

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

Lisa Lee
3415 Grant Avenue
Grove City, OH 43123

Civil Action No. _____
Jury Demand Endorsed Hereon

And

Paula Lee
4714 Michael Place
Grove City, OH 43123

CLASS ACTION

And

Teresa Ruby
10501 York Road
Pataskala, Ohio 43062

MAGISTRATE JUDGE KING

And

Cheri Bowman
3349 Liv Moor
Columbus, Ohio 43227

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And

Carrie Best
3153 Portman Road
Columbus, Ohio 43232

Individually and as class
Representatives on behalf
Of those similarly situated,

Plaintiffs,

-VS-

The City of Columbus, Ohio
50 West Broad Street
Columbus, Ohio 43215

And

Mitchell Brown
City of Columbus
Director of Public Safety
50 West Broad Street
Columbus, Ohio 43215,

And

James Jackson
Chief, Columbus Division
Of Police
50 West Broad Street
Columbus, Ohio 43215

And

Gary Thatcher
Deputy Chief
50 West Broad Street
Columbus, Ohio 43215

And

Gary Dunlap
Commander
50 West Broad Street
Columbus, Ohio 43215

And

Larry Yates
Lieutenant
50 West Broad Street
Columbus, Ohio 43215

And

Frances Gramlich
Lieutenant
50 West Broad Street
Columbus, Ohio 43215

And

Mark Valentino
Sergeant
50 West Broad Street
Columbus, Ohio 43215,

Defendants.

**COMPLAINT FOR CLASS AND INDIVIDUAL RELIEF AND COMPLAINT
FOR DECLARATORY JUDGMENT**

I. INTRODUCTION, JURISDICTION

1. At all times pertinent hereto, Plaintiffs were employees of the Defendant The City of Columbus, Ohio [hereafter "The City"], assigned to the Division of Police radio room and Plaintiffs Bowman and Best are still so employed and assigned;

2. At all times pertinent hereto, the individual Defendants were in the chain of command over Plaintiffs. Their actions and omissions were willful and wanton, though authorized by, and within the scope and course of their employment with The City;

3. This Complaint seeks relief for violations of federal law, specifically, the Rehabilitation Act of 1973, as amended, 29 U.S.C. §790, *et. seq.*; the Family & Medical Leave Act, 29 U.S.C. 2601, *et. seq.*; the First, Fifth and Fourteenth Amendments to the Constitution of the United States through 42 U.S.C. §1983; and Ohio law;

4. Jurisdiction over the federal law violation Claims is proper under 28 U.S.C. §1331. Pendent jurisdiction of the state law claims is proper under 28 U.S.C. §1367;

5. Venue is proper in this Court under 28 U.S.C. §1391;

II. CLASS ALLEGATIONS UNDER THE REHABILITATION ACT

6. Plaintiffs reallege Paragraphs 1 through 5 as if fully set forth herein;

7. Before 2004, Defendants, excepting Defendant Valentino, promulgated and put into execution Division Directive 3.07(G)2.b.3 [“The Directive”];

8. The Directive provides, in part, that upon return from absence due to illness or injury, a division employee must obtain from his or her health care provider a document, signed by the provider, which must include a description of the nature of the medical condition which caused the employee to be absent;

9. Defendants, from at least 2004 to present, implement The Directive by requiring the employee to deliver the document to the direct supervisor in the chain of command;

10. Defendants, from at least 2004 to the present, enforce compliance with The Directive by refusing to return any employee to work whose document does not provide the information, by charging the employee with unexcused absences and by disciplining the employee by suspension and termination;

11. To Plaintiffs’ knowledge and belief, The Directive, its implementation and enforcement, apply to all members of the Division of Police, numbering hundreds of employees;

12. Further, beginning in or around 2003, Defendants, with the exception of Defendant Valentino, began implementing a “Sick Leave Abuse” Policy and procedure;

13. Under the policy, employees whose absences for illness or injury met certain conditions were (1) required to provide documentation stating the medical conditions warranting every absence and (2) were subject to monitoring by members of the chain of command;

14. The conditions in the policy triggering the sick leave abuser designation do not distinguish between employees whose medical conditions legitimately require them to be off work, and employees who are taking time fraudulently;

15. The Defendants apply the sick leave abuse policy to individuals taking approved leaves under the Family & Medical Leave Act;

16. Section 794(a) of the Rehabilitation Act ["The Act"], provides, in part, that no employee of an employer receiving federal funds shall be subject to discrimination on the basis of disability;

17. The City is an entity covered by The Act;

18. The Act further provides that the standards to be applied by the Courts in construing the Act shall be the substantive standards of Title I ["employment"] of the Americans with Disabilities Act, 29 U.S.C. §12001, *et. seq.* ["The ADA"];

19. Subsection (d)(1) of §12112 of the ADA prohibits covered employers from discrimination in certain medical inquiries, which, except in specific circumstances set out by the ADA, will tend to elicit information about a possible disability;

20. Subsection 12112(d)(4) provides, in part, that any medical information collected by the employer from a medical inquiry shall be segregated and treated as a confidential medical record;

21. Supervisory personnel in the employee's chain of command are not authorized by the statute to have access to confidential medical information;

22. The Directive, and the Sick Leave Abuse policy, and the implementation thereof, violates the prohibitions of the Act in that the demand for a description of the

nature of the medical condition of the returning employee constitutes a prohibited medical inquiry;

23. Further, the requirement that the medical information be disclosed to those within the chain of command is a further violation of the Act;

24. All the individual Plaintiffs herein were subject to The Directive and the Sick Leave Abuse Policy, and, upon returning from absence, repeatedly required to disclose confidential medical information to unauthorized personnel by the Defendants' implementation and enforcement of the Directive;

25. Plaintiffs assert the existence of a class of employees composed of all Division employees who, from 2004 to present, have been required to disclose confidential medical information pursuant to the Defendants' implementation and enforcement of the Directive and the Sick Leave Abuse Policy;

26. Plaintiffs assert that the class is so numerous that joinder of all members is impractical;

27. There are questions of law and fact common to all members of the class;

28. The claims of Plaintiffs are typical of the class claims;

29. Plaintiffs will fairly and adequately protect the interests of the class;

30. A class action should be maintained in this case because (1) separate actions by individual members of the class would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants, and (2) the Defendants have acted on grounds generally applicable to each member of the class, therefore making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole;

**III. CLASS ALLEGATIONS: 42 U.S.C. §1983: FIRST, FIFTH AND
FOURTEENTH AMENDMENT VIOLATIONS**

31. Plaintiffs reallege Paragraphs 1 through 30 as if fully set forth herein;

32. Information concerning a citizen's medical condition is among the most intimate, sensitive and potentially harmful of any type of personally-identifiable information;

33. A citizen's medical records and medical condition is protected by the privacy provisions of the First and Fifth Amendments to the Constitution of the United States, and violation of that protected status by an instrumentality of government is actionable under 42 U.S.C. §1983;

34. Further, Defendants create public records designating employees as sick leave abusers, and disclose such information to prospective employers;

35. Defendants deny those employees with legitimate medical conditions, and those on approved Family & Medical Leave Act leaves due process when it designates them sick leave abusers, created public records so designating the employees, and publicized such information to prospective employers and others;

36. The implementation and enforcement of the Directive and the Sick Leave Abuse Policy by these Defendants, excepting Defendant Valentino, was and is a violation of the rights of Plaintiffs and all employees of the Division subjected to it;

37. Plaintiffs assert that there exists a class of employees of the Division similarly situated composed of all Division employees who, from 2004 to present, have been required to disclose confidential medical information pursuant to the Defendants' implementation and enforcement of the Directive and the Policy;

38. Plaintiffs assert that the class is so numerous that joinder of all members is impractical;

39. There are questions of law and fact common to all members of the class;

40. The claims of Plaintiffs are typical of the class claims;

41. Plaintiffs will fairly and adequately protect the interests of the class;

42. A class action should be maintained in this case because (1) separate actions by individual members of the class would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants, and (2) the Defendant have acted on grounds generally applicable to each member of the class, therefore making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole;

IV. INDIVIDUAL CLAIMS: LISA LEE

A. FIRST INDIVIDUAL CLAIM: FMLA VIOLATIONS

43. Plaintiffs reallege Paragraphs 1 through 42 as if fully set forth herein;

44. This Claim is brought pursuant to 29 U.S.C. §2617(1); to vindicate rights guaranteed Plaintiff under §2615(a) and §2615(b) of the United States Code;

45. At all times pertinent hereto, The City was a qualifying "employer" under §2611(4)(A)(i);

46. At all times pertinent hereto, Plaintiff was an "eligible employee" as that term is defined under §2611(2)(A);

47. The claims for relief are brought pursuant to 29 U.S.C. §2617(a)(2)(B);

48. 29 U.S.C. §2313 provides for certification of the health care provider of the employee's need for leave of absence for a serious health condition;

49. §2613(c) provides the vehicle for the employer's determination of the adequacy and validity of the issuing health care provider's certification, and specifically provides that if validity is doubted, the lawful course for the employer to follow is to obtain a second opinion from a health care provider not regularly employed by the employer;

50. 29 C.F.R. §825.307(a) elaborates on the employer's option, stating that the employer's health care provider may contact the employee's health care provider, "for purposes of clarification and authenticity of the medical certification;"

51. 29 U.S.C. §2613(e) provides that an employer can "require that the eligible employee obtain subsequent recertifications on a reasonable basis;"

52. 29 C.F.R. §825.308(b)(1), which augments §2613(e), provides, in part, that "[I]f the minimum duration of the period of incapacity on a certification furnished by the health care provider is more than 30 days, the employer may not request recertification until that minimum period has passed...." Under the regulation, the employer may only disregard the minimum period of certification if fact-specific changes in the conditions of the leave occur;

53. Under the statutory and regulatory scheme, certification of a need for intermittent leave for a permanent, chronic condition, in the absence of circumstances set out in §825.308(c), must be granted for the full 12 month period available under 29 U.S.C. §2612(b)(1);

54. In 2003, Plaintiff was diagnosed with a serious health condition. Her health care provider concluded that her condition was permanent;

55. Beginning in 2003, Plaintiff applied for, and was approved for, FMLA intermittent leave for this serious health condition;

56. In or around 2004, Defendants the City, Jackson and Dunlap adopted the policy and practice of requiring employees whose health care providers certified were suffering from long term, chronic serious health conditions requiring intermittent leave to recertify intermittent leave every 30 days without consideration to the prerequisites for requiring recertification set out in 825.308(c);

57. Beginning in or around 2003, Defendants the City, Jackson and Dunlap adopted a practice and policy of listing individuals such as Plaintiff in a “sick leave abuse” category, and including approved FMLA leaves within that category;

58. Defendants’ policy, in requiring recertification every 30 days, interfered with Plaintiff’s rights under the FMLA, and violated §2315(a). Defendants’ policy of categorizing Plaintiff as a “sick leave abuser” also interfered with Plaintiff’s rights under §2315(a);

59. Beginning in or around April, 2005, Defendants began reporting performance deficiencies in Plaintiff’s work because she was taking FMLA approved leaves;

60. The actions described above, and others, were taken by Defendants with the purpose of severing Plaintiff’s employment because of her serious health condition and need to take FMLA qualifying leave;

61. On or about May 1, 2006, Plaintiff was constructively discharged by Defendants;

62. Defendants' termination of Plaintiff was in violation of the FMLA and interfered with her rights under the FMLA under §2615(a);

63. Defendants' termination of Plaintiff was willful and malicious;

64. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future;

B. SECOND INDIVIDUAL CLAIM: FMLA INTERFERENCE IN PROSPECTIVE EMPLOYMENT

65. Plaintiffs reallege Paragraphs 1 through 64 as if fully set forth herein;

66. Following her termination, Plaintiff Lisa Lee sought employment at, among other employers, the Ohio State Highway Patrol;

67. On or around January 12, 2007, Defendants the City, Jackson, Dunlap and Graumlich reported to that agency that Plaintiff left The City's employ not in good standing because of "excessive abuse of sick leave and FMLA";

68. As a direct and proximate result of the report, Plaintiff was denied employment with the Ohio State Highway Patrol;

69. The report was made willfully and maliciously, and was intended to, and did, prevent Plaintiff from obtaining gainful employment;

70. The report both interfered with Plaintiff's rights under the FMLA and was taken in retaliation for Plaintiff having opposed the unlawful practices described above;

71. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future;

C. THIRD INDIVIDUAL CLAIM: CONSTITUTIONAL VIOLATION: DUE PROCESS

72. Plaintiffs reallege Paragraphs 1 through 71 as if fully set forth herein;

73. The actions taken by the individual named Defendants, described above, were taken under color of law and in conformance with the policy, practice and custom of The City;

74. This Claim is brought pursuant to 42 U.S.C. §1983 to vindicate rights under the Fifth and Fourteenth Amendments to the Constitution;

75. While employed by The City, Plaintiff Lisa Lee enjoyed a right under the collective bargaining agreement to have due process in the event the Defendants contemplated adverse employment action against her;

76. In April, 2006, Defendants intended to discipline Plaintiff for alleged “sick leave abuse” and attendance issues by terminating her employment;

77. In April, 2006, Defendants and other agents of The City lied to Plaintiff, informing her that if she resigned, she would leave The City under good standing, but if she chose to come back to work after her last leave of absence, she would be subject to termination. Plaintiff was informed that if she returned, Defendant Dunlap would continue to refuse her requests until he could terminate her;

78. Relying upon the representations of the Defendants, Plaintiff submitted a letter of resignation;

79. Notwithstanding the promises made, Defendants created records that identified Plaintiff as an abuser of sick leave and designated her termination in bad standing;

80. Under the Fifth and Fourteenth Amendments, Plaintiff was entitled to due process before the state could impose on her the designations identified above;

81. Plaintiff was denied due process;

82. As a direct and proximate result, Plaintiff has suffered injury to her property rights under the contract and to her profession that she is unemployable in that profession;

83. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

D. FOURTH INDIVIDUAL CLAIM: LIBERTY INTEREST CONSTITUTIONAL VIOLATION

84. Plaintiffs reallege Paragraphs 1 through 83 as if fully set forth herein;

85. This Claim is brought to vindicate Plaintiff Lisa Lee's right to liberty under the Fifth and Fourteenth Amendments;

86. Defendants' actions, in constructively discharging Plaintiff and making public record which impairs her from working in her profession has deprived her of liberty without due process;

87. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

E. FIFTH INDIVIDUAL CLAIM: FIRST AMENDMENT RETALIATION

88. Plaintiffs reallege Paragraphs 1 through 87 as though fully set forth herein;

89. This Claim is brought pursuant to the First and Fourteenth Amendment to vindicate Plaintiff Lisa Lee's right of free expression;

90. When Defendants began abusing Plaintiff's rights under the FMLA, and under the Rehabilitation Act, she contacted, among others, the United States Department of Labor and brought to that agency's attention the violations of law occurring in The City;

91. After making those complaints, Plaintiff was approached by others who had suffered abuses of rights under the Defendants' Directive and Sick Leave Abuse policies as well as FMLA and she then brought those abuses to the agency's attention.

92. Agents of the Department of Labor contacted the Defendants and made known Plaintiff's concerns regarding the policy and practices;

93. Defendants retaliated against Plaintiff, by, among other things, lying to her regarding her status with The City, constructively discharging her, and placing false and defamatory material in her public file;

94. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

F. SIXTH INDIVIDUAL CLAIM: DISABILITY DISCRIMINATION

95. Plaintiffs reallege Paragraphs 1 through 94 as if fully set forth herein;

96. This Claim is brought pursuant to The Rehabilitation Act and R.C. 4112.99 to vindicate rights guaranteed under R.C. 4112.02(A);

97. At all times pertinent hereto, Plaintiff was a person with a disability as that term is defined by the Act and R.C. 4112.01(A)(13);

98. Defendants discriminated against Plaintiff, in violation of §794 and R.C. 4112.99, when they, among other acts, denied her reasonable accommodation, and constructively discharged her;

99. The discriminatory conduct was intentional and malicious;

100. As a direct and proximate result, Plaintiff has lost income and benefits, suffered extreme emotional distress, humiliation and loss of enjoyment of life, and will continue to experience such losses in the future;

G. SEVENTH INDIVIDUAL CLAIM: RETALIATION

101. Plaintiffs reallege Paragraphs 1 through 100 as if fully set forth herein;

102. This Claim is brought pursuant to The Rehabilitation Act and R.C. 4112.99, to vindicate rights under R.C. 4112.02(I);

103. Defendants retaliated against Plaintiff for having opposed what she reasonably believed to be conduct made unlawful by the Act and by R.C. 4112.02(A);

104. The retaliation was intentional and malicious;

105. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

H. EIGHTH INDIVIDUAL CLAIM: DEFAMATION

106. Plaintiffs reallege Paragraphs 1 through 105 as if fully set forth herein;

107. Defendants Jackson, Dunlap and Graumlich defamed Plaintiff Lisa Lee when they publicized false allegations of “sick leave abuse” and abuse of the FMLA. Defendants’ statements were *per se* defamatory, in that they accused her of a crime, theft, and of conduct that directly injured her in her occupation and profession;

108. Defendants’ conduct was willful, wanton and intentional;

109. As a direct and proximate result, Plaintiff has lost income and benefits, suffered extreme emotional distress, humiliation and loss of enjoyment of life, and will continue to experience such losses in the future;

V. INDIVIDUAL CLAIMS: PAULA LEE

A. FACTS

110. Plaintiffs reallege Paragraphs 1 through 109 as if fully set forth herein;

111. Plaintiff Paula Lee was hired by Defendant City of Columbus on May 7, 1997;

112. From childhood, Plaintiff suffered from intermittent episodes of migraine headaches;

113. Before December, 2003, Plaintiff had received approval of Defendants for intermittent leave under the FMLA;

114. Beginning in December, 2003, Plaintiff suffered migraine episodes of increasing frequency and severity;

115. As a result of the increased incidents, Plaintiff began to reduce her voluntary overtime;

116. Defendants began assigning Plaintiff to mandatory overtime pursuant to its policy, which included demands to return to work for overtime without sufficient rest to recover from the previous work periods;

117. Plaintiff, as a result, was required to use more and more FMLA leave. On August 19, 2004, Defendant Dunlap issued an order that those who had an "FMLA approved disability" were required to work overtime and that any mark off for FMLA would be charged against the employee's allotted FMLA leave time;

118. By 2005, Plaintiff had exhausted her intermittent FMLA leave;

119. Plaintiff was placed by Defendants on the "sick leave abuse" list for absences caused by her FMLA-qualifying condition;

120. By 2005, Plaintiff's serious health condition was characterized by multiple weekly episodes of cluster migraine headaches, accompanied by hypertension, vascular disease, osteoarthritis, obesity, situational depression, and chronic venous insufficiency of the left leg;

121. Plaintiff repeatedly sought accommodation for her disabilities from Defendants. The requests included, among others, two letters from her treating physicians dated November 3, 2005 and June 9, 2006, in which the doctor sought accommodation of no overtime, stating the imposition of mandatory overtime "has severely affected my ability to provide her with relief from the pain which she suffers....;"

122. Defendants ignored Plaintiff's requests for accommodations;

123. Defendants began to subject Plaintiff to disciplinary actions for absences caused by her serious health conditions;

124. On June 20, 2006, Plaintiff was issued a suspension of 10 days for absences caused solely by the serious health conditions;

125. Defendants informed Plaintiff that she would continue to be subject to increasing discipline if she failed to work the mandatory overtime, such discipline up to and including termination;

126. On August 31, 2006, Plaintiff was terminated by Defendants;

**B. FIRST INDIVIDUAL CLAIM: DISABILITY DISCRIMINATION;
FAILURE TO ACCOMMODATE AND TERMINATION**

127. Plaintiffs reallege Paragraphs 1 through 126 as if fully set forth herein;

128. This Claim is brought pursuant to The Rehabilitation Act and R.C. 4112.99 to vindicate rights guaranteed under R.C. 4112.02(A);

129. At all times pertinent hereto, Plaintiff Paula Lee was a person with a disability as that term is defined by the Act and R.C. 4112.01(A)(13);

130. Defendants discriminated against Plaintiff, in violation of §794 and R.C. 4112.99, when they, among other acts, denied her reasonable accommodation, and constructively discharged her;

131. The discriminatory conduct was intentional and malicious;

132. As a direct and proximate result, Plaintiff has lost income and benefits, suffered extreme emotional distress, humiliation and loss of enjoyment of life, and will continue to experience such losses in the future;

C. SECOND INDIVIDUAL CLAIM: RETALIATION

133. Plaintiffs reallege Paragraphs 1 through 132 as if fully set forth herein;

134. This Claim is brought pursuant to The Rehabilitation Act and R.C. 4112.99, to vindicate rights under R.C. 4112.02(I);

135. Defendants retaliated against Plaintiff for having opposed what she reasonably believed to be conduct made unlawful by the Act and by R.C. 4112.02(A);

136. The retaliation was intentional and malicious;

137. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

D. FOURTH INDIVIDUAL CLAIM: LIBERTY INTEREST CONSTITUTIONAL VIOLATION

138. Plaintiffs reallege Paragraphs 1 through 137 as if fully set forth herein;

139. This Claim is brought to vindicate Plaintiff Paula Lee's right to liberty under the Fifth and Fourteenth Amendments;

140. Defendants' actions, in constructively discharging Plaintiff and making public record which impairs her from working in her profession has deprived her of liberty without due process;

141. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

VI. INDIVIDUAL CLAIMS: TERESA RUBY

A. FACTS

142. Plaintiffs reallege paragraphs 1 through 141 as if fully set forth herein;

143. Plaintiff was hired as a Communications Technician on March 3, 1991, and assigned to the Division of Police radio room;

144. During 2003, Plaintiff began to experience symptoms of sleep deprivation, anxiety and stress, contributed to by having to work the assigned mandatory overtime schedule set up by Defendants;

145. During the year 2004, Plaintiff's health care provider wrote requests to the City to reduce Plaintiff's hours of work to accommodate her. Defendants ignored the requests;

146. Beginning in December, 2004, Plaintiff sought approval of the City for FMLA intermittent leave because of her medical condition;

147. Plaintiff was placed by the City on the "sick leave abuse" list because of absences caused by her medical condition;

148. Through June, 2005, the Defendants refused to accept Plaintiff's applications, and her health care providers' certifications, stating that the information provided was "insufficient." The Defendants obstructed Plaintiff's efforts to obtain approval, including demands that she commence the certification process again, even though Plaintiff had provided the information that had been demanded. Further, the City continuously delayed responding to her requests and questions;

149. In 2005, Plaintiff contacted the United States Department of Labor, complaining about the Defendants' treatment of her FMLA requests. An agent of the DOL contacted the City;

150. On November 3, 2005, Plaintiff was issued discipline for "insubordination" arising from her repeatedly opposing Defendants' Directive requiring her to disclose her medical condition to the chain of command. Plaintiff was assessed a total of thirty-one (31) days' suspension from work;

151. On November 11, 2005, Plaintiff submitted to a psychological examination by Ronald Fathman, Ph.D., as required by the City. At around the same time, unknown to Plaintiff, Defendants retained Richard Clary, M.D. to conduct a second review of Plaintiff's mental and emotional condition. Both examiners were directed by Defendants to render opinions concerning Plaintiff's mental and emotional condition in February, 2005, and to opine upon her qualifications for leave under the FMLA;

152. Subsequently, Defendants refused to approve FMLA leave;

153. Plaintiff was constructively discharged on January 6, 2006;

B. FIRST INDIVIDUAL CLAIM: FMLA INTERFERENCE AND DISCRIMINATION

154. Plaintiffs reallege Paragraphs 1 through 153 as if fully set forth herein;

155. This Claim is brought pursuant to 29 U.S.C. §2617(1); to vindicate rights guaranteed Plaintiff Teresa Ruby under §2615(a) and §2615(b) of the United States Code;

156. At all times pertinent hereto, The City was a qualifying "employer" under §2611(4)(A)(i);

157. At all times pertinent hereto, Plaintiff was an "eligible employee" as that term is defined under §2611(2)(A);

158. The claims for relief are brought pursuant to 29 U.S.C. §2617(a)(2)(B);

159. 29 U.S.C. §2313 provides for certification of the health care provider of the employee's need for leave of absence for a serious health condition;

160. §2613(c) provides the vehicle for the employer's determination of the adequacy and validity of the issuing health care provider's certification, and specifically provides that if validity is doubted, the lawful course for the employer to follow is to

obtain a second opinion from a health care provider not regularly employed by the employer;

161. §2613(c)(2) provides that any health care providers so retained by the employer shall not be employed on a regular basis by the employer;

162. 29 C.F.R. §825.307(a) provides that the employer who requires clarification of a certification may, with the employee's permission, retain an independent health care provider to communicate with the employee's certifying doctor to obtain clarification. That health care provider may not be regularly employed by the employer;

163. Defendants' conduct, in obstructing the FMLA approval process, in demanding that Plaintiff commenced the process a second time, in retaining two examiners to review Plaintiff's medical condition, and in employing examiners the City regularly employs to conduct examinations and reviews of employee's mental/emotional conditions, all violated §2315(a), and constituted interference with Plaintiff's efforts to certify her condition;

164. Further, Defendants' conduct constituted actions prohibited under §2315(b);

165. Defendants' conduct was intentional and malicious;

166. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future;

C. SECOND INDIVIDUAL CLAIM: RETALIATION IN VIOLATION OF THE REHABILITATION ACT

167. Plaintiffs reallege Paragraphs 1 through 166 as if fully set forth herein;

168. This Claim is brought by Plaintiff Teresa Ruby to vindicate rights under §794 of the Act;

169. Defendants retaliated against Plaintiff because she opposed the unlawful policy of requiring disclosure of her medical condition to unauthorized persons;

170. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

D. THIRD INDIVIDUAL CLAIM: CONSTITUTIONAL VIOLATION

171. Plaintiffs reallege Paragraphs 1 through 170 as if fully set forth herein;

172. This Claim is brought by Plaintiff Teresa Ruby pursuant to 42 U.S.C. §1983 to vindicate rights to due process and privacy guaranteed her under the First, Fifth and Fourteen Amendments of the Constitution of the United States;

173. Defendants violated Plaintiff's First Amendment rights in retaliating against her for opposing what she reasonable believed to be the unlawful practice of requiring disclosure of private medical information;

174. Defendants denied Plaintiff due process in creating a hostile, abusive and intimidating work environment and constructively discharging her after she made known her opposition to the unlawful procedures;

175. As a direct and proximate result, Plaintiff has suffered loss of income and incurred medical and other expense, lost benefits, and will incur such additional losses in the future; has suffered permanent loss of earning capacity and has and will endure extreme emotional distress, humiliation and loss of reputation;

VII. CLAIM FOR DECLARATORY RELIEF

176. Plaintiffs reallege Paragraphs 1 through 175 as if fully set forth herein;

177. This Claim is brought pursuant to 28 U.S.C. §2201, which provides, in part, that this Court may declare the rights and legal relations of any interested party seeking such relief, whether or not further relief is or could be sought;

178. Defendants' maintenance of the policies and practices under the Directive have violated, and, if allowed to continue, will violate Plaintiffs' rights if not declared to be in violation of the law and halted by this Court;

WHEREFORE, Plaintiffs demand judgment of Defendants, jointly and severally, as follows:

1. An Order pursuant to Civil Rule 23(c), made as soon as practicable after discovery directed to the issue, certifying the class under The First Class Claim, The Rehabilitation Act and the class under The Second Class Claim, the Constitutional Claims;
2. A declaration, under 28 U.S.C. §2201, that Defendants are prohibited from enforcing the policies or following the practices set forth above with regard to Directive 3.07(G)2.b.3, as they are in violation of The Rehabilitation Act and the Constitution;
3. An Order creating a common fund from which to pay compensation to all class members and appointing a special master to administer such payments;
4. An award of compensation to Plaintiffs and to all members of the classes, in such amounts as the jury deems just;
5. Equitable relief, under §2617(a)(1)(B), including, but not limited to (a) injunctive relief prohibiting Defendant from enforcing the policies and following the

practices set forth above relating to treatment of FMLA qualifying absences as “sick leave abuse”, (b) redaction from the records of Plaintiffs disciplinary actions taken against them in violation of the FMLA, (c) reinstatement and restoration of benefits or pay, if any, lost because of disciplinary actions taken by Defendants in violation of the FMLA;

6. For Plaintiff Lisa Lee, an award of back pay, front pay, benefits lost, and liquidated damages under the FMLA; an award of compensatory and punitive damages for the constitutional and state law violations in the amount the jury deems just;

7. For Plaintiff Paula Lee, an award of compensatory and punitive damages in such amounts as the jury deems just;

8. For Plaintiff Teresa Ruby, an award of back pay, front pay, benefits lost, and liquidated damages under the FMLA; an award of compensatory and punitive damages for the constitutional violations in the amount the jury deems just;

9. An award of attorney fees, interest and costs;


10. Under the FMLA Claims, such monetary damages as proved, and liquidated damages; pursuant to §2617(a)(3), 42 U.S.C. §1988 and state law;

11. Such other relief as the Court deems just.

JURY DEMAND

Plaintiff demands trial by jury of twelve (12) persons as to all issues.

