In The Matter Of:

SOF v

REHAB

MCKINSTRY

November 30, 2017

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Tallahassee, Florida

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STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,
Petitioner,
vs. DOAH CASE NO. 17-005769

REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC,
Respondent.

DEPOSITION OF: MOLLY McKINSTRY

TAKEN AT INSTANCE OF: The Respondent

DATE: November 30, 2017

TIME: Commenced at 10:00 a.m.
Concluded at 12:45 p.m.

LOCATION: 2727 Mahan Drive
Tallahassee, Florida

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INDEX

STIPULATIONS

The following deposition of MOLLY McKINSTRY was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing is not waived.

* * *

THE COURT REPORTER: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Thereupon,
was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Would you state your name?

A Molly McKinstry.

Q Ms. McKinstry, we know each other. I am Geoff Smith. I represent Rehabilitation Center of Hollywood Hills, and we're here today on a license revocation proceedings. My purpose in being here is just to find out what you may know, what facts you have. If you intend to offer any kind of expert opinions in the

Page 5

proceeding, I'd want to find those out and find out what are the bases of those.

Does that seem like a fair process to you?

A Yes.

Q You don't mind providing that information to me today?

A No, I don't.

MR. MENTON: We'll be honest. You have to be honest on that one.

THE WITNESS: I am willing.

BY MR. SMITH:

Q Can you just take a couple minutes and give me for our record just a brief overview of your education and career, your professional background.

A Sure. I have a bachelor's degree from Florida State University in business. I have worked with the Agency -- well, with the state of Florida for close to 25 years. My career here with the Agency, I began in January 2000 in the long-term care unit, had previously worked with the Medicaid program as well as the long-term care unit; left for a few years and came back in 2000, managed the long-term care unit, and then became a bureau chief for long-term care services; ultimately promoted to deputy secretary for the division of health quality assurance.

Page 6

Q Okay. And deputy secretary reports directly to the Secretary?

A Yes.

Q And so as far as issues pertaining to the licensure of facilities, you would be the Agency person that's most -- at a senior management level, that's directly involved and you report up to Justin Senior as the Secretary?

A Yes.

Q In preparation for your deposition today, did you review any documents or information?

A Yes, I did.

Q And what did you review?

A I reviewed the emergency orders, the administrative complaint for revocation, I reviewed several of the press releases that were prepared during the events of Hurricane Irma, I reviewed the materials I presented to the House and Senate.

That's probably the gist of it.

Q And you testified before the House and Senate committees in Florida, correct?

A Yes.

Q Have you provided any federal testimony --

A No.

Q -- regarding Hurricane Irma?

Page 7

One thing that you and I do, I sometimes talk slow, but if you will bear with me and just let me get the whole question out because it just makes a better record.

Could you tell me who in the Agency, if anyone, did you use to help assemble the information for the presentations that you made to the House and Senate?

A I am not certain I could recall exactly who I used. I work frequently with all of our bureau chiefs and staff on materials, so probably a wide variety of staff.

Q You don't recall any specific individuals that you would have gathered information from, Laura MacLafferty?

A Sure. I am certain that I probably would have worked with the bureau chiefs: Kim Smoak, Laura MacLafferty, Ryan Fitch, perhaps Scott Waltz, several other staff that report to me.

Q We are here today to talk about the emergency management and the issues surrounding the intended license revocation at Hollywood Hills. Can you start by just giving me an overview of AHCA's role in emergency management in Florida?

A Yes. Our role related to emergency operations is generally under the coordination of the Department of

Page 8

Health.

The emergency operations center is divided into special function areas, and the health and medical section is led by the Department of Health as emergency response is often a public health matter.

Our role is to remain in contact with any facility issues that may come up in concert with the Department of Health.

In Florida, emergencies are local, so the local emergency operation centers have the lead in terms of emergency preparation and response activities. And the state emergency operations center operates in a supporting role to locals, providing assistance when needed.

Q In terms of -- I have seen the acronym EFS-8. What is ESF-8?

A ESF-8 is --

Q ESF-8.

A -- the emergency special function branch, and my understanding of the state emergency operations center is that it is organized in the special function branches that have different roles and responsibilities during emergencies.

The ESF-8 is the health and medical section that I mentioned that Department of Health leads.

Page 9

Q What role does the Agency for Health Care Administration have, by statute, in review of comprehensive emergency management plans for licensed facilities?

A Comprehensive emergency management plans are required to be prepared by facilities to address their response, their potential response and consider a variety of approaches to deal with emergencies that may come up. It is intended to be an all-hazards approach that facilities consider a variety of ways to meet their needs and have mechanisms in place to effect various activities, including evacuation, emergency power, sufficient food and water, sufficient staffing.

The plans are prepared and are to be submitted and approved by local emergency management officials. Those officials review them, they are the emergency management experts. If they have questions or have concerns, they may reach out to the Agency if a facility is in -- is not in compliance, they may report that to us.

It is a condition of licensure that they have those plans in place. And so our role would not be in reviewing those plans. We may be asked if there is an issue, but the review and approval is a local emergency management official role.

Page 10

Q And under statute, am I correct that the role of the agency as defined in Chapter 400 actually includes review of comprehensive emergency management plans?

MR. MENTON: Object to the form.

THE WITNESS: Do you have the statute with you?

BY MR. SMITH:

Q In the rule challenge proceeding that -- you testified in the rule challenge proceeding, correct?

A Uh-huh, yes.

Q Do you recall Mr. Frazier had asked you about this area -- I think it's section 400.23, somewhere thereabouts in the statute -- and you at that time, at least what I recall in your testimony, had stated that there was a requirement in the statute that the local emergency management planning agency share with state agencies, including Agency for Healthcare Administration, Department of Health, the comprehensive emergency management plans for their review, is that your recollection?

MR. MENTON: Object to the form.

THE WITNESS: That's why I would like to look at the statute because I think the question that you asked me is are we required to review it. And

Page 11

I don't believe the statute requires us to review it. I think the emergency officials can share it with us for review.

BY MR. SMITH:

Q In fact, it directs that the emergency management official, the local officials will share it, shall share it with the Agency, correct?

MR. MENTON: Object to the form.

THE WITNESS: I would like to look at the statute.

BY MR. SMITH:

Q Well, the statute will say what it says and we can get it on a break or something. But would it be the case that the Agency has not reviewed comprehensive emergency management plans?

MR. MENTON: Object to the form.

A The -- it's certainly possible that if the plan is not shared with the Agency for review, the Agency will not have reviewed it.

BY MR. SMITH:

Q And is it possible that the plans that have been shared with the Agency have not been reviewed?

A I am not aware of that.

Q Are you aware of ever providing testimony in any legislative committee hearing where you would have

Page 12

testified that it would be impossible for the Agency to review all of these comprehensive emergency management plans?

A I did speak in the House committee that it has not been our experience that many plans are shared for review; that when the legislation was originally created, I believe in 2006, there was likely more activity involving multiagency reviews, but that it was not our experience that the plans were shared for the most part at this time for review by the Agency; and the workload associated with the volume of plans that would be required for review would be significant, yes.

Q So that's not something that's occurring, the review of comprehensive emergency management plans by the Agency?

MR. MENTON: Object to the form.

THE WITNESS: My understanding, it is not occurring in the majority of cases.

BY MR. SMITH:

Q Okay. With respect to Rehabilitation Center at Hollywood Hills, have you reviewed their comprehensive emergency management plan?

A No.

Q And since you have not reviewed it, would you -- would I be correct you don't intend to offer any

Page 13

kind of testimony in this proceeding that there is anything deficient in the comprehensive emergency management plan of Hollywood Hills?

A I can't speak to their plan.

Q When a hurricane is approaching the state of Florida, is there an activation process that takes place to activate the Agency's role in hurricane preparedness and response operations?

A Our role with respect to emergency response is directed through the state emergency operations center and the Department of Health, who is the lead, as I mentioned, for ESF-8. So if we are asked to activate by Department of Health or the state EOC, we would do so.

Q Is there a process in which there's alert levels or something similar to that where at some point the Agency is put on notice that, yes, we are now going to implement our emergency preparedness as an agency?

A We would be alerted to activation of the state emergency operations center, but we would not initiate any actions unless directed to do so by the Department of Health.

Q And how are you notified that there is a need to activate your emergency preparedness actions as a state agency? Who notifies you?

A Typically, representatives of the Department

Page 14

of Health and ESF-8 would contact us, most likely by phone.

Q And you described the role that the agency plays in broad terms. What is the specific role that the Agency for Healthcare Administration plays during the hurricane event? What, if any?

A We would communicate with providers through, generally, the associations and messages by e-mail to providers that are enrolled in the Florida Health STAT system. That's a database that Department of Health created that healthcare facilities use to enter information related to their status. Providers are generally directed to make entries based upon activation of an event.

We would also potentially facilitate conference calls; in some cases, make outreach calls to providers. We generally, after an event, depending on the severity of it, would make visits to facilities, stay in contact with facilities through the state emergency operations center and other partners at the state ESF-8 to keep communication flowing between providers and the state.

Q How many hurricanes have you been personally involved in doing those activities that you described on behalf of the Agency for Healthcare Administration?

Page 15

A I don't know the number. I was involved in the two hurricanes last year, certainly Hurricane Irma and Nate this year, and I was also with the Agency in 2004, '5 and '6 when we had several hurricanes.

Q Did you participate -- I am going to kind of turn our attention a little bit towards Hurricane Irma now.

