMNS CARE CENTER

NURSING DEPARTMENT

PROTOCOL FOR RESIDENTS EXHIBITING VARIOUS SYMPTOMS DURIING THIS PANDEMIC

THOSE RESIDENTS EXHIBITING ANY OF THE FOLLOWING SYMPTOMS, THE PROTOCOL SHOULD BE INITIATED IMMEDIATELY

SYMPTOMS	**FEVER** **COUGH** **SOB** **GENERAL MALAISE** **SORE THROAT**
PROTOCOL	**IV FLUIDS FOR 5 DAYS** **ANTIBIOTICS FOR 5 DAYS (ZITHROMAX AND/OR ROCEPHIN)** **CHEST X-RAY** **LAB WORK** **URINE CULTURE TO BE COLLECTED** **RESIDENT IS TO REMAIN IN THEIR ROOM UNTIL DIRECTIVE GIVEN** **COOLING MEASURES SHOULD BE UTILIZED** **OXYGEN USE AS NEED AND O2 SAT DONE Q SHIFT** **VITAL SIGNS EVERY SHIFT**

THANK YOU FOR YOUR FULL COOPERATION IN THIS MATTER.

FULTON COMONS CARE CENTER

NURSING DEPARTMENT

March 10, 2020

UPDATED PROTOCOL FOR CORONA VIRUS

1. Until further notice there will **NO MORNING REPORT.** Each day (Monday through Friday) the RN Unit managers are asked to print out there census and indicate the residents as we discuss in morning report (IVF, ABT, REHAB Wounds, etc). This is to be done early in the morning and given to the ADNS for your unit so she may bring it to me. **This must be to me by 10am**

2. No employee is to leave his or her unit for any reason. The Nursing Supervisor for the week and the Unit managers may leave their unit for **SHORT INTERVALS** that are necessary.

3. All meals are to be eaten on the unit. If an employee brings in their own meal and it needs to be warmed in the microwave, the RN/Charge nurse may bring their meal down to the **Non-Kosher room** and warm it there.

4. The ADNS assigned to your unit is to be called for everything that you may need. They are not to cross units unless there is an emergency.

5. Visiting hours for families are limited to 8am-6pm.

6. Ms. Baptiste RN ADNS, Infection Control or their RN Unit Manager must evaluate any staff displaying any signs/symptoms of illness. Any employee ill will be sent home immediately.

Thank you

FULTON COMONS CARE CENTER

NURSING DEPARTMENT

March 11, 2020

UPDATED PROTOCOL FOR CORONA VIRUS

1. Until further notice there will **NO MORNING REPORT.** Each day (Monday through Friday) the RN Unit managers are asked to print out there census and indicate the residents as we discuss in morning report (IVF, ABT, REHAB Wounds, etc). This is to be done early in the morning and given to the ADNS for your unit so she may bring it to me. **This must be to me by 10am**

2. No employee is to leave his or her unit for any reason. The Nursing Supervisor for the week and the Unit managers may leave their unit for **SHORT INTERVALS** that are necessary.

3. All meals are to be eaten on the unit. If an employee brings in their own meal and it needs to be warmed in the microwave, the RN/Charge nurse may bring their meal down to the **Non-Kosher room** and warm it there.

4. The ADNS assigned to your unit is to be called for everything that you may need. They are not to cross units unless there is an emergency.

5. **VISITATION IS RESTRICTED AS OF 6PM TODAY.**
   (a) If any exceptions to the no visitation restriction is being given to a family their name will be left and the front desk and the unit involved will be notified.
   (b) Family responsible for doing the residents laundry will be allowed to come to the front desk. The unit will be called and the staff will bring the laundry down to the family.

6. Ms. Baptiste RN ADNS, Infection Control or their RN Unit Manager must evaluate any staff displaying any signs/symptoms of illness. Any employee ill will be sent home immediately.

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today March 30, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED March 31, 2020

PROTOCOL

STAT CBC and CMP
Baseline EKG STAT
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

Once this is done then initiate

Plaquenil 200mg po daily for 5 days
Azithromycin 500mg po daily for 5 days
Zinc 220mg daily for 7 days
Vitamin C 500mg for 7 days.

Repeat EKG in 24 hours to monitor QTC

The initiation of IV Fluids will be up to the discretion of the Physician.

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today April 3, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED April 3, 2020 **SECOND REVISION**
DUE TO THE UNAVAIABILITY OF THE IV AZITHROMYCIN WE WILL BE GIVING THE PO ZITHROMAX.

PROTOCOL

STAT CBC and CMP
Baseline EKG STAT
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

Once this is done then initiate

Plaquenil 200mg po daily for 5 days
Azithromycin 500mg po daily for 5 days
Zinc 220mg daily for 7 days
Vitamin C 500mg for 7 days.

Repeat EKG in 24 hours to monitor QTC

The initiation of IV Fluids will be up to the discretion of the Physician.

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today April 7, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED April 7, 2020 **FOURTH REVISION**
DUE TO THE UNAVAIABILITY OF THE IV AZITHROMYCIN WE WILL BE GIVING THE PO ZITHROMAX. ALSO NO PLAQUENIL IS AVAILABLE EITHER

PROTOCOL

STAT CBC and CMP
Baseline EKG STAT
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

Once this is done then initiate

Azithromycin 500mg po daily for 5 days
AND/OR
Doxycycline 500mg po daily for 5 days
Zinc 220mg daily for 7 days (if available)
Vitamin C 500mg for 7 days.

Repeat EKG in 24 hours to monitor QTC

The initiation of IV Fluids will be up to the discretion of the Physician.

Also a probiotic should be considered if any antibiotics are being ordered

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today April 8, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED April 8, 2020 **FIFTH REVISION**
DUE TO THE UNAVAIABILITY OF THE IV AZITHROMYCIN WE WILL BE GIVING THE PO ZITHROMAX. ALSO NO PLAQUENIL IS AVAILABLE EITHER

PROTOCOL

STAT CBC and CMP
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

Once this is done then initiate

Azithromycin 500mg po daily for 5 days
AND/OR
Doxycycline 100mg BID daily for 5 days
Zinc 220mg daily for 7 days (if available)
Vitamin C 500mg for 7 days.

* **As you can see EKG's are no longer needed unless the Plaquenil should be available and then the protocol would need to be re-issued.**

The initiation of IV Fluids will be up to the discretion of the Physician.

Also a probiotic should be considered if any antibiotics are being ordered

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today April 20, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED April 20, 2020 **SIXTH REVISION**

The following protocol is to be initiated

If the Physician wants to start Plaquenil the following protocol is to be done

PROTOCOL

STAT EKG
STAT CBC and CMP
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

ANTICOAGULANTS such as Xarelto, Eliquis, Pradaxa and Lovenox should be considered by the Physician as a prophylactic measure to put it in place.

If the Physician chooses not to initiate Plaquenil then this is the protocol to follow

Azithromycin 500mg po daily for 5 days
AND/OR
Doxycycline 100mg BID daily for 5 days
Zinc 220mg daily for 7 days (if available)
Vitamin C 500mg for 7 days

The initiation of IV Fluids will be up to the discretion of the Physician.

Also a probiotic should be considered if any antibiotics are being ordered

Thank you

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

NEW PROTOCOL FOR RESIDENTS WITH TEMPERATURES OF 100 AND ABOVE

As of today April 24, 2020 per our Medical Director Dr. Butchma the following is the protocol to be initiated for residents with a temperature of 100 or above.

REVISED April 24, 2020 **SEVENTH REVISION**

The following protocol is to be initiated

If the Physician wants to start Plaquenil the following protocol is to be done

PROTOCOL

STAT EKG
STAT CBC and CMP
Chest x-ray STAT
Urine and Urine culture to be collected and sent to lab

ANTICOAGULANTS such as Xarelto, Eliquis, Pradaxa and Lovenox should be considered by the Physician as a prophylactic measure to put it in place.

ADD ON OPTION-TYLENOL IV may be added if the physician desires

If the Physician chooses not to initiate Plaquenil then this is the protocol to follow

Azithromycin 500mg po daily for 5 days
AND/OR
Doxycycline 100mg BID daily for 5 days
Zinc 220mg daily for 7 days (if available)
Vitamin C 500mg for 7 days

The initiation of IV Fluids will be up to the discretion of the Physician.

Also a probiotic should be considered if any antibiotics are being ordered

Thank you

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROTOCOL
COVID 19 VISITATION

MARCH 10 2020

PROTOCOL

Until further notice the following protocol should be practiced to ensure the safety of our residents:

*1 **VISITORS MAY BE IN THE FACILITY ONLY UNTIL 6PM**
If family is uncooperative and/or disruptive the Nursing Supervisor is to be called immediately and will determine if 911 needs to be called.

*2 **ALL residents must remain on their units.**

*3 **NO residents may go out on pass unless the Nursing Supervisor has spoken to the resident, responsible party and has given the okay to allow the resident to leave the facility.**

*4 **If any resident leaves the facility without the Supervisors authorization they are considered AMA and MAY NOT return to the facility. If they attempt to re-enter the facility the Nursing Supervisor MUST BE CALLED at once before the resident attempts to go to the unit.**

Thank you

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROTOCOL
COVID 19 VISITATION

MARCH 11, 2020

PROTOCOL

Until further notice the following protocol should be practiced to ensure the safety of our residents:

*1 **NO VISITORS IN THE FACILITY AT ANY TIME UNTIL FURTHER NOTICE.**

If family is uncooperative and/or disruptive the Nursing Supervisor is to be called immediately and will determine if 911 needs to be called.

*2 **ALL residents must remain on their units in their rooms.**

*3 **NO residents may go out on pass unless the Nursing Supervisor has spoken to the resident, responsible party and has given the okay to allow the resident to leave the facility.**

*4 **If any resident leaves the facility without the Supervisors authorization they are considered AMA and MAY NOT return to the facility. If they attempt to re-enter the facility the Nursing Supervisor MUST BE CALLED at once before the resident attempts to go to the unit.**

Thank you

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROTOCOL

CANCELLATION OF
GROUP ACTIVITES/DINING ROOM

MARCH 10 2020

PROTOCOL

Until further notice the following protocol should be practiced to ensure the safety of our residents:

*1 **ALL group activities are cancelled until further notice within the facility.**

*2 **ALL residents must remain on their units and confined to their rooms. NO residents are allowed in the Dining Room on the units until further notice.**

*3 **NO residents may go out on pass unless the Nursing Supervisor has spoken to the resident, responsible party and has given the okay to allow the resident to leave the facility.**

*4 **If any resident leaves the facility without the Supervisors authorization they are considered AMA and MAY NOT return to the facility. If they attempt to re-enter the facility the Nursing Supervisor MUST BE CALLED at once before the resident attempts to go to the unit.**

Thank you

FULTON COMMOMS CARE CENTER

NURSING DEPARTMENT

PROTOCOL FOR EMPLOYEE ASSESSMENTS RELATED TO CORONA VIRUS MARCH 2020

1. **All staff must enter through the lobby entrance. Upon entering they will approach the assessment station where they will don a mask, use the hand sanitizer and have their temperatures recorded and fill out the assessment form BEFORE they enter the facility to clock in. Once this is done, they will proceed to their units.**

2. **Staff will have their temperatures taken at the beginning of their shift**

3. **Staff will be screened for signs/symptoms of Corona virus by answering the questions posed on the employee assessment form.**

4. **Any staff member exhibiting a temperature of 100 or higher will be immediately sent home to be followed up by their Physician.**

5. **All employees who are sent home will be maintained on a line list for follow up by the Infection Control Nurse and/or designee.**

6. **All employees who become positive with COVID 19 will also be line listed and followed by the Infection Control Nurse and/or designee.**

7. **Those employees who are out ill due to positive COVID 19 will be required to have a physician note to return to work infection free and without any restrictions.**

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

COVID POLICY/PROCEDURE REGARDING RESIDENTS GOING OUT OF THE FACILITY

MARCH 13, 2020

PROTOCOL

Until further notice the following protocol should be practiced ensuring the safety and wellbeing of our residents during this pandemic.

*1 Residents may **NOT** go out on pass unless it is an **emergency medical appointment** that has been reviewed by the Administrator, DNS and Medical Director and approved.

*2 If the resident is going out via wheelchair the staff will bring the resident down to the lobby where the ambulette driver will receive him/her and bring him/her outside. Upon the residents return from the appointment the unit will be called and an employee must come down and pick up the resident and return him/her to their room.

*3 Any resident that is leaving the unit **MUST** wear a mask both exiting and entering the facility.

*4 When it is necessary for the resident to be transported via stretcher the ambulance driver (s) will be allowed up to the unit once they have passed the screening process. The same process will occur upon the resident's return. These residents must also wear a mask as stated above.

*5 Since we are quarantined by this pandemic the resident's family should be encouraged to meet the resident at this emergent appointment. If a CNA is needed this too must be approved by the Administrator, DNS and Medical Director to ensure the safety and well-being of our employees Once approved 48 hours' notice should be given to the Nursing Coordinator for proper accommodations to be made.

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROTOCOL
COVID 19 VISITATION

REVISED AUGUST 11, 2020
SUPERSEDING MARCH 11, 2020

It is the policy of FCCC that visitation may begin with the following guidelines in place that were submitted and accepted by the Department of Health.

*1 Visitors will be allowed to visit their loved ones on their designated days for a period of 30 minutes outside the facility.

*2. Visitors will be screened before being allowed to visit their loved along with filling out the assessment form. Any visitor having a temp above 99 and/or displaying any symptoms will not be allowed to visit. Also, anyone who has recently traveled from a restricted state will not be allowed to visit.

*3. Visitors must always wear a mask during their visit and maintain 6ft socially distance from their loved ones.

*4 Residents will also be asked to wear masks if able to be tolerated during their visits.

*5. Any visitor who is non-compliant with wearing a mask and/or social distancing will be asked to leave immediately and forfeit their ability to visit in the future.

*6 NO residents may go out on pass unless it is for a medical emergency and the proper arrangements are made.

*7 Although visitation has begun residents will remain in their rooms until the Department of Health lifts the quarantine that is presently in place.

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROTOCOL
COVID 19 VISITATION

REVISED AUGUST 24, 2020
SUPERSEDS AUGUST 11, 2020
MARCH 11, 2020

It is the policy of FCCC that visitation may begin with the following guidelines in place that were submitted and accepted by the Department of Health.

*1 Visitors will be allowed to visit their loved ones on their designated days for a period of 30 minutes outside the facility.

*2. Visitors will be screened before being allowed to visit their loved along with filling out the assessment form. Any visitor having a temp above 99 and/or displaying any symptoms will not be allowed to visit. Also, anyone who has recently traveled from a restricted state will not be allowed to visit.

*3. Visitors must always wear a mask during their visit and maintain 6ft socially distance from their loved ones.

*4 Residents will also be asked to wear masks if able to be tolerated during their visits.

*5. Any visitor who is non-compliant with wearing a mask and/or social distancing will be asked to leave immediately and forfeit their ability to visit in the future.

*6 NO residents may go out on pass unless it is for a medical emergency and the proper arrangements are made.

*7 Although visitation has begun residents will remain in their rooms until the Department of Health lifts the quarantine that is presently in place.

REVISION

The following is the revision to this policy as of 8/24/2020 that has been submitted and accepted by the Department of Health.

*8 During inclement weather visitation will continue in the Non-Kosher Dining Room (4 residents) as well as the Dining Room on unit 1 East (2 residents). Visitors and residents will continue to wear masks and keep 6ft apart. These visits will be for 15 minutes and staff will be over seeing these areas during the visit.

FULTON COMMONS CARE CENTER
NURSING DEPARTMENT

POLICY/PROCEDURE
COVID 19 VISITATION
AND ACTIVITIES

REVISED SEPTEMBER 24, 2020
SUPERSEDES AUGUST 24, 2020
AUGUST 11, 2020
MARCH 11, 2020

It is the policy of FCCC that we will adhere to the new Department of Heath Directive regarding visitation in the facility as issued on September 17, 2020. This directive also gives guidelines regarding permissible activities as of September 24, 2020.

*1. If FCCC should have any positive cases of COVID 19 of residents and/or staff reported the facility will not be allowed visitation for **14 days.** This is a change from the 28-day waiting period that was in effect previously.

*2 Visitors may not exceed **ten percent (10%)** of the resident census. Only **Two (2)** will be allowed per resident at any one time.

*3 Visitors under the age of 18 years old are **PROHIBITED** from visiting residents as of September 24, 2020

*4 Visitation should be limited to outdoors, weather permitting and under certain circumstances as developed by the facility. The inside area should be well ventilated and no more then **ten (10) individuals** who are appropriately socially distanced and wearing a face mask in the presence of others.

*5 Visitation is strictly **PROHIBITED** in residents' rooms and/or care areas except for end of life visits and residents who may be bed bound,

*6 Limited visitation will be permitted under the following conditions:

(a) adequate staff are present to help transport residents, monitor the visitation and cleaning/disinfecting areas used for visitation after each visit.

(b) FCCC will maintain signage regarding facemask utilization and hand hygiene and applicable floor markings to cue social distancing delineations.

(c) Visitors will be screened for signs/symptoms of COVID 19 prior to resident visiting. In addition, the visitor **MUST PRESENT A VERIFIED NEGATIVE TEST RESULT WITHIN THE LAST WEEK (7DAYS). Visit**

Visitation will be **REFUSED** if the individual fails to present such test, exhibits any COVID 19 symptoms or does not pass the screening questions.

(d) Visiting documentation **must** include: first and last name of visitor, address of the visitor, daytime and evening phone number, date and time of visit and e-mail if available.

(e) adequate PPE will be made available by the facility to ensure residents wear face masks if tolerated.

(f) visitors must always wear a face mask when on the premise of FCCC and maintain social distancing.

(g) FCCC will provide alcohol-based hand sanitizer to visitors

(h) FCCC has developed and will distribute to all visitors an easy to read fact sheet outlining visitor expectations.

*7 Small group activities are now permissible when space is allowed to ensure appropriate social distancing. No more than **ten (10)** residents and staff will be permitted in any activity at any one time.

*8 Residents may also be assisted outside with **staff supervision** and all requirements maintained related to infection control, social distancing and safety.

*9 Since FCCC has an affiliation with the VEEB LPN program students will be allowed in the facility as long as they are compliant with the weekly testing.

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

POLICY/PROCEDURE FOR PERFORMING CPR ON A +COVID OR PRESUMED COVID RESIDENT

POLICY: It is the policy of FCCC that during a CPR event all will be in place to maintain the safety of the resident as well as the staff to ensure infection control is maintained minimize any negative outcome.

PROTOCOL:

(1) When a CPR is activated for a resident who is positive for COVID and/or presumed positive it will be announced as a **STAT 19 CODE.** The purpose of this code is to limit the amount of staff responding to this code.

(2) The following are the designated responders for such a code:

(a) All staff on the effective unit and the Nursing Supervisor on the 7am-3pm shift.

(b) During the off shifts of 3pm-11pm/11pm-7am the Nursing Supervisors will respond to the unit. The Nursing Supervisor covering that unit will enter the resident's room and take charge of the code. The other supervisor will take charge of the tasks at the desk i.e., initiating all necessary paperwork, all communication needed and controlling the traffic on the unit to minimize unnecessary staff exposure.

(3) If you are a staff member that must enter the room to assist in the code, you **MUST** don the proper PPE before entering the resident's room as well as wearing a **N95 mask**

(4) Once the code is completed **ALL** equipment used will be terminally cleaned as per our protocol.

ADDENDUM

(1) For all other codes designated within the facility the staff on the COVID unit(s) will assume full responsibility for the tasks related to that code on that unit.

(2) Staff on the COVID unit(s) will NOT respond to other units in any code situation. They are to remain on their designated unit,

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

COVID SURVEILLANCE AND TRACKING METHOD

POLICY: It is policy of Fulton Commons Care Center to monitor the development and spread of the coronavirus disease in order to establish any patterns of the disease progression.

SURVEILLANCE

CONFIRMED CASE a resident with a laboratory confirmed case whether symptomatic or not
SUSPECTED CASE a resident who displays a fever of 100 or above, acute respiratory illness where testing was not performed

(1) Residents within the facility will be having their temperature taken every shift. Any resident that has a temperature of 100 or above will immediately be started on the protocol and isolation precautions will be initiated. They will continue with temperature monitoring every shift and documented on the units census sheets. These residents will be maintained on the 24-hour report until the protocol is completed and monitoring of their temperatures with continue on every shift.
(2) If these residents have a roommate they will continue to be monitored for any signs and symptoms of the virus. Any symptoms displayed will be reported to the Physician for further orders and guidance.
(3) The facility will NOT move the resident unless doing so will NOT potentially put an additional risk to our residents and staff for further exposure
(4) Residents admitted from the hospital with a positive diagnosis will be housed on the designated unit and remain on isolation for seven (7) days since they have completed their first seven days in the hospital.
(5) Residents that have displayed no symptoms and remain afebrile will remain in their rooms and temperatures will be monitored every shift.

TRACKING OF RESIDENTS

(1) All residents will have their temperatures taken every shift, recorded and sent to the DNS/designee.
(2) All residents that have a temperature of 100 or above will be placed on the 24-hour report and tracked until their protocol is completed and afebrile for 3 consecutative days.
(3) Residents admitted from the hospital will be housed on one unit and maintained on isolation for 7 days and be afebrile for 3 consecutative days before being isolation is discontinued.

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

PROTOCOL FOR RESIDENTS WITH SUSPECTED COVID AS WELL AS RESIDENTS ADMITTED FROM HOSPITAL WITH CONFIRMED COVID

POLICY: It is the policy of FCCC to ensure all residents are maintained is an isolated area once identified as a presumed COVID or is admitted to the facility from a hospital setting with a confirmed diagnosis of COVID

PROTOCOL FOR IN HOUSE RESIDENTS WITH A SUSPECTED COVID DIAGNOSIS

(1) Any resident residing in the facility that has a fever of 100 will be assumed a suspected case of COVID and will be place on isolation precautions immediately. The resident will be transferred to the designated unit unless they are in a private room.
(2) These residents will be maintained in their room until the COVID protocol is completed and they are afebrile.
(3) The same staff will be assigned to them on a daily basis for each shift
(4) Residents will don a mask when care is being rendered.
(5) Disposable trays will be used to serve their meals on until the isolation has been discontinued. These trays will be thrown out on the unit by Nursing staff and removed from the unit by the Housekeeping staff

PROTOCOL FOR ADMISSIONS/RE-ADMISSIONS FROM THE HOSPITAL WITH CONFIRMED COVID DIAGNOSIS

(1) Any resident who is being admitted or re-admitted from a hospital setting will be placed on the designated unit. They are allowed to be co-horded together in the same room and will be placed on isolation precautions. If they are a re-admission they will be transferred back to their unit upon completion of their isolation period.
(2) These residents will be maintained on isolation and in their rooms for seven (7) days from day of admission and remain afebrile.
(3) The same staff will be assigned to them on a daily basis for each shift.
(4) Residents will don a mask when care is being rendered or therapy is in place.
(5) Disposable trays will be used to serve their meals on until the isolation has been discontinued. They will be thrown out by the Nursing staff and removed from the unit by the Housekeeping staff.

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

PROTOCOL AND PROCEDURE

POLICY: It is the policy of FCCC that upon expiration of a resident that their belongings will be packed and stored in a way that Infection Control measures are met.

PROTOCOL

(A) When a resident expires and a **family comes** to the facility they should at this time take any personal belongings they may want. These belongings will be placed in a bag/box for the family to bring out of the facility.

(B) If a **family is not coming** into the facility they must be told that the belongings will be packed for them but they may **NOT** be picked up for seven (7) after the day the resident expired.

(C) **ALL** belongings are to be packed by the staff once they know if the family is coming or not. They may **NOT linger** on the unit more than 24 hours.

(D) **Pictures and personal items are to packed separately from their clothing**. **ALL** items must be itemized on a **property form**. This form should be hung from the outside of all the residents' boxes and their name should also be written on the boxes so that they are easily accessible.

(E) Once this task is accomplished Housekeeping will be called to remove the boxes from the room. The room should be **cycled clean** and prepared.

FULTON COMMONS CARE CENTER

NURSING DEPARTMENT

PROTOCOL FOR SCREENING OF EMPLOYEES
APRIL 30, 2020

The purpose of this protocol to ensure all employees of FCCC is being screened for any signs and symptoms of the COVID 19 virus.

PROTOCOL

(1) All staff will enter the facility through the front door where they will be screened by having their temperatures taken as well as filling out the Coronavirus checklist.

(2) Any staff member exhibiting a temperature above 99.9 will be sent home and asked to see a physician regarding their condition. All staff members will be required to have a physicians note to return to work stating they are infection free and without restrictions.

(3) Essential personnel who have been **exposed** to a confirmed case of COVID can be permitted to work if the following is met:
   (a) Personnel is asymptomatic
   (b) Personnel quarantine themselves when they are not at work
   (c) Personnel while in the facility remain 6 feet apart and are donned in the proper PPE
   (d) If personnel develops and signs or symptoms of the virus while working they will be immediately sent home for follow up with their physician.

(4) Essential personnel with a **confirmed or suspected case of COVID** can be permitted to work if the following is met:
   (a) Personnel have maintained isolation for at least seven (7) days after illness onset and have been afebrile for at least 72 hours without using a fever reducing medication and with other symptoms improving.
   (b) Personnel who are recovering must wear a facemask and the proper PPE for fourteen (14) days following the onset of the virus.

(5) Any employee that is doing a double shift will be required to have their temperatures every 12 hours while in the facility.

FULTON COMMOMS CARE CENTER

NURSING DEPARTMENT

PROTOCOL FOR SCREENING VISITORS AND VENDORS

The purpose of this protocol is to ensure all visitors/vendors entering FCCC are being screened for any sign and symptoms of the COVID 19 virus

PROTOCOL

(1) All visitors/vendors will enter through the front door of the main lobby where they will be screened by having their temperatures taken as well as filling out the checklist for signs and symptoms of this virus. Visitors/Vendors will also be educated regarding the proper use of hand sanitizer.

(2) Any visitor/vendor that exhibits a temperature of 99.9, exhibiting any signs and symptoms of the COVID 19 virus as well having traveled outside of New York to a state that requires an incubation of 14 days upon return will be denied visitation.

(3) Visitors will be given a face mask once the screening process is complete and be educated that they must keep social distancing of 6 feet from the residents when visiting.

(4) Vendors will be given a face mask covering and an isolation gown if needed so that they may accomplish their task within the facility.

(5) Any visitor/vendor that does not comply or refuses to follow this protocol will be denied visitation and/or access into the facility.

FULTON COMMONS CARE CENTER

TITLE: Communication/Notification During COVID1-19 Pandemic Protocol

EFFECTIVE DATE: March 12, 2020

PURPOSE: It is the intention of Fulton Commons Care Center to implement effective, frequent and accurate communication with family members, designated representatives and residents during the COVID-19 pandemic.

PROTOCOL:

1. **Residents:** Administration or designee will utilize resident council meetings, individual resident meetings, the overhead paging system and written correspondence to keep residents informed about the COVID-19 pandemic and facility response to same.

2. **Family Members/Designated Representatives:**
    a. Nursing will continue to communicate with families/representatives concerning the health status of residents.
    b. Social Work will continue to facilitate care plan meetings via telephone and field family questions/concerns telephonically.
    c. Recreations will facilitate communication between families and residents via facetime, whats app, phone calls and texts.
    d. Administration will continue to take family/designated representative calls as well as utilize a robocall system to update families/representatives on COVID-19 status in the facility. Said calls will be made at least weekly or more often as necessary and/or mandated.
    e. All disciplines will continue to field family questions/concerns telephonically throughout the pandemic.

3/12/20 CD

FULTON COMMONS CARE CENTER

TITLE: Communication/Notification During COVID1-19 Pandemic Protocol

EFFECTIVE DATE: revised April 10, 2020

PURPOSE: It is the intention of Fulton Commons Care Center to implement effective, frequent and accurate communication with family members, designated representatives and residents during the COVID-19 pandemic.

PROTOCOL:

1. **Residents:** Administration or designee will utilize resident council meetings, individual resident meetings, the overhead paging system and written correspondence to keep residents informed about the COVID-19 pandemic and facility response to same.

2. **Family Members/Designated Representatives:**
    a. Nursing will continue to communicate with families/representatives concerning the health status of residents.
    b. Social Work will continue to facilitate care plan meetings via telephone and field family questions/concerns telephonically.
    c. Recreations will facilitate communication between families and residents via facetime, whats app, phone calls and texts.
    d. Administration will continue to take family/designated representative calls as well as utilize a robocall system to update families/representatives on COVID-19 status in the facility. Said calls will be made at least weekly or more often as necessary and/or mandated.
    e. All disciplines will continue to field family questions/concerns telephonically throughout the pandemic.
    f. one staff member will be assigned to each nursing station Monday – Friday, 9am– 3pm to answer incoming calls from family members/designated representatives/residents.

Rev 4/10/20 CD
3/12/20 CD

FULTON COMMONS CARE CENTER

TITLE: Communication/Notification During COVID1-19 Pandemic Protocol

EFFECTIVE DATE: revised April 24, 2020

PURPOSE: It is the intention of Fulton Commons Care Center to implement effective, frequent and accurate communication with family members, designated representatives and residents during the COVID-19 pandemic.

PROTOCOL:

1. **Residents:** Administration or designee will utilize resident council meetings, individual resident meetings, the overhead paging system and written correspondence to keep residents informed about the COVID-19 pandemic and facility response to same.

2. **Family Members/Designated Representatives:**
    a. Nursing will make weekly calls to ALL designated reps and daily to all that have residents with a change in condition or on report to continue to communicate with families/representatives concerning the health status of residents.
    b. Social Work will continue to facilitate care plan meetings via telephone and field family questions/concerns telephonically.
    c. Recreations will facilitate communication between families and residents via facetime, whats app, phone calls and texts.
    d. Administration will continue to take family/designated representative calls as well as utilize a robocall system to update families/representatives on COVID-19 status in the facility. Said calls will be made at least weekly or more often as necessary and/or mandated.
    e. All disciplines will continue to field family questions/concerns telephonically throughout the pandemic.
    f. one staff member will be assigned to each nursing station Monday – Friday, 9am– 1pm to answer incoming calls from family members/designated representatives/residents.

Rev 4/24/20 CD
Rev 4/10/20 CD
3/12/20 CD

NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

DATE: March 21, 2020

TO: Nursing Homes (NHs) and Adult Care Facilities (ACFs)

FROM: NYSDOH Bureau of Healthcare Associated Infections (BHAI)

Health Advisory: Respiratory Illness in Nursing Homes and Adult Care Facilities in Areas of Sustained Community Transmission of COVID-19

Please distribute immediately to:
Administrators, Infection Preventionists, Medical Directors, and Nursing Directors

Recent testing of residents and healthcare workers (HCWs) of nursing home and adult care facilities in New York City, Long Island, Westchester and Rockland counties has revealed that symptoms of influenza-like illness are very often determined to be COVID-19 in facilities located in areas with sustained community transmission.

As a result, ANY febrile acute respiratory illness or clusters of acute respiratory illness (whether febrile or not) in NHs and ACFs in New York City, Long Island, Westchester County, or Rockland County should be **presumed** to be COVID-19 unless diagnostic testing reveals otherwise. Testing of residents and HCWs with suspect COVID-19 is no longer necessary and should not delay additional infection control actions.

All facilities in areas of the state with sustained community transmission of COVID-19 including New York City, Long Island, Westchester and Rockland with residents who have febrile acute respiratory illness or with clusters of acute respiratory illness should follow the guidance from the NYSDOH advisory issued on March 13, 2020 for COVID-19 Cases in Nursing Homes and Adult Care Facilities in the section entitled “If there are confirmed cases of COVID-19 in a NH or ACF”.

NHs and ACFs outside of these areas should continue to pursue testing of residents and HCWs with suspect COVID-19 to inform control strategies.

Facilities should continue to seek advice from their Regional Epidemiologists as needed.

General questions or comments about this advisory can be sent to icp@health.ny.gov, covidadultcareinfo@health.ny.gov, and/or covidnursinghomeinfo@health.ny.gov.

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

----------X

In the matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

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63(12) Examination under oath of ELFA LLORENTE, taken via WebEx video conference, held on October 19, 2020, commencing at 10:03 a.m.

Reported by

Deirdre Plevritis

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
300 Motor Parkway, Suite 210
Hauppauge, New York 11788
BY: PRABHJOT SEKHON,
Special Assistant
Attorney General

ALSO PRESENT:
Ben Smith,
Special Assistant
Attorney General
John Tarpey, Investigator
Mary Gail Kowtna,
Audit Investigator

10-19-2020

(Subpoena was premarked State's Exhibit 1 in evidence; 10-19-20, D.P.)

(Facility floor plan was premarked State's Exhibit 2 in evidence; 10-19-20, D.P.)

(CNA assignment records were premarked State's Exhibit 3 in evidence; 10-19-20, D.P.)

(Daily census sheets were premarked State's Exhibit 4 in evidence; 10-19-20, D.P.)

(3 West 24-hour reports were premarked State's Exhibit 5 in evidence; 10-19-20, D.P.)

(Patient activity log was premarked State's Exhibit 6 in evidence; 10-19-20, D.P.)

(Policies and procedures were premarked State's Exhibit 7 in evidence; 10-19-20, D.P.)

(V.T. 24-hour report was premarked State's Exhibit 8 in evidence; 10-19-20, D.P.)

(H.G. 24-hour report

10-19-2020 E. Llorente

was premarked State's Exhibit 9 in evidence; 10-19-20, D.P.)

E L F A L L O R E N T E, the Witness herein, having been first duly sworn by a Notary Public in and of the State of New York, was examined and testified as follows:

EXAMINATION BY

MS. SEKHON:

Q. Can you please state your name for the record.

A. Elfa Llorente.

Q. Just to confirm the spelling of your last name; is it L-L-O-R-E-N-T-E?

A. Yes.

Q. What is your address?

A. [redacted]

Q. Are you at home right now?

A. Yes.

MS. SEKHON: My name is Prabhjot Sekhon. I am a Special Assistant Attorney General at the New York State Attorney General's Office in the Medicaid Fraud Control Unit.

I am going to ask my colleagues to introduce themselves to you at this time.

MR. TARPEY: Good morning, ma'am. This is Investigator John Tarpey.

THE WITNESS: Hi.

MR. SMITH: Good morning, Ms. Llorente. My name is Ben Smith, I am a Special Attorney General with the Attorney General's Office.

THE WITNESS: Good morning.

MS. KOWTNA: Good morning. My name is Mary Gail Kowtna. I am an auditor for the Attorney General's Office.

THE WITNESS: Good morning.

MS. SEKHON: At this time, I will ask my colleagues to turn their videos off, so this way it will just conserve the bandwidth and hopefully our examination will run a little smoother.

Ms. Llorente, we are conducting this examination remotely in order to ensure the health and safety of all

participants. That is due to the coronavirus and coronavirus related concerns.

This interview will be recorded by stenographic means by a court reporter certified to record the examination in the State of New York and any exhibits will be presented to you electronically.

Your testimony today is being taken pursuant to a subpoena that was issued by the Attorney General's Office, pursuant to which, I, and Benjamin Smith, as Special Assistant Attorney Generals, are authorized to take proof and make the determination of the relevant facts in connection with an investigation that deals with the resident care provided at Fulton Commons Care Center.

You are an employee there, correct?

THE WITNESS: Yes.

MS. SEKHON: At this time, I will

ask that the witness be shown what has been premarked as Exhibit 1.

Ms. Llorente, do you recognize what is being shown to you right now electronically as Exhibit 1?

THE WITNESS: Yes.

MS. SEKHON: If we could just scroll down to the next page.

Is this a copy of the subpoena that was issued and served on you directly?

THE WITNESS: Yes.

MS. SEKHON: Is that your signature on the second page?

THE WITNESS: Yes.

MS. SEKHON: This subpoena required and compelled you to virtually appear for an interview today, correct?

THE WITNESS: Yes.

MS. SEKHON: You understand that your virtual appearance here today is pursuant to that subpoena which compels you to appear and give testimony, correct?

THE WITNESS: Yes.

MS. SEKHON: Before we begin, I would like to take a moment to discuss some of your rights. Pursuant to the Fifth Amendment of the U.S. Constitution as well as the New York State Constitution, you have the right to refuse to answer questions if your truthful answer to that question would tend to incriminate you.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: Please be aware, however, that should you choose to invoke your Fifth Amendment right, a negative inference can be drawn against you in any future noncriminal proceeding.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: You took an oath a moment ago to tell the truth, the whole truth, and nothing but the truth, if you intentionally make any false

statements during this proceeding, and by that I mean, a statement which you do not believe to be true, you may be prosecuted for perjury.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: I am going to ask you questions which are relevant to the Attorney General Office's investigation into both the general resident care provided at Fulton Commons Care Center, and the specific resident provided during the coronavirus pandemic.

If I say Fulton Commons or Fulton from here on out, would you understand that I am referring to Fulton Commons Care Center?

THE WITNESS: Yes.

MS. SEKHON: Just some ground rules. As you see, we do have a stenographer today here, and she will be recording this interview. It is, therefore, very important that she hears everything that we are saying.

What that means is that we cannot speak over one another.

I ask that you allow me to finish asking my question before you begin to answer as she will not be able to get us both down at the same time.

There will be times throughout this examination where I am sure that you will feel like you know exactly where I am going with my question, and it is a natural tendency to want to jump in and answer, but it is really important that you let me get my question out there.

It is also important that you give verbal responses to all of my questions, so nods of the head, shrugs of the shoulder, uh huh, uh un, those things do not translate on to the record. If you do any of those things, I do ask that you accompany them with a verbal response. I will also prompt you periodically, so if I see that you are nodding and speaking, I will ask

you, you know, yes or no. Just please keep it in mind and if you could remember to do that I would appreciate that.

If you do not understand my questions, please let me know and I will do my best to rephrase it for you.

If you answer my question, I will assume that you understood it as I have asked it.

If you need to take a break for any reason, that is fine. I just ask that if there is a pending question that you answer my question before leaving the camera frame.

Do you understand the instructions as I have given them?

THE WITNESS: Yes.

MS. SEKHON: Sometimes you may give an answer as completely as you can and then later remember additional information. If that happens to you, please tell me that you would like to add something to the earlier answer and

we will do it right then while it is on you mind.

Will you do that?

THE WITNESS: Yes.

MS. SEKHON: In addition, it might occur to you at some point that a previous answer that you gave was not completely accurate. If that happens, will you tell me and we can make any necessary corrections to your answer at that time?

THE WITNESS: Yes.

MS. SEKHON: This proceeding is confidential. You are not entitled to a copy of the transcript of the testimony or any exhibits that will be marked today.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: As this is a confidential proceeding, there shall be no recording during the taking of the testimony. Although, WebEx, the software that we are using does offer

recording capabilities, I give you my assurance that this examination is not being recorded by the New York State Attorney General's Office via WebEx. This matter, on our end, is only being recorded via the stenographic means we have previously discussed.

Do you also agree not to record this examination in any way?

THE WITNESS: Yes.

MS. SEKHON: Similarly, due to confidentiality, we request that you not discuss this matter, your testimony here today, or any documents that you may view or potentially produce in connection with today's testimony with anyone.

Unless we are on a break, there shall be no private communication with anyone. That includes phone calls, passing of notes, texting, email or any other methods of communication that may or may not be visible on camera.

I would ask that you please mute

your phone, and if possible, turn off any other electronic devices to prevent distraction.

Before I start questioning you, I will also just ask you if you have a glass of water or anything with you. If you don't, you might want to get one. You will be doing a lot of speaking today.

THE WITNESS: Okay. Can I grab one right now?

MS. SEKHON: Absolutely.

THE WITNESS: I am back. Thank you.

MS. SEKHON: No problem.

EXAMINATION BY

MS. SEKHON:

Q. Have you taken any drugs or alcohol within the past 24 hours which may have an impact on your ability to testify here today truthfully and to the best of your knowledge?

A. No.

Q. Are you aware of any physical or

mental disability or defect that may interfere with your ability to understand my questions or your ability to respond truthfully and completely?

A. No.

Q. Did you discuss the fact that you were subpoenaed here today with anyone?

A. It's not, like, discussed, but when we were downstairs with the rest of the, you know, people who were subpoenaed, so those were the only ones.

Q. Who are were they?

A. I know it was the admissions, the one from admissions and Ms. Frawley and Ms. Doyle.

Q. The individual from admissions, was that the director of admissions or someone else?

A. It was Kristin.

Q. What did you discuss with Kristin?

A. Nothing. It was just that day when we were subpoenaed.

Q. What did the conversation consist

of?

A. That we were subpoenaed. That's it.

Q. Did you talk to Kristin at all about what you might be questioned about, or what you might be testifying about?

A. No.

Q. What conversations did you have with Ms. Frawley about the fact that you were subpoenaed?

A. I don't remember anymore. That was in September.

Q. Was that the day that you received the subpoena?

A. Yes.

Q. Did you discuss with Ms. Frawley the nature of your testimony at all?

A. No.

Q. Have you spoken to Ms. Frawley about the fact that you were subpoenaed since that day?

A. No.

Q. Have you spoken with Ms. Frawley about appearing for your appearance here

today?

A. No. Well, I did not speak to anyone about this, except for that day when we were subpoenaed. That's it.

Q. Can you tell what the conversation with Ms. Doyle consisted of that day?

A. I don't remember anymore, because I was called upstairs and, you know, they said that, you know, that there's a subpoena and that was it.

Q. Did you have any conversations with Ms. Doyle about what you might be testifying about today?

A. No.

Q. Did you have any conversations with Ms. Doyle regarding preparing for your testimony here today?

A. No.

Q. Have you spoken with anyone who has told you that they appeared before the Attorney General's Office and provided testimony?

A. No.

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Q. In preparation for your appearance here today, did you speak with anyone?

A. No. Well, I take that back. Because I need to take the day off. So that's the reason why.

Q. Who did you speak to?

A. It was Carol Frawley.

Q. When was that?

A. Friday. Because I needed to take the day off.

Q. Other than advising her that you needed the day off, did you have any other conversations with Ms. Frawley about your appearance here today at that time?

A. No.

Q. Did Ms. Frawley give you any information at that time in preparation for your testimony?

A. No information.

Q. Did you review any documents to prepare for your testimony here today?

A. No.

Q. Have you ever testified under

oath before?

A. There was a lawsuit, I guess. Yes, one time.

Q. When was that?

A. I think it was last year.

Q. You mentioned it was a lawsuit. Were you a party in that suit?

A. Well, I don't understand your question, but it was against Fulton Commons.

Q. Did you testify at a deposition or was it a trial, or something else?

A. Yes, it was a deposition.

Q. Did that lawsuit relate to patient care that was provided at Fulton Commons?

A. Yes.

Q. What was the name of the patient?

A. I don't remember anymore.

Q. Unless I give you a specific date or time period, all of the following questions will pertain to a time period of January 1st, 2020 through June 1st, 2020. Do you understand that?

A. Okay. Yes.

Q. What is your cell phone number?

A. [redacted].

Q. Who is the provider?

A. AT&T.

Q. Do you have a home phone as well?

A. Yes.

Q. What is the home phone number?

A. [redacted].

Q. Who is the provider?

A. I forgot.

Q. I will throw some common ones. Verizon, Optimum?

A. Optimum.

Q. Could you just give us an overview of your education?

A. I graduated with a bachelor's of science in nursing. It's a four-year degree in the Philippines. Then I moved here in 2002, I think, and I started working in Pittsburgh, and then to California and then to here.

Q. How long did you work in Pittsburgh?

A. I don't remember, maybe around

three years, maybe. I don't remember.

Q. How long did you live in California?

A. Three years, more or less also.

Q. When did you move to New York?

A. 2009.

Q. You mentioned that you have a BA, a bachelor's in nursing?

A. A BS.

Q. Yes, sorry. Bachelor's of science in nursing.

Have you attended any post-graduate courses or anything like that?

A. Continuing education, if you may say.

Q. The continuing education, is that required in order to maintain your license?

A. Yes.

Q. Are there a certain number of credits that you have to complete in a specific period of time to maintain your license?

A. Yes.

Q. How many credits are you required

to take?

A. I don't remember. I'm sorry.

Q. I am going to go back for a second, because we did jump right into talking about your license.

Is it fair to say that you are licensed as a registered nurse in New York?

A. Yes.

Q. Do you hold any other professional license in the State of New York?

A. No.

Q. Are you licensed in other states as well?

A. Not anymore.

Q. Was there a period of time when you were licensed in other states?

A. Yes.

Q. What other states were you licensed in?

A. I told you I worked in Pittsburgh and California.

Q. Other than Pennsylvania and California, were you licensed in any other

states?

A. Yes, there is another one, Nevada.

Q. Did you ever work in Nevada?

A. No.

Q. But you did mention that you are no longer licensed in the other state, so let's go one by one. What is the status of your license in Pennsylvania?

A. Say that again.

Q. Sure. What is the status of your license in Pennsylvania as a registered nurse?

A. I would say inactive.

Q. Were you subject to any disciplinary actions in Pennsylvania against your license as a registered nurse?

A. No.

Q. What is the status of your RN license -- if I say the word "RN" or the letters R-N, do you understand to mean registered nurse?

A. Yes.

Q. What is the status of your RN

license in California?

A. Inactive.

Q. Were you ever subject to any disciplinary actions with respect to your RN license in California?

A. No.

Q. What is the status of your license as an RN in Nevada?

A. Inactive.

Q. Were you ever subject to any disciplinary actions with respect to your RN license in Nevada?

A. No.

Q. When did you become licensed as an RN in New York?

A. 2009.

Q. Have you been continuously licensed since that time?

A. Yes.

Q. Had your license ever been suspended or revoked for any reason?

A. No.

Q. Have you ever been subject to any disciplinary action with in New York with

respect to your RN license?

A. No.

Q. How often do you renew your RN license?

A. Every two years.

Q. I know you said you don't recall how many credits you need to take every two years, but are there specific courses that you are required to take in order to maintain that license?

A. I don't remember. Sorry.

Q. Are you required to take an infection control class in order to maintain and renew your license?

A. Yes.

Q. What does that class consist of?

A. I don't remember. Sorry.

Q. How long is that class?

A. I don't remember.

Q. Do you recall if it is one day or more than one day?

A. It's online.

Q. Are you given any materials in connection with that course?

A. Actually, I don't remember. Sorry.

Q. That's fine. I don't remember is a perfectly acceptable response if that is the truth.

Is that class offered through the Department of Health?

A. I don't know the answer.

Q. Okay. Other than your license as an RN, do you hold any other professional licenses or certifications in New York?

A. No.

Q. I understand that you are currently employed by Fulton Commons; is that correct?

A. That's correct.

Q. When did you start working at Fulton Commons?

A. 2009.

Q. Was that the first job that you obtained when you moved to New York?

A. No.

Q. Where did you first start working when you moved here?

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A. Did you say "work"?

Q. Yes. What was the job that you obtained when you moved to New York?

A. It is still an RN at one of the facilities.

Q. And where was that?

A. South Shore Healthcare.

Q. How long did you work at South Shore Healthcare?

A. I think it's three months.

Q. Did you work there full time or part time?

A. Full time.

Q. Did you have a set schedule?

A. Yes.

Q. What was that schedule?

A. It's 3 to 11.

Q. Did you work set days or were they rotated days?

A. I don't remember.

Q. What was your title there?

A. RN supervisor.

Q. What were your duties and responsibilities as the RN supervisor at

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South Shore?

A. Making sure I -- well, I handle the RN's and the LPN's, and then I did the admissions. I make sure that everything is okay in the facility.

Q. Did you do rounds in the facility?

A. Yes.

Q. That particular facility, South Shore, how many units were there in the facility?

A. Two units.

Q. How many were you responsible for supervising?

A. One hundred. It depends on the census.

Q. Just to clarify. You said that there were two units. Were you responsible for supervising both units or just one of the two?

A. I don't remember anymore.

Q. Well, the number you just mentioned of one hundred, was that approximately a hundred beds that you were

responsible for?

A. Yes.

Q. Do you recall how many beds in total South Shore had or had available?

A. One hundred. It's a one hundred bed capacity.

Q. So, it would be fair to say that you are responsible for supervising a whole building on the 3 to 11 shift?

A. I don't remember if I supervised the whole building or just the second floor.

Q. How did it come to be that you switched from South Shore to Fulton?

A. I just don't like the shift, the 3 to 11 shift. That is why I resigned, because I have small kids then.

Q. Did you know anyone who was working at Fulton Commons before you became employed there?

A. Say that again.

Q. Sure. Before you started working at Fulton, did you know anyone who works there?

A. Well, my coworkers, yes.

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Q. Who were the coworkers there that you knew before you started working there?

A. Well, I don't remember anymore.

Q. When you started working at Fulton in 2009, what was your title?

A. RN unit manager.

Q. Were you assigned to a specific unit?

A. Yes.

Q. What unit was that?

A. It's 3 West.

Q. Has your title ever changed since you started working at Fulton in 2009?

A. I would sometimes I do supervision on every other weekend.

Q. Do you still do that?

A. Yes.

Q. What is your shift when you supervise?

A. Say that again?

Q. What is your shift when you supervise on the weekends?

A. 7 to 3.

Q. When you supervise on the

weekends, how many units are you responsibile for?

A. Well, I take care of the east side, so that would be 4 East, 2 East, 3 East and sometimes 1 East.

Q. So, approximately four units?

A. Yes, three to four units.

Q. When did you start supervising on the weekends?

A. I don't remember anymore.

Q. Along with the occasional supervision, or I shouldn't say "occasional," but along with the part-time supervision on the weekends, have you continuously been a unit manager since you began working at Fulton in 2009?

A. Yes.

Q. And have you always been assigned to unit 3 West?

A. Yes.

Q. What is your schedule as a unit manager?

A. Monday through Friday.

Q. What hours do you work?

A. Usually 7:44 to 8:00, until -- it's eight hours.

Q. Is that an eight-hour shift, including a one-hour lunch?

A. Yes, that's correct.

Q. So, if you started at 8:00, would you typically work until 4 p.m.?

A. Until 4:00.

Q. Since working at Fulton, have you ever had any disciplinary actions?

A. No.

Q. I just want to go through some abbreviations that I think will probably come up today, so I just want to kind of get them out of the way. Are you familiar with the Centers for Medicare and Medicaid Services?

A. Yes.

Q. So, if I say "CMS," moving forward, will you understand that I am referring to the Centers for Medicare and Medicaid Services?

A. Sure.

Q. Are you familiar with the New

York State Department of Health?

A. Yes.

Q. If I say "DOH," will you understand that I am referring to the New York State Department of Health?

A. Yes.

Q. I am going to assume that you are familiar with the term COVID-19?

A. Yes.

Q. If I use the terms COVID or coronavirus, would you understand that I am referring to COVID-19?

A. Yes.

Q. Are you familiar with the term personal protective equipment?

A. Yes.

Q. If I use the abbreviation "PPE," will you understand that I am referring to personal protective equipment?

A. Yes.

Q. Who is the director of nursing at Fulton?

A. Carol Frawley.

Q. How long has Ms. Frawley been the

director of nursing?

A. I don't know exactly.

Q. Has she always been the director of nursing since you worked there?

A. No.

Q. How many other directors of nursing have there been since you started working at Fulton?

A. Maybe two or three or four. I don't remember.

Q. Who is the administrator at Fulton?

A. Cathie Doyle.

Q. Has Ms. Doyle always been the administrator since you have been working there?

A. No.

Q. How many other administrators have there been?

A. Three, I guess. I'm not exactly sure, but I guess three.

Q. Are you familiar with an individual by the name of Steven Weiss?

A. Yes.

Q. Who is Steven Weiss?

A. The owner of the facility.

Q. Is he is the only owner of the facility?

A. That I don't know.

Q. Have you ever heard anybody else who may have been considered an owner of the facility?

A. No.

Q. Have you ever interacted with anyone else who represented to you that they were an owner of the facility?

A. No.

Q. Who is the medical director at Fulton?

A. Dr. Butchma.

Q. Has Dr. Butchma always been the medical director since you have been working there?

A. I don't remember. I'm sorry.

Q. Okay. Is it fair to say that having worked at Fulton since 2009, and also from being an RN supervisor that you are familiar with the facility's layout at

Fulton Commons?

A. Familiar, I guess, yes.

Q. Okay. How many floors are there at the facility?

A. Four.

Q. How many total units?

A. Seven units.

MS. SEKHON: At this time, I will ask that the witness be shown what has been premarked as Exhibit 2.

Q. Ms. Llorente, I am going to ask you to take a look at Exhibit 2. We will scroll through slowly. Let's scroll through first and come back to the first page.

Do you recognize what has been depicted in Exhibit 2?

A. Yes.

Q. Do these appear to depictions of the floors of Fulton Commons and their respective beds?

A. Yes.

Q. Do these depictions also indicate room numbers on them?

A. Yes.

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Q. So looking at page 1, could you tell us which unit is depicted here?

A. 1 East.

Q. Is that on the right side of the page?

A. Yes.

Q. What is located on the left side of the page?

A. Do you want me to read it? It says, "Exit --

Q. No. If you could just tell me from your familiarity with the facility. So, we have 1 East on one side of the building. What is on the other side of the building on the first floor?

A. The offices.

Q. Whose offices are there?

A. The administration's office, director of nursing, admissions, nursing office, and then there is therapy, like, the therapy services, PT, OT. There is a ballroom there in the back, and then the Medicaid/Medicare office.

MS. SEKHON: If we scroll down to

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the second page.

Q. Could you tell us what is depicted on this page?

A. It is 2 East and 2 West.

Q. Is it fair to say that 2 East is on the right side of the page and 2 West is on the left side?

A. Yes.

Q. Let's go to the third page.

A. 3 East is on the right, and 3 West on the left.

Q. 3 West, that was your unit, correct?

A. Yes.

MS. SEKHON: Just going to the last page of this exhibit.

Q. Can you tell us what is depicted here?

A. 4 East on the right, 4 West on the left.

MS. SEKHON: Thank you.

THE WITNESS: You're welcome.

Q. In January and February of 2020, did Fulton take any steps to prepare for the

possibility of the COVID-19 outbreak?

A. I don't remember.

Q. Were you involved in any way for preparing for a COVID-19 pandemic in January and February of this year?

A. I really don't remember. I'm sorry.

Q. Were there any meetings in January and February of this year discussing the possibility of a COVID-19 outbreak?

A. I don't remember.

Q. Did you attend any in-services in January and February of this year in preparation for a potential COVID-19 outbreak?

A. Are you asking January or February?

Q. January and February, in those two months.

A. I don't remember. It was because I got sick the last week of February. I don't remember.

Q. How long were you out sick for?

A. Two weeks.

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Q. Was that related at all to COVID-19?

A. No, I was not -- I --no.

Q. Prior to going out sick for those two weeks, did you attend any in-services related to coronavirus?

A. That I don't remember.

Q. Prior to going out sick, were you involved in any preparation meetings with other unit managers or with administration related to coronavirus?

A. I don't remember around that time.

Q. Let's talk about March. Did Fulton take any steps in March of this year to prepare for a coronavirus pandemic?

A. Yes.

Q. What steps were taken in March?

A. Social distancing, no more visitors, residents were not allowed to go to the dining room. I think that is all I can remember right now.

Q. Let's talk first about the social distancing.

A. Okay.

Q. How was social distancing implemented at Fulton Commons?

A. For the residents?

Q. Yes. I mean you tell me. You mentioned social distancing. Was it only implemented for the residents, or was it also implemented for the staff?

A. It's for everyone.

Q. Let's break it up. How was it implemented for the residents first?

A. So, eventually they were not allowed to come out of the rooms.

Q. When was that enacted?

A. I don't remember exactly when it was implemented.

Q. But it was some time in March, you believe?

A. Yes.

Q. How was social distancing implemented for the staff?

A. Well, we were supposed to be social distancing six feet.

Q. How was that facilitated? Were

there stickers on the floor or on the walls or anything like that?

A. Yes, there were, or, you know, wash your hands all time. If you are sick, you cannot come in, you know, all those flu-like symptoms.

Q. When were those steps implemented for the staff?

A. I don't remember exactly when.

Q. You also mentioned that visitors were restricted from the facility. When was that put into place?

A. I don't remember the exact date.

Q. But you also believe that was some time in March?

A. Yes.

Q. You had mentioned that communal dining was halted. When was that halted?

A. That I don't remember also when exactly.

Q. But you also said some time in March?

A. Yes.

Q. Did that happen before or after

the residents were kept in their rooms?

A. Say that again.

Q. Sure. Was the communal dining stopped before the residents were restricted to their rooms, or did it happen at the same time or after?

A. I don't remember exactly, but I think it was the communal dining -- I'm sorry. I don't remember. I don't remember exactly when we implemented, you know, that resident are not allowed to go to the dining rooms.

Q. Let me ask you this: After the resident were restricted to their rooms, were there still some residents being brought into the dining room for meals?

A. No.

Q. Did you receive any in-services in March 2020 in preparation for the coronavirus pandemic?

A. I don't remember.

Q. Did your staff receive any in-services in March 2020 in preparation for the COVID pandemic?

A. I don't remember, but, you know, I always tell them -- I always instruct the CNA's to wash hands all the time.

Q. How do you provide that instruction?

A. Verbal.

Q. Did you give a formal instruction on that in March of 2020?

A. I don't remember.

Q. Did anyone review with you the policy and procedures related to infection control and communicable diseases in March of 2020?

A. I don't remember.

Q. Did anyone instruct you to on your own time or at some point during your work hours to review the policy and procedures on infection control and communicable diseases?

A. In March.

Q. Yes.

A. I don't remember.

Q. If there were any in-services in March of 2020 related to the coronavirus

pandemic, would there be any documentation of that?

A. Yes.

Q. Who sort of documentation would there be?

A. They will let us sign the in-service paper.

Q. Would that be a sign-in sheet?

A. Yes.

Q. And that sign-in sheet would be acknowledging your presence at the in-service; is that correct?

A. Sure.

Q. Have you ever attended an in-service where you did not have an opportunity to sign a sign-in sheet?

A. I don't remember.

Q. Have you ever signed on an in-service sign-in sheet when you were not given a class or not given materials accompanying that sign-in sheet?

A. I don't remember.

Q. Ms. Llorente, would it be proper to sign on am in-service sign-in sheet if

you did not attend the class, or receive any written materials for that class?

A. No.

Q. So, if you were ever asked to do that -- is it fair to say that --

A. I didn't hear you. Say that again.

Q. So, if you were ever asked to sign an in-service sign-in sheet for a class that you did take or a class for which you were not given any materials, wouldn't that stick out to you?

A. Did you say it would not that stick out to you?

Q. Yes. Would that not be something that you would remember?

A. Yes.

Q. So, do you remember ever being asked to do that?

A. I really don't know. I don't have an answer. I don't remember.

Q. So, are you saying that it is possible that you were at some point asked to sign an in-service sheet for a class that

you did not take?

A. I don't remember. I mean you just need to let me see an in-service sheet, and then, maybe, I will let you know. I don't know.

MS. SEKHON: I am going to just repeat my question.

Q. Is it a possibility that you ever signed an in-service sheet for a class that you did not take?

A. I mean I usually read first before I sign.

Q. Would you have signed something for a class that you did not take?

A. Not really.

Q. What do you mean by "not really?"

A. I mean I usually read first in-service before I sign, but then I don't remember those times when it was, you know, it was just really busy. I don't remember.

Q. It is possible that you did sign for something that you didn't read?

A. Or maybe I forget that particular in-service.

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Q. What do you mean you forget the particular in-service?

A. I mean maybe I read, but then I forget about it, because it was so busy then.

Q. Okay. Are you saying that it is possible that either took an in-service and forget about it and signed for it, and it's also a possibility that you didn't take an in-service and signed for it?

A. I mean that's just wrong.

Q. I am just trying to figure it out.

A. I know. I really just don't remember that time, because it was just crazy.

Q. Well, I mean I think, you know, the question being: If it is possible that you ever signed an in-service for a class you didn't take? That should be something that you can answer, right? If you never signed for something that you didn't have a class for, then the answer would just be no, it's a possibility, but if it is possible

that you, then the answer would be yes.

Take a minute and think about it. I am just trying to figure out if it is a possibility that you ever signed for something that you didn't take a class?

A. I want to know when you are saying "in-services," what do you think that means when you are saying in-services to me?

Q. So, my understanding of an in-service; correct me if I am wrong, is any instruction that you would have received. So, right now, my concern is in-services related to coronavirus. So if you received --

MS. SEKHON: I will go back.

Q. My question being: Did you ever sign for an in-service sheet indicating that you took a class related to infection control and/or coronavirus when, in fact, you were not given that class, or you were not given any materials?

A. Yes.

Q. When did that happen?

A. That I don't remember.

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Q. Who asked you to sign the in-service sheet?

A. I don't remember.

Q. How did it come to be that you signed that in-service sheet?

A. I don't remember anymore.

Q. What was the purported class associated with that in-service sheet?

A. I don't remember what it is anymore.

Q. Who else signed that in-service sheet?

A. Who else signed, I don't know.

Q. Was anyone with you when you were asked to sign this in-service sheet?

A. No.

Q. Did Cathie Doyle ask you to sign that in-service sheet?

A. I don't know. I don't remember who or I don't know where it came from, I guess.

Q. How was it brought to your attention?

A. Well, I guess another staff

member let me sign the sheet, maybe.

Q. Who was that staff member?

A. I don't remember anymore.

Q. Do you recall what month this occurred?

A. No, I don't.

Q. Was this before or after the height of the COVID-19 pandemic?

A. I mean when really was the height of the COVID-19.

Q. So, I will be more specific. Do you recall if this was before or after the end of March and early April?

A. I don't remember specifically which month it was.

Q. Was this the only time that you were ever asked to sign something for a class that you did not take?

A. Can you explain that further?

MS. SEKHON: Sure. I will rephrase.

Q. Was this the only time that you were asked to sign an in-service sheet when you did not receive any instruction for that

in-service?

A. Yes.

Q. Did you discuss with anyone the fact that you did not receive any instruction related to that in-service sheet?

A. I don't remember.

Q. Did you have any concerns about signing that in-service sheet when you did not receive any instruction accompanying it?

A. Yes.

Q. What were your concerns?

A. I don't know. That it was just not right.

Q. Did you bring your concerns to anyone's attention?

A. No.

Q. Who do you report directly to?

A. Lisa and Carol Frawley.

Q. Is that Lisa Peterson?

A. Yes.

Q. Was she an assistant director of nursing services?

A. Yes.

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Q. Did you discuss with Lisa Peterson that you had not received any instruction along with this in-service sign-in sheet request?

A. I don't remember anymore. I don't remember if I spoke to somebody. I really don't remember. It's just really vague.

Q. Just so I am clear. At some point, prior to your testimony today, you signed an in-service sign-in sheet which would reflect that you took a class or received instruction that you did not receive, that you do not recall what that instruction pertained to, and you do not recall when that happened?

A. That's correct.

Q. It's your testimony today this is the only time it has ever happened?

A. Yes.

Q. It is also you testimony that despite having concerns about it, you do not recall whether you brought those concerns to anyone's attention?

A. I guess we were talking about it, but I don't recall who was in the conversation.

Q. You don't recall who asked you to sign this in-service sheet? That is your testimony today?

A. I don't recall where it was really coming from.

Q. What do you mean by that?

A. Like if it's from the administrator or from the director of nursing.

Q. Would it have been one of those two people asking you to sign it?

A. I believe so.

Q. Is there anyone else that it could have been who would ask you to sign that sheet?

A. No.

Q. So, it was either the administrator Cathie Doyle or the director of nursing Carol Frawley who requested that you sign an in-service sign-in sheet for a class on which you did not receive

instruction; is that correct?

A. Yes.

Q. At that time, did you address whoever it was, whether it was Cathie Doyle or Carol Frawley, and express to them that you had not received instruction accompanying that in-service sign-in sheet?

A. No.

Q. To the best of your recollection, was that in-service sheet related to coronavirus?

A. Yes.

Q. So setting aside the in-service sign-in sheet. Do you recall if you were specifically given any instruction in March 2020 with respect to coronavirus?

A. Can you be more detailed with your question?

Q. Yes. In March of 2020, do you recall receiving any sort of in-service instruction with respect to preparing for COVID-19 and/or infection control?

A. Yes.

Q. How did you receive that

instruction?

A. We were given papers, like, instructions.

Q. What did those relate to in particular?

A. Like if the resident spikes a temp, so we have those instruction what to do.

Q. So, it would be fair to say that you were given instructions on how to provide care to the residents throughout the course of the pandemic; is that fair to say?

A. That's correct.

Q. In particular, you were given guidance on what protocols to institute based on symptoms presented by the resident; is that fair to say?

A. Yes.

Q. Were you given any instructions on infection control in March of 2020?

A. Can you repeat that, please?

Q. Sure.

MS. SEKHON: Actually, I am going to back a second any way. You can

ignore that question all together.

Q. What instruction were you given with respect to resident care?

A. Wash hands all the time, wear a mask, and the resident stay in their rooms.

Q. What instructions were you given regarding the protocol on how to treat a resident?

A. Well, that I don't remember anymore, because it changes all the time.

Q. What was the first protocol that you were instructed on?

A. That if somebody spikes a temp, because we take the temps every shift, so if someone spikes a temp that we need to do the protocol.

Q. What was the first protocol that was instituted?

A. Well, there is not first protocol. There is a lot of instructions there.

Q. What were they?

A. First, to call the doctor and then let them know what is going on, and

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then they usually order to check -- to do chest x-rays, EKG, and the medications and to monitor the resident.

Q. Where there specific medications that were typically ordered in connection with COVID?

A. I mean when you say "in connection with COVID," what does that mean?

Q. Sure. So we are talking about the protocol for resident care. If a resident spikes a temp, this was the protocol?

A. Right.

Q. In connection with that, were there typically specific medications that were ordered by the doctor?

A. Yes.

Q. What medications were those?

A. The Plaquenil and Zithromax. A lot of times it changes, the protocol changes all the time, at least every two to three days, maybe.

Q. Plaquenil, is that also known as hydroxychlorquine?

A. That's correct.

Q. Now, you used the phrase "spike a temp." What was considered spiking a temperature?

A. It's one hundred and above.

Q. Were resident who had a temperature of one hundred and above suspected of having COVID in March of 2020?

A. Say that again.

Q. Sure. In March of 2020, when a resident spiked a temp, or as you said, had a temperature of a hundred degrees or higher, were they considered under suspicion of having COVID?

A. It's COVID-like symptoms.

Q. So, does that mean the resident was considered under suspicion of potentially having COVID?

A. Yes.

Q. You had mentioned before Plaquenil and Zithromax. Was Rocephin also utilized in treating residents who had COVID-like symptoms?

A. I don't remember really, but

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there were medications aside from those two, because sometimes they are not available.

Q. Zithromax is a Z-pack, right?

A. Yes.

Q. So that's anti-biotic?

A. Yes.

Q. Are you familiar with Rocephin?

A. Yes.

Q. Is that IV fluid?

A. Yes, IV or IM. You can give that IM.

Q. "IM" is intramuscular?

A. Correct.

Q. Were residents with COVID-like symptoms frequently given IV or IM similar to Rocephin?

A. I don't understand the question.

Q. Along with the other medications that you mentioned, Plaquenil and Zithromax, were residents with COVID-like symptoms also treated with medication like Rocephin?

A. Yes, but I don't remember if Rocephin was there. I really don't remember what it is.

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Q. But it would be fair to say that the residents were treated with something similar to Rocephin?

A. Yes.

Q. In March 2020, did you personally have any discussions with Lisa Peterson, your assistant director of nursing, your ADNS, with respect to preparing for the pandemic?

A. I don't remember specifically if it was Lisa Peterson, but, you know, we were instructed how to prepare for the pandemic.

Q. What instruction were you given on preparing for the pandemic?

A. Again, washing of hands, wearing masks.

Q. Were you given masks by Fulton in March 2020?

A. Yes.

Q. What sort of masks were you given?

A. The N95.

Q. Were your staff also given N95 masks?

A. Yes.

Q. Now, you mentioned in March of 2020 visitation was restricted to the facility. How was that communicated to the residents and their families?

A. I think the administrator had a robocall to all the family members about it.

Q. Did you have any involvement in preparing that robocall?

A. No.

Q. Did you have any involvement in facilitating that robocall?

A. No.

Q. Are you familiar with the number of robocalls that were made by the administration to the families?

A. No.

Q. In March of 2020, did you feel that Fulton had sufficient PPE?

A. I believe so.

Q. How do you define sufficient?

A. Well, it's not, like, you know, it's just there. You had to ask for it.

Q. How often were you given a new

N95 mask?

A. I don't remember anymore.

Q. Were you given any instructions on continued use of the N95 mask?

A. Can you rephrase that again?

Q. Sure. Were you given any instruction by anyone on extended use of the N95 mask?

A. Not really.

Q. In a typical setting, so we are talking before COVID, how long would an individual be expected to use one N95 mask?

A. Well, we never wore N95 mask before the COVID.

Q. In your previously employment history, did you ever utilize an N95 mask in any capacity?

A. No.

Q. So, COVID was the first time that you personally ever utilized an N95 mask?

A. Yes.

Q. Were you given any instruction on how to utilize an N95 mask?

A. Yes.

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Q. Who provided that instruction?

A. I don't remember anymore.

Q. Was that a formal in-service that you were given?

A. When you say "formal," do you mean we go to a classroom, and then, you know, listen to the in-service, because it was, you know, they just go to us, because, you know, we needed to stay in our unit, so they just go to us and instruct us on how to wear it.

Q. Were your given a sign-in sheet for that instruction?

A. I believe so.

Q. In March of 2020, and you just stared touching on this a little bit --

A. Say that again, you broke up.

Q. Sure. In March of 2020, were staff cohorted on their respected units?

A. Like they stayed in their own units?

Q. Yes.

A. Yes.

Q. In March of 2020, were any staff

every floated to other unit?

A. That I don't know. I don't know?

Q. Were any staff floated to 3 West in March of 2020?

A. I don't know if you call that floated, because, you know, they need to take their days off, so we have another person to replace the CNA who took the day off.

Q. Who was used to replace the individual that took the time off? Was that another staff member in the facility, or an agency staff member or something else?

A. Another staff member in the facility.

Q. Did staff members from 3 West ever cover shifts on other units?

A. That I don't know.

Q. Now, you had mentioned that residents would be monitored on every shift. We did mention the temperature getting monitored. Were any other vitals monitored?

A. The full vital signs.

Q. What did that consist of?

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A. The blood pressure, their temperature, the heart rate and respiration and also the oxygen saturation.

Q. And other than a spiked fever, what other symptoms were indicative of COVID?

A. I mean are you asking generally?

Q. Yes. In March of 2020, what other symptoms were indicative of COVID?

A. What I noticed from the residents or in general? I am not an expert in COVID.

MS. SEKHON: I will rephrase.

Q. We talked about the vitals that you are monitoring. You are monitoring the temp because a spiked temp could be considered a COVID fever or COVID-like symptom. What was the purpose of monitoring the other vitals?

A. To know if the resident is sick, or, you know, if the blood pressure is going down, or the oxygen saturation is not enough, so we can, you know, act accordingly.

Q. Was low oxygen saturation

considered a COVID symptom?

A. Yes, but not necessarily it, you know, the resident has COVID.

Q. Understood. So low oxygen saturation could mean a lot of things, correct?

A. Correct.

Q. But one of those things is potentially that the resident might contract COVID?

A. Can potentially, yes.

Q. So, the protocols that we discussed before with the chest x-ray, the EKG, the Plaquenil and Zithromax, would those protocols be implemented for a resident that had a low oxygen saturation?

A. Actually that is a good question, that I cannot answer. I don't know.

Q. To the best of your knowledge, where those protocols generally implemented only when the resident spiked a fever?

A. Just that specific instruction, yes.

Q. In March of 2020, and let's talk

specifically about 3 West, what was the protocol for a roommate if a resident displayed any of these symptoms that could have been indicative of COVID?

A. Say that again, please.

Q. In March of 2020, what was the protocol with respect to roommates of residents that were displaying COVID-like symptoms?

A. I do not get that one word that you said "roomie"?

Q. Roommate.

A. Oh, roommate. Okay. They need to stay in their rooms.

Q. Were there roommates taken out of the room and housed elsewhere if a resident was exhibiting COVID-like symptoms?

A. No.

Q. Why not?

A. I guess we don't have rooms.

Q. If there were rooms available, would you agree that the best course of infection control would be to move the roommate out of a room where a resident is

exhibiting COVID-like symptoms?

A. Are you asking my opinion?

Q. As a professional, as a registered nurse who is taking courses in infection control and received education on infection control and communicable disease, would you agree that the best course of action would be to move a resident out of that room?

A. Yes.

Q. Was there a COVID unit established at Fulton?

A. Yes.

Q. When was that established?

A. I don't remember exactly when.

Q. Do you recall if it was some time in March?

A. I don't remember. Sorry.

Q. Do you recall if the unit was established at some point in April?

A. I really don't remember when it started.

Q. Let's talk about the middle of April. Was a COVID unit present at Fulton

in the middle of April 2020?

A. I don't remember. The exact date, I really don't remember the exact date.

Q. I am not asking you now about the exact dates. I am just asking if you recall in the middle of April Fulton had a COVID unit?

A. I mean I don't want to make a mistake and say stuff, but I really don't recall when it started. Maybe, you know, we can see the document when, but I really don't recall when it started.

Q. How were you notified that there was a COVID unit at Fulton?

A. Carol Frawley usually calls us and let us know.

Q. What was the COVID unit?

A. 1 East.

Q. Was 3 West ever a COVID unit?

A. No.

Q. Who decided what unit should be designated the COVID unit?

A. I don't know.

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Q. Did you play any role in determining what unit would be made the COVID unit?

A. No.

Q. What was the policy surrounding housing residents on the COVID unit?

A. That I don't know.

Q. Where residents who were suspected of having COVID placed on to the COVID unit?

A. I don't know what the roles were, because I, you know, I was not in charge of the COVID unit.

Q. Are you familiar with where residents would be placed if they were admitted from a hospital with a COVID positive diagnosis?

A. Yes, on 1 East.

Q. Should those residents have ever been placed on other units?

A. So, you're asking my opinion?

Q. No. Regarding the policy, after the COVID unit was established at Fulton, was there a policy that COVID positive

residents should ever be put on any other unit?

A. No.

Q. So, the policy was, at that point, once the unit was established that all COVID positive residents should be placed on 1 East; is that correct?

A. Correct.

Q. As you sit here today, you are not sure what the policy was with respect to residents suspected of having COVID?

A. Not really.

Q. Do you know why residents who were COVID positive were supposed to be placed on the COVID unit as opposed to interspersed throughout the facility?

A. Yes.

Q. Why is that?

A. To so, you know, we won't spread the infection.

Q. So, is it fair to say that if COVID positive residents were interspersed throughout the facility it would put other residents at risk of contracting COVID?

A. That's correct.

Q. Would you agree with me that, that would endanger the physical welfare of the other residents at Fulton?

A. That is correct.

Q. Were staff cohorted on 1 East?

A. Yes.

Q. We talked before a little bit about how staff from other units would be used to cover shifts throughout the facility. After 1 East was designated the COVID unit, were staff from other units still used to cover shifts on 1 East?

A. That I don't know. I am not in charge of that.

Q. After 1 East was designated the COVID unit, were staff from 1 East ever utilized to cover shifts on any other unit?

A. That I don't know.

Q. Were staff from 1 East ever utilized to cover shifts on 3 West?

A. That I don't know.

Q. Were staffs from 1 East ever utilized to cover shifts on 3 West when you

were working?

A. That I don't know.

Q. If there was a staff member from 1 East that was covering a shift on your unit while you were there, would that have stuck out to you?

A. The thing is that I don't know exactly who the main staff on 1 East are. That's just the thing. I really don't take care of the staffing.

Q. So, is it possible that there were staff from 1 East used to cover shifts on 3 West?

A. I don't know.

Q. If you were aware that staff from 1 East were being used to cover shifts on 3 West, would that have been concerning to you?

A. Yes.

Q. Why would that have been concerning to you?

A. Well, because we don't want to spread the infection again.

Q. Did you ever feel that you or any

other staff at Fulton were not given sufficient PPE throughout the COVID-19 pandemic?

A. I don't know. That's a difficult question to answer, because you really don't know which one is -- when it started or you're saying "proper PPE," meaning what? The N95? We have N95 masks.

Q. My question is whether you ever felt that you did not have sufficient PPE?

A. I would think that we have enough PPE.

Q. Did you personally feel that you had sufficient PPE throughout the pandemic?

A. I mean I would think so.

Q. Did any of your staff ever complain to you that they did not feel they had sufficient PPE at point during the pandemic?

A. Sometimes they do.

Q. Which staff complained to you?

A. What did you mean, "which staff?"

Q. What are the names of the staff members who complained you?

A. That I don't know anymore.

Q. You don't remember which staff complained to you about not having enough PPE?

A. No.

Q. What were their titles?

A. My CNA's.

Q. What PPE did they indicate to you that they needed that they did not have?

A. The gowns.

Q. When did they complain to you that they didn't have sufficient gowns?

A. I don't remember anymore.

Q. Was that an on-going issue or did it resolve at some point?

A. It resolved.

Q. Was that the only PPE that staff complained to you that they did not have?

A. No.

Q. What other PPE did they complain they did not have?

A. The goggles.

Q. When did they complain to you they did not have goggles?

A. I don't remember the exact date.

Q. Did that issue resolve itself or is it ongoing?

A. It is resolved.

Q. Were there any other PPE that the staff complained that they did not have?

A. No.

Q. Just to verify. It was CNA's that were complaining to you that they did not have either the goggles or the gowns?

A. Yes.

Q. What did you do when you received those complaints?

A. Say that again. Sorry.

Q. What did you do when you received those complaints?

A. I would request for PPE.

Q. Who did you make that request to?

A. To a Carol Frawley.

Q. What was her response?

A. She would give me gowns and then eventually the goggles.

Q. Who was responsible for procuring PPE for the facility?

A. That I don't know.

Q. Let's talk -- let's get a better picture of 3 West. What type of unit is 3 West? Is it short term, long term, something else?

A. It's long term.

Q. Is it a dementia unit or anything like that?

A. Not really. It's mixed.

Q. Is it a lockdown unit?

A. No.

Q. I think you already mentioned that 3 West was never a COVID unit, correct?

A. Correct.

Q. Was any part of 3 West ever considered a COVID area?

A. No.

Q. How many beds are on 3 West?

A. 40.

Q. How many rooms total?

A. I'm sorry, yes, 40. Rooms, I have to count it because we have private rooms.

Q. Let see if we can make it easier.

How many private rooms are there?

A. Four.

Q. Are all of the remaining rooms double rooms?

A. Yes.

Q. Do any rooms house more than two residents?

A. No.

Q. As the unit manager, how many employees did you supervise on 3 West on a typical day?

A. One LPN and five CNA's.

Q. Did you have a regular staff on the 7 to 3 shift?

A. Yes.

Q. Who was normally the LPN on that shift?

A. Did you want me to name her?

Q. Yes.

A. It's Nobeltte Christie.

Q. Who were the regular CNA's on that shift?

A. Dorneval, Joaseus, Michelle, Bowe, Silien.

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Q. So just so the record is clear, I need to break that down a little bit. The first person, what was the name, Dorneval?

A. Dorneval.

Q. Can you spell that, please.

A. D-O-R-N-E-V-A-L.

Q. Do you know Dorneval's last name?

A. That is her last name.

Q. Do you know her first name?

A. I'm not sure.

Q. I think second one you named was Joazeus?

A. Joazeus.

Q. Can you spell that, please.

A. J-O-A-Z-E-U-S.

Q. That's also the CNA's last name?

A. Yes.

Q. Is that a male or a female?

A. A female.

Q. What is her first name?

A. Beatta.

Q. Can you spell that, please.

A. B-E-A-T-T-A.

Q. Then you named Michelle?

A. Yes.
Q. Is that the first name?
A. That is the last name.
Q. Is that a male of a female?
A. Female.
Q. What is her fist name?
A. Nededge.
Q. Could you spell that, please.
A. N-E-D-E-D-G-E.
Q. I think the fourth one you named was Bowe?
A. Yes, her first name is Angela.
Q. How do you spell her last name?
A. B-O-W-E.
Q. The last one you mentioned was Silien?
A. Yes.
Q. Also a last name?
A. Yes.
Q. Could you spell that please.
A. S-I-L-I-E-N.
Q. What was the first name?
A. That I don't know.
Q. So, these five were the regular

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CNA's that you worked with on the 7 to 3 shift on 3 West, correct?

A. Correct.

Q. So, it was at least one, if not more, of these five individual that complained to you that there was not sufficient PPE?

A. Yes.

Q. Was it just one person, or was it more than one person who complained to you?

A. I don't remember.

Q. As the unit manager, what were your duties and responsibilities for 3 West?

A. Oversee the residents, make -- give instructions on who to take care of for all the CNA's and communicate with the doctor if there are any issues, carry out orders.

Q. You mentioned before that there were 40 beds on the unit, correct?

A. That's correct.

Q. You did name five CNA's for a typical 7 to 3 shift?

A. Yes.

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Q. So, would the normal CNA to resident ratio on a full unit be eight residents to one CNA?

A. That's correct.

Q. Was 3 West typically a full unit?

A. Yes.

Q. So, that was a typical ratio of one to eight?

A. That's correct.

Q. Were the CNA's broken into numbered assignments for the shift?

A. They have a designated assignment, like, the room numbers.

MS. SEKHON: So, let's take a look at what has been premarked as Exhibit 3. Hopefully, it will come up in a couple of minutes.

Q. Ms. Llorente, if you could just take a look at Exhibit 3. We can go page by page, but looking at the first page, do you recognize what we are looking at here?

A. Yes.

Q. What is this document?

A. This is the CNA assignment sheet.

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Q. What does the information on here indicate?

A. The assignments of the CNA's.

Q. Is there a date of this document?

A. Yes.

Q. What is the date on it?

A. 4-22-20.

Q. Does this also indicate what unit it pertains to?

A. Yes.

Q. What unit was this?

A. 3 West.

Q. If we just go down to the middle of page. It says on the left of this chart we have what says, shift and then underneath it says day. Do you see where I am looking?

A. Yes.

Q. The next column says group. There are numbers there; 1, 2, 3, 5 and 4, correct?

A. Yes.

Q. What do those group numbers mean?

A. Those are the assignments, designated assignments, because we have a

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specific book that they are going to -- then that is the list of residents, like, for assignment one, there is, like, book one. That is where the list of the residents are.

Q. Are there specific room numbers associated with group one?

A. Yes.

Q. What are those room numbers?

A. Oh, that I don't remember.

Q. Can you give us any sort of an approximation?

A. Hold on. Assignment one is 324A, 326A, 328A, 332 -- wait. You are asking about for this particular date, right, because sometimes it changes because sometime, you know, we change the rooms, the room numbers, so I really don't know on that particular day.

Q. What is the shift normally?

A. The shift?

MS. SEKHON: Let me rephrase.

Q. What does group one normally cover?

A. It is eight residents. That

particular day, I don't know which one they covered, which one she covered.

Q. So, when you just started giving us room assignments; 324A, 326A, 328A --

A. Right.

Q. -- how did you think of those rooms?

A. Well, because those were the designated assignment for assignment one, but I stopped because sometimes we change the room numbers because, you know, of some issues or something. If it is not working with another roommate, so they change to another room. It's like that. That particular day I really don't know which one.

Q. But understanding that the designated assignment might not have been the actual assignment for this particular day, can you just tell what the designated assignment was for group one?

A. Are we talking about now or 4-22?

Q. In, April of 2020, what was the group one assignment?

A. That I don't know anymore.

Q. Where would that be listed?

A. It should be in the -- they have, you know, the paperwork, the documents, I mean the paperwork that they would sign. We are going to have to, like, check every residents signature there.

Q. So, the only place it would be documented is on the individual CNA accountability record?

A. That's correct.

Q. There was no other chart each day that was drawn indicating to the CNA's which rooms they were responsible for?

A. No.

Q. Are you familiar with the term "person under investigation" or "PUI?"

A. No, not really.

Q. What did Fulton have its first case of an individual exhibiting COVID-like symptoms?

A. When?

Q. Yes.

A. I don't remember.

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Q. Was that in March of 2020?

A. Yes.

Q. What unit was that individual housed on?

A. Oh, wait. Are you talking about the whole facility? That I don't know, again, because I was out of the facility for, like, two weeks. That was February 25th until March 9th, maybe, like, I was out.

Q. Okay. So let's talk specifically about 3 West. When did 3 West have its first resident exhibiting COVID-like symptom?

A. I don't know exactly when. I don't know when.

Q. Was it in March of 2020?

A. That's correct.

Q. Do you recall the name of that resident?

A. I don't remember who the first one was.

Q. Do you recall if it was a male or a female?

A. I don't -- we don't have many males there. A female.

Q. Did that individual have a roommate?

A. Say that again.

Q. Did that individual have a roommate?

A. Yes.

Q. What symptoms was that resident exhibiting that were COVID-like?

A. Fever.

Q. Were there any others?

A. I guess because I never had any severe symptoms, it's just a fever, and I guess, maybe, minor cough, like, on and off cough.

Q. What actions were taken with respect to that resident when she exhibited a fever and a minor on and off cough?

A. So again, you know, call the doctor and then we have that protocol.

Q. That was the protocol we discussed earlier with the chest x-ray, EKG, Zithromax, Plaquenil and IV fluids?

A. That's correct.

Q. What actions were taken with respect to her roommate?

A. I don't remember exactly, but there was a time when we moved the roommate to another room.

Q. So, understanding that you said that you don't remember exactly, if the roommate had been moved, what would have been the purpose of that?

A. Well, because we just don't want the roommate to get the infection.

Q. So, would it be fair to say that it would have been safer to move the roommate and that's why if she had been moved that was the basis for moving her?

A. Yes.

Q. Now, this female resident who was exhibiting the symptoms of the fever and the on and off cough, was she suspected of having COVID?

A. I would say so.

Q. Was she ever tested for COVID?

A. No.

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Q. Why not?

A. At that time, we were not testing for COVID, because, you know, that was a directive of the Department of Health or Governor Cuomo.

Q. Or Governor Cuomo?

A. Yes.

Q. What was your understanding of what that directive specifically said?

A. That we were not testing for COVID.

Q. Who is "we?"

A. I mean I guess, maybe, the staff members.

Q. Who told you about that directive?

A. I mean I don't remember who exactly it was, but, you know, usually the directive comes from Ms. Doyle.

Q. Did you ever discuss with anyone whether testing would be beneficial for the resident at Fulton?

A. Yes.

Q. Who did you discuss that with?

A. I guess the unit managers.

Q. Did you ever bring that concern or suggestion to Carol Frawley?

A. We never did.

Q. Why not?

A. Because we were not going to be heard.

Q. Can you elaborate on that a bit, please?

A. I guess whatever the directive is we are not allowed to question.

Q. Who told you that you were not allowed to question it?

A. No one, but -- well, no one is telling us not to question, but, you know, that is usually what happens. Like if there is a directive, that is the one that we are going to be instructed to do.

Q. Have you ever questioned the directives of Cathie Doyle since you started working at Fulton?

A. No.

Q. Why not?

A. I don't know. I guess because

nothing is going to happen, and I don't want to get yelled or screamed at.

Q. Have you been yelled or screamed at before by Ms. Doyle?

A. Yes, but I guess, maybe, because, you know, when something is not happening then, you know, she -- I guess it pertains to everyone when you get mad. You can't help but, maybe, scream or yell.

Q. Did you see Ms. Doyle or scream at other staff members at Fulton?

A. I mean is this relevant to?

Q. There might be a day when I am on the other side and I am having to answer the questions and you get to ask them, but right now I am asking the questions.

A. Yes.

Q. Were there ever situations where you saw staff members make suggestions to Ms. Doyle and as a result get yelled at or screamed at?

A. It would happen every now and then, but sometimes she would listen to suggestions, you know, like, before the

COVID.

Q. Before COVID she would listen to suggestions sometimes?

A. Yes.

Q. During COVID, did she listen to suggestions?

A. That I don't mind because we were not having meetings anymore because, you know, we can't be congregating.

Q. So, when you would see her yelling and screaming at staff, would that be in meetings with her?

A. Yes.

Q. Have you seen ever staff question her directives?

A. I mean I don't witness it, but I guess maybe it happened.

Q. Have you ever heard of staff questioning her directives?

A. Can you repeat the question?

Q. Sure. Have you ever heard about staff questioning her directives?

A. Like not directly in front of me. I really don't know.

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Q. Before, you know, when we talked about your discussions with the unit managers regarding testing, and when I asked you why you never brought it up to, I believe I said Ms. Frawley, you said you didn't think that you would be heard. What made you think that you would not be heard?

A. Because whatever the decision is, that would be it.

Q. Ms. Llorente, do you feel that the culture at Fulton was one that did not invite staff members to ever question Ms. Doyle's directives?

A. I really don't know, because I tried to just do my job there.

Q. Is it fair to say that you were afraid to question Ms. Doyle's directives?

A. Yes, and I don't know why.

Q. In, March of 2020, did you have any friends that worked in other nursing homes on Long Island?

A. No.

Q. So, everyone in the nursing home community worked at Fulton in March of 2020?

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A. Say that again. Sorry.

Q. Did everyone that you know in the nursing home community work at Fulton in March of 2020?

A. Did anyone I know work at Fulton?

Q. Did everyone you know in the nursing home community work at Fulton?

A. Well, the people at Fulton, yes.

Q. Did you know people who worked at other nursing homes?

A. No.

Q. Did you ever hear about how other nursing homes were handling the pandemic?

A. No.

Q. Were you ever made aware of the fact that other nursing homes were testing residents for COVID?

A. No.

Q. That was never brought to your attention in March of 2020?

A. Well, I don't usually talk personal with other staff members, but I would hear that some facilities would test, but I don't know who particularly it was who

was saying that.

Q. When you heard that, did it ever make you wonder why Fulton wasn't testing?

A. Yes.

Q. Did you ever address that question to anyone?

A. No, because, you know, again, Ms. Doyle would say that, you know, we're not testing because that's the directive.

Q. Did you ever look up that directive yourself?

A. No.

Q. Going back to the female resident, the first female resident on 3 West who was exhibiting COVID-like symptom. Who was notified about that residents status as being a person under suspicion of contracted COVID?

A. Who was notified?

Q. Yes.

A. Well, we call the doctor if there was somebody who would, you know, yeah.

Q. Is there a particular doctor that you would call for 3 West?

A. Yes, we have specific doctors in each unit.

Q. Who was the doctor for 3 West?

A. It's Dr. Curran and Dr. Johnson.

Q. Could you last name for Dr. Curran?

A. C-U-R-R-A-N.

Q. Was anyone else notified other than the doctors?

A. The people downstairs, you know, Carol Frawley.

Q. How was that notification made?

A. I usually call.

Q. Was anyone else notified?

A. No. I mean I don't know from Carol Frawley's side. I don't know.

Q. Is it fair to say the only notifications you made were to Carol Frawley and the doctor, either Dr. Curran or Dr. Johnson?

A. That's correct.

Q. Were staff on 3 West notified of that resident's status?

A. Yes.

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Q. Who notified the staff on 3 West?

A. If I'm there or if I'm not there, then the LPN or, you know, the nursing supervisor if there is anything going on when I'm not there.

Q. Was the resident's family notified of their status?

A. Yes, definitely.

Q. Who made that notification?

A. It's either me and/or the doctor.

Q. Was the family notified that the resident was suspected of having contracted COVID?

A. Well, not really in that sense, but, you know, I would call that family member and say that the resident has a fever. I would let them know what the plan of care is.

Q. Why weren't the family members told that the residents were suspected of having COVID?

A. We don't usually say that until there is a diagnosis there. You can't say, oh, you are suspected of this and that.

Let's say, it's not COVID, we can't do that. We're nurses. I guess, maybe, I don't know from the doctor's point of view, but we are only allowed to say the symptom. I can't say, oh, yeah, she's suspected of COVID. I can't say that.

Q. Is it fair to say that the only way you would have gotten the diagnosis would be a COVID test?

A. That's correct.

Q. And Fulton wasn't testing, correct?

A. Correct.

Q. Did you ever tell the resident's family members that they were being treated as if they had COVID?

A. Well, I did not say as if they have COVID. We have a protocol.

Q. To be clear, that protocol was instituted for residents who were exhibiting COVID-like symptoms, correct?

A. Correct.

Q. And that protocol was for residents who were suspected of having

COVID, correct?

A. That's correct. Again, I cannot say specifically that particular word, because, again, I'm not a doctor. I'm a nurse. So, I can only tell them the plan of care, the interventions that we were going to do and the symptoms. With regards to diagnosis, we cannot until it is right in front of us.

Q. Did family members ever ask you if there was coronavirus in the building?

A. They would, yes.

Q. What would you tell them?

A. I would tell them that, you know, we don't test for COVID.

Q. Did they ever ask you why you weren't testing for COVID?

A. I don't remember. I don't remember anymore if they were asking me. There was always the robocall.

Q. Do you know what information was given to the family members over those robocalls?

A. No.

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Q. Are you familiar with a resident named V.T. ?

A. Yes.

Q. Was he a resident on unit 3 West?

A. That's correct.

Q. Did there come a time when V.T. exhibited COVID-19 -like symptoms?

A. I know he had a fever.

Q. Did he also exhibit generalized weakness?

A. Yes, I mean, you know, fever comes with generalized weakness.

Q. Was V.T. suspected of having COVID-19?

A. Well, he had fever, so everyone who had fever were started with the protocol.

Q. Again, that was the protocol for residents who were under suspicion of having COVID-19, correct?

A. Correct.

Q. What did that protocol entail for ?

A. Can you rephrase that question?

Q. Sure. Do you recall the specific protocol that was put into place for V.T. ?

A. I don't exactly recall the specific protocol.

Q. Okay.

MS. SEKHON: So, let's show you what I am going to deem marked as Exhibit 8, at this time.