Respectfully submitted,



Mike Moore

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LISA LEE, <i>et al.</i>	:	
	:	
Plaintiffs,	:	Case No. 2:07 cv 1230
	:	
v.	:	JUDGE FROST
	:	
CITY OF COLUMBUS, <i>et al.</i>	:	MAGISTRATE JUDGE KING
	:	
Defendants.	:	

NOTICE OF FILING DEPOSITION TRANSCRIPT

Defendants, by and through counsel, hereby give notice that the **deposition transcript of Teresa Ruby**, conducted on March 11, 2009, is being filed electronically.

Respectfully submitted,

**CITY OF COLUMBUS, DEPARTMENT OF LAW
RICHARD C. PFEIFER JR., CITY ATTORNEY**

/s/ Pamela J. Gordon
Pamela J. Gordon (0030794)
Assistant City Attorney
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Columbus, Ohio 43215-9013
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Attorney for defendants

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing sent via First Class U.S. Mail, postage prepaid, and/or electronically to Michael W. DeWitt and Michael Garth Moore, 585 South Front St., Suite 250, Columbus, Ohio, 43215, counsel for Plaintiffs this 7th day of May, 2009.

/s/ Pamela J. Gordon

Pamela J. Gordon

Assistant City Attorney

PJG:swb

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

LISA LEE, INDIVIDUALLY AND :
AS CLASS REPRESENTATIVES ON :
BEHALF OF THOSE SIMILARLY :
SITUATED, ET AL., :
Plaintiffs, :
vs. : Case No. 2:07 CV 1230
THE CITY OF COLUMBUS, OHIO, :
ET AL., :
Defendants. :

DEPOSITION OF TERESA RUBY

Wednesday, March 11, 2009
Eleven o'clock a.m.
City Hall
90 West Broad Street
Columbus, Ohio 43215

Reported by:

Laura S. Benton

LAURA BENTON COURT REPORTING
6057 ARRAN COURT
DUBLIN, OHIO 43017
(614) 439-3898

Page 2

1 APPEARANCES:
2 Michael Moore and Vivian Fisher, Attorney
3 at Law
4 Chorpenning, Good & Pandora, LPA
5 585 South Front Street
6 Suite 250
7 Columbus, Ohio 43215
8
9 On behalf of the Plaintiffs,
10
11 Pamela J. Gordon and Paula Lloyd, Attorney
12 at Law
13 City of Columbus
14 90 West Broad Street
15 Columbus, Ohio 43215
16 On behalf of the Defendants.
17 ---
18
19
20
21
22
23
24

Page 4

1 PROCEEDINGS
2 ---
3 Teresa Ruby
4 being by me first duly sworn, as hereinafter
5 certified, testifies and says as follows:
6 EXAMINATION
7 BY MS. GORDON:
8 Q Good morning.
9 A Good morning.
10 Q My name is Pam Gordon. I'm an assistant city
11 attorney.
12 Would you state your name for the record,
13 please.
14 A Teresa Ruby.
15 Q Have you had your deposition taken before?
16 A No.
17 Q You are under oath. I'm going to ask you some
18 questions. You are obligated to answer my questions
19 truthfully. If you don't understand a question I ask,
20 let me know. If you answer one of my questions, I'll
21 assume you understood it.
22 A Okay.
23 Q If you need to take a break, let me know. I
24 would probably prefer that we finish the question and

Page 3

1 WEDNESDAY MORNING SESSION
2 March 11, 2009
3 11:00 a.m.
4 ---
5 STIPULATIONS
6 ---
7 It is stipulated by and between counsel for
8 the respective parties herein that this Deposition of
9 Teresa Ruby, a Plaintiff herein, called
10 by the Defendants under the statute, may be
11 taken at this time and reduced to writing in stenotype
12 by the Notary, whose notes may thereafter be transcribed
13 out of the presence of the witness; that proof of the
14 official character and qualifications of the Notary is
15 waived.
16 ---
17
18
19
20
21
22
23
24

Page 5

1 answer before we do that. You are going to have to
2 answer yes or no or some verbal indication so the court
3 reporter can get the information down. Shakes of the
4 head and nods will not be sufficient. I'll try not to
5 talk over you and interrupt you; I'll apologize if I do.
6 Can you tell me what your address is,
7 please.
8 A 10501 York Road, Pataskaka, Ohio.
9 Q How long have you lived there?
10 A Sixteen years.
11 Q Okay. Does anybody reside in the home with
12 you?
13 A Yes; my husband.
14 Q What his name, please?
15 A Ronald Ruby.
16 Q How long have you been married?
17 A Twenty-eight years.
18 Q Okay. And what does Mr. Ruby do for a living?
19 A Construction.
20 Q Do you know what company he works for?
21 A Lincoln Construction.
22 Q How long has he been there?
23 A Sixteen, 17 years.
24 Q You have some documents or a file folder in

Page 6

Page 8

1 front of you. What is that?

2 A Everything that you have: The exhibits; the

3 diary. That's all they are; the exhibits and the diary.

4 Q Do you mind if I look through it real quick?

5 A Nope.

6 MS. GORDON: Can we just take a quick break.

7 I just want to make sure that I have -- your

8 version seems to be thicker than mine.

9 (Pause in Proceedings.)

10 BY MS. GORDON:

11 Q And I also see that you have some handwritten

12 materials there. What is that, please?

13 A Just constructive discharge, reasons for the

14 intolerable conditions I had experienced up there.

15 Q Okay. And when did you create this document?

16 A I would have to say I have always had it. I

17 just brought it along.

18 Q This has not been previously produced.

19 MR. MOORE: Are these the notes you made for

20 this deposition?

21 THE WITNESS: Uh-huh.

22 MR. MOORE: Explain that to Ms. Gordon.

23 THE WITNESS: I have them in the side notes.

24 I just made a copy to bring here.

1 A No.

2 Q So just something related to this?

3 A Yes.

4 Q Okay. Was this -- did you keep a notebook of

5 notes?

6 A Yes. My diary; just in there.

7 Q I know there is something on a spiral pad,

8 looking at some of the exhibits you produced.

9 A Yes.

10 Q And there is something else that seems to be

11 on the same sort of paper as what you brought here

12 today. Is there anything else in that notebook?

13 A There is no separate notebook; no.

14 Q Have you produced all of the notes that you

15 have that pertain to any of the claims you are making to

16 your counsel?

17 A I believe so, yes.

18 Q Including any e-mails that you might have?

19 A Yes.

20 MS. GORDON: Can you make a copy of this?

21 MS. FISHER: We brought copies.

22 BY MS. GORDON:

23 Q Do you have any children?

24 A Yes.

Page 7

Page 9

1 BY MS. GORDON:

2 Q When did you create it?

3 A To bring here for the deposition.

4 Q When did he create it?

5 A As far as what date? Sunday.

6 Q You said you had always had it. So -- let the

7 record show the phone is ringing, and we are going to

8 ignore that.

9 I'm trying to figure out if you had it

10 for a couple of months.

11 A Not in a neat manner. Just like side notes.

12 Q Okay. Where are those side notes?

13 A Probably just at home.

14 Q Okay. Have you produced those to your

15 attorney?

16 A Probably not. I don't know, to be honest.

17 Q But they pertain to your reasons. We are

18 going to ask for a copy of the side notes.

19 MS. FISHER: Sure. If I may, I believe we

20 dropped Mike. If we can pick him back up.

21 (Pause in Proceedings.)

22 BY MS. GORDON:

23 Q Do you have other things that you consider to

24 be side notes?

1 Q Okay. And how old are your children?

2 A Twenty-three and 21.

3 Q Do they live with you?

4 A Yes, one does.

5 Q Which one?

6 A My 21-year-old.

7 Q And what does he or she do for a living?

8 A She's a college student.

9 Q And the 23-year-old, what does she or he do?

10 A She teaches; she's married.

11 Q Okay. Are you taking any medication today

12 that would impair your ability to recall correctly or

13 answer truthfully?

14 A No.

15 Q Are you taking any medication at all?

16 A Yes.

17 Q What are you taking?

18 A I currently am taking -- what am I taking? I

19 am taking something for my high cholesterol; Vitorin. I

20 take Pepcid AC, I believe. It's a prescription.

21 Q Okay. Anything else?

22 A No.

23 Q Okay.

24 A Vitamins.

3 (Pages 6 to 9)

Page 10	Page 12
<p>1 Q Have you ever been a plaintiff or a defendant 2 in another lawsuit? 3 A No. 4 Q Not at all? 5 A No. 6 Q Okay. Are you familiar with the case of 7 Yolanda Albaugh? 8 A No. 9 Q Do you know who Yolanda Albaugh is? 10 A No. 11 Q You don't recall that she was a communication 12 technician? 13 A No. 14 Q You don't recall that you were a plaintiff in 15 that lawsuit? 16 A No. 17 Q Okay. Have you ever sued the City before? 18 A No. 19 Q Have you sued anyone before? 20 A No. Does it count when you are part of a 21 class action suit that you don't initiate? Like Ricart, 22 the car dealership. I guess -- because I bought a car 23 from them, and -- I bought a car from them, and I filed 24 a class action. You just get a credit in the mail. Is</p>	<p>1 A I got married. 2 Q Did you work? 3 A Yes. 4 Q Can you tell me your employment history, then. 5 A With the years? 6 Q If you can. Just approximations; I won't hold 7 you to it. 8 A About 1979 I worked at Big Bear. I worked at 9 KMart -- I don't remember if it was before. I worked 10 at a little restaurant, I think, for a couple of months 11 called Cork and Cleaver sometime '79, '80, '81. 12 JCPenny. I worked for Premium Glass Company in -- maybe 13 1983 through 1985. Then I didn't return to work until 14 1990. I went back to JCPenny in '91. I worked for the 15 City of Columbus; public safety. 16 Q What did you do there? 17 A Police communications dispatcher through 2006. 18 Then I worked at The Ohio State University for 13 19 months. 20 Q What did you do at Ohio State? 21 A I'm trying to think of the title. I was -- it 22 was a clerk. They have another title for it. 23 Q What were your job duties at OSU? 24 A I worked at the dental clinic desk as a</p>
Page 11	Page 13
<p>1 that the same thing? 2 Q Uh-huh. 3 A Yes. My answer is yes, I guess. 4 Q Are you familiar with that process, with how 5 you get in class actions by opting in and out? 6 A Just by the mail I get. 7 Q Do you recall an attorney named Ruzicho? 8 A No. 9 Q Do you recall you ever paid him any money? 10 A No. 11 Q Can you give me your employment history. 12 Let's start with after high school -- 13 actually, let's do education; that might be easier. 14 Can you tell me your educational 15 background. 16 A I graduated from Reynoldsburg High School in 17 1978. I attended The Ohio State University for one year 18 immediately after that. 19 Q What did you study when you were at OSU? 20 A Just basic prep. 21 Q Did you graduate? 22 A No. 23 Q What did you do after you stopped going to 24 OSU?</p>	<p>1 receptionist/secretary. 2 Q Was that a full-time job? 3 A Yes, it was. 4 Q And just basically what were some of your 5 duties? 6 A Schedule appointments; schedule students to 7 the appointments; schedule students to instructors; 8 verify the students' treatment of the patient. 9 Q Okay. What were your work hours? 10 A 7:30 to 4:30. 11 Q Did you ever work any overtime? 12 A No. 13 Q And what was your salary there? 14 A Twelve at the most. When I left, I think I 15 was at \$13.40. 16 Q Did you get any sort of bonus or anything like 17 that? 18 A Not that I remember. 19 Q Did you use any sick leave while you worked at 20 OSU? 21 A Yes. 22 Q Do you recall the what the sick-leave policy 23 was at OSU? 24 A No.</p>

Page 14

1 Q Do you recall if you got a copy of the
 2 sick-leave policy?
 3 A Do I recall it, or did I get one?
 4 Q Uh-huh.
 5 A I don't remember. I would say probably.
 6 Q Okay. Do you know if they had a handbook, or
 7 was it unionized or anything like that?
 8 A No union.
 9 Q Was there a handbook?
 10 A Probably.
 11 Q Okay.
 12 A I don't have it, so --
 13 Q That was going to be my next question: Do you
 14 have a copy of it?
 15 A No.
 16 Q You don't recall any of the parameters of the
 17 sick-leave policy?
 18 A No.
 19 Q What did you do if you needed to call in sick?
 20 A Called my immediate supervisor.
 21 Q What did you tell your supervisor?
 22 A I was sick and not coming in that day.
 23 Q Did you ever give them the reason for being
 24 sick?

Page 15

1 A No.
 2 Q Never?
 3 MR. MOORE: I'll object. She answered the
 4 question.
 5 BY MS. GORDON:
 6 Q You can go ahead and answer again.
 7 Never gave them a reason for why you were
 8 sick?
 9 A No.
 10 Q And when did you leave OSU?
 11 A March of '07.
 12 Q Okay. Why did you leave?
 13 A I took another job.
 14 Q Okay. Were you looking for another job?
 15 A Yes.
 16 Q Why?
 17 A I didn't like the drive.
 18 Q I'm sorry?
 19 A I did not like the drive.
 20 Q From Pataskaka to OSU?
 21 A Yes. Or the parking. Or the pay.
 22 Q Where did you go?
 23 A The State of Ohio.
 24 Q What agency?

Page 16

1 A Taxation.
 2 Q What do you do there?
 3 A I'm a clerk.
 4 Q Can you describe for me your job duties.
 5 A I process tax returns.
 6 Q Anything else?
 7 A I Stamp them.
 8 Q Anything else?
 9 A I open mail.
 10 Q Anything else?
 11 A No; no.
 12 Q Is this a full-time position?
 13 A Yes.
 14 Q What are your work hours?
 15 A We have flex, but I work 6:30 to 3.
 16 Q Okay. Have you worked any overtime since you
 17 have been there?
 18 A Yes.
 19 Q Can you estimate for me how much overtime you
 20 have worked.
 21 A Maybe twelve hours.
 22 Q Since -- in your entire tenure, or --
 23 A Since I have been there; in my entire tenure.
 24 Q What is your salary at Taxation?

Page 17

1 A Right now, \$15.09 an hour.
 2 Q How long has it been that?
 3 A Seven months.
 4 Q What was it before, do you recall?
 5 A Fourteen dollars and eighty-nine cents.
 6 Q Are you a member of any bargaining unit?
 7 A AFSCME.
 8 Q I know there are lots of different locals. Do
 9 you know which one this is?
 10 A I think it's 11.
 11 Q Okay. Are you familiar with the sick-leave
 12 policies at the Department of Taxation?
 13 A Yes.
 14 Q Can you just basically describe them for me.
 15 A I call into my supervisor.
 16 Q What do you say?
 17 A I'm taking a sick day.
 18 Q Do you tell your supervisor why you are sick?
 19 A No.
 20 Q Do they have a written sick-leave policy?
 21 A Yes.
 22 Q Do you have access to that?
 23 A Yes.
 24 Q Okay. I would like you to produce that for

5 (Pages 14 to 17)

Page 18

1 me, please.

2 A Can I make a note of that?

3 MR. MOORE: Pam, if you have any specific
4 requests for production, please put it in a letter
5 and we will address it.

6 MS. GORDON: Okay.

7 BY MS. GORDON:

8 Q And other than work at the dental clinic at
9 OSU and then Department of Taxation, had you applied for
10 any other positions after you left Columbus Police
11 Division?

12 A Yes.

13 Q Can you tell me where else you applied.

14 A I'm not going to remember all of them.

15 Q That's fine.

16 A The Columbus City Schools.

17 Q What position did you apply for?

18 A Secretary.

19 Q Okay.

20 A BWC; Bureau of Worker's Comp.

21 Q What position did you apply for?

22 A Clerk. The Department of Agriculture;
23 secretary, clerk -- oh, maintenance.

24 Q Maintenance position at Agriculture?

Page 20

1 A I don't understand.

2 Q When I asked you were you working for OSU when
3 you were applying for these positions, you said some of
4 them. Was there a break in your employment, or why
5 wouldn't you have been working at OSU when you applied
6 for all of them?

7 A They were not all posted.

8 Q Some of these you applied for after you
9 started working at the Department of Taxation?

10 A Because of the openings.

11 Q Do you know why you -- what was the outcome of
12 some of these? Were you offered some positions?

13 A No.

14 Q Not offered any of these?

15 A I was offered a part-time job with Columbus
16 City Schools.

17 Q And you turned that down?

18 A It was part-time.

19 Q So you turned it down?

20 A I did.

21 Q Offered any of the rest of them?

22 A No.

23 Q Do you have any indication as to why you were
24 not offered any of the positions?

Page 19

1 A Yes.

2 Q Okay.

3 A Department of Transportation.

4 Q The state?

5 A Yes.

6 Q Okay.

7 A I believe it was an account clerk for that.

8 Several jobs within Taxation as researcher. I can't
9 remember the rest.

10 Q Okay. Were you working at OSU when you were
11 applying for these positions?

12 A Some of them.

13 Q Which ones, do you recall?

14 A Columbus City Schools; BWC.

15 Q Uh-huh.

16 A And maybe the Department of Agriculture.

17 Q You said "some of them." There was no break
18 between Columbus Police Division and OSU?

19 A No break.

20 Q Did you take a break between OSU and the
21 Department of Taxation?

22 A No.

23 Q Why only some of them were you working when
24 you applied for these positions?

Page 21

1 A No. Oh, I thought of another one. The City
2 of Columbus has that 311 rep position. I have applied
3 for that, and I have tried to inquire as to why I didn't
4 get it.

5 Q When did you apply for that one?

6 A Three separate times.

7 Q When?

8 A They have just been filled in the last two
9 years.

10 Q Did you have to take a civil service test for
11 that?

12 A Yes. I was on the list.

13 Q Do you know where you placed on the list?

14 MR. HENRY: Let her ask the entire question
15 before you answer.

16 BY MS. GORDON:

17 Q I think I have, and I think you have.

18 Do you know where you placed on the civil
19 service list?

20 A No.

21 Q Do you know if there have been any openings
22 for 311?

23 A Yes.

24 Q Okay. Do you know when those were available?

Page 22

Page 24

1 A I would have to check my records.
 2 Q Okay. What records do you have?
 3 A Where the supervisor or HR person, even -- not
 4 sure exactly who off the top of my head -- sent out the
 5 letter saying they had an opening. They were
 6 interviewing, I should say.
 7 Q Did you interview?
 8 A No.
 9 Q Do you have any idea how many people were on
 10 the list?
 11 A No.
 12 Q And you said you made inquiries as to why you
 13 were not selected; is that correct?
 14 A I left a couple of messages.
 15 Q With whom did you leave the messages?
 16 A I would have to check my records; I can't
 17 remember her name.
 18 Q What records do you have?
 19 A The letter; the 311 -- I'm not sure who the
 20 person was who sent it out.
 21 Q You had no response?
 22 A No.
 23 Q Have you applied for any law enforcement or
 24 dispatcher positions?

Page 23

1 A No.
 2 Q Why not?
 3 A I can't recall any openings.
 4 Q Do you look for some?
 5 A I check the State of Ohio Management System on
 6 a regular basis.
 7 Q Anyplace else that you check?
 8 A No.
 9 Q Other than -- strike that.
 10 Is that the only reason that you have not
 11 applied for any dispatcher positions, because you have
 12 not seen any openings?
 13 A I don't think I'm interested.
 14 Q Not interested in being a dispatcher?
 15 A I don't believe I am.
 16 Q When you were at the division radio room --
 17 A Okay.
 18 Q -- in 2005, what shift were you working, if
 19 you recall?
 20 A I'd say for the majority, first shift.
 21 Q Okay. What were those hours?
 22 A 6:30 a.m., 2:30 p.m.
 23 Q And were you ever a coach or trainer?
 24 A Yes.

1 Q Okay. When, if you recall?
 2 A I can't remember when I started. I'll say
 3 2000 through 2004, maybe.
 4 Q Obviously, you have reviewed the complaint
 5 that you filed, because you have a copy of it in front
 6 of you; correct?
 7 A Correct.
 8 Q I want to turn your attention -- you are a
 9 plaintiff in the class one, which is seeking damages; is
 10 that correct?
 11 A Yes.
 12 Q And I guess I'm trying to figure out what it
 13 is exactly that you are alleging.
 14 When it comes to the class, are you
 15 saying that you disclosed confidential medical
 16 information.
 17 A I was asked to.
 18 Q Did you disclose any?
 19 A When forced to.
 20 Q When were you forced to disclose confidential
 21 medical information?
 22 A I was sent home a number of times without pay
 23 and told not to return until I had a note.
 24 Q When was that?

Page 25

1 A I believe the first incident would be
 2 October '05. I would have to check my records for that.
 3 Q What records would you have that you would
 4 check?
 5 A Probably notes in here.
 6 Q In here?
 7 A Journal.
 8 Q A copy of your journal?
 9 A Uh-huh.
 10 Q October '05. Back up.
 11 When was the last time that you believe
 12 you were forced to give confidential medical
 13 information?
 14 A December of '05.
 15 Q Okay. And explain to me how you were forced
 16 to disclose it.
 17 A I was sent home without pay until I returned
 18 with the proper note.
 19 Q Okay. And you actually brought in a note that
 20 said what, if you recall?
 21 A To the best of my recollection, it would say,
 22 Teresa was seen in my office for a headache.
 23 MR. MOORE: You are not required to guess or
 24 speculate in this deposition. If you don't recall,

7 (Pages 22 to 25)

Page 26

1 tell her you don't recall; okay?

2 THE WITNESS: Okay.

3 BY MS. GORDON:

4 Q And what was confidential about a headache?

5 A It was still my medical information. Anything

6 would be just my right to privacy.

7 Q Anything would be?

8 A As far as medically related.

9 Q If you had a cold, do you think that would be

10 confidential?

11 A Yes.

12 Q If you had a broken arm?

13 A Yes, I do.

14 Q If you were pregnant, would that be

15 confidential?

16 A Yes.

17 Q A dentist appointment, would that be

18 confidential medical information?

19 MR. MOORE: I'll object. She's not required

20 to speculate as to what the extent of this is. If

21 you have an answer to that, fine; if you don't,

22 tell her you don't.

23 BY MS. GORDON:

24 Q I'm asking you: Would you consider the fact

Page 27

1 that you had a dentist appointment to be confidential?

2 MR. MOORE: I'll object. Unless you were

3 faced with the issue while you were there, you are

4 not obligated to speculate.

5 THE WITNESS: I would say I was not faced with

6 that situation.

7 BY MS. GORDON:

8 Q Were you faced with a situation where you ever

9 had a doctor's appointment?

10 A Yes.

11 Q Would you consider the fact -- just the fact

12 that you had a doctor's appointment to be confidential

13 medical information?

14 A I don't know.

15 Q You don't know?

16 A I don't know.

17 Q To whom did you disclose the fact that you had

18 a headache?

19 A To whom when? At which point?

20 Q Well, you have indicated there were two times

21 that you were forced, in your words, to disclose

22 confidential medical information.

23 MR. MOORE: Objection. That is not her

24 testimony. Second, she's not stated that it was

Page 28

1 only two times.

2 BY MS. GORDON:

3 Q Well, how many times was it, then?

4 MR. MOORE: If you know, Teresa.

5 THE WITNESS: How many times was I forced?

6 BY MS. GORDON:

7 Q How many times did you, in your view, disclose

8 confidential medical information?

9 A Almost every time I returned to work from a

10 sick mark-off.

11 Q Every time?

12 A Almost.

13 Q Do you know when this would have happened?

14 A No.

15 Q Do you have something that would help refresh

16 your recollection?

17 A Probably all of my grievances and disciplinary

18 charges.

19 Q What medical information were you disclosing?

20 MR. MOORE: Do you recall?

21 THE WITNESS: I'm not sure I understand what

22 you mean. The reason for my illness.

23 BY MS. GORDON:

24 Q What was it?

Page 29

1 MR. MOORE: If you recall each time.

2 THE WITNESS: I don't recall each time.

3 BY MS. GORDON:

4 Q Do you recall any time?

5 A A headache.

6 Q Anything else other than a headache?

7 A Stress-related headache.

8 Q Anything other than a stress-related headache?

9 A I don't recall.

10 Q Is there anything, again, that would refresh

11 your recollection?

12 A Again, referring back to the disciplinary

13 charges or the grievances I filed.

14 Q Okay. Would the grievances you filed include

15 the nature of the illness or the reason you were off?

16 A Probably.

17 Q Have you had a chance to review them since you

18 have them in front of you? Have you taken a look at the

19 information that you have in front of you?

20 A Today, no; in the past, yes.

21 Q And none of that sparks your memory today as

22 to what information you were disclosing, what medical

23 information you were disclosing?

24 A Nothing stood out. I can refer to them if you

Page 30	Page 32
<p>1 like.</p> <p>2 Q I'm just asking today.</p> <p>3 A No.</p> <p>4 Q So sitting here today, other than headache and</p> <p>5 stress-related headache, you cannot think of any other</p> <p>6 medical condition that you disclosed?</p> <p>7 A I don't recall.</p> <p>8 Q To whom did you disclose this information?</p> <p>9 A It would be to the information desk when I</p> <p>10 marked off.</p> <p>11 Q Anyone else?</p> <p>12 A The supervisor.</p> <p>13 Q Which supervisor?</p> <p>14 A Whoever was the duty supervisor at the time I</p> <p>15 called in; the supervisor at the time I came back.</p> <p>16 Q Who was your supervisor?</p> <p>17 A My supervisor -- it could be three. There</p> <p>18 was -- depending what shift I was on.</p> <p>19 Q Okay. When you were on the first shift.</p> <p>20 A Carolyn Griggs; Diana Quarles. We had a</p> <p>21 part-timer, Maggie Whitmoyer; and Ruth Crabtree.</p> <p>22 Q Anybody else that you disclosed information</p> <p>23 to?</p> <p>24 A Directly?</p>	<p>1 Q Did you keep a calendar for 2005?</p> <p>2 A Yes.</p> <p>3 Q You don't know if you still have it?</p> <p>4 A No.</p> <p>5 MS. GORDON: I'm going to ask that she look</p> <p>6 for the calendar.</p> <p>7 BY MS. GORDON:</p> <p>8 Q Did you keep a calendar for 2006?</p> <p>9 A Yes.</p> <p>10 Q Do you know if you still have that?</p> <p>11 A I'm sure I don't, but --</p> <p>12 Q Okay.</p> <p>13 A Again, look at least for January 2006.</p> <p>14 MR. MOORE: Again, Pam, if you put this in a</p> <p>15 letter, that's fine. We expect it to be in a</p> <p>16 letter so we have documentation in our hands as to</p> <p>17 what you have asked for.</p> <p>18 BY MS. GORDON:</p> <p>19 Q Other than the calendar and the journal, is</p> <p>20 there anything else where you kept a record of your</p> <p>21 mark-offs?</p> <p>22 A No.</p> <p>23 Q Are you claiming in the class portion of this</p> <p>24 lawsuit that you should not have to give a reason for</p>
Page 31	Page 33
<p>1 Q Sure.</p> <p>2 A I gave you the information desk; I gave you</p> <p>3 the mark-off -- no. Not that I can remember, no.</p> <p>4 Q Okay. And did you keep any -- other than what</p> <p>5 we talked about today, your journal and the other</p> <p>6 documents produced, did you keep any other records of</p> <p>7 your mark-offs?</p> <p>8 A Yes.</p> <p>9 Q What are those?</p> <p>10 A A calendar.</p> <p>11 Q And you have produced that?</p> <p>12 A No.</p> <p>13 Q You have not?</p> <p>14 A No.</p> <p>15 Q Okay. We will ask for a copy of the calendar.</p> <p>16 Can you tell me what is in the calendar.</p> <p>17 A I don't know that I would still have the</p> <p>18 calendar. It would be hanging on my --</p> <p>19 refrigerator-type calendar at home.</p> <p>20 Q What year was it for?</p> <p>21 A I always kept track of my time that way, '91</p> <p>22 to now. But I don't keep those calendars.</p> <p>23 Q What do you do with them?</p> <p>24 A Throw them out.</p>	<p>1 your use of sick leave?</p> <p>2 A Yes.</p> <p>3 Q Okay. And what is the basis for that? Why do</p> <p>4 you believe that?</p> <p>5 A I believe it's a privacy issue.</p> <p>6 Q Anything else?</p> <p>7 A No.</p> <p>8 Q Okay. I guess I'm trying to figure out: What</p> <p>9 is private about having a cold, for example?</p> <p>10 MR. MOORE: She also answered this question.</p> <p>11 You can answer it again. Objection.</p> <p>12 THE WITNESS: I believe anything related to my</p> <p>13 medical history is private.</p> <p>14 BY MS. GORDON:</p> <p>15 Q Okay. And so what is it that you are seeking</p> <p>16 out of the class portion of this claim? You are asking</p> <p>17 for money damages. What do you believe you are entitled</p> <p>18 to?</p> <p>19 A Well, lost wages between the jobs.</p> <p>20 Q Between jobs?</p> <p>21 A Between what I would have earned as a</p> <p>22 dispatcher as to what I'm earning as a clerk.</p> <p>23 Q Anything else?</p> <p>24 A Lost retirement.</p>

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1 Q Anything else?