Did you participate in conference calls with the long-term care industry in Florida in preparation for Hurricane Irma?

A Yes.

Q And do you know how many conference calls you were on?

A Yes, I believe we provided, as part of a press release that was posted, a list of the calls that occurred. (Examining Document.)

It looks like about 20 calls.

Q And from what date to what date? You are referring to a document. What's the document?

A Yes, this is a document that was part of documents that were posted with the press release on September 25th, conference calls related to Hurricane Irma.

Q And is that the governor's press release or AHCA's press release?

Page 16

A This was the governor's press release.

Q Okay. During the conference calls --

A I am sorry, I'm mistaken, a couple of those calls were canceled at the end. So it looks like it's shy of 20.

Q During the calls, did the governor provide his personal cell phone as a contact for industry members that were having problems?

A Yes.

Q And did you provide your cell phone number?

A Yes.

Q And I understand there were a number of other senior management staff that provided cell phone numbers and they were posted, is that correct?

A Yes.

Q What was the -- I guess was there a structure in place that you were trained on or people in the Agency were trained on how to handle the calls that would come in to the Governor's Office, the governor's cell phone?

A We were asked to assist with returning calls, given the volume that was coming in, to assist in finding out what concerns existed.

Q And who asked you to do that?

A I don't recall exactly. It probably was a

Page 17

discussion I had with the Secretary.
Q Did you have any correspondence, e-mail correspondence, text messages, electronic correspondence or paper correspondence with any representatives of the executive Office of the Governor in advance of Hurricane Irma?
A It's possible that I had -- was copied on e-mails related to staffing the Governor's Office.
Q You say it's possible you were copied on e-mails from the staff at the Governor's Office. Who would be the staff at the Governor's Office that you would interact with?
A I didn't routinely interact with staff at the Governor's Office. I -- we had several -- many folks on deck, helping, given the scope of the storm that was approaching. So I was routinely in communication with our leadership staff, some of whom were speaking to representatives from the Governor's Office, and we were basically doing our best to keep everyone informed.
Q And as far as those documents, any communication between AHCA and the Governor's Office concerning Hurricane Irma, have you undertaken any kind of review to locate those e-mails and documents?
A Those e-mails would have been pulled by our IT department in response to document requests.

Page 18

Q Have you reviewed any of the correspondence with the Governor's Office?
A Not specifically. I am sure I would have been involved in reviewing things as they were happening; but given the volume of what we dealt with during the storm, it was really the type of data pull that really could only be handled by an IT.
Q You mentioned a subsequent storm, Hurricane Nate.
Was there anything different in the preparation or response actions, to your knowledge, in how the preparations and response for Hurricane Irma was conducted versus Hurricane Nate? In other words, were there any lessons learned where you maybe did things differently with Hurricane Nate than what you did in Hurricane Irma?
A They were very different storms. Hurricane Nate really had no significant impact to the state. So there were many things that happened with Hurricane Irma that were not relevant to Hurricane Nate.
Q Do you know if there were industry phone calls, phone conferences, scheduled in advance of Hurricane Nate?
A Yes, I believe there were.
Q Do you know if the governor provided his

Page 19

personal cell phone number as a point of contact during those phone conferences with industries?
A I don't recall that he did, but I am sure we gave other information as a point of contact.
Q Did you provide personal cell phone numbers in advance of Hurricane Nate for the Agency's staff?
A I don't recall if I did, but I know that we still had information available on our website that we had shared statewide that was related to Hurricane Irma that would still be available.
Q Was there, to your knowledge, any discussion that -- either with the Governor's Office or internally at AHCA that perhaps the distribution of the personal cell phone number had caused confusion and was maybe not a good idea and don't do it going forward?
A I was not aware of a discussion to that effect.
Q Do you believe that there was any confusion caused by having multiple points of contact as opposed to a central point of contact that everybody calls and says this is where you contact if you are having a problem?
A I don't necessarily have concerns about that. I think whenever we were dealing with the potential impact of Hurricane Irma, there was a sense --

Page 20

especially given that, as a country, we had recently seen the devastation in Houston, Texas -- there was a sense that making sure that we provided as many points of contact as possible was important.
I think we were gearing up for the potential of routine lines of communication being disrupted and wanted to make sure that facilities had as many points of contact as possible so they could get through to someone if they needed assistance.
Q Does the Agency for Healthcare Administration have any role in advising facilities whether to evacuate or shelter in place in the approach of a major hurricane?
MR. MENTON: Object to form.
THE WITNESS: We do not advise on that. Those are emergency management matters. If we have facilities that are asking questions about those types of decisions, we refer them to contact the local emergency management officials and, of course, make sure that their responsibility to protect the residents for whom they are licensed to care are at the forefront of their decisions.
BY MR. SMITH:
Q Are you aware of any studies, literature that would suggest that sheltering in place is a preferred

Page 21

option if there is not an immediate threat that a facility may suffer catastrophic damage from the storm, that sheltering in place is a preferred option to evacuation?

A I am aware that there have been evaluations of the impact of evacuation on long-term care residents, and that there can be detriment to health long-term because of the disruption of the home environment and the logistics involved in moving.

However, those decisions to shelter in place versus evacuate are important and challenging decisions to be made by the leadership at the facility. Certainly, the goal of making sure that patients are protected should be the primary goal. In some cases, evacuation is a better option than sheltering in place, based upon the circumstances faced, and those decisions are made on a case-by-case basis.

We did see several nursing homes evacuate during Hurricane Irma: Some evacuated before the storm, some evacuated after the storm due to deteriorating conditions related to power outage; and those are difficult decisions, but they are important decisions to address and evaluate.

Q And you are aware of the difference between a mandatory evacuation and a voluntary evacuation?

Page 22

A I am familiar with the concept of mandatory evacuation, which typically is ordered by emergency management officials when they feel there is a -- a serious threat to -- generally geographically and most often as a prestorm type of action for protection of a facility if there is a risk of flooding or wind damage.

But yes, there are definitely circumstances that don't fall under the emergency management mandatory criteria when evacuation is considered by facilities to protect patients.

Q Would I be correct that Hollywood Hills was never placed under a mandatory evacuation order?

A I am not aware that they were placed under a mandatory order.

Q And so Hollywood Hills, like nursing homes around the state of Florida, had to decide: Should we evacuate our residents or attempt to shelter in place, is that true?

A That would have reasonably been part of their decision-making, yes.

Q And the decision to shelter in place, do you find to be a -- do you find fault with the decision in the approach of Hurricane Irma that the facility, Hollywood Hills, chose that they would shelter in place, do you find fault that that was not a reasonable, prudent action that a nursing home operator would take?

Page 23

A I can't speak to the specifics of what they should or should not have done. That's a decision that needs to be made based upon the circumstances in the facility.

I think one thing that was of concern related to the facility is that measures did not -- were not in place to protect people appropriately in response to the concerns that occurred.

So whether it was evacuation or some other measure that could have been considered, we worked with many other facilities after the storm had passed that were scrambling to find backup generators, to find evacuation locations if their primary plans could not be executed, to find assistance with transportation, to obtain ice and water, things that we worked with other facilities to accomplish because they were asking for resources to carry them through until power could be restored, and we did not see that same level of activity in our discussions with Hollywood Hills.

Q Okay. And when you say -- did you undertake a review to determine whether there were actions by Hollywood Hills to obtain generators or to obtain spot coolers or to do the things that you've just referenced?

A My understanding was there were spot coolers in the facility. Based upon the reviews that we did and the statement of deficiencies drafted, they were not necessarily appropriately placed to provide protections to all the patients in the facility.

Page 24

Q Were there, to your knowledge -- how many facilities in Florida lost power for a period of time equal to or greater than the time that Hollywood Hills was without power, AC power?

A I don't know the specific number. I know that there were many facilities that were without power for multiple days.

Q Would you describe that as a pervasive problem that occurred in the state of Florida after Hurricane Irma?

A There were a significant number of facilities around the state and communities around the state that were without power. I presented in my Senate testimony information about the scope of power outages around the state.

We did receive information through Florida Health STAT, which we know doesn't represent all the power outages, that there were a large number of facilities without power in response to Hurricane Irma. I am sure that's in my presentation.

Q And I show you a document and it has Bates

Page 25

stamps. I believe it was from your rule challenge hearing. If I could just -- it starts at Bates stamp 1 and continues through Bates stamp -- it looks like a 16. Can you just take a minute and look at that?

A (Examining Document.)

Yes.

Q What is that document?

A This is a document of facilities that had reported power outages during Hurricane Irma. This would have been obtained from information entered into Florida Health STAT or communicated through the ESF-8, and it does show in some cases, the number of days power was out. It would be an estimate.

We know that there were some facilities that were not reporting the duration of power outages, and in some cases, there are likely facilities that would not have been recorded here that were without power at some point.

Q Okay. So is the information on this document, again, Bates stamp 1 through 16 from the rule challenge exhibits, is that accurate information, to your knowledge, with the caveat it may understate the problem?

MR. MENTON: Object to the form.

THE WITNESS: I think it reflects some of the

Page 26

information that was relevant to the storm, based upon what was reported.

BY MR. SMITH:

Q I appreciate that but is it accurate, to your knowledge? Is the information here that is presented as to the number of facilities that lost power and the time periods reflected, would this be a baseline number? There may be more, there may be -- the days may be longer, but that's an accurate baseline?

MR. MENTON: Object to the form.