Q. Ms. Llorente, do you recognize what we are looking at?

A. Yes.

Q. What is this document?

A. This is a 24-hour report.

Q. Who is responsible for completing this document?

A. I check it and then I sign. It's the LPN.

Q. If we look at the first page of this document, does it indicate the unit that it pertains to?

A. That's correct.

Q. Is the 24-hour report completed

by each unit?

A. Yes.

Q. It is completed by each shift?

A. Yes.

Q. What is the date on this report for page 1?

A. March 27th of 2020.

Q. If we look at the first resident listed on the page. Who is that individual?

A. V.T. .

Q. Does it indicate what his presenting problem is?

A. Yes, increased temp and generalize weakness.

Q. Does it further indicate what protocols were put into place for him at that time?

A. No. I mean, you know, we -- the LPN wrote the interventions.

Q. What were the interventions that that were put into place?

A. IV fluids, the urine collection, the Zithromax administration and then the IV fluids.

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Q. So, as we discussed, this was the treatment that was put into place for residents that were suspected of having COVID?

A. Well, yes.

Q. Now, I am going to direct your attention to the second page. Does this indicated the unit for the 24-hour report?

A. Yes.

Q. This also, I think has the date of 3-27?

A. That's correct.

Q. If we look at the first resident on here we say the same resident's name, V.T. , right?

A. Was that March 27th too?

Q. That was the question I had for you: It is possible that this is a typo and that this was the following day?

A. That I don't know.

Q. Is that your handwriting anywhere on document?

A. Yes, I signed my name.

Q. Where is your name signed? Can

you just describe it for us?

A. On the supervisor's sig.

Q. If we go back to the first page, does your name appear there as well?

A. Maybe we made a mistake on the date.

Q. So, it is possible that the second page is referring to a different day than 3-27, correct?

A. Correct.

Q. So, looking at the second page. What were the interventions listed on the second page?

A. On the 7 to 3?

Q. Yes.

A. So, temp monitoring, Rocephin, increase fluids, encourage -- and then he still has the IV fluids.

Q. I am going to direct your attention now to the third page of this document. Does this also pertain to unit 3 West?

A. Yes.

Q. What is the date on this

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document?

A. 3-29.

Q. What is the first resident listed on this document?

A. V.T. .

Q. Does that indicate the interventions put into place on the 7 to 3?

A. Yes.

Q. What interventions are listed?

A. IV anti-biotics, increase fluids, IV.

Q. I am just going to direct your attention to the right side of the page and to the 11 to 7 shift. What is the note there for V.T. ?

A. Do you want me to read it?

Q. Yes, please:

A. "Expired 2:00 a.m. MD made aware. family made aware. DNR, DNI, DNH, awaiting for the -- I don't know. I can't read it.

Q. Does that look like it might say funeral home?

A. Yes.

Q. So, V.T. died that

night, correct?

A. Well, at 2:00 a.m.

Q. Right. Was V.T. family ever told that he was suspected of having COVID?

A. I don't remember.

Q. Did V.T. family ever ask if there was coronavirus in the building?

A. That I don't remember.

Q. Ms. Llorente, isn't it true that you personally spoke to Ms. Rosemary Rodriguez, V.T. daughter on March 27th, 2020?

A. I don't know.

Q. Did Ms. Rodriguez ask you directly if there was any coronavirus in the building?

A. Again, I don't remember what transpired in the conversation.

Q. You don't remember Ms. Rodriguez asking you if there was coronavirus in the building?

A. I just want to say it generally

that family members would ask, but again, I am not in a position to say that, yes, we have COVID in the building, because we never tested anyone for COVID. That's the reason why I am not in the responsibility or authority to say, yes, there is COVID in the building. I cannot.

Q. Did you tell her that there was no COVID in the building?

A. I mean because we were not testing. That's what I usually say to the family members. We don't test for COVID.

Q. Do you recall specifically telling her that there was no COVID in the building?

A. I don't remember what transpired in the conversation.

Q. Did you ever tell any family member that there was no COVID in Fulton?

A. Again, I don't say that kind of words. I mean it, this it was the robocall. I mean Ms. Doyle would always, you know, leave messages as robocalls.

Q. Ms. Llorente, did you tell

Ms. Rodriguez that her father probably just had a routine virus?

A. I did not say that either.

Q. You didn't say that or you don't recall saying that?

A. I do not recall what the conversation was.

Q. When V.T began to exhibit these COVID symptoms, he was treated as if he had COVID, correct?

A. I don't know how to say that, but, you know, during that time everyone who had fever were treated with the protocol.

Q. Right. Everyone who had fever were treated with the protocol?

A. Correct.

Q. There were other residents on 3 West begin actively treated as if they had COVID, correct?

A. I don't know how to answer that, but again, we have this protocol.

Q. Yes, and this is the protocol for residents who are suspected of having COVID, correct?

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A. Yes.

Q. Okay. So, V.T. gets sick. He is being treated with the protocol for residents who are suspected of having COVID. There are other residents also on 3 West being treated with the protocol as if they are COVID, as if they are suspected of having COVID, correct?

A. Yes.

Q. Did you think any of that was important to tell Ms. Rodriguez when you called her to let her know that he father had a fever?

A. Well, I don't think it is my responsibility to tell the family.

Q. Isn't it your responsibility to give the family accurate, sufficient information for them to make an informed decision as to the resident's care?

A. That's correct.

Q. Don't you think knowing that he is being treated as if he has COVID, and that there are other residents in the building being treated that way, it's

important for a family member to know in order to make an informed decision about their loved one's care?

A. That's correct.

Q. Why did you not give them that information?

A. Again, I told you. I did give the information what is in front of me. I did not lie at all. I told them what was happening, what was happening to their loved one. I told them the intervention. I told them that there is a fever.

Q. Did you tell them that those are the interventions used to treat a resident who is suspected of having COVID?

A. I don't know if I -- see, I really don't recall what transpired in the conversation, but I told each family member our protocol, what they are getting and what we are going to do.

Q. Did you tell each family that that protocol was put into place for residents who were suspected of having COVID?

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A. I don't remember saying exactly what you are saying right now. If I remember, I would really just tell you.

Q. Would you agree with me that it would be important for a family member to know in order to make an informed decision?

A. To know what?

Q. To know that their loved one is being treated as if they have COVID?

A. I mean are you asking me for my opinion?

Q. As a professional, Ms. Llorente, you are a registered nurse. You are the unit manager for 3 West. Isn't it a fact in order for a family member to make an informed decision they to have all the information that you have about that resident's status and their condition?

A. Yes.

Q. So, wouldn't it have been important for them to know that you were treating their loved as if they had COVID?

A. Again, I don't know what exactly I said or what transpired in the telephone

call, but I informed the family member what was happening to the resident.

Q. Would you agree with me that a layperson who hears that someone has a fever doesn't necessarily think that that fever means the individual has COVID?

A. That's correct.

Q. And a layperson would have not all the medical knowledge that you have regarding treatment for COVID residents, correct?

A. Say that again.

Q. Sure. Would you agree with me that a layperson does not have the medical background and the knowledge that you as an RN in a healthcare facility have regarding what treatment is being put in place for a COVID versus a non-COVID resident?

A. Yes.

Q. So, isn't it true that if all you do all is call and tell a family member about the medications that their loved one is being put on and the fact that they have a fever, that is not conveying to that

family member that their loved one might have COVID?

A. Again, what I said -- what I would tell the family member is that, you know, the resident has fever. In the case of V.T. that, you know, he has fever, and then the doctor ordered or we are going to do the protocol for the COVID symptoms.

Q. So, is it your testimony that you told them you were instituting protocol for COVID symptoms?

A. I don't remember specifically if I said the word COVID, but then, again, I would tell them, you know, what our protocol is if somebody spikes a temp.

Q. Right. The protocol for something spiking a temp versus protocol for COVID meant two completely different things to a layperson, correct?

A. Yes, that's correct.

Q. Did anyone ever direct you to not tell family members that their loved ones were being treated as if they had COVID?

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A. Can you ask that question, again, please?

Q. Sure. Did anyone ever direct you not to tell family members that their loved ones might have COVID?

A. The thing is we really did not test so, you know, the directive was we don't have COVID.

Q. Who did that directive come from?

A. From the administrator.

Q. Cathie Doyle?

A. Yes.

Q. How was that directive given you?

A. Sometimes she would announce it overhead, but, you know, we are a COVID-free facility and all that.

Q. Do you believe that Cathie Doyle intentionally did no test residents so that she could continue to say that there was no COVID in the building?

A. I don't know. I don't know.

Q. Did you have any concerns about the fact that Ms. Doyle was directing yourself and the other staff members that

because there were no COVID tests there was no COVID in the building?

A. Yes.

Q. Did you ever bring those concerns to anyone's attention?

A. Yes, I think we were talking about it and we were -- it's, like, an in formal conversation.

Q. Who was in that conversation?

A. I don't remember anymore, but.

Q. Did you have that conversation with Carol Frawley?

A. I guess at some point, yes.

Q. What was Ms. Frawley's response to you?

A. That Ms. Doyle does not want to test residents because that was the directive of the, you know, Department of Health or Governor Cuomo.

Q. Do you know if Ms. Frawley ever personally looked up that directive?

A. No, I don't know.

Q. Did you believe that, that was true?

A. That the directive, at that time, yes, because it was a crazy time and, you know, every -- almost every day their directive would change, or, you know, you would just hear it the news. It's not like it's just our facility, it's, like, the whole world. It's a pandemic.

Q. I just want to clarify something for the record. You said the directive from Cathie Doyle was we are not testing, and because we are not testing there is no COVID in the building. Were you in turn directed to relay that to family members and residents?

A. Eventually, yes, but it's not, like, relay this to, you know, to the family member. It's not like that. It was just said that we don't have COVID in here.

Q. So, Ms. Doyle instructed you to tell family members that there was no COVID in the building?

A. I don't if it was an instruction, but then I mean she was telling us that there was no COVID.

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Q. Did she ever tell you -- I'm sorry I didn't hear you?

A. I guess that was the instruction.

Q. So, the instruction from Ms. Doyle was if anyone asks, there is no COVID in the building?

A. I don't know exactly if she said that word, like, if anyone asks we have no COVID.

Q. Was that the implication?

A. Yes.

Q. Did Ms. Doyle imply that to you on more than one occasion?

A. Well, not just to me, like, you know, she calls me in the office and says those words, no. It was said on the phone through Carol Frawley or, you know, she would let us know overhead. She would announce it overhead that we have no COVID.

Q. Did you feel that this was misleading to residents' family members?

A. I don't know.

Q. You don't know if it misled family members to tell them there is no

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COVID in the building.

When you are actively treating people with COVID protocol?

A. I don't know what the exact reason was why Ms. Doyle wanted, you know, to tell us that. I have no idea. At that time, I was just taking care of the residents trying to save -- you know, just trying to save them.

Q. Ms. Llorente, would you agree with me that telling a resident's family member that there is no COVID in the building when you are actively treating people with the COVID protocol was misleading?

A. I -- seriously, I really don't know. It was a difficult time. All I did was get up and go to work and save the residents. That's what I did. I didn't think of that anymore.

Q. I understand that it was a difficult time, and really, the healthcare providers you all were heros throughout all of this, but would you agree with me that it

is not giving a family member the full picture if you're telling them that there is no COVID in the building when residents are being treated as if they have COVID?

A. The bottom line is it was really not my call, you know, to tell these family members, but what I did was I did my best to tell them what was really going on with these residents.

Q. So, it wasn't your call? It was Cathie Doyle's call, correct?

A. I mean, yes.

Q. Did you feel that that was putting you in a position where you were not giving residents' family members the full information?

A. Can you repeat that question, please?

Q. Sure. Did you feel that Cathie Doyle's directive to tell family members that there was no COVID in the building just because the facility chose not to test was putting you in the unfair position of not being able to give

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residents' families the full information?

A. Yes.

Q. Are you familiar with a resident by the name of Resident #2 ?

A. Yes.

Q. Was Resident #2 a resident on unit 3 West?

A. That's correct.

Q. Did there come a time when Resident #2 exhibited COVID symptoms?

A. He had fever.

Q. Was he treated with the COVID protocols we discussed?

A. That's correct.

Q. Did he have a roommate?

A. Yes.

Q. Was his roommate H.G ?

A. That's correct.

MS. SEKHON: I am going to show you now what I am going to deem marked as Exhibit 9. This is 31-page document.

Q. Ms. Llorente, looking at the first page of this document, is this also a 24-hour condition report?

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A. Yes.

Q. This is also for unit 3 West?

A. That's correct.

Q. What is the date on this report?

A. March 24th.

Q. If we look at the bottom of this page, who is the last resident listed?

A. It is Resident #2 .

Q. What was his room number?

A. [redacted].

Q. What was the presenting problem listed for him?

A. Increased temp/fall.

Q. That's an elevated temperature, right?

A. That's correct.

Q. What were the interventions put into place for Resident #2 on that day?

A. I don't know. It doesn't say.

Q. Under the fourth column, so to the right of where it says elevated temperature and fall, towards the bottom of the screen, does that say chest x-ray?

A. At the bottom, yeah, it says

chest x-ray, but I don't know why it was written like that.

Q. Let's go to the second page. What is the date on this report?

A. 3-25.

Q. Is that also for unit 3 West?

A. Yes.

Q. At the bottom of this page, who is the last resident noted?

A. Resident #2 .

Q. What is the presenting problem noted for him at that time?

A. Increased temperature.

Q. Does it indicate what interventions were put into place for him at that time?

A. No. It was not written there. It was not written, but on 3 to 11 it says, "Labs done this shift." And then he has IV fluids. I don't know why it was not written on the 7 to 3.

Q. Let's take a look at the next page, page 3 of this document. What is the date on this one?

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A. March 26th.

Q. Is this also for 3 West?

A. That's correct.

Q. Who is the first resident listed on this page?

A. Resident #2 .

Q. What is the presenting problem for him here?

A. Increased temperature.

Q. Does it indicate what interventions were put into place for him at that time?

A. IV fluids, yeah, just IV fluids.

Q. Going to the next page. What is the date on this page?

A. 3-27.

Q. Is that also for unit 3 West?

A. That's correct.

Q. Who is the second resident listed on this page?

A. Resident #2 .

Q. What was his presenting problem noted as?

A. It doesn't say.

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Q. Does it indicate the interventions that were put into place?

A. Yes.

Q. What interventions were put into place?

A. IV fluids, Zithromax, Ceftriaxone.

Q. At this point, is he being treated with COVID protocols?

A. That I don't know. It's a -- I don't know what happened before. I don't know.

Q. Well, just based on the interventions that are put into place, are these the COVID protocol interventions?

A. Yes.

Q. Now, I am just going to direct your attention to three pages down. What is the date on this page?

A. 3-27.

Q. That is the same date that we were just looking at, correct?

A. Okay.

Q. That's right, right? We were

just looking at 3-27?

A. Yes.

Q. So, looking at this page, this is also for 3 West, right?

A. That's correct.

Q. Who is the last resident listed on this page?

A. H.G. .

Q. What room is he in?

A. He is [redacted]

Q. It does says [redacted] on here, so that is just a typo, right?

A. That's correct.

Q. I think you said before that H.G. was Resident #2 roommate?

A. That's correct.

Q. He is listed on here. Does it indicate what his presenting problem is?

A. Complaint of pain left lower extremity.

Q. And there are no other presenting problems listed, correct?

A. That's correct.

Q. Is it fair to say that at this

point H.G. is noted as having any COVID-like symptoms?

A. Well, he is not noted to have fever.

Q. He is not noted to have generalized weakness or high respiratory rate or shortness of breath or low oxygen saturation; is that correct?

A. That's correct.

Q. Why was H.G. kept in the same room with Resident #2 ?

A. That I don't know.

Q. Would it have been safer for H.G. to be moved into a different room at that time?

A. Generally, yes, but there was no other vacant beds.

Q. That is your belief that there were no other vacant beds anywhere in the facility?

A. Yes, that's what I thought.

Q. If there was a vacant bed somewhere in the facility, should H.G. have been moved into that room?

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A. You know, in an ideal setting, yes.

MS. SEKHON: So, let's go back to Exhibit 9. I want to go down three pages from where we were looking.

Q. Can you tell us the date on this 24-hour report?

A. 3-28-20.

Q. Who is the second resident listed on this page?

A. It is Resident #2 .

Q. What are the interventions noted for Resident #2 at that time?

A. IV fluids, PO fluids encouraged, health monitoring.

Q. Does this page indicate that Resident #2 was on Azithromycin and Rocephin?

A. That's correct.

Q. Again, those are the COVID protocols that he is being treated with, correct?

A. That's correct.

MS. SEKHON: If we go down four pages -- I mean up one page.

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Q. So, is this also for 3 West?

A. That's correct.

Q. We looked at this page before. This also says 3-27, but it looks like it might have been a typo, right?

A. I guess so.

Q. Who is the second resident listed on this page?

A. H.G. .

Q. Again, that is Resident #2 roommate, correct?

A. That's correct.

Q. Is it fair to say that on this date, which seems like probably, March 28th, the following day H.G. still is not exhibiting any COVID symptoms; is that right?

A. Correct.

Q. So lets's go down two pages. What is the date on this page?

A. 3-29.

Q. Again, that is for 3 West?

A. That's correct.

Q. Who is the second resident listed

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here?

A. It's H.G. .

Q. What is the presenting problem for H.G. now?

A. Left leg pain and elevated temperature.

Q. What interventions are put into place for him now?

A. Chest x-ray and Zithromax.

Q. H.G. is being treated with the COVID protocol as well, correct?

A. That's correct.

Q. Let go down three pages. The date on this 24-hour report is also March 29th, right?

A. That's correct.

Q. It is also for unit 3 West?

A. Yes.

Q. Who is the last resident noted on this page?

A. Resident #2 .

Q. Does this also indicate that he is still being treated with the COVID protocol?

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A. That's correct.

Q. I am going to direct your attention to the 11 to 7 entry for Resident #2 . Could you please read that?

A. "Resident found unresponsive this a.m. at [redacted] [redacted]. Called 911. CPR initiated. Resident pronounced MD made aware. Family notified. Pronounced by -- something.

Q. Paramedic?

A. Right.

Q. So, Resident #2 passed away on [redacted], correct?

A. That's correct. No, [redacted].

Q. Okay. So, [redacted], [redacted]. Overnight between [redacted] and [redacted], he passed away after exhibiting COVID-like symptoms for several days, correct?

A. That's correct.

Q. Just hours before his roommate who, thus far, had not exhibited any symptoms is now exhibiting COVID symptoms, correct?

A. Correct.

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Q. Did keeping H.G. in the room with Resident #2 for several days while Resident #2 was exhibiting COVID symptoms put him at risk for contracting COVID?

A. See, the thing is that, you know, everyone was -- I think everyone did what they needed to do best. I don't know why he was not transferred to another room.

Q. But, you would agree with me that it would have been safer for him to have been transferred when Resident #2 began exhibiting symptoms?

A. Yes, if there were open rooms.

Q. Understood. If it was possible, it would have been safe for him to be moved?

A. Yes.

Q. Did keeping him in that room put him at further exposure to COVID?

A. I really don't know. It may be, yes. It may be no. We don't know what it was, then, like, you know, the COVID, if it was airborne, we really don't know. I mean everyone did not know what was going on.

Even Dr. Fauci did not know what

was really going on and how to go about this. I guess maybe if we have enough rooms, we would have transferred these residents who were, you know, infected with, you know, with fever. We really don't know.

Q. Ms. Llorente, if you have a resident who has the flu and they have a roommate, does keeping the roommate in the room with them put them at continued exposure and potential for contracting the flu?

A. Yes.

Q. So, understanding that COVID-19 is a new strand and understanding that there is still, even today, a lot that we are learning about it --

A. That's correct.

Q. -- wouldn't you agree that continued exposure to a resident exhibiting COVID symptoms puts a roommate at risk of potentially contracting COVID?

A. That's correct.

Q. And we did know that in March, correct?

A. I don't know if we fully knew about it in March, because it just started in March.

Q. Understanding that it had started -- well, for New York it became a problem in March, but it had been a problem worldwide from December, right?

A. Yes.

Q. It was problem in the U.S. since January, right?

A. I don't know. I don't listen to the news, so I don't know when it really started here in the U.S.

Q. Granted that we were still learning a lot about it in March, knowing everything we know about all other coronavirus and communicable diseases, isn't it fair to say that continued exposure to a resident exhibiting symptoms of COVID-19 puts the exposed individual at risk and a higher risk of contracting COVID?

A. I don't understand your question. I want to say to you yes, but what would you have done if you were in that situation

where there are no rooms. Again, if there were at least empty rooms then we would have, you know, transferred, I guess, but at that particular moment or time we really don't know what was going on. We don't know what it really was.

Q. So, setting aside COVID, what is the policy at Fulton for keeping a resident that you can't provide safe for?

A. Can you rephrase that question? That's keeping the resident if you cannot -- if we cannot provide safe care?

Q. What is the policy at Fulton if there is a resident that you cannot provide safe and adequate care for?

A. Then we transfer the resident to the hospital.

Q. Were any residents ever transferred to the hospital from 3 West during the course of the pandemic?

A. I believe there was.

Q. How many?

A. That I don't know.

Q. Was there ever a discussion when

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there was resident exhibiting COVID-like symptoms and a roommate who is, thus far, asymptotic about transferring one of those individuals to another facility?

A. No.

Q. Going back to Exhibit 9. Going to the next page --

A. Yes.

Q. Who is the second resident listed on that?

A. H.G. , [redacted].

Q. What is his presenting problem noted as?

A. Elevated temp, monitoring, left lower extremity pain Azithromycin.

Q. So, it is fair to say that at this point on March 30th, H.G. is being treated with COVID protocols, correct?

A. That's correct.

MS. SEKHON: I want to skip ahead three pages. Just up one page. Sorry.

Q. What is the date of this document?

A. 3-30.

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Q. That is the date that we were just looking at, right?

A. I don't remember. I'm sorry.

Q. That's okay. Let's go back up and you can see it.

A. Yes, 3-30.

Q. This is a continuation of March 30th, right?

A. Yes.

Q. Again. This is all for 3 West, right?

A. Correct.

Q. Who is the second resident noted on this page?

A. Resident #4 .

Q. What is the room number listed there?

A. [redacted] .

Q. That was where Resident #2 was located before, correct?

A. That's correct.

Q. So, new he is roommates with H.G. , yes?

A. That's correct.

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Q. What is his presenting problem noted here as?

A. In-house transfer.

Q. So, no presenting problem is documented, correct?

A. That's correct.

Q. Why was he put into a room with an individual who was being treated for COVID?

A. That I don't know. I don't take care of the transfers, the room transfers. We don't take care of that.

Q. Who is responsible?

A. I guess it's Carol Frawley and Cathie Doyle and admissions, maybe.

Q. Did you express any concerns to anyone about the fact that a seemingly asymptomatic resident was now being placed into a room with an individual being treated with COVID protocol?

A. Yes.

Q. What were your concerns about that?

A. Well, objectively, you can't put

another resident there who has -- whose roommate is sick.

Q. Is that because it puts them at risk of contracting the same illness?

A. That's correct.

Q. Did you bring those concerns to anyone's attention?

A. The thing is that I would say something about it, but it's, like, nobody listens.

Q. Who would you speak to about it that wouldn't listen?

A. The bosses downstairs. I mean that was their decision.

Q. By "bosses," are you referring to Carol Frawley and Cathie Doyle?

A. That's correct.

Q. What did they say to you when you brought this concern to their attention?

A. I don't remember anymore, but I don't usually talk to Cathie Doyle about it.

Q. Would you usually talk to Carol Frawley?

A. Yes, but I don't know if in this

instance if I specifically talked to Carol Frawley about it.

Q. Because it might have been somebody else that you talked to, or because you're not sure you spoke to anyone?

A. I know spoke to somebody, but I don't know specifically who it was. It was a crazy time before.

Q. If it wasn't Carol Frawley and it wasn't Cathie Doyle, could it have been anyone else?

A. It can be Lisa Peterson or, you know, some of my colleagues there just getting an idea of what is really going on.

MS. SEKHON: Going back to Exhibit 9. We are going to skip ahead.

Q. I am going to direct your attention to page 29 of this packet. What is the date on this?

A. 4-7-20.

Q. And this is also for 3 West, correct?

A. That's correct.

Q. So, this is a week after the last

report that we were just looking at. We were just looking at March 30th, right, so about a week later?

A. That's correct.

Q. Who is the last person on this page?

A. It's Resident #4 .

Q. What is the presenting problem noted for him now?

A. Increased temperature.

Q. What are the interventions that are put into place for him now?

A. Tylenol was given, fluids were encouraged. Zithromax, fiber mycin, labs, chest x-ray, urine collection.

Q. So, is it fair to say that now, a week later, after he was not exhibiting any symptoms was housed with a resident showing COVID symptoms, Resident #4 now also is being treated with COVID protocols?

A. That's correct.

Q. I am going to direct your attention to the last page of this document. What is the date on this page?

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A. 4-7-20.

Q. This is the same date that we were just looking at for Resident #4 , correct?

A. Correct.

Q. The unit also is 3 West?

A. Yes.

Q. Who is the last resident noted here?

A. H.G. [redacted] .

Q. What is the presenting problem noted for him?

A. Temperature monitoring.

Q. I am going to direct your attention to the last column, the 11 to 7 shift. Could you please read that?

A. "Expired. Resident noted absent of vital signs at 11:30 p.m. MD aware. Family notified."

Q. The same day that his roommates starts exhibiting COVID-19 symptoms, H.G. dies after being treated for COVID-19, correct?

A. Correct.

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Q. Ms. Llorente, was it safe to keep H.G. in a room with Resident #2 when he was exhibiting COVID-19 symptoms?

A. I guess, no.

Q. Was it safe to move Resident #4 into the room with H.G. when H.G. was exhibiting COVID-19 symptoms?

A. No.

Q. Would you agree with me that this is not proper infection control?

A. Yes.

Q. Are you familiar with the term neglect?

A. Yes.

Q. Have you received in-services at Fulton on abuse, neglect and mistreatment?

A. That's correct.

Q. And you have been given definitions of all of these things?

A. Yes.

Q. Would you agree with me that neglect is failure to render timely, consist, safe, adequate and appropriate

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services, treatment and/or care to a resident?

A. That is correct.

Q. Ms. Llorente, would you agree with me that keeping H.G. in the room with Resident #2 was neglecting H.G. ?

A. Again, I don't know how to answer that, but I did the best I can. I took care of these residents, because if there was enough rooms to transfer all these residents, then we would have -- I guess they would have done it. I don't know what their plan was. We were just -- we were just -- we were just taking care of these residents upon directive.

Q. Ms. Llorente, you did acknowledge that it was not safe to keep H.G. in the room with Resident #2 . Would you agree then that the facility, as a whole, Fulton, reflect neglected H.G. by keeping him in the same room with Resident #2 ?

A. I don't how to answer that.

MS. SEKHON: Well, I will rephrase.

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Q. Would you agree that keeping him in there, keeping him that room failed to provide safe services?

A. Again, we -- the thing is that we really don't what was exactly going on because there was no testing and all that. I mean if there was, I guess an opportunity to transfer the resident to another room, then it would have been better.

Q. Would you agree with me that putting Resident #4 into the room with H.G. after H.G. was already exhibiting COVID-19 symptoms failed to provide safe services to Resident #4 ?

A. I guess you can say that. I mean I don't know what their plan was, you know, he was transferred to Room [redacted].

Q. You had no control over that room transfer, correct?

A. No.

Q. Where there any precautions put into place on the unit with respect to residents, any transmission based precautions?

A. Yes, like, you know, wearing the gowns, washing hands all the time in between patients, wearing masks.

Q. Are those considered contact precautions?

A. Yes.

Q. Did there come a time when COVID positive residents were admitted from hospitals directly onto unit 3 West?

A. No, I don't think so. I don't remember.

MS. SEKHON: Let's take a look at Exhibit 4. This is a premarked exhibit, a two-page document.

Q. Ms. Llorente, do you recognize this document?

A. Yes.

Q. Have you seen this type of document before?

A. Yes.

Q. What is this exactly?

A. Is it a daily census sheet.

Q. Does this indicate at the top the census for each unit broken down by male and

females residents?

A. Yes.

Q. And then it also indicates the total census for the facility?

A. Yes.

Q. Going to the next box where it says admissions and readmissions --

A. Yes.

Q. -- does that indicate for us the names of individuals who were admitted or readmitted to Fulton that day?

A. That's correct.

Q. Does it also have their room numbers next to it?

A. That's correct.

Q. Does it also have their admitting diagnosis?

A. Yes.

MR. SEKHON: If we could just scroll up to the top, again. I'm sorry.

Q. If you could just tell me the date on this document?

A. April 17th.

Q. How many residents were admitted

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on April 17th?

A. Three.

Q. What units were they placed on?

A. [redacted].

Q. What was the diagnosis for all these of these residents?

A. COVID-19.

Q. So, all three of these individuals were admitted to Fulton positive for COVID-19, correct?

A. I don't know if they were still positive for COVID-19, or that was the previous diagnosis.

Q. Does this document indicated that they are still positive for COVID-19?

A. I mean I really don't know if this is the current diagnosis that they have when they are admitted, or this was the status-post diagnosis. We can always check the other documents; if you have.

MS. SEKHON: Sure. We will do that in a minute. Let's look at the second page of this before we move on.

Q. What is the date on this page?

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A. 4-21.

MS. SEKHON: Actually before we go, can we go back to the first page. I'm sorry.

Q. What were the names of the two residents that were admitted to your unit?

A. Resident #5 and Resident #6 .

MS. SEKHON: Now let's go to the second page.

Q. You already said the date on this was 4-21. How many residents were admitted that day?

A. Three.

Q. What units were these three residents on?

A. [redacted], [redacted] and [redacted].

Q. [redacted] and [redacted], are those on 3 West?

A. That's correct.

Q. What were the names of those two residents admitted to your unit?

A. Resident #7 and Resident #8 .

Q. What was the diagnosis for those

two residents?

A. It said COVID-19.

MS. SEKHON: Let's go to Exhibit 5. This is a premarked exhibit as well. For the record, it is a 32-page document.

Q. There are additional 24-hour reports, right?

A. That's correct.

Q. Looking at the first page, does that indicate what unit this pertains to?

A. Yes.

Q. What unit is that?

A. 3 West.

Q. What is the date on this?

A. 4-17-20.

Q. It looks like there is only one resident listed on this page. What is his name?

A. Resident #5 .

Q. Do the notes under the 7 to 3 over here indicate Resident #5 diagnosis?

A. Yes, COVID-19, seizures, glaucoma. This is supposed to be on the 3

to 11, not 7 to 3.

MS. SEKHON: Thank you for clarifying that.

Q. Does this indicate that Resident #5 is still positive for COVID-19?

A. Again, yes and no. I mean if you are going to present a positive COVID test, then I will say yes to you?

Q. Well, looking at the record that we reviewed, Ms. Llorente, he came in from the hospital with a diagnosis of COVID-19, right?

A. That's correct.

Q. Now, looking at the 24-hour report, he is listed as having a diagnosis of COVID-19, correct?

A. Correct.

Q. So, the documents that we have looked at indicate that Resident #5 was positive for COVID-19, correct?

A. Again, I did not see the records of Resident #5 . I did not admit Resident #5 . I can only say to you if he is positive for COVID if I see the exact results of the test

when he was admitted. I mean it is easy to say, yes, because it said COVID-19 in here, but some people can make a mistake. It can be, like, status-post COVID-19.

Q. Did that say status post?

A. There is nothing there that is written, but I did not write this. This is not my handwriting so I really don't know.

Q. Understanding that this isn't your handwriting --

A. It's COVID-19, so I really don't know. I mean you're asking me -- I just wanted to give you the right -- the answer I feel like is what's in front of me.

Q. Understanding that you did not write out this page, would you agree with me that as an employee at Fulton you have an obligation to make accurate entries on the 24-hour report?

A. That's correct.

Q. Would you agree with me that you relay on the information on 24-hour reports given to you in order to continue treatment of the residents on your unit?

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A. That's correct.

Q. So, again, looking at this document, which you have a duty, the employees of Fulton have a duty to make accurate entries on, and upon which you rely on as a unit managers, does this indicate that Resident #5 was positive for COVID-19?

A. Again, yes, but, you know, we make mistakes too.

MS. SEKHON: That's fine. We will keep going and then maybe it will clarify things. Let's go to the second page.

Q. What is the date on this document?

A. 4-18.

Q. And the unit?

A. 3 West.

Q. Who is the first resident listed on here?

A. Resident #6 ?

Q. What is his presenting problem listed as?

A. It said COVID-19, AFIB, CAD,

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AICB, hypertension.
Q. Does this indicate that Resident #6 was positive for COVID-19 and housed on 3 West?
A. I don't know.
Q. You don't know what this indicates?
A. No, I don't know if that was, again, status-post COVID-19. I mean it would be easier if the paperwork is right in front of me and I can just check it.
Q. Well, if the resident is status-post, that would be indicated in a way, correct?
A. That would be indicated in a way, but sometime we just put in -- staff would just put in the diagnosis in there which was already a status-post. Let's say, a UTI. They just put UTI there, but the resident has no more UTI.
Q. All right. You would agree with me that looking at this page, there is nothing to indicate status post?
A. Again, I agree.

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MS. SEKHON: Going to the third page.

Q. The date on this one is April 19th; is that right?

A. That is correct.

Q. And also for 3 West?

A. That's correct.

Q. Looking at the second resident on here, who is that?

A. Resident #5 .

Q. What is listed under presenting problem?

A. It says transfer COVID-19.

Q. This also does not indicate status post, correct?

A. That's correct.

MS. SEKHON: If we go to the next page.

Q. It looks like the same date, April 19th; is that right?

A. That's correct.

Q. Who is the first resident listed?

A. Resident #6 [redacted].

Q. What is his presenting problem?

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A. COVID-19, Afib, CD, hypertension.

Q. Again, that doesn't indicate status-post COVID-19, correct? It just says COVID-19?

A. Yes, that's correct.

Q. Looking at the next page, what is the date on this one?

A. 4-21-20.

Q. Again, this is for [redacted], right?

A. Correct.

Q. Who is the first resident listed here?

A. Resident #5 .

Q. What is listed as his present problem?

A. New admit COVID-19.

Q. There is no indication that, that was status-post COVID-19 on here; is that right?

A. Correct.

Q. The next resident listed on here, what is that individual's name?

A. Resident #6 , [redacted].

Q. The presenting problem for him?

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A. New admit COVID-19.

Q. Again, there is no indication that was status-post COVID-19, right?

A. That is correct.

MS. SEKHON: Skipping the next page, but going on to the next one after that.

Q. What is the date on this document?

A. 4-21.

Q. Who is the second resident listed here?

A. Resident #7 .

Q. What is his presented problem noted as?

A. New admit COVID-19, hyperlipasemia.

Q. Does that indicate status-post COVID-19?

A. No.

Q. Who signed under the supervisor's signature for Resident #7 ?

A. This is my handwriting.

Q. Do you recall writing this note

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for Resident #7 ?

A. Upon reading it, yes.

Q. Does this refresh your recollection as to whether Resident #7 was COVID-19 positive when he was placed on your unit?

A. Yes.

Q. Was he COVID-19 positive?

A. I believe so, because I put on isolation precaution.

Q. What did that entail?

A. Can you repeat that question?

Q. Sure. What were the isolation precautions that were implemented for Resident #7 ?

A. That he is not allowed to leave the room. That he needed to wear PPE, hand washing before and after.

Q. Was Resident #7 given a one-to-one CNA?

A. No.

Q. Were any residents on 3 West given a one-to-one CNA during the COVID pandemic?

A. No.

Q. So, is it fair to say then that the CNA was caring for Resident #7 and was caring for other individuals on 3 West?

A. Say that, again, your question, please?

Q. Sure. Would you agree with me then that the CNA who was providing care to Resident #7 was providing care to other residents on 3 West as well?

A. That's correct.

Q. Was the CNA providing care to Resident #7 also providing care to non-COVID residents?

A. That's correct.

Q. Is that proper infection control?

A. I mean the CNA should be wearing the proper PPE when taking care of Resident #7 .

Q. Were you aware of that DOH's guidance requiring that facilities implement separate staffing teams so that CNA's caring for COVID residents were not caring for non-COVID residents and vise versa?

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A. Yes.

Q. Did you have any concerns about the fact that CNA's who were caring for Resident #7 were also caring for non-COVID residents?

A. Yes.

Q. What were your concerns?

A. That these residents should be in one unit.

Q. That the COVID positive residents should be in one unit?

A. That's correct.

Q. In fact, was the COVID unit 1 East, wasn't that already established at this point?

A. I don't know really when it was established.

Q. Did you ever bring your concerns to anyone's attention that these residents were COVID positive should not have been on your unit?

A. Yes, and we were talking again about it.

Q. Who is "we?"

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A. My staff there.

Q. Who did you bring your concerns to?

A. Actually, they knew about it. They knew about it that we were concerned. That's why -- I don't remember what it was, but I wasn't sure when it happened, but I believe Ms. Doyle knew about it and we were called downstairs.

Q. When you say "we were called downstairs," who is "we?"

A. My whole staff.

Q. So, Ms. Doyle called your whole staff downstairs?

A. Yeah, but it was I think it was almost 3:00 so, it was not everyone anymore.

Q. When were you called downstairs?

A. I don't know when it was.

Q. Did you meet with Ms. Doyle when you were called downstairs?

A. Yes.

Q. What did she say to you when she called the you and your staff downstairs?

A. I don't remember what transpired

anymore, because she was just yelling.

Q. What was she yelling about?

A. Like why we were complaining, you know, that we have -- we have admissions.

Q. So, she had heard that you and your staff were complaining about having COVID positive admissions on your unit?

A. Correct.

Q. She was yelling at you and your staff for voicing those complaints?

A. Yes.

Q. Did she at all seem concerned about the fact that this was unsafe for the non-COVID residents on 3 West?

A. I don't know. I don't know.

Q. Did she express to you at all whether this was safe for the non-COVID residents on 3 West?

A. Actually, I don't remember anymore what transpired because I get -- I don't like being yelled at, and I really don't know what happened that day what she was talking about.

Q. Did that incident have any effect

on you being comfortable bringing your concerns to the administration?

A. What exactly is your question? Like what exactly are you talking about?

Q. Sure. That incident where you and your staff were brought down and you were yelled at for complaining about having a COVID and non-COVID residents mixed on one unit, did that incident of you and your staff getting yelled at have any effect on whether you felt comfortable voicing your concerns regarding resident safety to administration?

A. Yes.

Q. Did it make you less likely to voice your concerns to the administration?

A. Yes.

MS. SEKHON: Going back to Exhibit 5. I want to go to the next page.

Q. Ms. Llorente, what is the date on this document?

A. 4-21 or 4-22.

Q. Who is the first resident or the

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only resident listed on this page?

A. Resident #8 .

Q. What is his presenting problem listed as?

A. COVID-19.

Q. Is that a plus sign after it?

A. Correct.

Q. So, for COVID-19 positive, correct?

A. Yes.

MS. SEKHON: I am going to the next page.

Q. What date is on this?

A. 4-22.

Q. This is, again, for 3 West, right?

A. Correct.

Q. Who is the first resident listed on here?

A. Resident #8 .

Q. And under presenting problem, does it, again, say COVID-19?

A. That's correct.

Q. Now, this time does it also say

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underneath that, it might be a little difficult to read, but does it also say isolation precautions?

A. That's correct.

Q. So, would that indicate that Resident #8 was COVID-19 positive when he was on your unit?

A. I mean it can be. It cannot be, because, you know, with the new admits, we put them on quarentine just to make sure even if the negative is COVID.

Q. But you would agree with me the documents that we have looked at said COVID-19 positive and this also, again, says COVID-19 isolation precautions, right?

A. Correct.

Q. Now, looking at Resident #6 , the second resident listed here, does this also now say isolation precautions?

A. That's correct.

Q. And it also has COVID-19 listed for him as well, right?

A. Correct.

Q. Going to the next page. The

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first resident listed here is Resident #7 ; is that right?

A. Correct.

Q. At this time now we do see "S/P." Does that stand for status post?

A. Correct.

Q. So, it says status post, new admit COVID-19, right?

A. Correct.

Q. It doesn't say status-post COVID-19 here, right?

A. Correct.

Q. And for him also it is listed isolation precautions, right?

A. That's correct.

Q. The second resident on this page we have listed as Resident #5 ?

A. Correct.

Q. This also says status-post new admit, right?

A. Correct.

Q. And underneath that it just says COVID-19, correct?

A. Correct.

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Q. It also indicates isolation precautions?

A. Yes.

Q. Who is the supervisor who signed off on the 7 to 3 on this page?

A. It's me.

MS. SEKHON: Going back up to the page before this.

Q. The one we were just looking at with Resident #8 and Resident #6 , for both of those residents it also says status-post, new admit, right?

A. That's correct.

Q. And it does not indicate status-post COVID-19, correct?

A. That's correct.

Q. Who is the supervisor who signed off on the 7 to 3 here?

A. It's me.

Q. Does this reflect your recollection as to the fact that you had four COVID positive residents housed on your unit in April 2020?

A. It is possible.

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Q. Were the CNA's caring for those residents also providing care to residents who were non-COVID?

A. Correct.

Q. Did you ever bring those concerns --

MS. SEKHON: Withdrawn.

Q. Did you have concerns about the fact that CNA's were caring for COVID positive resident and non-COVID residents?

A. Yes.

Q. Did you ever bring those concerns to anyone's attention?

A. That was already when we got yelled at.

Q. Okay.

MS. SEKHON: We have been going for a long time and I have not yet given you a bathroom break even. I apologize. I think let's take a half hour break; if that is okay with everyone. Let's get something to eat. We will reconvene at 2:15.

THE WITNESS: Okay.

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(A recess was taken.)

MS. SEKHON: We are back on the record. The time is now 2:17 p.m. We did take an approximate half hour break.

At this point, we did do a rollcall off the record to make sure that everyone is back online.

Auditor Investigator Mary Gail Kowtna, Special Assistant Attorney General Ben Smith and Investigator John Tarpey are all here.

Of course, Ms. Llorente, as the witness, the most important person I do see you and can see that you are on.

As I said before, if you have any trouble hearing me, please let me know. I did turn on my space heater, so I don't know if that might cause a little bit of interference, so just let me know.

THE WITNESS: I'm good.

EXAMINATION BY

MS. SEKHON:

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MS. SEKHON: I want to just start by going back to Exhibit 5. If we could just go to the fifth from the last page, which will end up being page 28.

Q. Ms. Llorente, just looking at page 28 of Exhibit 5. Is this also as we were going over before another 24-hour report for unit 3 West?

A. Yes.

Q. What is the date on this report?

A. 4-30-20.

Q. Does that also say Thursday underneath that?

A. Yes.

Q. Just going to the last resident on this page. Could you tell us who that is?

A. Resident #5 [redacted].

Q. What was his presenting problem noted as?

A. Status-post, new admit COVID-19.

Q. Under that 7 to 3 shift, who was the supervisor who signed?

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A. It's me.

Q. Could you read the notes for Resident #5 for that day?

A. "Alert and responsive. Status-post new admit adjusting. No shortness of breath. No respiratory distress. Safety maintained."

Q. So, does this also suggest that Resident #5 was COVID-19 positive?

A. Again, he can be or he can be status-post.

Q. So, looking at the presenting problem we do see status-post, new admit. There is no status-post in front of COVID-19, correct?

A. That's correct.

Q. The last line that you read in here "safety maintained." What does that mean?

A. Meaning that, you know, we are providing -- it is a general term, like, safety maintain, like, free of falls.

Q. The resident who is right above it. I believe that name is Resident #9 ?

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A. That's correct.

Q. Does it say safety maintained in her notes?

A. No.

MS. SEKHON: Going to the next page.

Q. The date on this is also April 30th, right?

A. That's correct.

Q. Also for 3 West?

A. That's correct.

Q. Who is the first resident listed on here?

A. Resident #7 .

Q. What was his presenting problem?

A. COVID-19.

Q. That does not say status-post COVID-19, correct?

A. That's correct.

Q. It does, however, say status-post new admit, right?

A. That's correct.

Q. The notes for him, does that also indicate safety maintained?

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A. That's correct.

Q. Going down to the second resident listed here. What is his name?

A. Resident #6 .

Q. And his presenting problem?

A. COVID-19.

Q. Underneath that, does it say status-post, new admit?

A. That's correct.

Q. This also does not indicate status-post COVID-19, right?

A. Correct.

Q. And in the notes for Resident #6 , does it also indicate safety maintained?

A. That's correct.

Q. Looking at the last resident on this list, I think it say Resident #10 ?

A. Resident #10 .

Q. That resident's presenting problem does not indicate COVID, right?

A. That's correct.

Q. We do not see safety maintained in the notes for that resident, correct?

A. That's correct.

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Q. So, far we have only seen safety maintained in the notes for the residents whose diagnoses also indicate COVID, right?

A. That's correct.

MS. SEKHON: And going to the next page.

Q. The date on this is also April 30th, correct?

A. That's correct.

Q. This is, again, for unit 3 West?

A. That's correct.

Q. Who is the first resident listed on here?

A. Resident #8 .

Q. What does his presenting problem indicate?

A. COVID-19.

Q. It does not say status-post COIVD-19, correct?

A. That's correct.

Q. And in the notes for Resident #8 , does it also indicate safety maintained?

A. That's correct.

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Q. If we look at the last resident on this page, Resident #11 , her presenting problems do not indicate COVID; is that right?

A. That's correct.

Q. And we do not see safety maintained in the notes for her, correct?

A. Correct.

Q. Could you clarify, again, what does "safety maintained" mean in the instance of these four residents?

A. The thing is that I did not write those notes, so I would not know what it would mean to the writer, but when you say "safety maintained," it would just mean, you know, generally that the residents were made safe.

Q. So, these notes were written by the LPN that day; is that right?

A. That's correct.

Q. But they were signed off on by you?

A. That's correct.

Q. If you had any questions about

what something meant, would you have asked the LPN about that?

A. That's correct.

Q. Did you have any questions about the fact that safety maintained is only noted for the resident who are being treated as COVID?

A. Not really. It never entered my mind on that particular day.

MS. SEKHON: Back to Exhibit 5, the second to last page.

Q. What is the date on this?

A. 5-1-20.

Q. This is also for unit 3 West, right?

A. Correct.

Q. This indicates May 1st was a Friday; is that right?

A. That's correct.

Q. The first resident listed on this page, is that Resident #6 ?

A. That's correct.

Q. What is the presenting problem listed as?

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A. It says transferred to 1 East.

Q. That is the COVID unit, correct?

A. That's correct.

Q. The second resident on here who is listed, is that Resident #8 ?

A. That's correct.

Q. I am going to draw your attention to the notes under the 3 to 11 section for Resident #8 . Could you please read that?

A. "Resident transferred to 1 East."

Q. Does it say that for Resident #6 or Resident #8 ?

A. For Resident #6 and Resident #8 .

Q. For Resident #8 , does it indicate where he was transferred?

A. No, it did not indicate.

Q. Do you recall where he was transferred?

A. I know it was on 1 East.

Q. Were there other transfers off of 3 West on this day?

A. That I don't know.

Q. Do you recall if Resident #7 and

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Resident #5 were also transfer off of 3 West on that day?

A. That I don't know.

Q. I am going to, at this time, draw your attention to what has been premarked as Exhibit 6.

Ms. Llorente, Have you ever seen this sort of record before?

A. No.

Q. If we look at the top of this, it indicates that this is a document from Fulton Commons Care Center; is that right?

A. That's correct.

Q. And beneath that it indicates patient activity log. Am I reading that right?

A. Yes.

Q. Underneath that, does it look like there is a day, 05-01-2020?

A. That's correct.

Q. As we look at this, and we can go down on the left hand side it says date and time. There is also there what looks like the date of May 1st of 2020; is that right?

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A. That's correct.

Q. Under the second section, which states activity, we have names of resident; is that right?

A. That's correct.

Q. Underneath that they all say bed transfer to and there is a room number and a unit number, right?

A. That's correct.

Q. So, if we go the third resident listed here, we Resident# 8 ; is that correct?

A. That's correct.

Q. It has the date of May 1st. It has the bed transfer to Room 1 East [redacted]; is that right?

A. That's correct.

Q. And then in the 24-hour report we also saw in there that Resident #8 was transferred to -- well, that he was transferred to that day, and your recollection is that he was moved to 1 East, correct?

A. Yes, the Resident #8 , right, yes.

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Q. So, if we look at the resident underneath him we see Resident #7 ?

A. That's correct.

Q. The third resident that we identified that was on 3 West, correct?

A. That's correct.

Q. And for Resident #7, it also has a date of May 1st, 2020. It says bed transfer to Room 1 East-[redacted]. Did I read that correctly?

A. That's correct.

Q. Does this record indicate that Resident #7 was also transferred on that day to 1 East?

A. Maybe, I don't know.

Q. I am just asking whether this document appears to indicate that?

A. This document, I don't know this document. This is the first time I have seen this document.

Q. But reading the documents together, is that what it seems to say?

A. Yes.

Q. If we scroll downs toward the

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bottom of the page. So, the third resident from the bottom we see Resident #5 , who was also a resident on 3 West, correct?

A. That's correct.

Q. And underneath we also see 5-1-2020 bed transfer to Room 1 East-[redacted]; is that right?

A. Correct.

Q. Does this record also seem to suggest that Resident #5 was moved that day from 3 West on to 1 East?

A. Correct.

Q. Again, 1 East is the COVID unit, correct?

A. That's correct.

Q. So, on May 1st, according to the document we have looked at, it appears that there were four resident, the same four residents that came in admitted from the hospital with a diagnosis of COVID-19, those four residents were moved to 1 East the COVID unit on May 1st; is that right?

A. Yes.

Q. Does that refresh your

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recollection as to whether these four residents were positive for COVID-19 while they were on 3 West?

A. Yes.

Q. In fact, they were positive for COVID-19, correct?

A. Yes.

Q. Ms. Llorente, are you familiar with the number of room transfers that occurred on May 1st, 2020?

A. No. If you are asking right now, no, sorry.

Q. You don't recall several room transfers that occurred that day?

A. No.

Q. If we look at Exhibit 6, and we can go down the list together. We can count them; Resident #12 , Resident #13 , Resident #8 , Resident #7 , Resident #14 , Resident #15 , Resident #16 , Resident #17 Resident #18 , Resident #19 , Resident #20 Resident #5 , Resident #21 , Resident #22 , Resident #23 , Resident #24 , Resident #25 and

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Resident #26 . That is 18 room transfers that according to this document occurred on one day, May 1st, 2020. Does that seem like an odd number of room transfers to occur on a single day?

A. Yes.

Q. Does that seem abnormally high?

A. Yes.

Q. Do you recall a day when there was an abnormally high number of room transfers?

A. Wait. I don't recall the exact day.

Q. I am not asking if you recall the actual date. I am just asking if you recall a time when there were an abnormally high number of room transfers that occurred in one day?

A. Yes.

Q. Do you know why those room transfers occurred?

A. Well, they were closing -- because they were closing the first floor. That's the reason why there was an

abnormally high number of transfers. I mean, but it -- that happened just recently, not before.

Q. Okay. So let me clarify something. Is 1 East currently closed?

A. 1 East is currently closed.

Q. Were there a number of room transfers at the time that 1 East was closed?

A. Yes.

Q. Is that instance that you recall where there were several room transfers in one day?

A. Are you talking about the one that you showed me?

Q. No, I am asking about your recollection.

A. Yes, that's my recollection.

Q. Do you recall a day prior to that when an abnormally high number of room transfers occurred?

A. I recall that there was a high number of transfers.

Q. You recall that there was a what?

I'm sorry?

A. A high number of transfers, but I don't recall when it was.

Q. What prompted those transfers?

A. Well, in my unit I think they still need to be quarantined. That's what I know of.

Q. Could you elaborate?

A. Wait. There's -- hold on. Well, there was a time when we started testing the residents. I don't know if it was a high number. I can only say something from my unit, but I don't know if there was a high number of residents who were transferred to 1 East since we started testing for COVID.

Q. Do you know when you started testing for COVID?

A. That I don't know the exact day.

Q. Do you know why Fulton started testing for COVID?

A. No.

Q. At the time that Fulton started testing, were they testing for the anti-bodies or for the virus itself?

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A. We tested first for the anti-bodies and then after that we started testing nasal swabbing.

Q. Did the day with the high room transfers that you did indicate that you recall, did that day occur before or after Fulton tested for the anti-bodies?

A. I'm getting confused on the day. I don't recall.

Q. Are you aware of a DOH infection control survey that took place at Fulton on May 4th of 2020?

A. They were there -- well, I am aware, but I don't know that particular date, but I am aware that they were there for infection control.

Q. Do you recall that it occurred in May?

A. I don't remember if it was May or, maybe, it was May, but I recall that they were there.

Q. Were you interviewed in connection with that DOH infection control survey?

A. Yes.

Q. What were you asked?

A. I don't recall anymore what transpired.

Q. Who did you speak to?

A. I don't remember.

Q. At the time that DOH came in, were there any COVID positive residents on your unit?

A. That I don't know.

Q. Were you aware that the survey was going to take place before the inspectors showed up?

A. No. Were you asking this survey?

Q. Yes.

A. Before the what?

Q. Before the DOH surveyors, before they showed up, were you aware that the survey was about to take place?

A. I wasn't aware.

Q. Were you told by anyone in the administration, such as Cathie Doyle or Carol Frawley that they were expecting DOH to show up?

A. Well, because, you know, we usually have the survey. We were supposed to have the survey in December and they did not come, so from then on, you know, we were expecting the survey any time, but I personally don't know when exactly they are coming.

Q. Well, the survey that took place in May, that was not a full survey, correct? That was specific to infection control?

A. That's correct.

Q. Do you recall whether the facility took any steps in preparation for the survey?

A. I don't remember.

Q. Do you recall if there was a mass transfer of rooms 72 hours prior to that survey?

A. Well, I don't remember the specific date, but I know there was a high number of transfers. I just don't know when it was, when it happened.

Q. Do you recall that it occurred shortly prior to DOH arriving and conducting

an infection control survey?

A. No, I don't recall.

Q. Just to confirm. You don't recall whether there were still residents for COVID positive on your unit when DOH showed up?

A. No, there were no COVID residents on my unit.

Q. So, by the time DOH showed up the COVID residents had already been transferred to 1 East; is that right?

A. From my unit, yes.

MS. SEKHON: Yes, I apologize.

Q. So by the time DOH showed up, the residents who were COVID positive on 3 West had already been transferred to 1 East; is that correct?

A. That's correct.

Q. Would you agree with we that this would make it seem that Fulton properly been cohorting COVID positive residents on a designated unit when, in fact, they had failed to do that, and they had residents interspersed throughout the facility?

A. Yes.

Q. Do you know what prompted the residents being moved off of your unit on May 1st and put on to the COVID unit?

A. No.

Q. Are you aware of whether Fulton made any efforts to obtain COVID-19 test kits in March of 2020?

A. I don't know.

Q. Do you know if Fulton made any efforts to obtain COVID-19 test kits in April of 2020?

A. I don't know.

Q. Do you recall what month it was when Fulton started testing for the anti-bodies?

A. I don't know. I mean it should show on the documents, on the blood work. I don't recall when it really was.

Q. How many COVID presumed or COVID confirmed residents passed away at Fulton?

A. I don't know.

Q. How many COVID presumed or COVID confirmed resident passed away on 3 West?

A. I don't know.

Q. Did you lose more than ten residents on your unit that you were treating for COVID?

A. I don't think so.

Q. Do you think it was less than ten?

A. Can you repeat the question?

Q. Sure. Do you think that more than ten residents dies on your unit who had been treated for COVID?

A. No, I don't think so.

Q. Together today we have looked at two residents, right?

A. That's correct.

Q. V.T. and H.G. were treated for COVID and subsequently passed away. So, the two residents in the same room, right?

A. Correct.

Q. And Resident #6 , who was transferred off of your unit and put on 1 East on [redacted] [redacted], are you aware that he died hours after he was transferred to

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1 East?

A. I don't recall that.

Q. Were any of the resident who passed away on you unit tested for COVID?

A. No.

Q. Were any of the residents who you were treating as COVID presumed transferred to hospitals prior their passing away?

A. No.

Q. Why weren't they transferred to hospitals?

A. They were not exhibiting symptoms that emergent. There were no residents who were short of breath. That's the reason why.

Q. Did you ever have any conversations with family members effected who wanted their loved ones transferred to the hospital?

A. No.

Q. Did anyone from the administration ever direct that residents and family should be discouraged from being transferred to hospitals?

A. That I don't know.

Q. Were you ever instructed to discourage residents and their families from having the resident transferred to the hospital?

A. I don't have that conversation like that, no.

Q. Was it ever implied to you that you should discourage residents and their family members from requesting hospital transfers?

A. No.

Q. As you sit here today, do you have any idea how many residents died at Fulton who were COVID presumed or COVID confirmed?

A. I don't. I don't have a number for you. I don't.

Q. Were you aware of an increased number of deaths at Fulton in March of 2020 through the end of May 2020 compared to the other years that you worked at Fulton?

A. Yes.

Q. What did you believe was the

cause of those deaths?

A. I don't know how to answer that, because I don't know if my belief is relevant to this.

Q. Well, that's what I am asking you for. I am asking you for your belief.

A. You want my opinion?

Q. Yes. Understanding that you are not a doctor and that you not a funeral director and you don't perform autopsies, understanding all of that, what was your opinion as to why so many more residents were dying at Fulton during this time period?

A. I guess because of the virus.

Q. How many more residents died this year as compared to prior years during the same time period?

A. I don't know. We don't know how -- I don't know how to track that down. That's administration. It's not in my authority to track it down.

Q. Are you aware of whether Fulton had more than 50 deaths related to COVID?

A. I don't know if it is more than 50 deaths related to COVID. That I don't know.

Q. Has anyone ever told you how many deaths there were at Fulton that were related to COVID?

A. No.

Q. Have you ever asked anyone?

A. No.

Q. Was there a reason why you never asked?

A. During those times we don't have the time to do that. We just wanted to -- we just wanted to save lives then, so I did not have time. I even feared for my own life, because, you know, I'm sick myself. That's it.

Q. Are you aware of any policies and procedures that were implemented by Fulton with respect to COVID-19?

A. Like the wearing of masks, wearing PPE and hand washing.

Q. Were you ever given any written policies and procedures from Fulton with

respect to Fulton?

A. You know, those protocols, we get that in paper, like, any changes, like, almost every day, so, yes, we get that.

MS. SEKHON: Let's take a look at what has been premarked as Exhibit 7. It is a 19-page document. We will go through these one by one.

Q. The first one, the title of this document is Bio-Terrorism Pandemic Influenza/Virus. Do you recognize this document?

A. I don't recognize it. I mean the date is 2-26, and I was in the hospital at that time, I think.

Q. Did anyone ever give this document to you when you returned to work?

A. I don't remember it.

MS. SEKHON: Let's go to page 4.

Q. The policy name of this document is COVID-19. Do you recognize this policy?

A. I don't remember anymore because we have a lot of papers before.

Q. Does this look at all familiar to

you?

A. Somewhat.

Q. Let's go through this one since it looks like it is somewhat familiar to you. There is no date on this policy; is that correct?

A. That's correct.

Q. Do you have any idea who created this policy?

A. No.

Q. Do you know have any idea when this policy was implemented?

A. No.

Q. So, looking at the screen to the third sentence from the bottom. It reads: "The incubation time is believed to be approximately 2 to 14 days and the virus may be transmitted from asymptotic patients."

Was that your understanding of COVID in March of 2020?

A. Is there a way I can read that, again?

Q. Sure.

MS. SEKHON: Let's get that back

up on the screen.

Q. The third sentence from the bottom of the screen. "The incubation time is believed to be approximately 2 to 14 days and the virus may be transmitted from asymptotic patients."

A. Okay. Your question is?

Q. Was that you understanding in March of 2020?

A. Yes.

Q. Underneath the policy section on the same page it reads: "Fulton Commons Care Center will conduct education, surveillance and infection control and prevention strategy to reduce the risk of transmission of the Novel Coronavirus (2019-nCoV). The facility will implement action according to CDC, NYS DOH and World Health Organization recommendations, including identification, isolation and informing the Health Department of any suspected cases of COVID-19."

Was that your understanding of Fulton's policy in March of 2020?

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A. Some of it are.

Q. What part was not your understanding in March of 2020?

A. The isolation.

Q. When did it become your understanding that residents should be isolated?

A. Wait. I take that back. Because, you know, in March we were already letting residents stay in their rooms, so they were already isolated.

Q. So, that was your understanding then in March of 2020?

A. Yes.

MS. SEKHON: Going to the next page of this procedure under section four towards the bottom of section four after the underlined portion.

Q. "In the case that roommates are tested and one has a positive result and one has a negative result, the facility will separate the roommates, if logistically feasible without putting other residents or staff at risk for exposure."

Again, Fulton was not testing any residents in March and April of 2020, correct?

A. That's correct.

Q. So, if one resident was positive and their roommate was negative, Fulton would have no way of knowing that without a test, correct?

A. That's correct.

Q. Do you know what the phrase if logistically feasible means in this context?

A. No.

MS. SEKHON: Going to section five.

Q. It reads: "If logistically feasible and will not put other residents or staff at risk for exposure, the facility will cohort confirmed positive residents in the same room or area of a unit as much as possible."

Was that you understanding in March of 2020?

A. No.

Q. What was your understanding of

what was to be done in March 2020 if a resident was positive?

A. Resident are not allowed to go out of their rooms.

Q. So, in March of 2020, there was no plan for cohorting confirmed COVID positive residents in a particular area; is that correct?

A. That's correct.

Q. Was there such a plan in April 2020?

A. That I don't know anymore.

MS. SEKHON: Going to the next page, towards the bottom of the next page.

Q. There is a section called "Confirmed COVID-19 Unit." It says, "One floor of the facility has been designated to care for residents with confirmed COVID-19 admissions with the intent of this unit to ensure the safety of all residents and staff."

Do you have any recollection of when 1 East was designated the confirmed

COVID-19 unit?

A. No.

Q. As an RN with several, several years of experience and as a unit manager and a part-time RN supervisor, can you explain why a COVID designated unit would ensure the safety of other residents and staff?

A. It's just really simple, so, as not to spread the virus.

MS. SEKHON: I think you are right. I think it is that simple.

Q. So, would you agree with me that putting confirmed COVID positive residents on various units throughout the facility would not be ensuring the safety and health of the residents in the facility?

A. That's correct.

MS. SEKHON: Going to the next page of this policy. Looking at item number 6.

Q. It reads: "If a resident requires a higher level of care or the facility cannot fully implement all

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recommend infection control precautions, the resident should be transferred to another facility that is capable of implementation."

Was that your understanding of Fulton's policies and procedures in March of 2020?

A. No.

Q. Was that your understanding of Fulton's policies and procedures in April of 2020?

A. No.

Q. In fact, would you agree with me that Fulton was not able to implement all recommended infection control precautions, particularly on your unit 3 West?

A. That's correct.

Q. I want to go now to the next policy and procedure in this packet. The title of this is protocol for residents with suspected COVID as well as residents admitted from hospitals from confirmed COVID.

Ms. Llorente, have you ever seen this policy and procedure before?

A. No.

Q. Is there a date on this policy and procedure?

A. No.

Q. Under the first section where it says "Protocol for in-house residents with suspected COVID diagnosis." Number 1 reads, "Any resident residing in the facility that has a fever of 100 will be assumed a suspected case of COVID and will be placed on isolation precautions immediately."

Was that your understanding in March of 2020?

A. No.

Q. What is your understanding in March of 2020 with respect to residents with a fever above of a 100?

A. What was the last one, again?

Q. Sure. What was your understanding in March of 2020 regarding residents residing in the facility with a fever of 100?

A. My understanding is that, you know, for the residents who have fever to

not come out of the room.

Q. Where they placed on isolation precautions immediately in March of 2020?

A. Yes.

Q. So, the second sentence in that item number 1 reads: "The resident will be transferred to the designate unit unless they are in a private room."

Was that your understanding in March of 2020?

A. No.

Q. In fact, were any residents on your unit, 3 West, who exhibited fevers of 100 or higher transferred to 1 East in March of 2020?

A. No.

Q. Were any residents on your unit who exhibited these symptoms in April of 2020 transferred to 1 East?

A. No.

Q. Going to the second section of this policy and procedure. It reads: "Protocol for admissions/readmissions from a hospital with confirmed COVID diagnosis."

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The first section reads: "Any resident who is being admitted or readmitted from a hospital setting will be placed on a designated unit."

Was that your understanding in March of 2020?

A. No.

Q. Was that your understanding in April of 2020?

A. I don't recall.

Q. Well, the records that we have gone through today did show four residents admitted from hospitals with a COVID-19 diagnosis and placed onto your unit, 3 West; is that right?

A. That's correct.

Q. So, is it fair to say that this section of the policy that says that such residents should be admitted to the designated unit was not being followed in April of 2020; if it was if effect?

A. That is correct.

MS. SEKHON: We will go now to -- we can skip the next one. We can go to

the following policy and procedure that reads: "COVID surveillance and Tracking Method."

Q. Ms. Llorente, have you ever seen this policy and procedure before?

A. No.

Q. Is there any date on this policy and procedure?

A. No.

Q. Do you know when this policy and procedure was implemented?

A. No.

Q. If we look at number 4 under this policy and procedure it reads: "Residents admitted from the hospital with a positive diagnosis will be housed on the designated unit, remain on isolation for seven days since they have completed their first seven days in the hospital."

Would you agree with me that this was not being followed in April of 2020?

A. No.

Q. Just to clarify, no, it was not being followed, correct?

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A. That's correct.

MS. SEKHON: I want to go now to the -- we can skip the next one, but go to the policy and procedure after that.

Q. This one is called "Communication Notification during COVID-19 Pandemic."

Are you familiar with this policy and procedure?

A. I don't recall.

Q. If we look at just the purpose of this it reads: "It is the intention of Fulton Commons Care Center to implement effective, frequent and accurate communication with family members, designated representatives and residents during the COVID-19 pandemic."

Was that your understanding of Fulton intentions in March of 2020?

A. Yes, because I always speak to family members.

Q. As we discuss earlier today, when you spoke to family members, you did not disclose that residents were being treated as if they had COVID; is that correct?

A. Correct.

Q. Would you agree with me that that is not providing family members with accurate information?

A. Again, that is really not my call, but I told the family members what was really going on with the residents and what type of care they were given.

Q. But you never told them that they were being treated as if they had COVID, correct?

A. I mean I don't think we said that or I said that.

Q. Looking at the last page of this packet. This document is entitled protocol for residents exhibiting various symptoms during this pandemic.

Have you ever seen this policy and procedure before?

A. Yes.

Q. When did this policy and procedure go into effect?

A. That I don't know.

Q. Is this policy still in effect?

A. Yes.

Q. Does this indicate the COVID-19 treatment protocol that we discussed earlier today?

A. That's correct.

Q. Was this the protocol implemented for any resident who exhibited an elevated temperature?

A. That's correct.

Q. Did anyone discuss with you the alteration of any document in connection with Fulton's response to the COVID-19 pandemic?

A. No.

Q. Did anyone ever ask you to alter or create any documents in connection with Fulton's response to the COVID-19 pandemic?

A. No.

Q. Did you ever hear of anyone creating or altering documents in connection with Fulton's response to the COVID-19 pandemic?

A. No.

Q. Did you hear any rumors in the

facility regarding the potential alteration of documents in connection with Fulton's response to the COVID-19 pandemic?

A. No.

Q. Are you aware of any efforts by Fulton Commons staff to mislead or omit information requested by law enforcement or any regulatory agency in connection with its response to the COVID-19 pandemic?

A. No.

Q. Did you ever become aware of nursing staff being instructed not to discuss COVID related questions with family under the threat of immediate termination?

A. I thought I heard that.

Q. What did you hear?

A. That, you know, we are going to be terminated.

Q. If you discussed COVID related questions with families?

A. I don't know specifically if it is COVID related questions or about COVID, but, you know, we are not allowed to discuss anything.

Q. Who did you hear that from?

A. From the administrator.

Q. Cathie Doyle?

A. Correct.

Q. Did you hear that from her directly?

A. Yes.

Q. What were the circumstances under which she told you that?

A. We were in a meeting.

Q. Where did that meeting take place?

A. On the first floor.

Q. Was it in her office or conference room or something else?

A. I don't remember if it was in the conference room or the non-kosher recreation room.

Q. Who else was present for that meeting?

A. Everyone.

Q. Who is every one?

A. The unit managers.

Q. Was Carol Frawley present for

that?

A. Yes.

Q. Was Lisa Peterson present for that?

A. Yes.

Q. By the way, Lisa Peterson, I believe you said she was the assistant director of nursing services; is that right?

A. That's correct.

Q. So, is she one of two ADNS's?

A. Yes, we have two ADNA's.

Q. Who is the second ADNS?

A. Baptiste. I forget her first name.

Q. Is it Marise Jean-Baptise?

A. Yes, that's correct.

Q. Was Ms. Jean-Baptiste present for this meeting?

A. I don't remember, maybe. I don't know.

Q. Do you recall when this meeting took place?

A. No, I don't recall.

Q. Did you know what month it was?

A. I don't recall.

Q. Was it before or after DOH Health showed up for their infection control survey?

A. I don't recall.

Q. What in particular did Ms. Doyle say to you all at this meeting?

A. I don't recall exactly what it is anymore.

Q. What was your understanding when you walked away from that meeting?

A. I don't know.

Q. Was it your understanding that you could be fired for discussing anything coronavirus related outside of the facility?

A. Yes.

Q. Was it your understanding that you could be fired if you disclosed anything regarding the facility's action with respect to coronavirus to any non-employees of Fulton Commons?

A. Yes.

Q. Did you ever became aware of staff being required to sign what purported

to be in-service sheets acknowledging that there were not permitted to discuss COVID with residents families?

A. I don't know. I don't think so.

Q. Did you ever become aware of nursing staff being prohibited from discussing the increase in illnesses and deaths at Fulton?

A. I don't remember that anymore.

Q. Did there ever come a time that you observed staff using garbage bags as makeshift gowns as PPE?

A. Yes.

Q. How long did that happen for?

A. I don't remember.

Q. Was that happening on your unit?

A. Yes, at a time, yes.

Q. Did that go on for more than one week?

A. I don't remember.

Q. Do you recall what month that occurred?

A. I don't recall.

Q. You discussed earlier how you

were an RN supervisor every other weekend. Did that position continue through the pandemic?

A. I think so.

Q. Are you still an RN supervisor every other week?

A. Every other weekend, yes.

Q. As an RN supervisor, do you essentially step into the role of the assistant director of nursing just for the weekend?

A. I guess, maybe, you can cay that.

Q. So, let me ask you: What are your duties and responsibilities as an RN supervisor on the weekends?

A. I oversee staff and the residents in the facility and, you know, the LPN's and the CNA's.

Q. Do you have a regular unit assignment as an RN supervisor?

A. Yes.

Q. What units are you regularly assigned to?

A. On the east side, 4 East, 3 East,

2 East and sometimes 1 East.

Q. You said sometimes 1 East. Under what circumstance are you assigned to 1 East?

A. Actually we don't really have that set. Whoever is assigned to that one, but, you know, we just help each other. The other supervisor or I help.

Q. Were you a supervisor for 1 East while it was operating as the COVID unit?

A. That I do not remember. I thought I was not working the weekends then. I don't recall.

Q. When did you start working as an RN supervisor?

A. I don't remember.

Q. Can you tell me what year you started working as an RN supervisor?

A. It's a few year, but I just don't recall when exactly I started doing the supervision.

Q. But it's been a few years, correct?

A. Yes.

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Q. Have you consistently filled that role every other weekend?

A. For a time, yes, but then there was a time when I stopped doing it.

Q. When did you stop doing it?

A. I don't remember.

Q. Was that at some point this year?

A. No, but I don't know if I worked the weekends, because, you know, I was sick, so, I don't remember if I worked the weekends on 1 East, because I just got back from being sick.

Q. Just so I am clear. Is your testimony that you worked the weekends, but you are not sure if you covered 1 East?

A. No, I am not sure if I was doing the supervision during the COVID.

Q. Okay. When did you resume doing supervision?

A. We can always look at the documentation. I mean I would clock in and out on every other weekend, so I can always look it up. I don't remember. I mean it's not like I resumed. I was always there

every other weekend, but I just don't remember right now if I was working as a supervisor during the COVID.

Q. Where there other roles that you would fill when you worked on the weekends?

A. No.

Q. So if you worked a weekend, then you worked as a supervisor; is that fair to say?

A. Yes.

Q. I should asked this at the beginning, but other than Fulton, are you currently employed anywhere else?

A. No.

Q. Since you have worked at Fulton from 2002 to present, were you ever employed anywhere else along side your employment at Fulton?

A. Yes.

Q. Where did you work and when did you work there?

A. It was Constellation Home Care. It's a home care agency. I just don't recall when I started working there. I

stopped -- I don't know, maybe, 2018. I just don't remember.

Q. Was that the only other position that you held simultaneously with your job at Fulton?

A. Yes.

Q. Through the COVID pandemic, did there ever come a time when police were called to Fulton to respond to a family member complaint?

A. Say that again.

Q. Sure. During the COVID pandemic, did there ever come a time when police responded to Fulton with respect to a family member complaint?

A. I don't know.

Q. Did that situation ever arise on your unit on 3 West?

A. No.

Q. Ms. Llorente, we talked about a lot of things here today. We looked at a lot of documents. I really -- I would like to just find out from you. Do you believe that Fulton's action during the course of

this pandemic endangered its resident?

A. That is really a strong question. I mean, again, it's the pandemic. Nobody knows what we are supposed to do. I mean we get directives from the DOH or from whoever, but nobody really knew what was happening. I guess, we just acted on whatever was right at that time.

Q. Well, let's just be clear here --

A. Well, I'm just talking about what I did to my residents.

Q. Sure. So, I am just going to break this up a little bit. So, as a whole, the facility was aware that COVID positive residents were supposed to be cohorted, correct?

A. That's correct.

Q. There was a designated unit to facilitate cohorting residents who were COVID positive, right?

A. That's correct.

Q. Despite that COVID positive residents were placed on your unit, 3 West, which was not a designated COVID unit,

correct?

A. That's correct.

Q. On 3 West, those residents were cared for by CNA's who were also caring for non-COVID residents; is that right?

A. That's correct.

Q. Would you agree with me that these actions endanger the residents in the facility who did not have COVID?

A. Yes.

Q. Would you agree with me that Fulton, therefore, failed to provide safe and appropriate services to the residents who did not have COVID?

A. Yes.

Q. Is there anything that you would like to tell us that we have not already spoken about?

A. No.

MS. SEKHON: All right. So I think we are nearly done here. Let's take a quick five-minute water break and then we will resume. It is 3:30 now. We will resume at 3:35.

THE WITNESS: Okay.

(A recess was taken.)

MS. SEKHON: We are back on the record. The time is now 3:38. We took roughly an eight-minute break.

Ms. Llorente, we are all set. I do want to thank you for your time today. I know it was a long day and we didn't take that many breaks. I do apologize for that, but we do appreciate you taking the time and speaking to us and really being, you know, as honest as possible. We do appreciate that.

Before we close, is there anything you would like to say to us?

THE WITNESS: Not really.

MS. SEKHON: So, we are all set. Thank you very much. Enjoy the rest of you day.

THE WITNESS: Thank you.

(TIME NOTED: 3:39 P.M.)

INDEX TO EXHIBITS

CERTIFICATION

I, DEIRDRE PLEVRITIS, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October 2020.

DEIRDRE PLEVRITIS

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

----------X

In the Matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

----------X

63(12) Examination under oath of LATASHA WALLER, taken via WebEx video conference, held on September 30, 2020, commencing at 9:58 a.m.

Reported by

Stefanie Krut

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S
OFFICE
Medicaid Fraud Control Unit
300 Motor Parkway, Suite 210
Hauppauge, New York 11788
BY: PETER ZADEK,
Special Assistant
Attorney General
GERRI GOLD,
Special Assistant
Attorney General

ALSO PRESENT

Mary Gail Kowtna - Investigator,
NYS Attorney General
Robert Joyce - Investigator,
NYS Attorney General
Barbara Picone - Auditor Investigator,
NYS Attorney General
Anne Liptak - Paralegal,
NYS Attorney General

09-30-20 L. Waller

L A T A S H A W A L L E R, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. ZADEK:

Q. Ms. Waller, what is your address?

A. [redacted]

Q. Okay. And you said that's in [redacted]. What county is that?

A. [redacted].

Q. And that's where you currently are now?

A. Yes.

Q. That's your home?

A. Yes.

MR. ZADEK: My name is Peter Zadek and I'm a Special Assistant Attorney General in the Office of the Attorney General of the State of New York. I'm going to ask all others who are present on this webcast to introduce themselves.

09-30-20 L. Waller

THE WITNESS: Okay.

MR. ZADEK: So let's have everyone so you know who is on this webcast. I'll just ask everyone to unmute themselves momentarily and identify for Ms. Waller who you are.

MR. JOYCE: Investigator Bob Joyce.

MS. LIPTAK: Paralegal, Anne Liptak.

MS. KOWTNA: Auditor Investigator, Mary Gail Kowtna.

MS. GOLD: Special Assistant Attorney General Gerri Gold, also from the Attorney General's Office.

MS. PICONE: Barbara Picone.

MR. ZADEK: I didn't hear you, Barbara.

MS. PICONE: Can you hear me?

MR. ZADEK: Not well, but that's Barbara Picone who's an auditor investigator in this office as well. Did you hear all that, Ms. Waller?

THE WITNESS: Yes, I heard it.

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MR. ZADEK: Great. So I'll ask everyone to turn off your video, everyone but Ms. Waller, turn off your video and mute your audio, please.

We are conducting this examination remotely in order to ensure the health and safety of all participants, due to the Coronavirus related concerns. The examination will be recorded by stenographic means by a court reporter certified to record the examination in the State of New York and any exhibits will be presented to you, Ms. Waller, electronically.

THE WITNESS: Okay.

MR. ZADEK: Okay? Your testimony today is being taken pursuant to a subpoena that was issued by the Attorney General's Office pursuant to which I and Gerri Gold, who just introduced herself, are Special Assistants Attorney General, and we are authorized to take proof and make a determination of the relevant facts in

connection with an investigation that deals with the resident care provided by Fulton Commons Care Center.

Q. You, Ms. Waller, are an employee of Fulton Commons Care Center?

A. Yes.

Q. I've had certain exhibits premarked so at this time I will ask Ms. Liptak if she could show, for Ms. Waller, what's been premarked as Exhibit-1 for identification. All right. Ms. Waller, are you able to see that on your screen?

A. Yes.

Q. I'm showing you what has been premarked as Exhibit-1. It is a copy of the subpoena which was issued and served on you directly. Do you recognize this, is this -- is this document, Exhibit-1, which is the subpoena, does this reflect the document that you were served with? And if we scroll down to the bottom I think we'll see your signature below mine there. Is this the subpoena that was served on you?

A. Yes.

Q. Okay. This subpoena requires and compels you to visually appear for an interview today, correct?

A. Yes.

MR. ZADEK: Thank you, Ms. Liptak.

Q. You understand that your virtual appearance here today is pursuant to this subpoena, which compels you to appear and give testimony, correct?

A. Yes.

Q. Before we begin, I would like to take a moment to discuss some of your rights. Pursuant to the Fifth Amendment of the United States Constitution, as well as the New York State Constitution, you have the right to refuse to answer questions, if your truthful answer to that question would tend to incriminate you. Do you understand that?

A. Yes.

Q. Please be aware, however, that should you choose to invoke your Fifth

Amendment right, a negative inference can be drawn against you in any future noncriminal proceedings. Do you understand that?

A. Yes.

Q. Now you took an oath a moment ago to tell the truth. The whole truth, and nothing but the truth. Should you intentionally make any false statement during this proceeding -- by that I mean a statement that you do not believe to be true -- you may be prosecuted for perjury. Do you understand that?

A. Yes.

Q. I'm going to ask you questions which are relevant to the Attorney General's Off -- to the Attorney General Office's investigation into the resident care provided by Fulton Commons Care Center. If I say Fulton Commons or Fulton from here on out, do you understand I am referring to Fulton Commons Care Center?

A. Yes.

Q. Okay. I'd like to go over some ground rules with you. As you've seen today

and heard, we have a stenographer here. She will be recording this interview. It is, therefore, very important that she hears everything that you and I say. What that means is that we cannot speak over one another. I ask that you allow me to finish asking my question before you give me your response. It is also important that you give verbal responses to all of my questions, that you do not respond by simply nodding your head up and down or turning sideways indicating a negative but that you indicate verbally yes or no when responding, and certainly when you give more detailed responses as we go. But nods of the head or shrugs, the stenographer cannot take that down. If you do not understand my question, please, don't answer it. Ask me to rephrase it. Ask me to repeat it. If I ask you something that you don't understand, let me know. Okay?

A. Yes.

Q. All right. I will then do my best to rephrase the question so that you do

understand it. If you answer my question, I will assume that you understood it as I asked it. If you need to take a break for any reason, that's okay. I just ask that if there is a pending question, that you answer my question before leaving the camera frame. Do you understand these instructions that I've given you?

A. Yes.

Q. Okay. Sometimes you may give an answer as completely as you can and later remember additional information. If that happens, please, tell me that you would like to add something to the earlier answer. We'll try right then and there to correct or to add to a previous response you gave. Okay?

A. Yes.

Q. In addition, it might -- it might occur to you at some point that a previous answer you gave was not completely accurate. If that happens, will you tell me and make any necessary corrections to a previous answer?

A. Yes.

Q. This proceeding today is confidential. You are not entitled to a copy of the transcript of this testimony or any exhibits that may be marked today. Do you understand that?

A. Yes.

Q. As this is a confidential proceeding, there shall be no recordings during the taking of this testimony. Although WebEx does offer recording capabilities, I give you my assurance that this examination is not being recorded by the New York State Attorney General's Office. Do you agree not to record this examination in any way?

A. Yes.

Q. Similarly, due to its confidentiality, we request that you not discuss this matter, your testimony here today or any documents that you may review or may produce in connection with today's testimony with anyone. Okay?

A. Yes.

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Q. Unless we are on a break, there shall be no private communications with anyone, that includes phone calls, passing of notes, texting, e-mailing or other means of communication that may or not -- may or may not be visible on camera. All right?

A. Yes.

Q. Are you alone at this time during the course of this? Are you by yourself in a room with the door closed?

A. Yes. Yes.

Q. Please -- and this is a good reminder for anyone -- please mute your phones and -- and if possible, turn off any other electronic devices to prevent any disruptions during this examination. Thank you. Have you taken any drugs or alcohol within the past 24 hours that may have an impacts on your ability to testify here today truthfully and to the best of your knowledge?

A. No.

Q. Are you aware of any physical or mental disability or defect that may

interfere with your ability to understand my questions or your ability to respond truthfully and completely?

A. No.

Q. Did you discuss -- did you discuss the fact that you were subpoenaed here today with anyone else?

A. Is it paused? Oh, it was a delay.

Q. Was there a delay there?

A. Yes.

Q. Can you hear me now?

A. Yes.

Q. Is there still a delay or?

A. No.

Q. Okay. Let me know when that happens. Did you speak to anyone about the fact that you were subpoenaed to speak with the Attorney General's Office today?

A. Yes.

Q. Okay. So who did you discuss the fact that you were subpoenaed here to testify?

A. Can you clarify? Do you want

specific names or do you want coworkers?

Q. Everyone and anyone. Anyone that you informed that you were going to, or you have been subpoenaed, to testify here today, anyone you told; whether they be coworkers, non-coworkers, family, anyone.

A. My family. My sister.

Q. Your sister?

A. Yes.

Q. Okay.

A. My children.

Q. How many children do you have?

A. Three.

Q. So you spoke to your three children, your sister.

A. My coworkers, which included the director of nursing.

Q. Okay.

A. The administrator.

Q. Okay.

A. The -- scheduler. I would like to take that back, she doesn't know I'm in court. She doesn't know that I was subpoenaed, she just knows that I needed the

day off.

Q. Okay. I'm sorry. Who are you referring to?

A. The scheduler.

Q. Scheduler. Okay. So the scheduler simply knew that you needed the day?

A. Off. Yes.

Q. Okay.

A. And that she --

Q. Anyone else?

A. She said she would confirm it with the director of nursing. The assistant director of nursing.

Q. Okay.

A. And the other coworkers were -- do you need -- do you need names or -- they were coworkers that I used to, like, work with or that had mentioned that they had been subpoenaed.

Q. Others who mentioned that they have been subpoenaed?

A. Yes.

Q. Okay. So maybe I should rephrase

the question. Maybe I should have said is there anyone you didn't tell that you're --

A. Sorry. I didn't know that. Can I ask a question?

Q. I'm sorry?

A. Can I ask a question or no?

Q. What were you going to say?

A. Is it illegal to tell them that I was subpoenaed?

Q. I remind you that this is a secret proceeding and I just -- I just remind you of that and I'm -- and we'll discuss who you spoke with. So anyone else?

A. A coworker? No.

Q. All right. So let's -- let's begin with your family members that you spoke with. Are any of them also employees of Fulton Commons?

A. No.

Q. Are any of your family members that you spoke with healthcare professionals?

A. No.

Q. You mentioned you spoke to the

DNS, the director of nursing services?

A. Yes.

Q. And what's that person's name?

A. Ms. Frawley.

Q. Carol Frawley?

A. Yes.

Q. And when did you first speak with Ms. Frawley and advise her, let her know that you had received a subpoena? When was that that you first spoke with her?

A. The day that I got the subpoena.

Q. At Fulton you spoke with her?

A. Yes.

Q. And what did you say to Ms. Frawley concerning your receiving the subpoena and what did she say to you?

A. I told her that I got -- she asked me what was that, she saw that I was outside. When I was passing her office and she said What was that. I told her that I was served a subpoena to go to court and she said for what. And I said I'm not sure, it's an investigation, so she just was inquiring, you know, happened when I was

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outside.

Q. Okay. Let me ask, I'm sensing a little bit of delay also. When we speak to each other, there's a slight delay in hearing you and watching your lips move. There's like a momentary delay. I'm just going to ask whether the stenographer is hearing us clearly.

A. Okay.

(Discussion was held off the record.)

Q. All right, Ms. Waller. So Ms. Frawley had asked you what it was in reference to, correct?

A. Yes.

Q. Did you say anything else to her, or did she say anything else to you, concerning your appearance here today?

A. No.

Q. Was there -- was there any discussion with Ms. Frawley about you getting back to her in terms of letting me know how it goes, what they asked you?

A. No. Can I -- can I clarify the

question you just asked me --

Q. Absolutely.

A. -- before this one?

Q. Sure.

A. Add to it?

Q. Yes.

A. We had a general discussion during that time just about PPE and, you know, just general conversation about 1 East, like, you know, I said I was nervous. I said, well, what could they ask. So she just was -- you know, because she'd been to court before so she just said, you know, answer truthfully and just tell them, you know, what they want and I said, oh, okay.

Q. Okay. Okay.

A. So I was just asking general questions like well, why would they ask me. And she said you were the unit manager. If -- you know, it's okay.

Q. Okay. That was the extent of the conversation with Ms. Frawley?

A. Yes.

Q. Now you also mentioned you spoke

with the administrator at the facility, correct?

A. Yes.

Q. Ms. Doyle?

A. Yes.

Q. So how did that -- how did it come about that you and Ms. Doyle spoke about your appearance here. Tell me how did that happen?

A. As I was walking into the -- back into the facility through their offices, she was -- she came into -- I do not recall if she was actually there already or if she came into the office but all three of us was in the office.

Q. When you say "all three of us," do you mean Ms. Frawley, Ms. Doyle and yourself?

A. Yes.

Q. And what happened?

A. They could sense that I was a little nervous so they said, you know, they were consoling me and they said that it's okay, you know. They're just going to ask

you questions. And I said okay. And then they just -- they just kept -- Ms. Doyle said don't be nervous, it's okay, and to just answer them truthfully and I said of course. And then she said well, what did they want to know? And I said -- I'm sorry -- she said did you tell them about Larisa because Ms. Doyle had indicated for me to tell the gentleman and the other young man that Larisa wasn't in that day, but when I was with you guys I didn't mention it. I forgot.

Q. When you say Larisa, is that Larisa Ronayne?

A. Her last name I don't know for sure. I always call her Larisa. She's our MDS coordinator.

Q. Okay. So they were asking you about -- did you tell them about Larisa, meaning what about Larisa?

A. When Ms. Doyle told me that there were two gentlemen that wanted to talk to me outside, she told me please tell them that Larisa is not in today.

Q. Oh, I see.

A. But when I went outside, after speaking to you guys, I just never mentioned it. And so she said did you tell them about Larisa.

Q. Okay. Was there any other conversation that you had with the administrator, with Ms. Doyle concerning what might be discussed, your reporting back to her as to what you were asked? Was there any discussion on that?

A. They mentioned -- I don't recall the exact account, if I mentioned PPE, or if they started or initiated the conversation about personal protective equipment, but we started talking about personal protection equipment and they -- they were saying -- I said I think it's about personal protective equipment. And they said well, just tell them the truth and I said okay. I never intended not to.

Q. Was that the extent of the conversation you had with Ms. Doyle?

A. For the most part, yes. That I

recall for that day, yes.

Q. And you also mentioned the ADNS you spoke with?

A. Yes. Lisa Peterson. I spoke to her about appearing in court at a later date.

Q. So you're saying that after that initial conversation with Ms. Doyle and Ms. Frawley, you later spoke with Ms. Peterson as well that you had been subpoenaed?

A. Yes.

Q. When was that and what was said between the two of you? How did that come up that you were talking about it?

A. The exact date, I don't recall.

Q. Okay.

A. It was most recently. She -- she -- I mentioned that I have to go to court and I wanted to do it at work and Ms. Frawley had said speak to Lisa about it because she does all the computers, so see if Lisa can set you up in the conference room. So I had to tell Lisa that I was going to court and I needed the conference

room and a computer. She mentioned that the computers may not let me do it and that she was going to work on doing it with a tablet. And then that's when I decided not to do it at work, I just said it would be too much. I said I'll just do it at home.

Q. Right. And did you have any conversations with Ms. Peterson about the testimony you were -- you going to give or that you thought you were going to give?

A. She just -- not exact details, she just asked me why and I said I think it's about when we were going through COVID and the amount of PPE and she just said -- she just expressed wow. And then I just told her that I was nervous, like, why would they want to talk to me. And she said she'd never been to court so I said oh. And, you know, then she just kept trying to work on some sort of device to let me do it at work.

Q. So there was really no substantive discussion about the appearance, other than getting you set up at work?

A. Exactly. Can I -- I just

remembered something. Can I add to something from before?

Q. Absolutely. We had -- as I told you, if something comes to mind that you want to clarify or add to or clear up, absolutely. Please.

A. Okay. Because I talked to Ms. Frawley on a daily basis, so I'm -- you know, I just remembered something. I did ask Ms. Frawley, I said I don't remember specific dates and I was trying to figure out if I should have it at work or at home and she said whatever makes you comfortable. So I said but I don't have dates or any policies or anything that I remember. And she said I have everything in my, you know, in a binder. So I asked to see the binder but I never got a chance to look inside the binder. She said that I can always look through it and I said okay. My intention was to go through it but I never looked through the binder.

Q. So the binder was at Fulton?

A. Yes.

Q. And it remained at Fulton or you brought it home with you?

A. Oh, no. I didn't bring it home. It's at Fulton.

Q. And you never -- you said you never had a chance to look at it?

A. No.

Q. And she told you that the binder contained policies and procedures?

A. Yes. She just said I keep everything. And you know, and I said oh okay. So she said you can go through it.

Q. Okay.

A. -- if you want to. And I said okay. And then I said -- I said I think they may ask me about the deaths and she said -- I said I don't remember how many people expired and she said I have everything you need if you want it, but I never got a chance to go through any of her paperwork.

Q. Okay. So it sounds like the two issues that you've raised -- that you've mentioned here, in terms of conversations

with staff so far, you mentioned PPE and deaths?

A. Yes.

Q. Okay. So were those two areas, areas that you thought might be the subject of this investigation or those areas that you felt that Ms. Frawley and Ms. Doyle were concerned about?

A. Well, the PPE is because I was the unit manager, so I was the go -- one of the go to people to get PPE, so that's what made me think of it because COVID and PPEs are closely related.

Q. Right.

A. And the deaths -- I can't recall if I got the information from the two of you, like, I think you just had mentioned the stuff about the large amount of deaths that Fulton --

Q. Right.

A. -- had, so I think that's what sparked that, what made me ask because I just didn't -- I don't have numbers. So it made me think, like, what if they ask me

some numbers. And then she mentioned well, I have everything here for you. You can have the meeting at the facility.

Q. Okay. You also mentioned that you spoke with coworkers. Now, I don't know if you're referring to coworkers that are current workers at the facility or if you may have spoken with the former workers at Fulton or both. But why don't you -- you asked me whether if you should identify them by name, et cetera. So why don't you mention to me all the coworkers that you spoke with and who they are.

A. Okay. So the coworkers still are at the facility and the reason why is because I've never been to court, so I didn't know what to anticipate. And I was trying to figure out if I should do it at work or if I should do it at home. So I spoke to my coworkers to ask them if they've ever been in a situation like that and what did they do.

Q. Okay. Are these -- so how many coworkers did you speak to on this issue?

A. Sorry. So I spoke to Larisa about it.

Q. The MDS coordinator?

A. Yes.

Q. Okay.

A. And she mentioned that she's going to do hers at home.

Q. So she told you and she said she's going to do hers. Did you interpret that to mean she's also been subpoenaed?

A. Yes.

Q. And who else? Larisa?

A. My coworker, Precious Allen.

Q. That's an LPN, right?

A. Yes.

Q. Okay.

A. My co -- the coworker, the housekeeper, he's the manager, I guess. Michael Andrews.

Q. I'm sorry. What's the name?

A. Michael Andrews.

Q. Is he the head of housekeeping?

A. Yes.

Q. Okay. So you spoke to Larisa.

You spoke to Ms. Allen. You spoke to Michael Andrews. Anyone else?