2 A As far as monetary?

3 Q Yes; monetary.

4 A Or the whole thing? Whatever the jury

5 decides.

6 Q Are you seeking anything other than money, or

7 in addition to money, I should say?

8 A A change in the policy for the radio room for

9 the City.

10 Q I guess I'm trying to figure out: Are you

11 challenging the indicators of sick-leave abuse that were

12 set forth in the City's AFSCME?

13 MR. MOORE: I'll object. That's a legal

14 issue. If you know what she's talking about, you

15 can answer.

16 THE WITNESS: Rephrase it.

17 BY MS. GORDON:

18 Q Okay. Well, you were part of a collective

19 bargaining unit when you worked for the City covered by

20 the AFSCME.

21 A Yes.

22 Q And you are aware that there is an article in

23 there about sick-leave abuse and the use of sick leave;

24 correct?

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1 A I don't recall all of it; but yes.

2 Q Okay. Do you recall that there were set forth

3 in that contract indicators of sick-leave abuse?

4 A Yes. I don't recall what they are right now.

5 Yes, I know they were in there.

6 Q Are you challenging those? Are you saying

7 those are inappropriate indicators of sick-leave abuse?

8 MR. MOORE: Same objection. You can answer.

9 THE WITNESS: My challenge is basically a

10 privacy issue. I don't recall if that's in the

11 contract, though.

12 BY MS. GORDON:

13 Q Okay. In 2005, can you estimate for me the

14 number of times that you think you disclosed what you

15 consider to be confidential medical information?

16 A Estimate? I don't remember. A dozen at

17 least.

18 Q Do you think it was more than 20?

19 MR. MOORE: Terri, you are not required to

20 guess here.

21 THE WITNESS: I don't remember how many.

22 BY MS. GORDON:

23 Q So can you describe for me what harm is it

24 that you think you suffered by having to disclose what

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1 you consider to be confidential medical information.

2 A I'm sorry. Can you repeat that.

3 Q What harm do you believe you suffered by being

4 required to disclose what you considered to be

5 confidential medical information?

6 A Again, I go back to it's a privacy issue. My

7 medical history is my business. It was an embarrassment

8 for having to disclose that to the supervisors.

9 Q Okay. So far what you can recall today is

10 that you disclosed headache and stress-related headache.

11 What was embarrassing about that?

12 A Not only would I tell them, everyone would

13 seem to know. We are just saying -- like I said,

14 headache and stress. I was lucky that's all they got.

15 Q Did you ever tell anybody in the radio room

16 that you had a headache?

17 A I might have asked for an aspirin or Tylenol.

18 I don't recall specifically.

19 Q Embarrassment. What else?

20 A It was stressful.

21 Q Why was it stressful revealing that you had a

22 headache?

23 A Because I had to reveal I had the headache.

24 It was not anything I felt comfortable doing, which

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1 caused stress.

2 Q Did you seek any treatment for that stress?

3 A With my doctor; yes.

4 Q Is that Dr --

5 A Giersch.

6 Q Anybody else?

7 A Stress-related issues, a chiropractor.

8 Q Who was that?

9 A Dr. Jones.

10 Q Any other healthcare providers?

11 A No.

12 Q Okay. Embarrassment; stressful. Any other

13 harm that you can articulate?

14 A Due to --

15 Q Having to disclose what you believe to be

16 confidential medical information.

17 A Not that I can remember offhand.

18 Q Is there anything that would help you

19 remember?

20 A No. I don't know.

21 MR. MOORE: We have been at this an hour. I

22 would like to take a break of about ten minutes.

23 (Pause in Proceedings.)

24 BY MS. GORDON:

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1 Q We are back on the record after a short break.
 2 Ms. Ruby, I want to take you back to just
 3 one issue.
 4 We talked about -- you said you were
 5 forced to disclose confidential medical information in
 6 October of '05 and December of '05. Do you recall when
 7 in December of '05?
 8 A I think the question was if -- I think you
 9 rephrased it a little differently. I think it was, when
 10 was the last time I would have had to be forced? I said
 11 December of '05, because I probably had a mark-off in
 12 December of '05 that would have required me to tell them
 13 the reason.
 14 Q Do you recall the date in December of '05?
 15 A No, I don't recall exactly.
 16 Q Do you have anything that would help you
 17 remember? Do you think you have a grievance that would
 18 help you remember?
 19 A Or a disciplinary charge; yeah.
 20 Q Why don't you take a look and see.
 21 A I don't know what order these are in. Last
 22 one here so far is dated November 14.
 23 Q November 14 of 2005?
 24 A Uh-huh.

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1 Q Okay. What was it that you were looking at
 2 that gave you that November 14, 2005 date?
 3 A It was a notice of intradivisional letter of
 4 information.
 5 Q What is the date on that?
 6 A The intradivisional date is November 17 that
 7 was modified December 7.
 8 Q Are you reading from an exhibit?
 9 A Exhibit No. 26C.
 10 MS. GORDON: These are exhibits that she
 11 brought to the deposition, Mike. I understand
 12 that.
 13 BY MS. GORDON:
 14 Q Exhibit what?
 15 A 26C.
 16 MR. MOORE: If you are asked to read from a
 17 document, tell us what it is.
 18 BY MS. GORDON:
 19 Q You started to look through your journal.
 20 Look through that and see if there is anything else that
 21 helps you with the dates.
 22 A For December?
 23 Q Yes.
 24 A There is nothing in here to indicate anything

1 in here from December.
 2 Q I'm sorry, I didn't hear you.
 3 A There is nothing in here that indicates any
 4 mark-off for December. Just a suspension.
 5 Q Does that help refresh your recollection maybe
 6 there are not any mark-offs in December?
 7 A Maybe there weren't.
 8 Q Okay. Now, one of the allegations in your
 9 complaint is that the defendants violated your First
 10 Amendment rights. And I just want to ask you: In your
 11 own words, what is it that you are claiming with regard
 12 to that?
 13 A What -- I'll go back to my right to privacy.
 14 Q How did the defendants violate that right to
 15 privacy, in your view?
 16 A By requesting me to disclose my medical
 17 information.
 18 Q And you allege in your complaint that you
 19 opposed unlawful practices. And what unlawful practice
 20 did you oppose?
 21 A The disclosure of my medical information.
 22 Q Tell me what you did to oppose that practice.
 23 A I'm sorry. How?
 24 Q What action did you take?

1 A I filed grievances.
 2 Q Do you recall when you filed grievances?
 3 A I filed grievances probably beginning in
 4 January '05 maybe. I don't remember the exact dates.
 5 Q Okay. They would be in the records that you
 6 produced to us?
 7 A Uh-huh.
 8 Q And other than filing grievances, what did you
 9 do? Did you talk to anybody?
 10 A I talked to several people. I spoke with the
 11 Department of Labor. I, of course, tried to speak with
 12 Public Safety; human resources.
 13 Q And who did you talk to in -- who did you try
 14 to talk to in Public Safety?
 15 A E-mails went back and forth. Oh, my goodness.
 16 I can't remember the first person. She had two names.
 17 Linda Guyton is one of the people.
 18 Q What did you say to Linda Guyton about the
 19 privacy issue?
 20 A I shouldn't have to provide my medical
 21 information up the chain of command.
 22 Q Did you say to her -- did you give her any
 23 explanation as to why you thought you didn't have to
 24 disclose that?

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1 A I thought there was a federal law; HIPAA.
 2 MS. FISHER: I'm sorry. I think we lost Mike.
 3 If you don't mind.
 4 (Pause in Proceedings.)
 5 BY MS. GORDON:
 6 Q So you thought HIPAA didn't --
 7 A Protected.
 8 Q Protected you.
 9 Were there any other federal laws that
 10 you cited to Linda Guyton or anybody else in the
 11 division that you can recall?
 12 A In the division; no. I also believe I went to
 13 the city HR person. Her last name is Bass.
 14 Q Do you recall when you went to speak with
 15 Ms. Bass?
 16 A It would be sometime in '05. I don't know if
 17 it started in September or later. I don't recall what
 18 month exactly.
 19 Q Would you have any notes of that in your
 20 journal?
 21 A Huh-uh.
 22 Q And other than the notes in your journal,
 23 would you have any other information related to
 24 Ms. Bass?

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1 A An e-mail.
 2 Q Other than an e-mail, anything else?
 3 A No.
 4 Q Anybody else beside Linda Guyton, the
 5 Department of Labor, and Ms. Bass that you talked to?
 6 A I don't remember.
 7 Q Do you have anything that would refresh your
 8 recollection?
 9 A Maybe my notes.
 10 Q Why don't you take a look through them.
 11 Just for the record, she's consulting her
 12 journal again.
 13 A Nicole Leatherbury Brandon was the HR person I
 14 spoke to in the beginning.
 15 Q You talked to her about the privacy issue?
 16 A My whole thing was regarding -- they are
 17 private, yes. For -- there was one more person up
 18 there; I can't remember his name. It looks like Dave
 19 Edmonson was somebody I spoke with in Public Safety HR
 20 regarding all of my personnel information and who all
 21 had access to it up there.
 22 Do you want the names he gave me?
 23 Q Sure.
 24 A Lorraine Schirtzinger, and whoever stamps the

1 note when it comes over there. It could be anybody.
 2 Q Where did he work?
 3 A In HR in public safety.
 4 Q Was he in the employee benefits unit?
 5 A I guess so. Actually, I have note here that I
 6 asked him directly about this being a violation of
 7 HIPAA, and he said there was no way he could handle it
 8 all himself. Of course, the union, Cynthia Johnson.
 9 There was grievance hearings. Brooke Carnevale and Gary
 10 Dunlap were present. They would have heard that also.
 11 I don't know how in-depth you want me to be about all of
 12 the people, but --
 13 MR. MOORE: I'm sorry. Since I can't see what
 14 is going on there, is Teresa going through her
 15 notes?
 16 MS. GORDON: Yes.
 17 MR. MOORE: I'm going to try not to disconnect
 18 myself again.
 19 THE WITNESS: Ralph Witlow; union rep. Doug
 20 Moore; union.
 21 I think I lost track of the question.
 22 BY MS. GORDON:
 23 Q Well, we were talking about individuals or
 24 entities that you would have talked to about your

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1 concerns that your privacy rights under HIPAA were being
 2 violated.
 3 A Also, everybody up the chain of command that
 4 would have had to sign off -- every time you filed
 5 paperwork, there is a chain of command that everyone
 6 signs off on. It was Commander Dunlap, then to, like,
 7 the Deputy Chief Thatcher, then to, like, the police
 8 chief, James Jackson. And I believe the safety
 9 director, Brown, might have been on some of that.
 10 Q What were they?
 11 A Any grievances; disciplinary charges. They
 12 would have the -- routing letter, that's what I'm trying
 13 to think of. They would all have been on -- on the list
 14 of people that know that I felt like privacy rights were
 15 violated.
 16 Q You said something to Safety Director Marshall
 17 Brown?
 18 A No. It would have been on my grievances and
 19 disciplinary charges. That was why I was not putting it
 20 on the note.
 21 Q That would be in the charges --
 22 A Yes.
 23 Q -- that you didn't want to produce it because
 24 you thought it violated the law?

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1 A It should have been in the grievances.
 2 Q But not in the charges?
 3 A The charges were always because I didn't do
 4 it. I was insubordinate because of that reason, so --
 5 I'm not seeing anything else in my notes.
 6 Q Okay. Just so the record is clear, you are
 7 looking at your journal. You produced a copy of the
 8 journal to me, and it's Bates stamped 00448 to 00508.
 9 If you want to take a look at my copy --
 10 A I don't have a Bates Stamp on mine.
 11 Q If you want to make sure my copy mirrors your
 12 copy, that's fine. I want to make sure we are accurate.
 13 A I have no reason to dispute yours.
 14 Q When did you take these notes?
 15 A They are dated.
 16 Q Did you take them on each date -- I'm trying
 17 to figure out how you kept your journal.
 18 A I did try; but no, there is a lot of days when
 19 I didn't have anything to note. Days off, I probably
 20 wouldn't note anything; weekends.
 21 Q Did you take them contemporaneously? Does the
 22 entry date indicate the date you wrote the note?
 23 A Yes.
 24 Q Okay. So, for example, if it says here

1 A To the best of my memory; yes.
 2 Q What did she say back to you?
 3 A I don't know. We grieved it.
 4 Q What was the outcome of the grievances?
 5 A They dropped it, then, when I was correctively
 6 discharged.
 7 Q Do you recall what she said to you during any
 8 of the conversations?
 9 A No, I don't recall what she said.
 10 Q Did you have conversations with Doug Moore?
 11 A Basically through Cynthia. He was at a
 12 grievance or two. I don't recall talking to him
 13 directly.
 14 Q Okay. Do you recall sending him any paperwork
 15 other than grievances?
 16 A No, I don't recall sending him anything. I
 17 would probably go through Cynthia.
 18 Q Would there be any other union representatives
 19 that you would talk to?
 20 A Only if they were at a grievance or
 21 disciplinary hearing.
 22 Q Okay.
 23 A But not privately.
 24 Q Did you -- other than your journal, did you

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1 December 3, 2004, are you telling me that you actually
 2 wrote it on December 3, 2004?
 3 A Yes.
 4 Q Were there any times where you would save up
 5 information and then put it down later on?
 6 A I don't know.
 7 Q Okay. What was the purpose of keeping the
 8 journal?
 9 A I don't have that great a memory all the time.
 10 Q You said that you talked with Cynthia Johnson.
 11 Who was she?
 12 A The union -- the -- I think it's steward, is
 13 her title, for the radio room.
 14 Q Do you recall -- again, if you don't know,
 15 that's fine: What years she was the union steward?
 16 A She was there for this year.
 17 Q For 2005?
 18 A Uh-huh.
 19 Q And tell me about your conversations with her
 20 and your concerns that your rights under HIPAA were
 21 being violated.
 22 A Basically, just that I shouldn't have to
 23 disclose my medical information up the chain of command.
 24 Q Were those the words you used to her?

1 keep any notes of your conversations with Cynthia
 2 Johnson?
 3 A No. It would be the best I remember right
 4 here.
 5 Q You said you also expressed your concerns to
 6 the Department of Labor.
 7 A Uh-huh.
 8 Q You need to say yes.
 9 A Yes.
 10 Q When did you do that?
 11 A March, maybe.
 12 Q Of 2005?
 13 A Yes.
 14 Q And --
 15 A Yes.
 16 Q What did you say to the Department of Labor
 17 about your concerns that your privacy rights were being
 18 violated?
 19 A If I recall correctly, I think they are the
 20 office for HIPAA violations, and that's why I would have
 21 called them.
 22 Q What did you say to them?
 23 A That I felt that my employer was violating my
 24 HIPAA rights.

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1 Q Okay. Did you get a response from the
2 Department of Labor?
3 A Yes.
4 Q What was the response?
5 A Well, I had several verbal responses and the
6 written. They said that the City agreed to comply and
7 that they were closing the case.
8 Q Did they say that the City had violated HIPAA?
9 A No, they did not.
10 Q Did anybody ever tell you that the City had
11 violated HIPAA?
12 A Not that I recall.
13 Q Do you know if the Department of Labor
14 investigated your claim that your HIPAA rights were
15 being violated?
16 A I got an investigative packet, so --
17 MR. MOORE: The question is: Do you know if
18 they investigated your claim about HIPAA? Not
19 related to FMLA.
20 THE WITNESS: No.
21 BY MS. GORDON:
22 Q No, you don't recall?
23 A I don't recall that.
24 Q Is there anything that would refresh your

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1 recollection?
2 A I'm pretty sure that the investigative packet
3 she send me dealt with the FMLA, not the HIPAA.
4 Q It's your recollection that you did talk to
5 the Department of Labor about a HIPAA violation?
6 A It would have come up in the course of the
7 conversation; yes.
8 Q So what conversation was it that you were
9 having with someone from the Department of Labor about
10 HIPAA? Do you recall when this conversation took place?
11 A It would probably be the same time as the FMLA
12 conversation, so I think it started in March.
13 Q Of 2005?
14 A Yes.
15 Q Okay. And if you recall, what did you say to
16 the Department of Labor?
17 A Basically, that they would discipline me for
18 not noting the nature of my doctor visit on my note to
19 return to work.
20 Q Okay. And did you send them written materials
21 regarding that?
22 A I don't remember what I sent them as far as
23 written materials.
24 MR. MOORE: If you don't remember, just say, I

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1 don't remember.
2 THE WITNESS: I don't know what I sent. Just
3 say I don't remember.
4 BY MS. GORDON:
5 Q So you don't have any recollection of whether
6 you sent them written materials?
7 A No.
8 Q Okay. And did the Department of Labor tell
9 you whether they believed there was a HIPAA violation or
10 not?
11 MR. MOORE: I'll object. The Department of
12 Labor is not empowered to investigate HIPAA. You
13 can answer the question.
14 THE WITNESS: What was the question?
15 BY MS. GORDON:
16 Q Did anybody from the Department of Labor tell
17 you whether or not they believed HIPAA had been
18 violated?
19 A I don't remember what they said about HIPAA.
20 Q Other than the Department of Labor, the union,
21 and the people you talked about, did you talk to anybody
22 else or any other entity about your concern that HIPAA
23 had been violated?
24 A My husband.

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1 Q Okay. What did you say to him?
2 A That they were requiring me to note my -- of
3 course, my doctor. Just the same thing: They were
4 requiring me to note the nature of my illness on my
5 doctor note.
6 Q Again, the nature of that illness was the
7 headache?
8 A Maybe; sometimes.
9 Q Do you recall?
10 MR. MOORE: Objection. Answer the question,
11 if you recall.
12 BY MS. GORDON:
13 Q Anything else other than the headache and the
14 stress-related headache?
15 MR. MOORE: Objection. She has already
16 answered the question.
17 THE WITNESS: I don't remember.
18 BY MS. GORDON:
19 Q Okay. You are also alleging in your
20 complaint, I believe, that you were subjected to a
21 hostile work environment. Can you tell me about that
22 claim.
23 MR. MOORE: Objection. She's not a lawyer and
24 doesn't know the legal definition. You can tell

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1 them how you were treated.
 2 THE WITNESS: I was sent home without pay.
 3 BY MS. GORDON:
 4 Q When was that?
 5 A In October, I believe; October or November.
 6 Q Of '05?
 7 A Uh-huh. I served four disciplinary days with
 8 31 more yet pending. I had more charges pending by the
 9 end of '05 that hadn't come to fruition yet.
 10 Q Is there anything else that you believe
 11 created a hostile work environment?
 12 MR. MOORE: Same objection. You can answer.
 13 THE WITNESS: I just -- you know, everyone I
 14 turned to, I would get no assistance in this
 15 matter, so --
 16 BY MS. GORDON:
 17 Q What do you mean, everybody you turned to you
 18 would get no assistance?
 19 A The grievances; human resources; supervisors.
 20 Q What did -- you said supervisors. I guess are
 21 you saying that the supervisors somehow created a
 22 hostile work environment?
 23 MR. MOORE: Same objection as to the legal
 24 definition.

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1 THE WITNESS: They are the ones, of course,
 2 that would give me the paperwork, give me the
 3 interview, make me disclose the reason.
 4 BY MS. GORDON:
 5 Q Which supervisors are we talking about?
 6 A They would probably be all three -- four of
 7 them that worked on the shift: Carolyn Griggs, Ruth
 8 Crabtree, Diana Quarles and Maggie Whitmoyer.
 9 Q What did Ms. Griggs do?
 10 A All of them, whoever I would have to disclose
 11 this information to.
 12 Q What did they do?
 13 A Sent me home without pay.
 14 Q Griggs sent you home without pay?
 15 A Uh-huh.
 16 Q What else did she do, if anything?
 17 A Gave me all of the charges.
 18 Q Meaning physically handed you the charges?
 19 A Did the interviews; yeah.
 20 Q Okay. So she physically handed you the
 21 charges; she didn't draft them. Do you know who drafted
 22 them?
 23 A I don't know who drafts them.
 24 Q Is there anything else that Ms. Griggs did?

1 A I don't recall -- no, I don't recall.
 2 Q How about Ms. Crabtree, what did she do to
 3 you?
 4 A She was the same. It was -- whoever was on
 5 duty at the time that interviewed me for the mark-off.
 6 So it would be the same treatment by either. She would
 7 demand that I comply with the division directive. They
 8 gave me bad evaluations for the year.
 9 Q Okay. When you said she demanded that you
 10 comply with the division directive, did she do anything
 11 else?
 12 A I'm sure she did, but I can't recall offhand.
 13 Q Is there anything that would refresh your
 14 recollection?
 15 A No. I wouldn't probably note that they
 16 wouldn't let me change channels with somebody, or that I
 17 had a bad day, or that I would be --
 18 Q How about Ms. Whitmoyer?
 19 A It would be the same. She was not there that
 20 much. She was a supervisor on duty.
 21 Q What did she do?
 22 A If I turned my note into her, tell me it was
 23 incomplete and I needed to comply.
 24 Q Anything else?

1 MR. MOORE: Don't guess. If you remember
 2 doing that with Margaret Whitmoyer, tell her.
 3 Don't say you probably did.
 4 THE WITNESS: Any one of these four could have
 5 done it on any given day.
 6 MR. MOORE: That's fine. Just tell her that.
 7 THE WITNESS: I don't remember the days they
 8 worked.
 9 BY MS. GORDON:
 10 Q How about Ms. Quarles?
 11 A The same: I don't recall any given day.
 12 Q Do you remember any given incident?
 13 A Every time they requested, you know, a note.
 14 Q During what period of time was this happening?
 15 A Most of this occurred in 2005.
 16 Q Is there anything else that you believe
 17 happened in the radio room that created what you would
 18 consider to be a hostile work environment?
 19 MR. MOORE: I'll object; you can answer.
 20 THE WITNESS: No, not that I recall.
 21 BY MS. GORDON:
 22 Q Is there anything that would refresh your
 23 recollection?
 24 A No.

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1 Q Okay. And if you had something -- would you
2 have written it down in your notes if some incident had
3 stuck out in your mind?

4 A Maybe. I just looked through there, and
5 nothing stood out.

6 MR. MOORE: The question is: Would you have
7 written it down? And your answer is maybe?

8 THE WITNESS: Not necessarily.

9 BY MS. GORDON:

10 Q Would you have written it down anyplace else?

11 A No.

12 Q Other than these four supervisors that you
13 mentioned, is there anybody else that you believe was
14 involved in creating what you considered to be a hostile
15 work environment?

16 A I would say Gary Dunlap.

17 Q Okay. What did Gary Dunlap do?

18 A I would say he was the instigator for all of
19 this.

20 Q For all of what?

21 A The discipline. The notice to bring in the
22 note stating the nature of my illness.

23 Q What makes you say he was the instigator?

24 A He was the commander of the radio room.

1 recollection?

2 A No.

3 Q Now, you claim that you were retaliated
4 against. What was the retaliation?

5 A Constructive discharge.

6 Q Okay. And what do you mean by "constructive
7 discharge?" Is that a term that you are familiar with?

8 A I was forced, basically forced out of the
9 radio room.

10 Q How were you forced out?

11 A The disciplinary action pending against me,
12 the disciplinary action coming against me, my expensed
13 days to serve, my expensed days I had served; my unpaid
14 days.

15 Q What do you mean?

16 A In October when I was sent home and I didn't
17 have a note.

18 Q How did those things force you out?

19 A It was a continued -- I was not going to tell
20 them why, and they were going to continue to discipline
21 me. It only added stress to more medical conditions to
22 more doctor visits. I was a --

23 Q What medical condition are you talking about?

24 A The reason I was seeking -- I was under doctor

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1 Q Other than being commander of the radio room,
2 do you have any information or evidence that he was the
3 instigator?

4 MR. MOORE: I'll object to the term
5 "evidence." That is legal. Go ahead and answer.

6 THE WITNESS: His signature is on most of all
7 of it.

8 BY MS. GORDON:

9 Q All of what?

10 A Paperwork for the disciplinary charges for my
11 non-compliance of the nature of my illness.

12 Q Are you --

13 A At times it says in there, per the commander.

14 Q Says what?

15 A In the interviews; per the commander.

16 Q Do you know if he was following division
17 directives?

18 A I have no idea.

19 Q That was -- did you have any conversations
20 with Dunlap?

21 A No.

22 Q Anybody else other than Commander Dunlap?

23 A Not offhand; no.

24 Q Is there anything that would refresh your

1 care.

2 Q What was the reason?

3 A There was many.

4 Q What were they?

5 A The stress; the headaches. I was having
6 difficulty with stomach problems; bowel problems;
7 sleeping problems; emotional problems.

8 Q Tell me --

9 A Depression problems. Lack of intimacy
10 problems. I -- I having trouble remembering things.

11 Q Anything else?

12 A Back -- neck and shoulder problems. I had
13 been on more medication than I had been.

14 Q What medication were you on?

15 A I don't remember all of it. I was on
16 something for depression; acid reflux. I don't remember
17 everything I was on at the time.