THE WITNESS: It's accurate based upon the information collected.

BY MR. SMITH:

Q I've looked that over and I will just tell you, it appeared to me that there were many facilities throughout the state of Florida that -- skilled nursing facilities that lost power to their air conditioning and they were without air conditioning for periods of time longer than Hollywood Hills. Would you agree?

A I have not analyzed it to that degree.

Q Do you think Hollywood Hills was unique among providers that lost air conditioning in terms of the length of time that they were without power before they either evacuated or had power restored?

MR. MENTON: Object to the form.

Page 27

THE WITNESS: I think there were other facilities that lost power and were challenged with temperature issues as well.

BY MR. SMITH:

Q Is it your contention in this proceeding that Hollywood Hills is the only skilled nursing facility in the state of Florida at which there were deaths that occurred of residents, whether they occurred at a hospital, after being sent to a hospital under a 911 call, or they occurred at the facility, that Hollywood Hills is unique in the state in the fact that there were deaths that may have been attributed to rising temperatures?

MR. MENTON: Object to the form.

THE WITNESS: I think what is unique with Hollywood Hills is the number and scope of the circumstances that occurred on the 13th and then shortly thereafter. We had not been aware of any situation where we had eight deaths on a single day with residents whose body temperatures -- multiple residents whose body temperatures registered at 107, 108, 109.9-degrees and resulted in a mass casualty event in terms of another provider having to come in and assist with addressing patient decline, with being approached as a crime scene,

Page 28

with the information that ultimately we identified from emergency responders about the extreme temperatures in the building and the inappropriate location of cooling devices.

BY MR. SMITH:

Q What information are you referring to that you obtained from EMS responders that -- the rising temperature in the building and the inappropriate location of cooling devices?

A That's reflected in our statement of deficiencies from the survey, that the EMS records indicated the temperatures were untenable and that the location of coolers were -- let me refer to the document -- that the fans were inadequate in relationship to patients' location whereabouts.

Q The fans or the spot coolers?

A This says fans.

Q Other than what's written in the survey, do you have any information that there was inappropriate location of either fans or spot coolers?

A I am not familiar with other information than what's available from our staff.

Q And do you know if there were numerous facilities throughout the state of Florida that lost power to their air conditioners and had no spot coolers

Page 29

deployed in their building?
A I am not familiar with what each facility did. I know there were other facilities that were evaluated in all approaches to keeping residents cool and, in some cases, did choose to evacuate. But I am not familiar with what each facility did.
Q With respect to the impacts to residents, have you undertaken any kind of investigation, as an agency, in conjunction with Department of Health to determine for each licensed facility that did lose power and did lose the air conditioning for their residents, whether residents were sent to area hospitals under 911 and whether those residents subsequently expired at area hospitals?
MR. MENTON: Object to the form.
BY MR. SMITH:
Q My question is just simply have you undertaken any kind of investigation to determine that information?
A We have a number of post reviews that are being conducted to determine if there were concerns based upon complaints filed with the agency. We routinely investigate complaints that are filed with us and that process generally involves on-site inspection and review before we would determine the circumstances.
Q But I am probably asking a broader question.

Page 30

Other than responding to a complaint that may be filed, has the Agency attempted in any way to secure data from the Department of Health, vital statistics, to say: We would like to take a look at the scope of deaths that may have occurred in Florida attributed to heat-related issues in nursing home and ALF facilities? In other words, let's look at the residents of those facilities that have -- that there is a record that they died during this time frame, September 9th, say, September 9 through September 16, and try to get a grasp of what the scope of the number of deaths might have been across the state?
MR. MENTON: Object to the form.
THE WITNESS: We have not initiated a study to that effect, but I do feel that the complaints that I mentioned earlier would be information that we would look at on a statewide level over time.
BY MR. SMITH:
Q You would agree with me that would be something that -- regardless of what happens in the Hollywood Hills case, that it's something the State would want to do to determine were there nursing home deaths that might have been associated with loss of power and loss of AC?
MR. MENTON: Object to the form.

Page 31

THE WITNESS: There are always opportunities to look at circumstances in hindsight. I know sometimes that the Department of Health may be interested in looking at broader issues.
It's not something that we -- we just haven't made a decision at this time that we are pursuing anything like that. It is certainly something that might be considered in the future, but right now, I think we are looking at any specific issues that were addressed or were brought to our attention.
BY MR. SMITH:
Q I want to go back to the decision on whether to evacuate or shelter in place on the front end.
Is there any specific action or omission that you would point to in the approach of Hurricane Irma that Hollywood Hills took or didn't take that was deficient in terms of being prepared for the hurricane? In other words, did they do something or not do something that other facilities did, to your knowledge, in storm preparation?
A I am not familiar with their preparation activities.
Q So you don't know and don't have any information that there was something that they did deficient on the front end in terms of being prepared

Page 32

for the event, being prepared for the storm?
A I don't know.
Q Would you agree that actions that one might take that would be reasonable would be to consult your comprehensive emergency management plan and make sure you are doing the things that are in your CENP, that would be reasonable, correct?
MR. MENTON: Object to the form.
THE WITNESS: We would hope that an emergency management plan would serve as a roadmap for facilities to respond to emergencies. We did find that in talking to the facilities around the state that there were challenges in executing plans for many facilities for a variety of reasons. Some facilities had planned evacuation locations to which they could not go, either because they were promised to multiple parties and already occupied by another evacuating facility; in some cases they were too far away to move residents, given the gas shortages. In other cases, evacuation sites were in affected areas and also had to evacuate.
So we saw many facilities who could not execute their plans as written. But they also pursued other options because their plans could not necessarily be a single roadmap to an appropriate

Page 33

response to protect their residents.
BY MR. SMITH:
Q And can you give me some of the examples of those other options that other facilities would have implemented that Hollywood Hills did not? That's what I am after.
A I don't know all of the details of what Hollywood Hills tried to implement. I do recall working with facilities and being aware of facilities that requested assistance in transportation, if their transportation providers fell through.
In some cases, they asked for assistance in finding evacuation locations and/or came up with different strategies to do a partial evacuation if part of the facility was affected, if they could move people into an area that was appropriate and then move others out.
In some cases, residents were divided up among multiple locations to be able to move everyone out of a facility.
There were cases where requests for generators were made to bring in a way to run existing air cooling equipment or bring in air cooling equipment.
And then I mentioned that there were cases where requests for ice and water were also sought.

Page 34

Q And did you find that Hollywood Hills was deficient in exploring options?
A I don't know which options they pursued. When I looked at the types of assistance that was requested for other facilities through the information that I saw at the state level, I did not see requests from them comparable to the types of requests that other facilities had submitted.
Q And by that, you mean -- can you be specific for me? What requests would you have been looking for?
MR. MENTON: Object to the form.
THE WITNESS: Just the examples I just gave.
BY MR. SMITH:
Q Would this be the type of thing you were looking for: Calling the Florida emergency line that they were provided, that Hollywood Hills was provided and leaving the -- or talking to the individual on the emergency line that they need to be made a priority, they are a hospital -- a nursing home with 162 patients, many of them elderly and on oxygen, as well as adult mental health and adolescent mental health patients, that they needed assistance in making this a priority to get their AC on, is that the type of thing --
A The requests for power restoration was certainly pervasive among long-term care facilities.

Page 35

That request was made routinely.
What I am talking about in terms of distinguishing between the type of help that they asked for versus other facilities is making requests to keep people comfortable while power was still out. So whether it was -- what we saw from other facilities in addition to requests for power restoration was cooling devices, generators, consideration of evacuation, not solely waiting for power to come back on, but making sure that patients were kept safe during that outage period.
Q Things like trying to secure additional spot coolers, would that qualify for that kind of action that you are referencing?
MR. MENTON: Object to the form.
BY MR. SMITH:
Q That you saw other facilities do, the attempting to go find more spot coolers for the building?
A I think whether it was spot coolers or anything else, the expectation is that those avenues are pursued to the point of people being safe while power is out.
Q Is that something they have to specifically request from the emergency management officials; the

Page 36

emergency management officials wouldn't say to them: Well, can we help you get a generator? Here's an inventory of where we might have generators. Let us know if we can help in that regard, or here's some suggestions on where we might be able to get spot coolers.
So is it your view that if there is not a specific request, if the person calling doesn't say: I need a generator or I need spot coolers, that it's not something that the emergency management officials for the state would know to volunteer and say: Let us help you, you've got frail elderly patients without power?
MR. MENTON: Object to the form.
THE WITNESS: The -- I am not familiar with how the mechanics of requesting resources locally work. However, it is important to be able to articulate and monitor what's happening with individual residents and. If the situation is declining, help articulate the types of services or equipment that might assist the situation.
The emergency management officials are not in the facility, they don't know specifically what is going on with the individual residents or the environment. And it's important for the leadership at the nursing home, those staff that are there

Page 37

whose job is to protect those residents, to be the advocates for those residents and to help articulate the level of assistance they need and ways to help meet that need.

BY MR. SMITH:

Q Would you consider making 30 to 40 phone calls to Florida Power and Light, to the governor of the state, to the emergency, the Florida emergency information line or Florida emergency line, I guess (850)815-4925, that was provided to them as a number to call for assistance, if they made just numerous calls saying: Help, help, help, I've got frail elderly, you think they needed to say: Well, help can be: Get my power on, it could be get me an alternative source of power, if they didn't specify, that wasn't enough?

MR. MENTON: Object to the form.