A. I think that's all that I can recall for now.

Q. Okay. If -- if another name comes into your mind, you'll tell me, right?

A. Yes, I will.

Q. Okay. Now, let's talk about Larisa. You said Larisa is the MDS coordinator and she said to you, essentially, she's going to do it from home, correct?

A. Yes.

Q. Did Larisa tell you when she was going to do this from home. When she was going to be questioned?

A. Yes. We all knew each other's dates. Can I add one more person, please?

Q. Please.

A. Elfa Laurente, I think is her last name.

Q. Yes, Elfa Laurente.

A. She mentioned to me that she was subpoenaed as well. So I...

Q. So everybody is talking about it, is that fair to say?

A. Yes.

Q. So you spoke to Ms. Laurente, Mr. Andrews, Precious Allen and Larisa, correct?

A. Yes.

Q. So you were saying that Larisa, you all knew the dates of when people were -- that you -- when people were subpoenaed to give testimony?

A. Yes.

Q. So when was Larisa supposed to give testimony, to your knowledge?

A. I thought it was -- today is Wednesday. Yesterday.

Q. Did you speak with Larisa in the last day or two?

A. Two days ago, yes. Last day, no. I didn't speak to her about her testimony.

Q. Okay. And when you spoke to her two days ago, did the two of you discuss at all what testimony, if at all, you might both be giving to the Attorney General's Office?

A. No. She -- we -- I expressed to her, prior to us meeting up and realizing that we're not supposed to talk about this, because originally I didn't know it was something that you're not supposed to talk about, like, it was illegal or anything. So I said -- she said I'll let you know what happens and I said okay. And then she said -- you know, I just said good luck. And she -- and we just kept telling each other, just make sure you tell the truth. Just make sure you tell the truth.

Q. Okay.

A. Because I -- what happened -- I didn't realize -- I understood this was court but I didn't know how serious this was until, you know, we got closer.

Q. Okay. And did you discuss with Ms. Allen or Mr. Andrews or Ms. Laurente your testimony at all or to any extent did you discuss what you were going to say with them?

A. No. For -- no. For Elfa, Ms. Laurente, we just kept saying why do they

want to speak to us. And, you know, we just kept trying to figure out well, why. And we knew well, of course, for COVID and we were just questioning well why not other people, why just us.

Q. Okay. Did you review any documents? You mentioned that binder, which you said you didn't look at, did you review any documents in preparation for speaking with me today?

A. No.

Q. Have you spoken with any former employees of Fulton Commons concerning testifying?

A. No. Not that I recall, no.

Q. And as far as what you believe to be upcoming appearances with the Attorney General's Office, I believe you mentioned Ms. Laurente, correct?

A. Yes.

Q. Anyone else who mentioned to you potentially --

A. I --

Q. -- coming?

A. Not direct -- not directly from her but just -- I'm not sure who I heard it from but I heard that Ms. Frawley or -- and/or Ms. Doyle also was subpoenaed. But that -- that was just hearsay and not directly from them.

Q. Okay. And again, did any individual at Fulton Commons have a discussion with you concerning your reporting to them what was said during this examination?

A. No. Can you -- can you clarify that?

Q. Yes. Did anyone -- did anyone at Fulton -- anyone -- say to you, essentially, after you speak to the Attorneys General's Office, make sure you report back what you told them?

A. So Larisa and I had conversations and we said we'll -- you know, we just kept saying tell the truth. And we both -- I had asked Larisa well, you'll let me know what they said. But then after she didn't reach out to me last night and I kind of Googled

that, you know, you're not supposed to say anything, I understood why she didn't reach out to me.

Q. Okay. And again, I'll remind you I said earlier, when we first began this examination, that due to its confidentiality, we request that you not discuss this matter, your testimony here today, or any documents that you may view or produce with anyone else. Okay?

A. I understand that now.

Q. Okay.

A. Yes.

Q. Okay. Let me ask you, you've given us your address. Do you have a cell phone number?

A. Yes.

Q. What is that number?

A. [redacted].

Q. And you also have a home phone at your home in the house?

A. Yes. I have a landline number but I don't actually have a landline to pick up.

Q. Maybe it's time to cancel that?

A. It's a part of the package.

Q. Oh, okay. So there's no landline number?

A. No. I mean, we don't have the hookup for it but we have a phone number.

Q. All right. Who's your provider for your cell number?

A. AT&T.

Q. Can you tell me about your education. Just briefly outline for me after high school your education, where you studied, any degrees you received.

A. I went to BOCES of Nassau County and received my LPN, licensed professional nursing certificate -- license.

Q. So when did you -- I'm sorry. When did you get your LPN?

A. 1996 or '97, I think.

Q. Okay. And then what?

A. Then I took a couple of courses at Nassau here and there and eventually finished with my RN.

Q. When you say Nassau, do you mean

Nassau Community College?

A. Yes, Nassau Community College.

Q. And you ultimately received your RN degree from Nassau Community College?

A. Yes.

Q. When was that?

A. July -- I graduated in May 2019 and I passed the Board July 5, 2019.

Q. Oh, so you're relatively new as a registered nurse?

A. Yes.

Q. Okay. So you're certified in New York as a registered nurse?

A. Yes. And then I took online classes at Chamberlain and received my bachelor's in May of 2020.

Q. Congratulations.

A. Thank you.

Q. So in May of this year you obtained your bachelors. What was your area of study?

A. It was just Med Surg, I believe. It was just a bachelors track, fast track from associates to bachelors of nursing.

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Q. Okay. Do you have any certifications as a nurse, are you certified in any -- any certification other than your RN licensure?

A. No.

Q. So you obtained your LPN you said in '96 or '97.

A. Yes.

Q. When did you -- when did you begin working in the field of nursing?

A. As an LPN, August of the same year I received my license.

Q. Where? Where did you work?

A. Parkview Nursing Home in Massapequa.

Q. And you worked as an LPN there?

A. Yes.

Q. For how long?

A. The exact time, I'm unclear, but I believe it was under five years.

Q. You said over five years?

A. No, under. Less than five years.

Q. Okay. Where did you go after Parkview?

A. Our Lady of Constellation in West Islip.

Q. Again, as an LPN?

A. Yes.

Q. How long did you work at Our Lady of Constellation?

A. Again, the exact time, I don't know, but I believe it was between three to five years.

Q. Okay. And you worked as an LPN?

A. Yes.

Q. Where did you go after -- after that job?

A. Saint Joseph's -- wait, it wasn't called Saint Joseph's then. It was New Island Hospital in Bethpage.

Q. And how long were you at New Island?

A. New Island, three to four years.

Q. Okay. And you worked there in the capacity as an LPN?

A. Yes.

Q. And where did you work after New Island?

A. Fulton Commons. I also did agency work in between Our Lady of Constellation and -- I keep calling it Saint Joseph's -- it's New Island.

Q. New Island. Okay. Which agency did you -- were you hired by?

A. Medical Staffing Network and that was -- that was between those two jobs.

Q. Okay. What year was it that you were hired at Fulton Commons?

A. It was either 2009 or 2010. That one I can't remember because I was there for nine years so I --

Q. So it's fair to say you've got quite a bit of nursing experience under your belt?

A. Yes.

Q. And you've actually been at Fulton for almost a decade?

A. Yes. As an LPN though, mostly.

Q. Right. Until last year when you became an RN?

A. Yes.

Q. Now, when you began working at

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Fulton, what unit -- unit did you work on?

A. Did something happen? Oh, the box just went to sleep. Sorry.

Q. Oh, did you hear me?

A. Yes, I heard you. I just got two blinks, boxes at the bottom.

Q. Oh.

A. Can you repeat the question?

Q. Yes, I'm curious. Did you begin your work at Fulton on a particular unit?

A. Yes, 1 East, 11:00 to 7:00 shift.

Q. I'm sorry?

A. Yes.

Q. You began working at Fulton on unit 1 East but it was the 11:00 p.m. to 7:00 a.m. shift?

A. Yes.

Q. Do you currently work on 1 East?

A. No.

Q. When did you leave 1 East?

A. The exact date I'm unsure, but it was about two to three months ago, perhaps. They closed 1 East down.

Q. Right. So until -- well, do you

have any recollection if it was May or June when 1 East was closed?

A. I don't think it was June. Exact date I don't know. I believe it was -- it was definitely summer, a summer month because it was hot, but I can't remember the exact date.

Q. Okay. So is it fair to say that you spent almost nine years working on 1 East?

A. Yes. Can I clarify something?

Q. Sure.

A. When I originally got the position, I did the float, so I wasn't on 1 East for the full nine years.

Q. But at some point you were full-time on 1 East?

A. Yes.

Q. And did you remain on the 11:00 p.m. to 7:00 a.m. shift or did you transition to a different shift?

A. I transitioned to a different shift once I got my RN when Ms. Frawley asked me to cover a day shift, unit

manager's role.

Q. So is it fair to say that sometime last summer, July of 2019 until the summer -- this past summer 2020, you became the unit manager on the day shift?

A. Yes.

Q. What unit are you working on now?

A. 2 East.

Q. So when you came over to the day shift, the 7:00 to 3:00 shift; is that correct?

A. Yes.

Q. And that was at the request of Ms. Frawley, the director of nursing?

A. She asked me if I would like to take the position, yes.

Q. So is it fair to say that was a promotion to the unit manager position?

A. Yes.

Q. Is the unit manager essentially the charge nurse on the floor?

A. Yes. Yes. Yes.

Q. So is it fair to say that your experience as a unit manager, until this

past summer, was entirely on 1 East?

A. I did -- no, I did briefly -- unit manager on 3 East, to cover another supervisor, before coming to 1 East before she actually asked me to stay on day shift because when I went to the day shift, the assumption was that I would go back to nights.

Q. Oh, okay. So most of your experience as a unit manager has been on the day shift on 1 East?

A. Yes.

Q. What are your duties? What does it mean at Fulton Commons to be a unit manager? What are your duties, your responsibilities?

A. I oversee the LPNs and the CNAs and make sure that everyone is carrying out their roles. I help with the assignments, patient care, I interpret and follow out the doctors' orders, troubleshoot anything that happens, as far as the residents and report back to nursing supervisors or Ms. Frawley.

Q. So you mentioned carry out orders

and patient care, so you had direct patient care on the unit?

A. At times, yes.

Q. So is it fair to say you were familiar with the patients on your unit that you and your team cared for?

A. Yes.

Q. And you also mentioned your supervisors. You supervised the CNAs, you said, is that certified nursing?

A. There was a delay.

Q. Yeah.

A. There was -- there was a delay. Sorry.

Q. No. I'm sorry. You supervised, you said, the nurses. That would be the LPNs?

A. Yes.

Q. And the nurse aides?

A. Yes.

Q. You also mentioned that you respond to directions from your supervisors, correct?

A. Yes.

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MR. ZADEK: I'd like to talk a little bit about the organization, the hierarchy at Fulton Commons and I'd ask if Ms. Liptak could display for Ms. Waller the Exhibit-2.

Q. So Ms. Waller, do you see what's been premarked for identification as Exhibit-2?

A. Yes.

Q. And I'll ask you: Have you ever seen this document before?

A. I don't recall seeing this document.

MR. ZADEK: Okay. Let's just scroll down. Thank you for showing us the whole document now. All right. If you stop it right there, just go down -- yeah, that's perfect.

Q. If you look at this diagram, the second to last column on the left, the second to last head -- from the bottom has the word CNAs. Do you see that?

A. Yes.

Q. And then above that it says "Unit

nurses." And then above that it says "Unit managers." And then above that it says "Assistant director of nursing." Correct?

A. Yes.

Q. And then above that "Director of Nursing." Does that listing, those blocks, does that fairly and accurately represent the hierarchy of supervision at Fulton Commons?

A. Yes.

Q. So at the bottom of the -- that totem pole, if you will, you see the CNAs, correct?

A. Yes.

Q. And they work under -- it says unit nurses. Would that be the LPNs they work under?

A. Yes.

Q. And then the LPNs would work under the unit manager, such as yourself?

A. Yes.

Q. And then above that it says "Assistant Director of Nursing." So is that your supervisor?

A. Yes.

Q. And for the time that you worked at 1 East before you shifted over the summer, who was -- who was the assistant director of nursing that you worked beneath?

A. I had two. One was Ms. --

Q. Ms. what?

A. Oh, I'm sorry. I thought you were talking. One was Ms. Jean Baptiste and the other was Lisa Peterson.

Q. And did Ms. Peterson or Ms. Baptiste have any particular role or job junction, job duties within the facility, other than assistant director of nursing? Did they have any specialty or tasks that they were carrying out?

A. Ms. Jean Baptiste was in charge of infection control. And Lisa Peterson, she took on the role of setting us up with EMRs, Electronic Medical Records.

Q. Was that a relatively recent conversation from paper to EMR at Fulton?

A. Yes.

Q. Have you converted to EMR now?

A. We're almost 90 percent converted.

Q. Okay. And above the Assistant Director of Nursing it says "Director of nursing." Correct?

A. Yes.

Q. And that's Ms. Frawley?

A. Yes.

Q. And then to the right of the Director of Nursing, we have "Administrator," correct?

A. Yes.

Q. And that's Cathie Doyle?

A. Yes.

Q. And then to the left of Unit Manager, slightly below, I see MDS coordinator. Is that Larisa that you mentioned?

A. Yes.

Q. Now, so you took -- you received supervision from the assistant directors of nursing, correct?

A. Yes.

Q. And do you also receive

supervision at times from Ms. Frawley herself, the Director of Nursing?

A. Yes.

Q. And were there occasions in the last year where you had communications and received directions from the administrator herself, Ms. Doyle?

A. As far as -- can you clarify, like, what type of direction?

Q. Well, we'll talk in more detail about that but were there occasions in 2020 when you spoke with Ms. Doyle about certain issues on 1 East?

A. Not directly, no. Most of my communication would be with Ms. Frawley.

Q. Have you spoke --

A. Can I clarify that?

Q. Yes.

A. We have morning reports sometimes, so she would be -- she would talk and I would tell about what would happen on 1 East, and Ms. Doyle would be there, but I was essentially talking to Ms. Doyle and Ms. Frawley at their table, so I -- we did

talk about 1 East things together.

Q. But your -- is it fair to say, then, if I'm understanding correctly, you much more frequently spoke with Ms. Frawley concerning issues on 1 East, rather than Ms. Doyle?

A. Yes.

Q. But were there occasions in 2020 when you did have conversations with Ms. Doyle on issues?

A. No, we never have one-on-one conversations like that.

Q. Okay. Would you speak more often with Ms. Frawley or more often with Ms. Baptiste and Ms. Peterson during your workday?

A. Mostly with Ms. Frawley.

Q. And in 2020 -- let's just confine ourselves to this year. In 2020, how often were you speaking with Ms. Frawley directly about issues with 1 East; daily, weekly --

A. Daily. Daily.

Q. And were those in-person face-to-face meetings or would you speak to

Ms. Frawley on the telephone or both?

A. Mostly on the telephone and sometimes face-to-face.

Q. Okay. So I suppose it's fair to say --

MR. ZADEK: And thank you, Ms. Liptak. We can take that down now.

Q. It's fair to say that you were quite familiar with the layout of 1 East, you'd worked there for a long time, right?

A. Yes.

Q. Let me ask you about a bit about the building. How many floors are there in the building that house residents?

A. There's four -- four floors that we have.

Q. And how many resident units are there in the building?

A. There were seven. At this present time, only -- only five are open.

Q. And you said -- I believe you said that 1 East -- 1 East is no longer open; is that correct?

A. That is correct.

Q. So when I speak of 1 East, I'm speaking of the 1 East as it existed until this summer. Okay?

A. Yes.

Q. Where is 1 East or where was 1 East located in the building?

A. As you entered the building, it would be to your left, on the first floor.

Q. Okay. What is to the right, as you enter the first floor?

A. Administrative offices.

Q. And how many beds were on 1 East?

A. 40.

MR. ZADEK: And let's bring up, if we could, Exhibit-3, which -- Exhibit-3 which has been premarked for identification.

Q. Are you able to see that, Ms. Waller?

A. Yes.

Q. So you said you -- so the top of the -- this document that would be -- have you seen this before, this document?

A. Yes. But I believe by the

prior -- where we keep the fire hydrants. I think I've seen this before.

Q. So looking down from the top of the document, that would be the front entrance, correct?

A. Yes.

Q. So can you describe the layout of the rooms. Are there, essentially, two -- two wings or -- within 1 East?

A. Yes, a low side and a high side.

Q. Okay. And looking at Exhibit-3, is it fair to say that the low side is on the bottom portion of the Exhibit, which begins with the number 101?

A. Yes.

Q. And it would run, essentially, from 101 essentially to 111, correct?

A. Yes.

Q. And then the high side would be 112 up to 122?

A. Yes.

Q. Are these low and high sides connected to one another, so to speak? One can walk down the aisle -- down the central

corridor and enter the rooms as they're marked?

A. Yes.

Q. If we scroll down a little further on the document, there's some writing, it looks like writing notes on the documents. Do you see that?

A. Yes.

Q. And there also appear to be numbers written alongside the rooms of 1 East, correct?

A. Yes.

Q. Did you write -- did you make these handwritten entries?

A. No.

Q. Do you know who did?

A. The penmanship -- no, it does not look familiar.

Q. It says -- looking at Exhibit-3, it indicates, if I'm correct, 1 East equals 40 beds, correct?

A. Yes.

Q. And you said that's accurate?

A. Yes.

Q. And below that it says "Subacute Unit." What does that mean?

A. Just means that it's -- we -- we can deal with, you know, IV. Different -- higher level, more higher level, I guess, of care. Like not acute care but just a little bit above acute care.

Q. Okay. And then below that there's an arrow and it says the words "Converted to COVID unit." Do you see that?

A. Yes.

Q. Was 1 East, as indicated on the diagram, converted to a COVID unit?

A. Yes.

Q. And then to the right of that, it's handwritten the words "Private rooms." And it says: "120, 103, 110 and 113." Correct?

A. Yes.

Q. And are those private rooms?

A. Yes.

Q. So is it fair to say the other rooms contain two beds while those rooms contain a single bed?

A. Yes.

Q. Okay. So where it says, "Converted to COVID unit," I'm going to ask you: When was 1 East converted or designated as the COVID unit?

A. The exact date, I don't know but I believe it was March/April when COVID kind of took up a notch.

Q. Took up a notch, did you say?

A. Yeah, like, when we, when it -- became, like, a lot more prevalent.

Q. Okay. So March/April of 2020 this year?

A. Yes.

MR. ZADEK: Thank you, Ms. Liptak, we can take that down for now. We'll go back to it probably later but for now we can take that down.

Q. Who made the decision to convert 1 East into the COVID unit in March or April of this year. Did you make that decision?

A. No.

Q. Who did?

A. I believe it was Ms. Frawley that

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called and told me that we were going to convert 1 East to make it the COVID unit.

Q. You said Ms. Frawley notified you that 1 East was being converted to the COVID unit?

A. Yes.

Q. So you were notified by phone that it was being converted to the COVID unit?

A. Yes. Well, both. I was called into the office a couple of times to just go over that we're going to convert 1 East and make it the COVID unit, but I believe the initial phone call was made about it.

Q. So how many meetings did you have with Ms. Frawley concerning the conversation of the unit into the -- into a COVID unit?

A. Multiple. I couldn't give you an exact number but it was a daily conversation until everything transpired because it was very new, so I had a lot of questions.

Q. Did you -- who participated in these meetings or discussions about the conversation of 1 East into the COVID unit?

Was it you and Ms. Frawley, you and Ms. Frawley and others?

A. At most -- most of the time, it was just me asking Ms. Frawley questions. And then Ms. Baptiste came over, you know, every so often, but mostly myself and Ms. Frawley.

Q. How often was Ms. Baptiste present for these discussions?

A. Not often. Not often at all.

Q. How about Ms. Doyle. To what extent was she present for any of these discussions?

A. Other than when we had the morning report and she would say 1 East is the COVID unit, none.

Q. And how did that work when you said it was converted, you believe, in March or in April, how did that work? How was it converted? You mentioned that -- that the unit had been classified or characterized as subacute, correct?

A. Yes.

Q. So it would no longer be treating

those patients, it would be treating what type of patients, once it was the COVID unit?

A. The exact way we converted, I can't remember the exact way but what I recall is, we separated the people on the unit to one side and then we started admitting other people, like COVID onto the other side. That's what the original -- the original idea was.

Q. When you say "one side," are you referring to high numbers, low numbers?

A. High -- yes. High side and low side. That was the original plan.

Q. So the original plan was that one side would contain the subacute residents and the other side would contain the COVID residents?

A. Yes, that was -- we came up with a lot of different plans. When I say "we," they told me about a lot of different plans and that, to my recollection, was the first way they split it up.

Q. It didn't remain that way, right?

As time went on, the unit changed, correct?

A. Yes, we eventually transferred everyone upstairs to the upper part of the nursing home and then I was only getting admissions that were COVID unit patient residents.

Q. Right. So is it fair to say then, based on what you just said, that you said they transferred everyone else upstairs. The -- let's say, for infection control purposes, the decision was made that the COVID unit would truly contain COVID residents?

A. Yes.

Q. Now you also use the word "they." You said they told me about different plans. Who is "they"? I'm just wondering who was having this discussion with you about how to set up the COVID unit.

A. Originally, it was Ms. Frawley.

Q. Right.

A. And Ms. Jean Baptiste. And then when Ms. Jean Baptiste left, it was Ms. Chernowski.

Q. Chernowski?

A. Yes, she's our new infection control person.

Q. And Ms. Baptiste is no longer at the facility?

A. No.

Q. When did Ms. Baptiste --

A. No.

Q. -- leave? I'm sorry. When did she leave?

A. The exact date I'm unsure but I believe it was very warm outside; early summer months?

Q. So is it fair to say then when these initial discussions were taking place, about how to set up the COVID unit, it involved Ms. Baptiste because that's when the unit was being established, correct?

A. Yes.

Q. Ms. Chernowski came in after the unit was -- had already been created?

A. Yes. We -- yes.

Q. Okay.

A. The dynamics -- sorry.

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(Audio cutting out.)

Q. Did you want to say something?

A. I just wanted to clarify the dynamics of the unit changed often. They would tell me which -- (audio cutting out) how to do the unit. Like how to make sure that, you know, we stay within the control guidelines so.

Q. You know what, you broke up for me. So let's backtrack a second. It's not your fault, the audio visual. I missed something there. Can you just repeat what you said about that.

A. Yes. The dynamics of how to split up the unit was done a lot, so both Ms. Chernowski and Ms. Baptiste had a hand in how we would separate the unit or to make it more conducive to an infection control situation. Both of them had a hand in it because we changed the dynamics of the unit a lot.

Q. This is a situation I'll take it -- you had -- we had this discussion already. You had many years of experience

as a nurse, what happened in this year with the pandemic is something that no one in your field has ever had to deal with, correct?

A. Correct.

Q. So when you say the dynamics of the unit changed a lot, is it fair to say that personnel, your supervisors were trying to implement a unit that complied with infection controls?

A. Yes.

Q. But you said it changed over time, correct?

A. Yes.

Q. Let me remind you, by the way, any time you need to take a break, a bathroom break, any -- if you need a moment or get a drink, let me know because I -- you know, I might be able to go on, you know, nonstop, so let me know if you need to get up to stretch or get a drink or a bathroom break. Okay?

A. Okay.

Q. All right. So you mentioned that

initially the plan was that the unit would be divided between high and low side with respect to COVID patients, non-COVID, correct?

A. Yes.

Q. Which side, the high side or the low side, would contain the COVID patients?

A. Originally, it was high side had the COVID patients and then low side had mostly non-COVID. But eventually it spilled over so we would empty out the back of low and then put -- just fill the whole entire unit.

Q. So originally the high side would have the COVID patients and the low side would have the non-COVID?

A. Yes.

Q. But eventually the whole unit contained COVID patients, correct?

A. Yes.

Q. Were you making -- when you talk about the dynamics of the unit changed a lot -- were you making any of the decisions concerning placement of residents onto 1

East or --

A. No.

Q. -- simply carrying out the directions of your supervisors?

A. No. I did not make the planning part. I would always get a phone call or get called into the office to say this is how we're going to do -- you know, we're going to make the patients add. So I would always get a phone call or a meeting about it. Mostly a phone call.

Q. From whom?

A. Ms. Frawley.

Q. So Ms. Frawley was essentially directing the set up of 1 East during this pandemic?

A. Yes, I would either get a phone call from Ms. Frawley or admissions saying that we're getting more patients and that's -- that's how they moved the patients in.

Q. Now, we're going to go through a bit about -- a bit about, as you call it, the changing dynamics of 1 East. And were there times that you had opinions about a

failure to comply with infection control during this period? Were there occasions when you, either to yourself or said to others, this doesn't seem safe?

A. Yes.

Q. So as we go through the balance of our discussion today, I want to remind you that as we discuss what was going on, you should feel free to say at any point I thought this was unsafe or I thought that this did not comply with infection protocols. Okay?

A. Okay.

Q. All right. Do you want to take a 10-minute break now or not?

A. No.

Q. All right. We're going to talk a little bit now about infection control and you mentioned, I think, in fact, protocols at the facility. Through all your years, both all those years as an LPN, and your studies, and the time now as a registered nurse, have you received instruction on the importance of infection control within a

nursing home?

A. Yes.

Q. And have you received instruction concerning the importance of controlling the spread of an infection once it's entered the confines of the facility?

A. Yes.

Q. Have you received actual inservice instruction at Fulton about how significant infection control is?

A. Yes.

MR. ZADEK: Okay. I'm going to ask Ms. Liptak, if she would, display Exhibit-4.

Q. Again, I hope you can see this, Ms. Waller.

A. Yes.

Q. This Exhibit-4 is a four-page document and we'll -- let's back up again to the beginning. So this says "Fulton Commons Care Center Nursing Department," and then it says "I, Latasha Waller, was given the in-service on the Coronavirus prevention on March 9, 2020 on the 1 East unit by Ms.

Marise Baptiste, RN, infection control." And then we see a signature line with a signature. Is that your signature on this document?

A. Yes.

Q. So is it fair so say on March 9th you were in-serviced about infection controls with respect to the pandemic?

A. Yes.

Q. Okay. Now if we scroll down a little bit, we'll see on the next page, the topic is "Infection control protocol" and then it's "RT." I guess that's relating to?

A. Uh-huh.

Q. "Belongings of expired residents." And is line two your signature again?

A. Yes.

Q. And then page 3 of the document the topic here, again, is "Infection Control." And line one, is that your name and signature?

A. Yes.

Q. And then the last page, page 4,

it's an in-service entitled on the top "Coronavirus" and on the bottom, towards the last -- two or three up from the bottom, again, do we see your name printed and your signature and the indication that you are the nurse manager?

A. Yes.

Q. Okay. So this document, Exhibit-4, is a confirmation of some of the inservice you received this year on the pandemic and infection control, correct?

A. Yes.

Q. What I would like to do now is look at some of the protocols and we can bring that up as Exhibit-5, which has been premarked for you. And I think you mentioned earlier that there was that binder that you didn't have an opportunity to look at, but I think you were told that it contained policies and procedures?

A. Yes. Everything that had to do with, like, COVID.

Q. Right. So this document is Exhibit-5 and it's been so marked. It

contains 48 pages. If we go to page 4 of this document. We scroll down to page 4, right there. You'll see the top here it says the Department is administration and includes several other departments but it includes nursing, correct?

A. Yes.

Q. And the policy name of this document is "COVID-19" at the top.

A. Uh-huh.

Q. And if we scroll down towards the middle of the page, a little further down, we see a section called "Policies." Do you see that there?

A. Uh-huh. Yes.

Q. I'm going to reach -- I'm going to just read the sentence to you, the third line down of policy, where it says "The facility will implement actions according to CDC NYS DOH." Is that New York State Department of Health?

A. Yes.

Q. "And World Health Organization recommendations, including identification,"

and then "isolation." Do you see that?

A. Yes.

Q. So was it your understanding that the facility was taking steps that were in accordance with, or in conformity with, the CDC? Is that the Centers for Disease Control?

A. Yes.

Q. Was the facility, and were you being kept abreast, of guidelines from the CDC and the DOH, Department of Health?

A. To the best of my knowledge, they would filter information to us.

Q. Okay. And it says "The recommendations would include," and then we have the word isolation. What do you -- what do interpret isolation to mean with respect to a pandemic? What -- to what extent is isolating residents or isolating patients concern the pandemic? To what extent it -- let me withdraw that. To what extent is isolation a tool used for infection control purposes?

A. Can you -- can you just clarify

tools. Clarify the question.

Q. Yeah. To what extent was isolation, the isolation of a resident, a COVID resident from other residents, seen as part of the infection control protocol at the facility?

A. It was -- it was a big part of the protocol. The original residents that came in were in a room by themselves.

Q. So there was a sense that isolation would help protect the non-COVID residents, is that fair to say?

A. Yes, because we kept them separate from the other residents. They were in the room for a certain amount of days by themselves.

Q. Okay. If we go to the next page, which is page 5 of this 48-page document. I just want to follow up with what we were discussing about isolation. And if we go down a little further to number five on this page, it says -- and I'll read it and tell me if I'm reading it correctly, number five. If logistically feasible --

A. Can you -- can you pause. Can you pause for one second? My son just walked in the room.

(Discussion of the record.)

A. I'm so sorry.

Q. That's quite all right. The other day we had a cat walk in the room, so these things happen. No worries. So number five says "If logistically feasible, and will put other residents or staff at risk for exposure, the facility will cohort confirmed positive residents in the same room or area of a unit as much as possible." So what does that mean that the facility will cohort those confirmed positive residents? What does that mean to you?

A. That means that they would separate them as much as possible as they can away from anyone who didn't have -- who weren't possible -- I mean, positive.

Q. Right. Again, for safety of the non-COVID residents or residents?

A. Yes.

Q. And if we go to the next page,

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page 6, at the bottom of this page it says at the very bottom of page 6 -- I think we have to go to the next page. If we go to the bottom of the page, scroll down. Here we go. If we go to the bottom of this page it says "Confirmed COVID-19 unit." It reads "One floor of the facility has been designated to care for residents with confirmed COVID-19 admissions. It is the intent of this unit to ensure the safety of all residents and staff." Do you see that?

A. Uh-huh. Yes.

Q. So was that your unit, 1 East?

A. Yes.

Q. And is it fair to say that this unit was converted to the COVID unit to protect the safety of all the residents of the facility, including the non-COVID residents, as well as the staff at the facility?

A. Yes.

Q. And that was to be accomplished by keeping these COVID residents isolated from the other population of residents?

A. Yes.

Q. And now page 11. Page 11 here, this document is entitled "Nursing Department. Protocol for residents with suspected COVID, as well as residents admitted from hospital with confirmed COVID." And the policy is stated here at the top "It is the policy of Fulton Commons Care Center to ensure all residents are maintained in an isolated area, once identified as a presumed COVID, or is admitted to the facility from a hospital setting with a confirmed diagnosis of COVID." So again, from an infection control standpoint, why is it important to separate presumed COVID residents or confirmed COVID residents from other residents in the nursing home? Why was that --

A. You would want to separate them to prevent the non-COVID residents from contracting COVID. That's why you would want to separate them. You wouldn't want them to be -- to interact so that they would not contract COVID.

Q. Okay. Would you agree that the failure to properly separate presumed COVID residents from other residents, endangers the safety of the non-COVID residents?

A. Would I presume? Yes. Anybody who does not -- does not have COVID, if they're in contact with COVID, yes, it endangers them.

Q. Okay. And would you also agree that a nursing home that does not properly separate presumed COVID residents is not providing safe and adequate care to the non-COVID residents?

A. Can you repeat that? Would I presume?

Q. Sure. Not presume. Would you agree. Would you agree that a nursing home that does not properly separate presumed COVID residents is not providing safe and adequate care to the non-COVID residents?

A. Yes.

Q. Okay. I want to talk now a little bit about the staff. Because you, as the unit manager, talked about the staff you

supervise. Supervised and supervised on 1 East. I'd like to go to page 7 of these -- of Exhibit-5. If you can go to page 7. And page 7 at the top, it says under number three "As best as possible, exercise consistent assignment or have separate staffing teams on the confirmed COVID-19 unit." Do you see that?

A. Yes.

Q. It talks about having staffing teams -- having separate staffing teams on the confirmed COVID unit. That's your unit, 1 East, correct?

A. Yes.

Q. And if we go now to page 11 of Exhibit-5, and we go and look at number three on page 11 it says "The same staff will be assigned to them on a daily basis for each shift." And this is under the heading of "Protocol for in-house residents with a suspected COVID diagnosis." Can you explain why staff, such as CNAs, should not be caring for both presumed COVID and non-COVID residents at the same time on the

same shift?

A. Because it runs the risk of taking COVID with you to -- from COVID residents to non-COVID residents.

Q. Okay. Would you agree then, based on that statement, that staff, including CNAs, LPNs, et cetera, who care for presumed COVID positive and non-COVID residents on the same unit are not providing safe and adequate care to the non-COVID residents?

A. Can you repeat that?

Q. Sure. Sure. Sure. Would you agree that staff who care for presumed COVID and non-COVID residents on the same unit are not providing safe and adequate care to those non-COVID residents?

A. They're not providing care to not -- safely to non-COVID residents. Would I agree?

Q. Yes.

A. Yes.

Q. Okay. And would you agree, then, that staff who care for presumed COVID and

non-COVID residents on the same unit are endangering the safety of the non-COVID residents?

A. They have the potential, definitely, to endanger the safety.

Q. Okay. I want to talk briefly about room transfers because you mentioned earlier there was movement of residents from rooms during this pandemic.

A. Yes.

Q. So if we go to page 22, and we see at the top of page 22 this is called "Fulton Commons Care Center Policy and Procedures." Title is "Transfers to hospitals and room changes procedures." And if we scroll down to the next, to page 25 of it. If we move -- this is a 4-page document where if we go to page 25 on the screen, which is page 4 of this document, we see the heading "Nurse manager responsible for." Do you see that?

A. No.

Q. Page 25.

A. No.

Q. No? Let's see.

A. It's coming.

Q. There you go. Okay. So this is page 25 of Exhibit-5. It says "Nurse manager responsible for." Now, you are that nurse -- you are the nurse manager, correct?

A. Yes.

Q. It says "Nurse manager responsible for number one, securing clearance for room changes. Two, notifies unit social worker or designee for impending change. Three, implements nursing room change procedures. Four, accuracy of all paperwork pertaining to transfers." And then it goes on. So what -- when it says that you were responsible for obtaining clearance of all resident room transfers, what does that mean? What does that mean in terms of your duties?

A. It means that I would make sure the room is ready for someone. It's cleared and ready for someone to be transferred into.

Q. So that you're saying if a

resident is coming onto your unit, or 1 East, that room is ready to accept that resident?

A. Yes.

Q. In what -- in what way is it --

A. That it was -- that it was cleaned. That, you know, that housekeeping had cleaned it. That it had the bedding, the bed, it had a remote, the call bell was working, a telephone. And that it was ready for someone to be received on there.

Q. Okay. And it also says that the unit manager notifies the social -- unit social worker or designee for impending change. What does that mean?

A. Do you mean what does it mean for Fulton Commons or what does it just mean in general?

Q. No, all my questions pertain to Fulton Commons, specifically, to 1 East. What does it mean, for you as the unit manager when you were on 1 East, that you notified the unit social worker for the impending change? What does that mean?

A. Can I clarify something?

Q. Sure.

A. Social worker would normally notify me that someone would be getting transferred. I -- it wasn't the other way around. I'm -- I would get notified either from Ms. Frawley or social work that a resident would be transferred.

Q. Transferred onto the unit or off the unit?

A. That a room would be changed or that someone would be leaving my unit.

Q. So whether a resident is moving onto 1 East or moving off of 1 East, you would receive that information from the social worker or Ms. Frawley?

A. Yes. In-house. In-house. New admissions would come from the admissions office. And in-house transfers, social work normally would notify me. I wouldn't know until after they assigned the room because they would call the families and tell them that they were getting transferred.

Q. Okay. So in-house the

notification comes from the social worker or Ms. Frawley?

A. Yes. I didn't notify social work.

Q. So they're telling you that either a resident's being moved off or a resident's being moved onto the unit?

A. Yes.

Q. So can you walk me through that process. So what, the phone rings and it may be Ms. Frawley saying to you Latasha, you're getting a new resident on the unit?

(Audio/visual cut out.)

A. Can you hear me now?

Q. I do hear you now. I don't see you?

A. We're having problems.

Q. There you are. You're back.

A. Okay.

(Audio/visual cutout.)

(The requested portion was read.)

Q. Right. Is that how it would work, Ms. Waller, you'd get that phone call from Ms. Frawley saying you got a new

resident coming to 1 East today?

A. Yes. I'd either get the phone call from Ms. Frawley or social work would call me and say you're getting a transfer.

Q. From another unit?

A. From another unit, yes.

Q. And if you're getting a resident coming into your unit from the hospital, you're saying you'd get that information from the admissions office?

A. Yes. The majority, almost 99 percent of our admissions, comes in after 3:00 o'clock, so the charge nurse, because there's an RN at night that -- that takes over for me. She's the charge nurse. She would do the admissions, so she would -- admissions would notify either myself or her that someone was coming in from the hospital.

Q. And who might that be from the admissions office? Who is the person that you typically would speak with?

A. Kristin and before Kristin the young lady that was there before her, I do

not recall her name.

Q. Is that Kristin Herrscher?

A. Yes.

Q. So Kristin would call you and let you know about who's coming in?

A. Yes. And the time -- she would give me a guesstimate time that they would come in.

Q. And whether it's from the admissions office or Ms. Frawley, and the social worker for in-house transfer, you said you would have to make sure the room is ready?

A. Yes. Well, admissions -- admissions -- for new admissions, admissions would come over and check the room. But I also, as time went on, I would go in and make sure. As I saw, like, what they were checking for, I was checking the same things to make sure that the room was ready. But admissions would come over and check the room, that it was ready to receive a new patient from the hospital.

Q. And likewise, if the resident was

moving from upstairs unit 3 East, let's say, down to 1 East, you would also have to make sure the room was ready to accept that resident, correct?

A. Yes, I would. Admissions wouldn't do in-house checks. I would just make sure that the resident had what they needed, you know, in the rooms.

Q. Oh, I see. If they're from the hospital, admissions would -- admissions would actually come into the room and make sure it's ready to accept the hospital transfer?

A. Yes.

Q. Would that be Ms. Herrscher, Christine [sic] who would be doing that?

A. It was Kristin and the other young lady that used to work there, the name escapes me. And then it would be Kristin and Alex, the new lady that works there.

Q. So Kristin Herrscher or Alex?

A. Alexandra.

Q. What's her last name?

A. Her last name escapes me. I do

not remember it.

Q. But Alexandra or Kristin would physically go in and make sure that the room was ready?

A. Yes.

Q. And you mentioned earlier that -- that the room had been properly cleaned?

A. Their role -- if the room had not been properly cleaned, they would say, Ms. Waller, that room hasn't been cleaned. But for the most part, they're just checking that the bed was made, so that -- because they knew what time the resident was coming so they would just make sure that the bed was made, there was a call bell. Some of the same things that I would look for, that's what they would look for.

Q. And you're saying that -- if I understand correctly -- that whether it be a hospital admission, a resident coming from the hospital, or an in-house transfer, that decision was not made by you. You were simply informed of the move?

A. Yes.

Q. You were not saying get me a resident in room XYZ or get this resident out of here?

A. No. I was always notified that it was going to happen and the timeframe that they needed it to happen by.

Q. Okay.

A. Can I clarify something?

Q. Absolutely.

A. Once or twice -- they have a big board in admissions and I would look on the board, they would ask me my opinion. Like, if they were moving an in-house person and they would just say would this move be good. So maybe once or twice I would look at the board and say I don't think these two would, you know, go good together just because of their personalities or whatever the reason was but I would look at the board.

Q. But that was more the exception than the rule, right?

A. Yes. I only went in just out of my own curiosity once I -- you know, just to see who they were moving.

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Q. I know you mentioned earlier Ms. Laurente, was it, was she another unit manager?

A. Yes.

Q. Do you have a good relationship among the unit managers? Meaning do all the unit managers know one another on the day shift?

A. Yes.

Q. Is it fair to say that the unit managers talk to one another about issues arising at the facility?

A. Yes.

Q. Okay. So since we've been talking about COVID, presumed COVID, I want to -- you can take down this Exhibit-5 and just talk a little bit about those terms because even the protocol we just looked at mentioned the words suspected or presumed COVID versus confirmed COVID. I just want some clarification on that. Today are residents being tested at Fulton Commons for COVID?

A. Yes.

Q. Are they being tested for the virus itself or the presence of antibodies, do you know?

A. They're being tested for the virus itself today.

Q. When did that testing of residents begin, if you know?

A. I don't know the exact date but it's been a couple of months now. Right before I left 1 East, I believe, we started swabbing everyone every week.

Q. Can you give me an approximation, meaning maybe a month, if you had to venture --

A. Towards -- I don't know if it was towards the end of summer. I just remember swabbing all of the residents on 1 East right before they started to close -- when they started to shut down 1 East. The exact date I can't recall. I'm sorry.

Q. Okay. Well was it -- was it in March of this year?

A. Swabbing? No. Of every single resident, no.

Q. Was it in April?

A. I don't believe so but it could have started. I'm trying to think of an event that would make me trigger my -- the exact date I can't -- I don't think it was in April.

Q. You think it was sometime in the summer May, June, May, June?

A. Yeah, I believe it was more of a hotter month.

Q. Okay. Before that period when the swabbing occurred, were residents being tested at Fulton for COVID?

A. No. I -- that's not a yes or no. It's a -- I do -- they all, some of -- at one point, Fulton did, like, the antibody test, I believe. Like everyone got their blood drawn. But I can't really talk to upstairs because I was on 1 East, so it was different. I would -- I didn't do that testing because my residents were coming in with COVID, so that SAR test, the antibody test I didn't partake in that because my residents would have had it anyway.

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Q. When you say they're coming in with COVID, is that coming from the hospital or coming from upstairs or both?

A. Coming from the hospital.

Q. Where they -- where they had already been --

A. No one from up --

Q. I'm sorry. When you say coming from the hospital, meaning they've already been definitively identified as having COVID?

A. Yes.

Q. So let me ask you this: Before the testing occurred, before Fulton began swabbing or testing for COVID, which facility residents were considered presumed COVID, presumed COVID positive?

A. I'm not sure because I really didn't pay attention to what was going on upstairs because I was like engulfed with 1 East. So -- well, the presumed would be anyone upstairs who was not on 1 East. Actually, can you repeat that question because I'm not quite sure I understand it.

Q. Yes. Let me -- okay. So if I understand correctly, you said that those residents who came in from the hospital through the admissions office, those residents you said were considered COVID positive because they had been identified at the hospital as having COVID, correct?

A. Yes.

Q. And then there were also residents within the facility, you said, who were transferred, that that notification might come from the social worker or from Ms. Frawley saying we're sending you a patient down to 1 East, correct?

A. Yes.

Q. And some of those patients --

A. And they were -- so when they came down to 1 East -- when they came down to 1 East, they had tested positive.

Q. They had actually tested positive or they were presumed while they were upstairs? Were they showing symptoms of being positive?

A. Well, I -- to be honest, unless I

had the chart in front of me, I'm not sure if they were tested positive or they presumed. But some that were sent down were asymptomatic and had tested positive. And I don't think I ever got a transfer where someone was having active symptoms, no.

Q. Okay. But there were residents transferred down from upstairs who were presumed to be COVID positive, correct?

A. Presumed to be COVID positive. I -- the residents that were transferred from upstairs to 1 East were -- they tested positive, that's the way they got onto 1 East. They had to -- originally, I guess because there were so many different dynamics that 1 East took, originally anyone who came to 1 East from upstairs had tested positive and that's why they had to stay on 1 East, to quarantine.

Q. But there was -- I'm sorry. Go ahead.

A. So, yeah. So originally they would come downstairs and we would quarantine them for 14 days because they had

actually tested positive. That's really the only way that they came to 1 East. That would be the only reason because we were the COVID unit at that point.

Q. Right. But if you recall, the policies and procedures that we were just talking about a few minutes ago within Exhibit-5, mentioned the term suspected COVID diagnosis. In-house residents with a, quote, suspected COVID. So my question really concerns when I say presumed, I'm also using that interchangeably with the word suspected, meaning in the period before residents were being swabbed, when you were receiving residents from upstairs and they were suspected of COVID, how was that determination made or would -- or did you know why they were transferred?

A. I don't -- I didn't know. I was always on the back end. They would just say you're getting a resident and they would tell me where they were putting the person at.

Q. And you were just told that they

were suspected to be a COVID -- that they were suspected to be COVID, that's why they were going to your unit?

A. Yes.

Q. Okay. And again, why with respect to infection control protocols was it important to get that resident off of the unit upstairs, the suspected COVID resident, and onto your unit off of the --

A. If they -- if they had -- if they -- because you needed to isolate them for 14 days just to make sure they didn't have any signs and symptoms or if they were symptomatic with COVID-like symptoms.

Q. So is it fair to say it was designed to protect the residents upstairs who were non-COVID?

A. Yes.

Q. When was the -- do you know when the first presumed or suspected COVID resident was moved off of another unit upstairs and sent down to you on 1 East?

A. No, I don't have the exact date or time.

Q. Do you know, roughly, what month you received your first suspected COVID resident?

A. I can give you a very big range like March -- I know it was like between March and right before we closed.

Q. Okay. Now you said you have -- your communications with other nurse managers, unit managers on other floors, correct?

A. Yes, we communicated.

Q. Yeah. Are you aware of any suspected COVID residents who were not transferred down to 1 East but remained upstairs on other non-COVID -- on other non-COVID units?

A. Was I aware of any suspected residents that had COVID-like symptoms? Through hearsay but not actually looking at their paperwork. Not -- you know, I didn't have any definitive information because I didn't have privy to their charts.

Q. But your unit, 1 East, was I think you said March or April, set up as the

COVID unit, correct?

A. Yes.

Q. So all confirmed or suspected COVID residents belonged on your unit, correct?

A. Yes.

Q. So in your conversation with other unit managers, did you ever become aware that there were suspected or confirmed COVID residents upstairs on other units that had not been, and were not being sent down to you?

A. No, they didn't tell me directly. It was more of a, like -- all of my -- because all of my residents came from the hospital who had COVID, so it never was assumed that any of their residents in the beginning would come from upstairs.

Q. Okay.

A. But none of them directly -- I don't recall any of them directly saying that like XYZ person should be on my unit but I might have, like, overheard through hearsay that someone -- like more of a such

and such should be on your unit but it was never like, Ms. Waller, X person should be on your unit because they have, you know, suspected.

Q. And if we go to page 39 of Exhibit-5, which we had looked at earlier, Exhibit-5, the policies and protocols. If we can take a look at page 39 of Exhibit-5. At the top of the page of 39 we see that this form is called COVID Surveillance and Tracking Method. And now if we go towards the bottom third of the page, number four?

A. Did you pause?

Q. Yeah, I think it's paused for a moment.

A. I can hear you now.

Q. Yeah, I don't see the page moving.

A. I see suspected case. Okay. It's moving now.

Q. Yeah. So if we go to number four, it says under number four there, right there. It says "Residents admitted from the hospital with a positive diagnosis will be

housed on the designated unit and remain on isolation for seven days since they have completed their first seven days in the hospital." So is that what you were referring to when you say they -- that's where admissions would confirm the availability of the room, that it's ready and move the resident directly from the hospital to 1 East, the COVID unit?

A. Yes.

Q. So they were admitted from the hospital directly to 1 East?

A. Yes.

Q. Okay. Are you aware, again, through your conversations with other unit managers, are you aware of any confirmed hospital COVID residents who were not admitted to 1 East but were sent and placed on a non-COVID unit upstairs?

A. No.

MR. ZADEK: Yeah, I was going to say this would be an ideal time to take that stretch, so let's take a break. When do you want to resume? Any

thoughts?

THE WITNESS: I'm sorry. I didn't know you were talking to me. I thought you were talking to her.

MR. ZADEK: I'm talking to everyone. Ms. Waller, do you want to take 10, 15? What do you think?

THE WITNESS: Sure. 15 minutes.

MR. ZADEK: 15 minutes. Is that okay with you, Ms. Krut?

THE REPORTER: Of course.

MR. ZADEK: Okay. So why don't we resume at 12:20.

THE WITNESS: Okay.

MR. ZADEK: I'll see everyone at 12:20.

THE WITNESS: Okay.

(A recess was taken.)

MR. ZADEK: All right. So you can hear me, Ms. Waller, correct?

THE WITNESS: Yes.

MR. ZADEK: All right. So we're going back on the record now. And I think I'd like to note everyone's

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appearance once again, if you could just, please, unmute yourself momentarily and indicate for the record your presence at this examination, at this hearing.

MR. JOYCE: Investigator Robert Joyce is on.

MS. LIPTAK: Anne Liptak, paralegal, on.

MS. GOLD: Office of the Attorney General, Gerri Gold.

MS. KOWTNA: Auditor Mary Kowtna.

MS. PICONE: Auditor Barbara Picone.

MR. ZADEK: Okay. I believe that's everyone.

Q. So Ms. Waller, I wanted to go over a couple of points during our earlier discussion. You mentioned the term appearing at court pursuant to the subpoena. I think you used the term court. And I just wanted to clarify for you that, as I said earlier, your testimony today is being taken pursuant to a subpoena that was issued by

the Attorney General's Office, and were you not appearing virtually today, you would actually be sitting at -- across the desk from me -- across the table from me at the Attorney General's Office. You would not --

A. Oh.

Q. -- you would not be in court. You would be appearing at the Attorney General's Office for this hearing. Okay. Is that clarifying for you?

A. Yes. I think that was the only way I could just kind of like get my son out.

Q. Okay. No, I just wanted you to know that, that this is an appearance at the Attorney General's Office.

A. Okay.

Q. All right. So let's -- we just finished talking a bit about -- about some of the policies and procedures. Were you working the 7:00 to 3:00 shift on 1 East on Monday, May 4, 2020?

A. I believe so. I would have to check my phone but I really rarely took time

off, so most likely I was.

Q. Well, let's bring up Exhibit-6, which has been premarked for identification purposes.

A. Okay.

Q. Okay. Ms. Waller, do you recognize this document?

A. Yes.

Q. And what is this document, Exhibit-6.

A. That's our staffing schedule for the day.

Q. And if you look at the top left it says the date being May 4, 2020, which was a Monday, correct?

A. Yes.

Q. And then under 1 East it says on the top left "7:00 a.m. to 3:00 p.m." shift. And then below that it says "RN: Waller." So that's you, correct?

A. Yes.

Q. So is that an indication that you were working that day?

A. Yes.

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Q. And below that it says "Allen, P." Is that Precious Allen?

A. Yes.

Q. So she was an LPN working under you that day?

A. Yes.

Q. Under that it says "LPN, Bell, N." Is that Nakisha, Nakisha Bell?

A. Yes.

Q. So she was working under you as well?

A. Yes.

Q. And then below that it says "CNA: Bent, S." Is that Sonya Bent?

A. Yes.

Q. And then below that we have "Clermont, M." Is that Maria Clermont?

A. Yes.

Q. And below that it says "Small, Y." So is that Yvonne Small?

A. Yes.

Q. And then below that we have "Swaby." Would that be Jacqueline?

A. Yes.

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Q. And then below that we have "Knight." Would that be Georgiana?

A. Yes.

Q. So you had those two LPNs and these five CNAs working with you that day, correct?

A. Yes.

Q. Did -- I think earlier I asked you when we read a document it said "NYS DOH" and I asked you if you understood that to be New York State Department of Health, and you were familiar with that, correct?

A. Yes.

Q. Is it fair to say that over the many years that you worked in the nursing field you've had contact with the New York State Department of Health during the course of their work?

A. Direct contact, no, only this past year have I had it, because I worked the 11:00 to 7:00 shift, so they never came during my shift. They were in the building doing surveys but they -- I never directly came in contact with them until most

recently when COVID hit.

Q. I see, because you were working the overnight?

A. Yes.

Q. Okay. But once you transferred over to the 7:00 to 3:00 shift -- okay. Then you would have contact during the course of one of their surveys?

A. Yes. We never -- I never got -- well, our survey is actually this week, so I never got a chance to be a part of a survey with the Department of Health, but they came and did inspections and hybrid surveys during the Coronavirus.

Q. Okay. So when I say DOH, just so you know, I'm referring to the Department of Health, if I say DOH. Okay?

A. Yes. When you -- can I clarify? When you say the DOH, you're talking about the State, right? New York State --

Q. Yeah. New York State Department. Right. When I say DOH, I'm referring to the New York Department of Health.

A. Okay.

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MR. ZADEK: Okay. We can remove Exhibit-6 now.

Q. So did the Department of Health conduct a survey on May 4, 2020?

A. I don't have the exact dates that the Department of Health came but there were many times that they came in to do -- to come to 1 East, or to the building, to make sure infection control was correct.

Q. Okay. So you mentioned the word infection control. Do you recall that in early May there was an infection control survey done on 1 East?

A. Yes.

Q. And were you present on the unit during the period of this survey in early May?

A. Yes.

Q. And I believe you used the word infection control. Did you become aware that the survey from the DOH was an infection control survey?

A. Yes, it was -- that's what I thought it was for.

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Q. How many Department of Health -- how many DOH surveyors were involved in the survey on May 4, 2020?

A. The ones that I saw were two. I'm not sure if there were more in the office but I saw two.

Q. Okay. Now do you remember that day in early May, May 4th when you were working with those two LPNs and those five CNAs and DOH was in the building? Do you remember that?

A. I think it was -- I think we're recalling the same day with the two surveyors that were women.

Q. Yes.

A. Their names escape me but I think we're talking about the same day.

Q. You remember that day?

A. Yes.

Q. How were you notified that day that the surveyors had arrived and were in the building? How were you informed of that?

A. Ms. Frawley called me and said

the State is in the building.

Q. And when Ms. Frawley called, she called you on the telephone?

A. Yes.

Q. And when she said the State is in the building, you understood that to mean the Department of Health?

A. Yes.

Q. Were you aware that facility documents had been given to the Department of Health in connection with this survey?

A. No.

Q. Were you aware that -- withdrawn. Did you have information that other individuals at Fulton may have provided the Department of Health with certain records concerning this survey?

A. No. Can I clarify something from the first question actually?

Q. Uh-huh. Yes.

A. They did require -- they did require -- I think they did require some documents, so I think they -- like, they asked for in-services. They did ask for

documents but I didn't give those documents over. They were -- I believe, Ms. Baptiste was still there at the time. She was looking for documents so she had, you know, she had asked me if I did in-services at that time.

Q. So Ms. Baptiste had asked you whether or not you had done some in-services because the Department of Health needed those records?

A. Yes. I just -- I recalled like one moment where they were looking for, like, specific in-services and she asked me, like, if I had them, so I was looking through, like, all of my paperwork to say if I had -- I think it was a handwashing inservice.

Q. Is that a handwashing in-service that you had taught, that you had given?

A. Usually they would start the in-services and then she would ask me to finish it up if I could. I can't recall if I gave it directly or not. But Ms. Baptiste would normally give the in-services or she

would give me the paper and say to finish it out or to leave it for the 11:00 to 7:00 supervisor to finish out. I can't recall if that was the actual paper she was looking for.

Q. So you did not -- withdrawn. Did you give -- did you hand over, yourself, any documents to the Department of Health surveyors?

A. Oh, no. I never directly dealt with them that way. They only just conversate [sic] with me.

Q. Do you know if the Department of Health surveyors wanted to look at baseline care plans?

A. I didn't know that day that that's what they were looking for. And if that was -- like, when they do that, they do it in a conference room, so it's -- I don't really have privy to that.

Q. Do you know if they, the DOH surveyors, wanted to look at initial assessment and progress notes of certain residents? Not that you turned it over, but

are you aware --

A. Can I clarify something from before?

Q. Yes.

A. I'm sorry. Can I just clarify?

Q. Yes.

A. Yes. So you asked me about care plans. I do remember an instance -- but I don't know if it was that same day -- but when the Department of Health came in they were looking for some care plans that we had done.

Q. And when you say they were looking --

A. So sometimes they did ask for a care plan.

Q. Well, I'm talking about right in May of this year, May 4, 2020 when those two women were doing the infection control survey. Do you recall if there was a discussion about certain baseline care plans being provided to the Department of Health from Fulton?

A. I remember a discussion about

care plans that they needed.

Q. Okay. We'll get back to that.

A. Okay.

Q. Do you remember any discussion of initial assessments or progress notes or physician orders being turned over or being requested by the Department of Health?

A. I didn't know they wanted or needed that.

Q. You said you yourself did not provide any documents directly to the Department of Health surveyors on May 4th?

A. No. Just to clarify, I might be getting two survey times mixed up but at one point, like, Larisa would -- she'd ask me for care plans, so I provided, you know, care plans. But Larisa never asked me directly for it. I would get a call or, you know, someone would say we need the care plans or a chart.

Q. And when they asked you for that, was it your understanding that you were to give it to this person at Fulton who would then pass it on to the Department of Health?

A. Yes. Once I gave a chart to Ms. Frawley, I brought it to her office and then once Larisa came over and took the binder that we keep the care plans in.

Q. And that's Larisa Ronayne as we talked about earlier?

A. Yes.

Q. The MDS coordinator?

A. Yes.

Q. And you mentioned a conference room. Is that where the DOH surveyors would meet with folks from Fulton?

A. Not that they would meet with folks. They would -- the computers were set up there, so I guess that was their private meeting area.

Q. Were you in that room when they -- when the DOH surveyors were in there?

A. No, I don't go into the -- I stayed on the unit. When the surveyors did, like, question myself and the other CNAs or the nurses, we were all on the unit --

Q. Okay. So when --

A. -- 1 East.

Q. So you remained on the unit. So any contact you had with the DOH surveyors would be while you were on the unit?

A. Yes.

Q. You didn't leave the unit to meet with them at a different location in the building?

A. No, not during that time. No.

Q. Did you hear other employees of Fulton speaking with the surveyors during this infection control survey on May 4th, meaning Ms. Frawley, Ms. Doyle, Ms. Baptiste, Larisa. Were you aware or did you hear them speaking with those surveyors about this infection control survey?

A. No.

Q. Did you hear anyone speaking? Other than yourself, did you hear anyone else talking to the two female surveyors from DOH?

A. Oh, yes, because on the unit, when they came on the unit they spoke to me and then they asked specifically for -- I think they wanted to speak to the

housekeeper. They wanted to speak to the nursing assistant. And I don't remember -- I remember them talking to the nurse but I'm not sure if they gave like a formal interview. But I just -- I was walking by. Like, I was just walking down the hallway when I saw them speaking to the nursing assistants and then they asked me for some nursing assistants, where they went into the dining room and they talked.

Q. Okay. You say nursing assistants. You mean the CNAs?

A. The CNAs, yes.

Q. Did you hear anyone tell the -- either the complaint surveyors that unit 1 East was a strictly COVID-19 unit, strictly COVID-19? Did you hear anyone tell the surveyors that this unit is strictly for COVID-19 residents?

A. I don't recall anyone saying that to them.

Q. Okay. Now did you speak with either of the women, the DOH surveyors, on May 4, 2020?

A. Yes.

Q. How many of these -- how many of the surveyors did you speak with?

A. Both of them.

Q. Okay.

A. Two.

Q. Okay. And when you spoke to the two surveyors, you said they were two women, right?

A. Yes.

Q. Do you recall one of them being named Jennifer Manuel?

A. I can't recall her name. I know one was a lot younger and she might have been newer. And then one was -- after she left her, she came back with an older woman that seemed more, you know, experienced. Like, you know, she asked more of the questions.

Q. And when you -- when you spoke to these surveyors -- well, did you speak to them privately or were you with other Fulton employees when you were talking to them?

A. It wasn't -- I didn't really

speak to them privately. If we did, it wasn't intentional. When they interviewed me I don't remember really anyone being around. I mean, if they were walking by it wasn't like we were, you know. Like, she told me that it was a private thing. Like, I didn't have a private meeting like the CNAs did.

Q. Right. It's not as if went into a private conference room for a discussion?

A. No.

Q. Okay. So what, if anything, did the -- either of those DOH surveyors ask you and what, if anything, did you tell them?

A. I remember them asking me about infection control questions that was where do we keep our PPE. And I believe at that time I had the cart, I had a PPE cart and she asked me where did we keep our suits, because we had like white suits on. So I showed her where we kept the suits at. They asked me about how we sanitized the suits and I think that was the gist of it. It was a lot of infection control questions.

Q. Did they walk around the unit?

A. Yes.

Q. Did they walk into resident rooms, look into residents rooms?

A. I don't recall them actually going all the way inside of a room. I don't recall them actually going inside the room, I just remembered them in the hallway, up and down the hallway, inside of where we kept the suits at and -- but not -- they didn't directly -- I don't recall them actually going inside the rooms.

Q. Do you know if they looked into the rooms to see if there were residents -- if there were residents in the rooms?

A. Yes, I do believe so. A lot of the room doors were closed but they did go. They did look inside, yes.

Q. Okay. I'm going to ask you to look at what's been premarked as Exhibit-7 for identification. This document has been marked as Exhibit-7 and it says on the top Fulton Commons -- it was there. Here it is, Exhibit-7. It stays on the top "Fulton

Commons bed listing" and it's -- it goes from number one, it's sequential from number one down to number 24 and it has names on it. Have you ever seen this document before?

A. Most likely because I print one out everyday.

Q. Okay. So this is a document you're familiar with?

A. Yes.

Q. And is this a document that you may have been asked to print out to provide to the Department of Health in early May, on May 4, 2020?

A. I can't recall.

Q. Does this refresh your --

A. Yes. I can't recall if they asked me, though, to print out one out or if they just already had one from the conference room. I don't remember actually handing it over to them. I don't recall that.

Q. I'm sorry. You don't recall whether you handed it over to DOH or to

someone at Fulton?

A. Oh, well, we handed these out all the time to -- at least the nurses and myself, we printed these out multiple times throughout the day because it's a good check off list. But I thought the question was: Did I hand it to the Department of Health?

Q. Yes, that was my question.

A. I don't recall me physically handing them a list like this but it's very possible they had it because this is all of the residents that would have been there. This is as of May 1st, though.

Q. That's correct. We'll go through it in a moment but this is something that -- that you might have expected to have been provided to the Department of Health during their survey on May 4?

A. Yes.

Q. Okay. So let's go through the document. It -- is this document printed off the computer? How is it generated?

A. Yes, off of the provider panel part of the computer.

Q. Okay. And it says at the top "Fulton Commons bed listing" and it has a date on the top left as being Friday, May 1, 2020, correct?

A. Yes.

Q. So it's providing a bed listing for May 1st on 1 East, correct?

A. Yes.

Q. And it lists 24 residents on this sheet and it has the resident name, it has the bed, it has the residents's ID number, correct?

A. Yes.

Q. And the first bed listed for number one is 1 East 103A and if we scroll down to the last, number 24. We have 1 East Room 122B and then we have a lot of numbers in between. So these numbers, if you just glance at it, these numbers do correspond to the high and low wings of the unit, correct?

A. Yes.

Q. Now, as the unit manager on 1 East, were you familiar with these residents because they were residents whom you cared

for on your unit?

A. Yes.

Q. Okay. And on the day of the Department of the Health's survey, which was Monday, May 4, 2020, were these 24 residents living on 1 East?

A. Unless someone was transferred from the weekend then, yes, this would have been the exact number.

Q. Okay. The exact number?

A. Exact residents. Sorry.

Q. The exact residents both by number and name, correct?

A. Yes.

Q. So what I would like to do is you mentioned earlier that 1 East, at some point, became an entirely COVID unit, correct?

A. Yes.

Q. At some point, those residents living on 1 East were all presumed or determined to be COVID positive, correct?

A. Yes.

Q. And is it fair to say by May 1,

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2020, the unit had converted or moved over to entirely containing COVID residents, correct?

A. Yes. One -- let me just look through the list.

Q. Yes. Well, we'll go through this --

A. Because some of them --

Q. Go ahead.

A. Oh, okay, because I'm -- I'm not sure if all of them were admitted. Try the scroll bar. Yes, I believe all of these were admitted as COVID positive except one just might -- I don't know. Resident#27 sticks out. I can't recall if she came in positive.

Q. Well, we'll go through it eventually.

A. Okay.

Q. But I just wanted to confirm that as of May 1, 2020 the unit was entirely composed of COVID residents, correct?

A. Yes, I believe so. Yes.

Q. Okay.

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A. Yes. I believe so, yes.

Q. Okay. So -- okay.

A. We were COVID.

Q. So let's go through them individually. We have Resident #28 in room [redacted] We have Resident #7 in room [redacted], Resident #5 was in room [redacted]. E.S. was in [redacted]. Resident #29 is in room [redacted]. Resident #30 was in room [redacted]. Resident #31 was in room[redacted]. Resident #32 was in [redacted].Resident #33 was in room [redacted]. Resident #34 was in room [redacted]. Resident #35 was in room [redacted]. Resident #36 was in room [redacted]. Resident #37 was in room [redacted]. Resident #38 was in [redacted]. Resident #39 was in room [redacted]. Resident #40 was in room [redacted]. Resident #41 was in [redacted].Resident #42 was in [redacted]. Resident #43 was in one [redacted]. Resident#44 or Resident#44 was in room [redacted]. Resident #45 was in [redacted]. Resident #46 was in [redacted].Resident #8 was in room [redacted]. And Resident #6 was in [redacted]. So these residents

were in -- on 1 East on May 1, 2020, correct, as well as on May 4, 2020?

A. Yes. Yes. Can I just clarify something though?

Q. Sure.

A. I'm not sure -- I'm not sure if you asked -- I'm not sure if you asked me if all of these residents were either presumed or had COVID.

Q. Yes. They either -- my question was --

A. Right.

Q. -- were they confirmed or presumed? They were in one way or another considered COVID residents, to your knowledge?

A. Okay. I'm -- to my knowledge -- I would have to check a couple of the charts because some of them I can't remember the exact date when the policy changed or the State changed the policy where they needed to come out. They had to have at least one negative before they were admitted to 1 East but -- so some of them I'm not sure if they

actually had COVID when they were on the unit, unless I look at the chart.

Q. Well, let's --

A. I need to verify maybe one or two of them.

Q. Let's go through them individually, then. Let's look at Exhibit-8 for identification and we'll go through each of these residents. So if we look at Exhibit-8, just to get -- just so we can determine --

A. Okay.

Q. -- whether -- their status. So this is -- do you recognize this document, this 24 Hour Condition Report?

A. Yes.

Q. What is a 24 Hour Condition Report?

A. That's -- tells -- it's a communication from shift to shift that we write on to give report of, like, anything that's going on with the resident.

Q. Okay. So if we look at Exhibit-8, we see it's dated in April, April

22nd. It's from unit 1 East, correct?

A. Yes.

Q. And this indicates at the top, top left, the resident name is Resident #28 , it has her room as [redacted] and it does indicate, correct, COVID-19.

A. Yes. I remember Resident #28 had -- she -- yeah.

Q. So she was considered a COVID resident, correct?

A. Yes.

Q. If we go to Exhibit-9 now, take a look at that, Exhibit-9 is a Daily Census Sheet, correct?

A. Yes.

Q. What is a Daily Census Sheet?

A. This is a sheet that's made out that gives an accurate account of how many people are on each unit and then the total number of the facility, of how many beds there are.

Q. So if we scroll down to the middle of the document, we'll see two more residents on the list, right? We'll see

Resident #31 and Resident #5 , correct?

A. Yes.

Q. And Resident #6 , correct?

A. Yes.

Q. And they're also, all three are identified as COVID-19 diagnosis, correct, in the center of the page?

A. Yes.

Q. All right. So they were also considered COVID residents on your unit?

A. Yes.

Q. So if we go to Exhibit-10 now.

A. Did you pause?

Q. I'm just waiting for the document to load. So here we have another Exhibit, Exhibit-10. Another Daily Census Sheet, correct?

A. Okay. Yes.

Q. And if we look at the residents here, which we -- we're familiar with that resident listing on 1 East. We have Resident #41 , E.S. and Resident #37 , correct?

A. Yes.

Q. They're also all three are listed

as COVID residents, correct?

A. Yes.

Q. All right. If we go to Exhibit-11, and we continue down -- we'll take a look at Exhibit-11. And it's another Daily Census Sheet, correct?

A. Yes.

Q. And we have two more residents listed, right? Resident #29 and Resident #30 , correct?

A. Yes.

Q. And they are also identified as COVID-19 residents?

A. Yes.

Q. All right. Go to Exhibit-12 now. And again, I'm just trying to go through all the residents that are on that patient list to make sure or to confirm with you whether or not they were all --

A. Confirm, yeah.

Q. Yeah. Just to confirm they were all considered COVID. Here we have resident #33 . Resident #33 , correct, listed on the -- this Daily Census Sheet?

A. Yes.

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Q. And he's also listed as COVID, right?

A. Yes.

Q. So let's look at Exhibit-13 now. And Exhibit-13 is another Daily Census Sheet, correct?

A. Yes.

Q. And among the residents listed are two residents that we identified from that patient list. Resident #34 and Resident #39 , correct?

A. Yes.

Q. And they're identified as COVID residents?

A. Yes.

Q. Now going to Exhibit-14. Exhibit-14 is another Daily Census Sheet, correct?

A. Yes.

Q. And we have the resident #35 . Resident #35 listed as COVID-19, correct?

A. Yes.

Q. If we move now to Exhibit-15. Again going through the list of -- the

patient list from 1 East on May 1st.

A. Uh-huh.

Q. We have on Exhibit-15 another Daily Census Sheet and we have Resident #36 . Resident #36 listed, correct?

A. Yes.

Q. And that resident's also listed as COVID positive?

A. Yes.

Q. Okay. Going to Exhibit-16 we have another Daily Census Sheet.

A. Yes.

Q. And two of the residents listed here are from -- as well from the patient list. Resident #43 and Resident #38 , correct?

A. Yes.

Q. And they're both listed as COVID residents, correct?

A. Yes.

Q. And if we go now to Exhibit-17. Now we're looking at another Daily Census Sheet, correct?

A. Yes.

Q. And this lists a resident by the

name of Resident #40. Resident #40 who's listed on Exhibit-7, who was contained on Exhibit-7, that resident list, and he's listed as COVID positive, correct?

A. Yes.

Q. Okay. Working our way through the list we'll go to Exhibit-18. And Exhibit-18 we have resident -- again, listed on a Daily Census Sheet, we have resident Resident #42, who is identified as a COVID-positive resident, correct?

A. Yes.

Q. All right. Going to Exhibit-19 now. We have on Exhibit-19 another Daily Census Sheet that identifies -- the last name on this sheet is Resident #44 and she's identified --

A. Uh-huh.

Q. -- as COVID-19?

A. Yes.

Q. Okay. And if you go to Exhibit-20 we have another Daily Census Sheet and it says Resident #45, but it lists room [redacted], which is the same room,

correct, as Resident #45 ?

A. Yes.

Q. I think Resident #45 probably should have said Resident #45 .

A. Oh, Resident #45 .

Q. Correct?

A. Correct. Yes.

Q. And it has Resident #45 in room [redacted] which matches the patient list and he's identified as COVID positive, correct?

A. Yes.

Q. And if we look at Exhibit-21 now. This is another -- Exhibit-21 is actually another 24 Hour Condition Report, correct?

A. Yes.

Q. And it does list -- it lists the name of Resident #46 , correct?

A. Yes.

Q. And he's identified under presenting problem as having COVID-19, correct?

A. Yes.

Q. And if we go to Exhibit-22 we have another Daily Census Sheet, correct?

A. Yes.

Q. And we have identified here Resident #7 and Resident #8 listed here and they're both COVID positive, correct?

A. Yes.

Q. And finally if we go to Exhibit-23 we have another Daily Census Sheet, which lists, among others, Resident #32 as being COVID positive, correct?

A. Yes.

Q. So now, if we look back. If we can return for a moment to Exhibit-7 because as you indicated you have to look at documentation.

A. Yeah.

Q. Yeah, now looking back at Exhibit-7, the Residents List. We've gone through the residents and now is it fair to say that these residents that were on 1 East on May 1, 2020 had all been identified as COVID residents, correct?

A. Yes.

Q. And as such, they had been isolated on the COVID unit, correct?

A. Yes.

Q. So according to Exhibit-7, according to the Fulton Commons bed listing for 1 East for May 1st, Fulton Commons had properly quarantined these 24 residents onto that separate COVID unit, correct?

A. Yes.

Q. And the document also indicates that on May 1, 2020 presumed COVID and non-COVID residents were not living together on the same unit, correct?

A. Yes.

Q. All right. Do you recall if you were working -- we can take that off now for a moment. Do you recall if you were working on May 1, 2020? We just went over May 4th, Monday. Do you recall if you were working the previous Friday, May 1, 2020?

A. I believe so.

Q. And do you recall who you were working with?

A. I'm not sure. I know one of the LPNs take off every other Friday, so it might not have been both of them.

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Q. Well, let's take a look at Exhibit-24.

A. Yeah.

Q. All right. Do we have -- the top of the document, again, just for -- just to be clear, this document is called Staffing Schedule.

A. Yes.

Q. And it's the May 1st, the Friday May 1st schedule for the building, correct?

A. Yes.

Q. And it has the LPNs listed as Bercy. Is that Adeline Bercy?

A. Yes.

Q. And it has you, by the way, listed again as the RN, right?

A. Yes.

Q. Then under Bercy it says Bell. That's Nakisha again, Nakisha Bell?

A. Yes.

Q. In the left hand margin it's written Caruso and Allen. Again, is that Precious Allen?

A. Yes.

Q. And Caruso would be Nicole?

A. Yes.

Q. So were they working as well or why are they handwritten up there?

A. That means that they're available to call for that shift if we needed an LPN.

Q. Okay. But it was Bercy and Bell that were with you that day?

A. Yes.

Q. And again, you had Sonya Bent, Olivia Gabriel, Yvonne Small, Jacqueline Swaby and Georgiana Knight as your CNAs?

A. Yes.

Q. When you arrived at work on May 1st, Friday, May 1, 2020, were the residents on unit 1 East the same 24 residents who you identified on the May 1st bed listing that we just looked at, Exhibit-7?

A. Yes, it should have been unless -- I don't think there were any transfers, not that I recall. So they should have been the same one printed out on the Census.

Q. Right. Because Exhibit-7, the bed listing was for May 1st, correct?

A. Yes.

Q. And that bed listing may have been turned over to the Department of Health, correct, on Monday, to indicate who was living on the unit, correct?

A. Yes.

Q. All right. I would like to take a look at Exhibit-25 now. If we scroll to the top, Exhibit-25, this is a 94-page document indicating 24 Hour Condition Reports. You recognize these forms, correct?

A. Yes. The 24 hour reports.

Q. Right. And if we look at Room [redacted] on Exhibit-5. If we bring that up again, Exhibit-5. Exhibit-5.

MR. ZADEK: I'm sorry. I'm sorry, that's my fault, Ms. Liptak. I meant Exhibit-7. My apologies.

Q. If we look again at Exhibit-7, we'll see that in Room [redacted] on Friday, May 1st was Resident #7 , correct?

A. Yes.

Q. Do you see that? And he was in

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Room [redacted] and he was, as we just discussed, he was a COVID resident, correct?

A. Yes.

Q. But if we look at Exhibit-25, the 24 Hour Condition Report, and we go to page 14 and we look at this 24 Hour Condition Report, which is dated at the top May 1st. Do you see that 1 East, May 1st?

A. Yes.

Q. And if you go down to the last name listed we see someone named Resident #26 . Do you see that?

A. Yes.

Q. And it has the same room listing, [redacted], as Resident #7 . And it says room and a triangle. Is that change?

A. Room change from -- yeah, [redacted] to [redacted].

Q. And is that your name at the top of the document in the center where it says "supervisor signature"?

A. Yes.

Q. So did you complete this form?

A. Yes. That day we had a lot of

room changes, so I wrote it out so that the next shift would know who we transferred off the unit.

Q. Right. So looking at this 24 Hour Condition Report on Exhibit-25, it indicates who was living in Room [redacted] when you got to work that morning, correct, and it wasn't Resident #7, was it?

A. No. Somewhere -- no.

Q. It was Resident #26 in [redacted], correct?

A. Yes, as per the Census, yes.

Q. Do you recall Resident #26 who lived in Room [redacted]?

A. Nothing vivid pops out.

Q. Resident #26 was not presumed COVID, correct?

A. Her name doesn't really pop out. We didn't go over her name, I don't believe, so I don't -- I don't remember. I don't recall.

Q. Well, she was moved off of -- she was moved off of the COVID unit, right, onto --

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A. [redacted].

Q. [redacted], correct?

A. Yes.

Q. Well, it says right there. She's moved from [redacted] to [redacted], correct?

A. Yes.

Q. So she would not have been a COVID resident, correct?

A. No. Okay. So I think I remember this day. We moved all of these non-COVID people upstairs to kind of make room for COVID residents, I believe.

Q. Right. We'll go through them but you said non-COVID residents. So that was my question. Resident #26 was not a COVID resident, correct?

A. As far as I recall, I don't believe her being COVID.

Q. Do you recall her mental status? Was she alert and oriented? Was she suffering from dementia? How would you characterize her mental status?

A. Nothing really pops out with Resident #26. I don't -- I don't really recall

her, particularly. Some of the residents on the list I remember having vivid conversations where I can recall things, but Resident #26 , it doesn't really stand out in my memory. Sorry.

Q. Okay. But you do believe she was non-COVID and you do believe that on May 1st she was moved out of the [redacted] and brought up to 2 East, [redacted], correct?

A. Yes.

Q. So Resident #26 , a non-COVID resident, who had been living on the COVID unit, was transferred off of 1 East and moved onto a non-COVID floor, correct?

A. Yes.

Q. So it was only after this non-COVID resident, Resident #26 , was transferred out of Room [redacted] that COVID resident Resident #7 was transferred into her room, correct?

A. Yes.

Q. And, in fact, if we look at page 16 of Exhibit-25, the same document. We see the name Resident #7 listed, correct, the

first named resident?

A. Yes.

Q. And it says in-house transfer to Room [redacted], correct?

A. Yes.

Q. And under the column for the 3:00 to 11:00 shift, it says in-house transfer from 3 West, correct?

A. Yes.

Q. And if we go to page 27 of this same Exhibit, for Resident #7 , we can now look at the 24 Hour Condition Report for 3 West, this is 3 West's Condition Report, correct?

A. Yes.

Q. And they note next to Resident #7 name, which we've already discussed, is that he was COVID-19, correct?

A. Yes.

Q. And on the far -- on the 3:00 to 11:00 shift it says transferred to 1 East, correct?

A. Yes.

Q. Ms. Waller, did you tell the

Department of Health surveyors on Monday, May 4 that approximately 72 hours earlier on Friday, May 1st, Resident #26 , who was not COVID, was transferred from 1 East to 2 East?

A. I don't recall telling them that, specifically, no.

Q. Okay.

A. I don't recall.

Q. And how long -- I'm sorry.

A. I don't recall discussing that, no.

Q. Okay. How long had Resident #26 been living in Room [redacted] on the COVID unit before she was transferred up to 2 East?

A. I don't recall. Resident #26 doesn't really stand out to me.

Q. Okay. Why was Resident #26 moved off of the COVID unit on May 1, 2020?

A. The actual reason, I don't recall. I just usually get a phone call saying these room changes will commence and to carry them out. The actual reason, I

don't know.

Q. Who made the decision to move Resident #26 from the COVID unit to 2 East on May 1st?

A. All -- the exact person I couldn't pinpoint but, like I said before, all of the room transfers come from Ms. Frawley or from social work would notify and sometimes admissions would say you're going to have some room changes. But for the most part, Ms. Frawley and social worker would contact me to say I'm going to have room changes.

Q. But this is not -- this is the movement of a resident, an in-house transfer of a resident from 1 East to up to 2 East, so this would not have come from admissions, correct? This was not a hospital placement, correct?

A. No. They wouldn't -- normally they would not tell me about in-house transfers. They do have privy to the information because they control the board of where all the residents go but in-house

transfers would come from social work mostly, or Ms. Frawley would say you're going to have room changes.

Q. Okay. So if this -- if this movement in-house originated from social work or Ms. Frawley, can you tell me who makes the decision? Does the social worker make the decision as to moving residents in-house or is it a decision ultimately made by the DNS, Ms. Frawley?

A. Ms. Frawley and Ms. Doyle are the only two people that I know that could make that decision. We cannot -- I can't transfer a patient nor can social work. We usually get our information -- I can only speak for myself.

Q. Right.

A. But I know that my information can -- they're the only two that can make that decision.

Q. Okay. So although you might have received a telephone call, technically, from social work, the decision to move Resident #26 off of 1 East on May 1st came from

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Ms. Frawley or Ms. Doyle?

A. Yes.

Q. They're the only ones who would have had the authority to make the move?

A. Yes.

Q. Do you recall what you told Resident #26, what you told Resident #26 as to the reason why she was leaving the unit?

A. No. Again, I don't really remember Resident #26. I don't recall anything specific about Resident #26, so I'm sorry. I don't recall the conversation.

Q. Well, do you know if Resident #26's family was told that she was leaving 1 East and moving upstairs?

A. I know the family should have been told. The way it works is social work calls the family to let them know or to make sure to tell a case worker a resident is to be moved and then that's when they would notify me, but they're supposed to tell the resident as well.

Q. So is it fair to say you don't know yourself whether or not Resident #26's

family was ever told why and the fact that she was moved upstairs on May 1st?

A. That is a fair assumption because I didn't -- I don't recall directly speaking to the family and that wouldn't normally be my role to call the family to tell them why they would be moved or that they were moved at all.

Q. So if social work didn't call Resident #26 's family then they would not know where their resident was in the building, correct?

A. I'm just going to clarify -- they would know because it's the policy that when a resident gets moved to a unit, sometimes during that timeframe, maybe the next day, maybe the unit manager would call and introduce themselves to the family, if that's the way they do it upstairs. For 1 East that's what I normally do, if someone comes to the unit just so that I can you just say hello.

Q. Right. But as you sit here today, you don't know what was said to Resident #26

or what was said to her family on May 1st as to why she was leaving the unit?

A. Yeah, I do not know why or I do not remember a phone conversation.

Q. Did the Department of Health survey, which took place on Monday, May 4, contribute to the decision to move Resident #26 from 1 East to 2 East on May 1st?

A. Not that I recall. Not that I'm aware of.

Q. Okay. If we look at Exhibit-7 again, the bed listing which we have already talked about. And we've already gone through the residents, correct, that they were all COVID residents, correct?

A. Yes.

Q. And if we look at Room [redacted] on your unit, on 1 East, we see that on May 1st Resident #5 was in that bed, correct?

A. Yes.

Q. When you arrived at work on May 1st on Friday, was Resident #5 in that bed as this document indicates?

A. He should have been. Do you mind

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if I check my calendar? I'm not sure if I was on vacation right prior to this or not. Because I don't remember to be -- I don't remember them actually bringing Resident #5 down. Usually I'm a part of the process but I don't remember bringing Resident #5 down. But as for the bed listing is definitely -- he should have been in that bed.

Q. Right. According to this bed list, when you got to work on Friday, May 1st, Resident #5 should have been laying in bed [redacted], correct?

A. Yes.

Q. Let's take a look again at Exhibit-25, 24 Hour Condition Report. And we'll look at page 15 of -- page 15 of Exhibit-25. Again, if we look at the top of the page, this again, is the one -- the 24 Hour Condition Report for May 1st, correct?

A. Yes.

Q. For 1 East. And it has, again, your name that you completed this form, correct?

A. Yes, I did. Okay.

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Q. And now, if we look at bed [redacted], we do not see Resident #5 in this bed, do we?

A. No.

Q. We have Resident #51 in that bed, correct?

A. Yes. Why is she --

Q. Looking at this 24 Hour Condition Report, it indicates who was living in [redacted] and it was on May 1st Resident #51 ?

A. Yes.

Q. Do you recall Resident #51 who lived in [redacted] on May 1st?

A. Nothing particular.

Q. Okay.

A. You know, but...

Q. But she was not presumed to be COVID positive, correct, she was not a COVID resident?

A. No, she wasn't on our list, either.

Q. Okay. Do you recall Resident #51 's mental status, her orientation?

A. No.

Q. It says that she was transferred

off the COVID unit on May 1st and you wrote that on May 1st Resident #51 had a room change from [redacted] to room [redacted], correct?

A. Yes.

Q. So she was moved up to 2 East?

A. Yes.

Q. So, again, Resident #51, a non-COVID resident, who had been living on the COVID unit, was transferred off 1 East and moved to a non-COVID floor, correct?

A. Yes.

Q. So it was only after this non-COVID resident Resident #51 was transferred out of Room [redacted] that COVID resident Resident #5 was moved into her bed, correct?

A. Yes.

Q. And if we -- in fact, again, to confirm, if we go to page 16, the next page and we look at the second name listed, Resident #5. We see here that he was moved to [redacted] and it was characterized as an in-house transfer, correct?

A. Yes.

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Q. And if we go to page 27 of these 24 Hour Condition Reports, Exhibit-25, we see, again at the top, Resident #5 . He's identified from 3 West as a COVID resident, correct?

A. Yes.

Q. And on the 3:00 to 11:00 shift, it's noted that he was transferred to 1 East?

A. Yes.

Q. Again, I have to ask you: Did you tell either of those women, those complaint surveyors on Monday, May 4th, that 72 hours earlier on Friday, May 1st, Resident #51 who was not a COVID resident, was transferred from 1 East to 2 East?

A. I don't recall having that conversation with them. If they asked me and it was -- if they asked me and that's what happened, that's what I would have told them. But I don't recall saying that directly to them.

Q. Okay. And if they looked in room -- if they looked into Room [redacted] and they

saw Resident #5 laying there, they would have no reason to think, if they're looking at the May 1st bed listing, that he hadn't been there on May 1st, correct?

A. Right. It would -- yeah, it would.

Q. They would have no way of knowing that, correct?

A. No, they wouldn't unless they -- you know, they wouldn't.

Q. Unless someone had shown them these 24 Hour Condition Reports, when they looked in on Resident #5 on Monday, May 4, and they had in their hand this bed listing from May 1st, there would be no reason to think that Resident #51 had been laying in his bed 72 hours earlier, correct?

A. Correct.

Q. All right. Do you know how long Resident #51 , Resident #51 , had been living in Room [redacted] before she was transferred up to 2 East?

A. No, I would have to look at the chart.

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Q. I'm sorry.

A. I would have to look at her chart to see how long, the timeframe.

Q. Okay. Why was Resident #51 moved off of the COVID unit on May 1st?

A. I believe to make room for more residents that were presumed or that had COVID to come down.

Q. In this case, I guess, Resident #5 , correct?

A. Yes. Yes.

Q. And again, I have to ask you: Who made the decision to move Resident #51 from the COVID unit up to 2 East on May 1st?

A. Only two people have the authority to do that. It would be Ms. Frawley and Ms. Doyle who would tell social work, who would tell me.

Q. Right. But the actual decision could have only have come from Ms. Frawley or Ms. Doyle?

A. Yes.

Q. Again, I have to ask: Do you recall if you told Resident #51 why she was

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leaving the unit?

A. I don't recall having a conversation directly with Resident #51.

Q. And you don't know whether social work, you yourself, don't know whether social work or anyone else in the building notified the Resident #51 family that Resident #51 was leaving the unit, correct?

A. No, because normally I wouldn't call. Social work would call the specific families.

Q. Right. So if they didn't call a social worker on that -- as you said, that very busy day, didn't notify Resident #51's family, then they wouldn't know where their loved one was, correct?

A. Correct.

Q. If we go back once again to Exhibit-7, which is the bed listing, we have number -- I think it's number 23 at the bottom of the list. And again, we've gone through all these residents, which you confirmed to be COVID?

A. Right.

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Q. We have Resident #8 was in room [redacted] on May 1st, correct?

A. Yes.

Q. Okay. And he was a COVID resident. And to your recollection, again, when you got to work on Friday, May 1st, which is the date of this bed listing, was Resident #8 laying in [redacted]?

A. If it was on the Census, then he should have be in that bed.

Q. If we can go, once again, to Exhibit-25, the 24 Hour Condition Reports, and look at page 15. And again, if we look at the top of page 15 we see that this is the -- this is the 1 East -- again, this is May 1st, Friday, the 1 East 24 Hour Condition Report, correct?

A. Yes.

Q. And if we look at the last name listed we have Resident #22 ?

A. Resident #22 .

Q. Resident #22 , correct?

A. Yes.

Q. And we have Resident #22 as being in

room [redacted], correct?

A. Yes.

Q. The same bed that on Monday indicated that it was occupied by Resident #8 on Friday, May 1st, correct?

A. Yes. Are you -- can I clarify something?

Q. Yes.

A. Resident #8, are you saying that Resident #8 was in room [redacted] on the second day as Resident #22 ?

Q. I'm not saying that. I'm saying if you -- I'm saying Exhibit-7, which we just looked at, which is the bed listing for Friday, May 1st.

A. Uh-huh.

Q. You indicated that it has Resident #8 in Bed [redacted]. Do you want to see that --

A. Yes. But I believe that that was printed out, like, in the afternoon, so if they had -- so when we did the room changes this would have been in the morning and then if that was printed out at 1:00, it would

show the new resident in the bed.

Q. Okay. And if the Department of Health had Exhibit-7, the bed listing, provided to them, would they have any way of knowing that the 24 COVID residents listed had not been there two or three hours earlier that day?

A. No. Because it's printed out with the time stamp on the top.

Q. Right. But would there be any reason for the Department of Health to look at the bed listing and wonder whether or not residents had been moved on and off of the COVID floor hours before --

A. No.

Q. Would there be any reason for them to suspect that that had taken place?

A. No. Not that I'm aware of.

Q. So looking at Exhibit-25, page 15, we see here that Resident #22 was in that room, that same bed -- I guess you're saying potentially a few hours before --

A. Yes.

Q. -- Resident #8 occupied that bed?

A. Yes, because this is -- so this would have been during the day Friday, May 1st, and then if the other Exhibit you had said the same day May 1st.

Q. Right.

A. Then it would have -- we probably transferred in the morning and they printed a new Census out with all the new people on it.

Q. And if that Census from two or three hours earlier was not handed over to the Department of Health's complaint surveyor, they would have no way of knowing that these rooms, in-house transfers, had occurred, correct?

A. Correct.

Q. They would be led to believe that the May 1st printout that they were looking at indicated the residents that were in those rooms on May 1st, correct?

A. Correct.

Q. Do you recall Resident #22 who lived in Room [redacted]?

A. I do recall her, vaguely, yes.

Q. Okay. And she was not a COVID patient, was she?

A. Not that I'm aware of. I don't remember us going over her name but I don't recall that she was. I would have to look at her chart to confirm it, but we did not go over her name saying she was COVID.

Q. Okay. Okay. Do you remember her mental status?

A. I do believe she was alert with intermittent periods of confusion.

Q. Okay.

A. But she was able to have a conversation with you.

Q. And it indicates, as I said, that she went up to room [redacted], correct?

A. Yes.

Q. So she went to 3 West?

A. Yes.

Q. So again, Resident #22 , to the best of your recollection, a non-COVID resident, had been living on the COVID unit and was now transferred off of 1 East and onto a non-COVID floor on May 1st?

A. Yes.

Q. Correct?

A. Yes.

Q. So again, it's only after this non-COVID resident, Resident #22 , was transferred out of [redacted] that presumed COVID resident Resident #8 was transferred into her bed, correct?

A. Yes.

Q. And this all took place the same morning, correct?

A. May 1st was the report?

Q. Yes.

A. So, yes.

Q. If we look at page 33 of Exhibit-25, we see on 1 East on May 1st that we have Resident #8 in room [redacted]. And it's noted on the 3:00 to 11:00 shift resident received from 3 West to 1 East, correct?

A. Yes.

Q. Do you see that under the 3:00 to 11:00?

A. Yes.

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Q. So would that suggest to you, Ms. Waller, that, in fact, Resident #8 may have been transferred down to 1 East on the 3:00 to 11:00 shift?

A. It is -- looking at the paper, I would definitely say yes but it depends on how late he was transferred. I don't remember -- I don't remember receiving him or anything like that, but looking at the paper, it would indicate that he wasn't down there on 7:00 to 3:00, that he was transferred on 3:00 to 11:00.

Q. Right. If you don't recall him being brought down and the 3:00 to 11:00 notes that he arrived, the movement, the in-house transfer occurred between -- on the 3:00 to 11:00 shift?

A. Yes.

Q. And then, again, if we look once, just momentarily again, at Exhibit-7. If we look at Exhibit-7 again, and we see, again, at the bottom Resident #8 number 23 is in room [redacted], as we just discussed. And then if you go to the top of the page, which you

pointed out, that it was printed at 1:22 in the after on May 1st, correct?

A. Yes.

Q. Then that couldn't be accurate, right? This document could not be accurate because if he was moved on the 3:00 to 11:00, and this document was printed at 1:22, then he couldn't be in the bed?

A. So there's different levels to that. So sometimes -- the way the process works is social work will tell me that someone is getting moved, someone may change the Census list to indicate that once the conversation and all the paperwork because they give you a paper saying the resident is going to be moved, so that we fax it to dietary to have the accurate dinner. So they will move the resident on the Census sheet before sometimes the resident has been physically -- you know, that physically came down or that is -- if they're in the process of coming down.

Q. Right. But in terms of accuracy, if the Department of Health was handed a

document timed at 1:22 on May 1st.

A. Yes.

Q. And -- and that resident was not in that bed, but Resident #22 was in that bed, then this document is not presenting an accurate picture of --

A. Of --

Q. -- of 1 East on that afternoon, correct?

A. Correct. I'm unsure if -- now that I see because the time stamp is different, the reason why I know that it's --

Q. Right.

A. -- may look construed is because as soon as they tell us that someone is coming over, Ms. Frawley sometimes changes the list so that it reflects the 7:00 to 3:00 Census.