18 Q Who did you consult for all of these
19 conditions?

20 A Dr. Giersch.

21 Q Anyone else?

22 A A chiropractor. I went to him a couple of
23 times; Dr. Jones.

24 Q Were you truthful with your conversations with

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1 Dr. Giersch?
 2 A Yes.
 3 Q And so these medical conditions that you
 4 didn't want to disclose are the list of things that you
 5 have just given me?
 6 A Those are some of the problems that I was
 7 having at the time; yes.
 8 Q Do I take it since you didn't want to disclose
 9 them you didn't tell anybody at the division about this
 10 list of things?
 11 A No.
 12 Q I need to -- no, you did not tell them?
 13 A No. I don't remember telling anybody about my
 14 medical conditions like that.
 15 Q You indicated these were some of the problems
 16 that you were having. What other problems were you
 17 having?
 18 A I don't remember all of them now. It was
 19 almost four years ago.
 20 Q You are not having any of them now?
 21 A Not the majority of them; no.
 22 Q Which ones are you still having?
 23 A Well, I still take pills for acid reflux,
 24 which will probably never go away. That's about all my

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1 medication now. Other than the Vitorin -- we discussed
 2 that.
 3 Q For the high cholesterol, uh-huh. And we
 4 started with this discussion that you were claiming you
 5 were retaliated against. You said it was corrective
 6 discharge. Is there anything else that you consider to
 7 be retaliation?
 8 A As far as --
 9 MR. MOORE: Objection.
 10 BY MS. GORDON:
 11 Q You tell me.
 12 A I don't remember. Retaliation for -- I don't
 13 know what you are asking, really.
 14 Q You allege in your complaint that you were
 15 retaliated against for opposing unlawful practices. I'm
 16 trying to figure out what act or action you consider to
 17 be retaliation.
 18 MR. MOORE: That's a legal term. You can
 19 answer from what you understand in your own mind.
 20 THE WITNESS: I think I did.
 21 BY MS. GORDON:
 22 Q Okay.
 23 A Yeah.
 24 Q Constructive discharge is a legal term. Are

1 you familiar with legal terms?
 2 A No.
 3 Q So where did you get the phrase "constructive
 4 discharge?"
 5 MR. MOORE: I'll object. You don't have to
 6 answer that question.
 7 MS. GORDON: Yes, she does.
 8 MR. MOORE: No, she doesn't. Attorney/client
 9 privilege. She's not going to answer that
 10 question.
 11 BY MS. GORDON:
 12 Q Do you know if any member of the public has
 13 ever reviewed your division personnel file?
 14 A No.
 15 Q No, you don't know?
 16 A No, I don't know.
 17 Q How did you find out about the job at OSU
 18 dental clinic?
 19 A I don't remember. I think I was on a civil
 20 service list for them, but I don't remember.
 21 Q Do you remember when you found out about the
 22 job?
 23 A No.
 24 Q Do you remember if you were interviewed for

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1 the position?
 2 A Yes.
 3 Q Do you know when you were interviewed?
 4 A I believe in December of '05.
 5 Q Had you been looking for a new job?
 6 A Prior to that?
 7 Q Yes.
 8 A I can't recall any other civil service list I
 9 was on; no.
 10 Q Other than civil service list, had you been
 11 looking for any other jobs?
 12 A Actively, no.
 13 Q But you don't recall -- you must have taken a
 14 test for the position at OSU.
 15 A Uh-huh. I don't remember taking it, but --
 16 MR. MOORE: If you don't remember taking the
 17 test, you don't remember it.
 18 THE WITNESS: I don't remember taking it.
 19 BY MS. GORDON:
 20 Q Do you recall why you took it?
 21 MR. MOORE: I'll object. If she doesn't
 22 remember taking it, how could she remember why?
 23 THE WITNESS: I don't remember.
 24 BY MS. GORDON:

17 (Pages 62 to 65)

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1 Q Do you have any recollection about taking the
2 civil service test?
3 A No.
4 Q Other than the civil service test at OSU and
5 the 311 that we talked about, did you take any other
6 civil service test?
7 A While employed at CPD? No.
8 Q Did you look for any other jobs while you were
9 employed at CPD?
10 A I don't recall applying for anything else; no.
11 Q Do you recall conducting a job search?
12 A Only the ones at CPD -- with the City. There
13 was a few.
14 Q What were those?
15 A There was a mail-handler job. There was a --
16 I don't remember if it was classified as a clerk or
17 secretary position -- I think with narcotics. And I was
18 denied both of those jobs.
19 Q Do you know why?
20 A I was -- because -- it's in here. Staffing
21 levels for radio room is what I believe they cited. I'm
22 not sure where it's at.
23 I cannot recommend approval of the
24 request. There is shortage of personnel. I do not

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1 recommend approval. Radio is 34 persons under strength.
2 Q Just so the record clear, what are you reading
3 from?
4 A TR18.
5 Q It's a document that has been produced by
6 plaintiff during discovery. We are not going to mark
7 it. Anything else other than TR18?
8 A I believe it has -- both of those were there.
9 So no.
10 Q What is the date of that?
11 A For this routing sheet?
12 Q Yes.
13 A This top one is 9/7/05; the second one is
14 9/21/05. And that seems to be the last dates indicated
15 on a routing sheet.
16 Q Okay. Any other jobs that you were looking
17 at?
18 A I don't remember anything else.
19 Q I'm going to show you what is Ruby 00492. You
20 have it there too. Let me show it to you.
21 A Okay.
22 Q This is a page out of your journal.
23 MR. MOORE: Is that an exhibit or what?
24 MS. GORDON: I'm showing her a page out of her

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1 journal.
2 MR. MOORE: All right.
3 THE WITNESS: Okay.
4 BY MS. GORDON:
5 Q And you have an entry there: Told too many
6 people about the job search. And I believe the entry is
7 September 7, 2 005.
8 What did you mean by that?
9 A I don't remember. It's 9/17. I don't know.
10 Q Do you know who you told about your job
11 search?
12 A No. I wouldn't remember who I told.
13 Q Does it refresh your recollection that perhaps
14 you were searching for jobs in September?
15 A That was the date on these. It would be the
16 two dates we discussed. Mail handler and narcotics, I
17 believe.
18 Q Might it be anything else?
19 A No, not that I remember.
20 Q And you don't remember who you talked to?
21 A No.
22 Q At the top of the page there is information
23 that is blocked out. Do you know what that information
24 was?

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1 A No.
2 MR. MOORE: I'll object. We redacted
3 confidential medical information. Information that
4 has nothing to do with this case, we are not going
5 to have her testify to.
6 MS. GORDON: This is the first time that we
7 have heard there has been any sort of redaction or
8 any -- we are going to ask that all of it be
9 produced in its original version.
10 MR. MOORE: No. If you want the Court to
11 review in camera, that's fine. Nothing that was
12 blacked out has anything to do with the case. If
13 you want to force the issue, we will give them to
14 the judge.
15 MS. GORDON: Yes. I appreciate your position,
16 Mike, but I'm not required to take your
17 determinations on what is and isn't relevant.
18 MR. MOORE: Like I said, it's your call.
19 MS. GORDON: I guess I want to make sure on
20 the record you are refusing to produce un-redacted
21 copies.
22 MR. MOORE: That's correct.
23 MS. GORDON: And again, just to have it on the
24 record, there has been nothing in what we have been

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1 produced that information has been redacted.
 2 MR. MOORE: It's obvious there is material
 3 that is blacked out.
 4 MS. GORDON: There is nothing in any of the
 5 responses that indicates that anything has been
 6 redacted and for what purpose. We are entitled to
 7 that information.
 8 BY MS. GORDON:
 9 Q Do you know who B. Pierce is?
 10 A Benjamin Pierce in the radio room.
 11 Q Have you had any conversations with Mr. Pierce
 12 about the subject matter of your lawsuit?
 13 MR. MOORE: I'm sorry. Let me break in. I
 14 didn't hear the answer to the question about who
 15 B. Pierce is.
 16 MS. GORDON: Benjamin Pierce.
 17 THE WITNESS: I think there is something in
 18 here that he asked me about --
 19 MR. MOORE: The question is: Did you have any
 20 conversations with him?
 21 THE WITNESS: I believe so.
 22 BY MS. GORDON:
 23 Q What did he ask you about?
 24 A HIPAA.

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1 Q Tell me when this conversation took place.
 2 A I don't know.
 3 THE WITNESS: I'm looking through my journal,
 4 Mike.
 5 I noted -- it looks like 3/31. B. Piece asked
 6 what you could do to file complaints of HIPAA
 7 violation, as they demanded information of doctor
 8 note.
 9 MS. GORDON: Tell me your conversation with
 10 Mr. Pierce.
 11 A I don't recall any more than that.
 12 Q What did he say to you?
 13 A They demanded notation of why on his doctor's
 14 note. I don't know any more; what he did, who he
 15 contacted.
 16 Q Okay.
 17 A Not my business.
 18 MR. MOORE: Is this a good time to take a
 19 break? We have been at it another hour or so.
 20 MS. GORDON: Do you want to break for lunch?
 21 I have another hour.
 22 MR. MOORE: We can take a break for ten or
 23 fifteen witness to refresh the witness, or break
 24 for lunch.

1 MS. GORDON: Mike, I have to object here. The
 2 witness has not indicated --
 3 MS. FISHER: I could use the restroom.
 4 MR. MOORE: We have been at it an hour. We
 5 need a break -- I need a break. If you want to
 6 take a lunch break now, that's great. If Teresa
 7 wants to take lunch --
 8 MS. FISHER: She doesn't want to take lunch.
 9 MR. MOORE: Let's take ten or fifteen minutes.
 10 MS. LLOYD: For the restroom.
 11 MR. MOORE: We will take fifteen minutes.
 12 She's been at this two hours.
 13 MS. GORDON: We will take a fifteen-minute
 14 break.
 15 (Pause in Proceedings.)
 16 BY MS. GORDON:
 17 Q We are back on the record.
 18 I'm not going to mark these, but again, I
 19 want to show you some documents that were produced to us
 20 by your counsel. They are listed Ruby 00128 and 00134.
 21 I can't make this out.
 22 I'm curious if you can tell me: What is
 23 this? Right now we are looking at 00128.
 24 A Mine are not numbered that way, so -- I don't

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1 know; sorry. All I can make out is -- it looks like a
 2 phone number; 8073.
 3 MR. MOORE: The question is: Do you know what
 4 it is? Can you identify it?
 5 THE WITNESS: No, not at all.
 6 BY MS. GORDON:
 7 Q Do you have any idea what it was pertaining
 8 to? You are the one that produced it.
 9 A No.
 10 Q If you take a look at 00134, it's a similar
 11 document.
 12 A No. I can't tell -- I don't know either.
 13 MS. GORDON: Vivian, do you know if the
 14 originals of these are available?
 15 MR. MOORE: You have -- this is Mike. You
 16 have all of the legible copies that we have.
 17 MS. GORDON: I guess, Mike -- and I don't know
 18 whether you are -- if you have it in front of you,
 19 but that's the problem. It's just a blank piece of
 20 paper. It's not -- the copy is so dark, you cannot
 21 read what was on it. If there is an original
 22 available -- I assume you produced it for a reason.
 23 MR. MOORE: The reason we produced it is that
 24 we produced every piece of paper that our clients

19 (Pages 70 to 73)

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1 had. Therefore, we don't know if there is a
 2 legible copy.
 3 MS. GORDON: I'm going to object to that. We
 4 had established at the beginning of this deposition
 5 that there were other pieces of paper that she has
 6 not produced.
 7 MR. MOORE: Exactly where did we get that?
 8 MS. GORDON: That was her testimony.
 9 MR. MOORE: What evidence did she say she has
 10 that you have not gotten?
 11 MS. GORDON: You can go back and read the
 12 transcript.
 13 MR. MOORE: We have produced everything our
 14 client has that is relevant to the case.
 15 MS. GORDON: You have produced documents to me
 16 I cannot read. I would like to take a look at the
 17 originals to see if they are more legible.
 18 MR. MOORE: We tried to make legible copies.
 19 We can see if we can locate copies.
 20 BY MS. GORDON:
 21 Q Let me ask you this: Did you get copies of
 22 your original documents back that you produced to your
 23 counsel?
 24 A Yes.

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1 Q Okay. Do you still have what we looked at as
 2 00128 and 00123?
 3 A I don't know.
 4 Q Did you produce them?
 5 A If I knew what it was -- I don't know. I
 6 don't know what it is. I can't answer that.
 7 MS. GORDON: Again, we are going to ask to see
 8 the originals, and I'll ask that the plaintiff be
 9 required to go back and see if she can come up with
 10 these.
 11 MR. MOORE: Give us a letter on that.
 12 BY MS. GORDON:
 13 Q I want to go back to your journal, if we
 14 could.
 15 A Okay.
 16 Q How is it that you came to start keeping the
 17 journal?
 18 A I don't know. I --
 19 Q Well, had you routinely kept a journal?
 20 A Not routinely, no. But I have to make lists
 21 for everything; a grocery list, a to-do list. I just
 22 keep notes.
 23 Q This one starts at November of 2004, at least
 24 the copy that I have. Do you recall if you kept a

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1 journal before that?
 2 A No.
 3 Q Not sporadically or anything like that?
 4 A No.
 5 Q This is on a spiral notebook. Where did you
 6 keep this journal?
 7 A I don't remember. I carry a bag.
 8 Q You kept it in your bag?
 9 A Maybe. I had a locker. I carried a bag to
 10 work.
 11 Q You kept it with you every day?
 12 A Maybe. If it was in my locker, it would be
 13 with me at work.
 14 Q How is it that you came to make the entries?
 15 Tell me that process.
 16 A I just felt there was harassment that I felt I
 17 should start noting for my grievance hearings.
 18 Q When did you begin to think --
 19 A What I started filing my grievances.
 20 Q Were you documenting in here what you
 21 considered to be acts of harassment?
 22 A Not always.
 23 Q Sometimes?
 24 A I did try to note something on a workday,

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1 whether good or bad; yes.
 2 Q How would you go about doing that?
 3 A I'm not sure what you want me to say. I just
 4 wrote it down. I would just write the date and what
 5 occurred.
 6 Q Would you go to your locker and get the
 7 notebook out of your locker, or would you take it out of
 8 your bag? How did it happen?
 9 A If it was in my locker, I would get it; or in
 10 my bag, I would take it out.
 11 Q Was it during the course of your workday?
 12 A I don't remember if I did it then or break,
 13 lunch, after work. Sometimes it might have been in my
 14 locker; sometimes the bag. I don't remember.
 15 Q Would you take notes while you were at work?
 16 A I don't remember. I don't remember how I kept
 17 the notes, just that I kept them.
 18 Q So you don't recall if you took the notebook
 19 out during the course of your workday while you were
 20 doing your duties and jotted something down?
 21 A I don't remember.
 22 Q Did anybody tell you to keep notes?
 23 A Not that I recall. I don't know.
 24 Q Is there anything that would refresh your

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 recollection on that?</p> <p>2 A No.</p> <p>3 Q The notes here seem to stop on December 23,</p> <p>4 2005.</p> <p>5 A Okay.</p> <p>6 Q Is that correct?</p> <p>7 A That's the last entry here.</p> <p>8 Q Did you keep any other notes after</p> <p>9 December 23, 2005?</p> <p>10 A No.</p> <p>11 Q Why did you stop on December 23, 2005?</p> <p>12 A Because I turned in my resignation -- I took</p> <p>13 the 311 test.</p> <p>14 Q Is that -- we were talking about when you did</p> <p>15 that.</p> <p>16 A Yes. I guess that's when. I don't remember.</p> <p>17 Q You said you would write down things. I guess</p> <p>18 let me ask you: What sorts of things were you trying to</p> <p>19 keep track of in this journal?</p> <p>20 A Things that happened to me at work.</p> <p>21 Q Why were you keeping track?</p> <p>22 A Because I was filing grievances.</p> <p>23 Q Any other reason?</p> <p>24 A They were charging me.</p>	<p style="text-align: right;">Page 80</p> <p>1 Department of Labor note.</p> <p>2 BY MS. GORDON:</p> <p>3 Q Notes that you wrote?</p> <p>4 A Yes. That's my writing.</p> <p>5 Q The first page stops at February 25, I</p> <p>6 believe. And the next page picks up June 13. What was</p> <p>7 in between?</p> <p>8 A I don't know. I'm not sure where they come</p> <p>9 from.</p> <p>10 Q What do you mean, you are not sure?</p> <p>11 A I'm not sure why I wrote them or what I wrote</p> <p>12 them on.</p> <p>13 Q Do you recall any other entries between</p> <p>14 February and June?</p> <p>15 A No.</p> <p>16 Q Do you still have the notebook?</p> <p>17 A It's not a notebook. This is my only</p> <p>18 notebook. I don't know what they are.</p> <p>19 Q I want to show you -- I'm not going to mark</p> <p>20 it -- it starts at R001336 and runs to 00147. You</p> <p>21 talked earlier about a calendar, but you said you didn't</p> <p>22 produce this calendar. This is another calendar -- is</p> <p>23 this your calendar?</p> <p>24 MR. MOORE: I'll object to the statements of</p>
<p style="text-align: right;">Page 79</p> <p>1 Q "They," who?</p> <p>2 A The chain of command; the City. I don't know</p> <p>3 who.</p> <p>4 Q Were you trying to -- strike that.</p> <p>5 Something important happened or something</p> <p>6 that struck you, you would put it in your journal?</p> <p>7 A Yes.</p> <p>8 Q This is the only journal that you kept?</p> <p>9 A Yes.</p> <p>10 Q The reason I ask that, I'm showing Ruby 00284.</p> <p>11 It seems to be a page out of another notebook, and it's</p> <p>12 also dated. And this one starts January 4, 2005. There</p> <p>13 are two pages of it; it ends June 13, 2005.</p> <p>14 Is there -- is this another notebook that</p> <p>15 you were keeping, or another journal?</p> <p>16 A I don't keep another journal.</p> <p>17 Q Do you keep another notebook?</p> <p>18 A No; no.</p> <p>19 Q How did these notes come about?</p> <p>20 A The name -- here it is. This was also Beth.</p> <p>21 MR. MOORE: The only question is: How did</p> <p>22 these notes come about? If you know, tell her you</p> <p>23 do.</p> <p>24 THE WITNESS: I don't know. They look like a</p>	<p style="text-align: right;">Page 81</p> <p>1 counsel about production of whatever. You can</p> <p>2 answer the question.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GORDON:</p> <p>5 Q Okay. And when did you keep this calendar?</p> <p>6 A I would say in '05 for mark-offs. That's what</p> <p>7 the MO is; mark-off and vacation.</p> <p>8 Q Tell me how you would keep this calendar.</p> <p>9 A I'm not sure what you mean, "how." Just on --</p> <p>10 I would write down my mark-offs.</p> <p>11 MR. MOORE: If you don't understand her</p> <p>12 question, ask her to rephrase it.</p> <p>13 THE WITNESS: I don't know what else to say.</p> <p>14 I mean, it's evident.</p> <p>15 MR. MOORE: Ask her to rephrase a question.</p> <p>16 Ask her to rephrase it.</p> <p>17 THE WITNESS: I just noted mark-offs on a</p> <p>18 calendar.</p> <p>19 BY MS. GORDON:</p> <p>20 Q Did you note anything else on this calendar,</p> <p>21 other than mark-offs?</p> <p>22 A Vacation days.</p> <p>23 Q How would you keep this calendar? Was it on a</p> <p>24 daily basis?</p>

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1 A If I recall correctly, I noted my payroll --
 2 how many sick days, vacation, and overtime. I would put
 3 that on there every pay day. If I had vacation, I would
 4 put that in there. That would probably be noted in
 5 advance, where a sick day would be noted at the day it
 6 occurred.
 7 Q Okay.
 8 A It was my way of keeping HR straight; make
 9 sure my days matched theirs.
 10 Q Were you --
 11 A I was keeping track of my sick time, vacation
 12 hours, and overtime hours.
 13 Q Okay.
 14 A Overtime hours are not necessarily overtime
 15 hours.
 16 Q What do you mean?
 17 A Holidays go into our compensatory bank.
 18 That's just how I wrote that bank, as OT. It -- I
 19 didn't take it in pay as much as time; compensatory
 20 time.
 21 Q This is your personal calendar? Nobody else's
 22 handwriting would be on here?
 23 A No.
 24 Q Did you keep this calendar at work?

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1 A It would have been in my bag or my locker.
 2 Q I want to clarify a couple of things: What
 3 kind of doctor is Dr. Giersch?
 4 A I don't know.
 5 Q Why were you consulting her?
 6 A As a family doctor.
 7 Q What were you consulting her for?
 8 MR. MOORE: I'll object. She testified about
 9 that already. I don't want her to give the rhyme
 10 or reasons again.
 11 THE WITNESS: I would see her when I was sick;
 12 for my yearly physicals.
 13 BY MS. GORDON:
 14 Q Are you still seeing her?
 15 A Yes.
 16 Q What are you seeing her for?
 17 A My last visit it was just my yearly.
 18 Q And I know she completed some FMLA paperwork
 19 for you. Do you recall that?
 20 A Yes.
 21 Q And it indicated that you could perform any
 22 kind of work as long as it was a 40-hour workweek. And
 23 I wanted to know: What happens if you work more than 40
 24 hours a week?

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1 MR. MOORE: Okay. Counsel, we are not
 2 asserting an FMLA claim in this case. And we are
 3 not asserting she cannot work more than a 40-hour
 4 workweek.
 5 MS. GORDON: Go ahead and answer.
 6 THE WITNESS: I'm sorry. What was the
 7 question again?
 8 BY MS. GORDON:
 9 Q What happens if you worked more than 40 hours
 10 a week?
 11 MR. MOORE: You mean what happened to her?
 12 The job? Are you talking about the Columbus Police
 13 Department?
 14 MS. GORDON: She has not indicated any
 15 confusion.
 16 MR. MOORE: If you understand the question,
 17 answer.
 18 BY MS. GORDON:
 19 Q What happened if you worked more than 40 hours
 20 a week?
 21 A I'm not sure really -- what happened to --
 22 Q You.
 23 A In what ways?
 24 Q You tell me. Did anything happen to you if

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1 you worked more than 40 hours a week?
 2 A In her opinion, it caused more medical
 3 problems.
 4 Q Did it in your opinion?
 5 A I gave her those problems, so --
 6 Q What problems?
 7 A All of the conditions we listed previously.
 8 Q How is it that working more than 40 hours a
 9 week caused those issues?
 10 A I don't know.
 11 Q You didn't ask her?
 12 A She -- no. She said I was stressed; too many
 13 hours.
 14 Q Did you tell her you were stressed?
 15 A I would tell her the job description, what my
 16 day was like.
 17 Q What did you describe as a day?
 18 A I could work eight hours.
 19 Q Tell me what happened during the course of the
 20 day. You said you described to her your day. Describe
 21 it to me.
 22 A I don't remember what I would have told her.
 23 I would take phone calls from unhappy citizens.
 24 MR. MOORE: Don't guess. If you recall what

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1 you told her, say what you remember. If you don't,
2 you don't have to fill it.

3 THE WITNESS: No, I don't remember.

4 BY MS. GORDON:

5 Q I'm asking you to describe for me a typical
6 day for you in the radio room.

7 A Remember, this is like three years ago, so --
8 we would take phone calls from citizens.

9 Q I'm asking your day. Nobody else's; just
10 yours.

11 A There is no typical day in the radio room.
12 You have to be ready for anything. They are all
13 atypical days.

14 Q Describe a day for me, then, one of your days.

15 A Four hours on phones, whether it be
16 non-emergency or emergency. They were from citizens in
17 need of police response. Anywhere from two, three, four
18 hours dispatching officers to respond to the citizens'
19 requests.

20 Q Anything else?

21 A Well, basically that was the job duties.

22 Q Did you have any trouble performing those job
23 duties?

24 A Sometimes.

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1 Q Okay. And what sort of trouble would you
2 have?

3 A I don't know. You know, there could be a
4 specific incident or something that upset me from a
5 caller or a supervisor or co-worker.

6 Q Why is it that you couldn't work more than
7 eight hours a day?

8 A I'm not sure that was every day. That's not
9 what we were contending every day. We were not --

10 Q You were not asking to be excused for all
11 overtime?

12 A Nope.

13 MR. MOORE: When, counsel?

14 BY MS. GORDON:

15 Q You were not being asked to be excused from
16 all overtime?

17 A Not always.

18 Q Isn't that is whole purpose of your FMLA
19 claim, saying you could only work 40 hours a week?

20 MR. MOORE: If you know the purpose of your
21 FMLA claim or what your doctor put down, you can
22 answer the question. If you don't recall --

23 THE WITNESS: I don't know why she said I
24 couldn't work over eight hours or 40 hours. I was

1 accommodated for a year on that.

2 BY MS. GORDON:

3 Q You don't know why your doctor put that down?

4 A Nope.

5 Q You didn't ask her to put that down?

6 A No.

7 Q So you were able to work overtime?

8 A Not always; no.

9 Q How much overtime were you able to work?

10 MR. MOORE: What time, counsel? When?

11 MS. GORDON: 2005.

12 THE WITNESS: I don't know. I don't remember.

13 BY MS. GORDON:

14 Q What was the condition for your FMLA
15 application? What are you claiming was wrong with you?

16 A I believe her paperwork was stress-related
17 illness.

18 Q You said "her paperwork." It was your
19 paperwork.

20 MR. MOORE: You have a document that you can
21 show my client she signed. Show it to her.

22 BY MS. GORDON:

23 Q Are you claiming you suffered from stress and
24 anxiety, or is that your doctor's statement?

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1 A I'm going stand by her statement.

2 Q Have you talked -- I think you testified that
3 you talked with your husband about the lawsuit.

4 A I don't think -- I talked to him about the
5 fact that they were requiring me to bring in a note.

6 Q Tell me about those discussions. What did you
7 say?

8 A I would say I filed another grievance because
9 they weren't accepting my doctor's notes because I
10 didn't have the reason for the nature of why it is on
11 there.

12 Q What did he say?

13 A "That's bullshit."

14 Q Anything else?

15 A He doesn't get it. He doesn't work for the
16 City. He doesn't have to bring doctor's notes.

17 Q Have you talked to your children about the
18 lawsuit?

19 A No.

20 Q Not at all?

21 MR. MOORE: She said no, counsel. She already
22 answered the question. Move on.

23 MS. GORDON: I was not able to hear her
24 response.

23 (Pages 86 to 89)

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1 MR. MOORE: She said no.
 2 THE WITNESS: I did say no.
 3 MR. MOORE: She said no.
 4 BY MS. GORDON:
 5 Q You have not talked to them at all?
 6 MR. MOORE: She said no. Stop asking -- every
 7 time you ask a question, you ask her again.
 8 BY MS. GORDON:
 9 Q Did they know there was a lawsuit?
 10 A It's been in the paper.
 11 Q You have not had any discussions with your
 12 children about it?
 13 A They would ask me if i was involved.
 14 MR. MOORE: You don't need to answer this
 15 stuff.
 16 BY MS. GORDON:
 17 Q So you did have conversations with them?
 18 A They ask me if it was me, and I said yes.
 19 Q That's the only conversation you had with them
 20 about this?
 21 A Yes.
 22 Q Did you describe to them how you felt about
 23 the lawsuit?
 24 A No.

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1 Q Did you describe to them what you felt to be
 2 treatment in the radio room?
 3 A No. They were not at home then.
 4 Q Did you describe to your husband what you
 5 perceived to be your ill treatment in the radio room?
 6 A We -- just bullshit that I had to bring the
 7 note. That's about it.
 8 Q Did you describe to him how you felt about
 9 these issues?
 10 A He knows I was grieving them.
 11 Q Did you describe to him how you felt about
 12 these issues?
 13 A That they were bogus.
 14 Q Anything else?
 15 A No.
 16 Q Okay. Who are your friends in the radio room?
 17 A Friends?
 18 Q Uh-huh.
 19 A Well, I would consider all of my co-workers
 20 friends, but --
 21 Q Okay. Name some for me, then. Who would you
 22 consider to be friends?
 23 A Co-workers?
 24 Q Yes.

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1 A Let's see. Debbie DeBoard -- you want --
 2 Q I want the people that you considered to be
 3 friends; yes.
 4 A I can't remember everybody.
 5 MR. MOORE: Listen. What she's asking for you
 6 is names of specific people you consider to be
 7 friends. You said you consider all of the
 8 co-workers to be friends. If that's the case, it's
 9 all of them.
 10 THE WITNESS: All my co-workers.
 11 BY MS. GORDON:
 12 Q You cannot think of any specifically?
 13 A Can I go down the roster?
 14 Q Who would you consider to be good friends?
 15 MR. MOORE: If anybody.
 16 BY MS. GORDON:
 17 Q Are you saying you didn't have any good
 18 friends?
 19 A Yes, I had a good friend.
 20 Q Who was that?
 21 A Frances Gramlich.
 22 Q What shift did Francis Gramlich work?
 23 A Now, first. She just went to first.
 24 Q How do you know that?

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1 A She told me.
 2 Q When was the last conversation you had with
 3 her?
 4 A Conversation?
 5 Q Interaction.
 6 A Today.
 7 Q What did you talk to her about?
 8 A I said, good morning. Hope you are feeling
 9 better.
 10 Q Where did you see her?
 11 A I didn't. I sent her an e-mail.
 12 Q And did you send that e-mail -- you said this
 13 morning?
 14 A Uh-huh.
 15 Q From home or work?
 16 A From work.
 17 Q Did you say anything else in that e-mail?
 18 A Not that I recall.
 19 Q Have you had any conversations with Frances
 20 Gramlich about any of the claims you are making in the
 21 lawsuit?
 22 A Yes.
 23 Q Tell me about those conversations.
 24 A She would just ask -- I would ask her if she's

24 (Pages 90 to 93)

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1 dropping out of the class action, and she said no.
 2 Q Have you talked to her about what claims she
 3 might have?
 4 A No.
 5 Q Not at all?
 6 A No.
 7 Q Did you talk to her at all about what
 8 conditions she might have disclosed?
 9 A No.
 10 Q Do you know if she disclosed any?
 11 A No. I don't know anything about her; no.
 12 Q Do you socialize with Frances Gramlich?
 13 A Yes.
 14 Q How often?
 15 A Once a month.
 16 Q What do you do?
 17 A Walk and talk.
 18 Q Other than Frances Gramlich, is there anybody
 19 else in the radio room that you consider to be a good
 20 friend?
 21 A No.
 22 Q Do you attend the lunches that the former comm
 23 techs have?
 24 A No.

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1 Q You have never been to one?
 2 A No.
 3 Q And do you know an e-mail address for
 4 ladyradio911?
 5 A Yes.
 6 Q Who is that?
 7 A Lisa Lee.
 8 Q Have you exchanged e-mails with Lisa Lee?
 9 A Yes.
 10 Q Have you spoken with Lisa Lee concerning any
 11 of the claims, facts, anything that deals with this
 12 lawsuit?
 13 A I don't remember. We might have talked
 14 about -- she was on TV, so --
 15 Q Anything else?
 16 A Tried to change deposition times maybe, but
 17 no.
 18 Q Anything just dealing with the radio room in
 19 general?
 20 A There might have been a time when --
 21 MR. MOORE: Don't guess.
 22 THE WITNESS: No. I don't remember.
 23 BY MS. GORDON:
 24 Q Okay. You started to say "there might have

1 been a time." Explain that time.
 2 MR. MOORE: Objection. If you were
 3 speculating --
 4 THE WITNESS: I was speculating.
 5 BY MS. GORDON:
 6 Q You don't have any recollection of exchanging
 7 any e-mails with Lisa Lee regarding anything that was
 8 going on with the radio room any time recently, even?
 9 A No.
 10 Q Any time at all?
 11 A Not recently; no.
 12 --O--
 13 (Deposition Exhibit A marked.)
 14 --O--
 15 BY MS. GORDON:
 16 Q Let me show you what has been marked as Ruby
 17 Exhibit A and ask you to take a look at it. After you
 18 are done looking at it, let me know.
 19 MR. MOORE: Do you have a copy for us,
 20 counsel?
 21 MS. GORDON: Vivian has a copy of it.
 22 MR. MOORE: Vivian, what is it?
 23 MS. GORDON: The witness is going to identify
 24 it, Mike.