THE WITNESS: I think given the scope of the emergency that we were all dealing with as a state, that asking for help and not doing anything else to keep people safe was not an appropriate response.

BY MR. SMITH:

Q Let's assume that they -- it's not what you just said, that they didn't do anything else. Let's assume that what they did is they explored every possible avenue to obtain additional spot coolers, that

Page 38

they monitored their residents, that they hydrated their residents, that they had third-party licensed medical professionals in the building checking on their residents, rounding on their residents, determining whether or not to move their residents, they did all those kinds of things, they provided hydration to their patients, and they secured more fans, more spot coolers, they explored trying to get their generator to power up the AC if that was possible, explored that with electricians, explored whether an electrician would climb up there on the power pole to see if they could fix the transformer. Would those all -- assume they did all of that, would that affect your view that they didn't respond appropriately?

MR. MENTON: Object to the form

THE WITNESS: Given that there were many other facilities that were likely in similar situations, struggling to keep people comfortable and making very difficult decisions, but none of whom had eight residents expire on a single day, with dramatically high body temperatures, it does not appear that they took appropriate measures to keep their people safe.

BY MR. SMITH:

Q Isn't that -- what you just said, isn't that

Page 39

really at the heart of this? It's the Agency's view that there was no other facility where there were multiple resident deaths that occurred as a result of rising temperatures in buildings, isn't that sort of at the heart of what your -- your concern is with the Agency -- I mean with the facility?

MR. MENTON: Object to the form.

THE WITNESS: I think the -- that circumstance, in addition to the fact that the gravity of the situation was identified by external parties, from a hospital across the street from this facility, that had to stand up mass casualty response, that a police investigation immediately was conducted and that the entire facility was evacuated at the prompting of outside parties, makes this case different than anything else we saw.

BY MR. SMITH:

Q Okay. Do you know who ordered the mass casualty evacuation of the building?

A Not specifically.

Q Do you know if I was to go down the list of facilities from the spreadsheet on Bates stamps 1 through 16, facilities that were without power for days, would you be able to identify for me whether or not they

Page 40

had patients that were sent to the hospital via 911 and how many and on what days?

A Not specifically.

Q Do you have any information that any of those facilities did or did not send residents to hospitals on the days that they were without power?

A There may be information in some of the investigations that we're pursuing, but I don't have anything with me.

Q Do you have any general information where you could go down this list and say this -- can you tell me how many 911 calls there were from this facility on this day?

A I don't have that specific information.

Q And same thing with deaths, I couldn't -- you couldn't tell me for any of the specific -- for the facilities specifically did they send patients to the hospital that died; you just don't know, isn't that true?

A I don't know. I do think that if there were a significant number anywhere comparable to what we saw at this facility, it would have been escalated.

Q Did you receive any kind of training or instruction on how to prioritize the requests that were coming in for power restoration?

Page 41

MR. MENTON: Object to the form.
THE WITNESS: No, we did not receive any particular instruction. We did ask that if facilities were without power, that they articulate any other assistance they might need or share anything about the gravity of their situation.
BY MR. SMITH:
Q Are there any documents, to your knowledge, that are in the possession of the Agency for Healthcare Administration that would address the issue of which facilities should receive priority in power restoration?
MR. MENTON: Object to the form.
BY MR. SMITH:
Q Let me just give you an example.
Do hospitals have a greater priority for power restoration than nursing homes?
A I am not familiar with the details of how power restoration is prioritized by power companies. It is not within the Agency's jurisdiction to direct that. I know that there have been efforts in the past to make sure facilities are communicating with their power companies to ask -- make sure that they understand that their healthcare facilities -- and that is something many facilities have done during kind of nonemergency times to make sure that those circumstances

Page 42

are known. My understanding is that typically vital infrastructures receives priority and that power companies are making decisions about how to proceed based upon many factors.
Q Are there any documents at AHCA that address the issue of priority for power restoration --
A Not --
Q -- whether they are documents of AHCA that it prepared or documents of outside agencies or parties that they prepared, do you have any such documents?
MR. MENTON: Object to the form.
BY MR. SMITH:
Q To your knowledge?
A I can't think of any. I know that there were -- at the agency, there were some efforts that the Florida Healthcare Association participated in after the storms in 2005 to help improve communication about power issues, and I believe they might have conducted some training of facilities in terms of how to have those kinds of discussions with power companies, but I can't think of anything that's in the Agency's purview.
MR. SMITH: Can we take like a short break.
(A recess took place from 11:13 a.m. to 1:19 a.m.)

Page 43

BY MR. SMITH:
Q I think where we just left off, I was just trying to affirm and make sure that you don't have any kind of data or information for each of the facilities that are located -- that are on your spreadsheet, the facilities in Florida that lost power for days, whether or not they sent patients by 911 to hospitals, you don't have that data?
A I am not aware of that data in any kind of prescribed form. There may be information in individual visits that we are conducting as part of follow-ups that exist, but I don't --
Q But you don't have -- you haven't reviewed anything like that?
A No.
Q Okay. And same thing with data -- I think I fully explored that and I don't want to beat a dead horse, but you don't have death data for residents of nursing homes that occurred during the storm time period, and I will just put parameters from September 9th, say, for the following two weeks?
A Correct, I do not.
Q Would you agree with me that the impact of Hurricane Irma was considered to be widespread throughout the state of Florida?

Page 44

A Yes.
Q "Historic, unprecedented," would those be reasonable terms to use in association with the impact of Hurricane Irma on Florida?
A Yes.
Q In that decision on the front end to evacuate or shelter in place, would I be correct one of the considerations that any operator has to put in the equation is what the impacts, negative impacts of the trauma of a transfer would have on the frail elderly resident?
MR. MENTON: Object to the form.
THE WITNESS: Yes, we would expect the impact of residents to be part of any possible options that are considered.
BY MR. SMITH:
Q And as far as that decision to evacuate, would you agree with me, Irma kind of demonstrated that it's a very complicated decision because the facility to which you would evacuate might also be impacted or the storm may shift and a facility you thought wouldn't be impacted ended up being impacted?
A I would agree that that was something that we actually saw with Hurricane Irma and saw many facilities struggling with emergency management plans that fell

Page 45

through. But they also continued to pursue options until patients were in a safe setting.

Q Do you have any information -- I will just tell you to assume it -- if it's a wrong assumption, then it won't be worth anything to the judge -- but just assume there is going to be testimony that residents were being hydrated, that the spot coolers and fans were put throughout the building, that there was every effort made to ensure that residents were staying as comfortable as they could, and that there were temperatures being taken inside the building, monitoring of the temperature in the building.

Do you have contrary information to that?

MR. MENTON: Object to the form.

THE WITNESS: Contrary information to?

BY MR. SMITH:

Q What I was just saying, that I can break it down.

There's going to be testimony that residents were being monitored and hydrated by the facility's staff. Do you have any contrary information to that?

MR. MENTON: Object to the form.

THE WITNESS: The investigation that our staff was able to conduct was limited in that the facility had been roped off as a crime scene with a

Page 46

criminal investigation, so we had access to limited information.

Our job as regulators is to make sure that people are safe and although, ideally, we would have been able to do a more extensive investigation, including review of clinical records, including interviews with residents and family members, including review of other records beyond the facility that have not been accessible due to the criminal investigation, the information we did ultimately review represented concerns that were -- that raised our concern that the circumstances in the facility related to heat-related detriment to residents with extremely high temperatures when they were treated at the hospital.

So we don't have access to a lot of the records we typically would review. However, given the circumstances and the extreme nature and the volume of what we saw, we felt that our job as a regulatory agency required us to take action to protect other patients.

We know that as those additional investigations are completed, both the criminal investigation, the medical examiner's reports and

Page 47

other records become available, those will further illustrate the circumstances at the facility; thus far the documents that have become available have not been contrary to our concerns as to what occurred at the facility.

BY MR. SMITH:

Q Do you have any information contrary to the assertion that the residents were being hydrated? That was my question.

MR. MENTON: Object to the form.

THE WITNESS: Given that we don't have access to all of the information, we can't comment on that matter.

BY MR. SMITH:

Q So you don't have any contrary information that you can share with me today on that issue: Hydration of residents?

MR. MENTON: Object to the form.

THE WITNESS: I have no additional information other than what's been part of our investigative reports.

BY MR. SMITH:

Q When you say part -- it's a wide-open issue. If you've got information, I need to know what it is. If you are saying what's in the survey document, that's

Page 48

fair game. You can tell me that's in the survey document and I will read that and whatever is there is there.

But if there is other information, I just would like to know what specific information you would have that's contrary to the assertion that residents were being hydrated?

A I am not aware of any information that we have.

Q And do you have any information contrary to the assertion by the facility that it had deployed spot coolers?

A The information in the inspection report, which reflects notes from the emergency management officials indicating that the same expert I read earlier, that the fans were inadequate in relationship to the patient's location whereabouts.

Q That's a statement that some EMS provider had made?

A That's "EMS states they did note fans, however, were inadequate in relationship to patients' location whereabouts."

Q Do you know who said that?

A I don't personally know.

Q Are you aware that there were third-party

Page 49

licensed medical professionals in the facility, Hollywood Hills facility, on September 12 that ran -- that rounded on their patients?

A I am not specifically aware of that.

Q Do you have any information contrary to the observation of those third-party medical professionals that they -- their patients were not in distress or showing any signs of developing an emergency medical condition as of September 12 when they were in the building?

MR. MENTON: Object to the form.