Q. But if I worked for the Department of Health --

A. Yes.

Q. -- and I asked for the residents on May 1st, and I was handed this document,

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I would look at it as we just discussed with the other residents, and I would say oh, on the afternoon of May 1st, Resident #8 was in bed [redacted]. I would have absolutely no way of realizing that on the date and time stamped, Resident #8 was on a different unit. I would have no way of knowing that, would I?

A. You would not, no.

Q. I wouldn't even know that Resident #22 existed from looking at this document, correct?

A. Correct. Unless you asked for the one, the date before.

Q. Right. But unless I was looking for an earlier day, this document would actually be misleading me as to the residents on the unit at that time, correct?

A. Yeah, when you compare the two, it does.

Q. Okay.

A. I would have to -- can I just clarify something?

Q. Sure. Absolutely.

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A. I would to have to look at the chart to see what was actually documented to see that maybe if someone wrote the exact time down that Resident #8 came down.

Q. Okay. But again, this document is not presenting a correct picture of who was on the unit.

A. Yes.

Q. On May 1st, correct?

A. Yes.

Q. So do you know how long Resident #22 had been living in Room [redacted] before she was transferred up to 3 West?

A. I do not recall. I would have to look at -- at her chart to see what day she was transferred there.

Q. Okay. And again, why was -- we can take off this Exhibit momentarily. Why was Resident #22 moved off the COVID unit on May 1st?

A. I don't want to assume but I presume that because we needed to make room for a COVID patient from upstairs to come to the room.

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Q. And again, I have to ask: Who made the decision to transfer Resident #22 from the COVID unit up to 3 West on May 1st?

A. The only two people that can make that would have been Ms. Frawley or Ms. Doyle.

Q. And again, I have to ask: Did you inform Resident #22 as to why she was leaving the unit? Do you recall if you did?

A. No, I wouldn't have because she wasn't on my unit, so I wouldn't have any conversation -- oh, wait. I'm sorry. Did you ask me did I inform Resident #22 of why she went upstairs?

Q. Yes.

A. Is that -- no. That's not my role.

Q. Right. That might have been handled by the social workers?

A. Yes.

Q. And if the social workers had not placed a call to Resident #22's family, then they would have had no knowledge where their

resident was in the facility, correct?

A. Correct. Resident #22 had a son that was on my unit but I did not directly tell the son, which may have been on the face sheet, as the person to tell. They were on the same unit, on my unit. So I would have to double-check who's on the face sheet in order to accurately say who would have been notified.

Q. So if I understand correctly, you're saying that the notification would have been to the son? You remember that?

A. If he was the first person on the face sheet, then that would have been the person that social work would have contacted and they were on the same unit.

Q. Okay. And if -- if Friday, May 1st was a particularly busy day for room transfers and social work did not call the son, then Resident #22's family would have no knowledge Friday, Saturday, Sunday. They would have no clue where their father -- where their mother was until someone picked up the phone and reached them, correct?

A. Correct.

Q. Nor would the family, the son or any other family member, be able to raise any questions or objections to the move, correct?

A. The son and the mother were moved into the same room, so on the day of the move, they would have known -- if they moved on the same day, they would have known because they were in the same room, if he was on the face sheet.

Q. Oh, I'm sorry. Are you talking about Resident #23?

A. Yes.

Q. Is that the son or the husband?

A. I believe that's the son. If he was transferred off of my unit, the son and the mom went into the same room.

Q. Oh, I see what you're saying. You're saying that the son and the mother were living in the facility together?

A. Yes.

Q. Oh, okay. Then I misunderstood. So -- but presumably they had other family

members that would want to know where their loved ones were, correct?

A. I would have to check the face sheet because I'm not sure -- I know that a lot of the information that -- anything we did with the mom, the son was the one that was, you know, micromanaging it, letting us know yes or no. You know, that he was in charge. I believe he was on -- I believe he was on the face sheet but I would have to look at it in order to confirm it.

Q. Are you saying the son was also a resident at the facility?

A. Yes, I believe so, at that time.

Q. Okay.

A. I believe so.

Q. Okay. And again, if we look at Exhibit-7, the bed listing for May 1st, and we look at the last name on the list, number 24, Resident #6 , we see that he was in room [redacted], correct?

A. Yes.

Q. And we've already gone over the list and Resident #6 was considered a COVID

resident, correct?

A. Yes.

Q. Actually, Resident #6 had been Resident #8 's roommate, correct?

A. Yes.

Q. On the third floor?

A. I'm not -- I can't confirm that because I wasn't on three, on the third floor, so I'm not sure.

Q. Well, if we look at Exhibit-25 and -- if you look at Exhibit-25 and if you look at page 1 of Exhibit-25, the very 1st page. If we look at 3 West 24 Hour Condition Report, we see here, right?

A. Yes.

Q. That Resident #6 is in [redacted] and Resident #8 was in room [redacted], correct?

A. Yes.

Q. And next to Resident #6 's name, again, we see it says presenting problem transferred to 1 East.

A. Yes.

Q. So he was moved down, also, to 1 East?

A. Yes.

Q. Do you recall Resident #6 ?

A. Nothing pertinent about Resident #6 that sticks out.

Q. Do you recall his mental status?

A. No.

Q. And again, you didn't tell -- you didn't tell the Department of Health surveyors that 72 hours earlier Resident #6 was living on another unit, correct?

A. No, I don't recall them asking me if -- but if they did, I would have answered it.

Q. Well, do you know why Resident #6 was moved off 3 West onto 1 East on May 1st?

A. He must have been having COVID -- he must have tested positive for COVID upstairs or had symptoms of it in order to come onto 1 East.

Q. Well, how long did Resident #6 remain on 1 East?

A. The timing, I do not recall. I would have to look.

Q. You don't remember what happened

to Resident #6 on 1 East?

A. I don't recall. I would have to look at -- he doesn't stick out in my mind with anything, so I'm sorry.

Q. Okay. If we go to page 8 of this Exhibit-25, we see that it's -- page 8 has the May 1st -- this is the 24 Hour Condition Report, right, for May 1st?

A. Yes.

Q. And we have Resident #6 [redacted], correct?

A. Yes.

Q. And if we look at the 11:00 to 7:00 shift, we see that he expired at 5:25 in the morning, correct?

A. I see.

Q. So he died a few hours after he arrived, correct?

A. Yes.

Q. And do you recall if essentially Resident #6 was brought down from 3 West so that he would die on 1 East?

A. I wouldn't presume that he would be transferred just to expire on 1 East.

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No, I wouldn't presume that.

Q. Well, he was a COVID resident, correct?

A. Yes.

Q. And he had been on a non-COVID unit, correct?

A. Yes.

Q. And DOH came for their survey on May 4, correct?

A. Yes.

Q. And he ended up dying on the COVID unit, correct?

A. Yes.

Q. Do you know the extent to which the Department of Health's visit survey on May 4th may have contributed to the decision to get him downstairs on May 1st?

A. I'm not -- I don't because I'm not privy to that information. I usually just follow the orders, like, to transfer them where they need to go.

Q. Okay. But Resident #6 came down at some point on May 1st, correct? Do we know what time he arrived on the unit?

A. No.

Q. But the staff that would have been tasked with the responsibility to notify his family of the transfer, again, if I understand correctly, it would have been the social workers?

A. Yes.

Q. And if the social workers had not reached out to Resident #6 's family on that very busy Friday, May 1st, then he would have died on the unit a few hours later and his family would not have even known where he was, correct?

A. If they didn't contact the family, no.

Q. So we've discussed now several residents that were moved -- several non-COVID residents that were moved off of 1 East on May 1st, correct?

A. Yes.

Q. And we have also established for the record that there were COVID-positive residents who were moved onto 1 East before this DOH survey, correct?

A. Yes.

Q. Were those, to your knowledge, those residents we've talked about, which would be -- I guess it was Resident #22 and Resident #51. To your recollection, were those the only two residents that were non-COVID and had been living on May 1st on the COVID unit?

A. To my recollection, there could have been more but those are the two that I see right -- that I saw on the documents. But there possibly could have been more.

Q. Okay. Well, if we look again quickly at Exhibit-7. Let me ask you as we do that, how many rooms are there on 1 East?

A. Rooms, there are 20 rooms but it holds 40.

Q. I see. Wouldn't there be 22 rooms?

A. Wait. I'm sorry. My math is off. Hold on here.

Q. It's okay.

A. The exact number, I have to figure it out, but I know -- my unit, that

unit, 1 East, it only holds 40 beds, and then you have your single beds. So four single beds -- so yes, 22. Sorry.

Q. Okay. So there are 22 rooms in 1 East. And if we look at the listing, the bed listing, for Friday, May 1st for 1 East.

A. Uh-huh.

Q. We see that only 15 rooms are occupied, correct? We've got 103, 105, 108, 109, 110, 112, 114, 115, 116, 117, 118, 119, 120, 121 and 122. So 15 rooms were occupied, correct?

A. Yes.

Q. Why were there no residents listed for rooms 101, 102, 104, 106, 107 and 111?

A. If they're not on the Census sheet, that means that they're empty. That means that the room is empty. There's no residents in there.

Q. Okay. So they wouldn't be listed. So these rooms would have been empty when you arrived at work on Friday, May 1st, correct?

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A. Yes, in the morning as long as they didn't transfer someone between that -- before 1:00 p.m. If someone was in the room before 1:00 p.m. and they printed it out at 1:00, someone could have been in that room.

Q. Okay. Well, let me ask you: On May 1st -- on May 1, 2020, was there a non-COVID resident, Resident #13 , living in Room [redacted]?

A. I don't recall the -- if she was on there on that day, but it is possible because the Census was printed out at 1:00, a person could have been in that room before 1:00 when I came in.

Q. Well, do you recall if Resident #13 lived in Room [redacted] on May 1st?

A. The last name sounds familiar but I don't remember anything specific about Resident #13 .

Q. Do you remember if there was a non-COVID resident named Resident #21 living in Room [redacted]?

A. Yes.

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Q. Okay. Do you remember on May 1st if there was a non-COVID resident named Resident #16 living in Room [redacted]?

A. I remember Resident #16 . Her status, I don't know, but it's very possible. I remember her name.

Q. Okay. On May 1, 2020, was there a non-COVID resident named Resident #12 living in Room [redacted]?

A. On what day?

Q. Friday, May 1, 2020?

A. Yes. Resident #12 ended up tested positive and came down to my facility, to my unit. So I'm not sure what day she tested positive, so that's why some hesitation there.

Q. On May 1st was there a non-COVID resident named Resident #17 living in Room [redacted]?

A. The -- I do not recall. The name Resident #17 is very familiar to me but I don't recall anything specific about Resident #17 .

Q. On May 1st was there a non-COVID resident named Resident #14 living in Room [redacted]

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in [redacted]?

A. Resident #14 did reside in -- in [redacted]. As far as if she had COVID, I would have to check her chart. I don't recall why -- her diagnosis.

Q. On May 1st was there a non-COVID resident named Resident #25 living in Room [redacted]?

A. Resident #25 , yes.

Q. On May 1st was there a non-COVID resident named Resident #15 living in Room [redacted]?

A. They were roommates, so it is very -- it is very possible that they were on that unit.

Q. Okay. On May 1st was there a non-COVID resident named Resident #19 living in Room [redacted]?

A. I don't recall the -- I recall the name. I can't -- I don't recall what day Resident #19 was sent up.

Q. Okay. On May 1, 2020, was there a non-COVID resident named Resident #23 living in Room [redacted]?

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A. Yes, that is the son. Yes.

Q. Correct. Right. And on May 1st was there a non-COVID resident Resident #18 living in Room [redacted]?

A. Yes, I do believe so.

Q. And finally, on May 1st was there a non-COVID resident named Resident #24 living in Room [redacted]?

A. Yes. Can I clarify something?

Q. Sure.

A. The non-COVID residents that I identified were all on the low side and I do believe on the right, on the high side is where we kept the COVID residents. So we first filtered them out from -- we went from the back all the way to the front, so we pushed -- not pushed -- which transferred residents up and eventually all those non-COVID residents also got transferred up.

Q. Well, actually, Ms. Waller, you can correct me if I'm wrong, but some of the COVID -- we'll get to this in a moment, but the low side, as you point out, you're saying had primarily negative residents,

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correct?

A. Yes.

Q. Right. But Resident #13 ,Resident #21, Resident #12, Resident #16, Resident #17, Resident #14 ,Resident #51, Resident #15 , Resident #25 were negative, but if you look at Exhibit-7, and we look at Room [redacted] and [redacted] and [redacted] and [redacted] and [redacted], that was Resident #29 and E.S. , correct?

A. Yes, but that was -- if you can scroll down just a little, that was at 1:00 something, right? Was that printed out in the afternoon? So what would -- what I believe happened is all of the negative residents were transferred up and then we got --

Q. I'm sorry. Go ahead. Go ahead. I don't want to cut you off.

A. That's what I believe. All the non-COVID, the negative -- the non-COVID side were transferred upstairs and then we got positive people to come down or then put in.

Q. Right. But if resident, E.S. in Room [redacted] and Resident #29 in

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[redacted], Resident #31 in [redacted] and Resident #32 in the private Room [redacted], if they were on the unit on the morning of April 30th, the day before May 1st.

A. Uh-huh.

Q. Then they would have been sharing that corridor, that low side, with all those negative residents, correct?

A. Yes.

Q. Just give me one second.

A. Oh, okay. All right.

Q. Just give me on second. We're going to take a quick look at Exhibit-9, I just want to clarify this. If you look at Exhibit-9 again, as an example. Resident #31 , we see her, she's in [redacted], correct?

A. Yes.

Q. And that's the same unit, the same low side as all the other non-COVID residents, correct? And if we look at the date, let's just look at the date of this Census sheet. That was April 17th, correct?

A. Yes.

Q. So if Resident #16 , Resident #12 ,

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Resident #13 , Resident #21 , Resident #25 , Resident #15 , if they were all living on the low side, the non-COVID unit, but they were sharing the corridor with Resident #31 in Room [redacted], then they were not isolated from the COVID resident, correct?

A. If they were only isolated from rooms because they weren't allowed to come out of the rooms but they were not -- they were on the same side.

Q. Right. They would not have been isolated though -- not only would they have not been on a different unit, they would actually have been sharing the same corridor with a COVID resident, correct?

A. Yes.

Q. And again, just to be clear, because you have raised this issue, if we look at Exhibit-10, we see on Exhibit-10 the day is Saturday -- the day of this Census sheet was April 25th, five days before May 1st and we see E.S. , E.S. in Room [redacted], just as it's listed on the patient -- on the patient bed listing for May 1st. So

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E.S. , who was COVID positive, had also been living on that corridor right next to Resident #19, who is negative, correct?

A. Yes.

Q. Correct?

A. Yes. Because Resident #19 was in what room?

Q. [redacted], directly next door.

A. Okay. So --

Q. So they would have been sharing the same hallway, positive -- COVID positive and COVID-negative residents, correct?

A. Yes.

Q. And finally, again, just to clarify, according to Exhibit-7, the patient bed listing, E.S. was sharing the room with another COVID-positive resident Resident #29 and if you look at Exhibit-11, we can see that Mr. -- this is dated April 15th. This document is dated April 15th, this Census sheet. Resident #29 , in Room [redacted] and he's COVID positive. So again, just to be clear, according to these review of records, it -- it -- it is evident that

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non-positive -- non-COVID and COVID residents are sharing the same -- the same wing, the low hallway hof a unit, correct?

A. I would just -- I would need -- I would need to see Resident #29's chart because I'm not sure at that point were residents being admitted with two negatives. There was like an executive order where they had to be -- they had to have a negative order to come to the facility.

Q. Okay. But they've been identified. We've gone through the records. Resident #32 --

A. Yeah.

Q. --Resident #31 in Room [redacted] --

A. I'm just trying to -- I'm just --

Q. I'm sorry?

A. No. I'm just wondering -- I don't know. I don't know why they would be on the same unit.

Q. Right. Well, gone through Resident #32 in Room [redacted] and we talked about Resident #31, another COVID resident. Resident #29 and E.S. in [redacted]. And there was also talk about

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negative residents Resident #25, Resident #15, Resident #19 , Resident #51 , Resident #14 and others.

A. Yes.

Q. Down the same hallway, correct?

A. Yes.

Q. And they were negative, correct?

A. Yes.

Q. If we look, again, at Exhibit-25, the 24 Hour Condition Report, and we have talked about all those residents that I mentioned, all those non-COVID residents, and we just went through that whole laundry list of residents. If we look at page 14. Again. This has your name, you filled this form out, correct?

A. Yes, we transferred a lot of people that day.

Q. Yeah. This is dated May -- again, if we scroll up. You see it's dated May 1st and this is 1 East and you completed this. And this list -- these are the residents, right, we just talked about?

Resident #21 was moved off -- was moved off of 1 East. Resident #13 was moved off of 1

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East. Resident #16 was moved off of 1 East. Resident #12 was moved off of 1 East. Resident #17 was moved off of 1 East. Resident #14 was moved off of 1 East. We've already talked about Resident #26 at the bottom of the list. She was removed off of 1 East. Go to the next page, page 15. Again, this is your form, correct, you filled this out?

A. Yes.

Q. Resident #51 , Resident #51 we already discussed, she was transferred off. Resident #25 was transferred off. Resident #15 was transferred off. Resident #19 was transferred off. Resident #23 was transferred off. I guess that's Resident #23 . Resident #18 was transferred off and Resident #22 we discussed, she was transferred off. So you documented all these residents had their rooms changed on May 1st.

A. Yes.

Q. Possibly before 1:00 in the afternoon, correct?

A. Yes. Can I ask you a question?

Q. I'm sorry. Go ahead.

A. Was May 1st the same day that the Department of Health came?

Q. We discussed the Department of Health's visit on May 4th, Monday. And we're talking now about the Friday before, May 1st.

A. Okay.

Q. So again, based on your review of all these residents, based on your review of these 24 Hour Condition Reports, was the bed listing, Exhibit-7, those 24 residents who are all COVID positive, according to you, if that list was given to the Department of Health during their survey, was that an accurate and truthful statement as to the residents who were actually living on 1 East on May 1st?

A. The list -- just to clarify. The list they were given on May 4th?

Q. Yes, Exhibit-7. We'll show it to you again. Exhibit-7, which is -- which is a document you said you're quite familiar with, which is identified as the bed listing for May 1st.

A. Yes.

Q. And 24 residents -- and we've gone through those residents, correct? And these residents are all COVID residents, correct?

A. Yes.

Q. And we have just gone through -- let's see. We've just gone through at least 14 residents that were moved off of 1 East that morning or afternoon, sometime on May 1st. Looking at this, at Exhibit-7, the bed listing, based on your review of these 24 Hour Condition Reports, was this bed listing that was given to the Department of Health during the survey an accurate and truthful statement as to the residents who were actually living on 1 East on May 1st?

A. I need to clarify. So in the morning -- if this is the same -- because I remember that day was very busy. In the morning I recall that we were moving all of these residents up. So if they came in on -- they came in on May 4, and they asked for a bed listing, they would have -- someone

would have changed all of these residents out of the room during the day to indicate this to be accurate at 1:00 o'clock or 1:22.

Q. Right. You confirmed that all these residents, I think it was 14 residents --

A. Yeah.

Q. -- were in-house transferred off of 1 East, correct?

A. Yes.

Q. On May 1st?

A. Yes.

Q. And you said the decision to move those 14 residents off of 1 East was made by either Ms. Frawley or Ms. Doyle, correct?

A. Yes, I remember that morning she asked me to get a piece of paper and said are you ready because it was going to be a lot. We never transferred that many people before. That was a lot of people.

Q. Who is "she"? You said she asked me to get a piece of paper, who is she?

A. Ms. Frawley.

Q. Okay. So that's on Friday, May

1st. On May 4 --

A. Yes.

Q. -- Monday, if the Department of Health requested a listing of who was living on 1 East on May 1st and they were handed Exhibit-7, this bed listing, of these 24 positive residents, COVID-positive residents --

A. Uh-huh.

Q. -- would this listing of bed residents, knowing that 14 other residents that are not listed here were transferred in-house that very same day, would this bed listing, to your mind, based on your experience, be an accurate and truthful statement as to who was living on the COVID unit, on 1 East, on May 1st?

A. They would have had to ask for the listing for the morning.

Q. Right.

A. That 7:00 o'clock one that we printed out when we get in. So afterwards --

Q. So if they didn't -- go ahead.

If they didn't know to ask that.

A. I'm sorry.

Q. If they didn't know that a listing could have been printed out two hours earlier, without that knowledge, if the Department of Health surveyor looked at this list at -- as the listing of residents for May 1st, would this listing be a truthful and accurate statement of those residents who resided on the COVID unit on May 1st?

A. If I could have -- the only way I could answer that is if they -- if I actually transferred those people down in that time. I know we transferred a lot of people up that morning, so if they would have asked for the list in the morning, it would have had to indicate all those other people. After 1:00 o'clock, whoever put -- did the changes, it would show only this. They would have had to have asked for the morning one in order to get an accurate count of who was on the unit. So --

Q. Right. But if they didn't know

to ask for that morning list, this list does not provide an accurate count, an accurate count of who was actually on the floor that morning, correct?

A. No, it does not, because I -- when I came in in the morning, I had a different set of names and then once they were transferred, you would print out the names of who was actually on the unit. So unless they asked for the earlier one, they would not have known that the other people were on the unit earlier that day.

Q. So would providing this list alone to DOH serve, in essence, to have misled the surveyor as to the residents that were on the unit on May 1st when you arrived at work?

A. I can't answer that. It would was misled -- if they asked me to print it, I would have just printed what I had. If they would have asked me who was actually in the room, I would told them -- I would have went to the room and looked.

Q. Okay.

A. But if they -- whoever printed this out for them and gave it to them with this time stamp, was trying to make sure that only these people were in it. But if she would have asked for my list that I print out when I come in in the morning, it would have shown a different list because the other people were on it.

Q. Maybe this will add some -- maybe this will help clarify what took place. If we look at page 11 of Exhibit-25. And if we look at some of page 11 of Exhibit-25. Look at the reason given on the 24 Hour Condition Report. This is the 24 Hour Condition Report for 1 East, right -- scroll up for me -- for May 1st, correct?

A. Yes.

Q. Under Resident #13 where you said -- you indicated earlier was transferred out of Room [redacted]. If you look under the 3:00 to 11:00 shift, it says, "Resident transferred to 2 East, Room [redacted], in stable condition for facility necessity." What does that mean? What was the necessity

that required this transfer?

A. The only -- I don't want to assume why she was transferred but a reason why someone would be taken off of 1 East is to make room for a COVID resident. I don't know what facility necessity. We -- the way it works is if social work gives us a paper and it says the reason why they're transferred, sometimes it says psychosocial well-being. Maybe her paper said facility necessity.

Q. Well, if we look at the next page, page 12 and we look at Resident #23 under the 3:00 to 11:00 shift, we see the same thing. "Resident transferred to 3 West, right, for facility necessity." Do you see that?

A. Yes.

Q. What was the necessity that Resident #23 had to be moved off the unit on May 1st?

A. It -- it -- it might have been because we needed the floor to transfer a COVID resident there. I mean we needed the

room to transfer our COVID resident. But I really, honestly -- I don't know what "facility necessity" means.

Q. And if you look at page 13, the next page for Resident #17 , we see under the 7:00 to 3:00 shift Resident -- let's see under 7:00 to 3:00 shift.

A. Did you freeze?

Q. Yeah, I think we froze a little here. But I'll read it to you and I think you can still read it.

A. Yes.

Q. Bottom portion it says "Resident transferred to room" -- looks like --

A. [redacted].

Q. Yeah, "[redacted] Unit 2 East for facility necessity," again. And then it says "Family aware." Do you see that? Agrees with the same?

A. Family aware agrees with.

Q. Do you see that?

A. Yes.

Q. So what was the necessity that the family was told about that they would

have agreed to?

A. I couldn't answer that because I don't contact the families. When it's time for them to get transferred, and the only reason why I could think of that all of them have facility necessity is because the social work paper that social work provides to me, must have said facility necessity. But I don't have the paperwork in front of me to confirm that. Because they usually write the reason why they're transferred, like, psychosocial well-being, depending on what the social work paper says of the reason why the transfer took place.

Q. Okay. Well we can take the screen down for a moment. Was there any other -- you mentioned that the number of moves that occurred on May 1st was significant. Was there any other day in 2020 when as many residents were moved on and off of 1 East?

A. Not to that extent but, yes, there were days when I was asked to move a lot of residents in a short period of time.

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Q. You said not to that extent. Was there any other day in 2020 when so many residents moved on and off of 1 East?

A. I don't recall -- I don't recall any of them surpassing that amount. But I do just remember that day being very rushed and just a lot, a lot going on.

Q. Right.

A. It could have been but because we moved a lot of residents at times because we changed. 1 East got admits a lot. Ms. Frawley would call and say we need to do this and then I would have to do it.

Q. Well, you said earlier that a decision was made that the COVID unit, 1 East, would only house COVID residents, correct?

A. Yes, but if I can clarify that answer. There were -- there was a time when the high side was COVID and then the low side was not and then there was a time where we would, like, kind of push all of the -- or transfer all of the non-COVID upstairs and then house that unit with just COVID.

Q. Right. And by May 1st, I believe you said earlier, you can correct me if I'm wrong, but that certainly by May 1st the unit was designated as an entirely COVID unit. It was designed to have only COVID residents. I'm not talking about March, I'm not talking about March. I'm not talking about April.

A. Right.

Q. I'm talking about May 1st. It was entirely designated to house COVID residents, correct?

A. If I said that then I need to clarify because I saw that there were non-COVID residents, so I'm not sure the exact day that Ms. Frawley said this whole entire unit would be COVID but that was the plan and then eventually the Census kept getting lower because we were only a COVID unit.

Q. Right. But lets look at this situation based on your testimony. Is it fair to say that on May 1st -- let me -- withdraw. On May 4th the Department of

Health did an infection control survey, correct?

A. Yes.

Q. 72 hours earlier, on May 1st, you indicated that either Ms. Frawley or Ms. Doyle, one of them or both of them, made the decision to transfer approximately 14 residents off of the COVID unit, correct?

A. Yes.

Q. And all the residents who were transferred off were non-COVID residents, correct?

A. Yes.

Q. And all the residents that were moved onto the COVID unit were COVID positives?

A. Yes. I believe -- yes, because we saw --

Q. So on May -- so on May 1st, the COVID unit housed both COVID positive and COVID negative, correct?

A. Yes. But to answer your question --

Q. And I'm sorry.

A. To answer your question, when we actually said we were like deemed all full COVID, I couldn't give you the exact day because --

Q. Okay. Okay. But let's just talk about May 1st and May 4.

A. Okay.

Q. The unit had both positive and negative residents living together on 1 East, correct? Not in the same room but certainly on the same floor.

A. Yes.

Q. And on May 1st all the COVID-negative residents are taken off the unit, correct?

A. Yes.

Q. All the COVID-positive residents, additional COVID positive residents, are added to the remaining COVID residents, correct?

A. Yes.

Q. And on May 4th, 72 hours later, in walks the Department of Health and all they see is COVID positive residents living

on the unit, correct?

A. Yes.

Q. And when they're handed a document, which is a bed listing going back 72 hours to Friday, May 1st, all they're looking at are COVID-positive residents, correct?

A. Yes.

Q. And if they didn't know, if they didn't have the wherewithal, or the knowledge of the system at Fulton to ask for a 3 hour earlier window, they would look at that May 1st bed listing and say to themselves, there's nothing but COVID residents on this unit, correct?

A. Yes.

Q. So again, let me ask this question: Based on this discussion, is it fair to say that the necessity that's mentioned in the 24 Hour Condition Report, the movement of residents, non-COVID residents off of 1 East, the necessity was the upcoming, the impending Department of Health survey on Monday, May 4th?

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A. Yes. Can I ask you a question?

Q. Just let me get the answer out. Was the answer to that "yes"?

A. Yes.

Q. Were these residents -- based on what we've just discussed, were these residents that were moved on and off -- withdrawn. Let me say something before I ask this question. You're telling me, and I understood this from our earlier conversation, that you had no role whatsoever in making these decisions, correct?

A. No.

Q. None, correct?

A. No. I don't have that power or --

Q. You do not have that authority, correct?

A. No.

Q. Okay. Were these residents that were moved on and off of the unit, 1 East, on May 1st, were they moved on and off of the unit on May 1st to conceal from the

Department of Health that the facility had not provided safe and adequate care to the 1 East residents, based on these movements?

A. That was -- that was the question that I was going to ask was did they know that they were coming on Monday?

Q. Okay. I can't -- I can't answer your questions but what I can say to you is if -- let me phrase this to you -- if Ms. Doyle and Ms. Frawley knew that on May 4th the Department of Health was planning to do an infection control survey at the nursing home, if they had that knowledge, would the movement of these residents on and off the unit on May 1st have been done to conceal from the Department of Health that the facility was not providing safe and adequate care to these residents?

A. I don't -- wow. I can't -- I can't answer, like, if they did that because to conceal it. I just know that I was told on Friday to move all of them and that we got the transfers in. But I can't answer for Ms. Doyle or Ms. Frawley if that was

their intention because they knew that the State was coming.

Q. Okay. Let me ask you this. If --

A. Did you freeze?

Q. No. No. I'm just thinking how to phrase this question.

A. Oh, sorry.

Q. The fact that COVID positives and non-COVID residents were living together on the same unit on May 1, 2020 -- withdrawn. Did the facility endanger the safety of its residents by allowing COVID and non-COVID residents to live together on the same unit on May 1, 2020?

A. I was told because they were in their rooms they were isolated, so that they weren't a danger to each other. So to my knowledge, I thought that they were safe inside of their rooms. But if that wasn't the case, and that's the law, and that they were supposed to be off of the unit totally, then, yes. But from what I was told -- because I had lots of questions, they said

that because they were in their rooms, isolated in their rooms with all the services being brought to their rooms, that they were isolated and they were okay to be on the unit together. I didn't know that we needed to have the whole entire unit designated as COVID at first.

Q. What does it tell you -- what as a registered nurse, with a lot of infection control training, what does it tell you -- what did you gather from the fact that on May 1st all COVID -- all non-COVID residents were quickly moved off the unit and remaining COVID positives -- residents were added to the unit. What does that tell you about the facility's compliance with infection control?

A. I felt that we were -- it was my understanding that we were -- we were supposed to be deemed a COVID unit at that point. I didn't know we were supposed to be, you know, that they needed to be isolated totally and then a lot of the times when I asked the question, the answer I

would get would be the CDC said or this was an executive order, when I asked Ms. Frawley or, you know, when we went to our meetings. So the hurried nature made me think that we were deeming the entire unit now COVID and that it was just very hurried.

Q. Right. But what does that tell you, the fact that 72 hours before the Department of Health walked into the building, according to your testimony, there was a hurried movement of residents on and off 1 East so that only COVID residents would remain when the surveyors arrived. What does that -- in your mind as a nurse, what does that tell you?

A. That they -- I just feel like I wasn't privy to all of that information that they had, like, because they didn't -- they don't tell me why they're doing things. They just say transfer such and so, this person needs to go there but on that day, I got a list and even social work was giving me the list. I was like, this is a lot, why. But I didn't get an answer, like, oh,

because of X, Y and Z.

Q. I understand that and you've made it clear that you had no role in making these decisions. But as a registered nurse, with many years of experience in the nursing field, and having worked on the COVID unit throughout 2020, until the unit no longer existed, what is your opinion as to whether non-COVID residents on 1 East were put in -- endangered by living among the residents?

A. I really was told that being that they were in their rooms they were isolated and that they weren't an imminent threat to the other non-COVID residents. So I -- I thought that they really were keeping them safe while, you know, because everything was brought to them. They weren't allowed out of their -- they were isolated in their rooms. But that hurried nature that day, made me, like, question why now. And now looking forward to the State walked in on Monday, did they know. So I don't know.

Q. Well, we talked earlier about the policies and procedures. We went over how

-- we talked about infection control and, if you recall, we talked about how the CNAs, the aides were not to move between presumed COVID and non-COVID residents when providing care during their shifts, correct?

A. That's what they were told, yes.

Q. Right. The policies and protocols were that CNAs should not care for a COVID resident and then on the same shift provide care to a non-COVID resident, correct?

A. Yes.

Q. Because that -- that could endanger the health and safety of the non-COVID resident, correct?

A. Yes.

Q. And moving from a COVID resident to a non-COVID resident on the same shift is neglecting -- is an act of neglect toward the non-COVID resident, correct?

A. Yes.

Q. So I would like to take a look again at Exhibit-7 and we've already discussed Exhibit-7, which is the bed

listing. And you already testified, correct, that all -- they're all COVID residents, correct?

A. Yes.

Q. The ones listed on Exhibit-7 for May 1st. If we go back to the room transfers that you mentioned, that you noted on the 24 Hour Condition Report, we have these rooms listed for -- these were all COVID-positive residents, correct?

A. Yes.

Q. Now, if we look at page 14 of Exhibit-25, you go back to that sheet. While that's brought up, page 14 of Exhibit-25, that's the Condition Report where you noted the room numbers of the non-COVID residents who were moved off of the unit on May 1st, correct?

A. Yes.

Q. So we have Resident #13 in Room [redacted]. Resident #21 in Room [redacted]. Resident #16 in Room [redacted]. Resident #12 in [redacted]. If we move on to Room [redacted], we have Resident #17 and Resident #14, correct?

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A. Yes.

Q. We have Resident #26 in Room [redacted]. If we go to the next page, page 15 of the Exhibit, we have at the top again Resident #51 was in Room [redacted]. We have Resident #25 in Room [redacted]. And we have -- I'm sorry we have Resident #25 and Resident #15 in Room [redacted]. We have Resident #19 and Resident #23 , Resident #23 in Room [redacted]. We have Resident #18 in Room [redacted]. And we have Resident #22 in Room [redacted], correct?

A. Yes.

Q. Now, who makes the CNA assignments? Who determines which CNAs provide care to which residents in particular rooms?

A. Myself or the LPNs. Depends on who gets there first.

Q. Okay. So if we look at now a document, which is Exhibit-26. Okay. No, no, no. That's not it. Exhibit-26. Okay. There we go. This is an Assignment Sheet, correct?

A. Yes.

Q. And it's a 24-page Exhibit, Exhibit-26. But if we go to page 7 of the document and we just leave it there. This is for the day of April 29th, correct?

A. Yes.

Q. And that's Wednesday, that's two days before the massive room transfers of Friday. You're listed as the RN, correct?

A. Yes.

Q. And we have Small as one of the CNAs, correct?

A. Yes.

Q. And Bent. I don't see the other two. I see question -- I see blanks on there.

A. They didn't fill their names out.

Q. Okay. Oh, they would have filled it in?

A. Either they -- either the nurse or myself. It looks like they filled it in themselves.

Q. I see. But they were the five CNAs on duty, right?

A. It should have been. If you show

me the paper that has 4/29 that has -- because the CNAs were different depending on their day off.

Q. Okay. But if we go to the next page, page 8. We have a listing, correct, of five CNA assignments, correct?

A. Yes.

Q. So, in fact, we scroll down to the bottom.

A. Okay. There we go.

Q. Right at the CNA names?

A. Uh-huh.

Q. So these are the CNAs, Small, Gabriel, Bent, is there a Michelle Clermont?

A. Yes. I don't -- can I ask this out? Yeah, I see -- I don't see Clermont name but...

Q. It should be on the right, the right column.

A. It's just our faces are blocking it but, yes, that would be the CNAs that would be assigned for that day.

Q. So they're going to provide care to the residents in these rooms, correct?

A. Yes.

Q. So if we look at -- is that Yvonne Small?

A. Yeah, I believe that's her first name.

Q. Right. So if you look at Yvonne Small, she was number one on the list, correct? If we scroll up she's number one?

A. Yes.

Q. So going over the room numbers we just talked about for column one, for Ms. Small we have she's caring for [redacted], that would have been Resident #13 , correct?

A. Yes.

Q. [redacted], Resident #21 , correct?

A. Yes.

Q. They're COVID negative. Then we have Resident #16 and Resident #12 in Room [redacted] and [redacted], correct?

A. Yes.

Q. And you've already said they were COVID negative, correct?

A. Yes.

Q. But if we look again quickly at

Exhibit-3, just for a moment. I mean, you know the unit so well, [redacted] and [redacted] are directly across the hall from [redacted] and [redacted], correct?

A. Yes.

Q. So is it fair to say that a CNA who is providing care to rooms [redacted] and [redacted], would likely step across the hall and provide care to the residents in room [redacted] and [redacted], correct?

A. Yes, but to do that she would have to -- if she had her PPE on and she would have taken care of non-COVID rooms, we would have to take it off and then go into a non-COVID room. When we were in wet suits or if she was using a gown.

Q. Right. But my question was: For convenience, a CNA providing care for 101 or 102, might provide care to 121 and 122 across the hall, correct?

A. Yes.

Q. Just like rooms 108 and 109 appear to be essentially across the hall from Room 111, correct?

A. Yes.

Q. So now if we go back to Exhibit-26 and -- right. We're back at page 8, for May -- I'm sorry what was the date on this? Again, this is April 29th, correct. So on April 29th, Ms. Small was providing care to Resident #13 in Room [redacted], who is negative, correct?

A. Yes.

Q. And Resident #21 , who was negative. And she's also providing care to residents in Room [redacted], Resident #16 , Resident #12, who were COVID negative, correct?

A. Yes.

Q. But we've already talked about that based on the bed listing, Resident #45 was in room [redacted], correct?

A. Resident #45 , yes.

Q. Now Resident #45 was COVID positive, though, correct?

A. Yes.

Q. So Ms. Small was providing care on the unit to both COVID negative and to COVID-positive residents, correct?

A. Yes.

Q. And if we look at the next CNA number two, that's CNA Gabriel, if you scroll down a drop, that's CNA Gabriel that's number two?

A. Yes, that's Gabriel.

Q. Right, Gabrielle. I'm sorry.

A. That's okay.

Q. And she's providing care to Room [redacted], which was Resident #28 who, if you recall, from the resident bed listing, she's COVID positive, correct?

A. Yes.

Q. But then she's also floating over to rooms [redacted], [redacted], [redacted] and [redacted], which were Resident#14, Resident #26, Resident #51, Resident#25, Resident #15 and Resident #19, correct?

A. Yes.

Q. And they were all negative, COVID negative?

A. Yes.

Q. So this CNA is also mixing between positive and negative residents, correct?

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A. Yes.

Q. And if we shoot over to the next CNA assignment, it would assignment number three at the top of the page, she would appear -- this is what we talked about earlier. She would appear just to be providing care to positive residents. If you look at Room [redacted] and [redacted], that's E.S. and Resident #29, COVID positive, correct?

A. Yes.

Q. Resident #30 and Resident #31 we discussed in Room [redacted], they were positive, correct?

A. Yes.

Q. And Room [redacted], Resident #32, who was COVID positive, correct?

A. Yes.

Q. But then across the hall was Resident #18 and Resident #24 in Room [redacted] and they were COVID negative, correct?

A. Yes.

Q. And then finally, if we look over at the next assignment, assignment for CNA number four on the list, at the top, we have Room [redacted] and Room [redacted], which will be

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Resident #17 and Resident #23 , who were negative, correct?

A. Yes.

Q. But then the remaining rooms that this CNA cared for, Room [redacted] and [redacted] were Resident #34 and Resident #35, who from our list we said were positive. And [redacted] and [redacted] and [redacted] were Resident #36 ,Resident #37 and Resident #38, who were also positive, correct?

A. Yes.

Q. So on this day in April, just before the room transfers occurred, these CNAs were providing care to both positive and negative residents on the unit, correct?

A. Yes. I -- can I clarify something?

Q. Well, I just want to first of all, clarification, they were providing care to both COVID positive and negative residents?

A. Yes.

Q. And that action of having CNAs, particularly on a COVID unit, move between positive and negative residents, is in

direct violation of the infection control protocols, correct?

A. That's not what I was told when I questioned it.

Q. You questioned it? Oh, you did raise a -- I think earlier you said you had questions.

A. Yes.

Q. So you did question this?

A. I did question that because we only had five CNAs.

Q. Right.

A. And we normally split them evenly between -- so each person has the same amount of residents. So I questioned this as there's no way that one person can take care of -- or, you know, all of these COVID-positive people. And then I was just told that they needed to just disinfect, take off their stuff and then go take care of the other residents. And then I said that's kind of hard. And they said anticipate your care. Take care of all the COVID residents first -- excuse me, the

non-COVID residents first and then take care of the COVID residents. So I asked that question a lot because --

Q. So -- I'm sorry. Go ahead.

A. Because it just seemed un -- it just didn't seem natural that one person could take care of that many people and because we had people floating on the unit.

Q. Right. So when you said you asked that question a lot and then you were given that answer, who did you --

A. Yes.

Q. Who did you ask -- what supervisor did you speak to and raise these concerns with?

A. Ms. Baptiste, Ms. Frawley and just -- and those were the superiors that I spoke to and then --

Q. Okay.

A. -- and then in the latter part, I asked Ms. Chernowski, you know, just like, that doesn't seem right. And that's when -- but then after that that's when they put all the COVIDs on our unit. But I asked earlier

because it just didn't seem natural for one person to take care of that many people.

Q. Well, I have some questions there. So when this was taking place, then the date we looked at the end of April, we've discussed this already and I believe you've confirmed that there were COVID and non-COVID on the same unit, correct?

A. Yes.

Q. And you used the word "fair." This was not fair. Might I ask you: This behavior of having a CNA move from COVID to non-COVID resident in providing care, was it not only unfair but dangerous --

A. Yes.

Q. -- from a infection control standpoint?

A. Yes.

Q. And again, having a CNA move from COVID to non-COVID in providing care, was that endangering the health of non-COVID residents on the unit?

A. I was -- yes, but I was told that as long as they took off safety, anticipated

their care and took care of the non-COVID residents first and then took care of the COVID residents, then they could do it that way.

Q. I know that -- you made that clear that that's what you were told. And I also understand you said you had to follow your instructions, correct?

A. Yes.

Q. But as a registered nurse with as many years of experience as you have, is it fair to say that having CNAs care for both COVID and non-COVID residents on the same shift, is an act of neglect toward the non-COVID residents?

A. Yes. At the time, I don't think I even -- yes. I'm sorry.

Q. The answer is "yes"?

A. Yes.

Q. All right. I also wanted to show you --

A. Is it -- I don't know.

Q. I also wanted to show you -- just so we can bring it up to May -- approaching

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May 1st what happened. If we look at page 10 of Exhibit-26 that we're on now, if we go to page 10, this is -- again, this is -- you're the RN on this day, correct?

A. Yes.

Q. And this is April 30th, this is the day before the massive movement of residents, correct?

A. Yes.

Q. And we have Swaby, Small, Bent, Knight and Clermont as the CNAs listed, correct?

A. Yes.

Q. Now page 11, which is the next page, we have a schedule again and -- and again, this being the day before the movement, we have CNA number one being Swaby at the bottom and she's providing care to Room [redacted] and [redacted], [redacted] and [redacted], Resident #21 and Resident #13 who are negative, correct?

A. Yes.

Q. Resident #16 and Resident #12, who are in [redacted] and [redacted], they were negative, correct?

A. Yes.

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Q. And then we have [redacted] and [redacted], which would be Resident #45 and Resident #46, who were both COVID positive, correct?

A. Yes.

Q. And then again, we won't go through them all, but the next CNA is Yvonne Small and she's providing care. The first room listed is [redacted], which according to the bed listing, correct, was Resident #28?

A. Yes.

Q. And she was a COVID resident, correct?

A. Yes.

Q. And then the remainder of her residents, [redacted] was Resident #14, [redacted] was Resident #26. We said [redacted] was Resident #51. [redacted] would have been Resident #25?

A. Yes.

Q. Resident #15 was in [redacted] and Resident #19 was in [redacted]. So she was also -- Ms. Small was moving between COVID and non-COVID residents, correct?

A. Yes.

Q. Now -- keep going. Was this happening frequently, meaning you were told to make your assignments -- you were directed how to make your assignments, correct?

A. Yes.

Q. And is it fair to say that during the period when COVID and non-COVID residents were living together on the same units, CNAs were frequently providing care to both COVID and non-COVID residents?

A. Yes.

Q. If we look at page 13 of the document, Exhibit-26, this is not your shift, right? If we go to page 13 -- I think we must be frozen slightly.

A. Can you hear me?

Q. I can hear you. The screen wasn't moving. I can hear you. But if we look at page 13, is it fair to say that this is not your shift?

A. This is not --

Q. Is it the --

A. -- sometimes my shift would spill

over but this is the 2:00 to 10:00 shift, so 2:00 o'clock I'm still there.

Q. Right. So this is the 2:00 to 10:00 shift for April 30th, correct?

A. Yes.

Q. But again, if we look at assignment number one, so the 2:00 to 10:00 shift. Again, just to see if whether or not this mixing of COVID and non-COVID residents between the CNAs was going on 24 hours a day. If we see, look at assignment number one, we see [redacted] and [redacted] -- [redacted] and [redacted], being Resident #13 and Resident #21, who are negative, correct?

A. Yes.

Q. And [redacted] and [redacted], were Resident #16 and Resident #12 who were also negative, correct?

A. Yes.

Q. But as you pointed out on the floor plan for the unit, going across -- directly across the hall, we move to rooms [redacted] and [redacted], correct?

A. Yes.

Q. And that was Resident #45 and Resident #46

who were COVID positive, correct?

A. Yes.

Q. So the same thing was happening on all shifts, right? CNA --

A. Yes.

Q. -- they were mixing care between COVID positive and COVID negative, correct?

A. Yes.

Q. And that was in direct violation of Fulton's own policies, which we discussed earlier, correct?

A. Yes. I would -- but I was told that as long as they took care of the non-COVID's first, and then cleaning and then don their suits or their PPE, that, you know, and hand sanitize and wash. As long as they did that between COVID and non-COVID rooms, that that was okay.

Q. Right. But you also said that you had some serious concerns about this, correct?

A. I did. I voiced it and...

Q. Let me ask you this: Who did you voice it to? Can you -- who did you say

that you had concerns about the safety of resident by having them care for both COVID and non-COVID? Who did you speak to?

A. Everyone. Ms. Baptiste, Ms. Chernowski, Ms. Frawley. Me and Ms. Doyle never had direct conversation like that.

Q. Okay. Okay. And if any of those proto -- if any of those activities; washing, donning and taking off the clothing, if any of those aspects of care -- of routine broke down, if someone didn't wash their hands, or someone didn't take off gloves or didn't properly zip up, they were putting a non-COVID resident at risk of contracting COVID, correct?

A. Yes, if they didn't -- it was a lot of work, and if they didn't do it, then, yes, they would.

Q. And if we look at May 1st, if we look at the day of the transfers, meaning page 14 of Exhibit-26. This is May 1st. This is the day when you said all the transfers took place, correct?

A. Yes.

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Q. And we've already gone through who was working that day; Swaby, Gabrielle, Bent, Knight and Small, correct?

A. Yes.

Q. And if we go -- if we go to page 15. This document, if we scroll down to the bottom of the assignment sheet, just scroll down a bit, we see that this assignment sheet, the CNA assignment sheet, this is for May 1st, that Friday, correct?

A. Yes.

Q. And if we count up the rooms, the beds, the residents on the unit that day, and you'd have to scroll from top to bottom. But even if you go across from the top, if we go 101 across. You go 101, 107, 116, 101B, 104A, 108A, 112B, 117A, 102A, 104B, 108B, 110, 103, 1-2B, 105A, 109A, 114A, 121A, 105B, 109B, 114B, 118B, 121B, 106A, 115A, 119A, 122A, 106B, 111A, 115B, and 119B. We scroll down a drop further. You get Room 107A, 111B, 116A and 120P. Those were all the rooms that the CNAs on May 1st had to provide -- those are all the

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residents that the CNAs had to provide care for, correct?

A. Yes.

Q. And that totals up, approximately, 35 residents?

A. Yes.

Q. And again, if we compare that to the bed listing that earlier Exhibit, Exhibit-7 that had the resident bed listing that was printed out that only had 24 names on it, is it fair to say that this document confirms that that morning, all those other residents that were transferred off the unit were laying in bed on 1 East and were being cared for on 1 East, correct?

A. Yes.

Q. And if we look at even May 1st, Swaby's assignment right there. If we look at bed [redacted] was Resident #13 -- [redacted] was Resident #13 who was negative, correct? [redacted] was Resident #21 who was negative. Resident #16 and Resident #12 in Room [redacted] and [redacted], they were all negative, correct?

A. Yes.

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Q. And then if you go -- she went across the hall to [redacted] and [redacted], and again, was providing care to Resident #45 and Resident #46 who were COVID positive, correct?

A. Yes.

Q. And just finally, if we go to page 18. Page 18 says at the top May 2nd.

A. Uh-huh.

Q. So this is Saturday. This would be the day after all the transfers, correct?

A. Yes.

Q. And this would be the 10:00 p.m. to 6:00 a.m. shift, correct?

A. Yes.

Q. And if we scroll down a drop and we look at the rooms, this is the day after the bed transfers. And is it fair to say that this CNA assignment sheet now indicates all the residents who were moved off of the COVID unit, Room 101, Room 102, Room 104, Room 106, Room 107 and Room 111 are now empty?

A. Yes.

Q. There's no one there to care for

anymore, correct?

A. Yes.

Q. Because they've all been moved upstairs off of the COVID unit?

A. Yes.

Q. So these residents who are non-COVID have been living on the COVID unit and as per directions you received, they were suddenly interspersed on various units throughout the building, correct?

A. Yes.

Q. And is it fair to say as sort of a basic -- basic aspect of infection control, it is extremely dangerous to take a group of non-COVID residents who were living on a COVID unit and sending them onto other units to live with other residents? Potentially dangerous?

A. Potentially from moving them from 1 East to upstairs?

Q. Yes. They were being moved off of a COVID unit where they had been cared for by the same CNA who was caring for COVID residents and now they're upstairs on

different units. Isn't that potentially a dangerous situation within the facility?

A. Yes.

Q. Did any of the CNAs -- did any of the CNAs that worked with you on 1 East, did they ever raise concerns to you about having to provide care for both COVID and non-COVID residents?

A. Yes.

Q. Do you remember, did you speak to -- was it Ms. Small, did she ever raise a concern to you?

A. Yes.

Q. Can you tell me what Ms. Small said --

A. Yes.

Q. -- to you and what you said to her?

A. The exact conversation I don't know but I know she raised a concern and that was one of the days that I went over and said, you know, they're going in and out of the rooms and that's when I was told again that as long as they do proper hand

washing, take off the suit, change their PPE, and you know, continue to wear their mask and everything, that it was okay.

Q. So this is Yvonne Small who spoke to you?

A. Yeah. She voiced her concern.

Q. Concern for safety? Concern for residents? What was --

A. The exact conversation I don't recall but I know she was -- she said -- she voiced her concern that she was going -- you know, floating. I don't know if the conversation was specifically about going in and out of the rooms. It was because she was a full-time float, so she didn't want to keep floating.

Q. Was it fair to say she was also -- she also raised the issue of moving between COVID and non-COVID residents?

A. Yes.

Q. And did you explain to her that it wasn't your decision?

A. Yes. And I told her that I'll go ask again, which I always did. I stayed in

that office. And again, I would just be told, you know, as long as they do proper hand washing and, you know, don their -- put on the barrier over their suit, then that was safe for them to go in and out of the room.

Q. Did other CNAs or just Ms. Small raise that concern with you?

A. I remember Ms. Small. Other CNAs did complain -- would complain, type of environment because it was all very new to us. So we had a lot of questions but I always asked the questions. Whenever they raised it to me I would go and ask, you know, I would filter it down.

Q. Okay. And let me ask you this, and this is an innocent question but a little difficult to ask, but were residents aware -- were residents -- were non-COVID residents on 1 East ever made aware that the CNA who was coming to their room may have just provided care to a COVID resident or were they in the dark with respect to that?

A. I can't answer for certain, but I

would assume -- but I would assume that they were in the dark. I don't want to assume, but I don't think that the CNA would tell them that I just finished taking care of a COVID resident.

Q. Yeah. And is it fair to say that the family members of the non-COVID residents who were living on 1 East, they were unaware that staff was providing care to their loved one and COVID residents; is that fair to say?

A. It could be, but they were privy to ROBO calls that I didn't get, so sometimes I would get that -- I would get it from family members because a ROBO call would come and they would get it saying that we have XYZ cases in the building. And then they would call and tell me. So I don't know if the families were aware at the time, but a lot of them got ROBO calls. But I don't know what the ROBO calls said for sure because I didn't get it.

Q. Okay. Was is it fair to say that, as a registered nurse, if family

members knew that their loved one, who was non-COVID, was being bathed and washed and cared for by a CNA who had just cared for a COVID resident, they would not have felt that their loved one was being safely cared for; is that fair to say?

A. I can't answer for the family members. I just know that if they voiced a concern to me, I would filter and tell them exactly what I was told; that everyone is doing hand hygiene and making sure that they are, you know, taking precautions not to, you know -- I never said infect --

Q. Right.

A. -- but -- the exact wording I can't remember, but I would just let them know that we are doing everything to keep them safe. But I don't remember a family member just specifically asking me.

Q. Right. And if they didn't ask you, there was no way that they would have known, correct, that the CNAs were caring for their loved ones and COVID residents, correct?

A. They wouldn't know about the CNAs, no, because I don't think that was on the ROBO call, no.

Q. Right. They would have no reason to suspect that the CNAs were caring for their loved ones and COVID residents?

A. Exactly.

Q. You mentioned earlier that -- that, A, you did voice concerns about infection control problems, correct?

A. Yes. Because I wasn't -- this was all so new, so I mean, I asked a lot of questions.

Q. Right.

A. Because they were changing things so quickly.

Q. Were you given any directions by any supervisor before the infection control survey took place that involved the altering or changing of records?

A. To change records?

Q. Were you given --

A. No.

Q. -- any direction, suggestion to

manipulate or change records before the DOH survey took place?

A. No. Not that I'm -- I don't recall them ever asking me to do something like that.

Q. You don't recall any time that anyone spoke to you during the pandemic that certain records, patient records, may need to be altered or changed to reflect something that wasn't actually happening in the facility?

A. No.

Q. Did you ever become aware of nursing staff being instructed not to discuss COVID-related questions with families? Do you ever -- do you recall that, that there were just --

MR. ZADEK: By the way, you can take the screen off -- this exhibit off now.

Q. Do you remember becoming aware of nursing staff being told do not discuss COVID-related questions with family members of residents?

A. I wasn't told to not -- it wasn't told to me, like, in that respect. It was more don't discuss, you know -- like HIPPA, don't discuss any of the information from the other residents with the family members. What happened -- what would happen is they would get a ROBO call, I didn't hear the ROBO calls, and then I would get an influx of phone calls. And I wouldn't know how to answer, so I called and said did they get a ROBO call, just to give them some clarification --

Q. Right.

A. -- and then she said -- you know, Ms. Frawley would just say well, just answer what you know.

Q. Right.

A. And if a family member called and asked me do you have COVID on the unit, I would say at this time -- I would just speak to what their family member had, not to what everyone else had on the unit.

Q. Right. But were you ever given an instruction or a directive or were in

some way told not to discuss the increasing illness and deaths that were occurring in the facility with family?

A. Not directly, no. I don't remember someone specifically telling me don't discuss it.

Q. Okay. Do you ever recall having being asked to sign an inservice sheet -- an inservice acknowledgment that you would not discuss COVID with family members?

A. I don't recall signing that.

Q. Okay.

A. I don't recall signing that.

MR. ZADEK: Okay. I think we're going to take just a 10 minute break. I think we could all use a quick stretch. Make it 15 minutes. We'll regroup at, like, 3:35.

THE WITNESS: Okay.

MR. ZADEK: Thanks so much.

THE WITNESS: Okay.

(A recess was taken.)

MR. ZADEK: So I think we are going to begin again. So can everyone

just note their appearance for the record?

MR. JOYCE: Investigator Joyce is on.

MS. LIPTAK: And Anne Liptak, paralegal.

MS. KOWTNA: Auditor Mary Kowtna.

MS. PICONE: Barbara Picone.

MR. ZADEK: And are you there, Gerri Gold? Are you there, Gerri Gold? Well, we're waiting for one more person. You can hear me, Ms. Waller?

THE WITNESS: Yes.

MR. ZADEK: We are just waiting for one more individual and then we are going to just resume. Gerri Gold? Are you there, Gerri? Are you there, Gerri? Are you there, Gerri?

MS. GOLD: Yes.

MR. ZADEK: Are you there, Gerri?

MS. GOLD: Having technological difficulties. Sorry.

MR. ZADEK: Okay. So you're there. Fine.

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Q. So we're going to resume. So Ms. Waller, I just have a few questions. I know we talked about whether or not there was any instructions given concerning staff not being directed to not discuss COVID or illness or the deaths that were occurring at Fulton. And in that regard, were you ever instructed to have your staff -- to have your CNAs on 1 East sign a form to not speak with family members on these issues?

A. I don't recall a form for them not to speak to them about that.

Q. Were you ever -- without a form, without specifically a form, were you ever instructed by any of your supervisors to speak with your staff, including the CNAs, not to discuss with family members the rising illness and death and prevalence of COVID-19 at the facility?

A. Yes, I do recall now, because I guess -- I've never seen it, but there was an alleged Facebook group or some sort of protest that was supposed to happen at the facility and they didn't want us, the

employees, talking to family members about it, about COVID or about anything that's going on at the facility.

Q. And who told you that?

A. Directly, I think it was at a meeting that Ms. Doyle held. I don't remember it being Ms. Frawley, but I believe it was a meeting, like, under no circumstances for you guys to talk -- you know, talk to those -- to the people outside. And then they had a protest and, you know, we -- alleged protest and we weren't supposed to go and talk to them.

Q. And was this just a conversation you had with Ms. Doyle or were you given any written directions about not talking to families?

A. I don't remember a written directive, like an actual notice, no.

Q. You said this came directly from Ms. Doyle, correct?

A. I believe so. I mean, I don't -- I don't -- me and Ms. Frawley, we didn't have that type of conversation. It was --

it was more like -- if I recall right, it was Ms. Doyle. It was just like don't -- don't go outside, like, during the protest, or whatever she called it. I think she called it something else. But don't go outside, stay away from -- I mean, don't talk about that information. I mean, I didn't have the numbers anyway, so it wouldn't have been something I would have had a conversation about.

Q. Were these physical protestors that were physically outside the building, is that it?

A. Yeah. It was a -- it was an alleged thing. So I guess there was a Facebook group that families made and that's where the hearsay was coming from, that they were going to do some sort of protest or something like that.

Q. Okay. But do you recall any instance where Ms. Doyle told you, in general, don't speak to family members --

A. No.

Q. -- or told you -- or told you to

have your CNAs -- to instruct your CNAs not to talk to family members about the care being given to their loved ones?

A. It -- it wasn't -- it wasn't like she said don't talk to them about it. It was more of a general -- I think it was during, like, one of those unit meetings. It was, like, general blanket statement, like, you know, don't talk to anybody about the -- what's going on at Fulton. One of the reasons I -- it came up in a conversation is because the families were calling, asking me questions, I guess, after one of her ROBO calls that Ms. Doyle made, and she was, like, you know, you know, don't get involved in that.

Q. Uh-huh.

A. It wasn't like she said -- like -- because I -- if the family members called and asked me questions about their family, I would ask -- I would tell them, if they were on the face sheet.

Q. Now, you mentioned earlier that -- you said that Ms. Frawley was

directly aware of your concerns about the infection control problems on 1 East, correct?

A. Yes, because she was my -- for the most part, after Ms. Baptiste, like, she was my go-to person.

Q. Right. And you said you spoke directly to Ms. Frawley about, among other things, your concern that CNAs were caring for both COVID and non-COVID, correct?

A. Yes.

Q. And you also -- did you also have that conversation with Ms. Baptiste? Did you also, at some point, explain to her that you thought this was not a safe way to proceed?

A. Yes.

Q. You spoke to Ms. Baptiste directly as well?

A. Yes. When it -- when it first came up, because I didn't know how things were going to work out, like, with the dynamics of it.

Q. Right. Did you speak to

Ms. Baptiste and Ms. Frawley together or separately about your concerns?

A. No. Never together.

Q. Oh, separately?

A. Yes.

Q. And did you have any conversations -- withdrawn. Let me ask you: Was Ms. Doyle, the administrator, was she aware, to your knowledge, of the problems on 1 East, as far as infection control?

A. I am not quite sure because I never really spoke to Ms. Doyle about it. I would always speak to Ms. Frawley and Ms. Baptiste about infection control stuff.

Q. So Frawley and Baptiste were aware of your concerns?

A. Yes.

Q. You've been there so many years, do you have any information or any knowledge about who owns this place, who owns Fulton?

A. I hear them talking about a Mr. Weiss, that's it. I think that's Ms. Doyle's boss.

Q. Okay.

A. But I've never met him.
Q. Never met him?
A. No.
Q. Ever speak to him?
A. No.
Q. So to your knowledge, Mr. Weiss has some ownership interest in the place?
A. Yes. I just -- I just always knew that they would say the owner and then I know that -- well, this is just a hearsay, that Mr. Weiss is Ms. Doyle's boss.
Q. Okay. Now, when you mentioned that you did speak to Frawley -- Ms. Frawley and you spoke to Ms. Baptiste, was it primar -- was it -- were the concerns you raised with Frawley and Baptiste primarily about the issue about CNAs floating between COVID and non-COVID or did you also raise the concern about, as you said, the stages or whatever -- did you raise a general concern about we've got COVID and non-COVID here on the same unit, that doesn't seem safe? Did you mention that to them also?
A. I did mention that because I

didn't know what the -- like, I didn't know what the CDC -- like, I didn't know what the requirements were and I was working, so it was, like, they would give me a directive and I would say -- for instance, I would say well, why? And, you know -- but they have concerns and then they would give me the rationale and then I would just follow through.

Q. But you've made it known to both Baptiste and Frawley that you had concerns about housing COVID positive and non-COVID residents together might not be safe, you raised that with both of them?

A. I don't -- I may not have used the "safe" word. I just kept saying well, how are -- how do we have them all on one side and then the others on the other side. And then I would say yeah, like -- so to answer your question, yes. Sorry.

Q. Okay. So you made them -- you let them know that housing them on the same unit, 1 East, may not have been a safe situation?

A. Yes. I might not have said the word "safe". I just didn't think that it was a good idea.

Q. Okay. Did you make both Ms. Baptiste and Ms. Frawley aware of that or just one of them or both of them?

A. I might -- I -- I know I mentioned it to Ms. Baptiste, but it was more of a general conversation because we, you know -- she would -- she would come on my unit a lot. But Ms. Frawley, more of a, like, it was an ongoing thing, like, are we okay here? Like are we --

Q. Ms. Frawley would?

A. Yes.

Q. Are we okay here, meaning is what -- is what --

A. Like what --

Q. -- we're doing okay?

A. Yes. Like are we doing what we're supposed to be doing, and then she would give me the PPE cart. What am I supposed to keep in this? You know, it was an ongoing everyday kind of all day kind of

dynamic between us where we would constantly -- I would constantly be asking questions.

Q. Okay. To what extent, if any, did you put this in writing? Meaning are there any e-mails? Would you ever communicate with Frawley or Baptiste by e-mail?

A. No. We got our e-mails a little bit later on. I'm not sure of the exact date and then -- I'm losing my login -- we never conversed through e-mail. It was quicker to pick up a phone to call or just walk down there.

Q. That Exhibit-7 we've been talking about, that bed listing with the 24 residents, who's responsible for preparing that? Who prepares that list?

A. It's a couple of people could have. So in the morning when I come in, I print out a bed list. It's a good checkoff list for myself when I'm doing rounds. The LPN will print them out. But anyone who has a computer at the facility can print it out.

Q. Oh, so you print it, Ms. Doyle can print it, Ms. Frawley can print it?

A. Anyone can print this out who has a computer, as long as they're privy to the provider panel.

Q. And who enters the data with respect -- in other words -- in other words, if at 1:15 in the afternoon Resident #51 was still showing up as being on the unit, because we know she was there that morning, who had the ability to delete her name from the list so that when it is printed out at 1:22 Resident #51 's name no longer appears? Who --

A. All the nurses can do that and administration. Anyone who can login to the provider panel can go into a -- or who can go into someone's chart can transfer them out.

Q. Not a CNA?

A. Not a CNA because they weren't on the computers and they don't have access to it. It would have to be a nurse and above.

Q. When you say "a nurse," you mean

including LPNs?

A. Yes.

Q. So did you -- based on your recollection, did you prepare this list of 24 residents or this was not your work? This was not something that you -- you did not prepare this list, to your --

A. I don't recall preparing this list. If it was -- if it was for the Department of Health, if this list was printed just for them, most likely it would have been printed with them over in the conference room because, to my recollection, when it came to the unit, we just started talking about infection control and the dy -- the dy -- sorry -- the dynamics of the unit. I don't recall handing them a paper.

Q. So you don't recall being involved in preparing this list?

A. No.

Q. And the conference room, where is that, by whose office; Frawley, Doyle?

A. Next to Ms. Frawley's office. It's down the administrative wing. So I'm 1

East. That would be considered 1 West.

Q. Right. Is Ms. Doyle's office there?

A. Yes, but most likely --

Q. Yes?

A. Yes.

Q. And Ms. Frawley?

A. Yes.

Q. So you're saying that the only people who could have prepared this list would have been a nurse or administration?

A. Yes. I do believe -- yes. Anyone down that hallway. If they can get into the chart or the provider panel -- anyone who can get into the provider panel can print out this list.

Q. So if a list -- I'm just -- if the list on May 1st earlier in the day showed whatever it was, the 35 residents on the unit --

A. Yeah.

Q. -- COVID and non-COVID residents, and if someone said I'm going to prepare a list showing only these COVID residents,

they could have removed -- even before the resident was pulled out of the room, they could have recreated a list to indicate only COVID-positive residents on the unit?

A. Yes. They -- there's a lot of steps to it, but they could possibly do that.

Q. And is there any way to look into the system, if you will, and to see who did it? Meaning is there a way -- would they -- would the person who accessed it have left a footprint that they were there preparing this list?

A. I'm -- I do believe so because everything we do on the computer, I thought they could always go back and check.

Q. So in other words, if this list was -- was it printed at 1:22 or was it prepared at 1:22?

A. It looks like it was printed at 1:22. I don't have a -- I don't know stuff like that. But when you print the list, it usually tells the time that it's -- the time that it was printed. Being prepared, it

could have been -- they could have put one person in at a time. I mean, I'm not sure if I put any of these people in, like, changed Resident #7 to this room. But if I did, it wouldn't show the time that I did it. It would just give me a complete list of the time I printed it out.

Q. Okay. But to your -- to your recollection, you didn't prepare this list?

A. No, I don't recall giving a list. If they -- if the surveyors asked me for one, I would have given it to them, but I don't recall handing them a piece of paper.

MR. ZADEK: Okay. I think that concludes -- that does conclude our hearing today. And I want to thank you for virtually appearing and answering all my questions.

THE WITNESS: Okay. So how do I know -- like, do I need to come back or anything like that? Like, how do I know when this is, like, done or --

MR. ZADEK: Again, let me -- I'll remind you again that this proceeding

is confidential.

THE WITNESS: Yes, I know that now. Sorry about that.

MR. ZADEK: No. No apology needed. This is confidential. What took place between us today, these questions and the answers you provided, are entirely confidential, not to be discussed with anyone. And this concludes this examination. If -- if we wish to speak with you again -- you met Mr. Joyce, right, the Investigator Joyce?

THE WITNESS: Yes.

MR. ZADEK: And you might have met another investigator, Mr. Tarpey. They will certainly, with your consent, you know, reach out to you if there's any reason to speak with you again or to talk with you or to discuss any issues that arise. I suppose the best way for them to reach you would be by your cellphone?

THE WITNESS: Yes.

MR. ZADEK: Okay. And I appreciate that and they would do that then. So if we need to speak with you again, we'll reach out via cellphone.

THE WITNESS: Okay.

MR. ZADEK: And again, thank you so much for your time. And what was said, again, between us, 100 percent confidential.

THE WITNESS: Thank you.

MR. ZADEK: Be well. Thank you.

THE WITNESS: Okay. Bye.

MR. ZADEK: And this ends our examination.

(TIME NOTED: 3:58 P.M.)

INDEX TO EXHIBITS

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CERTIFICATION

I, STEFANIE KRUT, a Notary Public in and for the State of New York, do hereby certify:

THAT the witness(es) whose testimony is herein before set forth, was duly sworn by me; and

THAT the within transcript is a true and accurate record of the testimony given by said witness(es).

I further certify that I am not related either by blood or marriage, to any of the parties to this action; and

THAT I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of October 2020.

STEFANIE KRUT

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

----------X

In the matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

----------X

63(12) Examination under oath of [redacted], taken via WebEx video conference, held on October 20, 2020, commencing at 10:01 a.m.

Reported by

Sivan Dahan

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
300 Motor Parkway, Suite 210
Hauppauge, New York 11788
BY: PETER ZADEK,
Special Assistant
Attorney General
BY: PRABHJOT SEKHON,
Special Assistant
Attorney General

ALSO PRESENT:
Khristian Diaz,
Audit Investigator
Anne Liptak, Paralegal
Robert Joyce, Investigator

[redacted]

(Subpoena was premarked as State's Exhibit 1, for identification; 10-20-20, S.D.)

(1st floor plan was premarked as State's Exhibit 2, for identification; 10-20-20, S.D.)

(Document was premarked as State's Exhibit 3, for identification; 10-20-20, S.D.)

(Document was premarked as State's Exhibit 4, for identification; 10-20-20, S.D.)

(Document was premarked as State's Exhibit 5, for identification; 10-20-20, S.D.)

(Document was premarked as State's Exhibit 6, for identification; 10-20-20, S.D.)

(Document was premarked as State's Exhibit 7, for identification; 10-20-20, S.D.)

(Employee disciplinary notice was premarked as State's Exhibit 8, for identification; 10-20-20, S.D.)

[redacted], having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. ZADEK:

Q. Please state your name for the record.

A. [redacted].

Q. What is your address?

A. [redacted].

Q. [redacted], you indicated you live in [redacted], that would be [redacted], New York, correct?

A. Yes.

Q. Is that where you are now, currently, during this examination?

A. Yes.

Q. Again, let me introduce myself. My name is Peter Zadek. I am a special assistant attorney general in the Office of the Attorney General in the State of New York.

[redacted]

I see someone standing over your left shoulder, [redacted].

A. That's my daughter.

Q. Oh, okay. If you can ask all of the family to remain outside during the examination.

At this time, I will have everyone who is present to just introduce themselves. And they can turn off their audio and they can turn off their video, as well.

MS. SEKHON: My name is Prabhjot Sekhon and I am a special assistant attorney general with the attorney general's office. Good morning.

THE WITNESS: Good morning.

MR. JOYCE: I am Investigator Robert Joyce from the attorney general's office, also.

MS. LIPTAK: Good morning, my name is Anne Liptak. I'm one of the paralegals here.

MR. DIAZ: Good morning, my name is Khristian Diaz. I'm an auditor

[redacted]
investigator.

MR. ZADEK: I think everyone has introduced themselves and they can now turn off their audio and video.

Q. [redacted], we are conducting this examination remotely in order to ensure the health and safety of all participants due to coronavirus-related concerns. The examination will be recorded by stenographic means by a court reporter certified to record the examination in the State of New York. Any exhibits will be presented to you electronically.

Your testimony today is being taken pursuant to a subpoena that was issued by the attorney general's office pursuant to which I and Ms. Sekhon, as special assistant attorneys general, are authorized to take proof and make a determination of the relative facts in connection with an investigation that deals with the resident care provided by Fulton Commons Care Center.

You are an employee at Fulton Commons Care Center?

[redacted]

A. Yes.

Q. At this time, I would ask and request that Exhibit 1 be shown to you and we will see if Ms. Liptak can display what's being deemed as Exhibit 1. Are you able to see this page, [redacted]?

A. Have I seen this page?

Q. Are you able to look at it now, is it coming up on your screen?

A. Oh yes, I am seeing it, yes.

Q. We are going to scroll down just a bit and right there it says subpoena on the page?

A. Yeah.

Q. And if we scroll down a little further, we will see whether or not -- right there we have your name, [redacted], and the address of Fulton Commons Care Center, do you see that?

A. Yes.

Q. If we scroll down a bit further, we should see your signature at the bottom of the last page. Is that your signature?

A. Yes.

[redacted]

Q. So this is a copy of the subpoena which was issued and served on you directly. And you recognize this document, this subpoena, correct?

A. Yes.

Q. This subpoena required and compelled you to virtually appear for an interview today, correct?

A. Yes.

MR. ZADEK: We can take it off the screen now.

Q. You understand that your virtual appearance here today is pursuant to or is a result of that subpoena which compels you and directs you to appear and give testimony, correct?

A. Yes.

Q. Before we begin, I would like to take a few moments to explain some of your rights.

Pursuant to the Fifth Amendment of the United States Constitution, as well as the New York State Constitution, you have the right to refuse to answer questions if

[redacted]

your truthful answer to that question would tend to incriminate you.

Do you understand that?

A. Yes.

Q. Please be aware, however, that should you choose to invoke your Fifth Amendment right, a negative inference can be drawn against you in any future noncriminal proceedings.

Do you understand that?

A. Yes.

Q. You took an oath a moment ago to tell the truth --

A. Yes.

Q. -- the whole truth, and nothing but the truth.

A. Yes.

Q. Should you intentionally make any false statement during this proceeding, by that I mean a statement that you do not believe to be true, you may be prosecuted for perjury.

Do you understand that?

A. Yes.

[redacted]

Q. I am going to be asking you questions which are relevant to the attorney general's investigation into the resident care provided by Fulton Commons Care Center. If I say "Fulton Commons" or "Fulton" from this point forward, do you understand I am referring to the Fulton Commons Care Center?

A. If you say Fulton, yes.

Q. I might use the term "Fulton" or "Fulton Commons," I mean Fulton Commons Care Center?

A. Yes.

Q. Here are just some basic ground rules that I would like to go over with you. As you seen, we have a stenographer here today. She will be recording this interview. It is very important that she hears everything that we say. What that means is that we can't speak over one another. I ask you to allow me to finish asking my question before you begin to answer, as she will not be able to take us both down at the same time.

It is also important that you

[redacted]

give verbal responses to all of my questions, which you have done. Nods of the head, shrugs of the shoulder, she can't properly record those body gestures.

A. Okay.

Q. If you do nod your head or you shake your head, as the case may be, as long as you accompany that body gesture with a verbal response, that's fine.

A. Okay.

Q. If you don't understand my question, please let me know and I will do my best to rephrase it for you. So if I ask you a question and you are saying to yourself, I don't know what he is asking me, tell me. Let me know that the question is not clear to you and I will try to rephrase it or ask it in a different way so the question is clear to you.

A. Okay.

Q. Because if you do answer my question, I will assume that you understood the question as I asked it.

Now, if you need to take a break

[redacted]

for any reason, that's fine. If you need to use the bathroom, if you need to stretch, your back is tightening up, whatever the case may be, that's not a problem. The only thing I ask is that, if you need to take a short break, that you answer the question that has presently been asked of you before we take the break.

A. Okay.

Q. Do you understand these instructions that I have given you?

A. Yes.

Q. Okay. Now, sometimes you may give an answer as completely as you can and then later remember additional information. If that happens, tell me that you would like to add something to the earlier answer and we will do that while it's fresh in your mind.

A. Okay.

Q. It might occur to you at some point that an earlier answer that you gave to me was not completely accurate. If that happens, tell me, and we can go back and

[redacted]

correct what you had said earlier, if you think it would be helpful.

A. Okay.

Q. Now, this proceeding is confidential. Neither -- you are not entitled to a copy of this transcript of this testimony or any exhibits that is may be marked here today.

Do you understand that?

A. Yes.

Q. As this is a confidential proceeding, there shall be no recordings during the taking of this testimony. Although Webex, the system we are using, does offer the ability to make recordings, I can give you my assurance, my word, that this examination is not being recorded by the attorney general's office.

Do you agree not to record this examination in any way?

A. Yes, I am not going to do that.

Q. Also, due to its confidentiality, we request that you do not discuss this matter, your testimony here today, or any

[redacted]
documents that you may see with anyone else.
Do you understand that?
A. Yes.
Q. Unless we are on a break, unless we've indicated that we are going to take a short break, there shall be no private communications with any anyone. That includes phone calls, passing of notes, texting, e-mailing or any other means of communications that may not be visible on the camera, all right?
A. Okay.
Q. Please, if you do have a telephone or electronic device, please mute it, mute it or turn it off so that we don't have any disruptions, all right?
A. Okay.
Q. Have you taken any drugs or alcohol within the past 24 hours that may have an impact and effect your ability to testify here today truthfully and to the best of your knowledge?
A. No, I didn't.
Q. Are you aware of any physical or

[redacted]

mental disability or defect or problem that may interfere with your ability to understand my questions or your ability to respond truthfully and completely?

A. No.

Q. Now, did you discuss the fact that you were subpoenaed here today with anyone else? In other words, did you let anyone know or have any conversation with anyone where you said, Hey, I am going to have to be interviewed by the attorney general's office?

A. My job, they know that.

Q. So they know you are here today, correct?

A. Yes.

Q. Who did you speak with, who did you discuss that you were going to be sitting here today for this interview?

A. My co-worker. I told one of my co-workers, I -- tomorrow is a case, I don't know what's it all about. I did tell one of my co-workers that.

Q. Who was that co-worker?

[redacted]

A. Her name is Moxam, and Bent. Those two of them. I say, I don't want nobody to hear what I am telling you guys. It was between the three of us.

Q. Okay. So you mentioned "Bent"?

A. And Moxam.

Q. When you say "Bent," do you mean Sonya Bent?

A. Yes.

Q. So you spoke to Sonya. She is a CNA?

A. Yes.

Q. And who was the other person you spoke to?

A. Moxam, Novlette.

Q. What's the first name?

A. Novlette.

Q. Last name is spelled how?

A. Moxam, M-O-X-A-M.

Q. That's a woman, Novlette?

A. What?

Q. That's a woman?

A. Yes.

Q. And she is also a CNA?

[redacted]

A. Yes.

Q. And you spoke to the two of them together, were all three of you together, or you spoke to them separately?

A. Together.

Q. What did you tell them and what did they say to you?

A. They asked me when is the -- when I am going to court. I said Tuesday, which is today, 10:00. They say, Oh. So they asked me if I know what, and I said, No. They say, Okay. So they say, Be strong. And that was it.

Q. Okay. And how about anyone else, not a co-worker. How about someone in the administration, did you let anyone know who works in administration that you were going to speak to us today?

A. Only my son.

Q. Okay, that's understandable. I meant outside of your family, anyone at the facility other than those two coworkers?

A. No.

Q. Okay.

[redacted]

Did you look over any documents or papers before you came on this morning to be interviewed?

A. No. The only thing I look over, I remember when my doctor give me a letter to take to them and tell them they had to supply me with PPE. That's the only thing I look over.

Q. So you mentioned a letter from a doctor somehow concerning PPE?

A. Yes.

Q. Okay, I didn't really understand that. Can you explain that?

A. My doctor, when the COVID start, when they wasn't giving us no PPE, then I went to my doctor because I am a cancer survivor. And I told my doctor what's going on in my job, so he give me a letter to take back to my job so if they don't supply me with PPE --

Excuse me, I can go and get the letter and read it. Can I go and get the letter and bring it and read it?

Q. Yes, you can read it to us.

[redacted]

A. This letter is from my doctor. It says, "This letter is to inform that [redacted] is a patient of mine and currently under my care. Patient was seen in my office today for a medical condition. Patient is a known cancer survivor and needs to be provided with the proper PPE equipment while at work. Patient returned to her previous duties without restriction. If you need any further information, please contact me."

That's what my doctor put here. My doctor told me that if they didn't, then he would take further action with it.

Q. Okay. So first of all, what is the date on the letter from the doctor --

MR. ZADEK: The record should reflect that [redacted] is reading from a document --

THE WITNESS: April 9th.

Q. I'm sorry, what's the date?

A. It was April the 9th, 2020.

Q. Okay, April 9th.

And the physician looks like

[redacted]
Deepak Amin, MD, correct?
A. Yes.
Q. And it's dated April 9th?
A. Yes.
Q. Well, first of all, let me ask you, what is your understanding -- what does "PPE" mean, what is PPE?
A. That was we wasn't getting any gowns, no N95, no protection from the COVID. We wasn't getting that.
Q. Right. The letter from the doctor, which is dated April 9th, suggests that you had complained to folks over at Fulton that you didn't have PPE?
A. Yes.
Q. Who had you spoken to at Fulton about the problem of not having PPE?
A. Well, when the COVID start, people was having -- the patient there was having high fever. And we know that high fever, this symptom, we know this is COVID.
And the -- like, the nurses tell the unit manager, like, "What? We not getting anything to protect ourself to go in

[redacted]

to the patient?"

They ignore it. They are not listening.

So, when I hearing that, it feels -- as a cancer survivor or whatnot -- I start to get scared.

So -- because I remember, one day I was on a floor and one of the unit manager --

I got to put a plastic, a garbage bag plastic over me. So I told her, the patient she sending me to, I say, "I cannot go like this."

And she said, "You have something on already, so what." That was her answer to me.

I say, "Okay."

This is how I take it to my doctor. I went to my doctor, I say, "I don't think I can work in this condition if I am a cancer survivor."

Doctor say, "Yes, you cannot work like that."

So this is why he send them a

[redacted] letter to supply this patient with proper PPE.

Q. When you received this letter, did you take the letter back to Fulton?

A. Yes, I did.

Q. Let's just make sure that -- because we both sometimes are speaking together.

A. I'm sorry.

Q. That's okay. I have to not cut you off and you have not cut me off.

So, you brought the letter back by hand and gave it in to Fulton, correct?

A. Yes.

Q. Okay. Who did you give the letter to at Fulton, who did you hand it to?

A. To Ms. Peterson.

Q. Is that Lisa Peterson?

A. Yes.

Q. Would that be the assistant director of nursing?

A. Yes.

Q. Did you have more than one copy or did you only hand in -- did you only

[redacted]

provide one copy of the letter?

A. Well, I give her a copy and I keep mine.

Q. So you gave a copy of the letter to Ms. Peterson, that's the only person you gave it to, correct?

A. Yes.

Q. Do you know what she did with the letter?

A. I believe she still hold the letter because when I leave they pay me for vacation. So I say, "Why you paying me for my vacation, you are supposed to pay me for the COVID pay."

She said, "No, this is not for COVID pay because you have high blood pressure," and this and that she was saying.

And she call my doctor and ask my doctor, "What it is I come in the office for?" And my doctor tell her what it is I come for. So she say, "Oh, it's about PPE, so I cannot pay you that money."

Q. So after you gave her the letter, you said you gave it to Ms. Peterson?

[redacted]

A. Yes, she got the letter, yes.

Q. Was that on April 9th, or was that another day that you actually gave her the letter?

A. When I gave the letter -- like I went today, and the next one I go back to work I gave them the letter. When I go back to work I give them the letter.

Q. And as a result of giving Ms. Peterson the letter, did anything happen as far as your getting PPE?

A. No, I didn't get no PPE at the same time. They didn't have no PPE. We weren't given no PPE. Whether to give it, they give me one mask and they say, Take it for two weeks. And they give it a little gown and they tell us, Clean it off and use it again.

We had no set of PPE -- in the heart of the COVID, we wasn't getting no proper protection.

Q. So the letter did not help you?

A. We didn't get PPE at the same time. It's after.

[redacted]

Q. So you just said, "In the heart of the COVID --"

A. Yes.

Q. -- you were not, the staff did not have PPE, correct?

A. No. No.

Q. Can you give me -- we will talk a little bit more about this later.

Can you tell me, when you say, "In the heart of the COVID," when did the COVID pandemic, in your mind, start? Roughly, when did it begin?

A. I think in March.

Q. March?

A. I think in March it start.

Q. Okay, so this is now -- you came back to Ms. Peterson with this letter in the middle of April, correct?

A. Yes.

Q. And so from the start of the pandemic in March until you came to Ms. Peterson with the letter, you are saying the staff had no PPE?

A. Yes.

[redacted]

Q. Did there come a time, was there some time in the future after April 9th -- after the letter -- where you started to get some PPE, or did you always go without PPE? How would you explain what happened?

A. When March, when the people -- when the patient they was getting fever, they was getting high fever in March coming down. And they was ignoring that.

Q. Ignoring that?

A. They was ignoring the high fever. They was like just giving fever pain medication for the fever, see if it will go away.

And they floated us to a floor with no PPE on. So when it start to get more serious, when it start to get more serious now, then they start to give us one -- a gown. Like they give a gown and you had to take care of that gown.

So, if you don't have none tomorrow when you go in in the morning -- because I go in for 6:00 -- and they ask for a gown -- because upstairs used to come down

[redacted]
on 1 East to ask for gown. They have nothing to go upstairs and downstairs. They say, well, we don't have any either.

Q. So you are saying that you had very low supplies of PPE on 1 East --

A. Yes.

Q. -- and staff from upstairs were coming to you asking for PPE --

A. Yes.

Q. -- and you didn't have it to give them?

A. They will come down and they ask me if I ask the night nurse, did they ask the night nurse who works at night. The night nurse says, well, we don't have any.

And they will have something in a drawer. They will put it under a lock and key so no one will get it until Ms. Frawley had to come and say, "Yes, give it to them."

Q. I'm sorry, you mentioned a name?

A. Ms. Frawley, they would keep it in a lock and key. And if Ms. Frawley say give it to them, they will give it. If Ms. Frawley say no, we can't get it.

[redacted]

Q. Again, just so I understand, are you saying that Ms. Frawley controlled the PPE under lock and key?

A. Yes.

Q. And if staff from upstairs wanted to get some PPE to help them upstairs, they could only get it if Ms. Frawley agreed to release it?

A. Yes.

Q. From your experience in March and April, did Ms. Frawley release PPE to staff or was staff going without PPE?

A. It was taking from March until in the middle of April when no one coming down to the middle of April then. Around that time they start to give us PPE. In March they have no PPE.

In April, in the beginning of April come in and we didn't have no PPE. And then they coming down to the ending of April, coming down on that side they start to provide, they giving us PPE and they give you a mask, the N95. We got to keep it, we got to wash it and use it, you can't throw

[redacted]

it out. For me I have an N95 for three weeks.

Q. Three weeks?

A. Three weeks I have an N95 for. I can't throw it out. I have to keep washing it, trying to use it, because they don't have any to give you. You have to take care of it, you don't have none now.

Q. So you are saying -- are you saying that at the height of the COVID pandemic you and your staff did not have PPE to care for the patients?

A. Right. Until the end of April -- coming down to April. That's the time they supply us with a jumpsuit. They start to supply us with a jumpsuit, so they give everybody a jumpsuit.

So the jumpsuit they supply, we got to pick it up and clean it and put it down and put it back on. One of my co-worker get feces on hers and they went in the office and tell her that she need a new one. And Ms. Doyle tell her, "Clean it and keep moving."

[redacted]

Q. Ms. Doyle, what is her position at the facility?

A. She's the director.

Q. So Ms. Doyle told this aide, just clean the feces off?

A. And keep moving.

Q. She wouldn't give her a new gown?

A. No, she wouldn't give her a new one.

Q. I see. During the height of the pandemic in March all the way through the middle of April, did you have enough gowns?

A. We didn't have enough gowns between March and -- it's plastic. Within March coming down it's plastic they used to use. Coming down in April, coming down especially in April coming down with -- you know the white garbage bag? We use to cut the neck out and put it on.

Q. So, during the height of the pandemic in March and April, did you have enough gloves to wear?

A. They short on the gloves. They start to give us one box of gloves and you

[redacted]

had to go to the nurse to give you gloves. They have no gloves on the wall, they have no gloves in the room. When you want gloves you have to go to the nurse.

Q. So to answer the question, did you have enough gloves in March and April to care for the residents?

A. No, we didn't have enough gloves, no. The answer for that is no.

Q. Okay. In March and April, during the height of the pandemic, did you have enough masks, face masks to wear?

A. No.

Q. During March and April, during the height of the pandemic, did you have any enough eyewear, goggles to wear?

A. No. We didn't have any of that because they come -- after they come with this little thing we used to put over and we use that. And that's long after they bring this shade goggle for us.

Q. You mentioned the name, you said the director, Ms. Doyle?

A. Yeah.

[redacted]

Q. Have you -- did you speak ever yourself to Ms. Doyle about these problems yourself?

A. No, I never speak to her with the problem because she never used to come around. She -- they used to hide from us.

Q. Ms. Doyle would hide from you?

A. They don't -- we couldn't go near them. If they see us anywhere they run us back. We couldn't go anywhere near the office. When -- everyday you never used to see them. You wouldn't know if them are in the building or not in the building because you never used to see them.

Q. And is that because -- why do you think it is that they said that we don't want you near us?

A. Because they know that it's COVID on the floor, and if we get COVID then we will bring it to them.

Q. They thought you might infect them?

A. Yes. So they would just come and just -- come stay in their office, lock the

[redacted]
door and stay inside there.

Q. Ms. Doyle locked her door and stayed inside?

A. Yes. Ms. Doyle, Ms. Frawley, all management. That's what they were doing.

Q. You also mentioned the name, "Ms. Frawley." Is that Carol Frawley?

A. Yes.

Q. What is her position, if you know?

A. She is an assistant director.

Q. Ms. Frawley, did you ever speak with her directly during the pandemic face to face?

A. No, I didn't speak to her face to face. I didn't.

Q. We are going to come back to this PPE in just a bit. But I am glad you were able to explain that to me.

That letter that you showed us, the letter from your doctor, just please make sure you don't destroy the letter. Keep it somewhere safe.

A. I keep it.

[redacted]

Q. I can see that. Make sure you keep it safe.

A. Okay.

Q. Thank you.

Do you talk to anyone else, anyone who works at Fulton now or who used to work at Fulton, who stated to you or told you that they have spoken with us at the attorney general? Have you spoken to anyone else who discussed with you that they have been interviewed as well?

A. No, I can't remember if I spoke to anyone. I can't remember.

Q. Did you speak to anyone at Fulton who said they are going to speak to us in the future?

A. No.

Q. You gave us your address. Thank you.

Do you also have a cellphone number?

A. Yes.

Q. What is your cellphone number?

A. [redacted].

[redacted]

Q. Do you know who the provider is for that, the carrier?

A. AT&T. But it's not -- AT&T prepaid.

Q. Okay. Is there also a home phone number at the house?

A. No. Yes, I have a home phone number.

Q. What's that phone number?

A. [redacted].

Q. Who is the carrier or the provider for that?

A. Verizon.

Q. Can you tell me a little bit about your education? Where did you study, where did you go to high school?

A. I went to my country in high school.

Q. Where is that, what country?

A. Saint Vincent, Saint Vincent and Grenadine.

Q. Saint Vincent?

A. Yes.

Q. Where is that?

[redacted]

A. That's in the Caribbean, Saint Vincent and Grenadine.

Q. That's where you did high school?

A. Yes.

Q. And how old were you when you came over to the States?

A. I was 30, between 30 and 31.

Q. Did you have any further schooling here?

A. Yeah, I went to Allen School to do the CNA.

Q. What school?

A. Allen School in Brooklyn.

Q. That's for the CNA?

A. Yeah, and I went to Manhattan Institute to do phlebotomy and EKG.

Q. Manhattan Institute for EKG?

A. Yes.

Q. And anything else?

A. Phlebotomy and EKG, right.

And I went to another different school to do patient tech. What's the name of that school -- I forgot. I forgot the name of it where I went. That was the last

[redacted]

one that I went but I can't remember the exact name. But it's connected to te same institute, Manhattan Institute. But when they send me, I come from another school like Queens.

Q. Okay, if the name comes back to you, let me know.

So you mentioned you went to the Allen School for CNA?

A. Yes.

Q. To be a CNA in New York, do you need to be certified as a certified nurse aide?

A. Yes.

Q. When did you become certified?

A. In 2003.

Q. Approximately 2003?

A. It was 2003 I became certified.

Q. And you remained certified ever since?

A. Yes.

Q. So when did you begin working in -- when did you begin working in order -- withdrawn.

[redacted]

When did you begin caring for patients, for residents, either in a home or in someone's personal home? When did you begin your work providing care?

A. I begin my work to care for patients from the time I start to make my turn, I started to care for people. I had feelings to -- you know, how people feel.

And when I came to this country I was doing baby-sitting. And I was living in Florida, then I move up to New York and I do a lot of baby-sitting here in New York.

And the families, when I had to leave, they was so truly attached to me. They could not understand how I connect with children. And I said, "Because I love kids, I love people."

And then, I guess I take care of one old person I remember, but she died now. I forgot her name. But she, when she was sick and I do take good care of her, and I could see she is in pain.

And from there, that is my feeling. I love taking care of people. I

[redacted] love, I just love my job doing that.

Q. So you've always had that -- that's always been your passion?

A. Yes.

Q. How long have you worked at Fulton Commons?

A. Next December will make me ten years.

Q. Okay, so you started in 2000 --

A. Ten.

Q. Have you worked on different units in the last ten years at Fulton or always have you worked in the same unit?

A. No, different unit, even through this COVID. They said no float, they keep floating me through and through and through, so I always float. They always float me through and through and through. I float, I was always floating in Fulton Commons.

Q. So you have always have been a floater?

A. Yes, I was a floater right through.

Q. I'm sorry, they what?

[redacted]

A. They always have me as a floater right through the building. Even they put me on 1 East, they keep me on 1 East and I will be the floater on 1 East only. But when the time come they still float me through the building.

Q. And that's through even during the COVID?

A. Yes.

Q. You were floating between units through the pandemic?

A. Yes.

Q. So you've never been assigned to a particular unit?

A. One East, they assign me to 1 East. So any floating I had to do, it had to be on 1 East. But if I had a co-worker not there on today, I would take her assignment today.