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1 MR. MOORE: Fine.
 2 BY MS. GORDON:
 3 Q Okay. Recognize this?
 4 A I have seen this e-mail.
 5 Q What is it?
 6 A It was an e-mail sent about overtime in the
 7 radio room; changing the policy.
 8 Q What is the date of it?
 9 A Of the e-mail?
 10 Q Yes.
 11 A The e-mail sent to me? January 14.
 12 Q 2009?
 13 A Uh-huh.
 14 Q This was sent to you at work?
 15 A Yes, it was.
 16 Q Who sent this to you?
 17 A Lisa Lee.
 18 Q Lisa Lee sent it to you. And looking --
 19 A Oh, no, it's from me. I sent it to Lisa Lee.
 20 Q Who sent it to you?
 21 A I don't remember.
 22 Q You don't have any recollection of how you
 23 came to get this e-mail?
 24 A No. I don't remember who sent it to me.

25 (Pages 94 to 97)

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1 Q Have you exchanged -- received other e-mails
2 from other people in the radio room at work regarding
3 issues going on in the radio room?

4 A I don't remember. I mean, I don't remember.
5 Sometimes I get, how are you? How are the girls? As
6 far as situations in the radio room, I don't remember.

7 Q Okay. Why do you think somebody sent this to
8 you?

9 MR. MOORE: If you know.

10 THE WITNESS: I don't know.

11 BY MS. GORDON:

12 Q Why did you sent it to Lisa Lee?

13 A I found it interesting.

14 Q Did you and Lisa Lee have any conversation
15 about it?

16 A Not that I recall.

17 Q Do you routinely -- you said you sent e-mails
18 with Frances Gramlich. Does anyone other than

19 Ms. Gramlich send you e-mails?

20 A Not regularly, no.

21 Q Do you think this came from Ms. Gramlich?

22 A I don't know.

23 Q Who -- I guess I'm trying to think -- you said
24 the only good friend you have in the radio room is

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1 Frances Gramlich.

2 A Uh-huh.

3 Q Would there be other individuals who would
4 send e-mails?

5 MR. MOORE: I'll object, counsel. You have,
6 like, four questions there. She testified she
7 doesn't know how she got the document.

8 BY MS. GORDON:

9 Q Who else did you give your e-mail address to
10 in the radio room?

11 A I don't know.

12 Q You don't keep track?

13 A Yes.

14 Q Who else do you think?

15 MR. MOORE: Objection. She's not going to
16 speculate.

17 BY MS. GORDON:

18 Q Did you save the e-mail?

19 A I don't know. I don't know.

20 Q Have you had any discussions with any of the
21 other plaintiffs in this lawsuit concerning the claims
22 that you are making?

23 A I don't remember any discussions outside of an
24 attorney's office, no.

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1 Q Is there anything that would refresh your
2 recollection whether you had any or not?

3 A I don't have any notes or anything like that;
4 no.

5 Q Would you have sent them any e-mails?

6 A I don't remember.

7 Q Do you have a computer at home?

8 A Yes.

9 Q Do you use it to e-mail?

10 A Yes.

11 Q If you had sent any e-mails, would you have
12 saved those, any e-mails you sent to the plaintiffs?

13 A I don't think so, no.

14 Q Does the Department of Taxation have any
15 policy about the use of computers at work?

16 MR. MOORE: I'll object. You can answer the
17 question if you know.

18 THE WITNESS: Yes.

19 BY MS. GORDON:

20 Q Do you know what it is?

21 A Not offhand, no. I mean, you can use the
22 computers during breaks and lunches.

23 Q Have you had any discussions, interaction,
24 however you want to put it, a phone conversation,

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1 anything in writing, an e-mail, with any of the current
2 or former communication technicians in the radio room
3 concerning this lawsuit?

4 A Maybe, but no specific.

5 Q You don't recall who you spoke to?

6 A We are all on the website.

7 MR. MOORE: That's not the question.

8 THE WITNESS: I don't remember having
9 anything, but it wouldn't be hard for anybody to,
10 so -- e-mail.

11 BY MS. GORDON:

12 Q I'm sorry. I didn't understand that answer.

13 A It wouldn't be hard for anyone to know.

14 Anyone who is a part of the radio room with the class
15 action would know we are there.

16 Q Have you had any interaction with any of the
17 individuals?

18 A Looking through here, no.

19 Q Looking through what?

20 A The list of people in the e-mails here.

21 Q Is there anything else that would help you
22 remember?

23 A No.

24 Q You didn't keep any notes?

<p style="text-align: right;">Page 102</p> <p>1 A No, I'm not keeping notes.</p> <p>2 Q You are not keeping a journal now?</p> <p>3 A No.</p> <p>4 Q Are you keeping a calendar now of any meetings</p> <p>5 you might have with these individuals?</p> <p>6 A No.</p> <p>7 Q Is it your testimony that you have not had</p> <p>8 conversations with any of the potential class members in</p> <p>9 this case about their claims?</p> <p>10 A I don't remember any conversations I may have</p> <p>11 had with anybody.</p> <p>12 Q Do you know Dr. Jack Wagner?</p> <p>13 A No.</p> <p>14 Q You are suing Mitchell Brown. What it is that</p> <p>15 Mitchell Brown did to you, in your words?</p> <p>16 A He signed off on the disciplinary charges.</p> <p>17 His name is attached to some of the paperwork as far as</p> <p>18 the routing sheet going with comment.</p> <p>19 Q Have you ever had any conversations with him?</p> <p>20 A No.</p> <p>21 Q Any interaction with him?</p> <p>22 A None that I remember.</p> <p>23 Q Do you know if he knows who you are?</p> <p>24 A I would not know who he knows no.</p>	<p style="text-align: right;">Page 104</p> <p>1 interaction with Deputy Chief Thatcher?</p> <p>2 A No.</p> <p>3 Q Do you know if he knows who you are?</p> <p>4 A I have no idea; no.</p> <p>5 Q We talked about Commander Dunlap. Is there</p> <p>6 anything else that you believe Commander Dunlap did,</p> <p>7 other than what you told me?</p> <p>8 A He would make the comments on all of the</p> <p>9 routing sheets for discipline, transfer.</p> <p>10 Q Okay. And Lieutenant Yates, what did he do?</p> <p>11 A The same: He makes comments and assigns his</p> <p>12 name to all of this.</p> <p>13 Q What kind of comments did he make?</p> <p>14 A Well --are you talking about comments on the</p> <p>15 routing sheet? Yes.</p> <p>16 Q Other than the comments on the routing sheet,</p> <p>17 are there any other comments that Lieutenant Yates made?</p> <p>18 A No.</p> <p>19 Q Other than the comments that Commander Dunlap</p> <p>20 had on the routing sheet, are there any others that you</p> <p>21 recall?</p> <p>22 A Not that I recall.</p> <p>23 Q Is there anything that would refresh your</p> <p>24 recollection?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q How about James Jackson?</p> <p>2 A He signed off on the routing slips for</p> <p>3 discipline.</p> <p>4 Q Okay. Anything else?</p> <p>5 A The refusal to allow me to transfer.</p> <p>6 Q What was his involvement with that?</p> <p>7 A He concurred with the people below him.</p> <p>8 Q Other than that, do you know any other</p> <p>9 involvement?</p> <p>10 A No.</p> <p>11 Q Do you know if Chief Jackson knows who you</p> <p>12 are?</p> <p>13 A No.</p> <p>14 Q Do you know if he knows anything about your</p> <p>15 medical condition?</p> <p>16 A No.</p> <p>17 Q Deputy Chief Thatcher; what did he do?</p> <p>18 A He's on the routing slips for all of the</p> <p>19 discipline and everything related to discipline;</p> <p>20 appraisal, transfer requests.</p> <p>21 Q Other than being on the routing slips, is</p> <p>22 there anything else that he did?</p> <p>23 A I don't know.</p> <p>24 Q Okay. Have you had any conversations or any</p>	<p style="text-align: right;">Page 105</p> <p>1 A No.</p> <p>2 Q Mark Valentino, what did he do?</p> <p>3 A He was a supervisor -- well, actually, he was</p> <p>4 not. He was a supervisor, and then he worked in EBU and</p> <p>5 back in the radio room.</p> <p>6 MR. MOORE: We have no claim against Mark</p> <p>7 Valentino in this case. He's not -- we are not --</p> <p>8 BY MS. GORDON:</p> <p>9 Q Mark Gramlich, what did he do?</p> <p>10 MR. MOORE: We are not suing Mark Gramlich in</p> <p>11 her case, as you know.</p> <p>12 MS. GORDON: I don't.</p> <p>13 MR. MOORE: It's in the complaint.</p> <p>14 MS. GORDON: They are all named defendants.</p> <p>15 MR. MOORE: Mark Gramlich is not a named</p> <p>16 defendant in this particular case of this</p> <p>17 plaintiff.</p> <p>18 BY MS. GORDON:</p> <p>19 Q Do you know any involvement that Mark Gramlich</p> <p>20 had in any of the claims by the plaintiffs?</p> <p>21 A No.</p> <p>22 Q You have not had any discussions with him?</p> <p>23 A No.</p> <p>24 Q Is Mark Gramlich related to Frances Gramlich?</p>

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1 A Yes.
 2 Q How?
 3 A Spouse.
 4 Q Do you socialize with Mark?
 5 A No.
 6 Q What are you seeking out of this lawsuit?
 7 MR. MOORE: Objection. She has testified what
 8 she's seeking.
 9 BY MS. GORDON:
 10 Q That's all you are seeking, everything that
 11 you testified to?
 12 A Yes.
 13 Q Okay. I want to show you a document. I'm not
 14 going to mark it. This is something that your counsel
 15 sent to me yesterday.
 16 Do you recognize this?
 17 MR. MOORE: Can we mark this as an exhibit,
 18 please.
 19 THE WITNESS: Walter Mick.
 20 BY MS. GORDON:
 21 Q Is he your dentist?
 22 A He was my dentist.
 23 Q What was the purpose of providing this
 24 document, do you know?

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1 A No.
 2 Q Does it have anything to do with the claims
 3 that are you making in the lawsuit?
 4 MR. MOORE: Counsel, I'm asking you to
 5 identify the document if you would and mark it as
 6 an exhibit.
 7 MS. GORDON: I'm not going to use it.
 8 THE WITNESS: It was provided to me --
 9 MR. MOORE: If you are going to use it.
 10 MS. GORDON: Mike, Vivian provided this to me
 11 yesterday. I'm trying to find out what it has to
 12 do with the lawsuit.
 13 MR. MOORE: In order to make the record, we
 14 have to mark documents as exhibits. The reason I'm
 15 not requiring you to mark the Ruby -- we have them
 16 and they have a mark on them as a Bates Stamp. If
 17 you have a document we produced that has Ruby and
 18 the Bates Stamp, that's fine.
 19 MS. GORDON: You cannot require me to mark
 20 documents.
 21 MR. MOORE: I can't?
 22 BY MS. GORDON:
 23 Q Does Walter Micks have anything to do with
 24 the claims you are making in this lawsuit?

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1 A Not that I'm aware of.
 2 Q I want to show you another document that was
 3 produced to us. This is TR30 produced to us, I believe,
 4 within the last couple of days. TR30.
 5 Do you recognize this?
 6 A Yes.
 7 Q What is that?
 8 A The lost earnings.
 9 Q Do you know how this document was put
 10 together?
 11 A A spreadsheet.
 12 Q Did you do it?
 13 A Yes.
 14 Q So tell me how you went about doing it.
 15 A I put my lost earnings with the City and what
 16 I would have earned over the course of time staying
 17 there to retirement. I only projected out to 30 years
 18 at 3 percent, which was always the contract rule,
 19 percentage we were given during all my previous years of
 20 service.
 21 And what I earned at the dental clinic
 22 the year I was there, and then what I earn now with the
 23 Department of Taxation where we also have contractual
 24 raises usually at 3 percent. Of course, not for the

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1 next contract are we seeing that. But then the
 2 spreadsheet did the math.
 3 Q So this isn't really accurate then?
 4 A No. I would be losing wages at the Department
 5 of -- if the contract is approved as written now, we
 6 will not be having any raises for the next three years.
 7 This is past practice; we went to 3 percent.
 8 Q Let me show you TR31. Do you recognize this?
 9 A I see it, yes.
 10 Q What is that?
 11 A My pension calculations.
 12 Q Who put that document together?
 13 A I don't know.
 14 Q Have you seen it before today?
 15 A No.
 16 MS. GORDON: Let me take a few minutes. I
 17 might be through.
 18 (Pause in Proceedings.)
 19 BY MS. GORDON:
 20 Q Just a few more questions.
 21 It's true, isn't it, that you were never
 22 certified for an FMLA condition?
 23 A Yes.
 24 Q Your exam was not approved?

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<p>1 A Yes.</p> <p>2 Q Are you saying that you missed work because of</p> <p>3 depression?</p> <p>4 A No.</p> <p>5 Q Okay. Are you saying that you missed work</p> <p>6 because of forgetfulness?</p> <p>7 A No.</p> <p>8 Q You talked about the fact that you were denied</p> <p>9 a transfer. When was that?</p> <p>10 A September. Those were in September.</p> <p>11 Q Of 2005?</p> <p>12 A Yes.</p> <p>13 Q Why were you seeking the transfer?</p> <p>14 A My doctor's recommendation.</p> <p>15 Q Any other reason?</p> <p>16 A It was her recommendation. She even wrote a</p> <p>17 letter.</p> <p>18 Q Okay. Do you -- are you going through your</p> <p>19 stack, or --</p> <p>20 A It's enclosed. Yes. It's Exhibit 18.</p> <p>21 Q TR18?</p> <p>22 A Uh-huh.</p> <p>23 Q May I see that for a moment.</p> <p>24 If we go four pages back, there is a</p>	<p>1 A The intolerable conditions in the radio room.</p> <p>2 Q What?</p> <p>3 A The constant discipline.</p> <p>4 MR. MOORE: Objection. You don't have to tell</p> <p>5 her. You have given that testimony.</p> <p>6 THE WITNESS: I have basically said what was</p> <p>7 so intolerable in the radio room.</p> <p>8 BY MS. GORDON:</p> <p>9 Q Tell me again.</p> <p>10 MR. MOORE: No, no, no. She's not going to</p> <p>11 repeat her testimony.</p> <p>12 BY MS. GORDON:</p> <p>13 Q You have told me -- I want -- have you told me</p> <p>14 today every intolerable condition that you can think of</p> <p>15 that dealt with the radio room during your tenure?</p> <p>16 A That I can think of; yes.</p> <p>17 Q Is there anything else that would refresh your</p> <p>18 recollection?</p> <p>19 A Today, no.</p> <p>20 Q How about tomorrow or any other day?</p> <p>21 A I might think of something; I have no idea.</p> <p>22 There is no written or anything, no.</p> <p>23 Q You testified -- I think we were talking about</p> <p>24 overtime a while ago, that you had been accommodated.</p>
Page 111	Page 113
<p>1 document that says memo from Jennifer Ann Giersch. Is</p> <p>2 what the doctor's note you are talking about?</p> <p>3 A Yes.</p> <p>4 Q For the record, it says: Teresa Ruby, for</p> <p>5 medical reasons, I believe she would benefit greatly</p> <p>6 from a job change. She needs to work 40 hours or less a</p> <p>7 week, and she's unable to do so in this position.</p> <p>8 What was the medical reason?</p> <p>9 A Just the stress and all of the other work</p> <p>10 conditions of the radio room. That was of her</p> <p>11 opinion -- that was her medical opinion. I didn't</p> <p>12 dictate it.</p> <p>13 Q You would agree with me she doesn't include</p> <p>14 any of that in her note, anything about stress?</p> <p>15 A No.</p> <p>16 Q Forty hours; you were seeking to work less</p> <p>17 than 40 hours a week?</p> <p>18 A No. That was her diagnosis.</p> <p>19 Q What were you seeking?</p> <p>20 A I was just seeking relief; mental, physical,</p> <p>21 emotional. And this was her best recommendation, to get</p> <p>22 out of that environment.</p> <p>23 Q What was the environment that you were trying</p> <p>24 to get away from?</p>	<p>1 I'm not sure I understand what that situation was and</p> <p>2 what happened. Tell me about that.</p> <p>3 A The City accommodated my 40-hour work week in</p> <p>4 '04.</p> <p>5 Q And how did that come about?</p> <p>6 A A restricted-duty request by my doctor.</p> <p>7 Q Did you fill out any ADA paperwork?</p> <p>8 A No.</p> <p>9 Q Was that due to some medical condition?</p> <p>10 A It was her recommendation.</p> <p>11 Q Do you know why she was making this</p> <p>12 recommendation?</p> <p>13 A She just felt there was intolerable conditions</p> <p>14 for me in the radio room, and she was hoping to relieve</p> <p>15 some of that stress.</p> <p>16 Q Had she ever been to the radio room?</p> <p>17 A No.</p> <p>18 Q Do you know if she talked to anybody who</p> <p>19 worked in the radio room?</p> <p>20 A She would not tell me that; no.</p> <p>21 Q Would it be fair to say that the only</p> <p>22 information that she had about the radio room came from</p> <p>23 you?</p> <p>24 A Unless she had other patients from the radio</p>

<p style="text-align: right;">Page 114</p> <p>1 room. That would not be disclosed to me. 2 Q Do you know if she had other patients? 3 A I know there was others who went there, but I 4 don't know if she was the physician. 5 Q Went where? 6 A To the office; Mount Carmel East. 7 Q Who were those people? 8 A I don't remember. 9 Q You don't remember those people? 10 A No, not at this time. 11 Q How is it that you know there were other 12 people going to this same physician? 13 A I know I saw somebody in there one day. I 14 don't remember who it was. 15 Q Do you know if there was more than one person? 16 A No, I don't remember seeing more than that. 17 Q When did the so-called accomodation end? 18 A It's in here, actually. In '04, the end of 19 '04. 20 Q Do you know if your doctor, in '04 when she 21 first said you needed this restriction, did she give any 22 reason why you needed it? 23 MR. MOORE: Reason to whom? 24 BY MS. GORDON:</p>	<p style="text-align: right;">Page 116</p> <p>1 Q Did they tell you you were going to have to 2 mark off if you were not going to work overtime? 3 A Yes. 4 Q You could mark off sick? 5 A Yes. 6 Q Did you ever do that? 7 A Mark off sick? Yes. 8 Q For overtime? 9 A Yes. 10 Q I have seen in the documentation and your 11 calendar you had a huge sick leave balance. 12 A Yes, I did. 13 Q At the end of the tenure, do you know how much 14 it was? 15 A Just shy of 700 hours. 16 Q How did you manage to accrue so much sick 17 leave? 18 A I didn't take that much. 19 Q When you marked off for overtime, it was not 20 charged for sick leave? 21 A No. 22 Q Let me ask you this: Have you told me 23 everything sitting here today about your claims that you 24 recall?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q Did she give a reason to you? 2 A I don't remember. I just -- she filled out 3 the form. 4 Q The form that she filled out, did she give a 5 reason? 6 MR. MOORE: Objection. If you know. 7 THE WITNESS: I don't know. 8 BY MS. GORDON: 9 Q Do you know why the so-called accomodation 10 ended? 11 A Someone in the radio room -- the letter read 12 that they were so longer accepting restricted duty in 13 the radio room. 14 Q For overtime? 15 A No, no, no, no. They were no longer accepting 16 restricted-duty letters, forms, in the the radio room. 17 Q Who did you have conversations with? 18 A There was a Fitness for Duty hearing in City 19 Hall. It was dated September 21, 2004. 20 Q Okay. 21 A Fitness for Duty hearing; okay. That happened 22 during the hearing. They told me they were no longer 23 going to accept the restrictive -- restricted-hours duty 24 notice. I don't know what it's called -- TR3.</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. MOORE: Objection. We are not going to 2 get into that. She answered the questions that you 3 asked her. 4 BY MS. GORDON: 5 Q Is there anything else you want to tell me 6 about your claims? 7 MR. MOORE: Same question. Ask a question. 8 MS. GORDON: It's a fair question, Mike. 9 MR. MOORE: No, it's not. Ask her about 10 things that happened. You are not going to ask her 11 that. You are taking the deposition; not us. 12 BY MS. GORDON: 13 Q Is anything else about your claims that you 14 have not told me? 15 MR. MOORE: Don't answer it. 16 MS. GORDON: Answer. 17 MR. MOORE: Don't answer. 18 MS. GORDON: Answer. 19 MR. MOORE: Move on. 20 MS. GORDON: No. She's going to answer the 21 question. 22 MR. MOORE: No, she's not going to answer the 23 question. 24 BY MS. GORDON:</p>

<p style="text-align: right;">Page 118</p> <p>1 Q We have talked about the claims in your 2 lawsuit. Sitting here today, have you told me 3 everything to the best of your recollection right now? 4 MR. MOORE: Objection. Same answer. 5 BY MS. GORDON: 6 Q Yes or no? 7 MR. MOORE: No. We are not going to answer 8 that question. You ask her specific -- 9 BY MS. GORDON: 10 Q Have you -- 11 MR. MOORE: Let me finish. 12 MS. GORDON: You are finished, Mike. 13 BY MS. GORDON: 14 Q Have you answered to the best of your 15 recollection today? 16 MR. MOORE: Objection. Don't answer the 17 question. 18 MS. GORDON: Have you answered to the best of 19 your recollection today? 20 MR. MOORE: You can answer that. 21 MS. GORDON: Answer. 22 THE WITNESS: Have I answered to the best of 23 my recollection today? Yes. 24 BY MS. GORDON:</p>	<p style="text-align: right;">Page 120</p> <p>1 out. 2 MS. GORDON: I want my objection noted for 3 record. It's a leading question. 4 MR. MOORE: Fine. 5 BY MR. MOORE: 6 Q When you were answering the question regarding 7 being forced out, can you tell us what, at the time you 8 gave your resignation, your belief was about whether or 9 not continuing the process of the disciplinary actions 10 would lead to your termination? 11 MS. GORDON: Objection. Leading and calls for 12 speculation. 13 MR. MOORE: It's not leading. 14 BY MR. MOORE: 15 Q What was your expectation or understanding at 16 the time? 17 A I actually believed I would be fired. 18 Q Okay. 19 A I also knew that I did not want to be fired. 20 That's why I gave two weeks. 21 Q That's my next question, but -- in your 22 experience, you testified about how many days you and -- 23 you had continuing charges against you. Did you have 24 any reason to believe that you would have a resolution</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Is there any other piece of paper, any note, 2 any e-mail, calendar, diary, any book, journal, anything 3 else where you have written down, any tape recording, 4 video recording, text message that you have that deals 5 with the claims in this lawsuit? 6 A Not that I can recall. 7 Q Is there anything that would refresh your 8 recollection? 9 A Nothing concrete. 10 Q How about something not concrete? 11 A You know how sometimes a person thinks of 12 something -- something may come to me; but no. 13 MS. GORDON: That's all I have. 14 EXAMINATION 15 BY MR. MOORE: 16 Q I have a couple of questions. 17 You were asked the question earlier on 18 regarding -- you were being asked about being forced to 19 leave the City, and you were asked what the reasons were 20 you were forced to leave the City. And you had 21 addressed the -- according to my notes -- 22 MS. GORDON: This is a leading question. 23 MR. MOORE: I can do this on redirect. If you 24 want to stop the deposition and ask the judge, walk</p>	<p style="text-align: right;">Page 121</p> <p>1 of your medical condition in '06 that would not put you 2 in the position of taking sick leave time and be 3 required to provide medical reasons? 4 MS. GORDON: Objection. 5 MR. MOORE: Can you answer it. 6 THE WITNESS: I'm not sure I -- 7 BY MR. MOORE: 8 Q The question is: Did you expect at that time 9 that your medical condition would improve so that you 10 would not be required to give these medical notes? 11 A No. 12 MS. GORDON: Objection. 13 THE WITNESS: No. 14 BY MR. MOORE: 15 Q Now, you mentioned in your answer that you 16 gave two weeks' notice. Was there any kind of concern 17 that you had at that time about termination versus 18 resignation? 19 A For future employment, I felt a two weeks' 20 notice, leaving in good standing -- I had fifteen years. 21 I wanted to use them as a job reference. I had no idea 22 I would go down as a no-rehire. 23 Q Did you have any understanding -- did anybody 24 in the department tell you that if you resigned with</p>

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1 charges pending that you would be listed as leaving not
 2 in good standing and a no-rehire throughout the City?
 3 A No, I did not know that.
 4 Q Did you subsequently learn that?
 5 A Yes, I did.
 6 Q Afterwards?
 7 A Yes.
 8 Q Now, in terms of an answer you gave earlier in
 9 the deposition, you testified in answer to a question
 10 that Ms. Gordon asked that you don't believe you were
 11 interested in being a dispatcher anymore.
 12 Can you tell us why you are no longer
 13 interested in being a dispatcher.
 14 A I don't think I would be rehired in that field
 15 due to the negative standing the City has me down as.
 16 Q In applying for the position you applied for
 17 at the -- and I apologize, I think it's OSU Department
 18 of Dentistry?
 19 A Yes.
 20 Q You applied for that position before you
 21 actually gave your resignation to the City?
 22 A Yes, I did.
 23 Q And can you tell us why you were applying to
 24 the dentistry department before you actually gave your

Page 123

1 resignation.
 2 A I thought I was going to be fired.
 3 Q Had anybody told you in management that the
 4 disciplinary actions against you for refusing to give up
 5 your medical information would be stopped?
 6 MS. GORDON: Objection.
 7 THE WITNESS: Well, there was another
 8 discipline pending --
 9 BY MR. MOORE:
 10 Q My question is: Did anyone, around the time
 11 of your termination or before your termination that was
 12 in command, tell you that they were no longer going to
 13 require you to give out the medical information?
 14 MS. GORDON: Objection. And also, she was not
 15 terminated. I object to the question and the
 16 inaccurate representation.
 17 BY MR. MOORE:
 18 Q At any time before your resignation, did
 19 anybody in command tell you that you would no longer be
 20 required to give up medical information?
 21 A No.
 22 Q Did anybody in command tell you that if you
 23 are you told to do it, you would not be disciplined
 24 further?