THE WITNESS: I am not aware of the specifics of their reviews. This is a large facility. I believe there were over 120 or more patients in the facility. Given that it was a multistory building and that temperatures can be different in different rooms with different residents, I don't know that information related to a portion of those residents would be enough to address the needs of all the residents in the facility.

(Discussion off record.)

BY MR. SMITH:

Q Ms. McKinstry, is there a standard of care that you are aware of as to how long a facility can be without power, AC power, before the facility needs to

Page 50

evacuate?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: I am not aware of any proscriptive length of time. We would certainly expect that every resident of long-term care facilities' needs are met and their circumstances are reviewed related to their illness. And part of what we expect healthcare providers to do in a long-term care setting is make sure that the needs of every resident are met appropriately.

BY MR. SMITH:

Q But there is no standard, to your knowledge, of if a facility is without power 24 hours or 48 hours or 72 hours, then the facility needs to evacuate their residents somewhere else?

A I am not aware of a formula to make that decision. Those are going to be complicated decisions based upon the circumstances in a specific facility.

Q Okay. And do you know, the assertion of the agency appears to be that the facility did not appropriately monitor or detect that there was -- that patients would be in distress from the level of the temperature in the building.

Did you consider in that decision -- let me rephrase it.

Page 51

Do you believe that all of the caregivers in the facility were negligent in their care for residents; in other words, all the CNAs, the RNs, the physician assistant, just everybody associated, it was a collective failure of everybody to observe those conditions and take other action?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: Our investigation of the case, as I mentioned, was limited due to the circumstances involving the criminal review. So our review did not get down to individual facility -- excuse me, individual practitioner negligence.

It was, instead, focused on the extreme conditions that were found with the residents that were evacuated and ultimately died and that those circumstances were unacceptable.

BY MR. SMITH:

Q When you say the extreme conditions, you mean the body temperatures that were taken of some of the residents at Memorial Regional?

A That, and the clinical information indicated they had appeared to have heat-related conditions,

Page 52

hypothermia and other issues.

Q Are you aware -- first of all, let me establish you are not a -- you don't have any clinical background?

A Correct.

Q Are you aware of any information as to the onset of heat stroke and how rapidly it can occur?

A No.

Q Do you have any information on the ambient air temperature and heat index at which hypothermia can occur?

A No.

Q I want to go back to the issue of the priority for power restoration.

Is there any system in place, to your knowledge, in which a request for power restoration made to the emergency operations center or the emergency hotline, is there any guidance at all on how to seek priority for power restoration internally?

MR. ECENIA: I will object to the form.

BY MR. SMITH:

Q Internally at AHCA.

A Not at AHCA, no.

Q To your knowledge, is there any such documentation or guidance at any other state agency?

Page 53

A The information that is collected through the emergency operations center is -- my understanding is that's shared with the different sections of the emergency operations center, one of which is related to power. So it provides a mechanism to note facilities that are without power, but requests for power restoration is not a substitute for taking measures to make sure people are safe until power has returned.

Q And the measures that one would take would be what specifically?

MR. ECENIA: Measures, I will object to the form.

MR. SMITH: To keep people safe. She said there would be the expectation to keep people safe, and it's not a substitute. So I am just wondering the specific measures that one would be expected to take.

MR. ECENIA: I will object to the form of the question.

THE WITNESS: It would depend on the circumstances of each facility and the residents there. But I have previously mentioned the types of measures we saw other facilities seeking to address issues while power was out, including assistance with additional cooling, potential

Page 54

evacuation, things of that nature.

BY MR. SMITH:

Q On the issue of potential evacuation, it's been widely reported in press releases that Hollywood Hills, first of all, should have called 911 sooner.

What information, if any, do you have about using 911 as a means to advise that power had not been restored and that you had concerns that residents could -- if power is not restored, residents could develop problems?

A I think the concept of calling 911 relates to distress of individual residents and ideally, given that they are in a healthcare facility, their health should be monitored in a way that if they are declining, medical interventions are sought prior to their death.

Q So you would agree with me that 911 is not the mechanism that one would use to simply say: My residents do not appear to have any emergency medical condition, but they -- I need to get the power on before they do develop emergency medical conditions?

MR. ECENIA: I will object to form of the question.

BY MR. SMITH:

Q Would that be fair?

A I think the concept of seeking assistance to

Page 55

keep residents safe and protected while the power is out is part of what the facility should be doing in response to an emergency. The -- we have previously discussed the concept of asking for assistance outside of just power restoration and considering the safety of patients during the power outage.

911 would be a resource that we would expect be called if residents are in a situation that requires additional medical attention, but those calls should be made at a time -- health should be monitored in a way that -- prior to severe decline so that interventions that are needed are pursued prior to their death.

Q And my question is simple. If nobody in the building has what the medical professionals on site deem to be an emergency medical condition, there is nobody in distress, nobody is having what would -- appears to be an acute episode that is in need of emergency medical care, wouldn't I be correct that 911 is not an appropriate call to make to say we need to get our power back on and get our patients more comfortable, isn't that correct?

A The 911, I think, was brought up with respect to the clients that did decline and did expire at the facility.

Q But am I right about what I am saying, you

Page 56

don't use 911 to report that we still need to get our power back on because our residents need to be made more comfortable?

A Correct.

Q And are you aware that for each of the patients that were eventually transferred to Memorial or died at the facility, that 911 was called in each instance?

A I am not familiar with the details. I know that ultimately, there was a call for emergency medical assistance.

Q Were you aware that there were multiple calls for emergency medical assistance that were made on the night of September 13 -- or the early morning hours of September 13?

A Yes, my understanding is there were calls made on the 13th.

Q The second part of the issue of evacuating due to lack of power restoration, it's been widely reported that the facility should have evacuated to the hospital across the street, I think it's in the complaint. It's a large public hospital and it didn't lose power, so the facility should have evacuated its residents there.

Is that something that you have seen as a proper emergency response, to evacuate residents of a

Page 57

nursing home to a nearby hospital because they have power and you don't?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: We saw -- due to challenges in evacuation locations, we did see facilities in response to Hurricane Irma seek alternative locations for residents.

I don't recall exactly if there were individuals that went to hospitals, but I don't think it would have been unreasonable. But in some cases, individuals did go to hospitals as a part of an evacuation.

BY MR. SMITH:

Q Would you agree with me that hospitals are intended to be facilities for the care and treatment of patients with either an emergency medical condition or who are in need of inpatient hospitalization?

A Typically that would be the case. However, we did see many unusual circumstances related to locations for evacuations in response to Hurricane Irma. Basically in some cases, hospitals -- excuse me, nursing homes had residents go to even schools in some situations to set up situations where they could be in a safe environment with the facility staff there with

Page 58

them. So I think what's typical typical and what happens in an emergency situation can be different.

Q And the role of hospitals in an emergency situation, to your knowledge, in Florida, is not to serve as evacuation shelters for other licensed healthcare facilities, is that true?

A I think that would not be a typical arrangement, but it certainly could be considered if that were the best situation to deal with an emergency situation.

Q Have you reviewed the comprehensive emergency management plan for Memorial Regional Hospital to determine if its use as a hurricane evacuation alternative for nursing homes that lose power was contemplated?

A I have not reviewed their plan.

Q Did you have the opportunity to sit in yesterday on Ms. Smoak's deposition?

A I did listen to it, yes.

Q Do you recall, I had asked her about situations at the Agency where patients had been taken to hospitals as part of an evacuation and left at hospitals because the facility owner felt or operator felt that was a safe place for the patient to be and that in situations like that, facilities had been

Page 59

actually cited for inappropriate use of a hospital.

A Yes, I am familiar with that.

Q And so you would agree it's not appropriate to take patients to -- nursing home residents to a hospital simply because -- if they don't have an emergency medical condition, simply because the hospital has power?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: The situation that I am aware of from last year involved what appeared to be an assisted living facility that dropped their residents off at a hospital emergency department without making arrangements with the hospital to care for those residents or seeking a collaborative solution to their problem.

So I think that was a different scenario than what could have been contemplated if there was a discussion between this facility and a hospital or any other location as a potential evacuation site.

Ideally evacuation sites are an agreed situation where there is an outreach to a receiving party and an agreement that the residents can be transferred to that location. And we saw many situations during Irma where unique circumstances

Page 60

had to be negotiated to provide those protections and get people out of a facility when it was not an appropriate location for them to be.

BY MR. SMITH:

Q Did you have any experience during Hurricane Irma where hospitals discharged their residents to nursing homes that had lost their power, lost AC power, with the knowledge that the resident, the patient was being discharged to a facility that did not have power?

A I am not specifically aware of hospitals discharging that. I know that there were some situations where residents returned to facilities without power, but they did that, the circumstances I am familiar with, in conjunction with consultation with the local emergency management officials to make sure that if they returned, for example, from evacuation to a facility without power, that there were circumstances that provided for comfortable arrangements and that emergency management officials were advised of the circumstances, so that if they had to intervene later -- So, for example, if they came back on a generator and the later emergency management officials were called in to help with fuel to keep the generator running, that the emergency management officials understood the circumstances of reoccupation without

Page 61

power.
Q If a hospital was being reasonable and prudent, they would be investigating to determine whether the residents would be safe in a facility without power?
MR. ECENIA: I will object to the form of the question.
THE WITNESS: We would expect if a -- like I said, I am not familiar with circumstances where hospitals discharge people to nursing homes without power, but I am familiar with some situations where nursing homes went back without power and in that case, we would expect the nursing home operator to be aware of the situation, to inform local emergency management officials and to make those decisions in concert with those local officials.
BY MR. SMITH:
Q Are you aware if Memorial Hospital discharged patients to Rehabilitation Center of Hollywood Hills with knowledge that the nursing home did not have air conditioning power?
A I am not aware of that.
Q Were you involved at all in the decision to issue an immediate moratorium based upon the survey of the facility that occurred on September 13th?