Q. I see. So when were you first assigned to 1 East?

A. I think it's like almost five years ago, four or five years. I think about five years now. Four to five years.

[redacted]

Q. So when you say, you were a floater, you were a floater on 1 East?

A. Yes.

Q. So if another aide came in or another aide didn't come in, she was sick, you would take her residents?

A. Yes, when her day off, when it's her day off then I do. Like five of us, if today is her day off, I would do her assignment today. If she off tomorrow, I would do her assignment tomorrow, only on the floor 1 East.

Q. I see. But, maybe I misunderstood then. During the COVID you said have been a floater through the COVID all --

A. Yes. So when -- after they started floating. And when maybe patient started dieing and workers scared to come in. They scared to come in to work. A lot of workers stay away from work because they were scared, they don't have proper PPE, they wasn't coming.

So now whoever employed there

[redacted]
now, they try to float them through the building. And soon as I come in tomorrow I have to go upstairs on this floor. And I go on this floor today, and I go back on 1 East tomorrow, and I go on the next floor tomorrow, and I go back on 1 East. Yes, that's how they floated me.

Q. Are you saying that during this COVID pandemic, because so many staff members called in sick, you actually floated by going to other units in the building?

A. Yes. And even though some of them is still come in to, they still want to floating me.

Because if they didn't want to keep, didn't want to keep six people on the floor. If like six of us show for -- six people for 1 East and I am the floater and I have my assignment. And if six of us show up, I have to go upstairs and float.

Q. As far as safety, do you feel that it was not safe to have you going from the COVID unit upstairs during the pandemic?

A. Yes, because I used to tell my

[redacted]

unit manager, I said, "Why you guys doing this to me? Why you guys keep floating me?" I said, "The schedule come in and I ask you guys if anyone floating. No. And you guys keep floating me." That's what I told my unit manager.

And nobody paid no -- even the night nurse, the night supervisor, soon as I come in, "[redacted], you got to go. You got to go upstairs." Okay, I go upstairs. Tomorrow I had to go back on 1 East. Why you doing that? Nobody didn't care.

Q. Did you feel that that was not safe to you or did you feel like it wasn't safe to the residents in the building?

A. To everybody. It wasn't safe for me, the resident and my co-worker.

Q. Okay. And when you said that you spoke to the unit manager on 1 East, you complained about this?

A. Yes, I do.

Q. Who was the unit manager you complained to, what's his or her name?

A. Ms. Waller. Ms. Waller, she is

[redacted]
the unit manager at the time.
Q. Latasha?
A. Yes.
Q. And this is always on the 6 a.m. to 2 p.m. shift?
A. Yes.
Q. All right, we're going to talk a little bit more about that in just a little bit.
A. Okay.
Q. So, how many CNAs work on the 6 a.m. to 2 p.m. shift on 1 East, approximately?
A. The 1 East it is, all of the employees -- the 1 East is 6 to 2.
Q. Right, it's a 6 to 2 shift you work?
A. Yes. The 1 East carries 6 to 2 and 2 to 1, that carries that shift. But upstairs they carry -- like, two on each floor carry 6 to 2, and on the others are 7 to 3 they have upstairs. But One is always the 6 to 2 right through.
Q. Approximately how many CNAs work

[redacted]

the 6 to 2 shift?

A. On 1 East?

Q. Yes, on 1 East, because that's the unit you said you were assigned to.

A. Everybody, the whole, everybody.

Q. How many CNAs? Two CNAs, three CNAs, four CNAs? How many CNAs --

A. It's six CNA on that floor. It's six CNA 6 to 2 with that 1 East. So out of the six, I am the floater. And five have five assignments, this one have assignment, that one have assignment. So I didn't have no assignment.

Q. I see. So you said you floated as needed on 1 East?

A. Yes.

Q. And you said during the pandemic, because of a shortage of staff, you even floated upstairs to other units?

A. Yes. During the pandemic I float upstairs.

Q. And then the next day you might come back downstairs to 1 East?

A. Yes.

[redacted]

Q. And you said you complained that that was not safe?

A. Yes, and nobody listen to me.

Q. I want to talk to you a little bit about -- you have been a CNA for a long time, correct?

A. Yes.

Q. How close physically do you have to get to a resident or a patient when you care for them? Are you very close to them while you are providing care?

A. Yes, when I get to them, if it's a new patient come in, I will talk with them. You know, sometime they told me, they say, "You know, everybody come in and you just different."

I say, "Well, you see when you have God," I say, "When I have God within me, that's how it is."

Q. What I meant when I said close, I mean physically. Are you within a foot or two feet of them? When you work with your residents are you very close? You're touching them, correct?

[redacted]

A. You have to touch them. If you have to clean them, you got to touch them.

Q. What type of work do you do with the patients? Can you explain to me, on a daily basis, what your job duties are? What do you do for them?

A. Give them morning care.

Q. What is that, what is "morning care"?

A. Morning care is if that person can't help his or herself, it's wash that person in bed, wash them from right down, change them. If they stay in the bed you got to change the bed and everything.

And then I will take them out of bed and dress them. Take them out of bed, put them in the chair so that they can stay in the chair.

And if you have to feed them, get them ready for breakfast and feed then them.

Q. Okay. Who supervises you, who supervises your work during the day?

A. The unit manager.

Q. Is that Ms. Waller?

[redacted]

A. Ms. Waller, she supervises the floor.

Q. She was the 1 East unit manager, Latasha Waller?

A. Yes.

Q. I would like to talk to you since -- you say your primary assignment during the pandemic -- withdrawn.

You said for the last four or five years you have been assigned to 1 East?

A. Yes.

Q. If we can look at Exhibit 2, see if we can bring that up on the screen and tell me if you see it. Are you able to see that picture?

A. Yes.

Q. It's a diagram, correct?

A. Yes.

Q. If we can scroll down a drop. Is this a diagram of 1 East?

A. Yes, the first floor. The first floor is 1 East.

Q. It has -- if you look at the right side of the screen, is that the 1 East

[redacted]

unit?

A. It's on -- yeah, see they have -- yeah.

Q. It begins on --

A. That's 1 East unit. If that side is the east side, that's 1 East unit.

Q. And it begins with a Room No. 101, do you see that?

A. Yes. Yes.

Q. Is there a high side and a low side in terms of the number of rooms?

A. Yes. The high side carry like 118, 117, 114, 113, you know. The high side carry that number.

Q. So looking at the diagram, is it fair to say that Room 101 to Room 111 would be the low side?

A. Yes.

Q. And Room 112 to Room 122 would be the high side?

A. Yes.

Q. If we scroll down a little more on the diagram, do we see that someone wrote "40 beds," it says, "1 East equals 40 beds."

[redacted]

Do see that?

A. Yes.

Q. Is that correct, are there 40 beds on 1 East?

A. Forty beds, yes.

Q. And then, on the right side someone wrote the words, "Private rooms," and it says, "120, 103, 110 and 113," do you see that?

A. Yes.

Q. Were those private rooms?

A. 120 is a private -- yes, those are private rooms.

Q. It says -- there's an arrow, on the left side there's a little arrow that says, "Converted to COVID unit."

Do you see that?

A. Yes.

Q. So there came a time where 1 East became the COVID unit; is that correct?

A. After -- after, after all these things they decided to take 1 East for the COVID unit. So it was -- they didn't take nobody from upstairs yet. They was taking

[redacted]
them from outside and bring them in on that COVID, on that unit, and make it the COVID unit.

MR. ZADEK: We can take the diagram off now.

Q. So did you -- can you repeat that again about taking from the outside?

A. They was taking from the outside. When they turn that unit into COVID is when they taking people from outside and bring inside.

Q. From hospitals?

A. From hospitals, from wherever, I don't know where they were coming from, but they were coming from outside.

Q. Were those COVID patients?

A. Inside they -- they was COVID patients coming in.

Q. Onto 1 East?

A. Onto 1 East, yes.

Q. Do you know approximately when 1 East changed over to the COVID unit?

A. I can't remember exactly when.

Q. Okay. How -- I am sorry.

[redacted]

A. I can't remember exactly when was the time they change over. I can't remember exactly the time.

Q. How did you learn, how did you find out that 1 East was being changed to the COVID unit?

A. One day when I went into work, they said -- I hear my co-worker they say, "Oh, 1 East is COVID now, 1 East is COVID unit now."

And I said, "Why, they bring four of us -- it was four COVID patients from outside, it was the first I remember. It was in Room 21 and Room 19. It was two in 21 and two was in 19. Those are the two rooms first was COVID when them bring them in.

Q. So you remember the first time that these four patients came onto the unit and they were COVID patients?

A. Yes, and they have patient on that unit didn't have no COVID.

Q. So you are saying that they -- are you saying that they brought in these

[redacted]

four COVID patients from outside and they put them on a unit that had non-COVID patients?

A. Yes, non-COVID was on that floor and they bring in four COVID. That was the first COVID patients and bring in from outside. They put two in Room 21 and the other two was in Room 19.

Q. And you are saying on that same floor they had non-COVID?

A. Yes, they had non-COVID. I will not lie.

Q. When that happened, did you think to yourself, that's not safe?

A. So, it's nothing you could do, you just got to go with what they say. It's like, now we got to try and get ourselves more protected.

Q. Okay. Is that during the same time that you said you didn't have enough PPE?

A. So that time -- it's when they bring in those patients, then they give us the -- they start to give us the plastic

[redacted]
jumpsuit they give us to use.

Q. Have you received in-service training during the years you've been at Fulton?

A. Concerning what, because we get training on different things.

Q. Do you get lots of in-service trainings?

A. Not on the PPE, not on those things we didn't get it. After. Long after, I think when the state come and gone they give us, I get, they did that. But before, we get -- yes, we get in-service but they never give us no in-service about no PPE, how to put on and take off PPE. They didn't do that.

Because I remember Ms. Baptiste, when the -- when the state come in and ask me if Ms. Baptiste give us training, No, she didn't give us no training. Ms. Waller was the one was telling us, Oh guys, this is what you have to do XYZ and whatnot. Ms. Baptiste didn't give us no training.

Q. If we bring up Exhibit 3, as an

[redacted]

example. If we can look at what's been deemed Exhibit 3, it says here -- because you mentioned coronavirus -- it says, "Fulton Commons Care Center Nursing Department," do you see that?

A. Yes.

Q. It says, "I, [redacted], was given the in-service on the coronavirus prevention on March 9, 2020 on the 1 East unit by Ms. Marise Baptiste, RN, infection control." And then it has a signature line with a signature above it.

Now, did you sign this document?

A. Yes, I did. Because they was Ms. Waller -- Ms. Baptiste never give us anything. When we leave to go home, she call us in -- they call us, they talking about, "Oh, you got to sign this, you got to sign this." And then this one is to sign and go. But no one is reading what you signing. This is going to come back and haunt you.

Q. So are you saying that they told you to sign this paper --

[redacted]

A. Yes, that's what they always do.

Q. Let me finish. They make you sign papers without giving you the in-service?

A. Yes, this is what happened. Because she never, Ms. Baptiste never give us in-service.

Q. You are saying here today that you never received any in-service on the coronavirus prevention?

A. No, no. Ms. Baptiste never, never give us no in-service on coronavirus. If this had signed, but I can't remember, it had to be Ms. Waller because I remember Ms. Waller bring us papers and she tell us to sign this. If that if it's not that, that when we was leaving to go home, that they was attacking us by the clock to sign paper before we leave the building.

Q. Again, so you are testifying here today, that even though you signed this document, you never did receive a coronavirus prevention training on March 9th?

[redacted]

A. No, I didn't get that.

Q. And you are saying they never trained you, correct?

A. No, after. After the state come. After that, Ms. Baptiste come on 1 East inside and they have all of us and showing me what to do, and how to do, and what to tell us about things. That was way after. Way, way, way after. I think it when the state start to come down on them, then she did that.

Q. So are you saying that -- again, just to be clear, you are saying that before the Department of Health came into the facility you received no training on coronavirus?

A. No, they didn't train us on no coronavirus in March, that's a lie. They never us train on no coronavirus.

They make us sign paper. They will just come, "Oh, you got to sign it, you got to sign it." And then, like, if you in a rush, you sign and go knowing this is a mistake we make.

[redacted]

I tell them, "I'm not signing it." See this will come and haunt me now. They put in the box. They make me feels like we are fools.

Q. Let's take a look at Exhibit 4, which we will deem marked as Exhibit 4. Here is another one, [redacted], hopefully you can see it in a moment. Do you see this document on the screen?

A. Yes.

Q. It's called, Topic, Handwashing. And it looks like the third line down it says -- well, it says, "Handwashing" and it says, "March, 2020." And it says, third line down, "[redacted]," and it has a signature. And then under the Department it seems to indicate nursing, do you see that?

A. Yes. I think that Ms. Waller come and tell us handwashing, so we go wash our hand. So she say always wash our hand and then we sign the paper.

Q. So is this some sort of class, in-service, that you received on hand washing in March?

[redacted]

A. There wasn't no class. It was on the floor.

Q. You did not receive any kind of instruction about hand washing?

A. It wasn't no class, it wasn't no more class.

Q. There was no class you took about handwashing?

A. No, they come on the floor and then they it tell us go back inside to wash your hand. And then they see and we sign the thing.

Q. If we look at Exhibit 5, this document is deemed marked as Exhibit 5 and it says, Staff Skills/Competency Audit, then it says, "Staff name, [redacted], [redacted]." And again, it gives the date of March, 2020, and it says, "Skill being monitored, handwashing." And it has the auditor, "Waller," do you see that?

A. I remember when Waller come in we was in the lunch room and she come with this paper and tell me that.

Q. If we scroll down, it says,

[redacted]

"Observation." No. 1, it says, "Wet hands and apply soap, yes. Work up lather, cleansing front and back of hands and wrists, between fingers, around cuticles and under nails, checked off yes." And it has a whole list of items concerning washing of hands.

So did you do that for Ms. Waller to observe? Did Ms. Waller observe you doing those tasks?

A. No, this paper, when they bring it, they -- they didn't -- when one time when she said do handwashing, that was it.

And then they bring this paper and say, "Just check it off."

I said, "Check off what?"

She said, "Ms. Waller say, Just check it off, check it off."

I said, "Check off what? I don't understand this," and she explain this.

And I said to her, "What's this one for?" And then she will say. They will say and they will check it off.

Q. Oh, you checked off these "yes,

[redacted]

yes, yes" on the form?

A. When I check it off, I say, "Ms. Waller, what this for?" Because that's not my handwriting that is I write up there. That's not my handwriting here.

Q. Right, it looks like Ms. Waller filled this out.

A. Yes, yes.

So I remember she bring something looking like this. And I said, "What this for? I don't understand what I have to do with this. What this for."

And then she say, "About handwashing." Then I got to check this off.

And I say, "What is -- so I don't understand."

Like, well, she would say, "Prevent infection, wash hand twenty second."

I would say, "What that's for, what will it be?"

Then she will say, "Oh, that is for XYZ."

And if I say, "Well, what is that

[redacted]

for" she will say, "Oh, that is for XYZ." And then she will say that, and I will check it off and she give the paper.

Q. Okay, but do you remember that you did receive instruction about proper handwashing?

A. When Ms. Waller -- after, it's after. After Ms. Baptiste come I said she want to see us wash our hand. But that was way long after. Way, way after she come to us. And then she will take one at a time right on the floor and she want to see how we wash our hands and everything, and that's it. And then she tell me, she will just tell me, she will say, "Sign this," or "Sign that" and she give it to me to sign.

MR. ZADEK: Okay. So we can remove this from the screen now.

Q. I would like to go back to what you were talking about earlier. You were talking quite a bit about PPE.

In March, did you wear anything over your clothing when you provided care to the COVID residents on 1 East during the

[redacted]
month of March?

A. The plastic.

Q. The garbage bag?

A. The garbage bag plastic. That's all the co-workers were using before they give us any gown. We didn't get no gown.

Q. And do you remember --

A. That was in March. That was coming down in March coming down.

Q. And you said the letter from your doctor was in the middle of April, I think April 11th was it?

A. April the 9th.

Q. So until April 9th, you did not have any protective gowns other than garbage bags?

A. Right. This is why I go to my doctor because I start to get scared. This is when I start to get scare and I said no, I have to go see my doctor.

Q. And you said that throughout that whole period until you came to the facility with that letter from your doctor, you said there weren't enough gloves, correct?

[redacted]

A. Right, yes, there was not enough gloves, correct.

Q. During March and April, when you were caring for COVID residents on 1 East, were there times when you had to care for the residents without wearing gloves?

A. At time when -- they would bring the gloves, they would bring like a box and they would lock it up in the medication room.

So, you cannot go to the patient and have no gloves. I would say, "Well, I'm not going, I need gloves." I would have to wait for the nurse come to give me gloves to go inside there. They would give us the box of gloves, and we have to make sure we can't waste that box of gloves.

Q. So when you put on the gloves from the box and you cared for other residents that day, did you have to keep the same gloves on throughout the day?

A. No. I tell her, "No, you can't keep it on." Because they -- if the gloves are so thin that they can't, you have to use

[redacted]

more than one. Sometimes you have to use two, it start to break already. So right then I have to put two each on the hand.

So that when you have to take it off, it's nothing you can do. You have to take it off. When it's finish, you have to go back to them for more.

Q. Were you able to change the gloves on your hands for each resident that you saw?

A. Yes, yes.

Q. So each resident had -- you had a fresh pair of gloves whenever you went into a new resident's room?

A. Yes.

Q. So there were enough gloves for that?

A. Yes. When they give me a box of gloves, I keep it for myself. I don't leave it there for no one to take it, I keep for myself. So all my co-workers get a box of gloves, everybody keep it to themselves.

Q. Well, when you were working on 1 East and you saw the other CNAs, were they

[redacted]

able to change their gloves throughout the day, or did they have to keep the same gloves on for several patients?

A. No, they change it up. Because they would ask for a box of gloves too, and they would keep their box of gloves.

Q. Did you put anything on your eyes or your face when you cared for the COVID residents on 1 East in March and April -- let me finish. We are talking over each other.

Did you put anything on your eyes or face during March and April when you provided care to the COVID residents on 1 East?

A. When it now start in March we didn't have nothing to put on our eyes. We get the mask. When they give us, they give us this little -- this is an N95, but it wasn't no N95 so we have this little mask.

And the goggles, we didn't have no set of goggle. Later they bring this goggle that's the shaded goggle. When they bring the goggles that look like glass, it

[redacted]
was when COVID was over.

Q. When was that? Do you remember the month when you can finally got those glasses?

A. That was when COVID -- when it slowed down, when the whole thing slowing down. Because when the state come, they tell us we can't wear the goggle no more. And from then we never wear the goggle until now.

Q. So you are saying that in March and April you had nothing over your eyes to protect you?

A. No, we didn't have nothing on that in March and April, nothing on the eyes. We didn't have nothing over our eyes.

Q. When you came in the resident's room -- and when I say "resident," what I mean is the COVID residents -- when you cared for the COVID residents on 1 East, did they have anything on their face or on their mouth?

A. No.

Q. To protect them?

[redacted]

A. No, they didn't have anything.

Q. There was never anything over their mouth?

A. No.

Q. Or covering their face or nose?

A. No.

Q. Never?

A. Never.

Q. You testified earlier that, as far as coronavirus prevention class, you said you never received that training, correct?

A. Correct.

Q. So did they ever -- did anyone from Fulton ever train you or instruct you on something called "contact" or "droplet" precautions?

A. The only one it was Ms. Waller when she said that -- when you going in to the resident, make sure you put this on and whatever she would tell you.

Q. Did you ever have a class or a lecture or an in-service about contact or droplet precautions?

[redacted]

A. For me, I -- I wasn't in no class to teach or tell me or train me about droplet.

Q. You never received any instruction?

A. No, they never have me in no class to receive that instruction when all the COVID going on. We weren't seeing them people.

Q. And you said earlier that -- was it both Ms. Frawley and Ms. Doyle were hiding from the staff?

A. Both of them. Not even both of them. Peterson, all who inside the management office on that side, you were not seeing them. We wasn't seeing them.

Q. Their offices were on the other side of the first floor, correct?

A. Yes.

Q. And you are saying that they did not want to see any staff over on their side of the building?

A. Yes, they didn't want to see that.

[redacted]

Q. I would like to talk about 1 East after it was changed to the COVID unit.

A. Okay.

Q. You mentioned earlier that COVID patients came in from the outside and were placed on 1 East where there were non-COVID residents, correct?

A. Yes.

Q. Were COVID residents supposed to be separated and kept in a different part of the building from the rest of the Fulton residents?

A. That's what they came to say. But at the same, when there is no staff they didn't do that.

Q. I understand you said that. Do you know why they should have been -- do you know why the COVID residents should have been kept separate in the building from other resident? Do you know the reason why?

A. Because it contagious.

Q. So while you were working on 1 East during the pandemic, were both COVID and non-COVID residents living on the same

[redacted]

unit?

A. When they bring those from outside, at the same time, yes.

Q. So while you worked during the COVID pandemic on 1 East, the unit had both COVID and non-COVID living on the same unit?

A. Yes.

Q. I am sorry, I don't want to cut you off.

A. It's when the state, they know the state was coming. Like the state coming tomorrow, they pick all the non-COVID, put them upstairs. And all the COVID upstairs, and bring them downstairs. That's what they did.

Q. Okay, we are about to talk about that. We are just about to talk about that.

But let me ask you this before we get to that movement of how they moved everyone around, before we get to that.

How do you know -- how do you know that some residents on 1 East were COVID and others were non-COVID? So when you went to a room on 1 East, how would you

[redacted]

know whether the residents in the room were COVID or whether the residents in the room were non-COVID?

A. Well, the COVID they would tell us, the nurse would say, "Well, there is a COVID in that room." But the other patient, if their temp is normal, then they will say, "This one they have no COVID." If this one temperature is high, they say, this one temperature is high. So that's what it would be like.

Q. You said you have always been a floater?

A. Yes. They always float me. All through the COVID they was always floating me.

Q. Were CNAs on 1 East during the pandemic, were they supposed to only provide care to COVID residents during their shift?

A. Yes. The CNA, they was providing care for the COVID patient. Not the RN, it was the CNA.

Q. Right, but were the CNAs who cared for the COVID residents on 1 East not

[redacted]
supposed to also provide care to the non-COVID residents?

A. Yes, they have to provide care for their non-COVID resident. And because -- for me example, when I went in the morning and when they bring those four, they give me those four COVID, then they give me non-COVID.

So I start saying, "Why you guys give me four COVID at the same day?" Everybody get a COVID each.

Q. So you are saying that when you worked on 1 East during the pandemic, you were providing care on the same shift to both COVID and non-COVID?

A. Yes.

Q. Now, you said Latasha Waller was the unit manager on 1 East?

A. Yes.

Q. Did you speak with Latasha Waller where you complained to Latasha that it wasn't right that you were assigned to care for both COVID and non-COVID during your shift on 1 East?

[redacted]

A. The only thing -- I never tell her about that. The only thing I talk to her, I say, "Why you guys just floating me up and down?"

"Oh, sorry, that's float."

I say, "It doesn't matter because I am a float. You guys just want to be floating me up and down like this."

Q. When you say -- were you complaining to Latasha Waller that you were being asked to float to other units upstairs?

A. Yes, that's what I talk to her about. Because on the floor, I didn't really -- I didn't need to complain when I was on the floor.

But as soon as they start to move me and send me upstairs -- so I'm saying I start on the 1 East and they move me, they say, "You have to go upstairs." They have to float you upstairs. Then they upstairs and they come back, "You have to go back downstairs." That's how they doing it, up and down, up and down.

[redacted]

Q. On the same day?

A. Yes, they on one day they send me up and then they calling me, and I said, "No I am not going back downstairs. I am staying right here."

From there they say, "Whatever, go upstairs."

I say, "I'm not going upstairs."

Q. Are you saying that in the morning you might be caring for a COVID resident and then be sent upstairs to another unit --

A. Yes.

Q. -- and caring for a non-COVID resident?

A. You have to go upstairs. They have COVID and non-COVID mixed up upstairs.

Q. So are you saying that COVID and non-COVID were mixed up all through the building?

A. Yes, yes. All over the building, yes.

Q. And when you had this conversation with Ms. Waller, did you

[redacted]
explain to her that you thought it was dangerous?

A. She know it is danger, but she couldn't, she didn't do nothing. All she tell me, "Oh, you are the floater."

They didn't listen to me, they didn't care. They say I complain too much.

Q. Did Ms. Waller tell you that she spoke with anyone else in the administration to express your concerns?

A. No, no, she didn't do that.

Q. And how often, how many times did you to Ms. Waller about caring for both COVID and non-COVID on the same shift? How often did you complain to Ms. Waller about that problem?

A. Any time it happened.

Q. Did it happen quite often?

A. Every week it going. Like, this week it going in the same. Next week it the same thing. Every week it was going things like that, yeah.

Q. Now also, when you were on 1 East, during those times when you were on

[redacted]

1 East caring for residents, if another CNA on the unit said, I need help -- I don't know, let's say with a Hoyer lift or something, they needed help with their resident -- would you sometimes go across the hall to help another CNA?

A. Yes, I have to do that because they could say that, Oh they need help and I didn't help. So, to go there now -- then, if I with a patient, then I would finish the patient. And then, when I finish, clean myself and everything, and then get to the -- to my co-worker to help her.

Q. And are there other times when you might be working with a resident on 1 East and you needed some extra help and you would call out and ask for some help?

A. Yes, I would call for someone to help me.

Q. So in those situations when you were in one room caring for a COVID resident and another CNA calls you for help, might you run into that room and she is caring for a non-COVID resident? Could that happen?

[redacted]

A. If I am busy I cannot leave. I will tell my co-worker, I say, I cannot leave right now, go look for someone else.

Q. Right, but were there times -- you said you each helped each other out, correct?

A. We do help each other out.

Q. And when you help each other out and you move from resident room to resident room, you are working with residents that you were not assigned to, correct?

A. Correct. Because if this patient -- my co-worker need to transfer this patient, that's her patient and she call me for assistance to put her in the chair with the Hoyer, then I will go and assist her.

Q. In those situations where CNAs help each other, and they are going sometimes from COVID to non-COVID rooms, and non-COVID to COVID rooms, correct?

A. Yes.

Q. And during those times when they go from room to room to help each other out,

[redacted]
are there times when they don't have the opportunity to change their gloves, they walk from one room to another and don't change their gloves?

A. They change their gloves. Before they come in the room they will change their gloves, they will wash their hands before they come on the room. They would do that.

Q. When they are helping each other out?

A. Yes, they would do that.

Q. Okay. Were all the CNAs on 1 East at different times caring for both COVID and non-COVID on the same shift?

A. Well, if like five of us on 1 East, 6 to 2, so you might -- the other room might have a COVID in it, or every room might be COVID.

After this -- what happened, in the beginning, when they have like COVID and non-COVID bed, if you assigned to that, you have you to do it.

But after, when they hear the state coming, they try to move out who is

[redacted]
non-COVID upstairs or who is COVID upstairs, bring them downstairs. So now everybody downstairs. So when they did that now, so everybody is COVID downstairs now -- that you know all the patient now is COVID.

Q. Right, but before -- we're going to talk about that in a second, again, I'm going to get to that in just one second.

But before they made that move, before they moved the residents around the building, before that move took place, were the CNAs on 1 East generally providing care to both COVID and non-COVID on the same shift?

A. Yes, they do that. Yes.

Q. Okay. All right, you mentioned it now, so let's talk about what you brought up, that issue about the movement of residents.

Were you working on 1 East on Friday, May 1, 2020?

A. I can't remember. I work on Fridays, but I can't remember that date first.

[redacted]

MR. ZADEK: Let's bring up Exhibit 6. We will take a look at Exhibit 6.

Q. Are you okay, [redacted] or do you want to take a break? I don't want to go too long without -- do you want to take a break?

A. We could take a break after this one.

Q. Do you want to take a break now for a minute then?

A. Okay, all right.

Q. Let's do that. Let's take a break and we can come back -- what do you want, ten, fifteen minutes, what do you think?

A. Ten. Just to use the bathroom.

Q. Yes, a bathroom break.

A. Yes.

Q. I will see you back here at 25 minutes to 12. Ten minutes.

A. Ten minutes to 12?

[redacted]

Q. No, in ten minutes, so at 25 minutes to 12.

(Whereupon, a lunch break was taken.)

MR. ZADEK: We are back on the record, and we did take about a ten-minute break. I would like everyone to note their appearance for the record.

MS. SEKHON: Prabhjot Sekhon, assistant to the attorney general.

MR. JOYCE: Investigator Robert Joyce.

MS. LIPTAK: Paralegal Anne Liptak.

MR. ZADEK: I'm sorry, did Mr. Diaz note his appearance?

MR. DIAZ: I'm sorry, are you waiting for me? I'm sorry.

MR. ZADEK: Yes, we were, Mr. Diaz. Okay, so you're back?

MR. DIAZ: I'm here.

MR. ZADEK: Great.

Q. I just want to take a moment, [redacted].

[redacted], for a second to go back to Exhibit No. 3. Because you mentioned -- we discussed that exhibit and if we can bring up Exhibit 3 for just a moment.

Do you remember we talked about this in-service on the coronavirus prevention of March 9, 2020. Do you remember that?

A. Yes.

Q. I'm sorry, I can't hear you.

A. Yes, I remember that. They never give us that. On March 9, no, we never get nothing -- no in-service in no classroom on coronavirus.

Q. Right. I just want to go over this again. You testified that you never received an in-service on coronavirus prevention on March 9, correct?

A. No, I never --

Q. Correct?

A. Yes, correct.

Q. And you also testified that during this entire pandemic you've never received a coronavirus prevention

[redacted]
in-service, correct?

A. Correct.

Q. And you said that on Exhibit No. 3, there's a signature that has a signature line that has your signature on it, correct?

A. Correct.

Q. And you said that, at some point, they told you to sign the form as you were leaving the building, correct?

A. Correct.

Q. Can you tell me, first of all, when was that?

A. I can't remember when was that, but I remember when it was by the clock. They bring up paper for me to sign, but we didn't read it. Just put it and sign the name.

Q. When you say, "by the clock," meaning as were you leaving the building?

A. Yes. I don't know if this was the paper or is it another paper, but I know they always do that. They always bring paper and tell us, sign it.

[redacted]

Q. So you don't -- do you remember the month, or you don't remember at all when you were told to sign this?

A. I don't remember. I don't remember no month. No, no, I don't remember.

Q. When you say, "they did this," you say they did this all the time to you?

A. Not me alone, they do everybody, that's what they do all the time.

MR. ZADEK: We can take it off the screen now.

Q. So, when you say, "they do this all the time," do you mean they have you sign documents and tell you not to read it, just sign it?

A. Well, you have to read it but, you know, sometimes they just tell you, just sign, and then you are not conscious, you just sign it. It's so common, it come so common that you don't even thinking about reading it anything.

Q. When you say "they," who is telling you to do this?

[redacted]

A. Some day your unit manager will tell you -- they bring papers. Because she -- when I told her about this, I said, "Ms. Waller, why you want me to lie and say we get XYZ and you know that we didn't get that?"

"Oh, [redacted], well Ms. Baptiste sent it over and told me to tell you all about it and whatnot."

I said, "But you didn't do what Ms. Baptiste said or anything. You tell her to XYZ, so how come now you say that Ms. Baptiste sent over XYZ? And you know it wasn't like that."

Q. Okay. So you are saying that there were times when Ms. Waller presented you with these forms to sign, correct?

A. Yes.

Q. Were there times when someone else presented you with papers to sign?

A. Yes.

Q. Who were the other people that sometimes --

A. Who was the other persons? Who

[redacted]
was -- but she not here. The lady who -- after with the COVID and everything going on, she was pregnant and she leave. I forgot her name.

Q. Was that a social worker?

A. No, not a social worker. She was the in-service person to give in-service. So like, she will come on the floor and she used to give us in-service. But the person who give us in-service, she is pregnant. So because of the COVID going on, she couldn't stay. They said she leave.

Q. Okay. So you are saying this in-service individual sometimes?

A. She will come on the floor and she will tell us, "Well, this is about this." She will come up and say, "Let me see you wash your hands." And she would say, if it something else, she would talk something else. And then she would say, "Just sign the paper."

Q. Are you testifying today that it happened quite often that you and the other CNAs were told just to sign the paper?

[redacted]

A. Yeah, it's something -- it gets so common that you don't even think about what you sign and you don't think about to read what you sign it. You don't know if it coming back to haunt you.

MR. ZADEK: I would like to now go to Exhibit 6, what's being deemed marked as Exhibit 6. We will see if it comes up on the screen and if you can see it, as well.

Q. Do you see this document on the screen?

A. Yes.

Q. This is being deemed marked as Exhibit 6. Is this a CNA room assignment?

A. Yes.

Q. Is this a CNA room assignment for 1 East?

A. Yes.

Q. If we look on the bottom left of the page, it says -- has a date of May 1, 2020, correct?

A. Yes.

Q. And it says Friday, correct?

[redacted]

A. Yes.

Q. And it lists the first name on the sheet -- a handwritten name, Swaby, correct?

A. Swaby, yeah.

Q. Is that Jacqueline?

A. Yes.

Q. And then next to Swaby, your name is crossed out and below it, it says, Gabriel, correct?

A. Yes.

Q. Is that Olivia?

A. Yes.

Q. Next to Olivia, we have the word, "Bent," correct?

A. Yes.

Q. And I think you mentioned before, that was Sonya?

A. Yes.

Q. Next to Sonya, we have the name Knight.

A. Yes.

Q. Is that Georgeanna?

A. Yes.

[redacted]

Q. And then in the far-right column we see Gabriel -- that Olivia's name is crossed out and we see have your name, [redacted], written in, correct?

A. Yes.

Q. If we -- so this is an assignment sheet that indicates which rooms the CNAs are to go to to provide care?

A. Yes.

Q. So for instance, under your column, the last column on the right, under No. 5, has you going to Rooms 116, 117, 103, 118, 119 and 120, correct?

A. Yes.

Q. And then all the other rooms are divided among the other CNAs, correct?

A. Yes.

Q. If we look at Exhibit 6, this CNA assignment sheet from May 1, we can see that all the rooms, except for Room 113, had residents in them, correct?

A. 113?

Q. 113 is crossed out on Column 4.

A. Yes, those are crossed out. If

[redacted]
the other CNAs don't have that patient they give it to, then that room is empty.

Q. Right, so if we look at Exhibit 6, this CNA assignment sheet from Friday, May 1, looking at all the rooms listed, it appears that is every room except Room 113, the private room, every room has at least one resident in it, correct?

A. Every room have two patient. Only the private room carry one patient, but the other room carry two patient each.

Q. Correct. So is it fair to say that since every room is listed on this sheet, except for Room 113, every room on that unit on 1 East on Friday, May 1, has residents in them?

A. Yes.

Q. On May 1, were COVID and non-COVID residents living on 1 East?

A. On May 1 --

Q. Were there COVID and non-COVID sharing in the unit?

A. Yes, because -- I am trying to remember that. On May 1, you have people

[redacted] coming from rehab was still on that floor, I remember. I don't remember the name.

Q. My question is just generally speaking, on May 1, did you have COVID and non-COVID living on the unit?

A. Let me try and remember it clearly because I don't want to lie and I don't want to guess.

Q. We will talk about some of the residents -- I will ask you some questions about particular residents, if you remember them. But generally speaking, was the unit mixed with COVID and non-COVID?

A. Let me see. I think there was only COVID -- no. I can't remember if they have any non-COVID on that date.

Q. Let me ask you this, do you remember a resident named Resident #13 living in [redacted] in Bed [redacted] on May 1?

A. [redacted], she was there for rehab.

Q. I am just asking if -- let me finish the question.

Do you remember that there was a resident named Resident #13 living in Room

[redacted] [redacted]

[redacted] on May 1?

A. The name familiar.

Q. Do you remember the resident Resident #21 living in Room [redacted] on May 1?

A. Yes, I remember those people in Room [redacted]. They didn't have no COVID.

Q. You recall that they did not have COVID, correct?

A. They didn't have no COVID. I am trying to remember.

Q. So on May 1, then, is it fair to say that there were COVID and non-COVID living on 1 East?

A. Yes.

Q. Do you also remember a resident named Resident #16 who was living in Room [redacted] in Bed [redacted] on May 1?

A. I can't remember.

Q. Do you remember a resident named Resident #12 living in Room [redacted] in Bed [redacted] on May 1?

A. I can't remember the name now, but I know they didn't have no COVID.

Q. Do you remember a resident named

[redacted] [redacted]

Resident #17 living in Room [redacted], Bed [redacted] on May 1?

A. They have a black lady was in [redacted]. I can't remember her name.

Q. Okay.

A. She was in [redacted], in that room. It was a black lady. I can't remember her name well.

Q. That's fine. Do you remember a resident named Resident #14 living in Room [redacted], Bed [redacted] on May 1?

A. I can't remember the name now.

Q. Okay. Do you remember a resident named Resident #25 living in Room [redacted], Bed [redacted] on May 1?

A. I can't remember the name.

Q. Do you remember -- I'm sorry?

A. Someone in there I remember. Some I can't remember. But I remember if [redacted] was a black lady and there's another lady was there with her. They did not have no COVID, but all of a sudden they start getting high fever, I remember.

Q. Do you remember a resident named

[redacted]

Resident #15 living in Room [redacted], Bed [redacted] on May 1?

A. I remember his name. His name -- I can't remember his name.

Q. Do you remember a resident named Resident #19 living in Room [redacted], Bed [redacted] on May 1?

A. Resident #19 sound familiar. Yes, I remember Resident #19. I remember that name.

Q. Do you remember if he was positive or COVID-negative?

A. I didn't think he have COVID.

Q. So again, on May 1, there were non-COVID residents living on the unit, correct?

A. Correct.

Q. Do you remember a resident Resident #23 living in Room [redacted], Bed [redacted] on May 1.

A. No.

Q. Do you remember a resident named Resident #18 living in Room [redacted], Bed [redacted] on May 1?

A. Yes, I remember him.

[redacted]

Q. Do you remember a resident named Resident #24 living in Room [redacted], Bed [redacted] on May 1?

A. Yes, they was both in the same room. I remember those two beds was in that same room.

Q. Do you remember that on May 1, all of these residents in these rooms were transferred off of 1 East, do you remember there was a large transfer of residents?

A. Yes.

Q. Were all these residents in all these rooms moved off of 1 East during your 6 a.m. to 2 p.m. shift on May 1?

A. Yes, I remember when they move those patient to upstairs. I remember that.

Q. Why were all these residents moved off 1 East on May 1?

A. Because they didn't have no COVID and they have COVID on the floor. And they try to put those patients upstairs and bring those who have COVID upstairs, downstairs.

Q. How do you know that? How do you know that these residents were being moved

[redacted]

off to get them onto units upstairs because they were COVID-negative. Did you speak to anyone about that?

A. No, I didn't speak to anyone but I was there, so I see -- I know -- I know how Fulton Commons, they -- when the head of the state come in the next day, they tell us that we have one hour to take these people upstairs. And I say, "I'm not doing that. I am going home."

I remember they start to go like they crazy to take people off of the floor who is not COVID to take them upstairs. And they have a lot of COVID upstairs they going to bring them downstairs.

So when the state come the next day, they have, like, everybody with COVID on 1 East and then upstairs they have no COVID.

Q. Okay. And the state came in on Monday, May 4, correct?

A. I can't remember what day it was, but I remember the state was coming the next date.

[redacted]

Q. Besides getting all of these non-COVID resident off of 1 East, you said there were residents that were COVID that were moved down to 1 East, correct?

A. Yes.

Q. Do you remember how many came down from upstairs to 1 East?

A. No, I can't remember how much came downstairs because I didn't take no part of carrying up and bringing down. I said I am going home, I don't want no overtime. I am going home, I leave and go home. So I did not know who all they bring down from upstairs.

Q. Are you saying that there were so many residents being moved on and off of 1 East that they wanted you to stay past your shift?

A. Yes, they offered to pay me an hour or two overtime. I said no.

Q. Why didn't you use overtime to move all these residents around?

A. They use them -- because I see these manager just want to use you. What's

[redacted]
best for them, they use you to get what's best for them. And then to the end of it, we get the worst of it.

Q. Can you remember, in all of the years that you worked on 1 East, can you remember any other day when as many as residents were moved off and on to 1 East?

A. Not like what I see. If they coming for rehab, and then if social worker finish talk with them asking them long term, and they going to stay long term, then they would take them upstairs. But not like -- if it one person, two person going upstairs.

Q. Do you remember any other day on 1 East where so many residents came on and off the unit?

A. Only that day, that day. One day was that. And after that, after that they started to test people upstairs, and who have high fever they bring them downstairs. That's the only thing they do after all of that.

Q. So we see here, as we look at this exhibit on the screen, which is

[redacted]

Exhibit 6, we see that, as we've said, all of the rooms, except Room 113, have residents, correct?

A. Yes.

Q. Now, this is Friday, May 1, on Exhibit 6. Let's now look at Monday, let's look at Exhibit 7. So now you see Exhibit 7, correct?

A. Yes.

Q. And on the bottom we have the date now is May 4th, correct?

A. Okay, yes.

Q. Bottom left, May 4th?

A. Yes.

Q. And the day of the week is Monday, correct?

A. Yes.

Q. So this is the Monday after all the residents had been transferred, correct?

A. Yes.

Q. And this is, again, a CNA room assignment sheet?

A. Yes.

Q. And this shows that you were

[redacted]
working that day, correct?
A. Yes.
Q. Because under the first column we have Jacqueline Swaby, right?
A. Yes.
Q. And then we have you under Column 2, correct?
A. Yes.
Q. And then we have Sonya Bent on Column 3, correct?
A. Yes.
Q. And again we have Georgeanna Knight on the next column, correct?
A. Yes.
Q. And then Clermont, is that Maria Clermont?
A. Yes.
Q. So she's in the last column, so --
A. Yes.
Q. -- these are the five CNAs, including yourself, who are going to care for the residents on Monday, correct?
A. Yes.

[redacted]

Q. But now, if we look at the CNA assignment sheet for Monday, we see on May 4th that Rooms 101, 102, 104, 106, 107 and 111, they have been removed from the CNA room assignment sheet, correct?

A. Yes.

Q. They are all crossed out, correct?

A. Yes.

Q. Is that because, as you told us, all those residents were taken off the unit because they were not COVID and they were sent upstairs?

A. Yes.

Q. So, there's been now a change of residents -- there's been a big change of residents on the unit, correct?

A. Yes.

Q. Do you remember the state coming into Fulton on Monday, May 4th, to conduct some sort of inspection? Do you remember that?

A. Yes, I remember when the state came.

[redacted]

Q. Were you present on 1 East on Monday, May 4th, when the state came in?

A. Yes.

Q. Do you remember approximately how many people from the state looked around 1 East on May 4th?

A. I can't remember, but I remember I saw two -- I can't remember how much of them, but two individuals was looking around in the rooms.

Q. And they were from the state?

A. Yes.

Q. And these two individuals, do you remember if they were men or women?

A. Women. It was two women.

Q. Were you working on 1 East when the two women from the state were looking around?

A. Yes.

Q. Did you speak with either of these women on May 4th?

A. Yes, I did speak to them.

Q. You spoke with both of them?

A. Yes, the same time.

[redacted]

Q. Do you remember telling the women from the state that when you go into a resident's room on 1 East you do not wear gloves? Do you remember telling that to the women?

A. Yes, because when I get in, I don't put on the gloves from outside. I put it on when I get inside.

Q. That's what you were saying to them?

A. Yes.

Q. Were you ever told by someone at Fulton, after the state left, that they had said that the CNAs at 1 East were not washing their hands before or after they left the resident room?

A. That's not true, because we wash our hands.

Q. Okay.

A. We wash our hands when we go in and when you come out.

Q. Okay. So when you were on 1 East on Monday, May 4th, all the residents in Rooms 101, 102, 104, 106, 107 and 111 were

[redacted]
gone, correct?
A. Yes.
Q. Did anyone, while you were there, tell the people from the state that on Friday, May 1, those rooms did have residents in them?
A. I don't know if anyone tell the state, but I didn't tell the state that.
Q. You did or did not?
A. I did not tell them that.
Q. Did anyone from Fulton tell you to keep your mouth quiet about the room transfers?
A. Yes, they do. They say if you tell the truth, the state will shut us down and we will not have a job.
Q. Okay, they told you that if you did tell the truth, that Fulton would be shut down and you'd lose you're a job?
A. It was -- yeah we would not have a job.
Q. Who said that?
A. Co-workers.
Q. Who said that?

[redacted]

A. The co-workers.

MR. ZADEK: Okay, you can take this off the screen, by the way, the exhibit now.

Q. So the co-workers told you that if we tell them about all these room transfers we will lose our job?

A. They will shut down Fulton and we will lose our job. We wouldn't have a job.

Q. And these are co-workers talking to each other?

A. Yeah.

Q. Why would Fulton be shut down if the state knew that all these residents had been moved on Friday?

A. I don't know. I don't know where they get that talk, I don't know. But this was from the co-workers. Because they feel that -- they know that if they question me and ask me, I will tell them the truth. They try to tell me, Don't, don't, don't tell them that, because they will shut down the building and we won't have a job. That was my co-worker, you know, when we get up

[redacted]
to going home, they will be saying that.

Q. So you never told the state workers that all these residents had been transferred on and off the unit on Friday, correct?

A. No, I didn't tell them that.

Q. To your knowledge, did any of the other workers tell the state about this big movement of residents?

A. I don't think so. I don't know if they tell them, because they would have talk about it. But I didn't see nobody say anything that they tell the state that.

Q. When you say that Fulton would be shut down if the state knew about all the residents that were moved off the unit and onto the unit on Friday, is that because the state would have learned that COVID and non-COVID had been living together on this unit?

A. Yes.

Q. Was it is your understanding that having all these COVID and non-COVID living together on 1 East violated infection

[redacted]
control?

A. Yes. We all know that.

Q. I would like to show you -- I would like to discuss with you very quickly whether Fulton had some sort of screening policy for its staff, including yourself, during the pandemic, with respect to coming into the building. Did Fulton set up some sort of screening policy that staff had to follow when they entered the building during the pandemic? Do you know what I am talking about?

A. The white paper to fill out?

Q. Yeah.

A. Yeah.

MR. ZADEK: Well, let's bring up Exhibit 8, because I want your thoughts on this, on Exhibit 8.

Q. This is called an employee disciplinary notice, do you see this?

A. Yeah.

Q. Do you recognize this document?

A. They something like the morning --

[redacted]

Q. Let's look at what it says on the top. It says, Employee name, [redacted]; department, nursing. The date of this notice, September 3, 2020; position, CNA, 6 a.m. to 2 p.m. do you see that?

A. Yes, I see that.

Q. Date of hire -- I guess that would be your date of hire, [redacted], correct?

A. Yes.

Q. If we scroll down it says, handwritten on the form, looks like is says, Suspension one day, failure to follow protocol, do you see that?

A. Yes.

Q. And if we scroll down, under the section called Remarks, it says, "You are aware, since the beginning of the COVID-19 pandemic, the need to be assessed at the front desk by having your temperature taken, as well as filling out the COVID checklist. You failed to follow this protocol on September 2, 2020, placing the residents -- I can't read that next word -- placing the

[redacted] residents something in the facility in jeopardy. Your continued noncompliance in this matter will result in further discipline, up to termination."

Then under Actions, it says, "Suspension, one day. Failure to follow facility protocol relating to the Department of Health mandate for COVID screening. Suspended day, Monday, September 7, 2020."

Now on the bottom where it says, Employee signature, there it says, "Refused." Below that it says, "Supervisor Signature, Carol Frawley."

Can you tell us what this is all about, what happened here?

A. When we come in we take our temperature.

MR. ZADEK: We can take it off the screen now.

Q. Tell me about -- I want to know, exactly, what happened.

A. When we come in to take our temperature, some time no one is there to take our temperature. So I wait and get our

[redacted]

temperature done. Then you got to write down what your temperature, how much is it, in the book. Then they bring this white paper, saying that if you have to go near anybody with COVID and whatever, and you put yes or no.

That was in the morning, was a Thursday. And the way they did not organize this stuff, that they have a box to put this paper in. That morning I still have my paper in my bag, you know, I still have my paper in my bag. I pull out the paper and I hold the paper -- The box wasn't there. They had the box on the other side but I didn't see the box. And I go around to check to see if they move -- where they will going to put me in the morning before I'm going on. And I go around and I start talking with my other co-workers and then I forgot. I rest it in my bag, say I will put in the box, and I forgot. I didn't remember to put it in the box.

Then the -- Ms. Peterson called me downstairs and gave me this paper and

[redacted]

said I did not pull out anything and they going to suspend me this Monday. I said, "But tomorrow is Friday, suspend me tomorrow."

And they say, "No, it has to be Monday." The other co-worker -- so I go with the other co-worker with me and we sit in there.

So I told her, "But I didn't remember."

Then she said, "Oh, this is the way they have to do" and whatnot.

She never -- they put "refuse." She never tell me to sign anything, they already start pull up the thing, "refuse," whatever. And she just hand me the paper.

Q. So they filled out "refused" and they'd never asked you to sign it?

A. They never asked me to sign it.

Q. You said earlier that sometimes there's no one there to take the temperature?

A. No one is there for most of some day times to take the -- and we try to tell

[redacted]
them that. But now, the security was there now. They put the security when we come in now and tell the security to take our temperature.

Q. Are you saying that there were periods during the pandemic when staff would come in in the morning and there was no one to taking temperatures?

A. Yes, they would have to sit there, they waiting and there's no one to take your temperature.

Q. When that happened, did people just come in and go to work anyway?

A. So when that happen, I don't know. Some people might go to work and whatnot. They waiting on the supervisor, supervisor might be upstairs busy, can't come downstairs to take the temperature. There is no one there to take your temperature.

Q. And --

A. So you got to sit there and wait, so you sit there and wait.

Q. Were you aware of instances or

[redacted]
occasions during the pandemic when staff, when CNA were coming to work who you thought were sick?

A. No, any CNA know who is sick, they stay home.

Q. Okay.

A. They stay home because they say they get sick by us and they are not coming and whatnot.

And I remember when Ms. Peterson, in the middle of the pandemic, she would call you, "Oh, you not coming to work? You got to come to work."

I will say that I not coming, and she would begging me to come to work. She not thinking about your health or if you feel sick at work, whatever.

Q. So were there times that CNAs came to work who thought they were sick but they came in because they were pressured to come in?

A. Well, any CNA who is sick, they not coming. They not coming. If they sick, they not coming.

[redacted]

Q. Did you ever become aware of nursing staff, CNAs, or staff in general, being instructed or told not to discuss COVID questions with families?

A. They all tell us not to discuss whether anything at all. Don't discuss nothing with no family.

Q. They told you, don't discuss COVID with the families?

A. But the family wasn't coming. The family wasn't there, so there's no family to discuss anything with.

Q. But were you told, in general, don't speak to anyone on the outside about what's going on inside Fulton?

A. Yeah, they said do not discuss anything with no family, they stated that.

Q. Who said that, who told you that?

A. The unit manager said that this come from the office.

Q. So the unit manager, is that Ms. Waller?

A. Yeah, she said you can't discuss anything with the family and whatnot. Which

[redacted]
we know, we never discuss anything with the family. To me, I don't know for others, I never discuss anything with the families.

Q. You said Ms. Waller, the unit manager, received that instruction from whom?

A. Any instruction like that will come from the office.

Q. When you say, "the office," who do you mean? Who is in the office?

A. Well, Ms. Frawley is the one that's more -- Ms. Doyle might tell Ms. Frawley, Ms. Frawley tell -- it's like a chain and the chain like come right back down.

Q. Did you ever have to sign anything where you were promising that you wouldn't discuss anything with anyone about COVID at the facility?

A. I can't remember if we sign anything, if they give me any paper to say don't discuss anything with COVID patient family, if I sign this. I can't remember if I did.

[redacted]

Q. Did you ever become aware of nursing staff being told not to discuss in general the amount of illness and the deaths that were taking place at Fulton?

A. I don't know if they tell anybody that. They never tell me that. So I don't know if they say that. They told me who is dead and whatnot. They never tell me that.

MR. ZADEK: So it's just about 12:15 and we need to take just another ten-minute break.

THE WITNESS: Okay.

MR. ZADEK: Let's make it fifteen minutes. We will meet back here 12:30.

THE WITNESS: 12:30, okay.

(Whereupon, a short recess was taken.)

MR. ZADEK: We took about a ten-, fifteen-minute break. We will resume the hearing and I ask that everyone please note their appearance for the record.

MS. SEKHON: Prabhjot Sekhon, special assistant to the attorney

[redacted]

general.

MR. JOYCE: Investigator Robert Joyce.

MS. LIPTAK: Paralegal Anne Liptak.

MR. DIAZ: Audit investigator Khristian Diaz.

Q. [redacted], just a couple of things I wanted to clarify. You mentioned you spoke with several co-workers about the fact that if the state knew about these room transfers that took place on May 1, and therefore knew that COVID and non-COVID had been living together on 1 East, the state would have shut Fulton down, correct?

A. Yes.

Q. Who were these co-workers that you spoke with, do you recall?

A. It was my close co-workers friend, Bent, Moxam, and I forgot her name this one, but she upstairs. But even though that, I have overheard that other co-workers was talking the same thing.

Q. You heard that other co-workers

[redacted]
were saying the same thing?
A. Yeah, I overheard the say the same thing.
Q. But you actually spoke to Bent, to Moxam, and some other one?
A. They talk about it, we talk about it.
Q. You don't remember the third person right now? You said it was Moxam, Bent --
A. Moxam, Bent, yes. They talk about it. But other co-worker, I overheard they say that.
Q. Did you ever hear an announcement over the speakers in the facility of Fulton, did you ever hear some sort of an announcement that there was no COVID in the building, did you ever hear any announcement?
A. Yes, Ms. Doyle keep saying that. When there is COVID, that she keep saying there's no COVID. She just keep saying that.
Q. It was Ms. Doyle who did that?

[redacted]

A. Yes.

Q. What would she say, what was the announcement?

A. There there's no such COVID in the building. There's no such COVID-19 in the building. Anything she announce it over the intercom so everybody can hear.

Q. Do you know she was saying that over the intercom?

A. I don't know why she was saying that, because there is COVID. We all saying, Why she saying that and there's COVID here. COVID is here. Why is she keep saying that? I don't know she was saying that.

Q. Do you know how many times she made that announcement over the intercom?

A. Maybe I think she make it more than once.

Q. You mentioned that there was -- was it an in-service person who was out pregnant, she was not working at the facility?

A. Right. She the one who give --

[redacted]
used to give the in-service.
Q. And you said that she left because she came pregnant?
A. Yes.
Q. And, during that time, you were not getting in-services because she was not around?
A. We wasn't getting any in-service because she was not around, yes.
Q. Do you recall her name?
A. I can't remember her name, you know.
Q. Would the name "Rose" sound familiar, Rose Elzier?
A. Rose -- I think Rose her name is?
Q. Or Judine or Karen?
A. Not judine. I can't remember the name, you know. One was there before her, Mr. -- Mr. -- what's his name, Mr. -- he was there giving all the in-service. After he left and she came over, they bring her, but she come and get pregnant. I forgot his name now. He is used to give in-service and this lady come and she took over. He used

[redacted]
to be in class with her to do in-service. After he left we never go back in no class and do in-service.

Q. When was it that this women left, do you remember the month?

A. I don't remember the month she left.

Q. After she left, there were no more in-services?

A. We never go back in no classes and in-service.

Q. Did there come a time when the in-service did begin again?

A. They is like, they just come on the floor and they -- who is they? The unit manager most of the time. Maybe she get the paper -- because she said she get it from the office. That's what Ms. Waller keeps saying that they to give it in the office, then she got to give it to us. So she will tell us XYZ and whatever on the paper and then we sign the paper.

Q. Oh, that's when you sign the papers even though you didn't have the

[redacted] in-service?

A. Right.

Q. When was the last time that you had an in-service at Fulton?

A. I can't remember. In a classroom?

Q. Yes, a real in-service with an instructor.

A. We never have it in a classroom. It was after the state come and I don't know what the state told them. But then Ms. Baptiste come and was in the dining room. She call everybody in the dining room, and she said she want to see how we wash our hands. And then she got to show us how to put on PPE and how to take it off, how to put on the mask and take it off, and all that.

Q. You said that was after the state came?

A. After the state came.

Q. They didn't give you any instruction on that before the state came?

A. No.

[redacted]

Q. So there was no coronavirus or PPE instruction at all before the state came?

A. There is none. They never give us no nothing, no in-service on PPE before this. After the state came, then Ms. Baptiste come into in the dining room and they call us, a few of us in the dining room, and we sit there and she start to show what we got to do.

Q. Just to be clear, so there was instruction concerning PPE before the state came in?

A. No, she didn't give us that before the state came in. Only Ms. Waller was telling us. She got the paper and she will tell us what we got to do, how we do it, and whatnot. And then, if any paper for sign, she will tell us to sign. We have to sign this paper.

[redacted]

MR. ZADEK: [redacted], I thank you for appearing for appearing today and your testimony. Please enjoy the rest of your day.

(TIME NOTED: 12:38 P.M.)

INDEX TO EXHIBITS

CERTIFICATION

I, SIVAN DAHAN, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October 2020.

SIVAN DAHAN

From:	Cathie Doyle
To:	Steven Weiss; Susan O"Connor; Subrina Charles; Carlton Williams
Subject:	RE: IC survey
Date:	Friday, May 1, 2020 11:59:00 AM

Thank you, Mr. Weiss. We will do everything in our power to have them go with no findings!

From: Steven Weiss
Sent: Friday, May 01, 2020 11:59 AM
To: Cathie Doyle <cathie.doyle@bvnh.com>; Susan O'Connor <soconnor@bvnh.com>; Subrina Charles <subrinacharles@bvnh.com>; Carlton Williams <carlton.williams@bvnh.com>
Subject: RE: IC survey

Good Luck.
I know that we are in good hands!
That applies to all of you. Thank you for your hard work.
Steven Weiss

From: Cathie Doyle
Sent: Friday, May 01, 2020 11:57 AM
To: Susan O'Connor; Subrina Charles; Carlton Williams
Cc: Steven Weiss
Subject: IC survey

Last evening a friend told me that DOH was calling facilities to get policies, census, etc. the day before they are entering for the survey. Today I got my call…so I expect they will be here tomorrow.

Asked for:

Staffing levels today
Covid deaths 4/1 – 5/1 in facility, in hospital and other deaths in facility
# of staff out today due to covid
PPE supply adequate today?
IV supplies ok today?
DNS/Admin/Medical Director available 24/7?
Infection Control P&P's
Staff responsible for ICP
All COVID specific P&P's
Key personnel and locations
List of covid residents and location in facility
List of inhouse covid deaths 4/1 -5/1
# of suspected cases today
Procedure for procurement of covid supplies
Emergency plan for covid and emergency staffing
Screening of staff protocol
Family notification P&P
All housekeeping covid P&P's

List of admits, discharges and transfer in the last 72 hours

I will keep you posted on what to expect once they enter. Wish me luck! Cathie

Cathie L. Doyle, LNHA, MPA
Administrator
Fulton Commons Care Center,
rated a 5-star facility by CMS
60 Merrick Avenue
East Meadow, NY 11554
Tel: (516)-222-9300
Fax: (516)-222-9333
Email: Cathie.Doyle@bvnh.com

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

----------X

In the matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

----------X

63(12) Examination under oath of CAROL FRAWLEY, taken via WebEx video conference, held on October 15, 2020, commencing at 10:15 a.m.

Reported by

Sivan Dahan

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
300 Motor Parkway, Suite 210
Hauppauge, New York 11788
BY: PETER ZADEK,
Special Assistant
Attorney General
BY: BENJAMIN SMITH,
Special Assistant
Attorney General
BY: PRABHJOT SEKHON,
Special Assistant
Attorney General

ALSO PRESENT:
Barbara Picone,
Audit Investigator
Anne Liptak, Paralegal
Robery Joyce, Investigator

C. FRAWLEY

(Subpoena was premarked as State's Exhibit 1, for identification; 10-15-20, S.D.)

(Document was premarked as State's Exhibit 2, for identification; 10-15-20, S.D.)

(30-page document was premarked as State's Exhibit 3, for identification; 10-15-20, S.D.)

(Document was premarked as State's Exhibit 4, for identification; 10-15-20, S.D.)

(March 4, 2020 CMS guidance was premarked as State's Exhibit 5, for identification; 10-15-20, S.D.)

(March 13th, 2020 guidance was premarked as State's Exhibit 6, for identification; 10-15-20, S.D.)

(Three-page document was premarked as State's Exhibit 7, for identification; 10-15-20, S.D.)

(March 13, 2020 DOH guidance was premarked as State's Exhibit 8, for identification; 10-15-20, S.D.)

C. FRAWLEY

(Document was premarked as State's Exhibit 9, for identification; 10-14-20, S.D.)

C A R O L F R A W L E Y, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MS. SEKHON:

Q. Please state your name for the record.

A. Carol Frawley.

Q. What is your address?

A. [redacted].

Q. Ms. Frawley, what city -- you mentioned you are in [redacted], New York.

A. Yes.

Q. What county is that?

A. Nassau County.

Q. Are you currently giving testimony here today at your home in Nassau County?

A. Yes, sir.

Q. My name is Peter Zadek, and I am a special assistant attorney general from the Office of the New York State Attorney General.

All of the individuals here have turned off their video and muted themselves so the communications between you and I will improve. We are conducting the examination remotely in order to ensure healthy and safety of all participants due to the coronavirus concerns.

A. Excuse me, but you are breaking up. I am having a hard time hearing you.

Q. We will need to get Doreen back on the line if necessary. Let me try again.

We are conducting this examination remotely in order to ensure the health and safety of all the participants due to the coronavirus-related concerns.

Do you hear me clearly?

A. I heard you but you still broke up.

Q. The examination will be recorded

C. FRAWLEY

by stenographic means by a court reporter certified to record the examination in the State of New York. Any exhibits will be presented to you electronically.

Do you understand that?

A. Yes, sir.

Q. Your testimony today is being taken pursuant to a subpoena that was issued by the attorney general's office pursuant to I -- I think we need to get Doreen back on this because the audio is not great.

(Whereupon, a lunch break was taken.)

MR. ZADEK: I would like everyone who is on this hearing to begin by identifying themselves. If everyone can identify themselves to Ms. Frawley.

MS. LIPTAK: Anne Liptak, paralegal.

MR. JOYCE: Investigator Robert Joyce.

MS. SEKHON: Prabhjon Sekhon, assistant to the attorney general.

MR. SMITH: Good morning, my name

C. FRAWLEY

is Ben Smith, special assistant attorney general.

MS. PICONE: Barbara Picone, audit investigator.

MR. ZADEK: All right. If we continue to have any difficulty, the stenographer will jump in and tell me that she can't hear your testimony or my questions clearly.

Q. Ms. Frawley, your testimony today is being taken pursuant to a subpoena that was issued by the attorney general's office pursuant to which I, Mr. Smith, and Ms. Sekhon are special assistant attorneys general and we are authorized to take proof and make a determination of the relevant facts in connection with an investigation that deals with resident care provided by Fulton Commons Care Center.

You are employed there, correct?

A. Yes, sir.

Q. If you could bring up what's been -- or what I'll deem marked as Exhibit 1.

C. FRAWLEY

Ms. Frawley, are you able to see this document?

A. Yes, sir.

Q. If we scroll down, you see my name there, and if you scroll down further it indicates it's a subpoena, correct?

A. Yes.

Q. If you scroll down a little further, we see that -- is that your signature on the bottom of the third page?

A. It is.

Q. And this subpoena was served on you directly, correct?

A. Yes, sir.

Q. This subpoena required and compelled you to virtually appear for an interview here today, correct?

A. Yes, sir.

MR. ZADEK: You can take that off.

Q. You understand your virtual hearing today is pursuant to that subpoena which compels you to appear and give testimony, correct?

A. Yes.

Q. Before we begin, I would like to take a moment to discuss some of your rights. Pursuant to the Fifth Amendment of the United States Constitution is as well as New York State contusion, you have a right to refuse to answer questions if your truthful answer to that question would tend to incriminate you.

Do you understand that?

A. Yes, sir.

Q. Please be aware, however, that should you choose to invoke your Fifth amendment right, a negative inference can be drawn against you in any future none criminal proceeding, do you understand that?

A. Yes.

Q. You took an oath a moment ago to tell the truth, the whole truth and nothing but the truth. Should you intentionally make any false statement during this proceeding, by that I mean a statement that you do not believe to be true, you may be prosecuted for perjury, do you understand

that?

A. Yes, sir.

Q. I am going to ask you question which are relevant to the attorney general office investigation into the resident care provided by Fulton Commons Care Center. If, as we go through this hearing, I use the word "Fulton" or "Fulton Commons," do you understand that I am referring to Fulton Commons care center?

A. Yes, sir.

Q. Let ass go over some ground rules.

As you are aware we have a stenographer present today. She will be recording this vicinity view. It's there important she hearing everything that is said between us. What that means is that we cannot speak over one another. I ask that you allow me to finish asking my question before you begin to answer the question. She cannot take us down when we speak simultaneously. It is also important that you give a verbal response to all my

questions. Nods of the head or shaking of the head cannot be properly recorded.

If you do shake your head, I just ask it be accompanied with a verbal gesture, yes or no. If you do not understand any question, please let me and I do my best to reface it so you do understand the question. If you answer my question, I will assume you understood the question as I asked the question. Do you understand?

A. Yes, sir.

Q. If you need to take a break for any reason, that's fine. I just ask that if there is a question pending, a question before you, that you answer my question before leaving the camera frame. Do you understand these instructions that I have given you?

A. Yes.

Q. Sometimes you may give an answer as completely as you can and literature remember additional information. If that happen, please tell me you would like to add something to the earlier answer and I will

do that right then and there while it's fresh in your mind?

A. Yes.

Q. In addition, it might occur to you at some point that a previous answer you gave was not completely accurate. If that happens, will you tell me and make any necessary corrections to that previous answer?

A. Yes.

Q. This proceedings, Ms. Frawley, is confidential. You are not entitled to a copy of the transcript of this testimony or any exhibits that may be shown to you today. Do you understand that?

A. Yes.

Q. As this is a confidential proceeding, there shall be no recording during the taking of this testimony. Although Webex does offer recording capabilities, I give you my assurance that this examination is not being recorded by the New York attorney general office. Do you agree not to record this examination in

any way?

A. I do.

Q. Similarly, due to it's confidentiality, we request that you do not discuss this matter, your testimony here today or any documents you may view or may produce in connection with today's testimony with anyone. Do you agree to that?

A. Yes, sir.

Q. Unless we are on a break, there shall be no private communications with anyone, that includes phone calls, passing of notes, texting, me mailing or other means of communications that may or may not be visible on the camera. Is there anyone in the room with you other than yourself?

A. No.

Q. If you do have a phone, as we discussed, please mute it. Turn off any other electric devices that could provide interruptions or disruptions.

Have you taken any drugs or alcohol in the past 24 hours that may have an impact to testify truthfully and best of

your knowledge?

A. No.

Q. Are you aware of any physical or mental disability that may interfere with your ability to understand my questions or your ability to respond truthfully and completely.

A. No.

Q. Did you discuss the fact that you were subpoenaed here today with anyone else?

A. No.

Q. You didn't mention to -- you did not discuss with anyone else that you received a subpoena to appear and testify today?

A. My administrator was made aware when it happened and she made aware Mr. Weiss who runs the facility.

Q. So you said your administrator was made aware that you received the subpoena?

A. Yes.

Q. Who is your administer, what's that person's name?

A. Cathie Doyle.

Q. You mentioned another individual, who is that other individual?

A. He runs the facility, Mr. Steven Weiss.

Q. Did you say he runs or owns the facility?

A. No, his uncle owns the facility and he runs it.

Q. Did you speak to Mr. Weiss concerning your receiving this subpoena?

A. I did not, no.

Q. You said he was made aware of you receiving this subpoena?

A. Yes, sir.

Q. How do you know he was made aware of you receiving the subpoena?

A. Ms. Doyle informed me.

Q. She told you that she had informed him of that?

A. Yes.

Q. Did you speak to anyone else in preparation for your appearance here today?

A. No, sir.

Q. Did you speak to Ms. Doyle will respect to the substance of appearing here today. Was there discuss as to what would occur during your testimony?

A. No, sir.

Q. Did you receive any documents to prepare for your testimony here today?

A. No, sir.

Q. Did you speak with any current or former Fulton employees who stated to you that they provided testimony in this investigation?

A. Can you repeat that, please?

Q. Did you speak with any current or former Fulton employee who stated to you that they provided testimony in this investigation?

A. Yes, two of my current employees told me they spoke with the attorney general's office.

Q. Who were those two employees?

A. Larissa Ronayne and Kristin Herrscher. I am sorry, one more person, Ms. Waller.

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Q. So these three individual indicated to you -- what did they indicate to you?

A. That they had a lengthy interview with the attorney general's office.

Q. Let's go through them individually.

What did Ms. Row /TPHAEUPB indicate to you in terms of that interview? What, if anything, did she say to you and what did you say to her?

A. She told me no content. She just told me it's a very long process.

Q. Was that during a phone call or in person?

A. That was in person.

Q. Did you call her down to your office? How did it come about that you spoke to her face-to-face?

A. She comes into my office about matters and she told me she had a meeting with everyone.

Q. You mentioned a Ms. Waller. What was said between you and Ms. Waller?

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A. Ms. Waller just told me she needed the next day off because it was a very long process and that she couldn't tell me anything else.

Q. What about Ms. Herrscher?

A. She texted me yesterday and told me that the interview was over. Nothing else.

Q. Did you speak with any current or former Fulton employee who stated to you that they had been subpoenaed to give testimony in this investigation?

A. No, sir.

Q. Have you ever testified under oath in any setting before?

A. I have been deposed, yes.

Q. I am sorry, you broke up. You've been deposed what --

A. For cases for people suing the facility or something like that but nothing through the attorney general office.

Q. So you have given testimony. Is it fair to say in medical malpractice investigations regarding the nursing home?

A. Yes.

Q. How many times have you given testimony in the past?

A. For Fulton Commons I have only given once but when I was -- I gave testimony for Townhouse where I used to work, three to four depositions, and one for Fulton Commons.

Q. Have you given testimony in court, at a trial?

A. No.

Q. Other than three or four times with respect to Townhouse litigation and the one time with respect to Fulton litigation, have you ever given any other sworn testimony?

A. No, sir.

Q. The Fulton testimony you gave in the past, when was that?

A. Last month.

Q. On what case was that? Do you recall who the plaintiff was in that case, who's the party that was claiming malpractice?

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A. It was a family of a resident, [redacted].

Q. So it was the estate that was involved in the litigation?

A. Yes.

Q. Was that given in Nassau County?

A. Nassau County.

Q. You mentioned the three or four Townhouse cases. Do you recall the plaintiffs or the injured party or estates that were involved in that litigation?

A. I don't, that was a long time ago.

Q. But they all involved Townhouse?

A. Yes.

Q. What is the full name of that nursing home?

A. Townhouse Center For Rehabilitation and Nursing.

Q. Can you give us your cell number?

A. [redacted].

Q. Who is the provider of that number, the carrier?

A. AT&T.

Q. Do you also have a home telephone?

A. Yes, sir.

Q. What is that number?

A. [redacted].

Q. Thank you. Who is the carrier for that?

A. Verizon.

Q. Did you attend college?

A. I did.

Q. What college did you attend?

A. Adelphi University.

Q. Did you graduate from Adelphi?

A. I did.

Q. What year did you graduate?

A. 1975.

Q. What was your degree in?

A. Bachelor of nursing.

Q. Do you have any other education beyond the bachelor of nursing that you received from Adelphi?

A. No, sir.

Q. Other than your nursing degree, your bachelor degree from Adelphi, do you

have any other training in the field of nursing?

A. I attend in-service classes and I attend outside meeting, but I have no other classroom training.

Q. You say in-services within the facility?

A. Right, or meetings that pertain to nursing homes outside of the facility.

Q. Right. Are you licensed as a registered nurse?

A. I am.

Q. That's in New York State?

A. Yes, sir.

Q. Has your nursing license ever been suspended, revoked?

A. No.

Q. Are you licensed as a nurse in any other state?

A. No.

Q. Do you have any certifications in the nursing field beyond your RN?

A. No.

Q. You already mentioned Townhouse

as one of the facilities that you previously worked at in which you gave testimony. I would like you to go through with me, after college, your employment history leading up to Fulton. Can you bring me up to today?

A. When I was first -- after I graduated I worked at Winthrop University Hospital. After I left Winthrop --

Q. I'm sorry, slow down.

When you worked at Winthrop, what years were you at Winthrop?

A. From 1975 to probably 1995.

Q. About 20 years?

A. Yeah. I was not always full time. I took breaks when I had my three children.

Q. Okay. Did you work at a particular unit or multiple units at Winthrop?

A. In the beginning it was multiple units, and then I worked on the OBGYN floor.

Q. How long did you work in OBGYN?

A. Approximately, if I can remember correctly, about eight years.

Q. You said there came a time roughly in '95 when you left Winthrop?

A. Yes, I went and worked for one of the OBGYN doctors.

Q. Which doctor was that?

A. Joseph Pugliese.

Q. Can you spell that for us?

A. Pugliese.

Q. How long did you work for Dr. Pugliese?

A. Three years.

Q. Where did you work after that physician office?

A. Then I worked for a school called the Vocational Education Extension Board, it's an LPN school.

Q. In Hicksville?

A. It's in Hicksville now. It was in Uniondale when I was there.

Q. Okay. For how long?

A. Well, I worked for VEEB for approximately five years and that's how I got introduced to Townhouse, because they asked me to be the weekend supervisor at

Townhouse.

Q. VEEB, as you mentioned, is a training facility, correct, a training school?

A. Yes.

Q. Who were they training, or for what degree and certification?

A. They were training men and women to become licensed practical nurses.

Q. In what capacity were you hired and worked at VEEB?

A. I was a clinical instructor in the hospital.

Q. What did you teach, what were the areas you were instructing the students?

A. OBGYN and med services.

Q. So then you mentioned that you left VEEB to go work at what facility?

A. Townhouse.

Q. When did you begin working at Townhouse?

A. I believe it was 1999.

Q. How long did you work at Townhouse?

A. Twenty years.

Q. Continuously?

A. Yes.

Q. Roughly 2019?

A. No, I am sorry. It was 2016 I left Townhouse, November of 2016. No, I -- excuse me. I said that wrong statement. It's November of 2015.

Q. So roughly from '99 to 2015?

A. Yes, sir.

Q. Where did you work at Townhouse, what was your role at Townhouse?

A. I started as the weekend supervisor, then I became the 3 to 11 supervisor. From there I was promoted to in-service coordinator and then I was promoted to director of nursing.

Q. How long were you the director of nursing at Townhouse?

A. For at least ten years.

Q. Prior to arriving at Fulton, you had extensive experience at being a director of nursing?

A. Yes, sir.

Q. And you also mentioned the in-service coordinator at Townhouse?

A. Yes, sir.

Q. So you have extensive experience teaching staff members with respect to nursing protocol?

A. Yes, sir.

Q. As the in-service coordinator at Townhouse, did you have experience instructing staff with respect to New York State laws pertaining to abuse, neglect, mistreatment, those areas as well?

A. Yes, sir.

Q. And you came onboard from Townhouse to Fulton?

A. There was a year -- I left Townhouse in 2015 and I began at Fulton Commons in October of 2016.

Q. How was it that you were hired to work in October of 2016 at Fulton, how did that come about?

A. Ms. Doyle called me on the telephone saying she had an opening for an assistant director of nursing. And if I was

interested, she wanted to interview me.

Q. Did you have -- withdrawn.

How did you know Ms. Doyle in October of 2016?

A. I didn't until I met her upon interview.

Q. Had you been looking for a position?

A. No, sir.

Q. How is it she came, to your knowledge, to reach out to you?

A. She said she found my résumé. I don't know how she found my résumé, but she had it on hand.

Q. And you interviewed for the position of assistant director of nursing?

A. Yes.

Q. Is that -- were you hired as assistant director of nursing?

A. Yes.

Q. Who was the director of nursing at the time you were hired at Fulton?

A. Dr. Tara Mangroo.

Q. Did there come a time you became

the director of nursing in Fulton?

A. Yes, sir.

Q. When did the you become the director of nursing?

A. January of 2017.

Q. What prompted your promotion to director of nursing, did it involve the director of nursing leaving?

A. She was fired by the administration and I was asked to step into her place.

Q. Do you know why she was fired?

A. I do not.

Q. So beginning in January of 2017 you became the new director of nursing?

A. Towards the end of January, yes.

Q. And have you held that position until today?

A. Yes.

Q. How many resident units are there at Fulton?

A. I am sorry, you broke up. I am sorry.

Q. How many resident units, housing

units are there at Fulton Commons?

A. Seven.

Q. So that's 1 East, 2 East, 2 West, 3 West, 4 East, and 4 West?

A. Yes, sir.

Q. How many beds are in each unit?

A. Forty.

Q. What are the total number of beds in the facility?

A. 280.

Q. Is Fulton Commons a Medicare participating facility?

A. Yes.

Q. Since the time you arrived at Fulton, did you always work the same general shift or the same hours?

A. Yes.

Q. What hours have you worked at Fulton Commons since you have been hired?

A. Approximately 7 a.m. to approximately 5 p.m.

Q. So is it fair to say that you generally interact with staff members who work day-shift hours?

A. Yes.

Q. Where in the building is your office located?

A. On the first floor on the west side.

Q. So when you come in the building you would make a right?

A. Yes.

Q. I would like to talk to you a bit about the organization or the hierarchy at Fulton. If we can bring up what's been marked Exhibit 2.

Are you able to see that Ms. Frawley?

A. Yes, sir.

Q. Have you seen this diagram before?

A. Yes, sir.

Q. Does it essentially lay out the supervisory staff and employees at Fulton?

A. Yes.

Q. If we look at -- well, if we begin on the left side where it says, the first column says, "scheduling

coordinator/secretary."

Do you see that?

A. Yes.

Q. And below it, it says, "in-service coordinator."

Do you see that?

A. Yes.

Q. That's a position you said that you, in fact, had previously held at another facility?

A. Correct.

Q. What does an in-service coordinator do?

A. She ensures that the staff in the entire building get the mandated in-service that are recommended by the Department of Health. She will also in-service any necessary in-services regarding any kind of negative outcome the facility might have come from the Department of Health survey, and she keeps everybody in the loop as far as procedures of the facility.

Q. Who is the current in-service coordinator at Fulton?

A. Joan Dublin.

Q. How long has Joan Dublin worked in that capacity?

A. Three months.

Q. So when did she begin working as the in-service coordinator, approximately?

A. Approximately August.

Q. Who was the in-service coordinator before Ms. Dublin?

A. Give me a minute, I have to think of her name. She went on maternity leave and never came back. Rose -- and I don't remember her last name. I don't remember her last name.

Q. When did Rose go out on maternity leave?

A. March of this year, 2020.

Q. Who replaced -- withdrawn.

Who replaced Rose after she went on maternity leave and before Joan Dublin took over?

A. The assistant director -- I have two assistant directors of nursing who were taking care of the in-services as needed.

Q. Who were those individuals?

A. Lisa Peterson, and the other was Marise Baptiste.

Q. So is it fair to say, Ms. Peterson and Ms. Baptiste were the in-service coordinators during the height of the pandemic?

A. Yes.

Q. Were they providing in-services during the pandemic that related to protocols relative to the pandemic?

A. Along -- yes, along with my infection control preventionist.

Q. Who was your infection control preventionist?

A. Janice Chernofsky.

Q. She is a registered nurse?

A. Yes.

Q. When did she assume the position of infection control preventionist?

A. In January of this year.

Q. Is she still engaged in that job?

A. Yes.

Q. So is it your testimony that Ms.

Chernofsky, Ms. Peterson and Ms. Baptiste all provided instruction to staff concerning issues surrounding the pandemic?

A. Yes.

Q. Did you provide instruction at any point to staff concerning issues that arose during the pandemic?

A. If needed to, yes, I did.

Q. Below "in-service" on Exhibit 2 we see "MDS coordinator"?

A. Yes.

Q. What is the MDS coordinator?

A. She reviews the chart to make sure the accuracy of the ADLs, of everything that pertains to the residents is coded correctly for payer source.

Q. Who is the MDS coordinator?

A. Larissa Ronayne.

Q. R-O-N-O-A-N-E?

A. Yes, sir.

Q. If we go to next column, "director of nursing," that's your position at the top of the column, correct?

A. Yes.

Q. Below that we have "assistant director of nursing," correct?

A. Yes.

Q. That would be Ms. Peterson and Ms. Baptiste?

A. Ms. Peterson. Ms. Baptiste no longer works for the facility.

Q. How many assistants do you have now?

A. Just one.

Q. Just Lisa Peterson?

A. Yes.

Q. When did Ms. Baptiste leave the facility?

A. I believe it was February -- it was the beginning of March 2020.

Q. Under what circumstances, if you know, did Ms. Baptiste leave the facility?

A. She was fired by Ms. Doyle.

Q. Why was she fired by Ms. Doyle?

A. Because her work was not up to the work performance she expected.

Q. In what way was she deficient in her work performance?

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A. The recordings that Ms. Doyle would ask for, they were incomplete. She couldn't answer any questions for infection control that she needed to cover. It was her work ethic wasn't up to snuff.

Q. Ms. Baptiste worked under you, you were her supervisor, correct?

A. Yes, sir.

Q. Is it fair to say you informed Ms. Doyle as to Mr. Baptiste's performance?

A. No, Ms. Doyle would ask directly to the assistant director of nursing what they needed, and she was not able to give it to her.

Q. She asked who?

A. Ms. Doyle would go directly to the assistant directors of nursing for the information she required, and it wasn't given her by Ms. Baptiste.

Q. What information was not given to her that led to her firing?

A. There were statistics she needed for infection control, some of the in-services reports, audits that were not

done.

Q. Below the assistant director of nursing box on Exhibit 2, it says "unit managers."

A. Yes.

Q. Are those the RNs on the floor?

A. Yes, sir.

Q. So each unit has its own RN as a supervising nurse?

A. Yes.

Q. How many unit manager are there on each unit?

A. One.

Q. One per shift?

A. No. Seven to 3 has one unit manager per shift. There are no unit managers on 3 to 11 or 11 to 7.

Q. And below the unit managers it says "unit nurses," correct?

A. Correct.

Q. Are those LPNs?

A. Yes.

Q. How many LPNs are there on the three shifts?

A. One per unit.

Q. So on the day shift there's only one LPN?

A. With the exception of 1 East, which was our short-term unit. They have two nurses.

Q. Below "unit" it says "CNA." Are those the aides who provide the assistance with -- ADL assistance, the primary care to the residents?

A. Yes, sir.

Q. So is it correct looking at this chart that the RN -- the LPNs are direct supervisor of the CNAs. The RN unit managers supervise the LPNs, the assistant director of nursing supervises the RNs and you supervise everyone. Is that fair to say?

A. That's fair to say, yes, sir.

Q. As far as your supervisor, if I follow the arrow to the right it points to the administrator. Is the administrator your supervisor, your boss at the facility?

A. Yes, sir.

Q. Do you answer to anyone other than the administrator at the facility?

A. I answer to our medical director when we have meetings that are needed or questions going on in the facility.

Q. But in terms of the daily function and operation of the nursing department, is it Ms. Doyle that you answer to?

A. Yes, sir.

Q. You take directions from Ms. Doyle?

A. Yes, sir.

Q. I am sorry?

A. Yes, I do.

Q. I also see "director of admissions" in the center of the chart. Do you see that?

A. Yes, sir.

Q. Do you supervise the director of admissions?

A. I do not.

Q. That would fall under Ms. Doyle?

A. Yes.

Q. Role?

A. It is her role, yes.

Q. Who is the director today?

A. Kristin Herrscher.

Q. Does she work alone or does she have someone on her staff?

A. She has someone on her staff.

Q. Who is that?

A. Alejandra Burgos.

Q. How long has Ms. Herrscher been in that role of director?

A. I believe one year.

Q. Who preceded Ms. Herrscher in that position?

A. Elizabeth Moxam.

Q. Do you know why Ms. Moxam left the facility?

A. I believe she was let go, but I do not know the reason why.

Q. Going back to the unit, you said that 1 East has an RN during the day shift when you are on duty there?

A. Yes.

Q. Who is the unit manager on -- who

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has been the unit manager in 1 East from January to this summer?

A. Ms. Waller.

Q. You mentioned the medical director that sometimes you respond to as well. Who's the medical director at Fulton?

A. Doctor Butchma.

Q. Has he been at the facility as long as you have been working there?

A. Longer than I have been working there.

Q. I see under the second-to-last column on the right there's a listing, "director of housekeeping." Do you see that?

A. Yes.

Q. What is that, what is the role of housekeeping at the facility?

A. Housekeeping makes sure the units are maintained clean, they clean all the rooms, they take out the garbage, they take care of all the facility's needs.

Q. Who is the director of housing?

A. Mike Andrews.

Q. How long has he been the director of housekeeping at Fulton?

A. Four years.

Q. Four years?

A. Yes.

Q. How important is it during the pandemic that when a resident moves out of a room that housekeeping immediately cleans the room and the bed?

A. Extremely important.

Q. Why is that?

A. Because you want the room terminally cleaned so, you know, there's no possible infection within the room. So they terminally clean it. They take down the curtains, they take everything out of the room, and then nursing will approve once things are okay.

Q. What are the implications from an infection control standpoint if the bed and room are not thoroughly cleaned?

A. Then the person going into that room can catch an infection.

Q. Is it fair to say that whether a

resident moves into the room immediately or not, staff going in and out of that room -- were it not cleaned -- could potentially spread infection through the facility?

A. Yes, sir.

Q. I see also the same column that has housekeeping, I see, "director of social services" and below that it says, "social workers"? Who is the director of social services at Fulton?

A. I don't believe we have one at this point. We have two social workers and -- two-and-a-half social workers and a director -- a discharge planner.

Q. Was there, at any point, a director of social services at the facility?

A. Yes.

Q. Who was that?

A. Well -- the last one was Kameca Balan.

Q. When did Kameca Balan leave the facility?

A. In March of this year.

Q. Do you know under what

circumstances she left?

A. She sought another position elsewhere.

Q. You mentioned that currently you believe there are two social workers?

A. There are two social workers, yes. Luisa, L-U-I-S-A, Exiqidel, I'm not sure of that spelling, but it's E-X-I-Q-I-D-E-L, if I am not mistaken. And there's a new girl and I can't remember her name. If you give me few minutes I can think of it.

Q. But there are two social workers currently at the facility?

A. Yes, and then we also have another one, Arlene Fisher. She works three days a week.

Q. You also mentioned the discharge planner?

A. Yes.

Q. Why did you mention the discharge planner?

A. Because she is part of the social work team, she takes on the elements of

getting things together to be discharged home in a safe manner, she will do all of the supplies, she'll get the home care in place. The social workers are out of that aspect.

Q. Who is that discharge planner?

A. Patty Louden.

Q. You mentioned earlier -- was it a Steve Weiss you mentioned?

A. Yes.

Q. Is he the owner of the facility?

A. He is not. I believe he is the nephew of the owner.

Q. So as the nephew of the owner, what does he do at the facility, what's his role, if any?

A. He is just -- he oversees what's going on. He's appraised us of any kind of problems the facility's having, if it's mechanical, if it's -- he's appraised the DOH surveys coming to the building, he's appraised I would guess -- he told us of this subpoena. He's told about the overall what's going on as the administrator deems

necessary.

Q. You mentioned the administrator, is that Ms. Doyle?

A. Yes, sir.

Q. So Ms. Doyle speaks to Mr. Weiss concerning what's going on at the facility?

A. Yes. Any issues that she thinks he needs to be made aware of, she will tell him.

Q. To what extent do you have contact with Mr. Weiss?

A. I have very rare contact with him.

Q. Let's discuss the instances where you have had contact with him.

When have you had contact with him, and please tell me the nature of that contact?

A. I had contact with him when he came into the facility once when we were having an electric power outage, and he helped us get a generator.

I met with him when Ms. Doyle was out of the facility hospitalized. He

touched base with me and made sure that everything was okay and that I didn't need anything.

And in my four years, that was probably the only times I spoke to him.

Q. Those were occasions when you spoke with him face-to-face?

A. One was face-to-face when he came into the facility. The other two were by phone.

Q. Had you communicated with Mr. Weiss by any other way, e-mail or otherwise?

A. Only if I was attached to an e-mail with Ms. Doyle. But I don't respond, I just see what she writes.

Q. You mentioned that it's Ms. Doyle who speaks with Mr. Weiss then?

A. Yes.

Q. Do you know how they communicate with one another? Is it by e-mail, by phone, do they have meetings -- what is your understanding of how Ms. Doyle speaks to Mr. Weiss?

A. By e-mail or phone. I have never

seen a meeting with them.

Q. Do you know how often Ms. Doyle speaks with Mr. Weiss?

A. I know it's at least weekly unless something comes up.

Q. I am sorry, you said it's at least weekly?

A. Yes.

Q. Are you taking notes during this interview?

A. No, sir.

Q. Okay. I ask that you not.

You mentioned Mr. Weiss you believed to be the nephew of the owner?

A. Yes.

Q. Who owns Fulton Commons to your knowledge?

A. I don't know his name. I heard of it but it's off the tip of my tongue.

Q. In what context have you heard his name. How has the owner's name come up?

A. Ms. Doyle had just said Mr. Weiss is his nephew and he is the owner. I never met him or spoke with him.

Q. How would you describe your duties as the director of nursing? I know you have been the director of nursing now at two facilities, correct?

A. Yes.

Q. What is your responsibility as director of nursing?

A. I oversee the daily running of the nursing department. I ensure staffing is done correctly, that we have enough staff within the facility. I conduct audits for Ms. Doyle. I do numerous paperwork for the Department of Health as needed. I do statistics, I do in-services as needed.

Q. You said the daily operations of the nursing department?

A. Yes.

Q. So you're hands-on in the facility?

A. At times, yes.

Q. Well, you're physically in the facility essentially every day, correct?

A. Absolutely, yes.

Q. You have assistant directors of

nursing as well as nurses that provide you with information as to what's taking place on the units, correct?

A. Right. I make rounds two or three times during the time that I am in the facility. I'm make it first thing in the morning to make sure everybody is in place and they're all together. I make it if there's a problem and I make it before I leave to make sure the 3 to 11 staff is in place. And then I keep in touch with my supervisors, and they call me at home when needed.

Q. So you are very -- so that would suggest you are very closely involved with the daily operation of the facility?

A. Absolutely. Yes, sir.

Q. And when you say round, you physically walk to each and every unit every day?

A. Yes, sir.

Q. So you know what's happening on each and every unit every day?

A. Yes.

C. FRAWLEY

Q. To what extent if any, as the director nurse services, are you involved in developing policies and procedures that the facility uses?

A. I make the policies and procedures.

Q. You make Fulton's policies and procedures?

A. I create them, yes. And then I get them approved by Ms. Doyle.

Q. We will talk about that in a moment.

You said you supervise the unit managers?

A. Yes, sir.

Q. And you mentioned that you do your rounds every day, correct?

A. Yes, sir.

Q. Do they, in any way, have daily reporting to you? Do they come to you? Are they required every day to in some manner report to you?

A. We used to have 24-hour report meetings every day up until when the

pandemic started, and then we ceased them because we were not -- we had much more going on in the facility and we wanted to distance ourselves from each other. So we withdrew those meetings. But we have a 24-hour report that is given to me every day, I read it.

And the girls, the unit managers have -- I have a very big open-door policy. If there's any problem they can come down or they can call me on the phone.

Q. You described it as an "open-door policy." Staff -- including the unit managers -- can either speak to you or pick up the phone and call you with any issues on their units?

A. Yes.

Q. I would like to talk to you a little bit about admission and readmissions.

A. Okay.

Q. Who decides whether a hospital patient is going to be admitted to Fulton as a resident?

A. I do.

Q. Do you make that decision alone or do you make it conjunction with someone else?

A. Most likely I do it -- I review the PRI, and if I have no questions I accept the resident. If there's some questions about a skills need, I would ask my MDS coordinator to review it also.

Q. Okay. When you say you review the PRI, what does "PRI" stand for?

A. Peer review instrument.

Q. Where and how is that generated?

A. It's generated from the social workers in the hospital.

Q. What role, if any, does the administrator, Ms. Doyle play in determining whether to accept a patient from a hospital?

A. Ms. Doyle would get involved if I have a question of whether we can really handle the resident or not, if we have -- if we are equipped enough for him or I will go to her and I would ask her, and she will make the final decision.

Q. You mentioned earlier -- you

identified Ms. Herrscher as the admissions director?

A. Yes.

Q. To what extent is she involved as the administration director in proving you with the necessary information to make the decision?

A. She will give me the PRI, I will review it. Whatever questions I have, I write on this piece of paper she gives me. She goes back to that social worker, gets some answers, and the final decision is made.

Q. And when you say "the final decision is made," that final decision is made by you?

A. Yes.

Q. And does Ms. Herrscher print out the PRI?

A. Yes.

Q. The PRI or the data she might receive from all scripts and give it to you?

A. Yes, sir.

Q. Does she put it on your desk

physically?

A. Yes, sir. If I am there she will hand it to me physically.

Q. Does she come to your office and pick up the PRI and determine what you have indicated?

A. Yes.

Q. To what extent has the pandemic changed the procedure for determining which patients to admit from the hospital?

A. Can you repeat that?

Q. To what extent, if any has the pandemic changed this procedure by which you make determinations concerning hospital admission?

A. It really hasn't changed at all. I still accept everybody that I can.

Q. Once you make the decision as the director of nursing that this patient from this hospital is a suitable candidate to be admitted to Fulton, who make the decision as to which unit the resident will live on?

A. Well, in the beginning if it's a short-term rehab unit, they would have gone

to 1 East because that's our goal. The other units are usually our long-term units. However, during the pandemic, we designated 1 East for any resident that would come in as COVID positive. And any resident that was within the facility that was COVID or presumed COVID with go downstairs and that would be our isolated unit.