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1 MS. GORDON: Objection.
 2 THE WITNESS: No.
 3 BY MR. MOORE:
 4 Q Okay. You testified in response to questions
 5 by Ms. Gordon about the hostile work environment claims,
 6 and you listed a number of things. One of the things
 7 you talked about was the supervisor's demands on you.
 8 Can you tell us if the supervisor's attitude or behavior
 9 toward you changed from previous behavior after you
 10 began to contest the requirement that you give this
 11 medical information?
 12 MS. GORDON: Objection.
 13 MR. MOORE: You can answer it.
 14 THE WITNESS: Yes. It was more negative
 15 toward me; less friendly.
 16 BY MR. MOORE:
 17 Q You testified also -- and it was not followed
 18 up -- that one of the things that happened is the
 19 supervisor wouldn't let you change channels, I think is
 20 the testimony you gave; is that correct?
 21 A Yes.
 22 Q What does that mean?
 23 A We had assignments every shift that you came
 24 in to work on. Sometimes it would be easier to work a

Page 125

1 back channel, a comm channel, than a front dispatching
 2 channel. It was at their discretion. It was a
 3 perfectly allowable practice up there.
 4 Q Let me do it this way: Are you saying --
 5 before you started having issues with them about your
 6 medical absences and the requirements that you provide
 7 this information, before that happened, had you made
 8 inquiries about changing channels?
 9 A Yes.
 10 Q Had you been denied?
 11 A I don't remember; but no, not that much.
 12 Q Are you saying this changed after this period
 13 of time started?
 14 MS. GORDON: Objection.
 15 BY MR. MOORE:
 16 Q What I'm trying to understand is if you are
 17 saying they wouldn't let you change channels was
 18 something that changed after you started having the
 19 disciplinary action and the grievances, that type of
 20 thing.
 21 MS. GORDON: Objection.
 22 THE WITNESS: Yes.
 23 BY MR. MOORE:
 24 Q And I take it all of this behavior and conduct

<p style="text-align: right;">Page 126</p> <p>1 carried through right up until the day you gave your 2 resignation? 3 MS. GORDON: Objection. 4 THE WITNESS: Yes. 5 MR. MOORE: I don't think I have any further 6 questions. 7 FURTHER EXAMINATION 8 BY MS. GORDON: 9 Q You testified that you didn't think your 10 medical condition was going to resolve itself in 2006. 11 What was the medical condition -- from 2005 going into 12 2006? 13 A The same as previously stated. 14 Q Which was what? 15 A There was numerous conditions I was on 16 medication for. 17 Q What medical condition? 18 MR. MOORE: I'll object, counsel. You can 19 answer the question -- if you know the specific 20 medical conditions, answer them. 21 THE WITNESS: I don't think there is a name. 22 I listed all of the conditions I could remember at 23 the time to my doctor. 24 BY MS. GORDON:</p>	<p style="text-align: right;">Page 128</p> <p>1 MS. GORDON: That's it. 2 THE WITNESS: Thank you. 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 127</p> <p>1 Q Okay. And those are the conditions you did 2 not share with anybody in the division of police; 3 correct? 4 A Well, they would get the headache. 5 Q That was the only condition that you 6 disclosed? 7 MR. MOORE: If you know. 8 THE WITNESS: If I remember correctly; yes. 9 BY MS. GORDON: 10 Q You got a copy of the division directives; 11 correct? 12 A At the time I worked; yes. 13 Q Your own personal copy? 14 A To keep? No. 15 Q While were you employed there? 16 A Yes. 17 Q You were required to maintain it? 18 A Yes. My inspections were fine. 19 Q And you resigned before you could have a 20 disciplinary hearing on the last set of charges; 21 correct? 22 A I knew some were coming; yes. 23 Q Had you been served yet? 24 A I had been interviewed, I believe.</p>	<p style="text-align: right;">Page 129</p> <p>1 State of Ohio : 2 SS: 3 County of Franklin: 4 5 I, Teresa Ruby do hereby certify 6 that I have read the foregoing transcript of my 7 deposition given on March 11, 8 2009; that together with the correction page 9 attached hereto noting changes in form or substance, 10 if any, it is true and correct. 11 12 _____ 13 Teresa Ruby 14 15 I do hereby certify that the foregoing 16 transcript of the Deposition of Teresa Ruby 17 was submitted to the witness for reading and 18 signing; that after he had stated to the 19 undersigned Notary Public that he had read and 20 examined her deposition, he 21 signed the same in my presence. 22 23 _____ 24 Notary Public My commission expires _____ ---</p>

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1 CERTIFICATE

2 State of Ohio :

3 SS:

4 County of Franklin:

5 I, Laura S. Benton, Notary Public in and
 6 for the State of Ohio, duly commissioned and qualified,
 7 certify that the within named Teresa Ruby was by me
 8 duly sworn to testify to the whole truth in the cause
 9 aforesaid; that the testimony was taken down by me in
 10 stenotype in the presence of said witness, afterwards
 11 transcribed upon a computer; that the foregoing is
 12 a true and correct transcript of the testimony given
 13 by said witness taken at the time and place in the
 14 foregoing caption specified.

15 I certify that I am not a relative, employee,
 16 or attorney of any of the parties hereto, or of any
 17 attorney or counsel employed by the parties, or
 18 financially interested in the action.

19 IN WITNESS WHEREOF, I have set my hand and
 20 affixed my seal of office at Columbus, Ohio, on this
 21 23rd day of March, 2009.
 22

23 LAURA S. BENTON, Notary Public
 24 in and for the State of Ohio

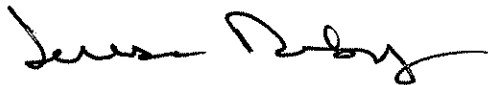
My Commission expires December 7, 2010

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1 State of Ohio :
2 County of Franklin: SS:
3

4 I, Teresa Ruby do hereby certify
5 that I have read the foregoing transcript of my
6 deposition given on March 11,
7 2009; that together with the correction page
8 attached hereto noting changes in form or substance,
9 if any, it is true and correct.
10

11 

12 Teresa Ruby

13 I do hereby certify that the foregoing
14 transcript of the Deposition of Teresa Ruby
15 was submitted to the witness for reading and
16 signing; that after he had stated to the
17 undersigned Notary Public that he had read and
18 examined her deposition, he
19 signed the same in my presence.
20

21 
Notary Public
MICHAEL C. MOORE

22 My commission expires LIFETIME COMMISSION
23
24

ERRATA SHEET

Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

TO THE REPORTER:

I have read the entire transcript of my deposition taken on the ____ day of _____, 20____, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Change	Reason
9	2	Ad vaiv	Remembered
9	20	Prilosec	Wrong Name
10	23	I was part of	Named as Plaintiff
12	14	JEP in 1990	incorrect
47	7	documentain	union rep advised
48	5	constructively	misspelled
49	20	FMLA	purpose of call
60	12	expensed	do not understand
60	13	expensed	do not understand
75	18	documentation	union rep advised
82	14	overtime hours worked	correct wording
97	21	Frances Grawlich sent it	I remembered

3/26/09

Date

Terese Duby

Signature

Danielle Murphy

From: Teresa_Ruby@tax.state.oh.us
Sent: Wednesday, January 14, 2009 12:28 PM
To: ladyradio911@aol.com
Subject: Fw: Mandatory Overtime

From: Gibson, Diana

Sent: Wed 1/14/2009 12:10 PM

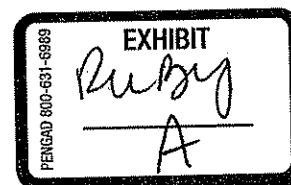
To: Gapen, Charity B; Guiler, Debora K; Hernandez, Cassie R; Hetterscheidt, Amanda M; Hull, James F; McCoy, Scharlotta; Overholser, Melinda C; Rahwan, Gary; Schleppi, John A; Becker, Christopher; Bentley, Todd; Branson, Gwendolyn; Collins, Natalie; Crooks, Anita; Dolder, Betty; Dublin, Michelle; Easter, Alycia; Estepp, Vicky; Foss, Jennifer; Gantt, Melissa; Gardner, Yvonne; Glieco, Jocelyn; Gramlich, Frances; Hannah, Stephanie; Heil, Janet; Kolas, Carole; Lombard, Deborah; Love, Anita; Massey, Wendy; Mirones, Janice; Penn, Elizabeth; Pierce, Kyle; Rensch, Elizabeth; Roese, Charlotte; Rush, Delisa; Stevens, Misty M.; Thompson, Jessica L; Adams, Benjamin; Brehm, Cora; Byrley, Toni L; Caldwell, Cara; Couch, Aaron; Fravel, Leslie; Frye, LaDosha; Gootee, Allison; Held, Carrie; Kato, Shanae; Kenefick, Christy; Knisely, Crystal; Lahn, Jennifer; Lucas, Elizabeth; Lyman, Christopher S; Mayfield, Chris; Mosley, Rebecca; Murray, Shannon; Nickel, Kimberley; Prothero, Gary; Rensch, Douglas; Seipel, Mandie; Shoffer, Mary Ann; Shook, William; Stewart, Cheryl L; Thomas, Dale J; Todhunter, Patricia; Williams, Shari N; Adkins, Melinda K; Anthony, Amber M; Banks, Kimberly; Blevins, Krisann; Brobst, Stephanie; Conley, Veronica M; DeLong, Brenda; Dillen, William L; Dittmer, Susan; Eggeman, James; Gapen, Barbara; Grant, Timothy; Hill, Kelly; Holland, Kathane; Iacoboni, Christopher; Lazar, Lisa; Little, Robert; Logan, Misty; McEneany, Dawn; Meyer, Lee; Pappas, Pamela S.; Pendleton, David; Smith, Charlotte; Smith, Jason A; Sneed, Jason; Taylor, Barbara; Thatcher, Brandon; Thomas, Danielle J; Townsley, Mary; Venrick, Cathleen; Weis, Jean A.; Winston, Sherry

Cc: Button, Barbara; Crawford, Vicky; Gibson, Diana; Griggs, Carolyn; Hornung, Edwina; Kimbrough, Pamela; Ross, Janice; Valentino, Mark; Whitmoyer, Margaret; Winter, Margaret A.

Subject: FW: Mandatory Overtime

Effective immediately.

PCTS Diana Gibson #S01
 Columbus PD, Radio Room
 614.645.4899



From: Yates, Larry

Sent: Wednesday, January 14, 2009 9:09 AM

To: Crawford, Vicky; Gibson, Diana; Griggs, Carolyn; Hornung, Edwina; Kimbrough, Pamela; Ross, Janice; Valentino, Mark; Whitmoyer, Margaret; Winston, Sherry; Winter, Margaret A.

Cc: Dunlap, Gary; Mull, Brenton S.

Subject: Mandatory Overtime

Supervisors,

In order to reduce the overtime expenditure and allow CT's more time away from work the following policy will be implemented immediately: There will be no mandatory overtime for CT's at the end of each four hour slot throughout the day. If a CT wants to volunteer to stay and work because of a shortage they are welcome to stay and work but we will not hold them. **Supervisors still have the discretion to hold CT's to get an emergency situation resolved.** If there is a shortage due to markoffs you are to lay in LEADS, (make the announcement on all of the main channels air so the officers know), lay in half the Comm. Channel then start laying in 4545 positions. Under no circumstance do you lay in any 911 positions, (this would fall under the emergency situation

to hold CT's). This policy is on a trial basis and can be revised at any time at the CMDR's discretion.

Additionally, the CMDR is considering reducing the number of mandatory OT hours from 12 to 8. Just an FYI, we were told Monday there are going to be no more CT classes in the foreseeable future. This will also eliminate the need to have the training CT's continually updating the lesson plans and/or class curriculum. Please keep track of issues that arise as a result of this temporary policy change and they will be reviewed at a future date to determine the feasibility of implementing the policy permanently.

In the future when making emergency notifications it will be the supervisor's discretion to pull a CT from the room to make all of the calls until an actual person is notified on every situation and it is to be noted in the CAD when complete.

Lt. Yates.

Jennifer A. Giersch, M.D.

January 12, 2010

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

Lisa Lee, et al., :

Plaintiffs,:

vs. : Case No. 2:07 CV 1230

City of Columbus, et al.,:

Defendants.:

- - -

January 12, 2010

Deposition of

Jennifer A. Giersch, M.D.

a witness herein, called by the
Plaintiffs for direct examination under the
applicable Rules of Ohio Civil Court Procedure, taken
before me, Michael A. Caswell, a Professional

Reporter and Notary Public in and for the State of
Ohio, pursuant to subpoena, at the offices of
Jennifer A. Giersch, M.D., 150 Taylor Station Road,
Suite 140, Columbus, Ohio, on Tuesday, January 12,
2010, commencing at approximately 10:24 a.m.

- - -

Jennifer A. Giersch, M.D.

January 12, 2010

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 ELIOTT R. GOOD, Esquire</p> <p>3 Chorpennig, Good & Pandora Co., LPA</p> <p>4 585 South Front Street, Suite 250</p> <p>5 Columbus, Ohio 43215</p> <p>6 (614) 469-1301</p> <p>7 ergood@cgmmlpa.com</p> <p>8</p> <p>9 On behalf of the Plaintiffs.</p> <p>10</p> <p>11 PAULA J. LLOYD, Esquire</p> <p>12 PAMELA J. GORDON, Esquire</p> <p>13 Columbus City Attorney's Office</p> <p>14 90 West Broad Street</p> <p>15 Columbus, Ohio 43215</p> <p>16 (614) 645-7385</p> <p>17 pjllloyd@columbus.gov</p> <p>18 pjgordon@columbus.gov</p> <p>19 On behalf of the Defendants.</p> <p>20 ---</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 ---</p> <p>3 Jennifer A. Giersch, M.D. Page</p> <p>4 Direct Examination, by Mr. Good 5</p> <p>5 Cross-examination, by Ms. Lloyd 36</p> <p>6 Redirect Examination, by Mr. Good 98</p> <p>7 Recross-examination, by Ms. Lloyd 104</p> <p>8 ---</p> <p>9 EXHIBITS</p> <p>10 Plaintiff's Exhibits Marked Referred</p> <p>11 No. 1 -</p> <p>12 Curriculum vitae of</p> <p>13 Jennifer A. Giersch, M.D.,</p> <p>14 1 page 5 8/42</p> <p>15</p> <p>16 No. 2 -</p> <p>17 Dr. Giersch's medical chart</p> <p>18 On Teresa Ruby, 157 pages 5 11-14/21/36/49</p> <p>19 54/55/62/86</p> <p>20</p> <p>21 No. 3 -</p> <p>22 Note To Whom It May Concern from</p> <p>23 Jennifer Giersch, M.D., Dated</p> <p>24 May 25, 2005, 1 page 5 20/21/90</p> <p>25</p> <p>26 No. 4 -</p> <p>27 Note To Whom It May Concern from</p> <p>28 Jennifer Giersch, M.D., Dated</p> <p>29 November 11, 2005, 1 page 5 20/25/27/90</p> <p>30 91/101/102</p> <p>31 105/106</p> <p>32</p> <p>33 ---</p> <p>34</p>
<p style="text-align: right;">Page 3</p> <p>1 Tuesday Morning Session</p> <p>2 January 12, 2010</p> <p>3 10:24 a.m.</p> <p>4 ---</p> <p>5 STIPULATIONS</p> <p>6 It is hereby stipulated by and between</p> <p>7 counsel for the respective parties herein that this</p> <p>8 deposition of Jennifer A. Giersch, M.D. may be taken</p> <p>9 at this time by the Notary; that said deposition is</p> <p>10 being taken by subpoena; that said deposition may be</p> <p>11 reduced to writing in stenotypy by the Notary, whose</p> <p>12 notes may thereafter be transcribed out of the</p> <p>13 presence of the witness; that proof of the official</p> <p>14 character and qualifications of the Notary, the time</p> <p>15 and place of the taking of said deposition are hereby</p> <p>16 waived.</p> <p>17 ---</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 ---</p> <p>3 Thereupon, documents were marked for</p> <p>4 purposes of identification as Plaintiff's Exhibits 1</p> <p>5 through 4 by the reporter.</p> <p>6 ---</p> <p>7 JENNIFER A. GIERSCH, M.D.,</p> <p>8 being by me first duly sworn, as hereinafter</p> <p>9 certified, deposes and says as follows:</p> <p>10 ---</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MR. GOOD:</p> <p>13 Q. Doctor, my name is Elliott Good.</p> <p>14 Thank you for making yourself available</p> <p>15 this morning pursuant to subpoena.</p> <p>16 I am one of the attorneys for Teresa Ruby</p> <p>17 in a matter that she has filed.</p> <p>18 Your testimony this morning is being taken</p> <p>19 for purposes of trial. Okay?</p> <p>20 A. Uh-huh.</p> <p>21 Q. I will be fairly short, but I do have a</p> <p>22 number of areas that I'd like to explore with you.</p> <p>23 I'm going to hand to you --</p> <p>24 MR. GOOD: I'm sorry. Please excuse me.</p>

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<p style="text-align: right;">Page 6</p> <p>1 Before we get into the questioning, counsel for the 2 city has an objection she'd like to make on the 3 record. 4 MS. LLOYD: Dr. Giersch, I'd also like to 5 introduce myself. My name's Paula Lloyd. I'm an 6 assistant city attorney. And this is Pamela Gordon, 7 assistant city attorney. We're the attorneys 8 representing the city in the lawsuit that Ms. Ruby 9 has filed. 10 And as plaintiff's counsel indicated, your 11 deposition today is being taken pursuant to subpoena 12 for purposes of a trial deposition. 13 Prior to getting started, since we would 14 anticipate that this deposition may be introduced at 15 trial, I would like to state that we will be 16 objecting to the introduction of Dr. Giersch's 17 testimony in the capacity of an expert witness, but 18 we may not object to her testimony in the capacity of 19 a treating physician in this matter. For purposes of 20 efficiency here, we wanted to raise that objection at 21 the start. And we will do our best to try to keep 22 repetitious objections to a minimum during the 23 deposition. 24 We will also, of course, given the nature</p>	<p style="text-align: right;">Page 8</p> <p>1 would certainly -- we object on -- we will be 2 objecting on the grounds of relevance, but I don't 3 know what questions you'll be asking. So why don't 4 we wait and see? 5 MR. GOOD: The only clarification I need 6 from you is you indicated you're not waiving any 7 other objections. I don't know what other objections 8 you refer to. If by -- You've raised the objection 9 as to ADA and FMLA. Understand that objection. I 10 have no problem with you stating on the record, 11 noted. That's fine. 12 If there are objections to areas of inquiry 13 or form, substance, how the question is phrased, 14 foundation, and you don't object to that -- 15 MS. LLOYD: We will attempt to, of course, 16 raise any objection that would be waived if we did 17 not raise it now. In particular, any objections that 18 if raised could cause counsel to rephrase the 19 question so that it would not be objectionable. 20 MR. GOOD: Okay. Comments by counsel are 21 noted. 22 BY MR. GOOD: 23 Q. Dr. Giersch, let me hand to you what has 24 been marked as Exhibit Number 1. And --</p>
<p style="text-align: right;">Page 7</p> <p>1 of this case, we will be objecting to the 2 introduction of any testimony as to the doctor's 3 conclusions relative to the -- conclusions relative 4 to the FMLA or the ADA because there is no longer any 5 FMLA claim in this case. And also we would object to 6 any testimony that would be offered to indicate or 7 that might suggest that the city had interfered with 8 plaintiff's rights under the FMLA or in any way 9 denied plaintiff FMLA leave to which she was entitled 10 as plaintiff has withdrawn that claim from this 11 lawsuit, and because plaintiff's counsel has 12 represented the issue of whether she is entitled to 13 FMLA leave is not an issue in this lawsuit. 14 Consistent with that, we will have that objection. 15 We will raise it if necessary, but we'll try to keep 16 are objections to a minimum consistent with what I've 17 said. 18 We don't waive any -- Of course, and we do 19 not waive any objection because we have not stated it 20 at this trial deposition. 21 MR. GOOD: Any objection as to any other 22 issue or -- 23 MS. LLOYD: I suppose we'll have to wait to 24 see what issues come up in the trial deposition. We</p>	<p style="text-align: right;">Page 9</p> <p>1 MS. LLOYD: May I have a copy, please? 2 MR. GOOD: I'm sorry. 3 Q. And ask you to take a look at that for a 4 moment and tell me: Is that your present CV? 5 MS. LLOYD: Counsel, we'll object at this 6 point that this document has not previously been 7 provided to us in accordance with the rules for 8 providing resumes of expert witnesses. 9 MR. GOOD: That's fine. 10 A. Yes, that's correct. 11 Q. Okay. And is this an updated resume to the 12 present time? 13 A. Yes. 14 Q. Okay. And you are a licensed physician in 15 the State of Ohio? 16 A. Yes. 17 Q. And for how long have you been a licensed 18 physician? 19 A. Since 1984. 20 Q. And since that time, have you limited your 21 practice to a particular area or specialty within the 22 medical field? 23 A. I'm a family practitioner. 24 Q. Okay. Would you be good enough to tell the</p>

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<p style="text-align: right;">Page 10</p> <p>1 jury what a family practitioner is, please?</p> <p>2 A. A family practitioner has spent three years</p> <p>3 in training in that field. It is fairly all</p> <p>4 encompassing; it includes pediatrics, geriatrics and</p> <p>5 adult medicine.</p> <p>6 Q. Okay. And when you say that you spend</p> <p>7 three years, is that three years after residency and</p> <p>8 fellowship?</p> <p>9 A. That's -- No. That's residency.</p> <p>10 Q. That is residency. Okay.</p> <p>11 A. That's where the training in family</p> <p>12 medicine occurred, following which I became board</p> <p>13 certified.</p> <p>14 Q. So you are a board certified physician?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And what is involved in becoming a board</p> <p>17 certified physician, please?</p> <p>18 A. A board certified physician has gone</p> <p>19 through the required training of three years of</p> <p>20 residency and then sits for an examination.</p> <p>21 In family practice, we are also required to</p> <p>22 recertify every seven years. And that requires also</p> <p>23 continuing medical education, documentation, as well.</p> <p>24 Q. And when was the last time you were</p>	<p style="text-align: right;">Page 12</p> <p>1 and look at that Exhibit Number 2?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Okay. I'm sorry. And do you believe that</p> <p>4 to be a complete set of Teresa Ruby's records?</p> <p>5 A. I do.</p> <p>6 Q. Okay.</p> <p>7 MS. LLOYD: Excuse me. At this point,</p> <p>8 Counsel, for purposes of clarity, could I request</p> <p>9 that Dr. Giersch -- it be clearer which document</p> <p>10 she's consulting since she has several documents</p> <p>11 spread out in front of her? If we could introduce</p> <p>12 the exhibit to which she is testifying?</p> <p>13 MR. GOOD: Sure. I thought I made it clear</p> <p>14 that we were looking at Exhibit Number 2.</p> <p>15 MS. LLOYD: Maybe if we could move these,</p> <p>16 so that when you do want to refer to something else,</p> <p>17 you can, but if we're talking about Exhibit 2 --</p> <p>18 MR. GOOD: Paula, I understand what your</p> <p>19 concern is. However, let's not lose sight of the</p> <p>20 fact that if you're confused over what --</p> <p>21 the document she's looking at, she was looking at</p> <p>22 Exhibit Number 2. If the doctor is not confused by</p> <p>23 it, we're okay.</p> <p>24 MS. LLOYD: For purposes of the record, I</p>
<p style="text-align: right;">Page 11</p> <p>1 recertified?</p> <p>2 A. Approximately four years ago.</p> <p>3 Q. Okay. Within your practice, do you have a</p> <p>4 patient that you see or have seen by the name of</p> <p>5 Teresa Ruby?</p> <p>6 A. I do.</p> <p>7 Q. Okay. And for how long has Teresa Ruby</p> <p>8 been a patient of yours? Do you know offhand?</p> <p>9 A. Since 1993.</p> <p>10 Q. Okay. Now, Doctor, let me hand to you --</p> <p>11 because you're looking at Exhibit Number 2, would you</p> <p>12 be good enough to tell the jury what it is, Exhibit</p> <p>13 Number 2, please, and what it consists of?</p> <p>14 A. Exhibit Number 2 is the chart on Teresa</p> <p>15 Ruby from --</p> <p>16 Q. That is your medical chart?</p> <p>17 A. My medical chart, yes.</p> <p>18 Q. Okay.</p> <p>19 A. And it consists of all progress notes, all</p> <p>20 letters received regarding this patient, any forms</p> <p>21 that I've completed for her, laboratory results,</p> <p>22 messages.</p> <p>23 Q. And prior to the commencement of this</p> <p>24 deposition, you had an opportunity to thumb through</p>	<p style="text-align: right;">Page 13</p> <p>1 would like it to reflect to which piece of paper the</p> <p>2 doctor is referring when she refers to a piece of</p> <p>3 paper.</p> <p>4 MR. GOOD: I don't mean to be difficult,</p> <p>5 but we mentioned specifically Exhibit 2. That is</p> <p>6 what she, in fact, looked at. And that is exactly</p> <p>7 what she referred to.</p> <p>8 MS. LLOYD: I was just requesting that we</p> <p>9 move the others away.</p> <p>10 MR. GOOD: I don't have a problem with</p> <p>11 that. It's how you did it. Okay.</p> <p>12 Q. Doctor, your practice and your procedures,</p> <p>13 would you explain to the jury, please, how you keep</p> <p>14 your records and what is contained within your</p> <p>15 records?</p> <p>16 A. When I see a patient and they are brought</p> <p>17 in, they are initially roomed by a medical assistant</p> <p>18 to document the date of the visit, the vital signs</p> <p>19 that are taken, and the chief complaint. Following</p> <p>20 that, my documentation of the visit is either</p> <p>21 handwritten or dictated or completed from a template.</p> <p>22 Q. Okay. Now, I noticed in looking at Exhibit</p> <p>23 Number 2 that there are certain pages that appear to</p> <p>24 be either typewritten or computer generated and</p>

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<p>1 others which appear to be handwritten pages. Is</p> <p>2 there a reason for the difference?</p> <p>3 A. Basically, the office that I was in and</p> <p>4 their procedures.</p> <p>5 Q. So how they kept the records at that time?</p> <p>6 A. Yes.</p> <p>7 Q. But the completeness of the records are</p> <p>8 still the same, they are complete?</p> <p>9 A. Yes.</p> <p>10 Q. And they represent your interactions with</p> <p>11 Teresa Ruby, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Towards the back of Exhibit 2 starting on</p> <p>14 Page 000132, there appears to be -- or there is what</p> <p>15 appears to be computer-generated forms that says,</p> <p>16 Clinical Task Report.</p> <p>17 Could you tell the ladies and gentlemen of</p> <p>18 the jury what this part of your medical records for</p> <p>19 Teresa Ruby may be?</p> <p>20 A. These are most likely reflected of a</p> <p>21 patient calling in with a phone message.</p> <p>22 Q. Okay.</p> <p>23 A. And my response to that phone message.</p> <p>24 Q. Would it also include a patient that</p>	<p>1 skim through these pages, would all of these pages</p> <p>2 from 000132 through 000157 be electronic contact</p> <p>3 information from Teresa Ruby either by way of a</p> <p>4 telephone call or a visit to your office?</p> <p>5 MS. LLOYD: Objection. Lack of foundation.</p> <p>6 Q. Doctor, this represents either a contact</p> <p>7 from a patient by telephone or a visit to your</p> <p>8 office, correct?</p> <p>9 A. Correct.</p> <p>10 MS. LLOYD: Objection. Lack of foundation.</p> <p>11 Q. You can go ahead and tell us whether this</p> <p>12 Page 132 through 157 is the contact pages for Teresa</p> <p>13 Ruby?</p> <p>14 A. Yes, they are.</p> <p>15 Q. Now, Doctor, I want to call your attention</p> <p>16 to Page 000132, if I may. Now, at the top of the</p> <p>17 page, I'm going to ask some questions about what some</p> <p>18 of the writing on the top of the page means. It</p> <p>19 says, Clinical Task Report. And it says, Due from</p> <p>20 01-01, 1800 to 12-31, 9999, date, time.</p> <p>21 Is that just something that's done by the</p> <p>22 computer or is it capturing something? Do you know</p> <p>23 what that means?</p> <p>24 A. I asked our information systems department</p>
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<p>1 appeared at the office?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So it's not only phone messages, it</p> <p>4 would be a patient that appeared at the office, as</p> <p>5 well?</p> <p>6 A. Yes.</p> <p>7 Q. Now, can you explain to the jury why there</p> <p>8 are certain items -- why there are certain visits and</p> <p>9 contacts with the patients that are maintained in</p> <p>10 this form versus the other forms that it looks like</p> <p>11 with -- as you would have for an office visit? Why</p> <p>12 are there differences?</p> <p>13 What I'm asking: Is this just an</p> <p>14 alternative way for you to --</p> <p>15 MS. LLOYD: Objection. Leading.</p> <p>16 Q. Is this an alternative way for you to note</p> <p>17 a contact with the patient?</p> <p>18 A. Yes. It is in a different section of the</p> <p>19 electronic medical records. So it appears</p> <p>20 differently because that's the way it's recorded.</p> <p>21 Q. I see. But it is part of the medical</p> <p>22 records for Teresa Ruby?</p> <p>23 A. Yes.</p> <p>24 Q. And if you would be good enough to just</p>	<p>1 to run a report to include all messages. I believe</p> <p>2 they chose those dates because they knew they would</p> <p>3 be all encompassing.</p> <p>4 Q. It certainly appears it would be. But when</p> <p>5 you look at the date, time now, would the date of</p> <p>6 12-30-09 at 10:57 be when you believed it was run?</p> <p>7 A. Yes.</p> <p>8 Q. Very good.</p> <p>9 Now, we go down a little bit further on</p> <p>10 that page, and there is a heading that provides</p> <p>11 several different indications. One says, PRI.</p> <p>12 Do you see that?</p> <p>13 Do you know what that stands for?</p> <p>14 A. I do not.</p> <p>15 Q. Okay. And then date, would that be the</p> <p>16 date of contact?</p> <p>17 A. Yes.</p> <p>18 Q. Patient?</p> <p>19 A. That's the patient number.</p> <p>20 Q. And then name would be the patient name?</p> <p>21 A. Correct.</p> <p>22 Q. Description?</p> <p>23 A. There are different descriptions for a task</p> <p>24 or a message on the electronic medical record. There</p>