Page 62

A I was aware of the situation at the facility and the -- I stayed in contact with Kim Smoak, who was in touch with our staff, who went on site to the facility. And yes, I was aware of the moratorium.
Q Tell me to the best of your recollection what transpired on September 13th in terms of AHCA's response to the situation at Hollywood Hills?
A We became aware through -- really through media reports that there appeared to be multiple deaths at a facility. We had -- I believe there were some initial conversations, contacting the facility to find out what was transpiring. We sent staff on site that day to determine what the circumstances were. Our staff had limited access to the facility. As I mentioned before, it was roped off as a crime scene. There was an investigation going on.
We gathered information as best we could and then evaluated our regulatory responsibility to make sure people are protected and decided to implement a moratorium on admissions to prevent any reoccupation of the facility until additional information was known.
Q And who was involved in that decision-making process, the decision to issue the immediate moratorium? Specifically what calls were made? What e-mails were exchanged, to the best of your recollection? Can you

Page 63

give me all of the players that were involved that made that decision?
A Well, our staff who conducted the investigation were involved, Kim Smoak, who was our bureau chief for field operations and typically, they are involved in these decisions. They are the ones on the ground gathering the information. Kim and I were in constant communication throughout the day as we had been, frankly, every day since we had been responding to this emergency.
And so she kept me briefed on what the findings were. I shared that information with our senior leadership, and we worked with legal to draft an order of moratorium that was ultimately executed.
Q So were there conference calls between yourself and Kim Smoak and Arlene Mayo Davis and the two surveyors?
A I don't believe that I was on that conference call with them. I think I just stayed in touch with Kim Smoak.
Q And did you exchange any text messages or e-mails with Kim Smoak on the decision to issue an immediate moratorium?
A I don't recall there being any text or e-mail messages about that. I wouldn't text Kim anyway. I

Page 64

think it was all just conversations.
Q Did you have any communication with the Secretary about -- with Secretary Senior -- about issuing the immediate moratorium?
A Yes, I was keeping him briefed.
Q Did you have any communications with the executive office of the governor or any representative of the Governor's Office regarding the issuance of the immediate moratorium?
A I don't recall having any conversations with the Governor's Office staff. They were likely briefed by our staff, but I don't recall any conversations I had.
Q And did Secretary Senior indicate to you that he had been in discussions with the Governor's Office about the immediate moratorium?
A He was likely keeping me briefed. I don't recall specifically.
Q The reason I am asking all these questions is because there is a press release in which the Governor's Office says that the governor directed that the immediate moratorium be issued.
Do you have any information as to why the governor would indicate that it was the governor's decision to issue the immediate moratorium on

Page 65

admissions?
MR. ECENIA: I will object to the form of the question.
THE WITNESS: I don't know that I recall specifically information that he directed the moratorium. I know there is -- can you point me to some --
BY MR. SMITH:
Q Yes. It's this one. I will just read the title for our record. "Governor Scott Directs AHCA" -- that's the Medicaid one, hold on. There is another one.
It's here, it's on -- "To interested media from John Topps," and it says "On Wednesday, September 13th, Governor Scott directed AHCA to issue an emergency moratorium for the Rehabilitation Center at Hollywood Hills that prevents the facility from admitting any patients until it is lifted."
A Well, we conducted our review that, again, was limited because of the criminal investigation, and we felt that it was appropriate and actually our responsibility to implement a moratorium on admissions.
Q But to your knowledge, you were not aware that the governor had directed that the Agency issue the moratorium?
A I am aware that the governor was very involved

Page 66

in activities related to Hurricane Irma. His staff were briefed, as I recall, not necessarily by me, but I do believe they were briefed about what was going on, and we pursued the moratorium. I kept the Secretary informed as to the actions, and there was no concern related to our pursuing that option expressed.
Q But you are not aware -- to your knowledge, you haven't seen any information that the governor directed that the moratorium be issued?
A We did what we needed to do in this situation. It was an emergency situation. There was a lot going on. It is not inconsistent that we were pursuing this for the governor to have certainly been interested in this, and -- but we carried out the moratorium based upon the way that we normally do our business. We were interested in putting it in place for the purposes of protecting patients from harm.
Q Do you know if the governor directed that AHCA terminate Hollywood Hills from the Medicaid program and issued an immediate and final order to terminate the Agency -- or terminate the facility, Hollywood Hills, from the Medicaid program?
A As the regulatory agency, we looked at all of the relationships that we had with the facility and considered all options available. Termination of the

Page 67

Medicaid treatment was one of those options available. And it was -- I am sure there was probably some briefing with the Governor's Office about other options and so that avenue was also pursued.
Q But my question, do you know if Governor Scott directed AHCA to terminate the Rehabilitation Center at Hollywood Hills from the Medicaid program? Do you have knowledge of that?
A That's the statement in this article.
Q But other than looking at what's in the press release, did you have knowledge that it was the governor that had directed the termination of Hollywood Hills from the Medicaid program?
A I didn't speak directly to the governor.
Q Did you receive information indirectly that -- from the Secretary or anybody else that the Governor's Office had directed the Agency to terminate the Medicaid provider agreement for Hollywood Hills?
A I think that -- that I am aware that the Governor's Office was being briefed, that we were pursuing options that they were in agreement with, that's my understanding.
Q Okay. But you don't have any specific knowledge of the governor issuing a directive to the Agency to terminate the facility from the Medicaid

Page 68

program?
A Other than this press release.
Q I want to look just briefly at some documents with you. If you could -- I will give you a copy of this.
These were documents that we obtained from your testimony in the rule challenge proceeding. We already talked about the first tab behind tab 4. I am just going to kind of go through these with you, and I will call out Bates stamp numbers. Really, my exercise here is to understand what the documents are.
If you could, starting -- the second tab starts at Bates stamp 493 and this appears to be another spreadsheet. Do you know what this document is?
A I am sorry, where are you?
Q It's tab 4A2.
A Yes.
Q What is this?
A This is a document that represents facilities that reported evacuation either through Florida Health STAT or based upon other information submitted at the emergency operations center.
Q Okay. So these were facilities that evacuated?
A Yes.

Page 69

Q And what is the -- is E and the R in the grid, there is a capital E and capital R, is that evacuation and return?
A That's my understanding, yes.
Q And what about the ones that don't have an E or R and they just have like an X and a date, what does that mean?
A So the information was not always complete. These were pieces of information that were gathered during the event, and X would indicate there was an indication that they were evacuated without necessarily knowing when they initially evacuated or returned.
Q We can go to the next tab. The next tab starts on page 498 and continues to 513. Is that essentially the same spreadsheet for assisted living facilities?
A Yes.
Q And then the next tab it looks like it starts on Bates stamp 516 and goes through 540. Can you just tell me briefly what this spreadsheet is? It appears to be generator information, but I am not sure what it means. It has a column "Power Stat."
A I would have to look into what this is. I am not certain.
Q Looking at the far column, "status: Closed or

Page 70

opened or null," does that mean anything to you?
A I would have to look into what this means to answer questions about this document.
Q Do you know who prepared -- who was the author of this document?
A Not without looking into it with greater detail.
Q Let's go to the next tab beginning at Bates stamps 542 and going over to Bates 566. Do you know --
A Which tab?
Q It was the next one in sequence. So it's 4A, Roman Numeral V, B?
A That's not the same Bates stamp I have. I have 170.
Q On this?
A I'm sorry, 4A5?
Q Uh-huh.
A 4A5, this is what the document I have looks like.
Q I wonder if it printed differently.
MR. SMITH: Off the record.
(Discussion off record.)
BY MR. SMITH:
Q There is a document that's titled "Nursing Homes without a Permanent On-Site Generator." It's hard

Page 71

to read the Bates stamp, it looks like --
A It's 175, could be 176.
Q Yeah. Can you tell me what this is? Is it self-explanatory? This is as of 9-25, these are nursing homes that did not have a permanent generator on site?
A Yes.
Q And there is only 17 of them?
A Yes.
Q When you say a permanent generator, does that mean that all the other nursing homes in the state have a generator that would be capable of running AC power?
A Not necessarily. The requirement for generator support will vary by facility, based upon the fire life safety code and building code in effect at the time of construction or renovations. So these were facilities without any generator, some of which either had projects pending or had a quick-connect ability, which meant they could bring in a generator to plug into some of the electrical system.
Q If you could go to -- hopefully, we are on the same page. Can you go to the next tab?
A Nothing.
Q Let me just show you. Somehow our notebooks are not identical.
A This one?