Q. At some point during the pandemic, 1 East became solely for COVID patients?

A. Correct.

Q. Putting that aside, that knowledge, in general when you have a hospital patient that is going to be admitted to Fulton, generally speaking who make the decision that Resident X is going to 3 East, 2 West --

A. That would be the director of admissions.

Q. Ms. Herrscher?

A. Yes.

Q. So she will physically make the placement on a particular unit after you've

approved the admission?

A. Yes.

Q. How about the rooms on the unit, who make the decision into which specific room to place the resident?

A. She does.

Q. You brought up 1 East as the unit for COVID residents during the pandemic, correct?

A. Yes, sir.

Q. During the pandemic, with respect to hospital admissions who made the decision as to where to place a particular incoming hospital patient?

A. Ms. Herrscher.

Q. So during the pandemic, if a patient was coming from a hospital and that patient was going to go either to a non-COVID unit -- meaning a unit other than 1 East -- or that patient was going to go on the COVID unit which you said was 1 East, that decision was left solely in the hands of Ms. Herrscher?

A. Yes. To some extent I was

involved if it was a COVID-positive resident coming from the hospital. I would make sure that there was no other -- we would put her in a single room for the 14-day period so no one else was exposed.

But most of our residents were not COVID positive, they would go to different units. We would discuss that, but she decided on the room.

Q. But if it was a COVID-positive patient coming from the hospital, they would be going to the COVID unit?

A. Correct. If one of our residents was suspected they would be moved down to the unit so it wouldn't infect anybody else on their unit.

Q. We will talk about that again in a moment.

A. Okay.

Q. When a patient comes in from a hospital being admitted to Fulton, who would inform the unit manager, the RN, that a patient from a hospital was going to be placed on their unit? Who would make

that -- who would provide that information?

A. Ms. Herrscher or her assistant would bring all of the paperwork to the unit and give them the entire PRI or whatever documentation came from the hospital so that they would be able to prepare for the resident's admission.

Q. Did that procedure change in any way during the pandemic?

A. No, except the fact that they had to wear PPE when they went into the unit.

Q. I didn't hear you.

A. They had to wear personal -- they had to use isolation gowns when they made it into the unit.

Q. So we have been speaking about hospital admission. I would like to ask you about transfers within the facility, bed transfers within Fulton.

Who has the authority within Fulton to transfer a resident from one unit or bed to another?

A. The social worker department would come to admissions and/or myself to

ask if they can move people to another unit for whatever reason there might be.

Q. Who has the authority, the decision-making ability at Fulton to say yes or no as far as a room transfer?

A. Either myself or Ms. Doyle.

Q. So that responsibility, in terms of transferring a resident within the facility, falls on either your shoulders or Ms. Doyle?

A. Yes, with the input of the admissions director also to make the final decision.

Q. The final decision comes from either you or Ms. Doyle?

A. Yes.

Q. What's the big board -- is there a large board in the admissions office that charts out or displays the resident rooms?

A. Yes.

Q. Can you describe the board for me and explain how you use it?

A. Okay, there's a big board hanging in the admissions office that has the seven

units and the 40 beds, whether they are a two-bedded room or a private room. And in each class is the names of the residents that are in that room.

Q. Does admissions use that board when they make decisions as to available beds on a unit to place a resident?

A. Absolutely, yes.

Q. To what extent do you use the admissions office board to assist you in making bed decisions?

A. If there's a room change, I would go into the office to see where I thought it would be best to transfer that resident to.

Q. You mentioned that -- I believe you say, and correct me if I am wrong, that on a hospital admission, the social worker or admissions, Ms. Herrscher, would notify the unit manager and provide paperwork concerning the incoming resident.

A. The admission director would do that, yes.

Q. What about room transfers if a resident was moved from 2 West to 3 East,

who would inform the unit managers as far as that transfer?

A. The social workers. They generate paper that says the resident is being moved from one room to the next room. And then they also make phone calls to the receiving unit to tell them they are getting the transfer.

Q. Did that policy change in any way during the pandemic?

A. No.

Q. What role, if any, do you play in deciding whether to discharge a resident out of the facility into a hospital?

A. I don't make that final decision but I am appraised to what's going on and I try to see if there's anything we can do to keep that resident from that transfer. And if not, I will speak to the physician and then we will decide if we are sending the resident out or not.

Q. You said you do whatever you can to keep that resident from having the transfer?

A. Yes. If there's nothing emergent and we can do IV fluids and antibiotics and things like that that they would be doing in a hospital, then we will try to keep the resident inhouse. However, if it's an emergency or something we cannot control and we think that they would be better handled in the emergency room, we would send them to the emergency room.

Q. To what extent, if any, did the pandemic change your policy with respect to hospital discharges?

A. We were advised if -- through the Department of Health that if we did not have to transfer to the emergency room, we should try to keep them in the facility. And that's what we did unless it was an emergency.

Q. Were there occasions that you recall during the pandemic when you determined that the resident ought not to be transferred and should remain at Fulton, and the resident's families reached out to you and indicated their disapproval and their

feeling that their loved one should be transferred to the hospital?

A. I never had an encounter like that, no.

Q. Okay. What role, if any, do you play as the director of nursing in deciding when to discharge a Fulton resident home to their family?

A. I don't play a role in that at all. That's between the discharge planner, the PT department to make sure it's a safe discharge, and the doctor.

Q. What documents do you regularly prepare in the course of your business duties as the director of nursing at Fulton? Are there any documents that you regularly complete or fill out in your role as director of nursing?

A. I give all of my numbers from the HERDS to Mrs. Doyle, she submits that. I do the census and matrix for the facility on a weekly basis just so that we are on top of the acuity of our residents.

Q. Let's talk about the data that

you give, the completion of the HERDS report. Is that the DOH HERDS report?

A. Yes, sir.

Q. Can you explain in your own words what that data is and what the HERDS report is used for?

A. The HERDS report, we give the numbers of our census to the Department of Health. And then we are reporting if we have any positive or presumed COVID cases, or any positive or suspected COVID deaths.

And then it has been updated to include all of the supplies we have in the building for our PPE in case there is a recurrence of the pandemic and what we use on a daily basis.

Q. Those numbers that you -- the presumed cases of COVID in the facility, you provide that information to Ms. Doyle and it's Ms. Doyle who uploads it for HERDS?

A. Yes, sir.

Q. So Ms. Doyle is getting that data, the COVID data, as well as the death data from you?

A. Yes, sir.

Q. You also mentioned separately a matrix, correct?

A. Yes, I do the census, which tells us exactly how many people have what in the facility, how many have ulcers or how many are on isolation. It's done by each unit manager pertaining to their unit. And I review those numbers to ensure that I have the proper staffing on those units and to ensure that the residents are being cared for. That's an internal document.

Q. Let's talk a little bit about that internal document. You mentioned the word "census." You keep track of admissions to Fulton, correct?

A. I keep track of -- excuse me, of what?

Q. Of admissions to the facility.

A. Yes. Yes, sir, I do.

Q. You also track discharges from the facility?

A. Yes, sir.

Q. And you described census -- is

that a numerical calculation of those residents that are, at any given time, within the facility?

A. Yes.

Q. It's a number of resident that are located at Fulton?

A. Correct.

Q. And is that tracked on a daily basis?

A. The census, yes.

Q. It's a written format?

A. It's in a form that's provided by the director of admission.

Q. Is that the daily census sheet?

A. Yes.

Q. Do you produce the daily census sheet?

A. Do I provide it.

Q. Do you prepare it?

A. Yes, I prepare -- let me -- can I explain what I do.

Q. Explain the process of how the daily census sheet is prepared and what you do?

C. FRAWLEY

A. What I do is I keep a written copy of it on my desk. And what I do is I start out with my daily numbers, and then I would continue on the 7 to 3 part of it anyone who is being transferred to another room, who was discharged home, or was sent to the hospital.

Then it gets passed along to the 3 to 11 and the 11 to 7 supervisors. They complete it for each of their shifts and then it's given to the admissions director and they'll make a hard copy and she send it to those people who work in the business office and whoever else needs it, Ms. Doyle, et cetera.

Q. So Ms. Herrscher would be the one who prepares the final report based on the data she was provided.

A. Yes.

Q. And it's distributed to the managers?

A. Yes, and to the business office.

Q. As far as stats being provided to Ms. Doyle from you, do you maintain any

facility stats other than the daily census sheets which are given to Ms. Doyle?

A. I do audits for Ms. Doyle. As far as stats that I give her we do in the facility regarding admission care.

Q. What is that, what kind of audit would you be preparing related to patient care?

A. I audit residents that have treatments that are done, if they are done correctly and in compliance with resident care. I do add-on pass statistics for Ms. Doyle, I do A&I for Ms. Doyle. I give her statistics on how many calls happen per month, their cause and their analysis, those type of audits.

Q. What about infection control analysis?

A. That's done by Ms. Chernofsky.

Q. Have you seen Ms. Chernofsky's reports or data concerning infection control issues at Fulton?

A. I have.

Q. Can you describe those for us?

A. She gives an overall view of how many nosocomial infections, those are infections that happened within the facility for that month. And then she gives an overall of the community acquired, those are those that come from the hospital. She will break them down into percentages on each unit, she will look at the cause, she will watch the antibiotics that are given, and she'll do a root analysis on how we can improve, if needed.

Q. And these report that is she prepares dealing with the infection control issues, are they give to you and Ms. Doyle?

A. The original is given to Ms. Doyle and I keep a copy.

Q. How often do you speak with Ms. Doyle during a typical workday?

A. Numerous, more than ten times.

Q. More than ten times a day?

A. But it's not necessarily having to do Fulton Commons. But we talk frequently.

Q. When you say not Fulton Commons,

you mean social you are friendly with her?

A. Inside the building, yes.

Q. So you characterize her as more than your boss, she is a friend?

A. Yes.

Q. You said you speak to her sometimes ten times a day. How many time does you actually meet with her face to face on any given day?

A. Two, three, maybe.

Q. Per day?

A. Yes.

Q. Do you sometimes -- when you are not meeting with her face to face, are you communicating with her by phone in the facility?

A. Yes.

Q. Are you also e-mailing her during the day?

A. Not during the day, no.

Q. Has your communications with Ms. Doyle changed in any way during the pandemic?

A. During the pandemic I spoke to

her much more frequently, even from home I would call her at night if I found out there was a death or someone had to go to the hospital, I appraise her of that not wait until the morning.

Q. I think you mentioned as well that you no contact -- withdrawn.

As far as the owner of the facility, you said you had no contact, correct.

A. Correct.

Q. As I recall, you say with Mr. Weiss you had very little contact, correct?

A. Correct.

(Whereupon, a lunch break was taken.)

MR. ZADEK: We will go back on the record. I will again note, my name is Peter Zadek, I am the special assistant attorney in the New York State attorney general's office.

We are going to -- after a ten-minute break -- resume testimony,

resume this hearing. I just ask that any other individuals participating in this virtual hearing, please note for the record your presence.

MR. JOYCE: Investigator Robert Joyce.

MS. SEKHON: Special assistant attorney general Prabhjot Sekhon.

MS. LIPTAK: Anne Liptak, paralegal.

MR. SMITH: Special assistant attorney general Ben Smith.

MS. PICONE: Auditor investigator Barbara Picone.

MR. ZADEK: I believe everyone is back.

Q. Let's continue, Ms. Frawley.

You mentioned that you have -- you mentioned the Department of Health, I assume with respect to your years of experience in the nursing home field you had significant contact with the New York State Department of Health?

A. Yes, sir.

C. FRAWLEY

Q. During the pandemic, did you receive alerts from the Department of Health that concerned COVID?

A. Yes, sir.

Q. Let's bring up, if we could, what's deemed marked Frawley Exhibit 11. Are you able to see this document?

A. I am.

Q. It's a two-page document, and if we start at the top, right there on the screen, do you see where it says, To [redacted]?

A. Yes.

Q. Is that your e-mail address?

A. Yes.

Q. What is "BVNH"?

A. Bridge View Nursing Home.

Q. What is Bridge View Nursing Home in relation to Fulton Commons?

A. That's the main office where all the -- where Mr. Weiss works. It's also a nursing home, it's one of the four nursing home that is under our sistership. But that's like the main office.

C. FRAWLEY

Q. When you say, "the sistership," how many nursing home are involved in this sistership?

A. We have four of us.

Q. What are the four nursing home?

A. Midway in Queens; Bridge View Nursing Home, which I did, is also in Queens; Mayfair, which is in Hempstead; and ourselves.

Q. Are they all owned by the same owner?

A. Yes, sir, to my knowledge.

Q. Does Mr. Weiss oversee all of these nursing home, to your knowledge?

A. I am believe so, I am not sure.

Q. This e-mail from the Department of Health, correct?

A. Yes.

Q. It's dated March 9, 2020?

A. Correct.

Q. It says in the subject line it's an alert concerning COVID-19 reporting requirements for nursing homes, correct?

A. Yes.

C. FRAWLEY

Q. If we -- this is early March, March 9, correct?

A. Correct.

Q. It deals with the HERDS survey, correct?

A. Yes.

Q. It talks about the HERDS survey and then, towards the middle page there, it says questions on the survey will include information to assess and then there's a colon, correct?

A. Yes, sir.

Q. And if we scroll down a bit, it says, "The survey will include information pertaining to total capacity, total inhouse census, number of residents with suspected COVID-19, confirmed COVID-19, number of residents who were tested for COVID-19 with negative results," and then below that it says, "number of residents on isolation while tests pending," it says, "quarantine," and then it says, "hospitalized," correct?

A. Yes, sir.

Q. These are some of the areas that

you have already mention today, correct?

A. Yes.

Q. You were providing -- you were providing, if I understand correctly, Ms. Doyle with data to be provided to DOH that pertains to COVID-19, residents at the facility with COVID-19, testing for COVID-19, and the isolation or quarantining of resident, which you mentioned as 1 East, correct?

A. Yes.

Q. This was information, is it fair to say, that the Department of Health required be disclosed during the pandemic?

A. Yes.

Q. Let's talk a bit about that. I would just ask you whether or not -- withdrawn.

Did there come a time when a Fulton resident exhibited symptoms and was presumed to be COVID-19?

A. Yes.

Q. During this pandemic, there were many residents who exhibited symptoms

consistent with COVID-19, correct?

A. Yes.

Q. When was that when the first Fulton resident exhibited symptoms that is were consist with COVID-19?

A. I believe in March. I don't know the exact date, but in March.

Q. Of this year, 2020?

A. Yes.

Q. When in March, beginning of March, middle of March?

A. Middle of March.

Q. Who was the resident who exhibited symptoms consist with and presumed to be COVID-19?

A. Mr. Zadek, I don't remember the name. I can look it up, but really I don't remember the name.

Q. Do you recall if it was a man or a women?

A. I believe it was a women.

Q. What treatment, if any, was administrator to this resident who exhibited symptoms consist with COVID-19?

A. The protocol of that first one was Zithromax IV and vancomycin IV antibiotics, and they were taking their temperatures every shift. They were taking their O2 saturation, and they were put on isolation.

Q. So it's an antibiotics regimen?

A. Yes.

Q. And that was March of 2020?

A. Yes.

Q. Was this information concerning the presumed COVID resident conveyed to Department of Health?

A. It was through the HERDS, yes.

Q. Was there any correction of change in treatment for Fulton residents who were presumed to be COVID-positive?

A. As the pandemic kept going on the medical director would make changes as to what the protocol was -- Dr. Butchma, who is our medical director, would advise myself and Ms. Doyle of the protocol to be used for residents who were presumed COVID. We used IV antibiotics, then she added Plaquenil to

it, and at that point we also added Lovenox so that no one would form blood clots.

Q. Okay, the term "Plaquenil," that's hydroxychloroquine, correct?

A. Yes, sir.

Q. So at some point there was a correction from antibiotic to the hydroxychloroquine and then the Lovenox as well?

A. Yes, and then when the Plaquenil went out of stock we went back to the IV antibiotic therapy.

Q. How many residents were treated without hydroxychloroquine at the facility?

A. Without hydroxychloroquine? I don't know.

Q. How many presumed COVID residents were treated without the hydroxychloroquine?

A. I don't know that number.

Q. Approximately?

A. Thirty to 50. I am not sure.

Q. During what period -- when was it that you were treating these residents without the Plaquenil?

C. FRAWLEY

A. April and May, when it was out of stock.

Q. How many resident were treated with Plaquenil?

A. I am sorry, I didn't hear you.

Q. How many residents were treated with Plaquenil?

A. I don't know the exact number, but probably 30 of them.

Q. What period was that?

A. That was --

Q. That resident were treated with Plaquenil?

A. Probably March, very beginning of April.

Q. When was the first patient admitted from a hospital with COVID?

A. I believe March 31.

Q. Who was that patient?

A. I don't recall the name.

Q. Was it a man or a women?

A. It was a female, I don't recall the name.

Q. How many suspected or confirmed

cases of COVID were at Fulton between March 1 and June 1 of this year?

A. I believe they were all suspected, and I believe there were 40 of them.

Q. So between March 1 and June 1, there were 40 presumed cases of COVID in the facility?

A. To the best of my knowledge, yes. And then we had admissions from the hospital.

Q. How many separate admission from the hospital of COVID patients?

A. I believe we had 21 from the hospital.

Q. Is it your testimony that approximately 61 COVID residents or presumed COVID residents were in the facility between March 1 and June 1 of this year?

A. To the best of my knowledge, yes.

Q. Why do you think there were so many COVID-19 cases at Fulton?

A. I have -- there are very fragile population and I have no idea why we had so

many cases.

Q. Let's take a look at what is being deemed Exhibit 12. Looking at what's deemed marked Exhibit 12, the one-page document, do you see that?

A. Yes, sir.

Q. If we scroll down -- well, stay at the top here for a moment. It says from Larissa.ronayne. Is that the Ronayne you mentioned earlier?

A. Yes.

Q. And that's an e-mail from her to you dated June 16 of this year, correct?

A. That's what it says, yes.

Q. And it indicates that there's an attached document, do you see that, under the subject line?

A. M-hmm.

Q. So you see next to attachments, it says, "FCCC." Is that Fulton Commons Care Center?

A. Yes.

Q. And it says, Fulton Common Care Center Residents With COVID.

C. FRAWLEY

Do you see that heading?

A. I do, yes.

Q. If we scroll down to the bottom of the page, we see here that the original e-mail looks like it came from Cathie Doyle and it was sent to Steven Weiss, correct?

A. Yes.

Q. And it was the same day, June 16, 2020, correct?

A. Yes.

Q. And it says that 23 and 34 were inhouse residents that were suspected COVID.

A. Yes.

Q. So who were these residents?

A. I am assuming they were residents in our facility. I don't understand what the 23 and 34 were inhouse. I don't know what that means.

Q. So you don't know who the individuals are that are referenced here?

A. No, I don't.

Q. Let's take a look at the attachment, Exhibit 13 deemed for identification. This is the attachment.

This is Exhibit 13 which is the attachment to Exhibit 12, the e-mail we just looked at. If we look at the top here, this document is entitled residents with COVID-19. Do you see that?

A. Yes, I do. Under "Fulton Common Care Center."

Q. Do you recall receiving this document looking at the e-mail?

A. I do remember this attachment, yes.

Q. Do you see it indicates, Residents treated for virus without Plaquenil?

Do you see that?

A. Yes, I do.

Q. And it lists -- if you scroll down it lists 23 residents, correct?

A. Yes, sir.

Q. When did you say the Plaquenil treatment was given?

A. March and beginning of April.

Q. When did you indicate that the first resident was identified as or presumed

C. FRAWLEY

to be COVID with within the facility?

A. I believe beginning of March, I think. Middle of March, I said, excuse me.

Q. If we look at the first name, Resident #47 , do you see that?

A. Yes, I do.

Q. It indicates she expired on March 16, correct?

A. Yes.

Q. So she was being treated for COVID in the facility and she had a date of death of March 16?

A. Yes, sir.

Q. And all these 23 residents, they were all receiving treatment in March and April, is it fair to say for COVID?

A. To the best of my knowledge, yes.

Q. Below that it says, "Residents treated for virus with Plaquenil," correct?

A. Yes.

Q. And we have, if we scroll down, we have 33 separate individuals, correct?

A. Yes.

Q. If we scroll a bit on this page,

we see "Residents admitted from the hospital with COVID."

A. Yes, sir.

Q. And we see the first name listed as Resident #48 ?

A. Yes.

Q. Is that the individual you were referencing before?

A. Yes, sir. I didn't remember her name but it was a women, that's all I can remember.

Q. I'm sorry, you broke up.

A. I remembered it was a women, I just could not remember her name.

Q. Does that refresh your recollection?

A. Yes, sir.

Q. So to your knowledge, as you sit here today, to your believe, was Resident #48 the resident who was initially admitted from the hospital with COVID?

A. Yes, sir.

Q. You said earlier that -- I want to go to the last page.

C. FRAWLEY

The last page of Exhibit 13 provides us with a total of COVID hospital admissions, correct?

A. Yes, sir.

Q. Forty-six, correct?

A. Yes, sir.

Q. You said a moment ago that between March and June you were aware of -- I believe you said 40 admissions -- 40 residents with COVID as well as 21 hospital admissions with COVID, correct?

A. Yes.

Q. Which would bring you to a number of approximately 61, correct?

A. Yes, sir. But it was higher than that.

Q. I didn't hear you, you broke up. It was higher?

A. Yes, it was higher. I am not good -- I don't remember the all numbers but I do know it was higher than the 61.

Q. Well, if we -- in looking at, as we have just done, the e-mail that you received from Ms. Ronayne which has been

received from Ms. Doyle, that would suggest that the number was much higher than you thought. That indeed, the number of COVID residents either from the hospital and/or inhouse was over 100, approximately 102 residents, correct?

A. Yes, sir. But they were not -- to my knowledge, they were not positive COVID cases, except for the ones from the hospital. The rest were all presumed. I do not recall any doctor writing that it was a positive COVID case.

Q. Do you remember, though, in discussing Exhibit 13 as well as Exhibit 12, the e-mail that contained the chart, do you recall that that e-mail had a subject line of Fulton Commons Residents With COVID-19?

A. It did say that from Ms. Ronayne, yes.

Q. And do you recall that the chart that you just looked at did not indicate residents with suspected COVID, but the chart that out lines these 102 resident is entitled residents with COVID-19.

C. FRAWLEY

Do you recall that?

A. Yes, sir.

Q. So when you said a moment ago that you had some question as to whether or not the residents as you stated from the hospital were identified COVID-19 versus presumed COVID-19, you are referring to the methodology by which to identify the residents, correct?

A. Yes.

Q. And the accurate way, from a medical or nursing standpoint, to identify any disease is testing, correct?

A. Yes, sir.

Q. So you had your first presumed COVID case in March, correct?

A. Yes.

Q. And you also had apparently your first confirmed COVID admission from a hospital in March, correct?

A. Yes.

Q. In March of 2020, being aware of COVID now within the facility, did you begin testing all of the Fulton resident for

COVID?

A. Not in March, no.

Q. Why?

A. We got a directive from the governor on March 21 that the nursing home resident were not to be test and Ms. Doyle did not -- did not give the directive to test.

Q. Let's break that down. You are referencing a Department of Health guidance from March 21?

A. Yes, sir. Yes.

Q. Let's talk about prior to that when you first became aware that the pandemic had entered Fulton, you could have tested or sought testing earlier than that Department of Health guidance, correct?

A. We could have, yes.

Q. And you did not, correct?

A. I did not, no. I was under -- I was taking the directive from my administrator and my medical director.

Q. You mentioned Ms. Doyle?

A. Yes.

C. FRAWLEY

Q. How did you become aware from Ms. Doyle that there would be no testing in March?

A. She told me, as well as Dr. Butchma told me, we were not testing.

Q. In March, did you at least test those residents who were exhibiting COVID symptoms?

A. No, sir, we did not.

Q. Why?

A. I have no idea. We were not testing the residents. We did not test them at all until later on in the pandemic.

Q. If that directive -- was that decision your's or Ms. Doyle's?

A. Ms. Doyle's.

Q. In April, did you test all of the Fulton residents for COVID?

A. I am not sure of the date, but we did blood testing for SARS of all of the residents in the facility.

Q. Okay, well first of all, the SARS test, is that what's commonly referred to as an antibody examination or test?

A. Yes, sir.

Q. Okay. It's not the test for the COVID-19 virus, correct?

A. Correct.

Q. In April, did you test every single resident at Fulton for COVID?

A. Only through the antibody, not through the nasal swab, no.

Q. No, I'm talking about the actual COVID test.

A. No.

Q. Why?

A. Under the direction of Ms. Doyle, my medical director, we were instructed not to test.

Q. Did you at least test in April those resident who were exhibited COVID symptoms?

A. No, sir, they were not tested.

Q. And that directive came from Ms. Doyle?

A. Yes, and my medical director.

Q. Were there any Fulton staff members in April who suggested to you that

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it was imperative that you begin testing for COVID in the facility?

A. No employee came to me, no.

Q. As the director of nursing with the number of years of experience that you have, did you consider that lives might be saved if you tested residents for COVID and then immediately began treatment?

A. I knew the test would be helpful, but I was told, again, by my administrator and the director -- and my medical director that we would not be testing, that we would only be treating as a presumed case.

Q. Let me repeat the question.

As the director of nursing services, did you consider, yourself, that lives might be saved if you tested residents for COVID and began treatment?

A. Yes, sir.

Q. In May, did you test all Fulton residents for COVID?

A. No, sir.

Q. Why?

A. I was following the directive of

my administrator.

Q. Ms. Doyle?

A. Yes, sir.

Q. In May, did you test those residents who were exhibiting COVID symptoms?

A. No.

Q. And that decision was made by Ms. Doyle?

A. Along with my medical director, yes.

Q. Between March 1, 2020 and June 1, 2020, how many Fulton residents died at the facility?

A. I believe close to 70, if I am not mistaken. I am not sure of the number, it was 70 at least, I believe.

Q. Total deaths?

A. Yes, sir.

Q. Why do you think there were so many deaths at Fulton during this period?

A. I don't know the reason. I just know they are very -- the elderly people were very fragile with many comorbidities

and, you know, we treated them with whatever we could. But we were told to by their physician, and some of them just couldn't fight.

Q. Between March 1, 2020 and June 1, 2020, how many Fulton residents died as a result of COVID at the facility?

A. I believe that's the same question you just asked. I believe 70.

Q. No, my question was actually, between -- let me repeat the first question.

Between March 1 and June 1 of this year, how many total residents died at Fulton? How many deaths were there at the facility? You said that you maintain significant stats, so to the best of your recollection, what were the total number of deaths within the confines of the building?

A. Total number of deaths, I would say, were close to 95.

Q. So it's your testimony that of those 90 to 95 deaths, 70 of those deaths were as a result of COVID?

A. Presumed COVID, yes.

C. FRAWLEY

Q. Did Ms. Doyle, as the administrator, implement any protocols at Fulton that were in direct response to the coronavirus pandemic?

A. We put protocols in place for tracking our residents. We put vital signs, we did things to keep, you know, the drugs for the residents. She also put protocols in place for staff also.

Q. Is it your belief or statement that Ms. Doyle had implemented a monitoring program of residents?

A. Yes, sir, along with nursing.

Q. When you say along with nursing, you mean monitoring the vital of staff?

A. Staff and residents, yes.

Q. And that protocol or those protocols, were they in writing or verbal?

A. They're in writing.

Q. Did you, as director of nursing, implement any nursing protocols that were in direct response to the coronavirus pandemic?

A. We put protocols into place for visitation, for stopping activities, keeping

residents in their rooms, keeping employees on their units so they would not be floating to other units.

We would not transfer residents unless it was an emergency at that point. Any resident that needed to go out would be wearing a mask when they left the facility.

Everybody that came into the facility had their temperature taken, forms were filled out to ensure that they weren't exposed or could expose anybody in the building to COVID.

Q. So those were all initiatives or protocols that you implemented in the facility in response to the coronavirus?

A. Yes.

Q. And that was as your role as the director of nursing?

A. Yes, sir.

Q. Were those protocols you mentioned in writing?

A. Yes, sir.

Q. I would like to talk to you a bit about rules and regulations within the

nursing home field.

If we can look at exhibit, what's been -- what will be marked as Exhibit 3. So Exhibit 3, Ms. Frawley, is a 30-page document.

Are you able to see that on your screen?

A. I can see the highlighted yellow.

Q. Yes, I highlighted it to make it a bit easier. I don't know if we can enlarge it.

A. Oh, I can see it now.

Q. There you go. I'll read it and you'll tell me if I am reading it correctly.

Have you heard the New York codes, rules, and regulations?

A. Yes.

Q. This is Title 10, Section 415.26 entitled, Organization and Administration. And if we look on this first page of this 30-page document, Exhibit 3, it says at the top, Organization and Administration. And then it says, "A nursing home shall be administered in a matter that enables it to

use its resources effectively and efficiently to attain or maintain the highest practicable, physical, mental and psychosocial well-being of each resident."

Do you see that?

A. Yes, sir.

Q. As the director of nursing, would you agree that a nursing home is required to do just that, maintain the various level of care for the psychosocial well-being of each resident?

A. Yes, sir.

Q. All right. And if we can scroll to page 24 of the document. And now we're looking at page 24 of Exhibit No. 3.

It says on this page 24, does it not, there's a heading called, Admission Policy and Practices, and then it says, "The nursing home shall --"

Do you see that?

A. Yes, sir.

Q. Well let's then turn to the next page, page 25.

And it says, "the nursing home

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shall -- " and under No. 2 -- "shall accept and retain only those nursing home residents for which it can provide adequate care."

Do you see that?

A. Yes, sir.

Q. Is that something that you, as the director of nursing and someone who actually has been an in-service coordinator, is that something that you impart to your staff members?

A. Yes, sir.

Q. What is "adequate care"? What does that mean, that a nursing home should only accept residents that it can provide adequate care to? What does that mean, what is adequate care"?

A. It means that we can maintain the and make -- it says we should accept residents that we can maintain in the same status they came in for them to get better by giving them the right medications, the right care, the right treatment, and the right well-being of their mind.

And hopefully, if they are coming

for short term, being able to discharge them back home. Or if they're staying for long term, making their home, as a nursing home, as comfortable as possible.

Q. Okay. And if we go back to page 27 of the document, and you see I've highlighted and I will read it to you.

"The nursing home shall -- " under No. 7 -- "apply the following restrictions to the admission and retention of residents -- "

And then under Letter "D" it says, "A resident suffering from a communicable disease shall not be admitted or retained unless a physician certifies in writing that transmissibility is negligible and poses no danger to other residents, or the facility is staffed and equipped to manage cases without endangering the health of other residents."

Do you see that?

A. Yes, sir.

Q. So let me first of all ask you, what's a communicable disease?

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A. Any disease that can be transmitted easily between one person to another if no infection control protocols are followed.

Q. Would you agree that the coronavirus is a communicable disease?

A. I do.

Q. I think you just mentioned that infection control protocols are -- I think you just inferred -- means by which to control that, the transmission and spread of such a virus, correct?

A. Yes, sir.

Q. It also says that, "The facility should not accept residents if it can't manage cases without endangering the health of other residents," correct?

A. Yes, sir.

Q. If we can now get Exhibit 4.

Since you mentioned, Ms. Frawley, that dealing with communicable diseases, infection control protocols must be in place?

A. Yes, sir.

C. FRAWLEY

Q. Are you familiar, as the director of admissions, with the guidances that CMS -- when I say "CMS" I mean Centers for Medicare & Medicaid Services -- and DOH -- when I say "DOH" I mean the New York State Department of Health?

A. Yes, sir.

Q. Are you aware that they periodically provide guidances to nursing homes concerning the coronavirus?

A. Yes, sir.

Q. If we look here at Exhibit 4, we see here that this guidance is a three-page exhibit. It's from the Department of Health and Human Services, correct?

A. Yes.

Q. It's from CMS and it's dated February 6, correct?

A. Yes, sir.

Q. And the subject of this guidance is, Information For Health Care Facilities Concerning 2019 Novel Coronavirus Illness, correct?

A. Yes.

C. FRAWLEY

Q. And then under the Health Care Facility Expectations in the middle of the page it says, "CMS strongly urges the review of CDC guidance and encourages facilities to review their own infection prevention protocol policies and practices to prevent the spread of infection," correct?

A. Yes, sir.

Q. Would you agree with that, that staff and the facility should be familiar with both the CMS guidances, as well as their own policies and procedures?

A. Yes, sir. Yes.

Q. Below that it says, "The Centers For Medicare & Medicaid Services (CMS) is committed to the protection of patients and residents of health care facilities from the spread of infectious disease.

"Every Medicare participating facility in the nation's health care system must adhere to standards for infection prevention and control."

Do you see that?

A. Yes, sir.

C. FRAWLEY

Q. Do you agree with that requirement, that every facility and its staff adhere to proper infection control?

A. Yes, sir.

Q. Below that, the last sentence of that second-to-last paragraph, it says, "Facilities must take steps --" I don't know if you can see that, right there.

"Facilities must take steps to prepare, including reviewing their infection control policies and practices to prevent the spread of infection."

Do you see that?

A. Yes, sir.

Q. At the very bottom of the page it says, right above the second-to-last line of the page it says, "Patients expect quality care from their health care providers."

Do you see that?

A. Yes, sir.

Q. Would you agree with that?

A. Yes, sir.

Q. Would you agree that those residents, particularly during this

pandemic, who entered Fulton and came under your care as well as your entire nursing staff had the right to expect that the care they would be receiving would be quality care?

A. Absolutely, yes.

Q. Okay. And again, finally, if we go to the second page, the next page at the top, the first full paragraph. Do you see where it says, "To ensure health and safety, CMS also expects health care staff and surveyors to comply with basic infection control practices."

A. Yes.

Q. All right. So let's move on now to Exhibit 5. And we'll take just a quick look at Exhibit 5, which is a four-page exhibit. And again, we're just going to talk very briefly about a few of the provisions.

Exhibit 5 is dated March 4th, correct?

A. Yes, sir.

Q. And again, it's from the

Department of Health and Human Services and its subject matter is, Guidance For Infection Control and Prevention of Coronavirus in Nursing Homes, correct?

A. Yes, sir.

Q. If we go to the bottom of the page, we see under "Guidance" if we scroll down a bit towards the bottom, it says, second or third line in.

It says, "Per CDC, prompt detection, triage and isolation of potentially infectious patients are essential to prevent unnecessary exposure among patients, health care personnel, and visitors at the facility.

"Therefore, facilities should continue to be vigilant in identifying any possible infected individual."

Do you see that?

A. Yes, sir.

Q. Now, when the CDC talks about the importance of isolation, is that what you referenced earlier about your isolation of COVID residents on a separate unit?

A. In the beginning when the doctors had a presumed case of COVID, the residents would remain in their own rooms. And if they had a roommate they were put on droplet precaution and monitored and kept in isolation, as well, in the unit.

When we started testing the residents and then they became a positive case through a nasal swab, that's when they were moved down to the isolation unit of 1 East.

Q. Well, there was -- is it fair to say that 1 East was, I believe you said that 1 East was converted to a -- well, we'll talk about it in a moment, was converted to a designated area for COVID patients?

A. Yes, sir.

Q. Was that -- the conversion of 1 East, I believe you said it was from a -- was it subject to care and it was converted to a COVID unit?

A. Yes, sir.

Q. Was that designed to isolate those residents from the other residents in

the facility?

A. Yes, sir, as well as to take in new residents from the hospital.

Q. That were COVID positive?

A. Yes, sir.

Q. And if we go to the second page of Exhibit No. 5, we see it says at the top here, on the second line, "Facilities should maintain a person-centered approach to care. This includes communicating effectively with patients, patient representatives, and their families."

Do you see that?

A. Yes, sir.

Q. Can you explain your understanding of that? What importance, if any, there was in keeping families of residents fully informed as to what was happening in the facility?

A. Our physicians, with any change of condition of the resident, made phone calls to the families to inform them of what was happening and what they were doing to care for their loved ones.

Ms. Doyle also communicated to the families through letters and robocalls of what was happening within the facility so they would remain -- they would know what was happening as far as how we were handling the situation.

Q. Okay. So is it fair to say that keeping the families fully apprised of what was happening within the facility during the pandemic was extremely important?

A. Yes, sir.

Q. If we go to the next page, page 3 of this four-page document on Exhibit 5. In the middle of the page, there's a heading, When Should Nursing Homes -- I meant the next section, right there. Scroll down a bit.

It says, When Should a Nursing Home Accept a Resident Who is Diagnosed With COVID-19 From a Hospital?

Do you see that?

A. Yes.

Q. And it says, "A nursing home can accept a patient diagnosed with COVID-19 and

still under transmission-based precautions for COVID-19, as long as it can follow CDC guidance for transmission-based precautions."

Is that what you were just referring to when you said you took COVID patients from the hospital but they were isolated on their own unit?

A. Yes, sir.

Q. To keep them away from potentially non-COVID residents at the facility?

A. Yes, sir.

Q. Okay. And then below that, under Note, it says, "Note: Nursing homes should admit any individuals that they would normally admit to their facility, including individuals from hospitals where is a case of COVID-19 was or is present."

Does that refer to what you had said, that you were accepting hospital patients even if they were presumed or actually COVID?

A. Yes, sir.

C. FRAWLEY

Q. And now if we move to Exhibit No. 6, which is a six-page document, but we're only going to talk about just a bit of it.

Exhibit 6, once again, is a CMS bulletin, correct?

A. Yes.

Q. It's dated March 13, 2020. And, in fact, it indicates in red letters that this is a revision, a revised bulletin. And if we go to the fourth page, we see there's a heading towards the bottom that says, When Should a Nursing Home Accept a Resident Who Was Diagnosed With COVID-19 From a Hospital? And if we go to the next page, under the note, I'll read it to you.

It says, "Nursing homes should admit any individuals that they would normally admit to their facility, including individuals from hospitals where a case of COVID-19 was or is present.

"Also, if possible, dedicate a unit or wing exclusively for any residents coming or returning from the hospital. This

can serve as a step-down unit where they can remain for 14 days with no symptoms instead of integrating as usual on short-term rehab floor or returning to long-stay original room."

Do you see that?

A. Yes, sir.

Q. Is that exactly what you were describing at Fulton, that there was a dedicated unit to accept hospital admissions -- COVID hospital admissions so that they would not be exposing other residents in the building?

A. Yes, sir.

Q. I think you also mentioned that COVID -- presumed COVID or COVID residents at Fulton were also moved into that unit as well?

A. Right. Yes, sir.

Q. So that was to essentially put a bubble around these individuals so that there would be no contact between them and non-COVID residents, and therefore avoid transmission of the disease?

A. Yes.

Q. Okay, thank you.

And now we're going to take a quick look at Exhibit 7, and that's a three-page document. And this is also, once again, from CMS. And it's entitled, COVID Long-Term Care Facility Guidance. It's dated now April -- now we're to April -- April 2, 2020.

If we go to the next page, page 2 of Exhibit 7, and we look at No. 5 on the page. And we see that it says there, "To avoid transmission within long-term care facilities, facilities should use separate staffing teams for COVID-19-positive residents to the best of their ability and work with state and local leaders to designate separate facilities or units within a facility to separate COVID-19 negative residents from COVID-19 positive residents and individuals with unknown COVID-19 status."

Do you see that?

A. Yes.

Q. The second part of that statement is what you were just discussing, right, that there was an effort made at Fulton for infection control to separate the COVID presumed or actual COVID-positive from COVID-negative, correct?

A. Yes, sir.

Q. They also say -- they also talk about using separate staffing teams.

Did you follow that guidance at Fulton?

A. Yes, sir. The team that was on 1 East was the team that remained on 1 East and they were not close to any other units in the facility.

Q. They only worked on 1 East?

A. Yes, sir.

Q. So they were only caring for COVID residents?

A. Yes, sir.

Q. And that was, again, to protect the safety of non-COVID residents?

A. Yes, sir.

Q. Okay. And finally, if you flip

the page and we go to page 3 of Exhibit 7. This might address what you were just talking about.

At the top of the page it says, "Staff, as much as possible, should not work across units or floors."

Do you see that?

A. Yes, sir.

Q. And then below that there's a bullet point that says, "Long-term care facilities should separate patients and residents who have COVID-19 from patients and residents who do not, or have an unknown status."

That is also what is you just discussed.

A. Yes.

Q. Finally, under No. 2 there, it says under No. 2, "COVID-19 positive units and facilities must be capable of maintaining strict infection control practices."

And then under No. 1 it says, "Facilities should exercise consistent

assignment or have separate staffing teams for COVID-19 positive and COVID-19 negative patients."

And again, what you were just referring to, in terms of your using staff only for COVID positive residents?

A. Yes.

Q. If we look at the last guidance here, which is Exhibit 8.

This next Exhibit No. 8, Ms. Frawley, is not from CMS. The exhibit is from the New York State Department of Health, DOH, correct?

A. Yes, sir.

Q. It's dated March 13, 2020. It's from the New York State Department of Health Bureau of Health Care Associated Infections.

If we go to the bottom of this bulletin, the very bottom of the page, we see that it says, the heading is, If There Are Confirmed Cases of COVID-19 in a NH or ACF -- so "NH" would be nursing home, correct?

A. Yes.

C. FRAWLEY

Q. And "ACF" would be adult care facility?

A. Yes, sir.

Q. If we look at that heading, If There Are Confirmed Cases of COVID-19 in a Nursing Home Or Adult Care Facility, and we go to the next page, page 5.

It says -- and this, again, is from New York State. It says under No. 5, "Do not float staff between units. Cohort residents with COVID-19 with dedicated HCP and other direct-care providers."

Do you see that?

A. Yes, sir.

Q. What does that mean, the sentence, "Cohort residents with COVID-19 with dedicated HCP and other direct-care providers"?

A. That means you can put all the resident with COVID-19 on the same unit. They could be cohorted in the same room with the same staff to take care of them.

Q. So again, it's a total isolation of the COVID residents and the staff from

anyone else?

A. Yes.

Q. Okay.

Now, Ms. Frawley, we can continue for another 20 minutes or we can take a 10-minute break. What's your feeling?

A. We can continue. I'm fine.

Q. Okay, let's push forward then.

You indicated that you actually have a great deal of experience yourself in in-service education, correct?

A. Yes.

Q. We can remove this exhibit.

Do you actually or have you actually, yourself, received in-service training while at Fulton?

A. Yes, I attended just like every other member of the team.

Q. Even though you are the director of nursing, you receive the same in-services as the other staff members?

A. Yes, every year.

Q. Since the outbreak of the pandemic, have you been in-serviced on the

coronavirus?

A. Yes.

Q. If we look at Exhibit 9, marked as 9 for the purposes of this hearing -- can you see that?

A. I can.

Q. This looks like a sign-in sheet, does it not?

A. Yes, it does.

Q. And it looks like an in-service dealing with coronavirus, correct?

A. Correct.

Q. So this would be an in-service from this year that related to the coronavirus, correct?

A. Yes.

Q. And I see here, the second name and signature on this sheet is yours, under Carol Frawley, correct?

A. It is.

Q. So you attended this in-service on the coronavirus this year?

A. Yes, sir.

Q. Let's scroll down to the bottom.

We go through the names, and then if we go to the bottom at the end of the page further down, there's nothing at the bottom of the page.

What was the date of this in-service?

A. Mr. Zadek, I don't know. I do not know.

Q. As an in-service -- as director of nursing as well a prior in-service coordinator, was there any importance in documenting when in-services were given to staff?

A. They should always be documented.

Q. So this in-service signature sheet doesn't provide any information of when it was given, correct?

A. Correct.

Q. But we know it was given during the pandemic, correct?

A. Correct.

Q. Who gave this instruction?

A. I believe that's my assistant director of nursing who gave it.

C. FRAWLEY

Q. Who would that be?

A. Lisa Peterson.

Q. But it's not noted anywhere on this sheet, is it?

A. Well, not -- no, I don't know if she signed it at top.

Q. We can look at the top and you can tell me if you see Linda [sic] Peterson's name anywhere on this sheet.

A. Yes, Lisa is right after my name.

Q. Okay, but that doesn't indicate -- that's a signature on the sign-in sheet. It doesn't indicate she instructed the class, does it?

A. No.

Q. And -- go ahead.

A. But to the best of my knowledge, I believe she did do the in-service, but I don't remember.

Q. What topics were covered during this in-service?

A. I believe it was the type of personal protection equipment that was needed, what type of residents we would be

taking in or we would be considering. We were talking about keeping residents in their rooms, taking precautions, making sure that the staff did handwashing, making sure the staff were wearing their proper equipment and disposing of the proper -- the proper way of disposing things.

Q. So it covered a lot of areas that you already discussed pertaining to, among other things, infection control?

A. Yes.

Q. Okay, we can take that off the screen now.

I have a question. We talked earlier about policy and procedure at Fulton. What are nursing home policy and procedure, what does that mean?

A. It's another word for rules and regulations that need to be followed within the facility, what's expected of each individual regarding that particular policy and how it's carried out.

Q. Are there policy and procedure that apply specifically to nursing

departments?

A. Yes.

Q. Who created the nursing homes policy and procedure?

A. I create the ones for the nursing department. And the other department directors, they do their own policy and procedure and if they need help, I would help them.

Q. But you, yourself, created the nursing department policy and procedure?

A. For the years that I have been there, at Fulton, yes.

Q. So each nursing home develops its own policy and procedure?

A. Yes.

Q. Why did each nursing home have its own specific policy and procedure?

A. Everybody does their own -- has their own view on how to handle a situation. So they make it specific for their nursing home so that they are specified as to how everything should be carried out.

Q. So nursing homes have different

staff, different patient populations, different units, there's no one size that would fit all nursing home, correct?

A. Correct, no.

Q. What role did you play in developing Fulton's policy and procedure relating to infection control?

A. I do those along with my infection control prevention with Ms. Chernofsky, and we develop them to ensure that everybody is kept free from any infection disease.

Q. Are the policy and procedure at Fulton dated?

A. To the best of my knowledge, yes.

Q. Explain why it's important that each policy and procedure at Fulton is dated?

A. So you know when it goes into effect. And then if it had to be revised you know the date of when it was revised.

Q. I was going to ask that.

Sometimes these policy and procedure are updated and revised, correct?

A. Yes.

Q. And do the policy and procedure then reflect the date of revision?

A. Yes.

Q. Is it important that the date of revision be indicated on the policy and procedure so that staff know that there have been updates that need to be followed?

A. Yes.

Q. To what extent, if any, did the pandemic require revisions to Fulton's policy and procedure?

A. Quite frequently we had to update our treatments, our visitation, what we were doing admission-wise, thing to that effect.

Q. Who is responsible for ensuring that Fulton's policy and procedure are carried out properly by the caregivers?

A. Mine, and the administrator.

Q. It's your responsibility and Ms. Doyle's responsibility to make sure that each policy and procedure is properly carried out?

A. Yes. Once the staff is

in-serviced on it, we have to make sure that they are doing the proper care, and the proper -- following what the policy says.

Q. When you say "we," that's you and Ms. Doyle?

A. Yes, I would say it's the entire administration team. Myself, Ms. Doyle, my assistant director of nursing, anybody that has any kind of pertinence to that policy would be following up on it.

Q. Okay, but do you know the expression, "The buck stops here"?

A. Yes.

Q. Where does the buck stop on protocols in a nursing home? Who ultimately is responsible to make sure that the residents are properly cared for?

A. It would be me.

Q. Okay. Is the quality of resident care dependent on the nursing staff following Fulton's policy and procedure?

A. Yes, sir.

Q. Can the failure of caregivers to follow infection control policy and

procedure endanger the well-being of Fulton residents?

A. From not following policy?

Q. Can the failure of caregivers to follow infection control policies and procedures endanger the well-being of Fulton residents?

A. Yes, sir.

Q. Can the failure of caregivers to follow infection control policy and procedure result in the neglect of a resident?

A. Yes, sir.

Q. Can the failure of caregivers to follow infection control policy and procedure result in injury to a resident?

A. Possibly, yes.

Q. Can the failure of caregivers to follow nursing home policy and procedure result in the death of a resident?

A. Possibly, yes.

Q. Since we have been talking about policy and procedure and we've already discussed CMS and Department of Health

guidances, correct?

A. Yes, sir.

Q. I would like to discuss Fulton's policy and procedure at the nursing home.

I would like us to take a look at Exhibit 10. Exhibit 10 is a 48-page document.

Do you recognize some of this language concerning bioterrorism pandemic influenza? Do you see that?

A. Yes, sir.

Q. Does that look familiar?

A. That's something from the administration, the administrator.

Q. Is it essentially one of the policy and procedure that the facility would implement when confronted with a situation?

A. Yes, sir.

Q. We are going to go through several policy and procedure and I am going to ask you to discuss it with me.

If we go to page 17 of Exhibit 10, there we go.

Now this policy and procedure is

from Fulton, correct?

A. Yes.

Q. And it's entitled, Handwashing?

A. Yes.

Q. Looking at the top right-hand corner, it says, "Issued 2/29/08, nursing, revised January 2019."

Do you see that?

A. Yes.

Q. So is that what you were discussing, how each policy and procedure needs to have the issuance date, and then if there were changes made, it be shown on the document?

A. Yes, sir.

Q. Okay, and let's take a look at a few pages, on to page 22. And right there.

This is the policy and procedure -- it says, "Policies and Procedures" on the top right, and it indicates that the title is, "Transfers to Hospital and Room Changes Procedures"?

A. Yes, sir.

Q. And again we see there, a few

lines down it says, "Effective January 2014, revised October 2014," correct?

A. Yes, sir.

Q. So again, this is an example of the importance of having the original effective date and the revision date noted on the document?

A. Yes.

Q. Let's go to page 4 of the document, and we will take a look at page 4. Again, this is all within Exhibit 10.

And here we have, it says, "Department: Administration, nursing, medical, dietary, housekeeping, maintenance, social service, recreation, admissions, rehabilitation," and the policy name is COVID-19, correct?

A. Yes.

Q. I believe it's a six-page document. And we don't see it here on this document at the top of page 1 -- no, we are going to far. Let's stay on page 4, right there.

We don't see anywhere on the top

of the page any date of the policy, correct?

A. Correct.

Q. And if we scroll down slowly, we go from page 4 through page 10, if we look we see various discussions from the document, various headings. But as we slowly scroll through to page 10, please let me know if you see anywhere where it indicates the issuance, the date of this policy, and any revisions to the policy.

Have you looked at the entire document? Does this document have any date it was issued or date it was revised or modified?

A. No, sir.

Q. Can you tell me why that it, that this policy which is entitled "COVID-19" on page 4 has no date of its creation?

A. I don't know. I did not create this. This was created by Ms. Doyle. I don't know why it doesn't have a date.

Q. Let's go to page 4 again.

You said it was created by Ms. Doyle. How do you know it was created

by Ms. Doyle?

A. How do I know? Because I know I didn't create this. I believe this is part of her manual for disasters, the disaster manual, part of that binder. I know I did not create this policy.

Q. It encompasses the nursing department, does it not?

A. It does. She did it, I am assuming, from what I am reading and I've seen, she did one to outline what everybody's responsibility would be during the pandemic of COVID-19.

Q. Well, when was it created?

A. I could not tell you that. I don't know.

Q. What date -- what's the effective date of this policy?

A. Again, I can't tell you. I don't know.

Q. How could staff, including nursing staff at the facility, be expected to follow policy that has no beginning, revision, ending date?

A. I don't know.

Q. All right. Well let's take a look at this first page. If we look at the policy, scroll down towards the middle of the page, we see a heading, Policy. Stop right there. I'll just read to you just a bit of the policy.

"Fulton Commons Care Center will conduct education, surveillance, and infection control and prevention strategies to reduce the risk of transmission of the novel coronavirus. The facility will implement actions according to CDC, DOH, and World Health Organization recommendations including identification, isolation, and informing the Health Department of any suspected cases of COVID-19."

So that statement is in conformity with what you've told us, correct, that you practiced safe isolation and you adhered to guidances that you received from the CDC and DOH, correct?

A. Yes.

Q. You also discussed with us the

need to quarantine COVID residents from non-COVID residents, correct?

A. Yes.

Q. And if we look at the next page, page 5 of this particular policy which is undated, but if we go to the next page, page 5, we see at the top right there, it says, Procedure, and it lists, Nursing/Medical, correct?

A. Correct.

Q. And if we go down a little further to No. 5, we see it says, "If logistically feasible and will not put other residents or staff at risk for exposure, the facility will cohort confirmed positive residents in the same room or area as much as possible."

Correct?

A. Yes.

Q. And that's what you've already told us about the importance of separating COVID from non-COVID within the facility, correct?

A. Yes.

C. FRAWLEY

Q. And if we look at the next page, which is page 6 of Exhibit No. 10, and we go to the very bottom of page 6, there's a heading called, Confirmed COVID-19 Unit.

Is that what you mentioned earlier, that there was a separate COVID-19 unit?

A. Yes, sir.

Q. And if we read the first line, it says, "One floor of the facility has been designated to care for residents with confirmed COVID-19 admissions. It is the intent of this unit to ensure the safety of all residents and staff," correct?

A. Yes, sir.

Q. And that's what you told us, that this separate unit was designed to protect all those non-COVID residents in the building, correct?

A. Yes.

Q. If we go to page 11 of this exhibit, right there we see a one-page document and it's entitled, From the Nursing Department, correct?

C. FRAWLEY

A. Yes, sir.

Q. This is a policy and procedure which you would have prepared, correct?

A. Yes, sir.

Q. And it's entitled, Protocol For Residents With Suspected COVID As Well As Residents Admitted From Hospital With Confirmed COVID.

And if we scroll from the top of the page to the bottom, I would like you to tell me where on this document we see the date that it was prepared?

A. I don't know. I -- there is no date. This you got from us? I am almost positive the one I have in the facility has a date on it.

Q. Okay, well let's go back to the top.

A. There is no date on this one.

Q. Right. And you asked me, did I -- did the attorney general's office get this from --

A. From the facility. Yeah, I have one dated, this is not one of my policies.

Q. So, it is listed as Fulton Commons Care Center --

A. There's no date.

Q. And you said you prepared this document?

A. Yes, sir.

Q. And you are saying that when you prepared it, it did have a date?

A. I am almost sure I have a date on all of my policies. I could be wrong, but I am almost sure it had a date.

Q. Okay, so if you do date your policies and this policy -- which concerns COVID -- no longer has a date on it, would someone have removed the date?

A. I don't know. I truly do not know.

Q. So you don't know from looking at this document when it was prepared?

A. I prepared all of my documents between March and April, unless something was changed and revised. So I believe I did this sometime in March before we started taking people from hospital.

C. FRAWLEY

Q. Right, but between March and April, during a pandemic is an eternity, correct?

A. Absolutely.

Q. So there's no indication, looking at exhibit -- at page 11 of Exhibit 10, there's no indication, with respect to this policy, when it was created or when it became effective, correct?

A. Correct.

Q. Let's look at what it says under Policy. And is it fair to say that you wrote this, that "It is the policy of Fulton Commons Care Center to ensure all residents are maintained in an isolated area once identified as a presumed COVID or is admitted to the facility from a hospital setting with a confirmed diagnosis of COVID"; is that correct?

A. Yes, sir.

Q. And that's exactly what you testified to here today, that that was extremely important for infection control purposes, correct?

A. Yes, sir.

Q. Would you agree that housing presumed COVID and non-COVID residents on the same unit violates basic infection control protocols?

A. Could you repeat that again? I'm sorry.

Q. Sure. Based on your testimony here today and based on this policy and procedure that we are looking at, would you agree that housing presumed COVID and non-COVID residents on the same unit violates basic infection protocols?

A. Yes, sir.

Q. And would you agree that housing presumed COVID and non-COVID residents on the same unit endangers the safety of the non-COVID residents?

A. Yes, sir.

Q. Would you agree that housing presumed COVID and non-COVID residents on the same unit failed to provide safe and adequate care to the non-COVID residents?

A. I don't agree with that, no.

C. FRAWLEY

Q. It's your believe that if you were to house COVID and non-COVID on the same unit you would be providing safe and adequate care to the non-COVID residents?

A. My belief is that they were being treated and isolated away from the non-COVID residents on those units. They are kept in their rooms under droplet precaution. That's infection control policy.

Q. So you are saying that housing COVID and non-COVID residents on the same unit does not endanger the non-COVID residents?

A. If infection control is followed properly, if somebody had a presumed COVID case, they were immediately placed on droplet precaution, maintained in their room wearing a mask. Their roommate was also put on -- if they had a roommate, they were also put on those same droplet precautions, with a mask, and staff was only allowed in that room as assigned. It wasn't a whole room. They did not break infection control.

Q. But that goes back to what you

said earlier, that that staff could not be then be floating between COVID and non-COVID patients, correct?

A. Correct. And during the pandemic we tried -- we did not move staff unless it was an absolute emergency. We did not have much trouble with our staffing as far as people being out 14 days. But we did not have to float residents -- I mean, excuse me -- employees to other units. We did have a per diem pool that we could pull from.

Q. All right, so since we're on that topic of the staffing, the caregivers, let's take a look then at page 7 of Exhibit 10.

Now again, this is part of the policy which you said that Ms. Doyle prepared, correct?

A. Yes, sir.

Q. If you look at page 7, No. 3 at the top of the page, it says, "As best of possible, exercise consistent assignment or have separate staffing teams on the confirmed COVID-19 units"?

A. Yes, sir.

Q. And then if we turn to page 11, which now, again, is what we just talked about, the policy and procedure which you prepared, and we look at No. 3, we see there are two different categories here.

One is, Protocol For Inhouse Residents With a Suspected COVID Diagnosis. And then the second heading is, Protocol For Admissions Or Readmissions From Hospital With Confirmed COVID Diagnosis," correct?

A. Yes, sir.

Q. Is it fair to say that under both categories, No. 3 says, "The same staff will be assigned to them on a daily basis for each shift," correct?

A. Yes.

Q. And if we scroll down for the hospital admissions, right there we see the exact same phrasing, right? "The same staff will be assigned to them on a daily for each shift," correct?

A. Yes.

Q. So this document is really -- matches up with Ms. Doyle's document in

C. FRAWLEY

that, at least on the COVID-19 unit, the separate unit, only staff will be caring -- the same staff will be caring for only the COVID patients, correct?

A. Yes, sir.

Q. Can you explain --

A. I'm sorry, I didn't hear you, Mr. Zadek.

Q. Can you again explain for us why staff, such as CNAs, should not be on the same shift caring for both COVID and non-COVID residents?

A. So the communicable disease would not be transmitted through the building.

Q. Would you agree that if a CNA provided care to both COVID and non-COVID patients on the same unit, on the same shift, she would be violating basic infection control protocols?

A. Yes, sir.

Q. Would you agree if a CNA provided care to both COVID and non-COVID patients on the same unit, on the same shift, she would not be providing safe and adequate care to

the residents?

A. Yes, sir.

Q. Would you agree if a CNA provided care to both COVID and non-COVID patients on the same unit, on the same shift, she would be neglecting these residents?

A. Yes, sir.

Q. And finally, would you agree that if a CNA provided care to both COVID and non-COVID patients on the same unit, on the same shift, she would be endangering the residents?

A. Yes, sir.

Q. Let's take a look at page 39 of Exhibit 10.

Page 39, this is also a nursing department policy and procedure, right?

A. Yes, sir.

Q. So this is a nursing department policy and procedure which you prepared, correct?

A. Yes, sir.

Q. And if we scroll from the top to the bottom of this one-page document, can

you please tell me when it was prepared?

A. Again, no, I can't, because I don't know where the date is.

Q. Okay. Earlier in our discussion you had shown at the top of the document it said -- it had the creation date of the policy and it also had the revision date of the policy, any revision date of the policy, correct?

A. Yes, sir.

Q. So, looking at this nursing department policy, where would you have included the creation date?

A. It would have been right underneath the title. It would have said, "Issue date," and it would have the date.

Q. Is it your belief that that issue date has been whited out or removed?

A. To the best of my knowledge, I put dates on my policies. I don't know what happened to them.

Q. So as a matter of your custom and practice in preparing these policy and procedure, you placed the issue date on it,

correct?

A. Yes.

Q. And you also placed any revision date on it?

A. Yes.

Q. So you don't why this policy and procedure, which you created concerning COVID, doesn't have the issue date or any revision date, correct?

A. Correct.

Q. Do you know if policy and procedure -- withdrawn.

Do you know if any nursing department policy and procedure was disseminated by any other nursing home in the State of New York?

A. Not to my knowledge, no.

Q. And you told us earlier that nursing policy and procedure are unique and specific to a particular nursing home, correct?

A. Yes, sir.

Q. So it would not be appropriate for a nursing home to remove the creation

date of its policies and procedures and disseminate them to other nursing homes, correct?

A. Correct.

Q. If we look at No. 4 on this document, which is entitled, COVID Surveillance and Tracking Method, if we look at No. 4, it says, "Residents admitted from the hospital with a positive diagnosis be housed on the designated unit," do you see that?

A. Yes, sir.

Q. Is that what you testified to here today, that when admitted from the hospital, the COVID patient would not be placed on any other unit but the designated unit?

A. Correct.

Q. When did you -- withdrawn.

It's not dated, but again, when do you believe this policy and procedure went into effect?

A. March of 2020.

Q. Is it fair to say that in March,

2020 -- which again, I believe we discussed -- is when you first began taking hospital admissions of COVID patients?

A. Yes, sir. At the end of the month.

Q. So is it your belief that this policy and procedure, which references a designated unit, was created at the end of March of this year?

A. Yes, sir.

Q. So the designated unit was in effect at the end of March of this year?

A. Yes, sir.

Q. And that unit I think you identified as 1 East?

A. Yes, sir.

Q. So this policy that we have just been talking about -- concerning COVID surveillance -- required that COVID patients from hospitals be housed only on the designated COVID unit, correct?

A. Yes, sir.

Q. And again, why was it necessary to separate COVID residents that were

admitted from the hospital from non-COVID residents in the facility?

A. So the disease could not be spread throughout the building.

Q. Would you agree that a nursing home endangered its residents if it failed to house COVID residents from the hospital on a designated unit?

A. Yes, sir.

Q. Okay. I think now -- although I think, Ms. Frawley, that you could probably go nonstop -- I think we should probably take, whether it's a 15-minute break or a 20-minute break, an opportunity for those people that need to stretch or use the restroom -- So I think I'll defer to the stenographer.

(Whereupon, a lunch break was taken.)

MR. ZADEK: We will go back on the record.

We took about a half hour, 45-minute break, and as noted before the break, Special Assistant Attorney

C. FRAWLEY

General Smith will not be able to be present for the balance of this hearing.

Can everyone just note their appearance for the record.

MS. SEKHON: Prabhjot Sekhon, special assistant to the attorney general. Good afternoon.

MS. LIPTAK: Anne Liptak, paralegal.

MR. JOYCE: Investigator Robert Joyce.

MS. PICONE: Auditor Investigator Barbara Picone.

MR. ZADEK: Thank you.

Q. You can hear me, Ms. Frawley, correct?

A. Yes, I can.

Q. I am going to read to you what I indicated to you at the outset of this hearing, and that is that you took an oath earlier to tell the truth, the whole truth, and nothing but the truth. Should you make any false statement during this proceeding,

and by that I mean a statement you believe is not true, you may be prosecuted for perjury.

Do you recall I stated that to you?

A. Yes, sir.

Q. You understand that, correct?

A. Yes.

Q. During this break that we took, which was in excess of half an hour, did you discuss your testimony with anyone?

A. No, sir.

Q. Did you speak with anyone where you discussed COVID in the interim since we broke?

A. No.

Q. You had no discussions with anyone concerning your testimony or any of the subject matter of our testimony here today?

A. I did not.

Q. I want to ask you a question about Exhibit 10. If we can bring up Exhibit 10 again, if we can go to page 4 of

Exhibit 10.

If you recall, this is a policy and procedure that you stated was, to your knowledge, created by Ms. Doyle, correct?

A. Yes, sir.

Q. Prior to today, my showing you this policy and procedure, had you seen this document before?

A. No.

Q. Despite the fact that it applies to the nursing document and despite the fact that talked about the cohorting of residents and the infection control instructions, et cetera, et cetera, you were never shown this document?

A. Not to my knowledge, I did not see it.

Q. Can you explain to me how a document that has a policy name of "COVID-19" and specifically addresses the nursing department could not have seen by you prior to today?

A. We have discussions every morning at meetings. We haven't had them, though

since the beginning of March. Those were things that were discussed but I actually never saw the document.

Q. Do you know if this document may have been prepared for use other than by staff at Fulton?

A. I don't know that.

Q. You do or you don't know that?

A. I don't know that.

Q. And this policy addresses among other things protocols to be followed by caregivers at Fulton, correct?

A. Yes.

Q. If you didn't see this policy and procedure concerning COVID-19 and protocols for caring for residents, is it fair to say that nursing staff may not have seen this as well?

A. They may not have, yes.

Q. So you don't know the purpose of why this document was created?

A. I believe the purpose was that it was part of our disaster plan that if a pandemic would recur that it was updated for

that pandemic.

Q. But if nursing staff -- if you and nursing staff haven't carefully reviewed this document for COVID-19 then it wouldn't serve much of a purpose, would it?

A. Correct.

Q. Let's talk a little bit about what you said prior to break.

You said that the policy and protocol concerning the establishment of a designated unit that we discussed in the protocols was created in, you believe, March of 2020?

A. Yes, sir.

Q. So you mentioned several times that during the pandemic a unit was designated to house only COVID residents, correct?

A. Yes.

Q. And that unit was 1 East?

A. Yes.

Q. So when was 1 East designated as the COVID unit?

A. I believe in March of 2020.

C. FRAWLEY

Q. Would that be the beginning of March, middle of March? Do you have any sense of when in March?

A. I believe it was towards the middle of March. I think it was once we realized we were going to be taking residents from the hospital we established that unit.

Q. Did you receive written notification or verbal notification that 1 East was now going to be housing only COVID patients?

A. Ms. Doyle made it clear that that was going to be the COVID unit.

Q. Did I hear you correctly, she made "clear"?

A. Yes, she was the one that decided that unit.

Q. That's one of my questions.

Ms. Doyle is the individual who designated 1 East as the COVID unit?

A. Yes.

Q. But how were you notified, how were you informed that 1 East was the

designated COVID unit, did you get a memorandum, how were you notified?

A. She just told me.

Q. She told you verbally and face-to-face in a meeting?

A. Between her and I --

Q. Do you have any electric device nearby or any electronic device at all with you, Ms. Frawley?

A. I do not, my phone is in the other room.

Q. Let's try it again, then. Let me repeat that.

So you found out during the a face-to-face meeting with Ms. Doyle that 1 East was going to be become the designated unit?

A. Yes.

Q. And how did you then inform other staff members or how did Ms. Doyle inform other staff that 1 East was now the designated unit in March of this year?

A. I told my assistant director of nursing and my infection control

preventionist and my unit managers that that was going to be the new unit -- the dedicated unit. So if any resident needed to be transferred there they need to let me know.

And then I also spoke to the staff on 1 East to tell them what is expected of them, and we set up with isolation carts and all the PPE equipment to care for those residents.

Q. So is it fair to say that at some point in March of 2020, all nursing staff was aware that moving forward 1 East would only house COVID patients?

A. Yes, sir.

Q. Where is 1 East located in the building?

A. When you come in through the front door you would go to the left, where the unit is, and then you would go to the right if you wanted to see me. So on the first floor as you come in.

Q. And I believe you said that 1 East, as the other units, housed 40

residents?

A. Yes, sir.

Q. Is it fair to say that 1 East has two wing s, a high wing and a low wing?

A. High side and low side, yes, sir.

Q. And low side would be rooms 101 through 111, correct?

A. Yes.

Q. And the high side would be rooms 112 through 122?

A. Correct.

Q. Is 1 East still the dedicated COVID unit in the building?

A. No, sir. It's currently closed.

Q. When was it closed as the COVID unit?

A. This is October, sometime in the end of August.

Q. Who made the decision to no longer use 1 East as the COVID unit?

A. Ms. Doyle.

Q. In 2020, how many unit managers were assigned to 1 East during the 7 to 3 shift?

A. One.

Q. And you mentioned that was a Ms. Waller?

A. Yes.

Q. Latasha Waller?

A. Yes.

Q. When did Ms. Waller become the nurse manager on 1 East on the 7 to 3 shift?

A. A year ago.

Q. Someone promoted her to the unit manager?

A. I did.

Q. Had she been working another shift prior to that promotion?

A. She was the 11 to 7 on that round. Once she got her RN she became the unit manager.

Q. During 2020, during the pandemic when Ms. Waller was the 1 East unit manager, how frequently would you speak to her during the day?

A. At least at the beginning and end of each shift, and she would call me if she needed anything.

C. FRAWLEY

Q. So you spoke to her at a minimum of once a day, every day, correct?

A. Yes.

Q. Is it fair to say you had very close contact with her and the events that were occurring on this designated COVID unit?

A. Yes, sir.

Q. Did she come to you with questions concerning any of the issues that might arise in the management of a unit in the building?

A. No.

Q. She wouldn't come to you with any questions?

A. She would come to me about questions about what kind of supplies they would need for the patients and how we were going to cohort them and how we were going to handle the staff. But she didn't come in about specific residents.

Q. No, what I meant was issues that arose in caring for residents generally. Issues of CNAs generally -- general issues

that would arise in caring for residents, you were the person she would go to?

A. Yes.

Q. PPE, CNA, general issues that would arise for caring for the resident, you were the person she would go to?

A. Yes, sir.

Q. Were you working at Fulton on Monday, May 4, 2020?

A. I am sure I was.

Q. Did the Department of Health conduct a survey, an infection control survey on May 4, 2020?

A. I think that was one of three or four we had.

Q. Right, but I am asking specifically about May 4, 2020. Were you present in the facility when an infection control survey was performed?

A. Yes.

Q. Do you recall how many Department of Health surveyors conducted this infection control survey on May 4th?

A. I don't recall.

Q. How were you notified that the surveyor had arrived at Fulton that day?

A. The receptionist informed Ms. Doyle who then informed me.

Q. By what means?

A. She came to my office and told me.

Q. You're breaking up again.

A. She came to my office and she told me.

Q. So she came to you and had a face-to-face encounter with you?

A. Yes.

Q. During the course of the infection control survey on May 4, were any documents from Fulton given to the Department of Health during this infection control survey?

A. There were, but I can't recall exactly which ones. But documents were given, yes.

Q. So you said that you believe documents were turned over to the Department of Health?

A. Yes.

Q. Do you know when they were turned over to the Department of Health?

A. The same day I believe they were there.

Q. So that would have been Monday, May 4, 2020?

A. Yes, sir.

Q. Do you have any recollection of what documents were provided to the Department of Health?

A. I do believe they asked for policy and procedure, and I do believe they asked for a certain amount of numbers as to resident on the COVID unit and resident with presumed and positive cases and they referred to some of the HERDS.

Q. And you recall that this was an infection control survey, correct?

A. Yes.

Q. Is it fair to say that a major area of concern during this survey was 1 East, which was the designated COVID unit, correct?

A. Yes.

Q. You mentioned that you believe the Department of Health requested documents concerning residents on 1 East, did I understand that correctly?

A. I believe they asked for residents overall since the beginning of March who had presumed cases -- presumed or positive cases as to where they were in the facility.

Q. Did you prepare or gather any documents that were provided to DOH relevant to this May 4th survey?

A. I believe I gave them the policies and procedures they asked for.

Q. When you say you gave it to them, do you believe you were the person who actually handed it over to the surveyor?

A. Yes, sir.

Q. Did you do that on your own initiative or were you directed by someone else to get those documents together?

A. No, the Department of Health gave me -- told me what they needed and I copied

my policies and gave it to them.

Q. So they would have told you what they needed that day, on Monday, May 4?

A. Yes, sir.

Q. Do you recall speaking with the surveyors on Monday, May 4 when they conducted their survey?

A. I don't recall.

Q. You don't recall having any conversation with the surveyors at all?

A. I don't.

Q. Was there any period on May 4 during this infection control survey when you were present on 1 East, on the COVID unit?

A. I did not go -- no.

Q. Do you know if any of the surveyors physically entered the COVID unit?

A. I believe they did with my infection control nurse, Ms. Chernofsky.

Q. Do you recall telling anyone from the Department of Health on Monday, May 4, 2020 that 1 East was a strictly COVID unit?

A. I don't recall saying that, no.

Q. Did you hear any employee at Fulton having any conversations with the Department of Health surveyors?

A. No.

Q. If someone from Fulton had told the DOH surveyors that 1 East was strictly a COVID unit, that would be a correct statement, correct?

A. Yes.

Q. It only housed COVID residents, correct?

A. Correct.

Q. I would ask you to take a look at Exhibit 14. It's a one-page document. And if we scroll through it from top to bottom, do you recognize this document?

A. It's a bed list for 1 East.

Q. You have seen this document before?

A. Not that actual document, but I know of the document, yes.

Q. Well, it's a bed listing and it lists 24 residents, correct?

A. Yes, I believe.

C. FRAWLEY

Q. We can scroll down again slowly.

A. Yes.

Q. Have you seen this bed listing printout before?

A. No.

Q. You've never seen this?

A. Not this document, no.

Q. I am talking about this document.

A. I have not seen this document before. I have seen other bed listings, but not this one.

Q. Do you know -- do you have any way of knowing who prepared this document?

A. This is prepared by whoever entered them into the facility and automatically -- automatically put it into the system itself through the department of the resident names.

Q. Let me ask you again, do you know who would -- I am not even seeing the document anymore.

Do you know who would have prepared this document?

A. No one in particular prepared

this document. This document is uploaded -- the name of the resident is uploaded into the bed listing upon admission, and then the unit manager or anybody can go into the computer and print out one of their bed listings.

Q. Okay. So this is a snapshot, if you will, of the residents on a particular unit that is printed out?

A. Correct.

Q. So looking Exhibit 14, we see that's it dated Friday, May 1, correct?

A. Yes, sir.

Q. So this would be the Friday before the DOH infection control survey, correct?

A. Yes.

Q. And this listing would be a listing of the 24 residents who were living on 1 East on May 1, 2020, correct?

A. Yes.

Q. Because the beds listed on this document begin in Room 103 and end in Room 122, which covers the high and low side of

the unit, correct?

A. Yes, sir.

Q. Do you know if this document was given to the -- I know you said you haven't seen it, but were you aware that a bed listing for 1 East was provided to the Department of Health during the May 4th, 2020 infection control survey?

A. I am not aware of that.

Q. You have no knowledge of this document being given to the Department of Health?

A. No, sir. I don't recall anyone asking me or telling me if that listing was given.

Q. Do you recall having any discussion with anyone about providing a bed listing for 1 East to the Department of Health?

A. No.

Q. Again, this bed listing is for Friday, May 1, 2020, correct?

A. Yes, sir.

Q. It provides the resident's name

as well as the particular room and bed they were in at 1 East, correct?

A. Yes.

Q. And all the rooms and the bed numbers correspond to 1 East, the layout of 1 East?

A. Yes.

Q. As the director of nursing -- and we can go through the document if you would like slowly -- but as the director of nursing, were you familiar with these 24 residents on Friday, May 1, 020?

A. I know of them. I recognize their names, yes.

Q. Is it fair to say that on the date of the Department of Health survey, on Monday, May 4, 2020, these 24 residents were living on 1 East?

A. To the best of my knowledge, yes.

Q. And again, is it fair to say that 24 residents that are on the list were considered either presumed or confirmed COVID cases?

A. Yes, sir.

C. FRAWLEY

Q. So, is it fair then to say that on May 1, according to this list, all the beds on 1 East were filled with presumed or confirmed COVID residents?

A. Yes.

Q. Again, would you agree then that this document indicates that on May 1, 2020 Fulton Commons had properly quarantined these 24 COVID residents on the 1 East unit?

A. Yes, sir.

Q. So this document also indicates that on May 1, 2020, presumed COVID and non-COVID residents were not living on the same unit in the facility, correct?

A. Correct.

Q. Were you working at Fulton on Friday, May 1, 2020?

A. I think so, yes.

Q. So that would be about approximately 72 hours before the infection control survey occurred, correct?

A. Yes.

Q. When you arrived to work on the morning of May 1, 2020, were the residents

on Unit 1 East the same 24 residents that are listed and identified on Exhibit 4, this bed listing from May 1?

A. To the best of my knowledge, yes.

Q. It's your testimony, to the best of your knowledge, on May 1, on the morning of May 1, when you arrived at work, these were the 24 residents living on 1 East?

A. Can you scroll down so I can see the rest of the name, please?

Q. Of course.

A. Yes, sir, to the best of my knowledge.

Q. On Friday May 1, were there any resident room transfers?

A. I don't recall.

Q. I believe you testified earlier that any resident room transfers require your approval, correct?

A. Well they would come to me after they decided who had to be moved off and I would approve it, yes.

Q. A resident would not be moved from one room or one unit to another without

your approval, correct?

A. Without my approval or knowledge, correct.

Q. And you still don't recall whether or not on May 1, 2020, 72 hours before the Department of Health entered the building, whether there were any room transfers?

A. I cannot recall.

Q. On the morning of May 1, 2020, did you speak with Ms. Waller about 1 East?

A. I probably did, yes.

Q. Did you tell Ms. Waller that they were going to -- did you tell Ms. Waller that they were going to be a lot of room transfers off and on to 1 East, which was the designated COVID unit?

A. I don't recall that, no.

Q. If there were a lot of room transfers being made on May 1, and it involved the designated COVID unit, that would be something that would stand out in your memory, would it not?

A. Absolutely.

C. FRAWLEY

Q. But you don't remember having that conversation?

A. I do not, sir.

Q. And you don't recall any room transfers on May 1, 2020?

A. Not that far back, I don't recall, no.

Q. If there were between 15 and 20 room transfers involving 1 East on that day, is that the type of event that would stand out in your mind?

A. Absolutely. I do not recall that many transfers happening.

Q. If I told you that on May 1, 2020, more room transfers occurred than at any other time this year, would that refresh your recollection about what occurred that day?

A. Not to that extent, no. I don't ever recall having that many room changes.

Q. I believe you just said that you don't recall any room changes occurring 72 hours before DOH arrived.

A. I do not.

C. FRAWLEY

Q. Let me ask you this. On May 1, 2020, Friday, May 1, were non-COVID residents living with COVID residents on 1 East, the designated COVID unit?

A. Not to my knowledge, no.

Q. How would it be possible, if non-COVID residents were living on 1 East, that you would not have that knowledge?

A. No, I do not recall non-COVID residents being on the COVID unit. I believe there were only residents there that came in from the hospital or that they were removed from another unit and we moved them down. I do not remember any other people living on -- residing on that unit.

Q. So on 1 East, the 40-bed designated COVID unit, it's your testimony that on May 1, all beds that were filled on 1 East were filled by COVID patients?

A. Yes.

Q. It's also your testimony that you regularly viewed the big board in the admission office that provided you with an immediate snapshot of which residents were

located in which beds in the building?

A. Yes. I reviewed it whenever I needed to refer to the board, I would use the big board in the admission's office.

Q. Did you ever have a conversation with anyone on May 1, 2020 or since then concerning the movement of residents onto and off of 1 East on May 1?

A. Can you repeat that? I didn't hear you.

Q. Let me repeat that.

Have you had any discussion with anyone in the building concerning the movement of residents onto and off of 1 East on May 1?

A. Not to my knowledge. I don't remember that at all.

Q. Did you have any discussion with Cathie Doyle about moving resident onto and off of 1 East on May 1, 2020?

A. Not to my knowledge, no.

Q. May 1, 2020, were COVID residents living upstairs on non-COVID units?

A. No, sir.

Q. So on May 1, any and all presumed or confirmed COVID residents were down on 1 East, correct?

A. Yes.

Q. To the best of your recollection as you sit here today, on May 1 there were no non-COVID residents that were move off of 1 East and transferred upstairs to non-COVID units?

A. To the best of my knowledge, no.

Q. It's your testimony here today that on May 1, there were no COVID residents that were moved off of non-COVID units upstairs and transferred down to 1 East?

A. That's correct.

Q. To the best of your recollection -- withdrawn.

You do not recall a single bed transfer occurring at Fulton on May 1, correct?

A. I cannot recall it, no.

Q. You don't recall a single bed transfer?

A. No, sir.

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MR. ZADEK: Ms. Liptak, can you share an exhibit that we would deem as Exhibit 15.

Q. Ms. Frawley, this exhibit is deemed marked as Exhibit 15. Do you see this?

A. Yes, sir.

Q. This is what's called the 24-hour conditional report, correct?

A. Yes, sir.

Q. What unit does this report cover?

A. One East.

Q. What's the date of this condition report?

A. 5/1/20.

Q. That's the date we are talking about, May 1, 2020, 1 East?

A. Yes, sir.

MR. ZADEK: Ms. Liptak, can you show us, please, page 3 of this 15-page document.

Q. Looking at page 3, Ms. Frawley, again, this is 1 East from May 1, do you see patient Resident #22 in Room [redacted]?

A. Yes, sir.

Q. If you look at the 3 to 11 entry.

Do you see it says, "Resident transferred from 1 East, Room [redacted] to 3 West, Room [redacted]?

Do you see that?

A. Yes, I do.

Q. Does that refresh your recollection that this resident was moved off of 1 East on May 1?

A. I can see by that notice, but I don't remember anyone going upstairs. But that was on 3 to 11, so it could have occurred, but I don't recall it.

Q. That does not refresh your memory?

A. Well, the note shows me that she was moved but it doesn't refresh my memory, no.

Q. If you could look at page 9 of Exhibit 15.

Do you see here where it says 1 East, correct?

A. Yes.

Q. And it's Friday May, 1, correct?

A. Yes.

Q. Do you see resident Resident #13 in Bed [redacted]?

A. Yes.

Q. Do you see the entry that says, "Room change, [redacted] Unit 2 East for facility necessity"?

A. Yes, sir, I see that.

Q. Does this refresh your recollection that this is another resident that was moved off of 1 East on May 1?

A. It doesn't refresh my memory. I can see that it was done, but I don't remember -- I don't remember seeing room changes at all.

Q. I am not asking whether you've seen -- this room change, what we just discussed, Resident #13 , who was transferred out of Room [redacted] and transferred upstairs to 2 East, that room change could not have been effectuated without your approval, correct?

A. Correct. But I don't recall

approving it at all.

Q. You have no recollection?

A. No. I don't remember telling them to move her. She was already in our facility so I have no idea -- I don't remember sending her upstairs at all. I don't remember room changes.

Q. You said that this room change for Resident #13 would not have occurred without your approval, correct?

A. Correct.

Q. If we look at page 10 of 15 pages of Exhibit 15, do you see Resident #23 is on 1 East on May 1? Do you see the same date?

A. Yes sir, I do.

Q. And do you again see on the 7 to 3 shift that the resident room was changed to [redacted] for "facility necessity"?

A. I do.

Q. Can you tell me, do you now recall this patient being moved off of 1 East on May 1?

A. I don't recall them being moved

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off on that particular date. If they had come into the facility and were finished their isolation period, we would move them up to a unit once we knew they were clear from COVID.

Q. Listen to my question.

Do you recall that on May 1, that this resident was moved off of 1 East, out of [redacted], and transferred up to 3 West for facility necessity?

A. I do not recall.

Q. You do not recall approving that transfer?

A. I do not.

Q. When the nurse's note indicates that this resident was moved for facility necessity, do you know what she is referring to?

A. I don't.

Q. Okay. Let's go on to page 11. Again, you said you don't recall a single transfer on this day.

Let's look at page 11 which is, again, Room [redacted] on May 1 on 1 East.

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Do you see the entry, "The resident was transferred." Again, this is on the 7 to 3 shift.

A. I see it.

Q. "Resident transferred to room -- " it looks like [redacted] -- " Unit 2 East for facility necessity."

Do you see that?

A. I do see that, but I do not recall these transfers, nor do I know what they mean by "necessity."

Q. So you have no knowledge of what facility necessity refers to, nor do you recall ever approving this resident being transferred, correct?

A. Correct.

Q. Is it possible that all these residents would have been moved on May 1 unbeknownst to you?

A. I can't imagine that, because there would be a multitude of interdisciplinary people that would have to know.

Q. Is there any aspect of your

memory that you now believe would cause you to have forgotten all these transfers?

A. No, sir. I mean, it's a long time ago, but I do not recall them, no.

Q. Okay, well let's take another look. Let's take a look, if you would, at page 12 of the 24-hour condition report, Exhibit 15.

A. Oh, brother. Yeah, okay.

Q. You say, "Oh, brother."

This is 1 East and this is May 1. And we have, it looks like a resident in Room 101B, 101A, 102A, 102B, 104A, 104B, and 105A. And you know what? Let's go on to the next page, page 13?

Do you see that?

A. I do.

Q. Resident in Room 105B, 106A, 106B, 107A, 107B, 111A, 122A.

That's one, two, three, four, five, six, seven, eight, nine, 10, 11, 12 -- 13 residents that were transferred out of 1A on May 1, 2020.

Do you now remember all these

residents that were quickly moved off of the unit?

A. I wish I could, I do not recall this. I do not recall moving -- I do not recall okaying these residents to be moved off.

Q. Do you recall residents being moved up to 1 East from non-COVID units?

A. On that same day?

Q. Yes.

A. No, sir.

Q. You can take that off the screen for now.

So, looking at the 24-hour condition report from May 1 for 1 East, would you agree that it appears that between 15 and 20 residents were moved off of 1 East on that day?

A. Yes, sir, I agree.

Q. And would you also agree that those resident room transfers could not have occurred unless they were approved by you directly?

A. Could you repeat that? I'm

sorry, you broke up.

Q. Would you agree that those resident room transfers, those 15 to 20 residents who were moved off of 1 East on the morning of May 1, they would not have been transferred had you not approved of them being transferred?

A. I can agree to that, but I didn't approve it.

Q. Do you believe that -- well, if you didn't approve it -- withdrawn.

Is there anyone else in the facility, can Ms. Doyle approve such transfers?

A. Yes, sir.

Q. Is she the only other person besides yourself who could have approved 15 to 20 room transfers on May 1?

A. Yes, sir.

Q. Okay. All right, let me rephrase my question.

Did there come a time, at any time in 2020, when you were aware that Ms. Doyle had approved the transfer of many

residents off of 1 East on May 1, 2020?

A. Yes, sir.

Q. Okay. All right, so now we need back up a bit.

A. Okay.

Q. It's your testimony today that you did not approve any one of these multiple transfers on May 1, correct?

A. Yes, sir.

Q. But you became aware, at some point, that many residents were being moved on and off of 1 East on May 1 and that the individual directing those bed transfers were Ms. Doyle?

A. Yes, sir.

Q. Can you please explain to me when you learned of that, how you learned of that, and what transpired?

A. I learned about it when I received all the notices of the room changes from the social work department, and I was just told that we needed to make these necessary -- these changes for those residents. I was not given any other

reason.

Q. So social work advised you that there has been a request that all these residents be move onto and off of 1 East?

A. Yes, sir.

Q. And that was a complete surprise to you, you had no knowledge of that?

A. Not until I got the paperwork.

Q. And that was the morning of May 1 or the afternoon of May 1, do you recall when?

A. I don't, but it was at some point of that day, yes. I believe it was in late morning.

Q. And during the late morning of May 1, 2020 when the social worker -- who was the social worker who came to you with this?

A. I believe it was -- I don't know. We have gone through so many social workers. I don't recall who gave it to me.

Q. It could have been Kameca Balan or it could also be Nina Takoria?

A. Yes, could have been one of them.

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Could have been Nina.

Q. Or Jessica?

A. Jessica, who was the intern, yes.

Q. You don't recall which one?

A. No, because they were in my box. They didn't hand them to me. They put them in my box.

Q. So you received, on May 1, all these bed transfers. And what did you do when you saw them all, that this was going to occur? What was your response?

A. I asked my admissions director why we were making so many changes on one day, and she just -- her response was somewhat like, I was just told to do so.

Q. And when she said, "I was just told to do so," did you ask her, Who told you to do this?

A. Yes, well, she had said Ms. Doyle.

Q. Okay. Now, you are the director of nursing, so this is your unit, correct? This is your facility and these are your residents, correct?

A. Yes, sir.

Q. So when you were advised of 15 to 20 bed transfers on an a single day, did you then speak to Ms. Doyle?

A. I inquired why we were making so many changes at one day, and her response was, "To facilitate for admissions."

Q. Did I see you, Ms. Frawley, roll your eyes just a notch there? Did I see you roll your eyes?

A. Yes, because I didn't understand. We had beds. I didn't understand why we needed to make all those room changes.

Q. I can show you daily census sheets, but I think you know there were plenty of available beds, correct?

A. Yes, sir. I know that.

Q. So if it weren't for bed availability, did you come to understand why all the resident movement occurred?

A. It was never explained to me, no.

Q. At some point on May 1 -- withdrawn.

You indicated you have a close

relation with Ms. Doyle. You and she speak very often, correct?

A. Yes, sir.

Q. Is it fair to say that at some point on May 1, 2020 -- whether by phone, by e-mail, or otherwise -- you became aware that there were an impending DOH survey.

Do you recall that?

A. That I do not recall, no.

Q. You don't recall e-mails discussing an infection control survey --

A. Yes, I'm sorry. Yes, I do. We did get a message. Yes, I'm sorry. We did, yes.

Q. Does that refresh your memory that you got an e-mail?

A. Yes, for infection control surveys, yes.

Q. And it was imminent, correct?

A. Yes, pending. We didn't know when, but it would be a pending investigation, yes.

Q. And that was on May 1, correct, that you began to have these discussions or

communications about the upcoming DOH survey, correct?

A. Yes, I'm sure, yes.

Q. So you were aware that there was a DOH survey -- on May 1 you were aware that there was an impending DOH infection control survey, correct?

A. Yes.

Q. And on May 1 you were aware of a tremendous number of room transfers involving the COVID unit, correct?

A. Yes.

Q. And you were also aware that Ms. Doyle's explanation about bed availability did not make sense, correct?

A. Correct.

Q. Is it fair to say that you realized that these bed transfers were connected to the upcoming DOH survey?

A. I thought so, yes.

Q. When you say "you thought so -- " Let me ask you this, those 15 to 20 bed transfers that occurred on May 1, had you ever had that many bed transfers at any

other time?

A. Never.

Q. So is it now coming back to you. Is this day beginning to revisit your mind?

A. Somewhat, yes.

Q. If Ms. Doyle -- you said the decision to move these resident onto and off of 1 East came entirely from Ms. Doyle?

A. Yes, sir. I did not have knowledge of it.

Q. So, if the decision to move all these residents on and off of 1 East came from Ms. Doyle and if it was related to the impending survey, the impending DOH survey, can you explain to me your thought process on why she was doing this?

A. Well, I thought that perhaps that the people here were not COVID positive any longer and did not require that unit. And if there were cohorts that were positive or presumed COVID, we would be breaking our own infection control protocol.

MR. ZADEK: (Whereupon, the requested testimony

was read back by the court reporter.)

Q. Is it fair to say that before May 1, 2020 you were aware that infection control protocols were not being properly followed at Fulton?

A. Can you repeat that for me, please?

Q. Sure. Is it fair to say that even before Friday, May 1, 2020, you had information indicating that Fulton Commons was not properly following infection control protocols?

A. I don't think I can say that.

Q. Okay. We'll get to that in a moment. But let me ask you again, going back to Exhibit 14, which was the 24 resident -- can we show Ms. Frawley Exhibit 14 for a moment?

Looking at Exhibit 14 again, which is a May 1 bed transfers listing for 1 East, does this refresh your memory now as to whether or not this document was given to DOH?

A. It does not. I don't recall

being told or giving it to the Department of Health.

Q. This bed listing for May 1, 2020 for 1 East -- withdrawn.

Based on the 24-hour condition report, Exhibit 15 that we just went over, based on a review of those bed transfers that took place on the day shift, or you said the afternoon shift of May 1, this bed listing does not accurately present the resident who were really living on 1 East on May 1, correct?

A. Unless they were transferred prior to when this was printed at 1:22, the names don't appear to be the same as on the 24-hour report.

Q. Right. So even if the residents were moved before 1:22 in the afternoon, if this document was handed over to the Department of Health, the Department of Health would have no way of knowing that several hours earlier this bed listing was completely wrong, correct?

A. Correct.

Q. Based on your years of experience and your involvement with surveys, if this document was handed to a Department of Health surveyor and it indicated a bed listing for May 1, is it fair to say that the surveyor could fairly assume that this document reflects those residents who were living on the unit that day?

A. Yes.

Q. And based on some of the room transfers that we've just discussed, this document does not reflect the actual residents who occupied those bed, correct?

A. Correct.

Q. So if this document was given to the Department of Health on Monday, May 4, 2020, then this 1 East bed listing was intended to conceal from the Department of Health who was actually living on the COVID unit, correct?

A. I can't answer that definitely, but would I tend towards yes.

Q. Well, providing the Department of Health with this 1 East bed listing, who was

intended to conceal from the Department of Health Department of Health that both COVID and non-COVID were living on the designated COVID unit, correct?

A. Yes.

Q. And again, based on your knowledge, based on your knowledge as to the extent of the resident transfers and the nature of the resident transfers, is it fair to say that these residents were moved on and off of the unit on 1 East on May 1 to conceal from the Department of Health that the facility was not providing safe and adequate care to these 1 East residents?

A. I can't say that, because I believe they got good care.

Q. Were these residents on May -- withdrawn.

Were these residents moved on and off of the unit on May 1 to conceal from the Department of Health that the facility had endangered the safety of non-COVID residents living on 1 East?

A. I can't answer that. I don't

C. FRAWLEY

know the answer to that question.

Q. Were the families -- so let's just clarify.

Is it fair to say that you were aware that non-COVID residents were living on the designated COVID unit on and before May 1?

A. To the best of my recollection, I would say yes.

Q. And to the best of your recollection, were you aware that COVID residents were also living upstairs on non-COVID units?

A. That I cannot recall.

Q. Were the families of non-COVID residents who were living on 1 East told that their loved ones were being housed with COVID patients?