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<p>1 are different categories.</p> <p>2 Q. And then doctor would be you?</p> <p>3 A. The message it is for.</p> <p>4 Q. And then case number description?</p> <p>5 A. I have no idea.</p> <p>6 Q. It doesn't seem to be used on any of these</p> <p>7 forms, does it?</p> <p>8 A. No.</p> <p>9 Q. Okay. Now, I notice that there are</p> <p>10 messages that seem to have been placed as a</p> <p>11 description in a number of these.</p> <p>12 Now, what does a message mean?</p> <p>13 Does it mean that it is --</p> <p>14 MS. LLOYD: Objection. Leading.</p> <p>15 Q. What does a message mean? How would that</p> <p>16 contact have come about?</p> <p>17 A. Message is something created from either a</p> <p>18 patient calling in or perhaps showing up at the front</p> <p>19 desk.</p> <p>20 Q. Okay. So a message doesn't mean that it</p> <p>21 was purely a telephonic or an e-mail message. It</p> <p>22 well, in fact, could have been a patient showing up</p> <p>23 at the office?</p> <p>24 A. That is correct.</p>	<p>1 will look at it. She will either do something with</p> <p>2 it or just forward it on to me. You see it was</p> <p>3 forwarded to me after that.</p> <p>4 Q. Okay. All right. Very good.</p> <p>5 Let me ask you to take a look at</p> <p>6 Plaintiff's Exhibit Number 3, please, if I may?</p> <p>7 MS. LLOYD: Can I have a copy, please?</p> <p>8 MR. GOOD: Yes.</p> <p>9 Q. Doctor, can you identify Exhibit Number 3,</p> <p>10 please?</p> <p>11 A. It is a work excuse for Teresa Ruby.</p> <p>12 Q. Now, how are these completed in your</p> <p>13 practice?</p> <p>14 A. This note merely states that the patient</p> <p>15 was seen in my office. So that can be generated by</p> <p>16 the person checking the patient out if they need</p> <p>17 verification for their employer that they were here</p> <p>18 on that particular day.</p> <p>19 Q. So that would've required Ms. Ruby to be in</p> <p>20 your office on May 25th?</p> <p>21 A. Correct.</p> <p>22 MS. LLOYD: Objection. Lack of foundation,</p> <p>23 leading.</p> <p>24 Q. Let me ask you to take a look at Exhibit</p>
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<p>1 Q. And your keeping of the record demonstrates</p> <p>2 that here, correct?</p> <p>3 A. Yes.</p> <p>4 Q. There's a notation of a name on many of</p> <p>5 these by the name of Donna Spurlock. Who is Donna</p> <p>6 Spurlock?</p> <p>7 A. She was my medical assistant at the time of</p> <p>8 those messages.</p> <p>9 Q. Okay. And would she have been the</p> <p>10 individual that would've either taken a message or</p> <p>11 met with the individual?</p> <p>12 MS. LLOYD: Objection. Leading.</p> <p>13 A. No. If you, for example, on Page 132 look</p> <p>14 at message dated June 6th, '08 --</p> <p>15 Q. Yes.</p> <p>16 A. -- it says, Created by Lisa Burns.</p> <p>17 Q. Okay.</p> <p>18 A. That is who took the message or spoke to</p> <p>19 the patient when she came in.</p> <p>20 Q. I see.</p> <p>21 A. It was sent to my medical assistant, Donna</p> <p>22 Spurlock, who looked at the message, did not feel she</p> <p>23 needed to do anything for that or perhaps did -- it</p> <p>24 says on this particular one that she refaxed it. She</p>	<p>1 Number 4, and ask you to tell the ladies and</p> <p>2 gentlemen of the jury what that is, please?</p> <p>3 A. That is another excuse for Teresa Ruby</p> <p>4 dated November 11th of 2005, stating that she was</p> <p>5 here for an appointment on November 11th and that she</p> <p>6 was able to return to work on November 12th.</p> <p>7 Q. So again, that would have required Ms. Ruby</p> <p>8 to be in your office?</p> <p>9 A. Right.</p> <p>10 MS. LLOYD: Objection.</p> <p>11 Q. Okay.</p> <p>12 MS. LLOYD: Lack of foundation, leading.</p> <p>13 Q. Okay. Let me ask you to go back to Exhibit</p> <p>14 Number 2, if I might, and ask you to turn to Page</p> <p>15 000037.</p> <p>16 Is that a progress note for Teresa Ruby?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And what is the date of that progress note?</p> <p>19 A. May 25th, 2005.</p> <p>20 Q. And does that indicate that Teresa Ruby was</p> <p>21 in your office that day?</p> <p>22 A. Yes, it does.</p> <p>23 Q. And does that coincide with Exhibit Number</p> <p>24 3, which is a letter from your office dated May 25th,</p>

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<p style="text-align: right;">Page 22</p> <p>1 '05 regarding Teresa Ruby?</p> <p>2 A. Yes, it is.</p> <p>3 Q. Okay. Let me ask you to turn in the</p> <p>4 clinical task report to Page 000134, please. And</p> <p>5 about halfway down, there's an entry dated</p> <p>6 November 7, '05, regarding Teresa Ruby.</p> <p>7 MS. LLOYD: Excuse me. Is this Page 134?</p> <p>8 MR. GOOD: Yes. Okay.</p> <p>9 MS. LLOYD: Okay.</p> <p>10 Q. The entry is November 7 of '05. Do you see</p> <p>11 that, Doctor?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Let me ask you, if you could, read into the</p> <p>14 record --</p> <p>15 (Discussion held off the record.)</p> <p>16 Q. Could you relate to the ladies and</p> <p>17 gentlemen of the jury what your contact note with</p> <p>18 Teresa Ruby demonstrates on November 7, please?</p> <p>19 MS. LLOYD: Objection. Lack of foundation,</p> <p>20 no testimony that this is her contact.</p> <p>21 Q. Contact with your office.</p> <p>22 A. Can you ask that question again? I'm</p> <p>23 sorry.</p> <p>24 Q. Sure.</p>	<p style="text-align: right;">Page 24</p> <p>1 what to do with the job that she had. And I</p> <p>2 suggested it might help her to talk with someone else</p> <p>3 about this.</p> <p>4 Q. And is that reflected in your office notes</p> <p>5 of a contact with Teresa Ruby with your office on</p> <p>6 November 7th of '05?</p> <p>7 MS. LLOYD: Objection.</p> <p>8 Q. You can answer.</p> <p>9 A. Yes. This refers back to when I had</p> <p>10 discussed this with her previously.</p> <p>11 Q. Right above the November 7th, '05 entry,</p> <p>12 there's an entry dated November 11th of '05. Would</p> <p>13 you read that entry for me and let us know whether</p> <p>14 you recall that contact on November 11th?</p> <p>15 MS. LLOYD: Objection. No testimony that</p> <p>16 this is Dr. Giersch's contact.</p> <p>17 MR. GOOD: It's her records.</p> <p>18 MS. LLOYD: Lack of foundation.</p> <p>19 A. On November 11th, I received a phone call</p> <p>20 that Teresa saw the work mental health person that</p> <p>21 day, she did not feel he was asking her questions</p> <p>22 about her mental health, that he asked her more about</p> <p>23 things not related to that, and she wanted to know</p> <p>24 what type of questions should they be asking.</p>
<p style="text-align: right;">Page 23</p> <p>1 The November 7th, '05 entry in your medical</p> <p>2 records, could you tell the ladies and gentlemen of</p> <p>3 the jury what contact Teresa Ruby had with your</p> <p>4 office on that day?</p> <p>5 MS. LLOYD: Objection. Hearsay.</p> <p>6 Are you asking the doctor to read what is</p> <p>7 on the record?</p> <p>8 MR. GOOD: Yes.</p> <p>9 A. This is a phone message dated November 7th</p> <p>10 stating that she was ready to see the mental health</p> <p>11 professional that she had spoken with myself the last</p> <p>12 time she was in. She thought it was a good idea at</p> <p>13 this point.</p> <p>14 MS. LLOYD: Objection.</p> <p>15 Q. Okay.</p> <p>16 MS. LLOYD: The doctor's reading something</p> <p>17 that's not stated on the sheet.</p> <p>18 Q. Doctor, do you recall having a discussion</p> <p>19 with Teresa Ruby regarding a mental health</p> <p>20 professional?</p> <p>21 A. Yes.</p> <p>22 Q. What do you recall?</p> <p>23 A. I recall that at this point she was very</p> <p>24 stressed and anxious trying to make a decision about</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. Exhibit Number 4 is a note from your</p> <p>2 practice dated November 11th, the same date of that</p> <p>3 entry. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Was Teresa Ruby in your office that day?</p> <p>6 Do you recall?</p> <p>7 MS. LLOYD: Objection. Lack of foundation.</p> <p>8 A. I do not see an office note. I cannot</p> <p>9 verify whether this message was taken as she appeared</p> <p>10 at the front desk.</p> <p>11 Q. Okay. But inasmuch as your November -- the</p> <p>12 Trial Exhibit 4 says she had an appointment, does it</p> <p>13 make sense then that she was in your office?</p> <p>14 MS. LLOYD: Objection. Objection. Lack of</p> <p>15 foundation.</p> <p>16 A. Yes, she would've had to have been in the</p> <p>17 office for that.</p> <p>18 Q. So in order to get that particular --</p> <p>19 A. Yes.</p> <p>20 Q. -- Exhibit 4, she would've had to have</p> <p>21 appeared at your office?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And that is consistent with your</p> <p>24 testimony previously that the messages here may be a</p>

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<p>1 telephone call or an appearance at the office?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. Yes.</p> <p>5 Q. And again, those electronic forms are</p> <p>6 another alternative type of contact that you have</p> <p>7 noted in your records with the patient?</p> <p>8 Strike that. I'll rephrase.</p> <p>9 These computer records from your office is</p> <p>10 a supplement to your other medical records, correct?</p> <p>11 A. Yes.</p> <p>12 MS. LLOYD: Objection.</p> <p>13 Q. Is there something you wanted to say,</p> <p>14 Doctor?</p> <p>15 MS. LLOYD: Objection.</p> <p>16 MR. GOOD: She can clarify an answer if she</p> <p>17 wants.</p> <p>18 A. Yes. The note from November 11th was most</p> <p>19 likely a walk-in note because it was created by my</p> <p>20 medical assistant. When somebody shows up and wants</p> <p>21 to talk to myself or the medical assistant, they go</p> <p>22 out and they create the message. My medical</p> <p>23 assistant does not answer the phones or, you know,</p> <p>24 take an initial message.</p>	<p>1 being seen for on what days starting on the first</p> <p>2 time we gave her the notes about her hours needing to</p> <p>3 be shortened, she is at home.</p> <p>4 Q. Okay. Now, can you tell from looking at</p> <p>5 this entry who created this?</p> <p>6 A. Donna Spurlock.</p> <p>7 Q. And that, again, was your medical</p> <p>8 assistant?</p> <p>9 A. Yes.</p> <p>10 Q. And this is an indication then that Teresa</p> <p>11 Ruby appeared at your office?</p> <p>12 A. Correct.</p> <p>13 MS. LLOYD: Objection.</p> <p>14 Q. And do you recall speaking with Teresa Ruby</p> <p>15 regarding this issue on or about June 29th?</p> <p>16 A. Okay. The question again was?</p> <p>17 MR. GOOD: Would you read the question</p> <p>18 back, please?</p> <p>19 - - -</p> <p>20 (Thereupon, the record was read back as</p> <p>21 requested by the Notary.)</p> <p>22 - - -</p> <p>23 A. I remember what the document says, yes.</p> <p>24 Q. Which document are you referring to?</p>
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<p>1 Q. That's what we were looking for.</p> <p>2 So that medical assistant was Donna</p> <p>3 Spurlock?</p> <p>4 A. Right. So -- Yes.</p> <p>5 Q. So that's how you know Teresa Ruby --</p> <p>6 A. -- was here.</p> <p>7 Q. -- was in your office that day, correct?</p> <p>8 A. Yes, yes.</p> <p>9 Q. And that is the basis for --</p> <p>10 A. Yes.</p> <p>11 Q. -- Trial Exhibit 4 being able to be issued</p> <p>12 that day?</p> <p>13 A. Yes.</p> <p>14 MS. LLOYD: Objection.</p> <p>15 Q. Okay. Doctor, let me ask you to look at,</p> <p>16 in the same area of your notes, Page 000136, please.</p> <p>17 And I'm going to ask you to take a look at an entry</p> <p>18 dated June 29th, '05, and ask if you would be good</p> <p>19 enough to read that note into the record?</p> <p>20 A. June 29th, 2005, need a note stating she is</p> <p>21 being seen for an ongoing medical condition, and she</p> <p>22 needs to be seen on an as-needed basis, I guess you</p> <p>23 and she -- I guess who and her talked about this the</p> <p>24 other day, now they want a note saying what she is</p>	<p>1 A. To the message, the task message.</p> <p>2 Q. Okay. Did you ever have a discussion with</p> <p>3 Teresa Ruby regarding the city demanding a medical</p> <p>4 diagnosis for every visit?</p> <p>5 MS. LLOYD: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. What do you recall of that conversation or</p> <p>8 those conversations?</p> <p>9 A. I remember the visit of October 18th where</p> <p>10 she came in to advise me that she had to have a note</p> <p>11 to state her actual diagnosis and treatment. I</p> <p>12 advised her at that time and gave her my opinion that</p> <p>13 I did not feel that was right. I remember comparing</p> <p>14 the situation and saying, If you had gonorrhea, would</p> <p>15 they need to know that too.</p> <p>16 I felt that it wasn't fair for her to have</p> <p>17 to give an actual diagnosis when I was stating she</p> <p>18 needed to be off work or have limited hours.</p> <p>19 Q. Okay. Let me bring you back in time just a</p> <p>20 little bit. And that's certainly a very appropriate</p> <p>21 answer. But let me ask you to look at Exhibit</p> <p>22 000039, please.</p> <p>23 Doctor, would you review that page and tell</p> <p>24 the ladies and gentlemen of the jury what that letter</p>

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<p>1 is, and then would you read it for the ladies and 2 gentlemen of the jury? 3 A. This letter is dated July 1st, 2005. It 4 states, To whom it may concern, This is to confirm 5 that I advised Teresa Ruby that I do not note reasons 6 for appointments on notices of visitation due to the 7 HIPAA law. I also stated that I could do so if the 8 patient is willing to sign a release stating that I 9 may. I also discussed with Teresa that if she wished 10 to verbally convey the reason she was seen, it would 11 be her decision. 12 MS. LLOYD: Objection. 13 Q. Okay. Does that refresh your recollection 14 of conversations with Teresa Ruby on or about -- 15 A. Yes. 16 Q. -- June 28th through about July 1st? 17 A. Yes. 18 Q. Okay. Could you tell the ladies and 19 gentlemen of the jury your recollection of your 20 conversations with Teresa Ruby? 21 MS. LLOYD: I will object to any reference 22 or any insinuation that there's any violation of 23 HIPAA law here, and lack of foundation to the doctor 24 to speak to HIPAA.</p>	<p>1 that page is and then read it to them, please? 2 A. October 17, 2005, this is a note signed by 3 Teresa Ruby stating, I request Dr. Giersch release to 4 me a note for my employer stating the nature of my 5 illness she has been treating me for over the last 6 two-year period. 7 Q. Now, Teresa Ruby had been your patient 8 uninterrupted during that period of time, correct? 9 A. Correct. 10 Q. And in June, July of '05, you and Teresa 11 Ruby had a discussion and a conversation regarding 12 whether -- 13 MS. LLOYD: Objection. Leading. 14 MR. GOOD: Restating testimony. That's 15 fine. You can make your objection. 16 Q. -- had a discussion regarding the demand 17 for medical diagnosis and condition, correct? 18 A. Correct, yes. 19 MS. LLOYD: Objection. 20 Q. From June and July of '05 through October 21 of '05, did the concerns of Teresa Ruby change at any 22 time during that period? 23 MS. LLOYD: Objection. Lack of foundation. 24 A. No.</p>
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<p>1 Q. You can answer, Doctor. 2 A. So at that point, I advised her that I did 3 not feel that she was required to give a diagnosis 4 for a visit, but under the HIPAA law, I could not 5 give that reason unless she legally signed a release 6 stating that I may. 7 Q. Okay. Do you recall any comments made by 8 Teresa Ruby? 9 A. I remember she was overwhelmed, stressed. 10 I remember -- 11 MS. LLOYD: Objection. Not responsive. 12 A. I remember that she felt she was caught, 13 she had a lot of time invested in this job, and did 14 not want to lose all of that seniority, and that she 15 had to do this. 16 MS. LLOYD: Objection. 17 Q. She had to do what was requested by the 18 city? 19 A. Yes, of giving a diagnosis. 20 Q. Demanded by the city? 21 A. By her job. 22 Q. Okay. Let me ask you to take a look at 23 exhibit -- at Page 000044. And would you review that 24 and tell the ladies and gentlemen of the jury what</p>	<p>1 Q. And from June through October of '05, what 2 concerns did Teresa Ruby tell you she had regarding 3 the demand by the city? 4 MS. LLOYD: Objection. Lack of foundation 5 as to the timeframe. 6 A. Her concern was she was going to lose her 7 job. 8 Q. Okay. Did you have a discussion with 9 Teresa Ruby as to your writing a letter on October 18 10 of '05, which is represented in Exhibit 000045? 11 A. Yes. 12 Q. Okay. Do you recall that conversation? 13 A. After she gave me permission, both written 14 and verbal, to put down her diagnoses, I summarized 15 them in this note and stated that they were related 16 to work and that I thought her working over 40 hours 17 a week was going to make her situation worse. 18 MS. LLOYD: Objection. 19 Q. Would you be good enough to read your note 20 dated October 18, '05 for the ladies and gentlemen of 21 the jury, please? 22 A. Teresa is being treated for headaches, 23 depression and anxiety. These are work related. 24 Because of that, I have asked that her work week not</p>

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<p>1 exceed 40 hours. She is on Paxil 30 milligrams and 2 Desyrel 100 milligrams for this condition. 3 MS. LLOYD: My objection stands. 4 MR. GOOD: That's fine. 5 Q. And you signed that letter? 6 A. Yes. 7 Q. Now, the next page, 00046, is a progress 8 note on the same date, correct? 9 A. Yes. 10 Q. Okay. And you indicate that -- 11 Would you read the handwriting just above 12 your signature on Page 46, please? 13 A. This is a progress note that states she 14 needs a note to state her actual diagnosis and 15 treatment. This was written for her, and a copy is 16 in her chart. 17 Q. Doctor, I'd like to ask you to turn to Page 18 000048. And that, again, is a progress note for 19 Teresa Ruby? 20 A. Correct. 21 Q. And what is the date of that progress note? 22 A. July 17th, 2006. 23 Q. Would you review this progress note and 24 tell the ladies and gentlemen of the jury how Teresa</p>	<p>1 further. I want to thank you very much for your time 2 and attention this morning. 3 THE WITNESS: You're welcome. 4 - - - 5 CROSS-EXAMINATION 6 BY MS. LLOYD: 7 Q. Dr. Giersch, I have some questions for you. 8 Dr. Giersch, first, just to clear something 9 up, did I understand you correctly to say that your 10 medical assistant, Donna Spurlock, would never take a 11 call from a patient? 12 A. She doesn't -- She's not here anymore. She 13 did not answer phones. She was not first line 14 picking up phone calls. The only time a medical 15 assistant takes a message is if they're talking to a 16 person in the waiting room. 17 Q. If I could direct your attention, please, 18 to Exhibit 2, Page 000136. Could you please look at 19 the entry for 7-8-05? 20 Isn't it correct that this entry for 7-8-05 21 indicates, patient calling, call her at work? 22 A. Yes, it does. 23 Q. Okay. So that indicates that the patient, 24 according to the way you described this record, the</p>
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<p>1 Ruby was doing on that date, please, according to 2 your progress notes? 3 A. According to that progress note, she was 4 wheezing daily and using her Advair as needed. 5 Insurance coverage was minimal on this medication. 6 She had been off Paxil for four months, doing well, 7 seems like her old self. A new job at Ohio State 8 University Hospital Dental College, an information 9 associate. And she stated that her reflux was 10 controlled with Nexium. 11 Q. So do I understand that when Teresa Ruby 12 presented herself to you in July of '06, she was no 13 longer working at the City of Columbus? 14 A. Correct, yes. 15 Q. And in her new job, she was now off the 16 Paxil? 17 A. Yes. 18 Q. And she was doing well and, in your own 19 words, seemed like her old self? 20 A. Yes. 21 Q. So the issues and the concerns and the 22 problems that she had previously had resolved? 23 A. Yes. 24 MR. GOOD: Okay. Doctor, I have nothing</p>	<p>1 patient is Teresa Ruby, and the patient is calling 2 your office and asking someone to call her at work; 3 is that correct? 4 A. Correct. 5 Q. Okay. 6 A. Yes. 7 Q. Now, looking at this document, who created 8 this message of a telephone conversation? 9 A. Donna Spurlock. 10 Q. So wouldn't it be Donna Spurlock who was 11 taking this message? 12 A. Yes, yes. 13 Q. So Donna Spurlock did answer the phone, 14 isn't that correct, Doctor? 15 A. She probably did not answer the phone. 16 She -- The person who answered the phone gave it to 17 her. 18 Q. How would you know that from this record, 19 Doctor? 20 A. I would not know that from this record. I 21 just know what we do in the office. 22 Q. But isn't it possible that Donna Spurlock 23 did take this phone call? 24 A. Answered it initially? Doubtfully.</p>

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<p>1 Q. Is it possible?</p> <p>2 MR. GOOD: Objection.</p> <p>3 Q. Is it possible, Doctor?</p> <p>4 MR. GOOD: Objection.</p> <p>5 A. Anything's possible.</p> <p>6 Q. Thank you.</p> <p>7 When someone who answers the phone takes a</p> <p>8 message, is that indicated in these records?</p> <p>9 A. Yes. Let me clarify. When it -- the</p> <p>10 person who it's created by is the person who creates</p> <p>11 the message. However, if somebody sits down at a</p> <p>12 computer that someone else was using, it may look</p> <p>13 like they created it and it wasn't that person who</p> <p>14 created it. The user at the computer could sit</p> <p>15 down -- somebody could else could sit down at their</p> <p>16 computer because they're doing something quickly,</p> <p>17 whatever, and they use it under their name.</p> <p>18 Q. So someone could take a message and they're</p> <p>19 sitting at a computer that is not their computer?</p> <p>20 A. Correct, yes.</p> <p>21 Q. So it would indicate that the person who</p> <p>22 took the message was someone other than the actual</p> <p>23 person who took the message?</p> <p>24 A. Yes.</p>	<p>1 messages?</p> <p>2 A. Correct, yes.</p> <p>3 Q. So none of these statements indicated on</p> <p>4 132 through 157 reflect an actual visit between you</p> <p>5 and the patient, Teresa Ruby?</p> <p>6 MR. GOOD: Objection.</p> <p>7 Q. None of these references?</p> <p>8 MR. GOOD: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. Yes, it is true that none of these messages</p> <p>11 reflect an actual visit?</p> <p>12 MR. GOOD: Objection.</p> <p>13 A. Yes.</p> <p>14 Q. And am I correct in looking at these</p> <p>15 records, Dr. Giersch, that several of these entries</p> <p>16 are not entries that you made onto a computer? Is</p> <p>17 that correct?</p> <p>18 Several of these are not entries that you</p> <p>19 generated?</p> <p>20 A. That I created to begin with?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So you have no personal knowledge as</p> <p>24 to the accuracy of any statement other than that</p>
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<p>1 Q. Okay. So when it says, Created by Donna</p> <p>2 Spurlock, Donna Spurlock may not have taken that</p> <p>3 phone call?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So the name Donna Spurlock really</p> <p>6 doesn't indicate that Donna Spurlock was involved</p> <p>7 with this message at all because someone else could</p> <p>8 have taken the message?</p> <p>9 A. Yes. Let me explain. I do not believe so</p> <p>10 because this message went directly to me. And no one</p> <p>11 else who was taking a message would send something</p> <p>12 directly to me unless it was Donna Spurlock.</p> <p>13 Q. So Donna did take the message?</p> <p>14 A. I think so, yes.</p> <p>15 Q. So Donna answered the phone?</p> <p>16 MR. GOOD: Objection.</p> <p>17 A. I wasn't there.</p> <p>18 Q. So Donna could have answered the phone?</p> <p>19 MR. GOOD: Objection.</p> <p>20 A. Yes. Anybody could have.</p> <p>21 Q. Yes.</p> <p>22 Just for purposes of clarification, Dr.</p> <p>23 Giersch, these documents, Pages 000132 through</p> <p>24 000157, you had indicated earlier were all records of</p>	<p>1 which you created?</p> <p>2 A. Yes.</p> <p>3 Q. Dr. Giersch, I understand, of course, that</p> <p>4 you are a -- your practice is family medicine?</p> <p>5 A. Correct.</p> <p>6 Q. And that you are board certified in family</p> <p>7 medicine?</p> <p>8 A. Yes.</p> <p>9 Q. Are you certified in psychology?</p> <p>10 A. No.</p> <p>11 MR. GOOD: Objection.</p> <p>12 Q. Are you certified in --</p> <p>13 Would that include any certification in</p> <p>14 psychiatry?</p> <p>15 MR. GOOD: Objection.</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you have any certification as a</p> <p>18 mental health professional?</p> <p>19 MR. GOOD: Objection.</p> <p>20 A. No.</p> <p>21 Q. Dr. Giersch, do you have any certification</p> <p>22 in the area of sleep disorders?</p> <p>23 A. No.</p> <p>24 MR. GOOD: Note an objection.</p>

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<p>1 Q. Am I correct, Dr. Giersch, that Plaintiff's</p> <p>2 Exhibit 1 is the only resume that you have?</p> <p>3 A. I have outdated resumes.</p> <p>4 Q. So this is your most updated resume?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay. Dr. Giersch, I'm sorry if you stated</p> <p>7 this already, but when did you first start seeing</p> <p>8 Teresa Ruby as a patient? Just what year?</p> <p>9 A. 3-29, 1993.</p> <p>10 Q. As of 3-29-93, she was already working for</p> <p>11 the city as a police dispatcher; isn't that true?</p> <p>12 A. I have no idea.</p> <p>13 Wait a minute. Sometimes I write that</p> <p>14 down.</p> <p>15 I don't know.</p> <p>16 Q. Dr. Giersch, do you have any knowledge as</p> <p>17 to the conditions of Teresa Ruby's employment?</p> <p>18 MR. GOOD: Objection.</p> <p>19 A. What employment?</p> <p>20 Q. Okay. Do you have any knowledge as to the</p> <p>21 conditions of Teresa Ruby's employment when she was</p> <p>22 employed by the city as a police dispatcher?</p> <p>23 MR. GOOD: Objection.</p> <p>24 You can answer, if you can.</p>	<p>1 knowledge, but you understood from two patients that</p> <p>2 overtime work was a requirement of the position of</p> <p>3 police dispatcher?</p> <p>4 MR. GOOD: Objection as to</p> <p>5 characterization.</p> <p>6 You can answer.</p> <p>7 A. They were told they had to do it, was</p> <p>8 mandatory.</p> <p>9 Q. When you said they were told, do you know</p> <p>10 who told whom?</p> <p>11 A. By their -- I was told by their superiors</p> <p>12 or supervisors.</p> <p>13 Q. So am I correct then that you don't have</p> <p>14 any knowledge of what was -- what were the conditions</p> <p>15 of work in the radio room, other than what your</p> <p>16 patients told you?</p> <p>17 A. Yes, more than one patient.</p> <p>18 Q. Okay. So other than what your two patients</p> <p>19 told you?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And who is this other patient?</p> <p>22 MR. GOOD: I'm going to object to that. I</p> <p>23 think there's a confidentiality.</p> <p>24 A. I can't do that.</p>
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<p>1 A. I can --</p> <p>2 Q. Strike that. Let me rephrase the question.</p> <p>3 Dr. Giersch, do you have any personal</p> <p>4 knowledge of the conditions of Teresa Ruby's</p> <p>5 employment when she was employed by the city as a</p> <p>6 police dispatcher?</p> <p>7 MR. GOOD: Objection.</p> <p>8 A. I know what she told me.</p> <p>9 Q. Other than what Ms. Ruby told you, do you</p> <p>10 have any independent knowledge of the conditions of</p> <p>11 her employment as a police dispatcher?</p> <p>12 MR. GOOD: Objection.</p> <p>13 A. I had another police dispatcher who was an</p> <p>14 employee at the same time. And she was in at the</p> <p>15 similar time. And I asked her if indeed there were</p> <p>16 things like required overtime --</p> <p>17 MS. LLOYD: Objection.</p> <p>18 MR. GOOD: You asked the question.</p> <p>19 A. -- required overtime, leaving for four</p> <p>20 hours and then having to come back.</p> <p>21 And the answer from that patient was, yes,</p> <p>22 that is indeed happening.</p> <p>23 Q. Okay. So is it true then that you</p> <p>24 understood from your patients, not your independent</p>	<p>1 Q. Okay. Did this other patient comment in</p> <p>2 particular on Teresa Ruby?</p> <p>3 A. Absolutely not because I would not let her</p> <p>4 know who I was asking about. I was just trying to</p> <p>5 verify the situation.</p> <p>6 Q. So this other patient gave you no</p> <p>7 information about particulars of Teresa Ruby's</p> <p>8 employment?</p> <p>9 A. Absolutely not.</p> <p>10 Q. Okay.</p> <p>11 A. She doesn't even know she's a patient</p> <p>12 here -- or was at the time.</p> <p>13 Q. Okay. Dr. Ruby --</p> <p>14 MR. GOOD: It's Dr. Giersch.</p> <p>15 MS. LLOYD: I'm sorry.</p> <p>16 Q. Dr. Giersch, have you ever -- Strike that.</p> <p>17 Dr. Giersch, do you know whether or not</p> <p>18 Teresa Ruby was a union employee?</p> <p>19 MR. GOOD: Objection.</p> <p>20 You can answer, if you can.</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. Have you ever seen the terms of the</p> <p>23 AFSCME collective bargaining agreement?</p> <p>24 MR. GOOD: Objection.</p>