Page 72

Q There is an e-mail and the Bates stamp looks like 43.
A Yes.
Q It's an e-mail from Celeste Philip to Wes Maul and you are copied. Can you tell me about this e-mail. What is the -- why did you receive a copy of this e-mail?
A Let me read it.
So this is an e-mail from Dr. Philip to Wes Maul at the state EOC asking for power restoration priority for a facility.
Q Okay. And this is a facility, the Renaissance at the Terraces, with over 200 clients, and it says they have basic needs on generator but don't have capacity to run AC, and some of their clients are deteriorating with the higher temperature. And it's asking for -- to create a mission since the CEO has been trying unsuccessfully.
What was it that would prompt this response from the Surgeon General and Secretary of the Department of Health to get involved and say we need to make this a priority?
A So the Surgeon General was working at the state EEOC and handling issues similar to really everyone who was assisting with activities. This

Page 73

appears to be a situation where she received information about a facility. We spoke at some point and as I mentioned earlier, the emergency response process is that the local emergency operations officials are the key responders and assisters in terms of any sort of emergency issues.

The state EOC is available to assist if someone has difficulty reaching the local EOC or requires some other assistance. So it sounds like in this case, they have not been successful in reaching the local EOC and have asked that this be escalated at the state level.

So this would be a mechanism to communicate at the state level the need for power restoration at this facility. This doesn't necessarily mean they weren't taking other measures as well as waiting on power restoration.

Q Do you know if they were taking any other measures?

A I don't know right off, no.

Q Do you know if anybody had been -- said their clients were deteriorating with higher temperature, do you know if any of them were sent to the hospital?

A I don't know.

Q Do you know if any of them died?

Page 74

A I don't know.

Q Can you flip over a couple of tabs and see if we can get on the same page with -- there is a 387 Bates stamp. It's an e-mail?

A Yes.

Q Okay. The top half is just an e-mail from you back. But I am looking at the bottom half.

A Yes.

Q It's from Gail Matillo on Wednesday, September 13, to AHCA EOC, and you are listed as one of the recipients. And down at the bottom, it says "Power Status: No power, no generator, have been without power for three days. Needs priority one FP&L for power restoration."

And then if you flip over to the next page, it goes on, "Has spoken with FP&L with no success, have spoken with local EOC, concerned about heat stroke and hypothermia."

Do you recall this particular facility and incident?

A Not specifically.

Q What does it mean to be needs priority one, what does that mean?

A I don't know. That's a term that was written by Ms. Matillo.

Page 75

Q Who is Ms. Matillo?

A She is with one of the associations.

Q Which association?

A Argentum, Florida Argentum.

Q And do you know if this facility had any residents that were sent to the hospital by 911?

A I don't know.

Q And do you know if it had any residents that died?

A I don't know.

Q But it is a facility that apparently was without power for several days: No power, no generator, correct?

A Based on this summary from Ms. Matillo.

Q And patients that were -- they were concerned about heat stroke and hypothermia, correct?

A That's what this says.

Q Flip over to the next one, this is from you to Kim Smoak about a facility called Juniper Village. And I guess you had been copied previously on an e-mail from Lee Meadows to AHCA EOC regarding this facility?

A Yes.

Q And your e-mail to Kim Smoak, it just says, "Importance high, you may have already visited."

What was it you were seeking to do here?

Page 76

A To make sure that we had stopped to visit at this facility.

Q And this one, you know that there was at least one patient that was sent to the hospital for heat stroke?

A That's what this says.

Q Do you know if that patient died?

A I don't know.

Q Go to the next -- there is an e-mail from Justin Senior to you, at the bottom, and to you -- and actually to you and Celeste Philip, but then the salutation is Celeste. But it concerns a facility in Brooksville, Northbrook Health and Rehab. And it had to do with generator fuel.

Above it, it looks like was urgent situation. Can you tell me about this? How is it determined when something is urgent, Level I, high priority, those kinds of terms that I see in a lot of these e-mails?

A I think one of the things that is generally articulated in this is if residents are being affected. And so I don't know if it's -- let's see.

So in this case, looking at the bottom of the second page, "Secretary received a text from Rose Garden the generator had just konked out. Extremely concerned that residents might not be able to make it without

Page 77

help. The locals have not been able to help yet."
So these situations were addressing resident decline issues that required interventions.
Q Turn over the next -- there is a series of these from either Melody Selis -- am I saying her name right?
A I think so.
Q Bob --
A Asztalos.
Q -- Asztalos and Adam Hill. The first two Melody Selis and Bob Asztalos, are they representatives of the Florida Healthcare Administration?
A Yes, they were assisting with the emergency response acitivities.
MR. ECENIA: You said Florida healthcare administration.
MR. SMITH: Florida healthcare Association is what I meant to say. I'm sorry. FHCA.
BY MR. SMITH:
Q Adam Hill, is he with the Public Service Commission?
A Where is he referenced?
Q The middle of the page, Adam Hill, it says "psc.state.dot.FL.US. Do you know Mr. Hill?
A I do not.

Page 78

Q The bottom of the page, there is another -- there is an e-mail that says -- the subject is "Priority: Restoration of power." It lists out several nursing homes. Again, do you know how -- how is that determined that those three facilities were a priority restoration?
A I don't know.
Q Was it because they contacted FHCA and said we consider it a priority for our members and please try to get these back on?
A I don't know the circumstances related to these. I know that there were many people trying to assist on cases.
This particular one, you can see, 11:30 at night. So folks are working kind of around the clock to help address any situations that they become aware of. The -- in many of these cases, some of them had to do with getting them other resources while power restoration was pending. In some cases, they needed more gas.
I think if you go through these, there are probably some that do totally evacuate. For example, under 73, there is one where the "Generator is powering the nursing home but not operating the AC. Residents are overheating and dangers of high temp and will have

Page 79

to evacuate if they cannot power the AC."
Q Do you know if they evacuated?
A In this case, they did get a generator hooked up and the central air was running, so the patients were stable. So I am not aware that they evacuated, at least based on this dialogue. But those were certainly part of some of the considerations.
Q I could go through all of these, but would you be able to tell me for any of the facilities represented in these e-mails and these mission reports whether or not they sent patients -- residents to the hospital via 911 and whether or not any of those residents died?
A There may be some indications of patients being hospitalized in some of these. I can tell you I am not aware of any that had eight patients die on one day.
Q Was there some line of communication to Florida Power and Light which you could use to say: This is our highest priority, we need to get this facility back online?
A The AHCA EOC desk and the ESF-8 that were copied on these were responding to requests for information through the state EOC and facilitating lists of facilities without power to the emergency special function that handles power restoration of utilities.

Page 80

Q Going back to my question, is there any kind of a -- was there any kind of a system in place that there was a person, a point person at FP&L that you could call to say: This is a high priority, we need to get somebody out there to restore power?
A That was not done by agency staff. That would have been done at the emergency operations center if those requests had been made, but I am not aware. That's not something the Agency carries out.
Q Are you familiar with any information that Hollywood Hills actually requested and obtained some kind of effort to escalate their request?
MR. ECENIA: I will object to the form of the question.
BY MR. SMITH:
Q It's a compound question. Let me -- are you aware if Hollywood Hills requested that they get priority?
A I think that they expressed the need for power in their communications, and my understanding is that they had contacted FP&L and had a ticket with FP&L.
Q Do you know if there were any efforts by the Agency to escalate the priority status for Hollywood Hills?
A The entries that were made in to Florida

Page 81

Health STAT were used to communicate at the state EOC level nursing homes that didn't have power, and we had conversations about the need for healthcare facilities to have their power restored, if possible.

Q All these e-mails we're going through here, it appears that they are coming to -- you are being copied, they are coming to you, and then we need -- the association is saying: Hey, we need help with these three facilities. What would you do with those requests? Obviously, there is a line of communication. They said: Please, help us. Here's our priorities.

What would you do with that information?

A We would share that with the state emergency operations center, who would share that. In some cases, they shared information or requests for assistance with local officials, who would facilitate resolution. In some cases they would be entered into Florida Health STAT and lists of facilities without power would be shared. There were varieties of ways to share communication.

Q And I just want to -- as fully as we can, I want to know what the varieties were. You said: Okay, well, you could share the information with EOC.

A Uh-huh. And we did. So that's the copying of AHCA EOC and the state ESF-8 planning, these were all

Page 82

shared with the state EOC.

Q And you could update information on Florida Health STAT?

A Yes.

Q What else -- is there anything else that you would do in response to any of these requests that came from the Florida Healthcare -- Florida Healthcare Association for assistance in escalating the priority for the facilities?

A This was -- so the way that the emergency response works is that local officials are the frontline in terms of responding to emergencies. The issues that are circulated at the state EOC serve to provide assistance when the locals can't meet needs.

It is incumbent upon the facilities to escalate issues, if they feel that the situations are deteriorating, and I think that's what some of these e-mails articulate, is people having to make these difficult decisions: I am going to have to evacuate if I can't have power restoration; is there a way to get a backup generator to run the air conditioning unit?

So these were examples of situations where people were articulating the gravity and then making decisions to protect their patients based upon the circumstances they were faced with.

Page 83

If they needed specific assistance, now everybody wanted power restored, absolutely, but if they -- but they had to take care of people until the power was restored. That was a big unknown, it was very difficult, given the widespread power outage, to know when power was going to be restored, so a lot of these show requests for generators, for assistance with cooling devices, for, in some cases, transportation if they have to evacuate.

So it was a difficult situation, it was a widespread situation. There was a lot of activity going on, but it was all focused on keeping people safe until their systems could come back to normal.

Q It's your view that Hollywood Hills, by virtue of the fact they had the resident deaths, they were not trying to keep residents safe?

A Whatever they were doing was not enough to save the eight people who died that day.

Q Is that what this case kind of boils down to: That eight people died, therefore, you must not have been doing enough? Otherwise, they wouldn't have died?