A. I don't -- not to my knowledge. I don't believe so, no. I don't really recall, but I don't believe so.

Q. And do you know who made the decision not to tell these families that their loved ones who were not COVID were

living on a COVID unit?

A. Well, that would have been the decision of our administrator but I don't know if -- I don't recall her telling me that they were not so I don't know if a social worker did -- I don't know if the social work department did call those families. I am not aware of that.

Q. Well, you testified that to your knowledge, on May 1 and before May 1, there were non-COVID residents improperly and in violation of infection control living on the COVID unit, correct?

A. I believe so, yes.

Q. Is it fair to say, based on your experience as the director of nursing, that if a family member of a non-COVID resident had been told that their loved one was living alongside COVID residents, they would have immediately requested that their family member be taken off that unit?

A. Yes, sir, that would have been true, yes.

Q. Were you told, Ms. Frawley, on

multiple occasions that the same CNAs on the same shift on 1 East were providing care to both COVID and non-COVID 19 residents?

A. Did you say, did I know, or was I informed?

Q. I can repeat the question.

Were you told on multiple occasions that the same CNAs on the same shift on 1 East were providing care to both COVID and non-COVID residents?

A. No, no one ever told me that.

Q. Were you told on multiple occasions that this behavior of CNAs on the same shift providing care to both COVID and non-COVID residents violated basic infection control protocols?

A. No one ever told me that.

Q. Were you told on multiple occasions that this behavior of CNAs on the same shift providing care to both COVID and non-COVID residents was endangering the safety and well-being of the non-COVID residents on 1 East?

A. No one ever told me that.

C. FRAWLEY

Q. Who was the 1 East 7 to 3 shift manager --

A. Ms. Waller.

Q. Let me just finish. That's okay.

The 1 East 7 to 3 manager in 2020 was Latasha Waller?

A. Yes, sir.

Q. Did Ms. Waller inform you on multiple occasions that CNAs on 1 East on the same shift were providing care to both COVID and non-COVID residents?

A. She did not.

Q. Do you recall Ms. Waller raising serious concerns about the infection control protocols that were in place on 1 East?

A. She never raised them to me.

Q. Did you have a discussion with Cathie Doyle about breakdowns in infection control protocols during the pandemic?

A. I didn't hear the first part of that question, I'm sorry.

Q. Did you ever have any conversation with Cathie Doyle concerning the breakdown of infection control protocols

at Fulton?

A. I did not.

Q. We are going to take a ten-minute break. We will resume at five minutes to 4.

(Whereupon, a lunch break was taken.)

MR. ZADEK: We are going back on the record, it's almost 4:00. We had a ten or fifteen minute break. I would like everyone to note their appearance for the record.

MR. JOYCE: Investigator Robert Joyce.

MS. SEKHON: Special assistant attorney general Prabhjot Sekhon.

MS. LIPTAK: Anne Liptak, paralegal.

MS. PICONE: Auditor investigator Barbara Picone.

Q. Ms. Frawley, let's continue with our discussion on some infection control violations that we have been talking about.

Did you say that you were unaware that COVID hospital admissions -- withdrawn.

C. FRAWLEY

To your knowledge, hospital admissions of COVID patients were placed on 1 East, the COVID unit?

A. Yes, they were placed on 1 East.

Q. And is it fair to say, again, based on our discussions earlier today and our review of the policies and procedures in place, that admitting a hospital COVID patient to any unit other than the COVID unit would be a violation of infection control?

A. Yes, sir.

MR. ZADEK: Ms. Liptak, can you show Ms. Frawley Exhibit 16.

Q. This is dated April 17th, correct?

A. Yes, sir.

Q. This is a daily census sheet for the 17th?

A. Yes, sir.

Q. And if we look at the census for 1 East, we see that 1 East had bed availability?

A. Yes, sir.

Q. And if we scroll down and we look at patient Resident #5 , do we see that he came in on April 17th to the facility and he was a COVID patient, correct?

A. Yes, sir.

Q. And he was placed on a non-COVID unit, [redacted]?

A. Yes, sir.

Q. Were you aware of that?

A. I don't recall it, but I see it on the paper. But I don't recall that actual day back in April.

Q. Well, if Resident #5 was admitted to Room [redacted], that certainly is not the COVID unit, correct?

A. Correct.

Q. And that would violate infection control protocols for a hospital admission, correct?

A. Yes, sir.

Q. And looking at Resident #6 -- do you remember Resident #6 , by the way?

A. I do not. I remember his name, I

don't remember him.

Q. Resident #6 also came in on April 17th to the facility, correct?

A. Yes.

Q. And he was designated as a COVID patient, correct?

A. Yes.

Q. And he was placed on [redacted], correct?

A. Yes.

Q. And he, too, was not placed on the COVID unit in conformity with infection control requirement, correct?

A. Yes, sir.

Q. This is an example of a violation of infection control protocols set up by you at the facility, correct?

A. Yes, sir.

Q. Who made the decision to place these two residents on units upstairs other than the COVID unit?

A. That's made by the director of admissions, the room assignments.

Q. Who is that?

A. Kristin Herrscher.

Q. What was your involvement in the decision to place these two residents in the building on a non-COVID unit?

A. I had no decision. I just approved their coming into the facility. I don't have any knowledge -- I don't decide where they are going. They are placed in by the admissions department.

Q. But you testified, as well, that you and Ms. Doyle had regular access to the admissions board, the big board in the admissions office and regularly saw who was on various floors and rooms, correct?

A. Yes, but we didn't do that for all admissions, we only did it when we were called upon to do it. I didn't walk in every day to look at that board.

When I was asked if there was room to put somebody somewhere, that's when we were brought into that room. Otherwise, the admissions director has full knowledge of where they should be going.

Q. But it wouldn't surprise you,

would it, if I told you that Resident #5 and Resident #6 were moved downstairs on May 1 off of these units and placed onto the COVID unit on May 1, would that surprise you?

A. Not after I saw that document, no.

Q. Is it fair to say that Ms. Doyle, who you said made the decision concerning all these resident, that she was well aware that these two residents were upstairs on a non-COVID unit, correct?

A. I can say she probably did know, yes.

Q. She made the decision on May 1 to get them off of a non-COVID unit and get them down where they belonged on the COVID unit, correct?

A. Yes.

Q. So how is it that Ms. Doyle was well aware that these two COVID patients were improperly on a non-COVID unit but you were not aware?

A. No one told me that they were -- I did not look at the census, to be honest,

to find out where they were placed. I just knew that they were coming into the building. I can't remember everybody who I approved and where they went. That's not my decision.

Q. No, but you also testified earlier, did you not, that you checked the census every day, correct?

A. Yes, I check to see who went in and who went out. And honestly, I do not pay attention to room numbers but -- I guess I should have, but I did not.

Q. Is it fair to say that a lay person would pick up this daily census sheet, look at it, and say, we have two COVID patients who, in violation of infection control protocols, aren't being placed on the COVID unit? One doesn't need to do much searching see that, correct?

A. Correct.

Q. And Ms. Doyle certainly had no trouble immediately recognizing that on May 1, in an anticipation of a DOH survey, these residents have to be moved downstairs,

correct?

A. To the best of my knowledge, yes.

MR. ZADEK: Ms. Liptak, can you show Ms. Frawley Exhibit 16.

Q. If we look at Exhibit 17, this is a bit later. This is April 21, correct?

A. Yes, sir.

Q. And this daily census sheet again confirms that 1 East had bed availability?

A. Yes, sir.

Q. And I would like you to look at two patients that came in from the hospital. One would be Resident #7 , and he was a COVID patient, correct?

A. Yes, sir.

Q. And he was placed into Room [redacted], a non-COVID unit, correct?

A. Yes, sir.

Q. And Resident #8 , also a COVID patient, came in and was placed in Room [redacted], correct?

A. Yes, sir.

Q. So again, when you stated you were unaware that hospital admissions that

were COVID were being placed on units other than 1 East, this is yet another example of two residents who were placed upstairs on a non-COVID unit, correct?

A. Yes, sir.

Q. Well, who made the decision to place these two residents in violation of infection control protocols onto the third floor?

A. Again, I repeat, all room assignments were done by the director of admissions.

Q. Did that change -- when you say that room assignments were made by the director of admissions, that would be Ms. Herrscher?

A. Yes, sir.

Q. Did that change at all during the pandemic? Meaning, is it fair to say that once the pandemic took grip in the facility -- let me repeat. Is it fair to say that after the pandemic took grip in the facility, certainly by mid-April of this year, that you had direct involvement and

direct decision-making as to where a hospital admission would be placed in the facility?

A. I knew everybody should be placed on 1 East. I did not make the decision as to where the new admissions came, I mean where they were placed. Again, that was by Ms. Herrscher, who was aware that the COVID residents were supposed to be placed on 1 East.

Q. Right, but you don't work under Ms. Herrscher, do you?

A. No, I work under Ms. Doyle.

Q. That's right. And you are responsibility for the safety and well-being of every resident in the facility, correct?

A. Correct.

Q. And is it fair to say that you are tasked with the responsibility of knowing where residents go when they arrive at the facility, particularly during a pandemic if they are coming in as a COVID patient?

A. I don't understand that question,

Mr. Zadek.

Q. Well, if the janitor came to you and said to you, "I don't know where patient would go in the facility," you would say, "You are the janitor, you don't need to know where they go," correct?

A. Yes.

Q. But you are not the janitor. You are the director of nursing services at Fulton, and as such, you are responsible to know where resident go when they arrive at the facility, particularly if they are coming into the facility with a communicable disease, correct?

A. Yes, sir.

Q. Let's take a look at Exhibit 18.

This is Exhibit 18, and it's April 24th of this year, correct?

A. Yes, sir.

Q. And this daily census sheet reflects that 1 East certainly had bed available?

A. Yes, sir.

Q. I would like you to look at

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second listed resident on the admission portion, Resident #49 .

Do you recall that resident?

A. Yes, I do.

Q. What do you recall about that resident?

A. She was sent out to the hospital for a hernia. She tested negative in our facility. They said was positive in the hospital but she returned with a negative finding, and it was determined that she could go back to her private room on her unit.

Q. Wouldn't she move back based on the policy and procedures after the quarantine period though on 1 East?

A. The decision was, she was in a private room on droplet precaution. She is an Italian-speaking woman who had an aide up there that would take care of her, who would speak Italian, and it was in her best interest to return back her to room, and she was kept in a private room. It would benefit her more than it would be on 1 East.

Q. Right, but the fact that she is Italian-speaking and had an aide is not really relevant to the policies and procedures at Fulton.

In other words, you had told us earlier, correct, that it was the policy and procedure at Fulton that hospital admissions, even with an initial negative test, would have to quarantine on 1 East, am I correct?

A. Yes, sir. But we had an ad hoc meeting with our medical director, myself, and Ms. Doyle, who thought and said it would be in her best interest, because of her language barrier and because of her long-term caring and her negative COVID test, the second time around in the hospital she would benefit without causing any risk to the other residents, that she would be placed back on her unit.

Q. But is it fair to say that when you speak of the "best interests of Resident #49 ," the policies and protocols that we discussed earlier, it's the obligation of

the facility to look out for the best interests of all the residents in the facility, correct?

A. Yes, sir.

Q. And placing a formerly tested COVID-positive patient onto a non-COVID unit would not be looking out for the best interests of the facility's residents, correct?

A. I can't agree with that. Because she was in a private room under droplet precautions and never came out of her room and wore a mask. I don't think she put anybody in danger.

Q. But it was certainly a breach of the protocol established at the facility that she ought to have gone to 1 East, correct?

A. Yes, sir.

Q. Can we look at Exhibit 19.

So Exhibit 19 is a daily census sheet from April 29th, correct?

A. Yes, sir.

Q. And, in fact, that's two days

before the massive bed transfer that occurred on May 1, correct?

A. Yes, sir.

Q. So on April 29th, 1 East again had bed availability, correct?

A. Yes, sir.

Q. And Resident #50 came in from Mercy Hospital on that day, correct?

A. I can't see it.

Q. I'm sorry, can you see it now?

A. I can now.

Q. And Resident #50 was a COVID-positive patient in Room [redacted], correct?

A. Yes, sir.

Q. So she was another COVID patient coming from the hospital who, in violation of infection control protocols, was placed upstairs onto a non-COVID unit, correct?

A. Yes. Again, that was a resident that was part of the QAPI team because she is at risk for elopement and that was a locked unit that she needed to go on.

Again, she was tested negative

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before she returned from the hospital and we thought, for her best interest, we did not want her to elope out of the building. So we put her on the locked unit where she resided beforehand.

Q. Are you saying, Ms. Frawley, that as far as Resident #50 and Resident #49, that they were placed for separate reasons into their own rooms -- although in violation of the policies -- under circumstances to protect the other residents in the unit?

A. You broke up, Mr. Zadek. I didn't hear that question.

Q. Are you saying that Resident #49 and Resident #50, these two residents, were placed onto units other than the COVID unit in violation of the policies set up at Fulton, but it was done so in a manner that considered the safety of the other residents on the floor?

A. Yes.

Q. Was Resident #49 assigned a one-to-one CNA?

A. Yes.

Q. Was Resident #50 assigned a one-to-one CNA?

A. Yes.

Q. Was it under that basis that you felt it was safe?

A. Yes.

Q. We can take this down.

When you said earlier that -- you testified earlier that you were unaware that hospital residents that were COVID positive were being placed in the non-COVID unit.

That lack of knowledge is based on your failing to carefully review census data?

A. Yes, sir.

Q. Is it fair to say then, based on Ms. Doyle's decision to make a mass movement of residents onto and off of Unit 1 East, that she was well aware of the census data in the building?

A. I can't answer that, but -- I can't answer that.

Q. DOH did the survey on May 4th, correct?

A. Yes, sir.

Q. Did they prepare, as a result of this focused infection control survey, did they prepare a report based on their inspection?

A. I believe so, but I can't recall what it was.

Q. Would that report be sent to you or to Ms. Doyle?

A. Ms. Doyle.

Q. But is it fair to say that, as the director of nursing, you would be made aware of DOH's findings, correct?

A. Yes.

Q. I mean, you would be very interested, because you and Ms. Doyle, you want to know whether there's a detailed plan of correction et cetera that has to be taken care of, correct?

A. Yes, sir.

Q. Are you aware that the focused infection control survey of May 4th resulted in just isolated deficiencies, you became aware of that, correct?

A. I do believe so, yes.

Q. Do you recall what those isolated deficiencies were?

A. I believe it was one housekeeper -- if I'm recollecting correctly, I believe it was one housekeeper who did not have on his protective gear, it was unzippered. I believe they did not see one CNA do handwashing properly or in between residents, and that's all I can recall.

Q. Okay, so you do have a pretty clear recollection that the deficiencies that were noted were isolated and, in the scheme of things, relatively minor, correct?

A. Yes, sir.

Q. And there was no IJ, no immediate jeopardy finding at all, correct?

A. Corrects sir.

Q. Would you agree, Ms. Frawley, that Ms. Doyle's mass movement of residents on May 1 onto and off of 1 East to have it appear to DOH that 1 East was, in fact, housing only COVID patients was successful?

Would you agree with that?

A. Yes, sir.

Q. Because if, in fact, Ms. Frawley, based on your testimony today -- if DOH had arrived unannounced on April 30, 2020, and found the actual patient population of 1 East, they might very well have cited the facility for immediate jeopardy based on serious infection control violations, correct?

A. They could have, yes.

MR. ZADEK: I think at this juncture we will conclude this hearing. It's been a long day and I thank you, Ms. Frawley.

THE WITNESS: Thank you.

(TIME NOTED: 4:22 P.M.)

INDEX TO EXHIBITS

CERTIFICATION

I, SIVAN DAHAN, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of October 2020.

SIVAN DAHAN

NEW YORK STATE: ATTORNEY GENERAL'S OFFICE

----------X

In the Matter of

FULTON COMMONS CARE CENTER, INC.; an Investigation by the New York State Attorney General, made pursuant to the New York State Executive Law, et seq.

----------X

63(12) Examination under oath of MICHAEL ANDREWS, taken via WebEx video conference, held on November 19, 2020, commencing at 10:47 a.m.

Reported by

Nicole Lebovic

A P P E A R A N C E S:

NEW YORK STATE ATTORNEY GENERAL'S OFFICE
Medicaid Fraud Control Unit
300 Motor Parkway, Suite 210
Hauppauge, New York 11788
BY: PRABHJOT SEKHON,
Special Assistant
Attorney General

ALSO PRESENT

Ben Smith- Special Assistant Attorney General, NYS AG

Robert Joyce - Investigator, NYS AG

Barbara Picone- Auditor Investigator, NYS AG

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M I C H A E L A N D R E W S, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

MS. SEKHON: Would you please state your name for the record?

THE WITNESS: Michael Andrews.

MS. SEKHON: What is your address?

THE WITNESS: [redacted].

MS. SEKHON: Can you just spell the street? I believe you said [redacted]?

THE WITNESS: [redacted].

MS. SEKHON: Thank you. And is that where you are right now?

THE WITNESS: Correct, yes.

MS. SEKHON: Is that [redacted], State of New York?

THE WITNESS: Yes.

MS. SEKHON: So, my name is Prabhjot Sekhon. I am a Special

Assistant Attorney General at the New York State Attorney General's Office in the Medicaid Fraud Control Unit.

I am going to ask my colleagues to identify themselves to you at this time.

MR. SMITH: Good morning, Mr. Andrews. My name is Ben Smith. I'm a Special Assistant Attorney General at the New York State Attorney General's office. I'm located in the New York City office and thank you for coming and talking to us today.

THE WITNESS: Thank you.

MR. JOYCE: Good morning, Mr. Andrews. I'm Investigator Robert Joyce with the Medicaid Fraud Control Unit. I work in Hauppauge Barbara Picone.

MS. PICONE: My name is Barbara Picone. I'm an Auditor Investigator with the Medicaid Fraud Control Unit. I'm also in Hauppauge.

MS. SEKHON: And I am also based out of the Hauppauge office.

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At this time I am going to ask my colleagues to just make sure they're muted and to turn off their videos so we can conserve bandwidth and hopefully the rest of today will run a little bit more smoothly.

So, we are conducting this examination remotely in order to ensure the health and safety of all participants due to Coronavirus-related concerns.

The examination will be recorded by stenographic means by a court reporter certified to report the examination in the State of New York. And any exhibits that we discuss today will be presented to you electronically.

THE WITNESS: Okay.

MS. SEKHON: Your testimony today is being taken pursuant to a subpoena that was issued by the Attorney General's Office pursuant to which I and Benjamin Smith, as Special

Assistant Attorney Generals, are authorized to take proof and make a determination of the relevant facts in connection with a investigation that deals with the resident care provided by Fulton Commons Care Center.

You are an employee there, correct?

THE WITNESS: Yes.

MS. SEKHON: I ask that the witness be shown what's been premarked as Exhibit 1.

(Subpoena was marked as Exhibit 1 for identification; 11/19/2020, N.L.)

MS. SEKHON: Mr. Andrews, this is a copy of the subpoena which was issued and served to you directly. Have you seen and received a copy of this subpoena?

THE WITNESS: Yes.

MS. SEKHON: If we go to the second page, is that your signature that appears in the middle of this page?

THE WITNESS: Yes.

MS. SEKHON: This subpoena required and compelled you to virtually appear for an interview today, correct?

THE WITNESS: Correct.

MS. SEKHON: And you understand that your virtual appearance here today is pursuant to that subpoena which compels you to appear and give testimony, correct?

THE WITNESS: Correct.

MS. SEKHON: Before we begin I would like to take a moment to discuss some of your rights.

Pursuant to the Fifth Amendment of the U.S. Constitution and the New York State Constitution, you have the right to refuse to answer questions if your truthful answer to that question would tend to incriminate you.

Do you understand that?

THE WITNESS: I'm sorry, repeat that just one more time?

MS. SEKHON: Sure. Pursuant to

the Fifth Amendment of the U.S. Constitution and to the New York State Constitution, you have the right to refuse to answer questions if your truthful answer to that question would tend to incriminate you.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: Please be aware however that should you choose to invoke your Fifth Amendment right, a negative inference can be drawn against you in any future noncriminal proceeding.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: You took an oath a moment ago to tell the truth, the whole truth and nothing but the truth, should you intentionally make any false statement during this proceeding and by that, I mean a statement that you do not believe to be true, then you may be prosecuted for perjury.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: I'm going to ask you questions which are relevant to the Attorney General Office's investigation into both the general resident care provided by Fulton Commons Care Center, as well as more specific care provided by Fulton Commons Care Center during the Coronavirus pandemic.

If I say Fulton Commons or FCCC from hereon out, would you understand that I am referring to Fulton Commons Care Center?

THE WITNESS: Yes.

MS. SEKHON: So just some ground rules.

As you see we have a stenographer here today and she will be recording this interview. So it is very important that she hears everything that you say and what that means is that we cannot speak over one another.

I ask that you allow me to finish

asking my question before you begin to answer because she will not be able to get us both down at the same time.

There will probably be times during this examination that you feel like you know exactly what I'm asking before I'm done, it's really important that you let me finish asking my question before you begin to speak.

It is also important that you give verbal responses to all of my questions. So nods of the head, shrugs of the shoulder, uh-huh, hmm-hmm, those things do not translate on to the record. So, if you do any of those things, I ask that you accompany them with a verbal response, with words.

If you do not understand my question, please let me know and I will do my best to rephrase it for you. You know, we are doing this virtually, so if you don't hear me or you don't hear the whole question, please let me know that as well and I will certainly

repeat it for you.

If you answer my question, I can only assume that you understood it as I asked it.

If you need to take a break for any reason, that's fine. I just ask that if there's a pending question, that you answer my question before you leave the camera.

While we're talking about scheduling, I do not expect this to be an all day affair. However, if it starts to run long, then I will generally take a break every hour and a half, every two hours, you know, but before we get to that, if you feel like you need a break for any reason, just let me know and I will be happy to accommodate you.

Do you understand those instructions as I have given them?

THE WITNESS: Yes.

MS. SEKHON: And sometimes you may give an answer as completely as you

can and then later remember additional information. If that happens to you, please tell me that you would like to add something to your earlier answer and we will do that right then while it's on your mind.

Will you do that?

THE WITNESS: Yes.

MS. SEKHON: In addition, it might occur to you at some point that a previous answer you have gave was not completely accurate. If that happens, please tell me and we'll make the necessary corrections at that moment.

THE WITNESS: Yes.

MS. SEKHON: This proceeding is confidential. You are not entitled to a copy of the transcript of this testimony or any exhibits that will be marked today.

Do you understand that?

THE WITNESS: Yes.

MS. SEKHON: As this is a confidential proceeding, there shall be

no recording during the taking of this testimony, other than by the stenographic means that we have already discussed.

Although Webex does offer recording capabilities, I give you my assurance that this examination is not being recorded by the New York State Office of the Attorney General via Webex.

Do you also agree not to record this examination in any way?

THE WITNESS: I'm sorry, can you just say that last part one more time?

MS. SEKHON: Sure. Do you also agree not to record this examination in any way?

THE WITNESS: Yes.

MS. SEKHON: Similarly, due to confidentiality, we request that you do not discuss this matter, your testimony here today or any documents that you may view or may produce in the future in connection with today's testimony

with anyone.

Unless we are on a break, there shall be no private communications with anyone. That includes phone calls, passing of notes, text messaging, e-mailing or any other means of communication that may or may not be visible on camera.

I do know that your -- I believe it was your wife who was helping you get set up via Webex this morning. I just want to confirm that she is no longer in the room at this time?

THE WITNESS: No, she went back to work actually.

MS. SEKHON: Please, later today, express my gratitude to her for her assistance in trying to get you connected, I appreciate it.

THE WITNESS: Thank you, I will.

MS. SEKHON: If anyone else does come into the room during the course of this examination, please let me know and we will take a break because there

should not be anyone else in the room with you. Okay?

THE WITNESS: Okay.

EXAMINATION BY

MS. SEKHON:

Q. Have you taken any drugs or alcohol within the past 24 hours that may have an impact on your ability to testify here today truthfully and to the best of your knowledge?

A. No.

Q. Are you aware of any physical or mental disability or defect that may interfere with your ability to understand my questions or your ability to respond truthfully and completely?

A. No.

Q. Did you discuss the fact that you were subpoenaed here today with anyone?

A. No, other than my wife, she knows.

Q. Did you discuss the fact you were subpoenaed here today with anyone at Fulton Commons?

A. No, but when I was subpoenaed, I was brought out with my administrator to be served the subpoena.

Q. You said you were brought out with your administrator?

A. Yes, the people that were serving me the papers, my administrator brought me outside to them.

Q. Okay.

A. And they served me the paper in front of her.

Q. Who was the administrator?

A. Cathie Doyle.

Q. Did Cathie Doyle have any discussions with you at that time regarding the subpoena?

A. No.

Q. Did Cathie Doyle at any point discuss with you what you might be testifying about here?

A. No.

Q. Did anyone else at Fulton Commons have any discussions with you about what your testimony here today might be about?

A. No, they didn't discuss it, but word gets around. Like you hear things, but no one personally came and discussed anything with me.

Q. So what have you heard?

A. Just that we got subpoenaed, I guess people were suing, that's it. That's just talk around the building.

Q. Do you know who you heard that from?

A. Just people talking, no one or one conversation, just people talking. I can't particular say a name. It's just words that's in the building, that's all.

Q. And has that -- have those rumors discussed what any lawsuit may be about?

A. No.

Q. Have you spoken to anyone in preparation for your appearance here today?

A. No.

Q. Why do you believe that you were subpoenaed to be here today?

A. Why do I believe? Because of the rumors, people dieing in the building and

there was talk of them, like a Facebook page and stuff like that. So I believe it's all in the same process.

Q. Is that related to COVID-19?

A. Allegedly, I don't know for sure, but allegedly, yes, because of peoples family members dieing.

Q. Did you review any documents to prepare for your testimony here today?

A. No. Honestly, I didn't know what you were going to ask me.

Q. Okay. Have you spoken to any other employees at Fulton Commons who have told you that they were subpoenaed to testify?

A. No.

Q. Are you aware --

A. But we do know that -- no, I hadn't spoken to anyone, but we do know people had been subpoenaed, but I don't know who.

Q. Have you ever testified under oath before?

A. Yes.

Q. In what setting?

A. Criminal.

Q. Were you a witness in this case or something else?

A. No, I wasn't a witness, I was accused.

Q. Did you testify at trial or was it a hearing or something else?

A. It was a hearing, never made it to trial.

Q. What county was that in?

A. Queens County.

Q. When did that occur?

A. Approximately 20-something years ago.

Q. Was that the only time you testified under oath?

A. In traffic court, I did a civil case when I was a jury, stuff like that, nothing, yeah.

Q. Okay. I'm sorry, you said that you were on the jury with the civil court piece?

A. Yes.

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Q. Have you ever testified in a deposition before?

A. No, I don't believe so.

Q. Have you ever testified at a trial before, other than traffic court?

A. No.

Q. So unless I give a specific date or time period, all of the following questions will pertain to the time period of January 1, 2020 through June 1, 2020, do you understand?

A. Yes.

Q. Would you please provide your cell phone number for the record?

A. [redacted].

Q. Who is the provider?

A. Verizon.

Q. Do you have a home phone number as well?

A. Yes.

Q. What is that number?

A. [redacted].

Q. Who is the provider for that?

A. Verizon.

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Q. Can you just give us a little bit of your educational background?

A. I did one year of college.

Q. How long ago was that?

A. Let's say about 20 years ago.

Q. Did you obtain any sort of degree or license related to that one year of college?

A. No.

Q. Do you hold any licenses or certifications in the State of New York other than a driver's license?

A. No.

Q. And you mentioned before that you work at Fulton Commons Care Center, how long have you worked there?

A. 18 years, December 2nd will make it 18 years.

Q. I'm sorry, I didn't hear the last part?

A. December 2nd will make 18 years -- I'm sorry, December 9th will make 18 years.

Q. Okay. When you were first hired

by Fulton Commons, what was your title?

A. Housekeeper.

Q. How long did you hold that title?

A. Approximately four years.

Q. After that four-year period, what did your title become?

A. Supervisor.

Q. Was that still within the housekeeping department?

A. Yes, housekeeping supervisor, yes.

Q. How long were you a housekeeping supervisor?

A. Until about another four years.

Q. You said until like for another four years?

A. No, about four years ago. So, '16, '17, 2016, '17.

Q. Okay. At that point, what did your title change to?

A. Now I'm the housekeeping director.

Q. Have you been the director of housekeeping continuously since that

2016/2017?

A. Correct, yes.

Q. What are your duties and responsibilities as a housekeeper when you were first hired by Fulton Commons?

A. I was the first floor man. I controlled the fourth floor actually. I was in charge of cleaning the rooms, the hallways, the bathrooms, stuff like that, in that category.

Q. Did you say that was the first or the fourth floor?

A. That was the fourth floor, when they first opened the fourth floor, 4 East actually.

Q. Was someone else responsible for 4 West?

A. Yes, at that time, yes.

Q. So before we move on, let's -- just so the record is clear, just get the facility layout?

A. Okay.

Q. So how many floors are there at Fulton Commons?

A. Are you talking about resident units or are you talking about the floors in the facility itself?

Q. Floors in the facility itself?

A. Okay. So you have the cellar, the first floor, the second floor, the third floor, the fourth floor and the roof, six actually.

Q. Can you just repeat what you said, there's the cellar, the first floor, second floor, third floor, fourth floor?

A. Fourth floor and then there's the attic, which is the roof. I'm sorry, the roof.

Q. Okay.

A. So up on the roof there is two bathrooms, so yes.

Q. How many of those floors have resident units?

A. It should be seven. I mean, the floor, I'm sorry, four of the floors have resident units.

Q. How many units are there total?

A. Seven total.

Q. Where are the units located?

A. You have the east side and the west side of the building.

Q. How many units are there on each floor?

A. There is two units on each floor, except for the first floor. The first floor has one unit.

Q. Is ti fair to say that the units are called 1 East, 2 East, 2 West, 3 East, 3 West, 4 East and 4 West?

A. Yes.

Q. So when you first started working at Fulton Commons, you were assigned to 4 East you said, correct?

A. Yes.

Q. And were you the only housekeeper assigned to 4 East?

A. At that time, no. At that time there was two people on a unit, at that particular time.

Q. When you became the housekeeping supervisor, at that point what were your duties and responsibilities?

A. I controlled the staff on every unit to make sure that their job was being done correctly.

Q. Were you the only housekeeping supervisor?

A. We had a weekend supervisor also at that time.

Q. How did you ensure that the staff were performing their jobs correctly?

A. I would do daily rounds on a regular basis, we do daily rounds. Everybody had a work assignment that had to be done before the day was out.

Q. When you were the housekeeping supervisor, was there someone else in the position of director of housekeeping?

A. Yes.

Q. Who was that individual?

A. His name was Errol Bierria.

Q. Can you spell that last name, please?

A. B-I-E-R-R-I-A.

Q. And you said the first name was Errol -- E-R-R-O-L?

A. Yes.

Q. How did it come to be that you became the director of housekeeping?

A. Change of administrator. I don't know the details, but I'm assuming that whatever happened, Errol was released and I was moved up.

Q. So, when you say change of administrator, was that when Cathie Doyle became the administrator of Fulton Commons?

A. Yes.

Q. Who was the administrator prior to Miss Doyle?

A. I'm sorry?

Q. Who was the administrator of Fulton Commons prior to Miss Doyle?

A. You had Patrick Russell. We had about four before Miss Doyle actually.

Q. When you became the director of housekeeping, did you have to apply for the job or were you just given the promotion?

A. I earned it through the ranks. I was just moving up in my position.

Q. Do you have a set schedule as the

director of housekeeping?

A. I'm actually basically on call 24 hours kind of.

Q. Generally speaking, are you in the building physically, you know, somewhat of the same hours each day?

A. Yes, correct, yes, yes.

Q. Are you generally in the building the same days every week?

A. Yes.

Q. So what days are you usually in the building?

A. Monday through Friday.

Q. And what hours are you usually in the building?

A. I'm there from 6:00 in the morning, sometimes to 4:00 in the afternoon.

Q. So can you tell us just generally what are the duties and responsibilities of the housekeeping department as a whole?

A. We're in charge of making sure that all the rooms Are disinfected and cleaned. I deal with laundry. I deal with basically environmental.

You want a detailed breakdown? That basically sums it up.

Q. As detailed as you can be, that would be helpful?

A. I was in control of delivering the linens. We deliver the linens to the unit. We take the linen off the unit. We mop the rooms. We mop the bathrooms. We disinfect the units. We deal with the residents' clothing, as far as picking it up to send it out to laundry, to return it back to the residents on the unit. Throwing out the resident's clothing when they leave.

That basically sums it up.

Q. What your specific duties and responsibilities as the director of housekeeping?

A. That's a good one, everything. I have to make sure that the staff are doing their job. I deal with payroll. I deal with disciplinary actions. I deal with ordering, supplies. I have a lot of titles under me.

I deal with the morgue. I deal

with a lot of things. I have a lot -- it's a lot.

Q. Who do you report directly to?

A. I report to Cathie Doyle, the administrator.

Q. How many employees are there in the housekeeping department in total?

A. About 23.

Q. How many of those are housekeeping supervisors?

A. I just received a housekeeping supervisor, one housekeeping supervisor.

Q. And that number 23, does that include you?

A. As of today? Yes, yes, you could say that, yes.

Q. So of those 23 employees, one is you, the director of housekeeping, another is the housekeeping supervisor, so the other 21 employees, are they all housekeepers?

A. Yes.

Q. Did the housekeepers report directly to the housekeeping supervisor or did they report directly to you?

A. Either or, but most of them report directly to me though.

Q. Does the housekeeping supervisor report directly to you?

A. Yes.

Q. Who is the housekeeping supervisor currently?

A. His name is Warren Lufkin.

Q. When did Warren Lufkin begin working at Fulton Commons?

A. I believe -- I want to say in February.

Q. How did he come to be hired?

A. He applied for the position.

Q. Did he know anyone at the facility prior to his application?

A. Did he know anyone? I honestly don't know, but he applied for the position and I hired him. Those are questions that I just don't ask.

Q. What's the normal application process?

A. We fill out -- because they're union, we post it. If someone in the union

is available, then we try to move people up.

If not, someone on the outside, could be posted on Indeed or one of those specific websites.

They come in, they fill out an application. They get background checked and everything. If it's a fit, then we hire them.

Q. And it's your belief that Mr. Lufkin when through that's channels in this application process?

A. Yes.

Q. Did Mr. Lufkin know Cathie Doyle in any manner prior to being hired?

A. I believe so.

Q. How did he know Cathie Doyle prior to being hired?

A. That part I really don't know. I'm going to assume -- I'm going to assume that it was an accident, a car accident and he was just introduced and that's how I met him.

He came, filled out an application. He seemed like a fit for me

and I hired him.

Q. So you say that you're going to assume that it was a car accident, that's an interesting thing to assume, so can you elaborate on that a little bit?

A. Yeah because you hear things, so that's why I got to say I assume. I don't know if it's a fact. I just know things that I hear. So because I hear it and I don't know if it's a fact, I assume.

Q. Okay. What did you hear to assume?

A. That him and her daughter had a car accident. They met, he was looking for work at the time. He was introduced. He filled out an application and then he went from there with it.

Q. Who did you hear that from?

A. He told me himself.

Q. Okay.

A. Yeah, he told me.

Q. So that's a reliable source of information?

A. No, but prior to him telling me

that, you hear it in the building. People talk, that's why I say, people talk, so you got to assume.

Q. Did you ever hear that from Cathie Doyle directly?

A. No, I believe she mentioned it in a meeting. She did mention it, yes, I'm lying, yes, she did. She mentioned it in a meeting, yes, she did.

Q. Do you recall Cathie Doyle ever mentioning that to you?

A. In the meeting. It was in the meeting.

Q. Okay.

A. She had a meeting with the whole -- all of the departments and she mentioned it during his process of hiring.

Q. Did Miss Doyle recommend Mr. Lufkin for the housekeeping supervisor position?

A. I can't say that she recommend him. I'm not going to say she recommended him. She left it up to me to hire whoever. At the time I was working by myself for a

while and when I met him, I liked him. He had management experience. And I just hired him. I needed the help and I hired him.

Q. Would you have felt comfortable declining to hire him despite that he was familiar with Cathie Doyle?

A. Had I had met him and didn't agree with him? Yes.

Q. So I believe you said Mr. Lufkin started working at the facility in February of 2020; is that right?

A. Correct.

Q. Did he receive any sort of training upon being hired at Fulton Commons?

A. Yes, he was in-serviced. He was in-serviced. Before you're hired, you have to go through an in-service process. So yes, he was in-serviced on things and then he was trained as ongoing. You know, I taught him as much as I knew and he's been working out ever since.

Q. What topics did he receive in-services?

A. Well, you have to receive

in-services of the -- well, you say workplace violence, all the policies and procedures, the guidelines for housekeeping. You have to go through a background of the HIPAA laws, all of the major in-services you have to do and then most of it is learning as you go.

He's a very smart individual. He caught on quick. When I was out, he took over. So, he's doing a phenomenal job.

Q. Who was responsible for in-servicing Mr. Lufkin?

A. I'm sorry?

Q. Who was responsible for in-servicing Mr. Lufkin on these topics?

A. At the time that he was hired we had an in-service lady. Her name was Rose -- I can't really pronounce her last name, Rose Edneiser.

Q. Was it Edneiser?

A. It's Rose -- I want to say it's Edneiser. She was the in-service coordinator at the time.

Q. Did you personally in-service Mr.

Lufkin on any topics when he was hired by Fulton Commons?

A. Yes, we have in-services also. We constantly have in-services. I'm still learning also. In the process we constantly having in-services on all updates. How the rules changed, anything knew that's going on in the building, we trying to keep everybody informed.

Yes, he was in-serviced through me too on new chemicals that come in, on everything.

Q. So I think we established that there are currently 21 housekeepers specifically?

A. Okay.

Q. Is that the same number that has been since January 1st of 2020 or has that number changed in any way?

A. The number has changed. It fluctuated up and down actually because we had some people that resigned and there was some people that I had hired. So, the number, it did fluctuate, but that was the

round about number of hires of people that was hired, yes.

Q. So from January 1, 2020 to June 1, 2020, what was the highest number of housekeepers that you had?

A. At one time we might have had about -- maybe about 26, with me included, maybe.

Q. During that same time period of January 1st to June 1st of this year, what was the least number of housekeepers that Fulton Commons has had?

A. As far as housekeeping it was never less than 20.

Q. Never less than 20 total including you?

A. Including me, to say -- no, we can't say including me, including me would be higher. So let's say never less than 22, including me.

Q. Okay. So on the high end you had as many as 24 housekeepers specifically and on the low end, you had as low as 20 housekeepers; is that fair to say?

A. Yes.

Q. What shift does the housekeeping department work?

A. We have two people that come in 6:00 to 2:00. We have about maybe about 14 that come in like 7:00 to 3:00. And then from we had one person that come in at 2:00 to 10:00. And we have two people that come in 7:00 to 3:00 and then there's one person that comes in from 4:00 to 12:00, but it varies on each day.

Q. Okay. I just want to make sure we have the times clear on the record. So you said there are two people that come in 6:00 to 2:00, is that 6:00 a.m. to 2:00 p.m.?

A. 6:00 a.m. to 2:00 p.m., yes.

Q. And then 14 individuals who come in from 7:00 a.m. to 3:00 p.m.?

A. It's about 14, yes.

Q. And then one who comes in from 2:00 p.m. to 10:00 p.m.?

A. Yes, he comes in 2:00 to 10:00. That's on Tuesday, Wednesday and Thursday.

Q. And then we have two individuals who come in from, you said 7:00 to 3:00, is that 7:00 p.m. to 3:00 a.m.?

A. Yes, I'm sorry -- no, I'm sorry, 3:00 p.m. to 11:00 p.m.

Q. Okay.

A. Two individuals.

Q. And then there is one person who does 4:00 to 12:00, is that 4:00 p.m. to midnight?

A. Yes, correct.

Q. Other than the individual who comes in from 2:00 to 10:00, Tuesday, Wednesday, Thursday, are there any other fluctuations in the schedule?

A. Those are the hours that we have, but we have -- all of them are not full time. Some of them are part time. Some of them are per diem that comes from.

Q. Now, how many full-time employees do you have as housekeepers?

A. Wow, give me a second, let me add them up. About 14 employees during the morning time, between the 6:00 a.m. shift to

the 3:00 p.m., there's about 14 during the daytime. At nighttime, there's two.

Q. How many part-time employees are there?

A. Part-time you have -- I want to say there's three.

Q. Did those individuals have a set number of days every week?

A. Yeah, they work -- because of their union, you have like four to five days, three out of five days, stuff like that, two out of five days. So, those individuals work those. And then we have per diems that we call in.

Q. How many per diems does Fulton Commons have?

A. I believe it's three of them too.

Q. So the breakdown that you gave us before, you know, with two individuals in the 6:00 a.m. to 2:00 p.m. and 14 in the 7:00 a.m. to 3:00 p.m., that breakdown, are the those the specific shifts that require coverage at Fulton Commons?

A. I'm sorry, let me hear that

correctly again? Say that one more time?

Q. So that breakdown you gave us before of the two individuals on the 6:00 a.m. to 2:00 p.m. and the 14 individuals on the 7:00 a.m. to 3:00 p.m. and et cetera, for the rest of the day, are those the different shifts that require coverage at Fulton Commons?

A. So, you have people that have different shifts. So, the 6:00 p.m. guy, one comes in and he works the cellar and then you have one that comes in and he's on the unit. So, they like -- those are full-time employees. Those are full-time employees.

Then the 14, you have a person on the west side. I'm just doing the math in my head, if you don't mind?

Q. No, that's fine.

A. You have a person on the west side. At this present time our east side unit is closed down, but you would have a person on 1 East and then there was a --

Then you go to the second floor

and then you have three full-timers on the complete second floor, which would work 7:00 to 3:00.

On the third floor you would have three full-timers that would work 7:00 to 3:00.

And on the fourth floor, you would have the two full-timers, plus the one person from 6:00 to 2:00.

Q. Just going back, you had said you would have one person on the west side, what this is that referring?

A. If I break it down, so let me just break it down for you. So, you have a person on the east side, you have a person on the west side and then you have a floor man. He recovers the east and west. He goes back and forth.

So, you have that on the fourth floor, the third floor and the second floor. Right? So that would give me nine people right there, that's nine full-timers. Right?

Okay. Then on the first floor

you would have one on the west side and then you would have two on the east side at the time because that was our rehab floor. So that would give me 12 right there.

Then you would have the cellar guy, which is 13. And then -- so, that's 13, that's 13.

And then sometimes you have the guy that you could bring in for second assignment during the week also. He would like strip rooms and stuff like that. So that would be 14. And that's between the 6:00 p.m. -- I'm including the two 6:00 p.m. shifts. So, that's on the 6:00 a.m. to the 3:00 p.m., that covers that shift alone.

And then at 2:00 on Tuesday, Wednesday and Thursday, you have a 2:00 to 10:00 guy come in, which is a part-timer. And then you would still have your two full-time guys, one works 3:00 to 11:00 and one works 4:00 to 12:00. And they cover five days.

And then the slots that they're off, then you bring in per diems or other

people to fill in the slots.

Q. So the 2:00 p.m. to 10:00 p.m. shift, that part-time individual on Tuesdays, Wednesdays, Thursdays, what areas does he recover?

A. I'm sorry, I didn't catch the last part.

Q. I'm sorry, what areas does that individual cover?

A. It depends on the day and the special assignment, sometimes he cover the special assignment. Sometimes he would cover a side of a unit.

Q. What does -- could you just elaborate more on the term special assignment?

A. So special assignment means that individual would come in and on that particular day he might clean the unit's wheelchair. He might have wheelchair assignment that night.

So, he would take the wheelchairs from the residents themselves, bring them down and clean them up. And that would be

all that he would do that night and take it back.

Sometimes he might have an assignment where he has to strip and wax the hallways, the locker room or go outside on the outside grounds. So, they have special assignments that they do, that they take care of.

Q. So, then the individuals who work the 3:00 to 11:00 shifts --

A. Yes.

Q. -- what areas do they cover?

A. So one would cover the east side and one would cover the west side.

Q. Of the whole building?

A. Yes, correct.

Q. And then you mentioned that there's one individual or one shift on the 4:00 p.m. to 12:00 a.m. shift?

A. Yes, so there's one full-time guy that works 3:00 to 11:00 and there's one full-time guy that works 4:00 to 12:00.

Q. Okay.

A. So, one would cover the west side

and one would cover the east side.

Q. Okay. And then you said that these shifts are covered by per diems when these individuals are scheduled off, so would that be the weekends?

A. No, we work every other weekend there.

Q. Okay.

A. So let's take the 2:00 to 10:00 guy, he works every other weekend. So, he would work a Saturday and Sunday when one of the full-timers was off. And then you would bring in another per diem to cover the other full-time positions. So that covers both weekends. Does that sound correct to you? Do you understand what I'm saying?

So, we have a -- each individual has to work a weekend.

Q. Okay.

A. Yes.

Q. So do the days that the staff work in the housekeeping department, in particular, the days that the housekeepers work would rotate every week?

A. Yeah, their weekends rotate and their days off. So let's say for instance I have to work that weekend coming up, my day off would be on Thursday. But it's consistent for that. Like, so every time you work a weekend, you know your Thursday is your day off.

Q. Okay. And your full-time staff, do they work five days a week or more than that?

A. They work five days a week, sometimes we do give them overtime when needed.

Q. Are the -- so, are the staff members specifically assigned to particular units?

A. Yes.

Q. And was that the case prior to January 1, 2020?

A. Yes.

Q. Did that remain the case through June 1st of 2020?

A. No, we cut back. When COVID hit we scaled back to try to keep each

individual on a unit. Like, so the floor man himself would go side to side. When COVID hit, we stopped the side to side business. We particularly tried to leave all that one side and tried to leave that specific person on that one side.

And then I had a couple of staff members that was out during that time with COVID because they were sick. So we was working, trying to keep everybody consistent to where they was at.

Q. Has Fulton Commons resumed having the floor man go the entire length of the floor or are they still confined to one side?

A. Because there's no COVID in the building, we went back to having it the floor man side to side.

Q. Okay. When was that resumed?

A. Let me see, we had -- COVID was out the building for about -- I don't want to lie to you. So whenever they said that COVID was out the building, I know that we had infection control people come in,

everything was clear and then we went back to normal procedure. I want to say a couple of months back, couple of months ago.

Like, they started doing -- we couldn't do visitation unless COVID was out of the building. So, it had to be a couple of months ago now.

Q. When did Fulton initially put a stop to the floor man covering the whole floor?

A. Actually, she stopped it really kind of before COVID even did us like that. And she tried to put us on quarantine before everything. I want to Say -- I know we was ahead of the game on that one.

I can't give you an exact date, I'm sorry. I don't know an exact date. I do know it was before COVID really hit us, before COVID was known in the building, she kind of quarantines the building down.

Q. Do you recall if it was in February of this year?

A. Warren had started in February, it could have been February. It could have

been early March. It could have been February because I know Warren was there. It could have been February, yes.

Q. And you are using the term "he," you were saying, "He shut you down"?

A. She, Mrs. Doyle, she.

Q. Okay. So Miss Doyle had decided to put a stop to the floor man?

A. She stopped all visitation and everything and tried to quarantine the building. So that included stopping the individuals from going all around the building, stuff like that, yes.

Q. So whose decision was it to confine the floor individuals to one unit?

A. Wait, say that one again?

Q. Sure. Whose decision was it to confine the floor person to one side of the building?

A. That was my decision actually, yes.

Q. And you believe that was done when Miss Doyle put a stop to visitation?

A. Yeah, when she had quarantined

the building, that was like part of the -- like the plan to stop everybody from being all over the place, just in case something happened we would kind of have an idea of where it could have started, more or less, like, you know.

Q. In your own words, how would you describe the term infection control?

A. In my version?

Q. Yes.

A. How would I describe infection control? You try to prevent any outbreaks, try to make sure that everything is clean, up to standards. You know, you don't -- not just because of COVID, because of care. You just try to make sure that everything is up to par, you don't want no deficiencies from the Department of Health. So you try to make sure that everything is up to date, like everything is clean, everything is just clean. I mean, infection control, you try to control anything from outbreaking.

We had infection control surveys back to back. I had the CDC coming in --

so, we were, you know -- they was on top of it.

Q. And in particular, what role does housekeeping play in following properly infection control?

A. I'm sorry?

Q. Sure. In particular, what role does housekeeping play when it comes to infection control?

A. We have a big role. We have to make sure that everything is cleaned properly, disinfected properly. We have to make sure the right chemicals are in, which ones are EPA approved. Cleaning, you have to make sure everything is cleaned and disinfected, high touch areas, low tough areas.

Housekeeping role is cleaning and you have to make sure that you do a proper job, if not, an outbreak can occur.

Q. You used the term "high touch area" and "low touch area," what do those mean?

A. So, areas that you know that a

resident is going to constantly touch, areas that you know that you might touch on a regular basis. That's -- you know, that's the extremely high touch areas, like the doorknobs, the light switches, those are things that hold and carry most of the germs. So you have to try to make sure that you clean all of those on a regular basis. That's considered my high touch areas.

I can go down the line of high touch areas. Your low touch areas is something that you are not constantly touching, but everything still has to be cleaned.

Q. So when you say that high touch areas must be regularly cleaned, how frequent is regular?

A. We clean every day. We do terminal cleaning, not every day, but the rooms are cleaned every day. You know, you do terminal cleaning if you have someone that's, let's say, I don't want to -- someone that's sick or someone that you know went home or went to the hospital, then you

go in and you do a terminal cleaning of that room.

But as far as cleaning the room, you clean the room every day.

Q. So what does terminal cleaning mean?

A. Terminal cleaning?

Q. Yes.

A. So, if, let's say, I'm sick and I'm in a room that's off limits without me checking with the nurse and stuff to come into my room, I would have to come in and terminally clean that room, let's change the curtains.

If you went to the hospital, I would have to come in and do a complete clean of your room, change curtains, do this, do that, stuff that you wouldn't normally do on a normal basis.

You have to take everything out of that room, terminally clean it, disinfect that room completely and then put it back together.

Q. Okay.

A. That's terminal cleaning.

Q. So I'm going to ask you for a lot more detail with respect to that, can you tell --

A. Okay.

Q. What would you do differently with a room that's being terminally cleaned versus a room that's being cleaned just generally day-to-day?

A. So, the difference is we don't always change the curtains in the room. That's something that I do -- if you're there and your curtain is not thorough and you're in that room, then we just don't go in there and chance that curtain. We go in and clean everything else.

Your bed, we don't take the mattresses and stuff off if you're in your room on a every day basis. When you're in that room and that room is being terminally cleaned, we take that mattress off and we terminally clean that mattress and stuff.

So, there is little specific things that we do when we're terminally

cleaning a room.

Q. How is the mattress terminally cleaned?

A. So, we take the mattress off the bed -- when we terminally cleaning a room, the mattress is turned off, taken off the bed and we disinfect everything. The bottom of the bed, the top of the bed, the mattress and stuff.

We do a complete cleaning of that. He use bleach. We use like the chemicals that we need to do a terminally cleaning. When you terminal cleaning, something we use a stronger chemical, we always use bleach when we're terminally cleaning.

On a regular cleaning we might not always use bleach. We have other chemicals that we can use because sometimes a resident is in the bed. So, you can't use bleach when a resident's in the bed. So, you have to use different chemicals. So, terminal cleaning is different.

Q. So, other than removing the

curtains and terminally cleaning the mattress and potentially using different chemicals, what else is done differently during a terminal clean versus a routine lining?

A. Differently, we use different chemicals. You don't -- on a regular clean you're not going to go in -- because sometimes a resident doesn't want to leave their room. When you're terminally cleaning, most of the time the residents are not in the room.

So, you can use bleach. You can take down the curtains. You can move -- the beds are taken and disinfected completely. On a regular cleaning you just wipe it down. You're cleaning it, but you're wiping it down with a less stronger chemical, let's put it that way.

So, there's a difference. We're still going to clean the bathroom. We clean the bathroom on an every day basis. That's included in terminal cleaning or regular cleaning, that's on an every day basis.

You go and do the high touch areas and the low touch areas on a regular basis. But terminal cleaning, you know that you're just -- everything is more or less bleached down with everything because you want to try to disinfect everything in that room because we don't know what else somebody might have had.

Q. How is terminal cleaning done -- actually, before I even ask that question.

Is it fair to say that most of the rooms at Fulton are double rooms, meaning they can hold up to two occupants?

A. Yes.

Q. How is terminal cleaning done if one resident is discharged from the room, but the other one is still there?

A. So, if it's not an infectious room, 99 percent of the time the nurses will move that resident out the room so that we can go in and do a terminal cleaning of that room.

Q. So, the room would still be terminally cleaned?

A. The entire room.

Q. As long as one person is being discharged or transferred, I should say?

A. Yes, correct.

Q. Is it documented in any way when a room is terminally cleaned?

A. I'm sorry, say that again?

Q. Is it documents in any way when a room is terminally cleaned?

A. Yes, we have documents. We started keeping documents more or less during COVID.

Q. What documents are kept with respect to terminal cleaning?

A. We keep documents of room changes, when somebody left. Since COVID we've been keeping documents of everything that's been terminally cleaned.

Q. Is there a name for the document?

A. It would be "Terminally Cleaning," it might say, "COVID Terminal Cleaning" on it and we've been using those documents ever since.

Q. Who's responsible for completing

that document?

A. I write up the document, the supervisor signs off on it. The staff is alerted to what rooms need to be terminal cleaned and the staff handles the cleaning.

Q. Do you write up the documents before the rooms are terminally cleaned or after?

A. No, mostly it's after. When we found out that a room has to be cleaned, nursing on the unit more or less alerts to the staff on the unit to what rooms need to be cleaned.

And the process, I give paperwork also on which rooms need to be cleaned and our staff -- most of our staff has been there for ten years, 12 years and better. So, they go in and do what they supposed to do, as far as terminally cleaning their rooms.

Q. What paperwork do you receive with respect to the rooms that need to be cleaned?

A. I'm sorry, say that again?

Q. What paperwork do you receive that indicates that rooms that need to be terminally cleaning?

A. So, I go off the room changes, discharges. It's more like an census paper and it has the room changes and discharges of the residents and stuff like that.

Q. Where did you get that census paper?

A. Most of the time it's in my mailbox.

Q. Is that the only paperwork that you would receive as to notify to what rooms need to be terminally cleaned?

A. Yes, those are the only paperworks that I receive. Other than notification from word of mouth from the nurses and stuff as to who knows what's going on on their unit, then they alert us also.

Q. If your notified by a nurse that a room needs to be terminally cleaned, would you include that room on the COVID terminal cleaning log?

A. I'm sorry, can you repeat that one more time?

Q. Sure. If you were notified by a nurse that a room needed to be terminally cleaned, would you include that room on the COVID terminal cleaning log?

A. So what we do now is -- yes, yes, to that end. So what we do now, is every time that there is a room that needs to be cleaned, we clean a room as if it is COVID, to be honest, that's what we do now. Since COVID started we have been cleaning rooms as if it has COVID because you just don't know.

Q. Is that COVID-19 terminal cleaning log the only document taken that Fulton maintains that would show that a room was terminally cleaned?

A. That's the only one that I keep, yes.

Q. Do your housekeepers review that document to make sure that you all the rooms that they cleaned are reflected in it?

A. Do they keep documents?

Q. No, sorry. Do your housekeepers

review the COVID terminal cleaning logs to ensure that the rooms that are reflected on it were rooms that were actually terminally cleaned?

A. Do they have a log? No, they don't have a log. They know -- we have in-services. We have in-services every day -- not every day, maybe not say every day, but we have in-services all the time. They know that's how we clean a room.

We do a competency form that they have to sign off and they sign off on room cleaning also. So the papers that they do sign off that the room was cleaned, so yes, we do that have.

Q. Okay, let me go back a bit.

A. Okay.

Q. You mentioned the COVID terminal cleaning log and you said you're the one who writes it up and then someone signs off on it, right?

A. Yeah, that part.

Q. Sure. I think you said that you're the one who writes up the log and

then Warren Lufkin signs off on it; is that right?

A. No, either I'm going to sign off on it or Warren will sign off on it. But one of us will sign off that that room has been cleaned.

Q. So how do you obtain the information that the room was cleaned?

A. Well, we constantly doing rounds, so we know the housekeeper is in the room doing their job.

Q. Okay.

A. Go ahead.

Q. Sorry. But you're not with every housekeeper in every single room, correct?

A. Correct, no, I'm not.

Q. So how do you verify that the rooms that you're listing on this log were actually terminally cleaned?

A. How do verify? So let's see, we definitely do daily rounds on a regular basis. There's a lot of communication on the units with the nurses and with the housekeeping staff. So, we go by

communication, for one.

Warren does go up and does rounds to make sure that they're inside the room. I go up and make sure that they're inside of the room cleaning. I'm not standing over their shoulder. They're experienced housekeepers. They've been trained. They've been in-serviced.

That's how we know that the rooms have been cleaned. They sign off on papers that says that the room was cleaned. So, we do have different sources of making sure that they're cleaned.

But most of the nurses, when they clean the room, the nurses and them do go back in the room to make sure that everything is cleaned because they have to make back up the room itself.

So, the nursing unit is also going to make sure. The nursing unit manager is also going in to make sure that the room is clean. We try to have a lot of communication amongst each other about that stuff.

Q. Okay, I just want to go back to what you said. I think you just stated that the housekeepers themselves sign off on something that the room was cleaned, what do they sign off on?

A. So, it's a paper that says terminal cleaning of the room. It also has all of the high touch -- it tells them all the high touch areas to make sure -- I would call it -- I kind of call it a cheat sheet, that's what I call it. Because it tells them to make sure that they clean specific things in that room, as high tough areas, you use more of this or that.

Sometimes you forget. So, this paper kind of just helps you guide your way along, that's what this paper is.

Q. Do they sign off on that after they clean?

A. Yes, they do. Those things they do sign off on, yes.

Q. Who maintains that document?

A. Warren normally has them sign off on it, so we should have it downstairs in

the file. It should be downstairs.

Q. What's the name of that document?

A. Huh?

Q. I'm sorry, I didn't mean to cut you off, go ahead.

A. It would be -- it's a paper. It has -- I'm not sure if it says, "Competency" or not. It's like a competency form. It has terminal cleaning of the room. It should say, "Terminal cleaning of a room" on it.

Q. And you believe that the housekeepers sign off on this document for every individual room that they terminally clean?

A. I can't say every individual. I can't say that. They're supposed to clean the rooms. I'm not going to sit here and say every single room. They know their job. I can't sit here and say that.

Q. Okay. What's the name of that?

A. It's a terminal cleaning form. It has like your high touch areas. I don't have the forms in front of me, I can't

honestly say the exact language. It should say, "Terminal Cleaning" on it.

Q. And would that form say the name of the housekeeper who was completing the form?

A. Yeah, they should sign off on that paper, yes.

Q. Would that have the room number that they purportedly terminally cleaned?

A. Yes, it should.

Q. And would it have the date that they purportedly terminal cleaned it?

A. It should have the date also, yes.

Q. If the housekeepers were filling out this form to indicate they terminally cleaned the room, was that a form that you relied on when creating your COVID terminal cleaning log?

A. You're asking me a question?

Q. I am, yes.

A. I'm sorry, could you repeat that?

Q. Sure, no problem, I'll repeat my question.

You believe that the housekeepers were filling out this form for rooms that they terminally cleaned. So, my question is, did you rely on that documentation when you created the terminal cleaning log that we talked about earlier?

A. I don't rely on any documentation. I rely on me doing rounds and I rely on Warren doing rounds. I rely more on the communication with the nursing and with my staff. That's what I rely on.

Should that paper work? Yes, that paper should work. Do they always fill that paper out? I can't guarantee and say yes, they always fill that paper out.

I rely on me or Warren, the communication from the nurses and the staff making sure that they clean the room.

Q. Okay.

A. That's more dependable to me.

Q. So the room you would list on this COVID terminal cleaning log, did you have conversations with your staff to confirm that they had terminally cleaned

those specific rooms?

A. Yes, yes, not documentation, not all documentation, yes. But we know who was on that unit and whether they cleaned that room or not, yes.

Q. So understanding there's no documentation, but you would have a conversation with your staff to ask them, "Did you terminally clean this room" before listing it on the COVID terminal cleaning log, is that fair to say?

A. Yes, that's fair to say, me or Warren, yes.

Q. And when you would have these conversations with your staff members, would they tell you all of the rooms that they terminally cleaned on the individual units?

A. Yes, they would because sometimes we have to send more than one person up to that unit to help clean out. Because if there's more than one unit then we would have to move staff around to make sure that the rooms were cleaned, so yes.

Q. So every room that's terminally

cleaned would appear on the COVID terminal cleaning log, is that fair to say?

A. That's fair to say, yes.

Q. And would you agree with me then that if a room is not listed on the COVID terminal cleaning log, then that room wasn't cleaned?

A. That's fair to say, yes.

Q. So, I think you made a pretty good case about how housekeeping plays a very important role when it comes to infection control, so I'm just curious, did you at all work with the infection preventionist at Fulton between January 1st and June 1, 2020 to ensure that your staff was meeting the CMS and DOH standards with respect to infection control and housekeeping?

A. So, you asked me when the -- I just want to make sure I understand the question.

Q. Sure.

A. So you're asking me when the infection control people from the Department

of Health and the CDC came in, did I work with them personally?

Q. No, and let me go back.

So, was there an infection preventionist employed by Fulton Commons?

A. Yes, there was actually.

Q. Who was that individual?

A. At that time I want to say it was Miss Baptiste, I believe was her name.

Q. Is that Marise Jean-Baptiste?

A. That's correct. I know her last name was Baptiste, yes.

Q. So between January 1, 2020 and June 1, 2020, did you personally work with Miss Baptiste to make sure that your housekeeping staff were meeting the CMS and DOH guidance when it came to housekeeping and infection control?

A. So that would be yes because Miss Baptist had to in-service me on some things also as well as my staff.

Q. What did Miss Jean-Baptiste in-service you on?

A. As far as the COVID cleaning,

that's when we came up with some of the lists for the -- you know, the high tough areas and stuff. We did in-services for the -- I want to say it was --

At that time we were using protective, PPEs, so she in-serviced us on the PPEs. On how not to leave the room with gloves and stuff on your hands.

She went over the fact of importance of washing your hands and sanitizing your hands.

Miss Baptiste in-serviced all of us on those things. Those things that we had been in-serviced before, but like she reenforced those on us.

Q. When did you receive those in-services, what month?

A. I honestly can't tell you what month. I honestly can't say what month because we having these conversations all the time. As far as when Miss Baptiste did it, it could have been March.

I honestly can't give a date of when Miss Baptiste did it because I know

we've been having these conversations ever since forever. So, Miss Baptiste just reenforces it. I honestly can't say what day she gave us, but Miss Baptiste did give us in-services on it.

Q. And did your staff sign on a sign-in sheet when they received those in-services?

A. Yes, they do sign off on an in-service form, yes.

Q. Other than the in-services, did you attend any other training to keep up to date on the best practices with respect to the housekeeping throughout the COVID pandemic?

A. The CDC website. Like I said earlier, we had inspection after inspection for infection controls. They was constantly in the building. We had the CDC come into the building too and I had to walk around with them and go over infections of like the high touch areas. Like one again it all goes back to the high touch areas, the low touch areas.

When the infection control people came in we went over chemicals that was needed, that was to clean the rooms that was EPA registered.

They also enforced the fact of checking on all the staff to see if they was coming out the rooms with gloves and they was doing their PPE correctly.

So, we had a lot of infection control people in the building going over the things with housekeeping and also going over infection control. And actually, they was like every other week, to be honest.

So during that -- with that inspection with them and then looking on the CDC website to see if anything changed, what would could do better, what we need to do, that's how I went about it.

Q. Just to be clear, when you say CDC, are you referring to Centers for Disease Control and Prevention?

A. Correct, yes.

Q. So while we're talking about abbreviations, let me just get a few of them

out of the way also. If I use the abbreviation CMS, would you understand that I'm referring to Centers For Medicare and Medicaid Services?

A. Yes.

Q. If I use the term DOH, would you understand that I'm referring to the New York State Department of Health?

A. Yes.

Q. And I know we've been using the term COVID and Coronavirus, you know, COVID-19, if we continue using it throughout the examination, would you understand then that I'm referring to COVID-19?

A. Yes.

Q. And you previously used an abbreviation PPE, were you referring to personal protective equipment?

A. Yes.

Q. Are you familiar with the term contact precautions?

A. Yes, kind of, yes.

Q. Do you know what that means?

A. Yes, that means if -- I can go

back to the room log. So, if there's a room has red bins or the caution signs, then staff and myself know not to go into those rooms until we speak to the nurse to make sure we follow the direction. If we can go in the room and if can go in the room, what do we need to go into that room to do our job.

Q. Okay. Is that -- so is that your complete understanding of contact precautions as least as far as it pertains to housekeeping?

A. It doesn't just pertain to housekeeping, it pertains to staff itself. But as far as my knowledge, contact precautions, if we see that sign, that means that a resident might have an illness that we shouldn't go around until we speak to the nurse and they say it's okay.

Q. Are you familiar with the term droplet precautions?

A. Yes.

Q. What does that term mean to you?

A. To me? Once again, that goes

back to if there's a person that's sick or something stuff. Like let's say stuff that come out their mouth or whatever, you still have to go back to the nurse because that still would have a caution sign on the door, so you still have to go back to the nurse to be informed if you can go into the room and what we need to wear to go into that room to do the job.

Q. I think you mentioned before that the resident rooms were cleaned every day; is that right?

A. Yes.

Q. And aside from terminal cleaning, is there any documentation about when a room is routinely cleaned at Fulton Commons?

A. No, I don't have documentation of that. Rooms were routinely cleaned. They go into rooms every day to clean their room. I don't have documentation of that, no.

Q. And we talked about the fact that terminal cleaning will be done if a resident is discharged or transferred, is terminal cleaning done for any other reason?

A. Terminal cleaning is done if a resident is discharge, if a resident is transferred. Terminal cleaning, we try to do -- we have a -- if red precautions tape is in the room, so we know that room has to be terminally cleaned when that resident is out.

Most of our rooms are done within discharges, within room changes, within a resident moving to a hospital, that's when most of our terminal cleanings are done.

Q. Why is terminal cleaning important?

A. Why is terminal cleaning important? Terminal cleaning is important because it goes back to the infection control now. So, that's why you have to terminally clean.

We, as housekeepers, don't know the resident's condition, but we do know that before we let somebody else come in that room, we do have to terminal clean the room to make sure that whatever infections might be in that room, could be cleaned,

disinfected and contained. That's why it's important, for one.

Q. Would putting a new resident into a room that wasn't terminally cleaned potentially expose the new resident to various infection or bacteria that might be living in that room?

A. Say that one more time?

Q. Sure. Would putting a new resident into a room that was not terminally cleaned have the potential to expose that resident to various infection or bacteria that the prior occupant might have had?

A. I believe so, yes.

Q. And so, would you agree with me then that putting a resident into a room that isn't terminally cleaned has the potential to endanger that resident's health?

A. I would agree with you on that, yes.

Q. Typically how long does terminal cleaning take per room?

A. It should take about 45 minutes,

to be honest.

Q. How long does a routine cleaning generally take per room?

A. A routine cleaning? That can take like 15 minutes, 20 minutes. You're going to clean the bathroom, you're going to wipe down. If the resident's not there, you're going to try to dust. That could take about 15 to 20 minutes, depends on the room.

Q. Just to be clear, that's 15 to 20 minutes per room or per bed?

A. No, that's 15 minutes, 20 minutes per room, yeah.

Q. So, to your knowledge, in January and February of 2020, what steps, if any, did Fulton Commons take to prepare for the possibility of a COVID outbreak?

A. In January and February?

Q. Yes.

A. What steps did Fulton take for that, you said?

Q. Yes.

A. Honestly -- I honestly can't

answer that. I believe when she shut it down and I can't give you an exact date on when she shut it down, I believe when she shut it down that was the most important step because then there was no COVID in the building, so it was just regular routine.

So, I honestly can't speak on no other level other than that.

Q. Okay. Did you have any involvement in preparing for the possibility of a COVID-19 outbreak?

A. I didn't hear the first part.

Q. Did you personally play any role in preparing for the possibility of a COVID-19 outbreak? And again, this is going back just to January and February of this year.

A. The only role that I played personally was making sure that we had chemicals in, listening to the news, listen to the CDC website, speaking to the Department of Health and infections when they came in because they -- like I said, they had been in the building on a regular

basis. Just trying to make sure that we had what we thought was the right things to try to prepare ourselves and mainly everything was bleach, bleach, bleach, that was mainly everything.

In-servicing the staff. Me personally having conversations with the staff every morning just to make sure that they took it serious, which I still do to this day. Forgive me if I get a little upset right now because I lost my father this year also, so it's like a touchy thing to me.

Q. I'm very sorry to hear that.

A. So, while I was in the building I tried my best to just try to keep the staff informed, to make sure they took it serious and that they did the right thing.

Q. Were there any --

A. Just one minute.

Q. Do you want to take a few minutes? Absolutely.

A. Okay.

Q. We can take a break if you would

like?

A. No, we can go.

Q. Are you sure?

A. Yeah, we good. We're good.

Q. In January and February of 2020, were there any facility meetings to prepare for the possibility of a pandemic?

A. Yes, we actually had QAPI meetings. We have QAPI meetings. It's a meeting to ensure the quality of life for the residents and the facility. So, we had meetings though. We did have meetings to try to inform us. What we should do if this happens, how we should -- what moves could be made, what do we meed to prevent it from spreading.

Q. And who was involved in those facility meetings?

A. She had meetings with all department heads and unit managers.

Q. Who is "She"?

A. I'm sorry, Cathie Doyle, the administrator.

Q. Do you know who the medical

director is of Fulton Commons?

A. That would be Carol Frawley.

Q. Is Miss Frawley the director of nursing?

A. Yes.

Q. Do you know who the medical director is?

A. As far as -- I think it's Larissa Lorraine, Larissa.

Q. Are you familiar with a Dr. Olaf Butchma?

A. Okay, so you mean a doctor who's in charge of all the doctors? Yes, that's Dr. Butchma, yes.

Q. Was Dr. Butchma a part of those facility meetings, the QAPI, the Q-A-P-I meetings?

A. Yes.

Q. Do you know who the owners are of Fulton Commons?

A. I believe it's -- I don't know his first name, but Mr. Kalter and then there's Mr. Weiss.

Q. Were Mr. Weiss and Mr. Kalter

part of those QAPI meetings?

A. They wasn't in the building. If Miss Doyle informed them afterwards? I don't know, but they wasn't in the building.

Q. Did you personally have discussions with Mr. Weiss or Mr. Kalter with respect to preparing for the COVID-19 pandemic?

A. I have never personally spoken to Mr. Weiss or to Mr. Kalter.

Q. Did you personally have a discussion with Dr. Butchma with respect to preparing for the COVID-19 pandemic?

A. No, other than him being in the QAPI meeting and voicing during QAPI, no. And that was a group meeting. I never had a one-on-one with Dr. Butchma or anybody else for that matter.

Q. Did you make any suggestions to Miss Doyle or Ms. Frawley, the director of nursing, in January of February of this year on how they could prepare for the COVID-19 pandemic?

A. No, I didn't. I didn't know

myself. We was all learning on the go.

Q. Now, you did mention that at some point your staff began to wear PPE, personal protective equipment?

A. Yes.

Q. When was it that they began to utilize PPE?

A. I want to say it was some time in March when -- I want to say it was in March, that's when they said COVID was in the building. I honestly can't give you the exact date. It had to be in March when they officially knows as COVID was in the building. I want to say it was March, but I honestly can't -- I honestly can't be correct on that because I don't have the documents in front of me. But I want to say March because that's when COVID kind of hit the building, I want to say, of it being known.

Q. You were just saying, "They said that COVID was in the building," who's the "they" that you're referring to?

A. I want to say the administrators

and them announced that COVID was in the building, I believe.

Q. So that's Cathie Doyle made that announcement?

A. Yes, it would be Cathie Doyle. It could have been Carol Frawley, I'm not sure. But it was announced that COVID was in the building because that's when the PPE and stuff started coming out and all that.

So, I can't honestly give you a date, but that's when it was know that COVID was in the building. They started handing protective gear to the employees.

Q. And you believe that was in March? I'm not holding you to the dates because you said that you don't remember exactly.

A. No, I'm trying to think myself. I believe it was March. I believe it was in March, yeah.

Q. Do you believe it was the middle of March or the end of March or the beginning?

A. I honestly don't want to lie to

you. I don't know. I believe it could have been in March. I don't know. I think it was in March, near the middle maybe. Because at first they kept saying there was no COVID in the building. It could have been -- I believe it was March though. I believe it was March.

Q. And again you said, "They kept saying there was no COVID in the building," what was "they" you are referring to?

A. The administration, Mrs. Doyle, Miss Frawley, they were saying there was no COVID in the building in the beginning. So when they did know that COVID was in the building, that's when they started handing out the equipment.

Q. Did you believe them when they said there was no COVID in the building?

A. Now you trying to put me on spot. My belief is only my opinion.

Q. So let me -- before you answer that, let me just again say that this is a confident proceeding, but I am, I am asking for your opinion. Did you believe them when

they said there was no COVID in the building?

A. That's only my opinion. Did I truly believe it? No.

Q. Was there any particular reason why you didn't believe it?

A. Once again, this is only my opinion. I believe that when the residents started getting sick, I believe it was COVID. I believe -- and once again, this is only my opinion.

I believe during the process of when COVID hit, the lockdown could have been better than what it was. But once again, that's just my opinion. They said this there was no COVID in the building, I don't have no medical degree. I only could go by what I see on the news, what I read about and take that to looking and see what's going on around me and think differently, but that's just my opinion.

Q. No and understand that and that's what I'm asking you for right now, your opinion and your observations.

So, you mentioned the residents started getting sick, did you personally notice and hear about an increased number of residents getting sick in the beginning of the pandemic?

A. Let put it to you this way, I been there 19 years -- 18 years. I been around a lot of people in there that was there 10, 12, 13 years and they're not here no more. Yes, people get older. Yes, people die from different illness.

It's a coincidence that during the COVID, while it's being broadcasted on the news and everyone watches the news, everybody read newspapers, I believe if you find a bunch of people getting sick and I believe that something's going on and you put two and two together, but that's just my opinion.

I believe that testing in the facility should have came earlier. But then again, that's just my opinion also. So, I mean, everyone has an opinion on what's right. I don't know.

Q. So, you had been there for a long time, you know, 18 years is a long time, did you believe that there were more residents getting sick during this period of time than you have seen get sick during the same couple of months in the other years that you worked there?

A. Absolutely.

Q. Do you find that there were more residents dieing during this period of time than you have ever seen before in the time that you worked at Fulton Commons?

A. Absolutely.

Q. Now, you did mention something about testing and that you believe that testing should have been done earlier, when did Fulton begin testing their residents for COVID?

A. Honestly I can't gave you a date because I don't know. All I know is that when -- like I said, this is just my opinion, when a bunch of people start getting sick at the same time, something is going on. That's just my opinion though.

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Q. Were you aware of whether or not Fulton was testing any residents for COVID in March of 2020?

A. I know they started testing, I don't know a date. I don't know a month of when they started testing. I know they started testing. I honestly can't give you a month.

There was so much going on. Listen, everybody watches the news. There was so much going on. It was just so much going on. I honestly can't tell you when they was testing. I was going through my own personal stuff. Some days I was in work, a couple of weeks I wasn't even in work because I was dealing with my father. So, I honestly can't give you dates.

Q. Okay.

A. But my belief -- and that's just like I said, that's my belief only, is that if a bunch of people getting sick and it's a coincidence that there's a COVID pandemic going on and you watch the news and you reed the newspapers so you know what's going on,

and a bunch of people getting sick around you, I believe some of the steps could have been addressed earlier.

Who's to blame for it? I can't put the blame on nobody. All I know is how I feel.

Q. And I appreciate that and you know, I think I would like to hear more about what you think they could have done better. So, you mentioned that you think they should have been testing earlier, what else should do you think should have been done that wasn't don't when residents first started getting sick?

A. A lot of room changes, in my opinion, it could have waited. Like I said, this was only my opinion. I don't believe that the sick residents should have been moved. I believe that the healthy residents should have been moved. I don't know.

You know what, I honestly can't say because everybody has a way of what they thought was right or what should have been done or what could have been done. I don't

know. I just think things could have been done just a little different.

Truthfully speaking, I don't think the Governor should have let nursing homes take on people that had COVID. Especially if they wasn't prepared and if you was going to enforce them to take people, then they should have said -- Department of Health, CDC, they should have sent people to those nursing homes to make sure that they was qualified to take these people in.

So, everybody has an opinion, that's just my opinion. That's just my opinion. My opinion is everybody dropped the ball, in my opinion. But no one knew what it was. It was new to everybody.

Q. Do you believe that Fulton was properly equipped to accept residents from the hospitals that had COVID?

A. On that part? Yes because when they brought them in they brought them into a specific unit. Yes, on that part.

Q. Okay.

A. On that part I have to say yes.

Q. Okay. So, we'll talk more about that specific unit shortly. At this point I just want to ask you, are you familiar with DOH guidance that was issued on March 11, 2020 related to COVID?

A. If you read it to me I might say yes or no, I honestly can't just say yes to something that I really don't know what it is.

Q. Sure, let's take a look at it together. If you can take a look at what's been premarked as Exhibit 2.

(DOH Guidance dated March 11, 2020 was marked as Exhibit 2 for identification; 11/19/2020, N.L.)

Q. So I'm just going to ask you to take a look at what's in front of you, it should be showing on your screen right now?

A. Okay.

Q. Does this look familiar?

A. This says to the administrator, so, no, it doesn't.

Q. Did Cathie Doyle ever share with

you guidance that she received from the Department of Health?

A. We received e-mails on some things, exactly what, I honestly can't say offhand because we constantly receiving e-mails from the CDC. We constantly received e-mails from what the Department of Health suggested that we did or use as far as my department, of what -- suggested of what chemicals and stuff that were used, they suggested on how you clean.

They sent out -- I received e-mails from the Department of Health and the CDC actually on how to store laundry, the residents' belongings, how to quarantine for seven days, how it should be packed.

So, we received -- we did receive e-mails and stuff from the Department of Health and from the CDC. It doesn't come directly to me, it goes to Cathie Doyle and then they forward it to the department heads that's needed for those situations.

Q. Okay.

MS. SEKHON: If we can get

Exhibit 2 back on the screen and if you just go to the fourth page.

Q. So towards the top of the page, the first full paragraph it reads, "Daily, frequent cleaning and disinfection of commonly touched environmental surfaces must be done with EPA-registered, hospital-grade disinfectant to decrease environmental contamination. Staff must be instructed on the need to follow all manufacturer's instructions for use, including proper dwell times for all cleaners and disinfectants."

A. Hmm-hmm.

Q. Were you aware of that requirement in March 2020?

A. I can't say the exact date, but I believe so, yes, I did have that particular quote. I do remember that quote there.

Like I said earlier that was during the times where Miss Baptiste was in-servicing staff on the proper way to wash your hands, sanitize your hands, go over the kill times of chemicals that we have and that we was using to be make sure that they

did that properly.

If you used a certain chemical it need to be wet, to make sure you didn't dry it off, you let it stay wet for that particular kill time because if you didn't, that chemical wouldn't work.

So yes, I can say -- I can't say exactly in March, but I do know that I do have that paper.

Q. Okay. So first you're using the term "Kill time," what is that?

A. So, let's say for instance I'm using bleach and on the bottle of the bleach it says, "Please leave wet for four minutes" because the four minutes will kill whatever diseases or infections that's on that particular area.

So, you have to make sure that you don't just spray the bleach on and wipe it off because that's not going to do anything. You have to spray it on and leave it for about four minutes and then you can wipe it off.

So, certain chemicals have

different kill times on them. So, you have to make sure that you know the kill times for all the chemicals that you're using. So, my staff -- I go back to having a cheat sheet, what I call it because I gave my staff a paper with all the chemicals that we use and the kill times next to it and whether it had to be wet or dry.

So I gave my staff a cheat sheet for that because we deal with so much, sometimes you forget and you need something to go back and look onto. So, that's what I mean by kill times.

Q. Is that also known as "Dwell time"?

A. I'm sorry?

Q. The term you're using, "Kill time," is that also referred to as "Dwell time" -- D-W-E-L-L?

A. No, I've never used the term dwell time. On top of the chemicals itself it doesn't say, "Dwell time," it says, "Kill time," so that's what we call it.

Q. Was Fulton in compliance with the

guidance we just removed with Department of Health throughout the COVID-19 pandemic?

A. Was Fulton in compliance?

Q. Yes, with the guidance that we just removed from the Department of Health, was Fulton in compliance with that guidance throughout the COVID-19 pandemic?

A. Throughout the whole Pandemic? I'm going to say yes. As far as we having my chemicals, as far as there being PPE inside the facility and as far as being in-serviced for them washing their hands, taking their gloves off, not having gloves in the hallway, I would say yes.

Q. Did there ever come a time when your staff did not have EPA-registered hospital grade disinfectant?

A. No because like I explained, we use different chemicals and one thing we always kept in the facility was bleach.

Q. Okay. Now, you mentioned, I believe, that you believe that your staff was given PPE some time in March of 2020, what PPE in particular were your staff

given?

A. We had the N95 mask. At first we was using these little -- like a little hospital mask, but then we had the N95 mask. We always had our gloves and we had gowns that they was using.

Q. How often did your staff receive a new N95 mask?

A. When they needed it. Some people at that particular -- I want to say in the beginning of the pandemic it was like you tried to hold on to it for a week or as needed. Like, if your thing got soft, then you knew that you had to get another one.

We used goggles. We used the N95 masks. We used face shields. It was available. It was available. I mean, it was available. They used them. Some people kept them for a week. Some people had to switch out because it got soft. At the time they didn't know whether you should keep it in a brown bag or a plastic bag. So, it was always a learning process.

Q. Did there ever come a time that

your staff needed additional PPE but were not able to receive it?

A. No, not my staff. I can't speak for nobody else, but whenever my staff needed something I made sure they had it.

Q. Did you ever get any pushback from administration on receiving additional PPE for your staff?

A. Not me, no, not me.

Q. Did your staff receive in-service on how to don and doff the PPE?

A. Yes, they did. Miss Baptiste gave them an in-service on that. And also they received a sheet. The sheet -- it was a black and white form, it had a couple of pages on it and they gave the steps on how to put the gown on, how to take your gloves off, what to do first, what to do second, what to do last. So, they did receive a sheet and they signed off on the in-service.

Q. When did they receive that in-service?

A. I'm sorry.

Q. When did they receive that

in-service, do you recall what month it was?

A. No, I honestly can't. I just know -- let's say -- I can't say. I think it was March. I think March.

Q. Did they receive that in-service around the same time that they first obtained the PPE?

A. That's a good question. We had in-service from -- I'm going to say -- I'm going to say yes. I'm going to say yes on that. I believe so. I believe so.

Q. I know you mentioned that there was a sheet that they received with respect to the donning and doffing?

A. Yes.

Q. Do you know the name of that sheet?

A. No, it was -- it's like a guide. It's a guide on how to -- it's a guide on how to -- It's just a sheet with pictures that gives you steps on how to put on your gown, what you should put on first, how you should take it off.

Just a guideline like that, you

know, how to put on your goggles. Like I said, the steps that you should take to put on your PPE and how to take it off.

Q. Could you tell us for the record what the protocol was? Like what was the order in which PPE was supposed to be donned and taken off?

A. Wow, I can't give that right -- myself, at the present moment, I really don't remember.

Q. Okay.

A. We spoke about it. I can't lie to you, I really don't remember. Offhand I really don't remember.

Q. Do you still have the guide that you received from Miss Jean-Baptiste?

A. I have it at work, yes.

Q. I'm just going to ask you to hold on to that and not to destroy it?

A. Okay.

Q. Are you familiar with the term "Person under investigation"?

A. I mean, I know what it means. I'm not familiar with the term, but I know

what it means.

Q. What does it mean to you?

A. So let's say for instance myself, if I'm under investigation for -- let's just use a criminal act or whatever, so that means that people are inquiring on what I did and what I did wrong or so forth.

Q. So, yes, that -- it could mean that. You know what I'm referring to, I'm asking more in the send of COVID. Like have you ever heard the term person under investigation as to pertaining to COVID?

A. No.

Q. How are individuals referenced at Fulton who were suspected having COVID?

A. Say that to me one more time?

Q. Sure and I'll rephrase that actually.

Was there a particular term used by Fulton Commons when talking about a resident who was under suspicion for having COVID?

A. No, no, there wasn't. No, not to my knowledge, no.

Q. And I believe you said that you believe it was some time in March that they -- and by they I mean Cathie Doyle -- acknowledged that there was COVID in the building; is that accurate?

A. I believe so.

Q. At that time, do you know what unit was affected potentially?

A. There was a couple of units. I don't know exactly what unit. I can go off of -- I can't go off of no legal document on this. I can go off what I believe was the unit, the fourth floor I believe it was. I want to say 4 West. I want to say 4 West.

We had a couple of floors that had a lot of people that passed away. What floor it actually started on I honestly can't tell you. I want to say 4 West though.

Q. Just to --

A. And it could have been 3 West also because they had a lot of people, but I honestly can't tell you exactly what floor.

Q. Okay. Just to go back for a

second, when Cathie Doyle announced that there was COVID in the building, how was that announcement made, was it over a loudspeaker or something else?

A. You know, I don't know because I don't remember if she had announced it over the loudspeaker, I don't believe she did. I believe she had a meeting with the staff, her unit managers, I believe. I believe there was a meeting with the department heads and unit managers, I believe.

I don't believe it was announced over the loudspeaker. She wouldn't do nothing like that. She did some things, but nothing silly like that.

Q. So it was announced at a meeting with the department heads?

A. I believe within the department heads and the nursing -- the unit managers, I believe so.

Q. So when COVID was first in the building and that you believe it might have been 4 West or 3 West, how were you notified about that? And by that what I mean is, how

were you notified about the location of the affected residence?

A. At that time we wasn't really -- we wasn't -- I don't believe I was actually notified by the unit itself. At that time we was notified and we just took every floor as the same. As far as every floor has COVID, clean every floor the same way. Every --

Like I said, she had locked down -- she had stopped people from traveling around the building before that any way. So we had been on like a quarantine any way, so that's how we were treating this any way, like a quarantine.

So, I honestly can't say that I was alerted to what floor because we treated all floors the same way.

Q. But knowing the location of a resident who may have COVID, would be important for your housekeepers to know, correct, so they can take extra precautions coming in and out of that room?

A. That's correct, but we treated

every unit as a COVID unit.

Q. Okay.

A. So every housekeeper took extreme precautions because you just didn't know.

Q. Were the housekeepers ever informed within the units which rooms had residents that might have COVID?

A. No, I can't say what nursing informed them. I can tell you that I informed them to treat every room in every unit as COVID.

Q. So, at that point, if they're treating every room on every unit as if it has COVID, can you please explain what precautions they were taking in between going from one room to the next?

A. Repeat that last -- the precaution part, say that one more time?

Q. Sure. What precautions were they taking, you know, when they would go from one room to the next room?

A. At that time we was wiping everything down with bleach. They were wearing their protective gear, their

goggles, face mask, the face shield, the N95 mask. They had on gowns, protective gowns over their clothing. And we was wiping and washing everything down.

Q. Did they change any of that PPE after leaving one room and going into the next one?

A. Honestly I can't answer that because I wasn't amongst them at the time. I honestly don't know.

Q. What was their training as to that respect?

A. They supposed -- at that time the whole unit was quarantines as COVID, so they wasn't going into like rooms unless it was absolutely necessary at that time because they didn't know who had the COVID. So when they did go into the room, they did put on the gowns. They had to whether gowns on the whole unit actually.

The most important part was them not wearing gloves going room to room, but I honestly wasn't standing over them. The unit managers stayed up on the units with

them. I wasn't supposed to go to the units unless it was an emergency, emergency because we tried to keep everybody that was on that unit quarantined to that unit and if you didn't have to go to that unit, then you didn't go into that unit.

So, I personally didn't have to go into those units at that time. So, I can't say that. I honestly can't answer that. They supposed to have done the right thing through the in-services through Miss Baptiste, through the in-services with the -- because even sometimes the unit managers had to in-service the staff if they learned something and they would have to tell them also. So I honestly can't say.

Q. Were your staff trained that they should be changing their gowns between going from one room to the next?

A. Say that one more time for me?

Q. Were your staff trained that they should have changed their gowns between leaving one room and going into the next one?

A. I believe -- you know what, I don't want to lie to you. Miss Baptiste in-serviced them on the infection control part. I believe they was in-serviced on not going room to room with your gowns on.

Q. Okay.

A. Whether they actually did that? I hospital can't say because I don't know.

Q. Okay.

A. Were they all in-serviced on what they were supposed to do and how to do it, yes, they was. At that particular time I know it was a lot going on. So I honestly can't answer that, but I do know that they were all in-serviced on it.

Q. So, during March and April of 2020, were resident rooms still cleaned on a daily basis?

A. Resident rooms wasn't cleaned on a daily basis because you didn't want to have staff in contact with residents. At that time the COVID had starred. So staff wasn't going in on a regular basis for that no more. You had to treat those rooms as a

COVID room and if you didn't have to go in that room, you didn't go in that room.

Q. How often were the rooms cleaned during March and April of 2020?

A. During March and April a lot of people was dieing. They had to go into those rooms then and do a terminal cleaning of those rooms. I don't know a number of how many people died off of this particular unit or that particular unit.

A lot of times the nurses helped us out. They would tie the garbage on the floor, bring it to the door and the staff would collect it from the door so they didn't have to go into those rooms. They only went into those rooms when it was absolutely necessary.

Q. And you mentioned bathrooms, were they inside the residents' rooms or were the bathrooms in the hallway?

A. No, they can go into the bathrooms because the bathrooms is right there before the bed. There's a door right before the bed. So they can go to the

bathrooms. It's as far as they could like literally go to clean those bathrooms and make sure they have toilet paper and make sure that the bathrooms are bleached down.

Now you also have residents that have dressers and stuff like that, they shouldn't be going by the resident during that time. Like I said, they was in-serviced on it. Most of them been there 10 or 12 years, it was new to everybody, but they was experienced. I don't know how to answer that really. I mean, they did the right things as far as what they could do.

Q. So, I just want to verify then, so the staff, were they still going into the rooms on a daily basis as far as the bathrooms, but not beyond that?

A. Bathrooms, yes, because bathrooms had to be cleaned.

Q. Okay. And to your knowledge, your staff were not told by the nurses on the units which residents were under suspicion of having COVID versus not; is that fair to say?

A. That's fair to say, to my knowledge.

Q. Okay.

A. Now, if you ask any of my staff they might tell you different.

Q. Sure.

A. But to my knowledge.

Q. Right. Would you agree with me that it would have been helpful for your staff to know which residents are presumed to have COVID or under suspicion of having COVID versus not so that they could clean the healthy residents' rooms first?

A. I would agree on that.

Q. Would you agree with me?

A. But like I said, they might have known.

Q. I understand that. I understand, it's just to your knowledge.

A. Hmm-hmm.

Q. Would you agree with me that it could potentially spread infection if your staff went into a resident room who has COVID and then thereafter went into a room

with a resident did not have COVID?

A. Okay. So, for that answer there, most of the residents that had COVID was transferred to the first floor, which was the COVID unit.

Q. Okay.

A. So they was able to clean the rooms. The once on the first floor, which was 1 East, which was the COVID unit. The rest of the staff fill wore their protective gear and went into the rooms to clean.

So 1 East was the COVID unit and I believe -- I want to say that yes, everybody on that unit was treated as COVID because everybody knew this was the COVID.

Q. So let's talk about that just a little bit. Is it your understanding that when 1 East was established, that all of the residents in the building were under suspicion of COVID were put on to 1 East?

A. Yes. To my understanding, that 1 East was the COVID unit. So if you were under suspicion for COVID, then you went to 1 East.

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Q. So going back for a minute to before 1 East was established --

A. Okay.

Q. -- prior to it being established, would you agree with me that if one of your staff unknowingly went into a room of a resident who was under suspicion of COVID and thereafter went into a resident's room who was healthy, that that increased the likelihood or potential for spreading infection?

A. That would increase the likelihood of spreading infection, yes. Let's not forget though that there was no COVID in the building and then when COVID was alerted to the building, then all units were treated as COVID room.

THE COURT REPORTER: I'm sorry to interrupt, can we take a short break?

MS. SEKHON: What if we take a 45-minute lunch break, does that work for everyone?

THE WITNESS: Okay.

MR. SMITH: That works for me.

MS. SEKHON: So it's 1:05 now, so how about we reconvene at 1:15.

THE WITNESS: Yes.

(A lunch recess was taken.)

MS. SEKHON: Back on the record, the time is 1:51 p.m. We've taken approximately a 45-minute break. And we did do a quick roll call before going back on the record. Just to confirm, Barbara Picone, Ben Smith and Robert Joyce are also on the line.

And Mr. Andrews, I also see you and of course, we have the stenographer.

And just bear in mind that you are still under oath.

Q. So, we talked a little bit before the break about how when COVID was first in the building, it was on -- I think you said it was either on the third or fourth floor. You believed it might have been 4 West or 3 West; is that right?

A. Yes.

Q. But there came a time that Fulton

Commons established a COVID unit, correct?

A. Fulton Commons had established a COVID unit, yes.

Q. When was that unit established?

A. I honestly don't know the date. I want to say -- I honestly don't know. I think I want to say March maybe, maybe March.

Q. And how long had there been COVID in the building prior to Fulton establishing this unit?

A. I don't believe COVID was in the building when they established that unit.

Q. So before when you said that you believed that there was a case of COVID on either 4 West or 3 West, can you elaborate on that?

A. On 4 West or 3 West, it was like I said, it was nothing in facts and this is just my opinion. There was some nurses that was out on vacation and then they came back, they weren't quarantined and it was in the building. And then that not long after -- once again, this is only my opinion, it

seemed that's when everything went crazy. But that's just my opinion. I really don't know.

Q. Okay. So I'm just a little confused because you said that there was a period of time when you were treating the building as if COVID was on every floor, so when was that?

A. So we started treating the building in March, the whole building, as if everything was COVID. But like I said earlier, watching the news, reading the newspaper, you kind of read between the lines, if you see a bunch of things going array that wasn't the normal, then that's -- you try to get ahead of the game, you start preparing yourself.

I believe that with all the deaths and stuff like that, that it started on the fourth floor. It was either the fourth floor west or 3 West, I believe that's where it started at.

In the same sense of me saying that, I believe that where those nurses came

back from vacation I believe that's where they was at. So, I can't honestly say that that's what happened, but it's just a coincident. So why I say what I said.

Q. Okay. And when Cathie Doyle made the announcement at the meeting that there was COVID in the building, at that point, was 1 East already designated the COVID unit?

A. I believe so. I believe that was brought up in QAPI that 1 East would be the COVID unit. Yes, so I believe so.

Q. And you believe that when she acknowledged that when there was COVID in the building, that 1 East was already established as the COVID unit?

A. I can't honestly speak correct on my case, but that's what I believe, yes.

Q. Okay.

A. That's the unit that was supposed to be established for COVID, yes.

Q. So when that unit was established as a COVID unit, what affect did that have on your housekeepers with respect to the

rest of the building?

A. Okay. So, that particular unit with those housekeepers, the whole building -- the whole building was PPE, but that particular unit itself, they never left that unit. That unit just carried itself differently because that was like it was where COVID was supposed to be. Even though we treated all units as COVID, but it was like that unit you knew was COVID.

Can you kind of get what I'm saying? Probably not. So we treated the whole building as COVID, but that particular unit was designated for COVID. So you knew if you walked on that unit you knew that this was a COVID unit. You didn't know whether it was still around the building, but you knew 1 East was a COVID unit. But housekeeping still cleaned every room as if it was COVID.

Q. Okay. Did the housekeepers on the other units do anything differently after 1 East was established as a COVID unit?

A. No, every unit was cleaned the same way. Every unit was still cleaned like it was COVID.

Q. Did the housekeepers on the other units ever tell you that there were residents on the other units that were suspected of having COVID?

A. Everybody suspected everything, no one had proof of anything. So the answer to that question, it could be yes, but everybody talked. But once again, nobody has facts. I didn't have facts that it was on the other unit. My staff didn't have facts that it was on another unit.

We are not in the health department, so if someone is sick, we don't know if they had other sicknesses, but we just didn't know. But we did know that 1 East was the COVID unit.

Q. Did your staff ever tell you that they had been informed by nursing staff they were treating residents with COVID protocols that were on the nonCOVID units?

A. No.

Q. Would it have been concerning to you if you had learned that?

A. Yes.

Q. Why would that have been concerning to you?

A. Because that's -- like I said, that is personal to me, so that would be me talking personal about my own personal experience with my own personal family. So that's why I take it very serious.

Q. Would you agree with me that it would be important for your staff to know if there were residents on other units who were being treated as if they had COVID?

A. Yes, it would be important to me too because I was roaming those units, so yes.

Q. So would you agree with me that from an infection control standpoint it would be important for your staff to know that residents are being treated for COVID so they could take the appropriate precautions before going into residents' rooms?

A. Yes.

Q. Who made the decision to designate 1 East as the COVID unit?

A. It was brought up in QAPI. So, that would have to be a decision that was made through Mrs. Doyle, Mrs. Frawley, the nursing director, the administrator, probably Dr. Butchma, they would have to make those medical calls on that.

Q. So you learned of this in the QAPI meeting?

A. It was brought up in QAPI, yes, everything that's a concern in the building it was brought up in QAPI. So that it would be of anybody has an opinion to address certain things to the quality of everybody else.

Q. Was your staff made aware at that time that 1 East was being designated the COVID-19 unit?

A. Was my staff aware?

Q. Was your staff made aware?

A. Yes, yes, everybody was aware of it. At the time everybody was aware, yes.

Q. Who informed your staff about that?

A. I informed my staff. I'm pretty sure nursing informed them. It was known in the building that that would be the unit.

Q. Did your department play any role in preparing that unit to be the COVID unit?

A. Yeah, that unit was cleaned. It was cleaned and disinfected and they was moving people in. So, as far as playing a role, making sure we had enough linens and things so that they didn't have to come off the unit. We didn't have to keep making regular runs up to the unit. We left that unit as full as possible so that nobody had to go in and out of that unit. So I would say yes.

Q. The cleaning that was done to prepare that unit, was that terminal cleaning?

A. Yes, yes, it was. You had residents on that unit that had to be moved before they brought the COVID residents down.

Q. How many residents were moved?

A. I honestly can't give you an answer on that. I don't have no paperwork in front of me.

Q. Do you remember if it was a significant number?

A. I honestly don't know, to be honest. I honestly couldn't say, that was the rehab floor. I honestly can't say, not offhand, not just speaking to you like this.

Q. Did anyone oversee the cleaning of the unit 1 East to make sure that it was completed?

A. That goes back to my housekeeping staff and myself as doing the daily rounds.

You're talking about before COVID, before they opened it up for COVID?

Q. Well, when they were in the process of turning in into a COVID unit?

A. Yeah, all of us. The whole unit itself, nursing, the nursing unit manager that was on the unit, myself, when I was there, Warren, we all had to oversee and make sure that the unit was clean.

Q. Would the terminal cleaning that was done on the unit, would that be reflected in the COVID terminal cleaning log that we discussed earlier today?

A. Say that one more time?

Q. Sure. The terminal cleaning that was done on the unit in order to prepare it to be the COVID unit, would that be reflected in the COVID terminal cleaning log that we discussed earlier today?

A. I believe that would be on -- I don't know the date, whatever date that they made those room changes, then it would go from that date on. So, I can't answer that like a general answer to that one. If it happened to be on the date, I believe it was somewhere in March. Like I said, I don't know the exact date, but if it was during that date approximately, then yes.

Q. Now, with respect to the room changes that were done after the unit was established as the COVID unit, who was responsible for the room assignments?

A. I don't understand what you

asking me. Was there a specific housekeeper addressed to those units?

Q. No, sorry. What individual employed by Fulton Commons was responsible for actually assigning rooms to the residents?

A. That would have to be admissions or Miss Frawley that assigned rooms to residents.

Q. Do you know definitively who was responsible for assigning rooms during the room changes for the COVID unit?

A. No, I wouldn't know that.

Q. Okay.

A. That would be either have to be Miss Frawley or the admissions office. I really wouldn't know that.

Q. At the time that 1 East was designated the COVID unit, were any nonCOVID residents kept on that unit?

A. I believe they always was moved off. I believe so. I don't honestly know. I believe they all was moved off from that unit, but I honestly don't know that answer.

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Q. Who were your staff members that were responsible for 1 East?

A. We had different staff at the time. One of my staff would be -- who was up there at that time on 1 East? It would have been Verona Levy, Edison Johnson. I believe it might have been David Burwell.

I really don't know who else, but like those two, Levy and Edison, that was their unit. And David Burwell came and subbed in, like on their days off.

Q. Could you spell his last name?

A. Which one?

Q. David Burwell?

A. B-U-R-W-E-L-L.

Q. Thank you.

A. Hmm-hmm.

Q. So at the time that 1 East was designated the COVID unit, then is it fair to say that to your knowledge, every individual on that unit had COVID?

A. To my knowledge do I believe everybody on that unit had COVID? To my knowledge, yes, but I don't know that for

sure, but to my knowledge, yes.

Q. Was that your staff's understanding as well, so Verona Levy, Edison Johnson and David Burwell, were they under the same impression, that everyone on this unit had COVID?

A. Yes.

Q. Were they made aware of -- withdrawn.

Would it have been important for them to know if there were residents on that unit that did not have COVID?

A. Yes, it would have been important.

Q. Why would it have been important?

A. Excuse me?

Q. Why would it have been important for them to know?

A. Because you wouldn't want them to go into a COVID room and then transfer something to a resident that didn't have COVID, we wouldn't want that.

I believe -- like I said, I believe that that whole unit was COVID

because that's what that unit was for. If it was anything different, it wasn't to my knowledge.

Q. Thank you. Were your staff that were assigned to 1 East ever sent to any other units within Fulton from January 1, 2020 through June 1, 2020?

A. From January 1, 2020? Were they moved around? Levy and Edison, that was their unit, so no, they would be on that unit. Mr. Burwell, he did float. But at the time from January 1st to then, it wasn't COVID in the building. So, he would have moved from January 1st, yes.

Q. Did Mr. Burwell continue to float after 1 East was designated the COVID unit?

A. I don't think Mr. Burwell -- you know what, he might have. I don't have the paperwork in front of me, but he might have.

Q. What paperwork would indicate whether or not he was floated to other units?

A. The days that they worked, the actual schedule.

Q. Does that schedule indicate what units they were assigned to on the days that they worked?

A. I'm sorry, say that again?

Q. Did that scheduling indicate which units they were assigned to on each day they worked?

A. Yes, it kind of does, yes.

Q. What was that schedule called?

A. It's just their weekly schedule.

Q. Do you maintain that weekly schedule?

A. I'm sorry, say that again?

Q. Do you maintain that weekly schedule?

A. Yes, I should have that. Yes, I should actually. I should have it at work.

Q. So I'm just going to ask you to hold on to that and to retain those documents and to not destroy them or get rid of them in any way?

A. Okay, I wouldn't do that.

Q. So, we did talk a little bit about testing of the residents and you had

mentioned in your opinion it would have been helpful for Fulton to begin testing residents earlier, did you ever express your concerns to anyone about the lack of tests?

A. No.

Q. Were you ever made aware of why Fulton wasn't testing residents?

A. No.

Q. Did you have any suspicions as to why Fulton wasn't testing its residents earlier?

A. That would only be my opinion.

Q. I know, I'm asking for your opinion, sir. Do you have any suspicions as to why Fulton didn't test its residents earlier?

A. Ignorance.

Q. Can you elaborate on that a little bit?

A. Like I told you earlier, if you see things going out array that you didn't see before, why not look further into it, especially knowing what was going on during that time period. Everybody watches the

news, everybody read newspapers, so, you mean something is just common sense. But I don't know the details of the health-wise, the medical-wise, I don't know the details of who's on charge of getting it done or who should operate that. But if you see something, then something -- you should just -- during that situation, then you just address it.

Q. Did you ever hear any rumors about why the administration wasn't addressing these issues?

A. No, I don't think that was ever brought up. I think people felt it inside, but just never questioned it, like myself.

Q. Do you have any opinion as to why they didn't act on these issues?

A. I'm sorry, say that again?

Q. Do you have any opinion yourself as to why they didn't act on those issues?

A. Other than ignorance, I really don't know. I don't know.

Q. So when you say ignorance though, what do you mean by that?

A. Like I said, we all read the newspaper. We all watch the news. We see what's going on on television. And you know that you didn't have a bunch of people sick and then all of a sudden a bunch of people sick and there is a pandemic that's on the news and there's a pandemic that's in the newspaper, then that tells us that something wrong, but that's just my personal opinion.

Q. Right. So my question to you, sir, in your opinion, did the administration choose to ignore the issue?

A. I can't answer that. I don't know what they thought. I really don't know what they thought. That's like me saying did the nursing home that my father was at not let us see him before he died, so I can't answer that. I really can't. That would be wrong for me to even suggest something that I don't know.

Q. Do you believe that if Fulton Commons had tested its residents earlier it could have potentially saved some lives?

A. Yeah.

Q. Do you believe that the director of nursing, Carol Frawley, would have had the same opinion knowing what she knows in terms of all the news and everything going on around everyone?

A. I can't speak on someone else, no, I don't know.

Q. Do you think that Carol Frawley should have known that it could have saved lives if they were testing earlier?

A. Should she had known? We all should have known. I can't answer that. I really can't answer that, I can't speak for somebody else.

I can just say how I feel and I feel that if they had been tested earlier, then yes.

Q. Do you believe that the administration at Fulton was willfully ignorant when it came to addressing the residents' sicknesses earlier in March?

A. Willfully? I don't know the answer to that. I don't believe I can answer that. I can't even answer that.

Q. Well, it's really a question of what you think, do you think they were burying their heads in the sand or do you think that they knew that they should have tested, but they just chose not to do it for some reason? Like what do you think was going on?

A. I mean, everybody has an opinion. Listen, that goes further than Fulton. We got a president saying it's not that serious and he's not taking it serious. You got some people that not going to take it serious maybe. I can't answer that. I can't speak for somebody else. I can only speak for me. I really can't answer that. I really can't. I don't know what they think.

If you ask me what I think? Yeah, I think they should have tested earlier. I'm not at that level to answer for them. I really don't know what they was thinking.

Q. Do you know if anyone at Fulton ever suggested to the administration that

they test residents earlier on?

A. No, I wouldn't know that.

Q. Did anyone ever tell you that they suggested to the administration that they should be testing residents for COVID?

A. No one mentioned that to me, that's just my personal belief.

Q. Do you know how many residents died between March 1, 2020 and June 1, 2020?

A. I don't know that many exactly. I know it was a lot. I know it was a lot. I don't know how many. I can't give an exact number, but knowing it used to be a full facility and we're not a full facility now. I honestly can't give you a number.

Q. Did Fulton implement any policies and procedures related to COVID-19 as it pertained to the housekeeping department?

A. I'm sorry, say that one more time?

Q. Did Fulton implement any policies and procedures related to COVID-19 as they pertained to the housekeeping department?

A. COVID-19? Yeah, we had

procedures and stuff implemented. Like I said, they went through the CDC guidelines. We went through the Department of Health guidelines.

We had different policies for laundry. We had different policies for cleaning. We had different policies for how we stored the residents' belongings. Housekeeping had a couple of different policies, yes.

Q. Did you have any role in the creation of those policies and procedures?

A. Say that to me one more time?

Q. Sure. Did you play any role in the creation of those policies and procedures?

A. Yes. Actually, yes, I did. We took what we could from the CDC, what they recommended. I took things from the Department of Health, what they recommended. Actually, some of our policies was submitted to the Department of Health also to make sure that it was good and that it was okay. Some of them I did, yes.

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Q. Do you write those yourself or were you working with someone in drawing those up?

A. As far as myself, I wrote up some of the policies that we have? Yes, I wrote up some of the policies that we have.

Q. So, let's go through some that we have copies of. So, if we can take a look at what's been premarked as Exhibit 3.

(Policies and procedures were marked as Exhibit 3 for identification; 11/19/2020, N.L.)

MS. SEKHON: This is a 23-page document.

Q. So Mr. Andrews, just looking at the first page, do you recognize that document?

A. Bioterrorism? I'm not sure if I recognize that document.

Q. Okay. Did you play any role in the creation of this policy and procedure?

A. Pandemic?

MR. SMITH: Mr. Andrews, if you need me to make a larger, just let me

know and I can expand it and make it easier to read for you.

THE WITNESS: If you can please, just a little bit.

MR. SMITH: Absolutely.

A. Infection control nurse? No, that wouldn't be me.

Q. Okay. So I'm just going to go to page 4 of this policy and procedure.

A. Hmm-hmm.

Q. So, if we can just scroll down a little bit?

A. Hmm-hmm.

Q. So, the second section is titled, "Linen and Laundry"?

A. Okay.

Q. Would that pertain to the housekeeping department?

A. Yes, it does.

Q. And the second bullet point reads, "Wear gloves and gowns when directly handling soiling linden and laundry" -- as an example, bedding, towels and personal clothing -- "as per standard precautions.

A. Hmm-hmm.

Q. Were you aware of this policy and procedure?

A. We had that policy and procedure, yes, I believe that came from -- it was either the CDC or the Department of Health.

Q. Was your staff in-serviced on this requirement?

A. Yes, they was I believe, yes.

Q. Just a second ago you said, "I believe"?

A. Yes, I'm reading it. This should be from the -- yes, this should be from the infection control, Miss Baptiste, I believe.

Q. Do you know for a fact whether Miss Baptiste in-serviced your staff on this?

A. I can't say anything for a fact about somebody else.

Q. Did you personally in-service your staff as to this policy and procedure?

A. Yes, we had in-services on these things, wear gloves and transfers, yes, we had in-services on these things.

The linen gets set out to a company, but yes, as far as them taking the residents' clothing out the rooms and stuff like that, yes, we have had in-services on these things, yes, wearing gloves, yes, we all had out own little in-services. But I want to say that this is a paper that infection control had, but we also had it also.

Q. So did you personally in-service your staff as to this information?

A. I believe so. I believe it was either me or Warren, but yes, I know that we had had in-services about this stuff, laundry -- linen and laundry, especially after the CDC put their policy and procedures for the laundry unit.

That's how we know that the stuff should be stored for seven days and no family members could pick it up. So yes, we did have conversations about linen and laundry.

Q. When did this in-service occur?

A. I don't have paperwork in front

of me, so I honestly can't give you dates.

Q. Did you maintain paperwork related to these in-services?

A. I believe I do have those.

Q. And that were the sign-in sheets or something else?

A. It should be a sign-in sheet and it should have the topic on top of it, it should be of what we spoke about.

Q. So again, I'm just going to ask you to continue to retain those documents and not destroy them in any way?

A. Okay.

MS. SEKHON: I'm going to ask then to go to the next page in this packet.

Q. So this is the continuation of that same policy. I think we are missing a page, that's interesting.

MR. SMITH: It does look like it goes from page 20 to 22.

MS. SEKHON: That's so weird.

Q. Mr. Andrews, just bear with me one moment.

MR. SMITH: I'm not sure why this is happening, but page 21 is here, so it is in the package, it's just out of order. But I will turn to the top of page 21.

MS. SEKHON: Okay, thank you.

Q. Okay. So my apologies, Mr. Andrews, but so going to page 8 of the packet, this looks like a continuation of the policy and procedure we were looking at?

A. Hmm-hmm.

Q. And do you see the section, "Environmental cleaning and disinfection"?

A. Hmm-hmm.

Q. So would that also apply to your staff?

A. Cleaning and disinfecting, yes.

Q. And the first sentence says, "Cleaning and disinfection of environmental services are important components of routine infection control in health care facilities."

Do you agree with that statement?

A. I agree with it, but I can't read

it because there's a square that's blocking it.

Q. Okay.

MR. SMITH: Sorry, that's my computer, I'll move that, my apologies.

A. But yes, I agree with that, I agree with what that said.

Q. Can you explain why they are important components of routine infection control in health care facilities?

A. I'm sorry, you want me to explain why cleaning and disinfecting is important?

Q. Yes.

A. To stop the spread of infections, that's number one. Safety is for two. I don't know what more --

Q. So, to stop the spread of infection and for the residents, is that fair to say?

A. Yes, to stop the infection, yes, we don't want spread the infection. You don't want to catch nothing yourself, you know, so you got to make sure that you clean and disinfect everything because you don't

know the next person's illness.

Q. So looking again at the fourth bullet point under that section, Environmental Cleaning and Disinfection, "Follow facility procedures for regular cleaning of resident-occupied rooms," could you explain what that entailed?

A. "Follow facility procedures for regular cleaning of resident-occupied rooms"?

Q. Yes, what is the policy and procedure for regular cleaning?

A. During COVID or before COVID?

Q. So let's break it up. So before COVID, what was the facility's procedure for regular cleaning of resident-occupied rooms?

A. So, we're not allowed to spray chemicals and stuff around the resident. So, we still can go in and clean the rooms, so we use the chemicals and wipe off the tables, the beds, the bed tables, the night tables, the lights above, the TV. They clean the bathroom. They could change their garbage. A regular leaning of.

Q. How did that change after COVID?

A. After COVID everything turned into a terminal cleaning where you we were using bleach, along with the chemicals. Before we used chemicals that was -- it was EPA-registered, but they wasn't EPA-registered for COVID. So after COVID happened, then we started using bleach. Bleach was bad for the furniture, but that's what we had to use.

Q. Was terminal cleaning done in the occupied rooms as well?

A. Terminal cleaning wasn't done as much as in the resident room because during COVID you wasn't really allowed to go into the residents' rooms as much. So we had to clean the bathrooms and stuff, but like the little stuff.

You wasn't able to go into a COVID room unless it was absolutely necessary for you to go into a COVID room. They wanted to minimize anybody being around anything COVID as much as possible.

Q. So would it be fair to say that

the routine cleaning, the regular cleaning that you described, prior to COVID, that that was essentially put on pause during COVID?

A. I can't say it was put on pause, no, I can't say that. That wouldn't be fair to say because they still wanted to clean rooms. You just couldn't take the residents out of the room. So we had to go in and clean, but if someone -- like I said, 1 East was the COVID unit, so that unit, you had to take real precaution. You didn't go into those rooms unless it was absolutely necessary.

The other units on the different floors, they still went into the residents' rooms, they still wearing their PPEs and stuff, but they was able to go into the residents' rooms and clean their rooms.

Q. So on every unit other than 1 East, housekeeping staff was still going in and cleaning the rooms?

A. Yes. Yes.

Q. Okay. On 1 East, where you said

they wouldn't gp in unless it was absolutely necessary, how was that decision made whether it was absolutely necessary?

A. So the bathrooms had to be cleaned, but they wouldn't go to the patient's -- like okay, I don't know if you're familiar with the rooms. But when you walk in the door there's about 4 feet and then there's a bathroom.

The bathroom has to be cleaned every day. Then you have another 2 feet or so, then you have the resident's space. So they didn't go to the resident's space at all, but they had to bleach out the bathrooms and stuff to make sure that the bathrooms and stuff was clean.

You didn't go to the resident's space unless somebody had died, someone had passed or someone left and you had to go in and clean that room because you had to get it ready for somebody else, so you could go in and do that.

If there was a resident in "A" bed, you didn't bother that resident in that

"A" bed. You did all your chemicals before you went to that "B" bed and then you did everything that you had to do on that "B" side. You couldn't touch that resident in the "A" bed because of the chemicals and stuff.

So, they had to do everything by the doorway and then continue to do their job. So, on 1 East, it was a whole different program. It was a different type of cleaning. They had to take down curtains and stuff still. You had to have people to work together because one would go it and start the process of cleaning and somebody else would come in and get on the ladder and do the curtains and then sometimes it had to be cleaned, so they could bring somebody else in.

So, this was a different type of cleaning on 1 East because 1 East -- you knew, people on 1 East had COVID.

Q. Should that sort of cleaning have also been implemented with residents who were under the suspicion of COVID with those

residents who were housed in other units?

A. I'm sorry, say that one more time?

Q. Sure and I'll rephrase.

If your staff had been made aware that there were residents on other units, other than 1 East, who were under the suspicion of COVID, should those same policies used on 1 East had been used in those residents' rooms?

A. Well, once again, on the other units we still cleaned as if it was COVID. If nursing thought that there was a resident that had symptoms of COVID, nursing made that decision to move those residents. They didn't leave those residents on that unit if they suspected this.

So, my staff -- I can speak for my staff. My staff went in and cleaned all rooms -- when COVID hit, my staff cleaned all rooms as if it was COVID. The only difference was on the unit that wasn't COVID, they was allowed to do just a little bit more. They were allowed to go around

the residents a little bit more instead of not being around the residents.

They would go into the residents' rooms, they would pull the garbage from that resident's side. We had ever department helping in every department. Nursing would bring garbage to the door, if they could.

So, you had everybody working together, that's what I mean. But yes, the cleaning was done, the cleaning was still was done, but 1 East was a different type of cleaning. 1 East was totally different. On the other units, because there was no COVID alleged in the building on those other units, it was a little more freedom for them to clean the rooms a little bit more in there.

Q. If you had been made aware that there were residents on the other units who were under suspicion of COVID, would you have instructed your staff not to go into those rooms and do the extra cleaning that you described?

A. I would have, yes, and so would

have the nurse. The nurses would have alerted my staff that I believe. I don't think the nurses on those units would have let my staff go into a room where they suspected the resident to have COVID.

And I definitely did not let my staff go into a room, me knowing that a resident was suspected of COVID, not letting them go in there knowing that they are suspected of COVID.

Q. If the nurses informed them that they should not go into a room on a nonCOVID floor because that resident was under suspicion of COVID, would your staff had reported that to you?

A. Yeah, they would have, yeah, they would have asked me.

Q. Did any of your staff ever report to you that they were told by nurses on the nonCOVID floors that there were residents being treated for COVID?

A. No, they never mentioned that a nurse said anything to them about that. So no, I can't say that. But my staff was just

like me. If you see something out of the category, of course you're going to bring yourself to say maybe this person might have it, maybe this one does, but did we have proof or facts? No, we didn't.

Did we suspect something? Yeah, we all suspected something. Can you prove those things? That's a different story. Do you have facts on those things? That's a different story. So, my staff just like me. Yeah, we caught some things, but you know what, if someone is saying that there's not on a unit and we are not medically inclined, how can we disagree with -- you know, that's just out thing, what can we say?

We would hope that leadership and nursing and doctors would be honest with us for our safety just as well. So, if the doctors and them and the nurses and them are saying there's nothing on this unit, what can we say differently?

Q. Did your staff ever express concerns to you on the nonCOVID units that their safety was being jeopardized?

A. No, but my staff -- once again, my staff is just like me. If you see something that's not the same and everybody has fears, so I mean, everybody had fears.

You can speculate. We all had fears, but we didn't know. So, they never expressed to -- "No, Mike, I'm not going to work on this unit," none of that ever happened. They came in, they did their job.

Yes, everybody talks, you hear things. Everybody say, "Hey, this one might be sick," but truthfully speaking, how do we really know if they were sick? We don't, we didn't.

Q. Going back to Exhibit 3, so if we could just scroll down on page 8, there is a section called, "Cleaning and disinfection after resident discharge or transfer."

So, this is a section we were just looking at where it says, "Follow standard facility procedures" -- I'm sorry, this is not. This is a different section, yes.

So this reads, "Follow standard

facility procedures for post-discharge cleaning of an isolation room."

Are those the procedures we previously talked about with that terminal cleaning?

A. Yes, ma'am.

Q. Going to page --

A. And as far as the cleaning and disinfecting after the resident discharge or transfer, during COVID, we also submitted a paper to the Department of Health, a COVID terminal cleaning of floors for this particular type of room as well.

MS. SEKHON: So I think it's just page 9 in the packet. So it should just be the next page.

Q. Mr. Andrews, have you ever seen this policy and procedure before?

A. Is this the whole paper or can you scroll up? It's not showing me the policy though, so I can't -- it's just showing me the document. If it came from the Department of Health, I probably did see it.

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Q. So, this is not a Department of Health policy. My question for you is whether you recognize that to be a policy from Fulton Commons and we can scroll up to the top again.

Does this at all look familiar?

A. We do have COVID policies. I don't know offhand. I honestly can't answer. I don't know. I don't know. It might be one of the ones that I have seen, but we had -- when COVID-19 hit, we had to make up a bunch of COVID-19 policies for COVID-19. I might have this one here. I'm not sure.

Q. Okay. If we go to the second page of this policy, number 4, it reads, "A resident presenting with potential COVID-19 symptoms will be placed on the recommended contact and droplet precautions."

A. Okay.

Q. To your knowledge, how was this information conveyed to your staff if a resident was presenting with potential COVID-19 symptoms?

A. I didn't understand that question, say that for me one more time?

Q. Was it ever conveyed to your staff and if so, how, whether a resident was presenting with potential COVID-19 symptoms?

A. I don't know if this was portrayed to the staff. I believe it might have been. Also in one of the in-services, I'm not sure. As I said to you earlier, the unit manager would let my staff know what was going on with the rooms in those units.

My staff did wear face masks. My staff was wearing eye goggles and stuff, protective gear.

Q. So I want to just clarify what you just said. You said the unit manager let the staff know what has going on in the rooms, but you also said the unit managers told your staff that a resident on the nonCOVID unit was under suspicion of COVID, that your staff would have reported that to you.

And to your recollection, you never received any such reports, correct?

A. To my knowledge -- say that again?

Q. To your recollection, you never received any such report from your staff members; is that right?

A. No, the nursing would let my staff know if there was something on the unit. If there was something on the unit, the nurses and them would have moved the resident to 1 East, I believe.

So none of that was brought to my attention, no. That was correct, what you said, no, none of that was brought to my attention.

Q. So you were never made aware whether there were residents on the nonCOVID units presenting symptoms for COVID, correct?

A. Correct because we -- when COVID hit, the whole building dressed up as precautions, that's how we took it.

Q. And it's also your understanding that if there were residents presenting with symptoms of COVID, that that information

would have been conveyed to your staff, who would have in turn conveyed that information to you, correct?

A. Yes because from my understanding that every resident who had a symptom of COVID or suspected of COVID, should have been moved down to the COVID unit.

Q. Okay.

MS. SEKHON: Going back to Exhibit 3, we can go to page 12 of the packet. If we can scroll down to the bottom of this page.

Q. So now there is a section that seems to address the housekeeping staff; is that right?

A. Yes, it says, "Housekeeping staff will don appropriate PPE."

Q. "Based on precautions in place and will provide appropriate resident room cleaning based on precautions," correct?

A. Correct.

Q. To your knowledge, did your staff ever implement different resident room cleaning for -- let me rephrase.

To your knowledge, did there ever come a time when your staff with respect to the nonCOVID units were cleaning some resident rooms in one way and other resident rooms in another way due to necessary precautions?

A. No, not to my knowledge. To my knowledge my staff should have been cleaning every room as if it was COVID. Because when we found thought that COVID was in the building, everybody should have cleaned every room as if it was COVID.

Q. You said that a few times, that they should be cleaning every room as if it was COVID. But then you also said that they cleaned the rooms on 1 East --

A. Let me rephrase. Let me correct again. As using the same chemicals, the same chemicals as if it was COVID.

Q. But the cleaning on the other units was more extensive than the cleaning on the COVID unit, correct?

A. Correct.

Q. Okay.

A. On the nonCOVID unit -- I'm going to say yes, until it was terminally cleaning because they wasn't allowed to really go into the COVID rooms and be around the resident.

Q. So they were taking extra precautions on 1 East that they were not taking on the other units; is that right?

A. Wrong wording. They were taking the same precautions, but 1 East, the housekeeping staff wasn't allowed to be around the residents themselves because that was the COVID unit.

The other unit that did not have unit, they were still wearing their proper protective gear, but they was able to go into those rooms in a little more detail. To grab the garbage from that side, to do little things. They all was cleaned using the same chemicals, which we basically was using bleach at that time to kill everything.

So, I don't want the wording to be wrong. They still cleaned all the rooms.

It's just 1 East was -- 1 East was the COVID unit it was not allowed to really be around the residents. The rooms that didn't have COVID, the unit that was not affiliated with the COVID, they was allowed to go into those room in a little bit more detailed.

Q. Well, wouldn't you agree that avoiding contact with the residents on 1 East is an additional precaution?

A. Yes, okay. Yes, if you put it that way, then avoiding the residents on 1 East is an additional precaution, yes.

Q. So, is it fair to say that one additional precaution of avoiding residents on 1 East, that additional precaution was not taken on the other units, right?

A. To that extreme, no.

Q. So then your staff on 1 East were taking extra steps and extra precautions as compared to the staff on the other units, correct?

A. Correct, we could say that, yes, because those were the COVID units, yes, we could say that.

Q. And if you had been made aware that there were residents on the other units that were being treated for COVID, would you have expected your staff to take those extra precautions with respect to those individual residents as well?

A. Yes, if that was the case.

Q. So, if we go to the next page of Exhibit 3, just the top of the page, number 3, it says, "Housekeeping staff will identify rooms that require terminal cleaning through communication with admissions and nursing."

A. Hmm-hmm.

Q. Who was responsible for communicating with admissions?

A. Admissions and nursing would let us know -- remember I told you I get the mail in my mailbox and stuff like that? So, that's how we receive the mail and then the unit nurse, whatever room was being transferred or deceased or so be it, the nurse on the unit would inform the housekeeper on that unit as well.

Q. And the notification in your mailbox that was the census sheet you said, right?

A. Yeah, it's like a census sheet and it tells us residents discharged, residents room changed and so forth, yes.

Q. Okay.

A. And then during daily rounds we would see if the rooms had been cleaned.

Q. I'm sorry, would you say that again? On your daily rounds --

A. On daily rounds, if we knew of a room change, we would make sure that the staff cleaned that room, "Hey, this is the room that needs to be terminally cleaned" and they would come and clean those rooms.

Q. Okay.

A. But the nursing was very informative of that.

MS. SEKHON: So going to page 16 in this packet.

Q. Mr. Andrews, have you ever seen this policy and procedure before?

A. This is for nursing department,

yeah, I seen this before, yes.

Q. So, if you can just scroll down a little bit, so letter C?

A. Hmm-hmm.

Q. Indicates that "All belonging are to be packed by the staff once they know the family is coming or not. They may not linger on the unit more than 24 hours"?

A. Hmm-hmm.

Q. And then letter E indicates, "One this tack is accomplished housekeeping will be called to remove the boxes from the room. The room should be cycled clean and prepared."

Was that your understanding of what was to be done during COVID?

A. Yes, that's part of what came from the CDC and them and the Department of Health recommendation, that the clothes be actually, we couldn't even give the clothes to the family. If they didn't take what they took within that period of time, we couldn't give it to them within seven days. They had to wait seven days clearing time

before they received anything.

Q. Just to clarify, that policy relates to the clearing of rooms after a resident expires; is that correct?

A. That would be the terminal cleaning of the rooms, correct.

Q. So with respect to letter E, were your staff in-serviced on this section?

A. That would be our terminal cleaning, yes.

Q. So the term used in this section that says, "Cycle cleaned," is that referring to terminal cleaning?

A. Yes, that would be our terminal cleaning. They put cycle clean, but that, during COVID, that would be our terminal cleaning, yes.

Q. Would that be different during nonCOVID times?

A. This right here would be different, the whole paragraph? The whole protocol?

Q. That's my question. So I'm referring only right now to the section

"Cycle clean." So you said during COVID that would refer to terminal cleaning. What would that mean otherwise?

A. I don't know why they have "cycle clean." When a resident is moved or deceased, whether they room move to another room, we go in and terminal clean any way. Cycle clean, this is a nursing protocol. This is not a housekeeping policy. Housekeeping know that the room needs to be terminal cleaned.

Q. Okay.

MS. SEKHON: If we can go to the next page.

Q. Mr. Andrews, have you ever seen this policy and procedure before?

A. I don't think so. This is a nursing issue. I don't believe so. This looks like the COVID protocol, I don't really know.

This might be in-service to staff about going in an out of rooms wearing your PPEs. I don't know if this the exact paperwork shown, but I think it kind of like

runs into the same ball game, wearing your proper PPEs and stuff.

Q. Okay, but you're not familiar with that, is that fair to say?

A. You could say that, I guess.

Q. Okay. So, let's just move on to the next one then.

Have you ever seen this policy and procedure before?

A. The difference is you showing me nursing policy and procedures, so I really wouldn't know nursing policies and procedures. But it starts -- at the top it says, "handwashing," we do get in-services on handwashing and stuff like that.

Q. So would there be a separate policy and procedure for housekeeping staff with respect to the handwashing?

A. No, I wouldn't have the nursing policy and procedure. These are in-services that we're in-serviced on through the in-service coordinator.

Q. So is it fair to say then that if there's a policy and procedure, you would

not have actually seen the written document, you would simply receive the in-service on it?

A. Yeah, I would receive the in-service on it. We would all be in-serviced on -- let's use handwashing /-R for an instance. That's an infection control issue. So we would in-serviced on infectious control issue. I would not see the nursing policy unless there was a reason for me to have to see nursing policy.

But the infection control lady who is in-servicing the staff, I'm pretty sure she would see these policies and then in-service the staff on the policies that need to be in-serviced on.

As far as handwashing and stuff, we all do hand wash -- we all do in-service on handwashing. So, I can't say I've seen the policies or procedures, no.

Q. Okay. But you and your staff were all in-serviced on handwashing throughout the pandemic, is that fair to say?

A. Yes.

Q. So let's skip ahead then to page 20?

A. Okay.

Q. Mr. Andrews, what's the title of this policy and procedure?

A. "Proper selection and use of cleaning supplies."

Q. Would that pertain to the housekeeping department?

A. Yes, it would.

Q. Have you ever seen this policy and procedure before?

A. Yes, I have.

Q. So going to the second bullet point under procedure it says, "All chemicals are locked in the housekeeping carts, in the janitor closet or in storage when not in use"?

A. Correct.

Q. Was that your understanding of the policy and procedure of Fulton?

A. I'm sorry, say that again?

Q. Sure. Was that your

understanding of the policy and procedure of Fulton?

A. That all our chemicals were to be locked up?

Q. Yes.

A. Yes, that's my good understanding, yes.

Q. Was that been in practice?

A. That's been in practice for the 18 years that I've been there.

Q. Why are the supplies locked up?

A. Excuse me?

Q. Why were the supplies locked up?

A. For one, we don't want a resident, if you have your cart on a unit, you don't want a resident to come -- it could be a resident that have a mental problems, it could be a resident that was wondering, you don't want to take a chance that any resident or anybody taking the chemicals or accidentally drinking or do something to their self to cause harm.

That's why we keep all our chemicals locked up. And those that are

caught with their carts unlocked or chemicals left out, are written up and disciplined because that's a hazard. That could cause a whole bunch of different problems.

Q. So, in practice, you know, you mentioned before you had housekeeping staff in the building basically 6:00 a.m. to 12:00 a.m., what would happen after hours if somebody needed to clean something?

A. Nursing have -- nursing has their little set, it's called sani-wipes, sani-wipes that is also a different cleaner that they can use instead of our chemicals.

Housekeeping does not have an overnight shift. I've been there 18 years and we've never had an overnight shift and we still don't have one now. Nursing has their wipes and stuff that they use for their equipment, that they can use to disinfect and then they would alert housekeeping, leave a note for housekeeping for the morning if it was something that was that important for them to take care of.

MS. SEKHON: I think we can go to the next page, page 21 in the packet.

Q. Mr. Andrews, what is the title of this policy and procedure?

A. "COVID-19 Pandemic Policy and Procedure Daily Room Cleaning-Occupied Room."

Q. And does this pertain to the housekeeping department?

A. Yes, it does.

Q. Have you ever seen this policy and procedure before?

A. Yes, I have.

Q. Do you know who created this policy and procedure?

A. I think it was me, as a matter of fact, I know it was me, I believe. Yeah, this was me. This is the COVID-19 policy, this is me.

Q. If we can just scroll down the page a little bit, is there a date anywhere on this policy?

A. No, I don't see a date on there, no.

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Q. Do you recall if you dated this policy?

A. I don't know, to be honest. I don't recall dating this policy, no.

Q. Is it important?

A. This policy here, also, I think was sent into the Department of Health.

Q. You think it was turned in to the Department of Health?

A. I believe so. I believe -- like I said, we had like -- we had infection control there like every other week, they was in the building. So I believe they did see this.

Q. Would it be important to put a date on a policy and procedure?

A. Is it important? I guess you could say it is, but there hasn't been and I didn't put one on this one. A lot of policy and procedures that I seen, they didn't have dates on it. I don't know. This one doesn't have a date on it. I didn't put one on this one.

Q. If we go down to the bottom of

the page?

A. Okay.

Q. So under procedure number 10 it says, "All cleaning equipment (mops, buckets, et cetera) used in isolation rooms will be considered contaminated and will be properly decontaminated before reuse."

A. Yes?

Q. Can you explain that a little bit more?

A. So, if you go into an isolation room, you're supposed to take your mop, your bucket, everything that you used should be bagged up and cleaned before you reuse it in another room.

So, you would take it to your janitor closet. You would wipe it down with your chemicals, your bleach, all the chemicals that we use and before you go walk into another room with it.

Q. Was every room on 1 East considered an isolation room?

A. 1 East was just a COVID unit. I can't say every room was an isolation room.

The whole unit was an isolation unit.

Q. For that unit, were the staff required to decontaminate their cleaning unit before going from one room to the next?

A. I'm not going to say they was, no because that whole unit was a COVID unit.

Q. So on 1 East, the staff purported to use the same equipment without decontaminating it and just continued from one room to the next; is that fair to say?

A. I'm not going to say that's fair to say. I'm not going to say that. I don't know exactly -- I wasn't over them. I don't know exactly what they did. 1 East was a COVID unit at that time. That whole unit was just a COVID unit.

Did they use -- did they clean their mop, buckets and stuff after every room? 90 percent of the time I could say no, they didn't. Should they had? I honestly don't know the answer to that myself because that whole unit was a COVID unit. Yes, I guess they should have.

In reality could that have been

done? No, I don't think it could have.

Q. Can you explain that a little bit more, how do you think that it would not have been able to be done?

A. With them cleaning the rooms, that COVID rooms, that COVID unit, nothing was coming in and off that unit at the time. They supposed to change their mop, water and stuff after every three rooms any way. So that's how we continued, to change their mop, water and stuff after every three rooms.

Did they do it after every room? I don't believe so. I honestly don't believe so.

Q. If there were residents on 1 East that did not have COVID, would it have been important for the housekeeping staff to decontaminate all of their equipment before going from one room to the next?

A. Yes.

Q. And to your knowledge, this particular section of decontaminating the cleaning equipment, was that followed on the

nonCOVID units?

A. I'm sorry, repeat that one more time?

Q. Sure. To your knowledge, was this particular policy of decontaminating the cleaning equipment, was that followed on the nonCOVID units?

A. They would clean -- if there wasn't no -- if there was not an isolation room on that unit -- if there was an isolation room on that unit, they would do those isolation rooms last.

As far as them going in and out of the rooms in the nonCOVID rooms, they are allowed to use their bucket and stuff every three rooms. And then they change their equipment and stuff like that, they clean their equipment and their water and everything in that category.

If there happen to be an isolation room on that nonCOVID room -- if they did that isolation room, then they would have to go back to their closet and disinfect and clean their equipment, yes.

Q. And how would your staff be notified if there was a room on a nonCOVID unit that was an isolation room?

A. Normally there's a sign on the door and there's these precautions signs and would they have to ask the nurses before they go into that room.

Q. Would you be notified if there was an isolation room on any of the nonCOVID units?

A. Not until I went up on the unit, no, I wouldn't get a personal paper from them, no. But as daily rounds, you go on the rounds, you see the rooms that have the tags and stuff on that, that's how you know.

Q. If your staff had been assigned to a unit and learned that there was an isolation room on that unit, would they have reported that to you?

A. Most of the time, no, my staff wouldn't because once again, my staff had been there 12 years or better. The nursing would let me them know. When I do rounds, I would see the isolation room. But nursing

would let me them know if there was an isolation room.

There would be no need for my staff to come to me and say, "Hey, there's an isolation room on this unit." They know the proper procedure or protocol and how to handle that.

Q. Were you ever made aware of any isolation rooms on the nonCOVID units?

A. On the nonCOVID unit? Isolation rooms? I don't believe we had any at the time. And if we did, isolation would call down for red bins. We would send red bins up to the unit, but I would be aware because I do daily rounds.

Q. But the daily rounds I think you said were put -- a stop was put to the daily rounds?

A. Sorry, say that again?

Q. I believe you said before that the facility put a stop to the daily rounds during COVID?

A. Yes.

Q. But --

A. But I still could do daily rounds, I would just have to protect myself, put on the right PPE. I don't go into the rooms though. But I do have information with the unit managers and stuff like that to see what's going on if I'm doing daily rounds, yes.

Q. So did you continue to do daily rounds during COVID?

A. Me or Warren did go rounds when we was needed. If we were called up stairs to do something, yes, we did. A lot of times we were called upstairs for miscellaneous things to me during that time. If someone was missing clothes, you would need information. We didn't have to go into the rooms and stuff at that time, unless it was absolutely necessary. We didn't go in the rooms.

Q. But then you did still, throughout the pandemic, so March, April, May 2020, you did continue to go up?

A. Not as much. We still do sometimes, but not as much.

Q. Okay.

A. But not as much. Nowhere near as much.

Q. Now you said something about red bins?

A. So red bins are for isolation rooms. The red bins might not have COVID, a resident might have C. diff or something like that. So we would have to take an isolation bins -- we call them isolation bins, to the unit and they will use those.

Nursing would put up precautions signs on the doors to let everybody know that you have to put on your PPE before you enter the room. So all of that is consistent the isolation rooms.

Q. Were red bins -- I know you said they don't have to be COVID, but would they be used for COVID?

A. I believe nursing would use them. I honestly don't know that answer, but I believe nursing would use them for COVID.

Q. Just to clarify, I think that you said that you were never asked for red bins

on the nonCOVID units; is that correct?

A. No, I was asked for red bins. I never said I wasn't asked for red bins.

Q. Okay.

A. I was asked for red bins.

Q. Okay.

A. Yes.

Q. So before when you said that you don't believe there were any isolation rooms on the nonCOVID units, can you explain?

A. During the COVID, we didn't have no isolation rooms up on other units, there were no isolation rooms. Had there been, a nurse would have let us know. Like I said, it might not have been COVID, it could have been C. diff, we didn't have that during the time.

But had it had been, they would have called and asked for a red bin or something for that particular area. But during that process, we didn't have isolation rooms up on the other units.

Q. Okay. So, is it fair to say that in March, April and May of 2020, you were

never made aware of any isolation rooms on the nonCOVID units?

A. As far as I can remember today? No.

Q. And to the best of your recollection, you were never asked for a red bin to be placed on the nonCOVID units during March, April and May of 2020; is that fair to say?

A. I guess we could say that's fair because I don't remember that. I guess we could say that's a fair thing to say then.

MS. SEKHON: So, if we go to the following page.

Q. This is page 22, Mr. Andrews, do you recognize this policy and procedure?

A. Yes and there's also a revised one of this also, I believe.

Q. Okay, that's good to know, thank you. Did you create this policy and procedure?

A. Yes, I did.

Q. Do you recall when you created it?

A. No, I don't know the exact date. It must have been in March when we had to do all the COVID policy and procedures to deal with COVID. But there's a revised one to this, I believe.

Q. Okay. Are you sure that you created this policy and procedure?

A. Yes.

Q. If we can just scroll down a little bit to under the section, "Procedures," the third bullet point that says, "Allow to dry to dwell time, wipe away as needed using clean, dry cloth."

Did I read that right?

A. Yes, I wrote that, yes.

Q. So earlier today when I asked you about dwell time you said you weren't familiar with that term?

A. I wasn't familiar with that, I use "kill time."

Q. But you're saying that you wrote this up where you put the term "dwell time"?

A. Yes, yes, absolutely.

Q. Can you explain that?

A. Because this was some of the stuff that I took off of the CDC and the Department of Health suggestions and stuff.

Q. Okay. So just so I'm clear then, you pulled this from the CDC suggestions?

A. Yes, during the COVID-19, we went through certain things and the CDC and the Department of Health recommended certain things. So, we took from our policy and we took from the CDC and the Department of Health as to what they suggested and added more things to it. That's why I said there's a revised version of this.

Q. Right.

A. Hmm-hmm.

Q. So do you understand what that meant, "allow to dry to dwell time" at the time that you wrote this up?

A. Dwell time mean leave it on there for the kill time. So, I say, "kill time," but it's dwell time, yes. If the chemical says two minutes wet, then leave it on there two minutes before you wipe off. If it says five minutes wet, then leave that chemical

five minutes before you wipe it off.

Q. And I think you said before that you have a cheat sheet that you give your staff that says what the dwell time is for all the different products?

A. Yes, but my sheet says, "kill time," yes.

Q. So I would just ask you to maintain a copy of that cheat sheet?

A. No problem.

Q. Looking at the last page of this packet?

A. Hmm-hmm.

Q. Do you recognize that policy and procedure?

A. Yes, I do.

Q. Do you know who created this policy and procedure?

A. Yes, this is the terminal cleaning policy.

Q. Who wrote up this policy and procedure?

A. I did.

Q. Do you know when you wrote it up?

A. Ma'am, all this was during March or I want to say during this COVID thing, that's when we had to write up all new policies and procedures.

Q. Would you agree that it would be helpful to date this policy and procedure so that you could tell when it was actually implemented and put into place?

A. Well, I do know that was done during COVID-19, so that would have been during March. But yes, a date would be good for somebody else, so I could agree with that.

Q. But you believe it was sometime in March that you wrote this out?

A. I could say it was March, I believe so. I know it was during COVID, yes.

MS. SEKHON: If we can go towards the middle of the page, we will just scroll down.

Q. So under "Procedure," the last bullet point indicates, "Notify nursing staff upon completion of terminal clean,"

who was responsible to notify nursing staff?

A. The housekeeper in the unit would let the nurse know when the room was clean.

Q. Who in particular at the nursing staff would be notified?

A. The RN, the unit manager. If the unit manager wasn't available at the time, it would be the LPN.

Q. Was your staff in-serviced on notifying the unit manager or the LPN when the room was terminally cleaned?

A. Yes, that's something that's been in process. Whenever a room is cleaned, you tell the unit manager or the RN, the nursing unit that the room was cleaned, yes.

Q. I want to talk just a little bit about room changes.

A. Okay.

Q. Are you familiar with the number of room transfers that occurred on March 30, 2020?

A. March 30th? I'm not familiar with the number, but I know there was probably some room changes if you mention

it. I really don't know the number though.

Q. Okay. Do you recall at all there were a number of room changes on March 30, 2020?

A. Do I recall? No, I don't recall. But I know we had a lot of room changes going on. Can I give you an exact date? I can't give you an exact date, but I know we had a lot of room changes going on.

Q. You mentioned a little bit about these room changes before, so can you elaborate on that? Did these room changes take place over a course of time or was it all in one day, to your recollection?

A. I really don't know, to be honest. I would have to see paperwork in front of me.

Q. Did you have any involvement in a number of room changes that occurred on March 30, 2020?

A. I honestly don't know, ma'am. I can't answer that because I really don't know. You can switch this question around seven times, I really don't know. I really

would have to have paperwork in front of me to answer that.

Q. So let's take a look at what's been premarked as Exhibit 4.

(Housekeeping log was marked as Exhibit 4 for identification; 11/19/2020, N.L.)

A. Okay. I know there was a lot of room changes going on, but I honestly couldn't tell you who, but there's no paperwork on my screen.

Q. Okay. We might have lost our presenter, so let me see if I can do this.

A. Okay. Okay.

Q. Do you recognize the document that we're looking at?

A. Yep, that's me signing off to say that that particular housekeeper worked on that particular floor that day.

Q. What's the title of this document?

A. Terminal Cleaning COVID-19.

Q. So, just to clarify then, does this indicate that a housekeeper worked on a

particular unit or does this indicate that particular rooms were terminally cleaned on particular days?

A. So like take for instance the 27th, Kim Allen worked on that union and that unit, 438 was cleaned by Kim Allen.

Q. Okay. So let's go, I guess, column by column here. So the first column is the date discharged or transferred, what does that mean?

A. So this is the date that the resident was supposedly discharged, which means they left the room to get discharged or transferred. They either left to get discharged or transferred. They should have left that room.

That doesn't mean on that date that they actually left that room that particular day because sometimes people don't leave that particular day.

The next column is the date my housekeeper cleaned that room. That's the next column. That's the date that that room was actually cleaned and made sure that room

was cleaned. So that's what that is.

You go to the next column, that's the current housekeeper for that unit that cleaned that particular room. The bed number of the room and that's just me signing off on saying, "Yes, that person should have cleaned that room."

Q. Is it that person should have cleaned that room or that person did clean that room?

A. That person should have cleaned that room. Should have been Kim Allen. And that room should have been cleaned because nursing would have the note.

Like I told you, my staff has been there 10 to 12 years, if the room need to be cleaned, they would have cleaned the room.

Q. Did you ever verify with your staff that the room was actually cleaned?

A. Did I ever go behind them and see actually? No, ma'am, I can't say that.

Q. Not go behind them, but did you ever speak to your staff to verify that they

terminally cleaned the rooms that are listed on this log?

A. Wait, repeat that one more time for me?

Q. Sure. Did you ever speak to your staff members to verify that they actually cleaned the rooms that are listed on this log?

A. No, no, we don't -- I don't have one-on-one conversations with them, "Hey, did you clean this room?" No, I don't oversee them like that. If the room needed to be cleaned, they cleaned the room. They had to let nursing know that the room was cleaned. Nursing would inform them on the unit that that room had to be cleaned and they would clean the room.

So, I don't have to like one-on-one speak to them and say, "Hey, does this room have to be cleaned?" We've been doing this too long in this building not to know.

Q. Just to go back a little bit, what we're looking at right now, this is the

terminal cleaning -- the COVID-19 terminal cleaning log that we were talking about earlier today, correct?

A. Yes, so these are the rooms that we started cleaning from that day.

Q. Okay.

A. The 25th of March.

Q. And this log would indicate every room that needed to be terminally cleaned?

A. Yes, it should, yes, correct.

Q. If a room does not appear on this log at a particular date, is it fair to say then that room was not terminally cleaned?

A. It's fair to say.

Q. Okay. Again, the fact that the room appears on this log, only means that you were aware that it needed to be terminally cleaned and a certain staff member was assigned to that unit; is that right?

A. That's fair to say too.

Q. Okay. So if we take a look and I will scroll down here, under "Date discharged or transferred"?

A. Hmm-hmm.

Q. We see a number of rooms --

A. Hmm-hmm.

Q. -- on March 30th; is that right?

A. That's correct, a number of rooms on the 30th, yes.

Q. Does this refresh your recollection as to whether there were a number of room changes that occurred on March 30, 2020?

A. On the paper it says, yes, but if you look on the next row it says when those rooms was cleaned.

Q. Right. So those rooms were purportedly vacated on March 30th, but not cleaned until most almost all of them the next day; is that right?

A. That's correct.

Q. Is that typically the case, where a room is cleaned the day after it's vacated?

A. Can they clean a room -- like, say that again? Can they clean a room after it's vacated?

Q. No, just so we're clear. Is it typically the case that the room is cleaned a day later, so a day after it's vacated as opposed to the same day?

A. No, that's not always the case. Just because you see the date there, that doesn't mean what time that the room was transferred. So that's why some the dates would be a day off because they might have gotten transferred at nighttime and then the room had to be cleaned the next day. So, that's what that means.

So, these are the people that worked on those units that cleaned that room and had to be the next day.

Q. So looking at this log on the right-hand side --

A. Okay.

Q. Do you see what appear to be initials?

A. Yes, hmm-hmm.

Q. Are those your initials?

A. The "MA" is mine confirmed those people are the people that worked on those

units and supposed to clean those rooms. So yes, that's my initials.

Q. And if we look at the second, third and forth row, we see next to your initiates, there's another set of initials, right?

A. Yes.

Q. Whose initials are those?

A. That particular "AM" would be Audley McClow.

Q. Who is that?

A. He's one of my lead porters.

Q. One of your lead -- I'm sorry?

A. He's one of my lead housekeepers.

Q. Why would he also be signing this?

A. Because those particular days -- I want to say the 28th might have been a Saturday or a Sunday and I wasn't there. So, he was there and he signed off on it to make sure that those particular people was up on those units to clean those rooms.

Q. So on days that you're not there, then was the name Audrey?

A. Audley.

Q. Okay, Audley McClow was responsible for signing off on this information?

A. He was responsible for signing off on that because that might have been a weekend. I'm not sure of the exact date, but that might have been a weekend.

Q. Can you spell the first name for us, please?

A. A-U-D-L-E-Y.

Q. So Mr. Andrews, just looking at the first page, is there any information on this document that on March 29, 2020, a resident died in room [redacted] on 3 West?

A. I don't know if a resident died or not on that date.

Q. Do you have any indication that a resident was moved out of the room for any reason on March 29th, 2020?

A. On March 30, 2020?

Q. Not March 30th, March 29th, 2020?

A. March 29th, 2020, okay.

Q. Is there any indication that on

unit 3 West, room [redacted] had been vacated?

A. I don't have that on the paper that I'm looking at, [redacted] was vacated on 3/30/2020.

Q. So, according to this document, it was cleaned on March 30th?

A. Yes, which is 3/30/2020 and it should have been cleaned on 3/31/20.

Q. Would it have been proper to move another resident into that room prior to being terminally cleaned?

A. Would it have been proper? Would that have been the right protocol? No, that wouldn't have been the right protocol to do.

Q. If I told that a new resident had been moved to that bed on March 30, 2020, the day before that room was purportedly terminally cleaned, would that have been concerning to you?

A. Yes, it would be.

Q. Why would that be concerning?

A. Because nursing should let people do their job and that's an infection control issue, number one. So that would be very

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concerning.

Q. Could that put the new patient into that room at risk of contracting an infectious disease?

A. Yes, it could.

Q. Could that endanger the new resident who moved into that room?

A. Yes, it could.

Q. I'm just going to take this down a minute.

Mr. Andrews, you mentioned that there were several weeks when DOH and CMS were in the building at Fulton?

A. Hmm-hmm.

Q. Are you aware of the DOH infection control survey that took place on May 1, 2020?

A. On May 1, 2020?

Q. I'm sorry, May 4, 2020?

A. I'm aware of it, but I wasn't in the facility at the time. That was during the time that I was dealing with my father.

Q. How did you become aware of it?

A. Phone call.

Q. Who called you?

A. I believe that was Warren because they were looking for certain documents, I had to tell him where it was at.

Q. So understanding that you were out of the facility on May 4th, I'm just going to go back a little bit, were you in the facility on May 1, 2020?

A. Ma'am, I don't know, to be honest.

Q. Okay.

A. My father was on his death bed that whole week, the doctors were saying he was dieing. I don't know.

Q. Prior to receiving the call from, as you indicated, Mr. Lufkin --

A. Yes.

Q. -- did you have any reason to believe that DOH was going to be in the building that day or the weekend before?

A. I don't know, ma'am. I don't know if they let them know that they was coming. I really don't know. I honestly don't know.

Q. Did anyone tell you --

A. I just know I wasn't there when they came. It was a shock to me, I wasn't there when they came.

Q. So, my question really, sir, is whether anyone told you that DOH was going to be coming prior to their actual arrival?

A. No, ma'am, during that time if you check my payroll sheet or whatever, I wasn't in the facility as much. Like I explained to you, I was going through my own situation. Warren was the supervisor, he was there. I wasn't in the facility as much, so I honestly -- I honestly don't know.

I know when they came, they called me. They asked for certain paperwork. I gave it to them. I told them where it was at and that was the end of it. I didn't speak to nobody from DOH. I didn't deal with them.

Q. Okay. So you said you were never introduced by DOH in connection with that survey?

A. Not during that time of May, no, not during that time of May.

Q. Did you ever learn of the results of that survey?

A. Yes, I believe that there was a housekeeper -- I don't know if it was that particular time. But I believe that there was a housekeeper that -- from 1 East that was said to have went into a resident's room and came out without sanitizing their hands, I believe.

I believe that there was, on that same particular unit, I don't know if it was the same day or not, so my dates could be a little mixed up, that he was observed with his PPE halfway off, but he had just came from lunch. Because they couldn't leave the unit, so he had left the unit and I believe he just came out of the lounge and he had his PPE like halfway off his shoulder.

If that's the same time, I believe that's what happened. Like I said, during that time, I was going through my own thing. So my days might be a little off,

but I believe that is what happened during that process.

Q. Did you have any involvement with drawing up the plan of correction for Fulton?

A. As far as him being with his PPE and stuff? No, they had that in-services and stuff about it. I believe I suspended that person. I'm not really sure. But I believe I suspended that person for a day or two, it might have been three days. But I know prior to that they had in-service about wearing their PPEs, the proper way of wearing their PPEs and so forth.

And again, I might be getting my dates mixed up with something else because during that time I was going through my own thing.

Q. Got it. I'm going to ask you another question about May. So, I understand that you know you might not know, but just let me know.

Are you aware of another of room changes that occurred on May 1, 2020?

A. Ma'am, to be honest, I really don't know. I don't believe I was at work. I'm not even sure -- like I said, during that week there was a lot going on for me.

Q. Okay.

A. I really don't know.

Q. So I'm going to -- let's go back to the exhibit for a minute. So, I think --

A. Okay.

Q. -- the presenter is back. I think his computer might have been a little bit frozen.

MS. SEKHON: Ben, if we could just show Exhibit 4 again.

A. Hmm-hmm.

Q. So I would like to go to page 4 of this document?

A. Hmm-hmm.

Q. What's the last date listed on page 4?

A. Say that again, the last --

Q. Sure. And let me be more clear. What's the last date listed for which a room was vacated on this page?

A. 4/30/2020.

Q. Does that also indicate what day that room was cleaned?

A. 4/30/2020.

Q. And I know I'm using the term "cleaned," but by that what I'm really referring to is terminally cleaned. Would you agree with me that the room was supposed to be terminally cleaned on 4/30/2020?

A. Yes, it should have been cleaned by Mr. Denham Allen.

Q. And then if we go to the following page?

A. Okay.

Q. What's the first date listed as the date of discharge or transfer on this page?

A. You have 5/1/2020.

Q. So just to ask, on the page above us, there was still plenty of room --

A. Okay.

Q. Is there a reason why the next page or the next date starts on the following page?

A. That could have just been the printout on the computer.

Q. Okay. Who has access to this document on the computer?

A. I'm sorry, say that again?

Q. Who has access to this document on the computer?

A. I have access and Warren has access to my computer.

Q. And this stays on your computer itself?

A. Yes, it should be on my computer itself, yes.

Q. Would Cathie Doyle have access to this document?

A. I don't know, she might have COVID-19 documents. She might because they had to give them to the Department of Health so she might.

Q. Okay. Would --

A. Did I give it to her? I haven't given her this, but I know during that process of Warren and them calling me, the Department of Health needed some paperwork.

So, she might have it, I honestly can't say.

Q. Okay. Would you typically start a new month on a new page?

A. No, that's why I said it could have been -- just been a printout error. I don't know how this was printed out, but sometimes we do -- I don't know. If you go down, sometimes it could just be the month of May, it could be the month of June. I really haven't looked at it just like that, but it shouldn't be.

Q. What program is used to create this?

A. As you've seen this morning, I'm not really computer savvy like that. So, I honestly can't even say that I really know. It's a program on the computer at work. I really don't know, ma'am.

Q. Do you know if the program is Microsoft Word or Microsoft Excel?

A. You're asking the wrong one. I can get you that information, but truthfully speaking, I'm not the computer savvy person, I'm the hands-on person, more or less. I

really don't know, ma'am.

Q. So you punch the information into this log, correct?

A. So Warren had put this information in for me. Like I give him the paperwork and stuff and we put it in there. Sometimes I might put one or two, but I'm not -- as you've seen this morning, that's not my thing. I'm -- that's not my thing. I'm more looking at the paperwork, reading the paperwork myself. I'm not a computer person. I would not tell anybody I'm that.

Q. So is it Warren Lufkin then that generally puts this information in there?

A. Warren Lufkin will put the information for me, yes.

Q. But you give him the information to put in?

A. Yeah, we get the information off the paperwork that I told you, the census paperwork. We get the room changes. We see who worked there that day and we marked it off.

Q. So again, this document this

terminal cleaning log, is really a reflection of what should happen and what should have happened?

A. Hmm-hmm, yes.

Q. But there was no actual verification done with the staff members on the individual units, correct?

A. I can't say that, ma'am, because they speak to the nurses. They speak to nursing on the units and nursing makes sure that the rooms are cleaned. So I honestly can't say that.

Q. Well, neither your or Warren actual verified this information with your housekeepers, correct?

A. Well, Warren might have verified some of this information when the paperwork comes through. Like I said, my staff's been there, they know what to do as far as cleaning the rooms. It hasn't been a room that's in the facility that they don't clean. So, I can't say that just because of how you're asking me, that's not true.

The rooms get cleaned. Can I say

I overlook and see? No, I can't say that, but the rooms do be cleaned and there's always communication with the nurses and they say that the rooms have been cleaned.

Q. Well, we spent a lot of time talking about the different ways that rooms could be cleaned and so, for a room to be terminally cleaned, requires significant additional steps, correct?

A. Yes.

Q. And would it be obvious to a layperson walking in whether the room was terminally cleaned versus routinely cleaned?

A. No, ma'am, the curtains and stuff would have to be changed. I'm pretty sure that if I had to call the company that cleans the curtains, you would see a bunch of curtains and stuff that had to be cleaned and processed. The rooms -- nursing can acknowledge that the rooms were cleaned.

Q. Well --

A. I'm pretty sure Warren can confirm during his rounds and stuff whether rooms was cleaned.

Q. Well, let me ask you, would you say Mr. Lufkin by looking at a room would be able to tell whether the mattress was disinfected?

A. If you using bleach and stuff, ma'am, yes, you can tell, you can tell. You can tell whether the room was thoroughly cleaned. If you walk into the room you can tell whether the room has been terminally cleaned also. So, there are ways to tell if a room was terminally cleaned, yes.

Q. If somebody walked into a room, would they be able to tell whether the mattress was disinfected?

A. Who's the somebody?

Q. Let's say the unit manager, if the unit manager walked into a room, would she be able to tell that a mattress had actually been disinfected?

A. Would she actually be able to tell? No, she wouldn't be able to tell. If she asked the housekeeper, the housekeeper would be able to tell if the room was terminally cleaned.

Q. Right, so that's my question. So really it's the housekeeper, the only person who could attest as to whether a room was terminally cleaned? No one else would be about to attest that, correct?

A. Not unless they was in that room.

Q. Right. And this terminal cleaning log that we're looking at, which was created by you and Mr. Lufkin, is based on what should have happened, you've never had a housekeeper come back and actually look at this document and tell you, "Yes, that is what actually happened"; is that correct?

A. I never had one come to me and ask me that, no. I never questioned. No, I never had one actually come to me and say, "Hey, this room wasn't properly cleaned," no.

Q. Did you ever show this to your staff and ask them to look at it and verify that they terminally cleaned the listed rooms?

A. Have I ever asked them? No,

ma'am, I never had to ask them before.

Q. Wouldn't you agree with me that that would be the best way to make sure that the documentation is accurate?

A. No, ma'am, that's not true. Even if they left a note on the bed itself, if they put a note that says -- a document that says, "Room terminally cleaned," if I'm not overseeing them and I'm not watching them, that doesn't mean that they actually did the room. I have to go by their experience, their judgment and what they tell me, that would be more accurate. Unless I'm in the room overseeing them, watching everything that they do.

Q. Right. So you're talking about their experience, their judgment and what they do --

A. Yes, ma'am.

Q. Wouldn't this terminal cleaning log be more accurate if you showed it to your staff and asked them to acknowledge that they did it?

A. I can't say that would be more

accurate, ma'am, honestly, I can't. Like how you said about March 30th, right? Suppose I asked them and they say yes? Suppose I ask them and they say no? Unless you really actually oversee, how do you examine? No, you're hoping that they did their job properly and in the right way, that's the best way to answer you.

So if I say -- can I ask Miss Levy, "Hey, Miss Levy, did you clean your room?" Miss Levy can tell me, "Yes, yes, I cleaned that room." And how am I supposed to know exactly other than her judgment that Miss Levy actually cleaned that room?

Q. I understand that. I'm not saying that if they tell you that it happened that it actually happened. What I'm saying is isn't it more accurate to ask them if they cleaned something rather than having a document that's just what should happen?

A. Okay. They are asked by nursing whether this room has been cleaned. No, I have not asked them. So, if you asking me

could I go forward with asking them, "Hey, did you clean this room," and take their word on it, is that basically what you asking me?

Q. Well, I'm asking you if that would be a better method?

A. I can't say that would be a better method. That's saying the same thing that we been speaking about.

Q. If you asked your staff if they cleaned a room, they can tell you no, right?

A. Yeah, they could.

Q. Okay. Unless you show them that document and asked them if they cleaned something, that doesn't give them the option to say no, correct?

A. Correct, but nursing also would inform me if that room was cleaned. Because, once again, there's a unit manager up on the unit that knows if the room was cleaned. They see housekeeping in the rooms and stuff cleaning.

But yes, I could ask them. I could ask them. That doesn't mean that

they're not gonna lie to me, but yes, I could ask them.

Q. Let's go back to Exhibit 4?

A. Okay.

Q. So looking at this page, sir, how many rooms were purportedly vacated on May 1, 2020?

A. On this one here? One.

Q. And what day was that room cleaned?

A. It says 5/2.

Q. There are no other rooms on this document that seem to suggest -- well, let me rephrase.

This document does not indicate that any other rooms were vacated on May 1, 2020, other than this one room, correct?

A. Correct.

Q. And it has been your testimony today that whenever a room is vacated in any way, that that room would appear on this terminal cleaning log; is that right?

A. As far as my knowledge on the paperwork that I receive, if there was a

room discharge or transfer, that's what's on this paperwork here, the terminal cleaning COVID-19 paper. I went off the papers that I received as far as transfers and discharges.

Q. Let's go to what's been premarked as Exhibit 5.

(Patient Activity Log was marked as Exhibit 5 for identification; 11/19/2020, N.L.)

Q. Mr. Andrews, have you ever seen this document before?

A. No.

Q. Does this appear to be a document from Fulton Commons Care Center?

A. Okay.

Q. I'm asking you, sir, does this document appear to be from Fulton Commons Care Center?

A. I've never seen this document before, but on the title, yes, it says, "Fulton Commons Care Center."

Q. And if we look at the -- there are different columns. If you look at the

first column it says, "Date and Time"; is that right?

A. Yes.

Q. And the next column says, "Activity"?

A. Yes.

Q. And if we look immediately underneath that, we appear to have what seems to be a resident's name, so the first one is Resident #12 ?

A. Can we open it up a little wider for me because it's blurry here?

Q. Yes.

A. Okay, Resident #12 .

Q. And underneath that we have what appears to be a date, May 1, 2020?

A. That's what it says.

Q. And then next to that it says, "Bed transfer to" and an arrow and then a room number, right?

A. Okay, yes, ma'am.

Q. So if we just scroll down slowly, so you have an opportunity to look at the next few entries?

A. Uh-huh.

Q. The date and time, they all seem to say, "May 1, 2020" and they all seem to indicate "Bed transfer to" with a room number, right?

A. Yes.

Q. And in total, I think we have -- we can keep scrolling and scroll to the next page -- I counted 18 entries on this document?

A. Okay.

Q. Does this appear to be a record of bed transfers that occurred at Fulton Commons on May 1, 2020?

A. Does it appear to be? I've never seen this document, so I'm going to assume -- it is a document from Fulton Commons. What it is? I don't know.

Q. I understand that you've never seen it before.

A. Okay.

Q. But looking at this information, that it seems to --

A. It says, "Patient Activity Log."

Q. Right. And does it appear to suggest that these residents that are listed on here, on May 1st, were transferred from one bed to another?

A. According to the paperwork, yes.

Q. And so -- and we can scroll up a little bit too, but I counted 18 entries on that. Do you want to take a minute and count as well?

A. No, I believe you, ma'am.

Q. So according to this document, there are 18 bed transfers that occurred on May 1, 2020?

A. Okay.

Q. If we go back to Exhibit 4, which is the terminal cleaning log for COVID?

A. Hmm-hmm.

Q. Back to page 4 of this exhibit -- I apologize page 5?

A. Okay.

Q. We only have one bed purportedly vacated on that day, correct?

A. Correct.

Q. So, if we put these documents

together and look at them together, would they suggest that there are 17 beds that were vacated on May 1, 2020 that are not depicted on the terminal cleaning log?

A. Correct.

Q. So would you agree with me then that there is no documented evidence that would show that 17 beds were terminally cleaned after they were vacated on May 1st?

A. Can you go back to page 4 and scroll up so we can see the bed numbers?

Q. Yes, we can go back.

A. Can you scroll up so that we can see more bed numbers? No, the other way, I'm sorry, the other way, down.

So, that would be correct.

Q. Right. So, there's nothing to indicate that 17 additional beds had been terminally cleaned after vacated on May 1, 2020, right?

A. Correct.

Q. Does this log on Exhibit 4 --

MS. SEKHON: If we can just scroll up a little bit.

A. Okay.

Q. Does this log indicate that rooms [redacted] and [redacted] on unit 1 East were cleaned on May 1, 2020?

A. Not on May 1st, on 5/3 I have room [redacted].

Q. And that indicates that room [redacted] was vacated on May 2nd, right?

A. Correct.

Q. And that's no indication that those rooms were cleaned on May 1st, correct?

A. Correct.

Q. If I told you that those rooms were vacated on May 1, 2020 and that new residents were moved into those rooms the very same day, would that be concerning to you?

A. Very.

Q. Why?

A. For one, I don't have it in the paperwork. For two, that's putting myself and my staff in jeopardy.

Q. How is it putting you and your

staff in jeopardy?

A. Because my staff goes in and out those rooms to clean just as well. So, if there's a room that's not cleaned and you put another resident in the room, we don't know what's being contaminated for the next person.

This can also contaminate staff. And if you contaminate my staff, which could contaminate me. And during that time, like I said, it was a real problem during that time because of my personal life.

Q. I'm going to show you another document, just bear with me.

A. Hmm-hmm.

MS. SEKHON: So I'm going to deem this document marked as Exhibit 6.

(Census was marked as Exhibit 6 for identification; 11/19/2020, N.L.)

MS. SEKHON: I will send it over to the stenographer after we complete today.

A. That's the census, ma'am.

Q. Okay. So I'm showing you this

two-page document and I just want to know -- it seems like you recognize this document, correct?

A. Yes, correct.

Q. Is this the daily census sheet that you utilized when you would create the terminal cleaning log?

A. Yes, ma'am.

Q. So this is the only document that you would have received to notify you if there were room transfers or discharges?

A. This is the document that we use, ma'am. Sometimes we get different documents that says, "Resident discharge" or "Resident transfer" on a different page. This is the document that I went over right here.

Q. What's the date on this census sheet?

A. I can't see it, can you open it up a little bit?

Q. Sure, yes, I'm sorry.

A. The date is 4/17/2020.

Q. And does this census sheet indicate whether residents were admitted to

Fulton that day?

A. Admissions, yes. It says, "Readmissions and admission, three."

Q. Does it indicate what the diagnosis was for those three admissions?

A. COVID-19.

Q. Does this document indicate what units those residents were placed on?

A. It says, "109" and the third floor, 3 West.

Q. So one resident went to 1 East and the other two went to 3 West, correct?

A. According to the document, correct.

Q. And this is in the middle of April, so at this point 1 East was already designated as a COVID unit, right?

A. Should be, yes, correct.

Q. How many beds does 1 East have?

A. 1 East? 34, they had 40 beds.

Q. And you just read the number 34, what does that reflect?

A. The number of people that should be on 1 East.

Q. So is it fair to say that on this day, April 17th, there were six open beds on 1 East?

A. Absolutely.

Q. And nonetheless, two residents were being admitted with a COVID-19 diagnosis were put on 3 West, according to this paperwork; is that right?

A. Absolutely.

Q. Were your staff members who were assigned on 3 West notified that there were COVID-19 positive residents being placed on that unit?

A. That's a question I can't answer, it wasn't brought to my attention if they knew.

Q. Would they have brought it to your attention if they had known?

A. I believe they would have, yes.

Q. Who were your staff members assigned to 3 West?

A. At that particular time, I really would have to look at the schedule. 3 West should have been Yves Toussaint -- during

that time period it should have been Yves Toussaint and Otis Buchanan, during that time period.

Q. Thank you. I'm just going to scroll down now to the second page of Exhibit 6?

A. Yep.

Q. Is this also a census sheet?

A. Yes, it is.

Q. What's the date on this one?

A. 4/21/2020.

Q. Does this indicate how many residents were on 1 East on that day?

A. 30.

Q. So that would mean there were ten empty beds?

A. Correct.

Q. If we scroll down to the admissions and readmissions, how many residents were admitted to Fulton Commons on that day?

A. Three.

Q. What were their diagnoses?

A. COVID-19.

Q. What units were they placed on?

A. 3 West and 1 East.

Q. Is it concerning to you that we now looked at four residents who were designated as COVID-19 positive were put on unit 3 West?

A. Very much.

Q. And just to verify, this was never brought to your attention, correct?

A. No, ma'am.

Q. Would you agree with me that it would be helpful for you to know where residents who are COVID-19 positive are being placed in order for you to properly execute your duties and responsibilities as the director of housekeeping?

A. They should have been on 1 East, ma'am. So yes, I agree with you, yes.

Q. Would you agree with me that because you didn't have this information, you were not able to convey that information to your staff members?

A. Yes, ma'am.

Q. And did that in turn make it

difficult for your staff members to properly execute their duties and responsibilities in following proper infection control?

A. Yes, I could agree with you on that. And also let me add -- let me add to that, Yves Toussaint, which was on 3 West, you might not have this in your documents, he was also an employee that was out for being sick with COVID.

Q. When was he out sick with COVID?

A. I'm not sure, but he was out sick with COVID. So, look into that.

Q. Thank you, I appreciate that information.

Mr. Andrews, did you ever become aware of staff at Fulton Commons being instructed not to discuss COVID-related questions with families with the threat of immediate termination?

A. It was never brought to my attention, but yeah, I hear things.

Q. When did you hear exactly?

A. Similar to what you said.

Q. Who did you hear that from?

A. You know, just not from any particular individual. Just -- we just hear talk amongst the building.

Q. Was it surprising to you to hear that?

A. Very much. Very much.

Q. Did anyone ever direct you not to speak to anyone related to -- you know, regarding COVID-related questions with the threat of immediate termination?

A. Did anyone every bring that to my attention?

Q. Did anyone ever say that to you, yes.

A. No, no one ever said it to me. No one ever said that to me. Like I said, you hear things. You take some things and you listen to and you kind of say, hey, that kind of sounds like something that might have been said and it's something you take and say maybe that wasn't said, so you hear things. But no one came to me directly and said that, no.

Q. Did you ever become aware of

Fulton staff being required to sign in-service sheets acknowledging that they were not permitted to discuss COVID-19 with residents' families?

A. Not that I know of, no. I mean, I know it would go against HIPAA, but -- it would go against HIPAA laws, so unless they brought -- a sheet like that I think was passed about HIPAA laws. I believe a sheet like that was passed, I guess that's just a different way of saying what you said. So I think it might have been under HIPAA law.

Q. Okay. Did you ever become aware of Fulton staff being prohibited in discussing the increase of illness and deaths at the facility?

A. I'm sorry, say that one more time?

Q. Did you ever become aware of staff being prohibited from discussing the increase of illnesses and deaths at the facility?

A. No, I never -- to my knowledge, I never heard that. I'm not saying that it

wasn't said to them, I've never heard it.

Q. So, we talked before about in-services that your staff received and that you received --

A. Okay.

Q. Are you familiar with the term "neglect"?

A. Yes.

Q. Have received in-services on abuse and neglect and mistreatment?

A. Yes, we all have.

Q. Is it fair to say that everyone who works in the facility has received those in-services?

A. Yes, that's fair to say.

Q. Were you given definitions of all of these three terms during those in-services?

A. All, like neglect, like abuse, verbal and social, yes, we all received that. That's part of your hiring and training -- hiring package. That's in-service that they do annually. So yes, we all received it.

Q. Would you agree that neglect is failure to render timely, consistent, safe adequate and appropriate services, treatment and/or care to a resident?

A. Yes, I would agree with that.

Q. And during those in-services, Are the staff also taught that abuse and neglect and mistreatment are crimes in New York?

A. Yes, that's in the packet, yes. It speaks on it, it breaks down what it is. So I will say yes on that.

Q. Would you agree with me that failing to terminally clean a room before moving another resident into that room, would put the new resident at risk for contracting an illness?

A. Yes.

Q. Would you agree with me that such facility action is neglect?

A. Yes.

Q. Would you agree with me that failing to notify housekeeping staff of which residents are under suspicion for COVID would make it impossible for

housekeeping staff to ensure that they are following the necessary protocols and infection control protocols when entering those residents' rooms?

A. Yes.

Q. And if a housekeeping staff member erroneously did not believe that a resident was under suspicion of COVID, would that staff member have possibly thereafter entered another room where they did not believe the resident was under suspicion of COVID with the same equipment without disinfecting it first --

A. Yes.

Q. Would you agree with me that that action would endanger the second resident that the housekeeper is encountering?

A. I'm sorry, repeat that for me just one more time?

Q. Sure. Would you agree with me that that action would endanger the second resident in the second room that the housekeeper is entering?

A. I would agree with you that it

endangers all of us and yes.

Q. Would you agree with me that the failure of nursing to notify housekeeping staff could therefore put nonCOVID residents at risk for contracting COVID?

A. Yes.

Q. Would you agree with me that such failure is neglect?

A. Yes.

Q. Mr. Andrews, we've gone over a lot today, but I do want to take a minute and open it up to you. Is there anything that you would like to tell us or share with us after our documentation that we've gone through today?

A. No, we good. We good.

Q. Are you sure? It seems like there might be something you want to say?

A. No, no, we good. I need my job. I'm only joking, don't put that on the record.

I believe what you said today was correct about the neglect part. I believe some things could have been done better --

differently. I believe I did the best as what I could do in my power, in my control. I believe the housekeeping staff did the best they could do in their power, in their control.

Could there have been better decisions making? Yeah. You know, could you look more into things? Yeah, that's all I could say.

Q. So, what better decisions could have been made?

A. Well, that biggest one is the testing, testing, testing, that definitely should have been done earlier than it was. And just like I said, this is just my opinion. You could say COVID is not in the building, if you're not testing nobody to find out.

So, that's just my opinion. Are you wrong for saying it? No, you not wrong because technically you're right because you're not testing nobody to find out. I think things could have been done a little bit better.

Where we at now is a better place, is a better space, a better place. We have more knowledge. I have more knowledge. We've been doing great since. Could we have been doing great before? Who's to say? According to some things that I've learned today, yes, if things were communicated better.

Man, don't know what else to say.

Q. Mr. Andrews, do you believe that the administration didn't test its residents so that they could continue to say there was no COVID in the building?

A. That would just be my opinion.

Q. And that's what I'm asking for, do you believe that's what happened?

A. Do I believe that they didn't do testing so that they could say that? I might be a little biased on that because of my situation. I really don't want to answer that because I might be a little biased.

But let's just say that I believe that testing could have been -- testing should have been done a little bit earlier.

Q. After the hours that we spent together today and the documents that we looked at --

A. Hmm-hmm.

Q. And you did make one suggestion for us of something that we should look into, do you have any other suggestions of things that we should look into?

A. Offhand, you know, sometimes things come to you as you speak and you see things pop up, you like, "Oh, wow, that happened" and then you put two and two together. Right now? No, I don't.

The reason why I brought up that other thing was because looking at the documents and me seeing, "Oh, wow, he was out, that could be why." So, at this moment, not looking at nothing, I can't say. At this moment, no.

Q. Is there anything else other than what you've already told us that -- as we've been going through this documents for you it's been like putting two and two together?

A. No, just like I said, right now,

no. Everything will start calculating a little later, I guess. At this present time, nothing really, nothing I can say. I think things could have been done a little bit better, but that's just my opinion.

MS. SEKHON: So we're towards the end right here. I'm just going to suggest that we take a quick five-minute break. So it's 4:20, so let's just reconvene at 4:25.

THE WITNESS: Okay.

(A brief recess was taken.)

MS. SEKHON: Back on the record. The time now is 4:25 p.m. We took a five-minute recess.

Q. Mr. Andrews, we are all set. So I want to thank you for taking the time to speak with us today. I want to thank you for what I believe was your candid and straightforward and forthcoming testimony. You know, we appreciate it. We appreciate you being so forthcoming throughout everything.

There is a good chance that I

will be asking you for some of the documents that we talked about today, the ones that I asked you to retain. So just keep those documents and then keep an eye out for a request. We will probably go through the facility as opposed to coming to you directly. I think we are all set.

Do you have any questions for us?

A. Not at all.

Q. I will remind you that this is a confidential proceeding. You know, as I told you before, we keep the fact that you've been subpoenaed confidential. We haven't disclosed that to anyone.

And we just -- I can ask you because I can't tell you not to, but I do ask you not to disclose the nature of your testimony with anyone else?

A. Absolutely.

Q. Okay. So, we are all set. Thank you very much and thanks again to Mrs. Andrews for her help in getting you connected this morning.

A. I sure will. Thank you, all.

Q. Have a great night.

A. You too.

(TIME NOTED: 4:26 P.M.)

INDEX TO EXHIBITS

CERTIFICATION

I, NICOLE LEBOVIC, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of November 2020.

NICOLE LEBOVIC

Corona Virus Update robocalls made to designated representatives/families:

3/12, 3/13, 3/17, 3/19, 3/20, 3/26, 3/30, 4/1, 4/3, 4/6, 4/8, 4/9, 4/10, 4/14, 4/17, 4/20, 4/22, 4/24, 4/27, 4/29, 5/2, 5/5, 5/7, 5/14, 5/19, 5/22, 5/26, 6/2, 6/4

Corona Virus Updates/Announcements to staff/residents:

2/26: re: staff and visitor assessments protocol initiated/announced

3/05: Unit resident council/staff meetings held on all 7 units.

3/06: staff and residents advised of temps q 3 shifts, OOP stopped, restricted to own units

3/10: all group activities canceled, staff report and stay on units, visiting hours reduced

3/11: all visiting stopped; suspected/confirmed cases identified in facility staff and residents

3/19: Wash hands frequently, socially distance, stay home/in room if you are ill, follow all infection control protocols

3/24: COVID-19 identified in staff and suspected in residents

4/06: no outside packages permitted including laundry

4/23: suspected cases significantly reduced – tracking only 2 in the facility; staff returning to work

4/24: stay vigilant with infection control – NOT the time to relax!! Staff: wear ALL PPE, wash hands, report to your unit and stay there. Residents: stay in your room, wash your hands frequently, stay well hydrated. Help me, help you stay safe!

4/27: NOT TIME TO RELAX! Staff - Stay vigilant with PPE, stay on your units, follow all infection control protocols. Residents – stay in room, hand wash, cough into crook of arm, do not throw tissues or spit on floor. Tracking three presumed cases in house. Ask Aaliyah if you would like to face time a loved one. Thank you for your patience and cooperation!

4/29: letter re: corona cases and deaths among residents and staff distributed to A&O x3 residents

5/02: 24 covid cases in facility – all from hospitals, 1 presumed case, 1 covid related death overnight, admitted from hospital

5/05: showers being resumed! Stay vigilant with handwashing, social distancing, wearing of PPE.

5/07: 25+ cases, all from hospitals. 0 Suspected cases, one covid related death admitted from hospital. 6 covids successfully discharged home! Packages that can be wiped down may be delivered by your loved ones to the front desk.

5/14: 9th covid+ discharged home today! 22+ cases. All from hospitals. All employees will be tested for covid per Governor's EO.

5/26: 23+ all from hospitals, 0 suspected, 0 deaths. No visiting continues, facetime calls available by asking recreation staff.

6/02: Staff testing continues – 8 staff out that tested +. Resident swabbing to start Friday – you may refuse.

ROBOCALLS:

3/12 – 0 cases, special circumstances for visiting, please call

3/13 – 0 cases of covid or flu

3/17 – 0 cases of covid or flu

3/19 – 0 cases of covid or flu

3/23 – 0 cases of covid or flu

3/25 – no confirmed cases, one suspected case being treated with protocol

3/26 – 1 suspected case

3/30 – no confirmed cases, several with low grade temps and being treated presumptively

4/1 – no confirmed cases – per DOH, no testing. started to admit covid + from hospitals

4/3 – no confirmed cases, except from hospitals who are isolated for 7 days. If symptomatic, loved one will be presumed positive and treated.

4/6 – residents stable, some with temps being treated with protocol, deliveries stopped

4/8 – residents staying in rooms, peak week, staffing stable, effective tomorrow staff will be assigned to all units to answer phones, M-F, 9-3.

4/9 – staff recovering and returning to work, 21 presumed +, may or may not be covid

4/10 – 19 presumed +, no testing per DOH

4/13 – safety measures continue, 9 presumed +

4/17 – 12 presumed +, 1st symptom = treatment stared as if +, 3/21 DOH guidance re: no testing read

4/20 – 5 presumed + in house

4/22 – 3 presumed + in house

4/23 – 23 confirmed cases admitted from hospitals and 2 presumed + in house

4/24 – 24 confirmed cases admitted from hospitals and 2 presumed cases in house. Effective today, ALL families will be receiving *at least* a weekly call to review your loved one's condition

4/27 – 26 confirmed cases admitted from hospitals, 5 presumed and being treated as if +. Weekly calls to continue. Delivery of flowers will be accepted in glass vases ONLY.

4/29 – 27 confirmed cases admitted from hospitals, 1 positive case readmitted after hospitalization, 2 presumed cases being treated as if +. Total of 37 deaths since March 1st including those admitted from hospitals and LT residents. Antibody testing of all residents not previously tested will begin Thursday and be complete by next Friday.

4/30 – 28 confirmed cases - 27 from hospitals, 1 presumed case being treated. No COVID death overnight. Five COVID-19 residents discharged home! Antibody testing began today. All measures to keep residents and safe remain in place.

5/2 - 24 confirmed cases from hospital, no presumed or new cases in facility. One COVID death that was admitted from hospital. Flowers in glass vase ONLY permitted to be delivered. Facetime call – call ext. 5152. Antibody testing continues.

5/5 - 24+ cases all from hospitals, 0 suspected cases, 0 deaths. Showers being resumed tomorrow. Antibody testing continues.

5/7 – 25+ cases from hospitals, 0 suspected cases, 1 deaths. 1 d/c home making total 6 to date. Packages to be permitted in starting Monday – must be able to be opened and sanitized by staff before delivery. No outside food or clothing yet.

5/14 - 22+ cases from hospitals, 0 suspected, 0 deaths. 9th covid resident discharged home today. Employee testing per Governor's EO started yesterday with antibody -testing – those that test negative will then be swabbed 2x week.

5/19 – 22+ cases from hospital, 0 suspected cases, 0 deaths, 10 covid residents discharged home. Laundry permitted for drop off, labeled and in brown paper bags only.

5/22 – 23+ from hospitals, 0 suspected, 0 deaths, 10 covids home Lunch (only) may be dropped off for residents at lunchtime for delivery (no heating up).

5/26 – 23+ from hospitals, 0 suspected, 0 deaths. Reminders: no visiting continues indefinitely, clean cloths labeled and in brown paper snacks that can be wiped down ok, lunch now ok from home, face time calls continue by calling Recreation at ext. 5152.

6/2 - 19 + covid cases, all from hospital, 0 suspected cases, 0 deaths. 8 staff out that tested + from biweekly swab testing. Resident swabbing by DOH to start Friday.

6/4 - 18+ covids, 0 suspected, 0 deaths. No new staff tested positive – 8 remain out. Recreation to continue calls, facetimes.

Status	Start Date	Create Dat	Broadcast	Broadcast I	Size	Voicemail	Live Answe	Invalid	Tota
Complete	########	########	Announcer	Staff Coron	289	142	131	1	
Complete	########	########	Announcer	Corona Viru	291	121	152	1	
Complete	########	########	Announcer	Corona Viru	289	114	157	1	
Complete	########	########	Announcer	Corona Viru	292	111	159	3	
Complete	########	########	Announcer	Corona Viru	291	115	155	3	
Complete	########	########	Announcer	Staff Coron	292	139	133	1	
Complete	########	########	Announcer	Correct #3	296	111	164	2	
Complete	########	########	Announcer	Corona viru	298	115	159	5	
Complete	########	########	Announcer	Staff Coron	292	142	129	1	
Complete	########	########	Announcer	Staff Coron	292	136	138	1	
Complete	########	########	Announcer	Corona Viru	288	109	160	2	
Complete	########	########	Announcer	Corona Viru	290	125	142	2	
Complete	########	########	Announcer	Corona Viru	293	111	162	2	
Complete	########	########	Announcer	Corona Viru	285	106	158	2	
Complete	########	########	Announcer	Corona Viru	292	120	149	2	
Complete	########	########	Announcer	Corona Viru	291	120	147	3	
Complete	########	########	Announcer	Corona Viru	293	111	161	1	
Complete	########	########	Announcer	Corona Viru	293	111	160	2	
Complete	########	########	Announcer	Corona Viru	297	113	162	1	
Complete	########	########	Announcer	Corona Viru	301	108	172	3	
Complete	########	########	Announcer	Corona Viru	289	103	167	1	
Complete	########	########	Announcer	Corona Viru	296	120	157	1	
Complete	########	########	Announcer	Corona Viru	297	111	164	1	
Complete	########	########	Announcer	Corona Viru	310	119	171	1	
Complete	########	########	Announcer	Corona Viru	321	125	176	1	
Complete	########	########	Announcer	Corona Viru	333	132	180	1	
Complete	########	########	Announcer	Corona Viru	346	123	205	1	
Complete	########	########	Announcer	Corona Viru	351	130	203	1	
Complete	########	########	Announcer	Corona Viru	350	127	206	0	
Complete	########	########	Announcer	Corona Viru	363	131	211	0	
Complete	########	########	Announcer	Corona Viru	368	140	212	6	
Complete	########	########	Announcer	Corona Viru	367	132	218	0	
Complete	########	########	Announcer	Corona Viru	369	127	222	0	
Complete	########	########	Announcer	Corona Viru	377	137	218	2	
Complete	########	########	Announcer	Corona Viru	377	128	228	2	
Complete	########	########	Announcer	Corona Viru	377	145	210	2	
Complete	########	########	Announcer	Corina Viru	378	139	218	2	
Complete	########	########	Announcer	Corona Viru	379	131	228	0	
Complete	########	########	Announcer	Corona Viru	381	136	227	0	
Complete	########	########	Announcer	Corona Viru	381	158	206	0	
Canceled	########	########	Announcer	Test	4	0	0	0	
Complete	########	########	Announcer	Corona Viru	387	149	218	2	
Complete	########	########	Announcer	CORONA U	390	153	214	2	

Busy/NA Tc	Transfer Tc	Incomplete	Delivered T	Failed Text	Created By	Caller ID / ⁻	Text Opted	Text Replie
15	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
10	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
19	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
20	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
17	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
0	0	4	0	0	Cathie Doy	5.16E+09	N/A	N/A
18	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A
21	0	0	0	0	Cathie Doy	5.16E+09	N/A	N/A