Is there any information, specific facts that you can point to and say: This facility, Hollywood Hills, did not do X, Y, and Z, that they should have done, or that Hollywood Hills did X, Y, and Z that

Page 84

affirmatively contributed to the deaths of these residents?

MR. ECENIA: Object to the form of the question. It's still going on. It's a long question.

MR. SMITH: It is a long question. It's more of a discovery question than a question that I am using at trial.

I am just trying to get your view, is that what this boils down to, is that they had resident deaths, multiple resident deaths, and the residents had high temperatures and that, therefore, they must have done something wrong?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: So our object as a regulatory agency is to protect patients. We expect facilities that have a license to operate as a nursing home in the state of Florida to -- we entrust them to care for people in their care.

Our job is not necessarily to prove a criminal case and find every detail of information related to what happened and why, but our job is to make sure people are protected and safe.

In this case we could not conduct a thorough

Page 85

investigation because of the ongoing criminal case. My understanding is there was a homicide investigation underway. There were medical examiner reports that would take some time to become available. There were clinical records we could not obtain access to because of the nature of the criminal investigation.

We were able to obtain enough information to raise concerns about the ability for people to be safely maintained in this facility. We initially imposed the moratorium and, then as additional facts were available that indicated that the temperatures in the facility were extreme, that proper protections were not in place to keep people safe, that eight people died on that single day, and ultimately more people died, and that the temperatures of those individuals was so extreme, that we are very concerned that people would be safe to be in this facility in the future.

BY MR. SMITH:

Q Is there any specific actions you can say, like they weren't providing sufficient water, they weren't -- they should have had 14 spot coolers instead of 10 spot coolers, or they should have had 70 fans instead of 40 fans, some specific action that you can

Page 86

point to, other than residents died, they had high temperatures when they arrived at Memorial and, therefore, they didn't keep them safe, they died, is there anything else?

I am just trying to understand the full set of facts that you are basing this revocation on.

MR. ECENIA: I will object to the form of the question.

A We were not in the facility. We don't run nursing homes at the Agency for Healthcare Administration. We don't know exactly what measures could have or should have been taken with this. That's up to the facility to decide, and in a manner to meet the individual needs of all the residents under their care.

What we do know are the indications that I already shared with you about the deaths and the temperatures and the concern of the temperature in the facility and the lack of sufficient fans for the residents that were there.

Q And let me just ask you this. If the facility was to demonstrate that the facility has -- as the Agency has, subsequent to Hurricane Irma, suggested, has a backup generator capable of providing air conditioning power for 96 hours after a hurricane event and has a --

Page 87

whatever, has the perfect-world standby bus, has all kinds of fail-safe measures, is it the Agency's view that the entire staff of this hospital -- this nursing home and the everybody associated with it is just so incompetent that they can't be trusted with care of residents?

MR. ECENIA: I will object to the form of the question.

THE WITNESS: Well, the facility didn't have safe temperatures for the residents that were there. So I can't compare this to a situation where there's ideal measures in place.

In any situation when you are dealing with frail individuals who have unique medical needs, you can't just have a system and expect it to self-run and everyone be safe.

We expect currently for facilities to have policies and procedures to prohibit abuse and neglect, to have systems in place that identify issues before they escalate. Just because those systems are there doesn't necessarily mean that they are executed properly.

So we are always looking at what actually happened in facilities on a case-by-case basis to see if the facility acted appropriately to protect

Page 88

the patients in their care.

BY MR. SMITH:

Q So there is no other specific act that you can point to? I just want to make sure I've got everything and there is no specific action or omission by the facility other than that their power went out, these residents died and had high body temperatures, so they must have not properly cared for them and provided a safe environment?

A We made our decision to proceed with the actions based upon limited information, because of the criminal investigation and a lack of access to records and information. As more information becomes available, we'll certainly review that. So far, the information that has come to light has not contraindicated the actions that we have taken.

Q But you don't have any other facts because you were limited in what you could gather due to the criminal investigation?

A Yes.

Q Have you been asked to form any or have you formed any professional or expert opinions that you plan to share in this proceeding?

A I am not sure what that might be that we haven't already discussed.

Page 89

Q Since this is my chance to find out, so if you have any others, I just want to know. Do you have any other professional opinions that you don't feel like we explored today?

A I can't think of anything.

Q Do we agree that Hurricane Irma was an unprecedented event in our lifetimes in terms of the scope of damage that it caused?

MR. ECENIA: I object to the form of the question.

THE WITNESS: I think in terms of the disruption to the state, yes, it was unprecedented.

In terms of power outages, it was unprecedented.

In terms of facility damage, we may have incurred more facility damage in other storms that we have experienced as a state.

Every storm is unique. There were definitely challenges with this storm as it related to how much of the state was affected and how much we saw facilities with challenges in executing their comprehensive emergency management plans, certainly from a perspective of having to be creative, we saw that across hundreds of facilities, between nursing homes and assisted living facilities.

Page 90

BY MR. SMITH:

Q And putting aside Hollywood Hills specifically, do you believe there were any lessons from Hurricane Irma that exposed what I call "deficits" in the emergency preparedness and response infrastructure in the state?

A Whenever you go through an event the scope and size of Hurricane Irma, there's always lessens to be learned. I think one of the biggest takeaways that we had as an agency was the need for facilities to be self-sufficient without power for extended periods of time and not rely on power restoration as the way to create a stable temperature environment in facilities.

To that end, we have initiated an emergency rule to require nursing homes and assisted living facilities to have emergency power sources that keep temperatures at a comfortable level for up to four days to create stability during a four-day period that will enable the limited resources available in response to storms to be shared in a way that is -- creates a safe environment for folks in the state.

Q Are you aware if the emergency operation center, division of emergency management, has an inventory of available generators at state agencies?

A I am not specifically aware of how that works.

Page 91

I have heard the concept of local emergency operation centers having access to resources that they can deploy, but I don't know exactly how that -- whether it's a state issue or a local issue or how that happens.

Q Would you consider that to be among the lessons learned, that there could be better communication of where those types of resources might be available for facilities that were having problems with power restoration?

A I think I would have to defer to the emergency management professionals on whether or not that would be helpful. I do think that what we saw with this storm in terms of gas shortages, difficulty with transportation due to mass evacuations, that the concept of relying on external resources is not ideal. And that is part of the reason that we put together emergency rules to require the facilities actually have those resources on site.

Q As far as the emergency rule, is the Agency also proceeding with the normal rule-making process for developing rules to have backup generator power at nursing homes and ALFs?

A Yes.

Q Would a system deficit that was perhaps brought to light by Hurricane Irma be the fact that

Page 92

nursing homes were not considered to be priorities for power restoration by the utility companies?

A I can't speak for the power restoration priorities. I think that in some cases, even with restoration priority, when you have massive power outages in such a large part of an area, it's difficult to make priorities based upon geographic locations. So I would defer to the power professionals in terms of the challenges of that.

But again, I think that the concept of doing what we can to make sure healthcare facilities are self-sufficient will assist.

Q Are you aware of Representative Book's bill to require that nursing homes be given priority in power restoration?

A I am aware that that's the content of several bills that have been filed.

Q So at least some people observed that to be a deficit that should be filled?

MR. ECENIA: I will object to the form of the question.

BY MR. SMITH:

Q Apparently, they filed bills to address an issue.

A I am not familiar with what -- how that would

be carried out by utility companies. I think that would be a question for them in terms of what does it mean if a facility is a priority.

When you look at 3,000 assisted living facilities around the state, many of which are embedded in neighborhoods, I am not sure that making assisted living facilities a priority doesn't mean that everyone is a priority. So those are big challenges that need to be evaluated.

But I think, again, the emergency, the power professionals are best equipped to indicate whether or not those are solutions that will help.

Q Did you have any feedback as to the effectiveness of the Florida Health STAT system, database system, as a result of Hurricane Irma, did you get any feedback from providers as to whether they felt like it was working, not working?

A I don't know that there was a lot of feedback from providers other than I think some providers felt that they were contacted multiple times, that that could have been a little more efficient.

So there are always opportunities to improve the systems that we use, and one of the things that we've looked at with Florida Health STAT is a way to expand the ability for a greater variety of people to

use this system and, as I mentioned before, whenever you go through a situation like this, you are looking at lessons learned and ways to improve whatever systems that you use.

Q Any other opinions, have I got everything?

MR. ECENIA: There is certainly going to be another -- other depositions that are to be taken in this case, and I think depending on what is said and who says it, she certainly may have additional opinions, but I am not aware of any other at this time.

MR. SMITH: Then I have no other questions. Thank you.

MR. ECENIA: She'll read.

(Proceedings concluded at 12:45 p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF LEON)

I, the undersigned authority, certify that the above-named witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 4th day of December, 2017.

SANDRA L. NARGIZ, RMR, CRR, RPR
850-878-2221
snargiz@comcast.net
Commission #FF 090413
EXPIRES: APRIL 18TH, 2018

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, SANDRA L. NARGIZ, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 96 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 4th day of December, 2017.

SANDRA L. NARGIZ, RMR, CRR
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ERRATA SHEET

I have read the transcript of my deposition, pages 1 through 96 and hereby subscribe to same, including any corrections and/or amendments listed below.

DATE:_____ _____

MOLLY MCKINSTRY

PAGE/LINE	CORRECTION or AMENDMENT	REASON FOR CHANGE
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DATE OF DEPOSITION: 11-30-17 REPORTER: Sandi Nargiz

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