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<p style="text-align: right;">Page 46</p> <p>1 You can answer, if you can.</p> <p>2 A. No.</p> <p>3 Q. Did Teresa Ruby bring to your office any of</p> <p>4 the division directives for you to review?</p> <p>5 MR. GOOD: Objection.</p> <p>6 You can answer.</p> <p>7 A. No.</p> <p>8 Q. Okay. So I believe your testimony was that</p> <p>9 Teresa Ruby told you she needed a diagnosis, and</p> <p>10 you -- had you ever seen anything in writing that the</p> <p>11 city required a diagnosis from her?</p> <p>12 A. No.</p> <p>13 Q. Dr. Giersch, I'm saying this in connection</p> <p>14 with the status of your testimony, but Dr. Giersch,</p> <p>15 were you paid for your testimony today?</p> <p>16 MR. GOOD: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. How much were you paid?</p> <p>19 A. I don't remember. I gave the numbers to --</p> <p>20 Q. Could you tell us approximately how much</p> <p>21 you were paid?</p> <p>22 A. Help me out here.</p> <p>23 MR. GOOD: If you don't know. It's okay if</p> <p>24 you don't know. If you don't recall, you don't</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. LLOYD: She's already answered the</p> <p>2 question.</p> <p>3 MR. GOOD: I objected to it anyway. You</p> <p>4 said for her testimony. It's for her time.</p> <p>5 A. I'm being paid for my time to sit her and</p> <p>6 provide this testimony.</p> <p>7 Q. And just for purposes of the record, you're</p> <p>8 being paid by plaintiff's counsel for your time</p> <p>9 today?</p> <p>10 A. Yes.</p> <p>11 Q. Dr. Giersch, have you spoken with any of</p> <p>12 plaintiff's attorneys in connection with your</p> <p>13 testimony?</p> <p>14 A. About the time of the --</p> <p>15 Q. Not about the time, but as to -- as to the</p> <p>16 testimony that you would present?</p> <p>17 A. About my testimony? No, absolutely not.</p> <p>18 Q. Have you spoken with plaintiff's counsel in</p> <p>19 connection with preparing a letter?</p> <p>20 MR. GOOD: Objection.</p> <p>21 But you can answer.</p> <p>22 A. I'm trying to remember. There was a letter</p> <p>23 that I created, I believe.</p> <p>24 Q. And to the best of your recollection, what</p>
<p style="text-align: right;">Page 47</p> <p>1 recall.</p> <p>2 A. I don't recall.</p> <p>3 Q. Were you paid \$1,000?</p> <p>4 A. I can't recall.</p> <p>5 Q. Okay. Could you have been paid more than</p> <p>6 that?</p> <p>7 A. I don't recall.</p> <p>8 MR. GOOD: Objection.</p> <p>9 Q. And when were you paid for your testimony</p> <p>10 today?</p> <p>11 A. I don't know that I have been.</p> <p>12 Q. Okay. Is there an agreement that you will</p> <p>13 be paid for your testimony today?</p> <p>14 A. Yes.</p> <p>15 MR. GOOD: I'm going to object to the form</p> <p>16 of the question.</p> <p>17 Q. Do you have an agreement with plaintiff's</p> <p>18 counsel that you will be paid for your testimony here</p> <p>19 today?</p> <p>20 MR. GOOD: Objection. Not for her</p> <p>21 testimony, but --</p> <p>22 MR. LLOYD: Objection.</p> <p>23 MR. GOOD: I'm giving you a chance to cure</p> <p>24 your question.</p>	<p style="text-align: right;">Page 49</p> <p>1 was the purpose of that letter?</p> <p>2 A. It's been too long. I don't remember.</p> <p>3 Sorry.</p> <p>4 Q. Do you recall speaking with plaintiff's</p> <p>5 counsel before or during the process of preparing</p> <p>6 that letter?</p> <p>7 MR. GOOD: Objection.</p> <p>8 You can answer.</p> <p>9 A. Yes, as to what they wanted in the letter,</p> <p>10 what it needed to state, I mean as far as what</p> <p>11 information needed to be included in the letter.</p> <p>12 Q. Dr. Giersch, we have been looking, and you</p> <p>13 have been testifying, in connection with, I believe,</p> <p>14 what is now called Plaintiff's Exhibit 2?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Okay. Is it your testimony, Dr. Giersch,</p> <p>17 that Plaintiff's Exhibit 2 represents your complete</p> <p>18 record on your patient, Teresa Ruby?</p> <p>19 A. Yes.</p> <p>20 Q. Dr. Giersch, could you please tell me in</p> <p>21 connection with the -- I guess I'll have to call it</p> <p>22 Pages -- Pages 1 -- the numbers are on the bottom,</p> <p>23 Pages 00001 through Page 62 --</p> <p>24 MR. GOOD: Through 62?</p>

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<p>1 MS. LLOYD: Through 62.</p> <p>2 MR. GOOD: Okay.</p> <p>3 Q. Could you, please, tell me how these pages</p> <p>4 generally are created?</p> <p>5 A. I don't understand your question.</p> <p>6 Q. Okay. I'll try.</p> <p>7 For the most part, and I realize there</p> <p>8 could be a page or two that's different in here, but</p> <p>9 for the most part, Pages 1 through 62 appear to be</p> <p>10 progress notes?</p> <p>11 A. There are several other things in here,</p> <p>12 though.</p> <p>13 Q. Okay. I'll limit my question to the</p> <p>14 progress reports --</p> <p>15 A. Okay.</p> <p>16 Q. -- and the progress notes.</p> <p>17 Could you tell me how you prepare the</p> <p>18 progress notes, if you do prepare those?</p> <p>19 MR. GOOD: Objection.</p> <p>20 You can answer.</p> <p>21 A. As I stated earlier, a progress report is</p> <p>22 started by a medical assistant who's rooming a</p> <p>23 patient, who puts the date, my initials, and the</p> <p>24 vital signs down, and the chief complaint.</p>	<p>1 look at Page 22.</p> <p>2 For purposes of clarification, would all</p> <p>3 the handwriting on that page be your handwriting?</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. 2-23-04, all the things on that line and</p> <p>7 the next line are done by Donna Spurlock, her</p> <p>8 initials are right there.</p> <p>9 Q. And where does your handwriting start?</p> <p>10 A. Fourth line down, No vaginal discharge.</p> <p>11 Q. And then at the bottom of the page, is that</p> <p>12 your signature?</p> <p>13 A. Yes. And it says, Continued.</p> <p>14 Q. Continued, okay.</p> <p>15 Now, Dr. Giersch, on this particular page,</p> <p>16 the handwriting that is yours, does that represent</p> <p>17 your examination of the patient?</p> <p>18 A. Are we on 2-23-04?</p> <p>19 Q. Yes.</p> <p>20 A. The first paragraph -- or the first two</p> <p>21 lines are about complaints. The next line is</p> <p>22 documentation of her medications and allergies. The</p> <p>23 next line is reviewing her past history, her family</p> <p>24 history and her social history. And the next line is</p>
Page 51	Page 53
<p>1 Q. Okay. And because there are a few</p> <p>2 abbreviations here, am I correct that the</p> <p>3 abbreviation CC at the top of the page would indicate</p> <p>4 chief complaint?</p> <p>5 A. Correct.</p> <p>6 Q. And is it the patient who is providing the</p> <p>7 chief complaint?</p> <p>8 A. Yes.</p> <p>9 Q. And just as far as other abbreviations that</p> <p>10 appear scattered throughout, am I correct that F,</p> <p>11 slash, U stands for follow up?</p> <p>12 A. Yes.</p> <p>13 Q. Who is it -- other than this information</p> <p>14 that you indicated, I'm sorry, is put on there by one</p> <p>15 of your assistants?</p> <p>16 A. Yes.</p> <p>17 Q. Other than that information, who is it that</p> <p>18 creates the additional information on the progress</p> <p>19 reports?</p> <p>20 MR. GOOD: Objection.</p> <p>21 A. If you're asking what is in my handwriting</p> <p>22 that is matched up with my signature, it would be my</p> <p>23 writing.</p> <p>24 Q. Dr. Giersch, if I could ask you to take a</p>	<p>1 review of systems, it goes down to PE.</p> <p>2 Q. I'm afraid that I lost the place here.</p> <p>3 If I'm looking at Page 22 --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- where does the -- if there are any notes</p> <p>6 of an examination, where would they begin?</p> <p>7 A. They start at physical exam, VSS for vital</p> <p>8 signs stable.</p> <p>9 Q. And where's that?</p> <p>10 A. Fourth line from the bottom.</p> <p>11 Q. I see.</p> <p>12 So the information that is above that line</p> <p>13 is coming from what the patient is telling you?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then your examination is --</p> <p>16 follows the vital sign designation?</p> <p>17 A. Correct.</p> <p>18 Q. Is that a consistent format on the progress</p> <p>19 notes?</p> <p>20 A. You will not -- Yes. This is a physical,</p> <p>21 so there will be more -- the review of systems is not</p> <p>22 typically on every visit.</p> <p>23 Q. So if, for example, on Document 24, am I</p> <p>24 correct that the statement -- the sentence or phrase</p>

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<p style="text-align: right;">Page 54</p> <p>1 that begins, At least 50 percent improved, that's</p> <p>2 your handwriting?</p> <p>3 A. Yes.</p> <p>4 Q. And there's no vital sign indication on</p> <p>5 this page, right?</p> <p>6 A. We are now -- The vital signs were taken,</p> <p>7 but they are in the electronic medical record.</p> <p>8 Q. And where is the electronic medical record?</p> <p>9 A. In the computer.</p> <p>10 Q. So am I correct that Exhibit 2 does not</p> <p>11 represent your complete medical records?</p> <p>12 A. There is -- There are vital signs on the</p> <p>13 electronic medical record, the old electronic medical</p> <p>14 record that have not been printed out.</p> <p>15 Q. Is there anything else on the old</p> <p>16 electronic record that hasn't been printed out?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. And I guess, when you say the "old</p> <p>19 electronic record", at some point do the vital signs</p> <p>20 appear on these records?</p> <p>21 A. Yes. On the newer format -- Let's see if</p> <p>22 we have a recent one.</p> <p>23 Page 61, you'll see the vital signs on</p> <p>24 there.</p>	<p style="text-align: right;">Page 56</p> <p>1 complaint on these progress notes?</p> <p>2 MR. GOOD: Objection.</p> <p>3 A. Can you ask that question again?</p> <p>4 Q. Okay. Well, let me go back to what I was</p> <p>5 saying. What is --</p> <p>6 You indicated that your purpose in writing</p> <p>7 the notes, I believe, was to record the information</p> <p>8 that you observed or that you're given?</p> <p>9 A. Yes.</p> <p>10 Q. Do you record all the information?</p> <p>11 A. I'm sure I do not record every single word</p> <p>12 the patient says. I include everything on my</p> <p>13 physical exam that I do, but I'm sure I do not put</p> <p>14 every word down that a patient states.</p> <p>15 Q. Do you include everything that you believe</p> <p>16 is relevant to the chief complaint?</p> <p>17 A. Yes.</p> <p>18 Q. I am correct, aren't I, Doctor, that you</p> <p>19 have produced all your records for your appointments,</p> <p>20 and when I say "your appointments", I mean you, the</p> <p>21 doctor, for your appointments with Ms. Ruby?</p> <p>22 A. Yes.</p> <p>23 Q. So that if you saw Ms. Ruby for treatment</p> <p>24 or consultation, a record of that visit would be</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. But other than the vital signs, you</p> <p>2 believe that this is --</p> <p>3 A. Oh, yes, it is complete.</p> <p>4 Q. Other than the vital signs, you believe</p> <p>5 Exhibit 2 is a complete record --</p> <p>6 A. Yes.</p> <p>7 Q. -- for Ms. Ruby?</p> <p>8 Dr. Giersch, what is your purpose in -- I</p> <p>9 believe this may sound like a simplistic question to</p> <p>10 you, but for the purpose of this record, what is your</p> <p>11 purpose in writing information on the progress note?</p> <p>12 A. To keep track of the patient, their</p> <p>13 complaints, their physical findings --</p> <p>14 Q. Okay.</p> <p>15 A. -- documentation.</p> <p>16 Q. Okay. Do you include -- Excuse me. Strike</p> <p>17 that.</p> <p>18 There was another abbreviation I saw in</p> <p>19 there. I'm not sure. Do you use an abbreviation PE?</p> <p>20 A. PE is for physical exam.</p> <p>21 Q. Physical exam. Thank you.</p> <p>22 Do you include relevant information from</p> <p>23 the physical exam or from any statements that the</p> <p>24 patient gave you that are relevant to the chief</p>	<p style="text-align: right;">Page 57</p> <p>1 included in the progress notes?</p> <p>2 A. Yes.</p> <p>3 Q. Could you, please, take a look --</p> <p>4 I don't think this will be very difficult.</p> <p>5 Could you, please, take a look at your</p> <p>6 notes beginning in 2005?</p> <p>7 MR. GOOD: Do you have a page number,</p> <p>8 Paula?</p> <p>9 MS. LLOYD: I believe they begin on 33.</p> <p>10 MR. GOOD: Okay.</p> <p>11 Q. What I would ask you, Doctor: Based on</p> <p>12 your progress notes, could you, please, state the</p> <p>13 dates that you saw Ms. Ruby in your office for an</p> <p>14 appointment during 2005?</p> <p>15 A. February 28th, 2005; March 25th, 2005;</p> <p>16 May 25th, 2005; June 22nd, 2005; July 6th, 2005;</p> <p>17 July 20th, 2005; August 17th, 2005; October 18th,</p> <p>18 2005. That's it.</p> <p>19 Q. Okay. Looking at the -- at your entry</p> <p>20 for -- on Page 46, your progress note which is on</p> <p>21 Page 46.</p> <p>22 A. Okay.</p> <p>23 Q. On October 18th, '05, does this progress</p> <p>24 note indicate that you conducted a physical exam of</p>

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<p style="text-align: right;">Page 58</p> <p>1 Ms. Ruby?</p> <p>2 A. No.</p> <p>3 Q. Do your progress notes indicate the length</p> <p>4 of the visit with the patient?</p> <p>5 A. No.</p> <p>6 Q. And if it's here, I guess I haven't seen</p> <p>7 it, do the progress notes indicate the time of the</p> <p>8 appointment?</p> <p>9 A. No.</p> <p>10 Q. And looking at Page 46, isn't it true,</p> <p>11 Doctor, that it indicates that Ms. Ruby told you that</p> <p>12 she needed a note to state her actual diagnosis and</p> <p>13 treatment, and that this was written for her and a</p> <p>14 copy's in her chart?</p> <p>15 There isn't any indication of any other</p> <p>16 comment that Ms. Ruby made relevant to her chief</p> <p>17 complaint, is there?</p> <p>18 MR. GOOD: Objection.</p> <p>19 Q. There's nothing more on that page?</p> <p>20 A. Nothing written.</p> <p>21 Q. Dr. Giersch, did Teresa Ruby tell you that</p> <p>22 she did not want to work more than 40 hours?</p> <p>23 MR. GOOD: Objection.</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 60</p> <p>1 make this a little shorter.</p> <p>2 MR. GOOD: Okay.</p> <p>3 A. So you don't want me to answer the</p> <p>4 question?</p> <p>5 Q. If you're ready. I just didn't want you</p> <p>6 to -- if you couldn't find it --</p> <p>7 A. She told me on August 25th, 2003, that she</p> <p>8 was working 12- to 16-hour days, asked to come back</p> <p>9 in four hours after she leaves work.</p> <p>10 Q. Okay. What year is that?</p> <p>11 A. 2003.</p> <p>12 Q. 2003.</p> <p>13 And do you know what shift she's working in</p> <p>14 August 2003?</p> <p>15 A. I don't have it documented.</p> <p>16 Q. Okay. Do you have any independent</p> <p>17 knowledge that Ms. Ruby was working 12 to 16 hours a</p> <p>18 day?</p> <p>19 MR. GOOD: Objection.</p> <p>20 Q. Other than what she told you?</p> <p>21 A. No.</p> <p>22 Q. Do you know how many times she worked</p> <p>23 12 hours a day?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Did Teresa Ruby tell you that she could not</p> <p>2 work more than 40 hours?</p> <p>3 MR. GOOD: Objection.</p> <p>4 A. No.</p> <p>5 Q. Dr. Giersch, did you ever ask, according --</p> <p>6 per your notes, did you ever ask Teresa Ruby what her</p> <p>7 schedule was?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. As far as?</p> <p>11 Q. Her work schedule.</p> <p>12 A. Yeah. There's note of it, yes.</p> <p>13 Q. And where's that?</p> <p>14 MR. GOOD: If you can find it. Take your</p> <p>15 time.</p> <p>16 Q. I think --</p> <p>17 MR. GOOD: Are you withdrawing the last</p> <p>18 question? You have a question pending. It's up to</p> <p>19 you.</p> <p>20 MS. LLOYD: That's fine. If you would like</p> <p>21 to look for it, that's fine.</p> <p>22 MR. GOOD: Wait, wait. Do you want her to</p> <p>23 answer the question or not? It's up to you.</p> <p>24 MS. LLOYD: Okay. I think we can probably</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Do you know how many times she worked</p> <p>2 16 hours a day?</p> <p>3 A. No, but she was telling me that her number</p> <p>4 of hours each week was adding up to more than</p> <p>5 40 hours.</p> <p>6 Q. Are you saying that Teresa Ruby told you</p> <p>7 she was putting in more than 40 hours of work per</p> <p>8 week?</p> <p>9 A. Yes.</p> <p>10 Q. So is it your testimony that you based your</p> <p>11 assessment of her on her statement that she was</p> <p>12 working more than 40 hours a week?</p> <p>13 MR. GOOD: Objection.</p> <p>14 You can answer.</p> <p>15 A. No. She --</p> <p>16 Let me clarify. I do not have that</p> <p>17 documented. I may be wrong.</p> <p>18 She told me she was working extra long</p> <p>19 days, leaving for the four hours and coming back.</p> <p>20 When I wrote the excuse, it was for no more</p> <p>21 than eight hours a day and no more than 40 hours a</p> <p>22 week. I cannot recall whether she was working more</p> <p>23 than 40 hours a week.</p> <p>24 Q. Did she ever tell you that she was?</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. I don't have it documented. I can't say. 2 I don't remember. 3 Q. So when she saw you on August 25th, 2003, I 4 think we can refer to that -- that is Page 17 of 5 Exhibit 2? 6 A. Yes. 7 Q. And Page 17 is just one page. It's not 8 continued onto another page; is that correct? 9 A. It should be. 10 Q. It should be continued onto another page. 11 A. I don't see it either. 12 Q. So we don't have the continuation of the 13 progress notes, August 25th? 14 A. Can I get those off the computer? 15 Q. I'm saying you haven't produced them today; 16 is that correct? 17 A. You're giving me these copies. 18 Q. Doctor, let's be clear for the record. 19 These are the copies that were produced to -- 20 provided to us from your office. 21 A. I don't know where the second half of the 22 note is. That's all I can say. 23 Q. Okay. So do you know -- 24 As you look at this report, you don't know</p>	<p style="text-align: right;">Page 64</p> <p>1 have recommended that she only work four hours. With 2 what it was doing, it was too much for her and it was 3 causing her physical problems. 4 Q. I guess my question, Doctor: How is it 5 that you connect her complaints of stress with her 6 work? 7 MR. GOOD: Objection. 8 A. Because it was worse when she went to work. 9 She was not getting consistent sleep. 10 Q. How much sleep was she getting? 11 MR. GOOD: Objection. 12 A. She would work and then leave four hours -- 13 for four hours, not have enough time to sleep a good 14 seven or eight hours and have to come back. 15 Q. When did she do this? 16 MR. GOOD: Do what? Objection. 17 A. I had it documented that that was the 18 story -- that that was what she told me on August 19 25th, of '03. I don't ask my patients specifically 20 what days they're talking about. 21 Q. Well, if she weren't talking about any days 22 in July or August, that would be relevant, wouldn't 23 you? 24 A. Well, that that's what she told me on</p>
<p style="text-align: right;">Page 63</p> <p>1 whether Teresa Ruby's -- you don't know whether 2 Teresa Ruby actually worked a 12- or a 16-hour day in 3 the week preceding her visit; is that correct? 4 MR. GOOD: Objection. 5 A. Yes. 6 Q. You don't know; is that right? 7 A. Yes. 8 Q. Okay. And you don't know whether she 9 worked a 12- or 16-hour day in the two weeks 10 preceding the visit; is that correct? 11 MR. GOOD: Objection. 12 A. Correct, it's not documented. 13 Q. Okay. If Teresa Ruby's statement to you 14 that she was working 12- to 16-hour days is 15 incorrect, does that affect your evaluation of her? 16 MR. GOOD: Objection. 17 A. All I can go with is what I've been told. 18 Q. So if the information you're getting is 19 incorrect, then your conclusions could be incorrect; 20 is that true? 21 MR. GOOD: Objection. 22 A. The fact is that her job was causing some 23 physical symptoms. If she had told me she was 24 working eight hours a day, two days a week, I might</p>	<p style="text-align: right;">Page 65</p> <p>1 August 25th of '03. I don't ask my patients 2 specifically what days they're talking about. 3 Q. If she weren't talking about any days in 4 July or August, that would be relevant, wouldn't it? 5 MR. GOOD: Objection. 6 A. I lost you. 7 Q. You're saying that -- Strike that. 8 From your records here, how many hours of 9 sleep is Teresa Ruby getting? 10 A. I don't have that documented. 11 MR. GOOD: Objection. 12 Q. So you don't have any information of how 13 money hours of sleep she's getting at night, right? 14 A. Yes. 15 Q. Can you tell from your records if you asked 16 her how much sleep she had the night before she same 17 for her appointment? 18 A. No. 19 Q. Did you ask her -- 20 MR. GOOD: Objection. 21 Q. -- how much sleep she had in the week 22 before she came for her appointment? 23 MR. GOOD: Objection. 24 A. No.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Do you know how many days off a week Ms. 2 Ruby has? 3 MR. GOOD: Objection. 4 A. No. 5 Q. Dr. Giersch, are you stating that it is 6 your -- that Teresa Ruby -- Strike that. 7 Dr. Giersch, you read for us or you've 8 looked through the records and told us the dates that 9 you had seen Ms. Ruby in 2005. You did not see her 10 on October 13th, did you? 11 A. I did not see her for an appointment. 12 Q. And you did not see her for an appointment. 13 And you didn't see her on November 11th, 14 2005 for an appointment, did you? 15 MR. GOOD: Objection. 16 A. Correct, yes. 17 Q. Dr. Giersch, do some of your patients need 18 doctor's notes when returning to work or school after 19 taking an absence from sickness? 20 A. Yes. 21 Q. And do you have a doctor's note/form for 22 this purpose? 23 MR. GOOD: Objection. 24 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 provided a note; Isn't that correct? 2 MR. GOOD: Objection. 3 A. Yes. 4 Q. Dr. Giersch, is it your opinion that Teresa 5 Ruby needed ten to 14 hours for rest and decreasing 6 stress a day? 7 MR. GOOD: Objection. 8 A. No. 9 Q. Dr. Ruby, I'd like to show you -- Strike 10 that. 11 Do you recall providing a letter to 12 plaintiff's counsel indicating that you thought 13 Teresa Ruby needed ten to 14 hours for rest and 14 decreasing stress? 15 MR. GOOD: Objection. 16 A. I don't recall. 17 Q. I'm sorry if I asked this before, but 18 I'm -- 19 You don't know how many hours of sleep 20 Teresa Ruby was getting per day or per week, do you? 21 MR. GOOD: Objection. 22 A. No. 23 Q. Dr. Giersch, isn't it true that stress, 24 anxiety and depression are mental or emotional</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. Dr. Giersch, did you ever personally 2 refuse to provide Teresa Ruby with a doctor's note 3 for any of her visits with you? 4 A. No. 5 MR. GOOD: Objection. 6 Q. Dr. Giersch, assuming that Teresa Ruby 7 consulted you with a complete complaint of stress and 8 asked you to provide a note stating she was seen for 9 stress and signed a release, you would've provided it 10 to her, right? 11 MR. GOOD: Objection. 12 A. Yes. 13 Q. And if Teresa Ruby was seen by you for 14 headaches, I asked you to provide a note that she was 15 seen for headaches and released, you would've 16 provided a note, wouldn't you? 17 MR. GOOD: Objection. 18 A. Yes. 19 Q. And I could ask the same question, 20 basically, for any condition for which she presented 21 to you, such as a head cold or head stuffiness, if 22 that were her chief complaint, and she asked you to, 23 write a note stating she was seen for that complaint 24 provided a release for you to do so, you would've</p>	<p style="text-align: right;">Page 69</p> <p>1 conditions? 2 MR. GOOD: Objection. 3 A. Yes. 4 Q. Dr. Giersch, did Teresa Ruby tell you that 5 the city was working with her in December of 2005 so 6 that Ms. Ruby and the city could come up with an 7 agreed upon mental health professional to examine 8 her? 9 MR. GOOD: Objection. 10 Q. My question is: Did she tell you that? 11 MR. GOOD: Objection. 12 A. I do not have documentation. I recall her 13 saying that she was to be seeing a -- she was to have 14 an evaluation from a mental healthcare worker through 15 the job. 16 Q. Okay. Do you know whether she was ever -- 17 ever had an evaluation by a mental health 18 professional? 19 MR. GOOD: Objection. 20 A. There was a message that stated such. We 21 talked about earlier. 22 Q. Did you ever have any conversations with 23 any mental health professionals concerning Ms. Ruby? 24 MR. GOOD: Objection.</p>

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<p>1 A. I remember a phone call. And I don't</p> <p>2 remember anything about the phone call, the person</p> <p>3 who evaluated her.</p> <p>4 Q. Did Ms. Ruby release you to speak to the</p> <p>5 mental health professional concerning her?</p> <p>6 MR. GOOD: Objection.</p> <p>7 A. I don't have a release in here, no.</p> <p>8 Q. Okay. I'm sorry. Just tell me how this</p> <p>9 works.</p> <p>10 You remember speaking to a mental health</p> <p>11 professional concerning Ms. Ruby?</p> <p>12 A. A person can talk to me. That doesn't mean</p> <p>13 I talk back to them. I remember the consult calling</p> <p>14 and saying he saw her. I don't -- This is too far</p> <p>15 back for me to remember. I just remember the person</p> <p>16 who saw her calling me.</p> <p>17 Q. And do you remember speaking with the</p> <p>18 person?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember speaking with more than one</p> <p>21 mental health professional?</p> <p>22 MR. GOOD: Objection.</p> <p>23 A. Only one.</p> <p>24 Q. Do you recall whether Ms. Ruby ever</p>	<p>1 questions.</p> <p>2 MS. LLOYD: Okay.</p> <p>3 Q. I'm sorry. I didn't catch the end of that.</p> <p>4 A. She stated that she wanted to talk -- to</p> <p>5 talk the situation out. I think I referenced earlier</p> <p>6 that she felt that I recommended that if she was</p> <p>7 having trouble making a decision on what to do, that</p> <p>8 to talk to somebody would be a good idea.</p> <p>9 Q. To talk to a mental health professional</p> <p>10 would be a good idea?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know, did you recommend that Teresa</p> <p>13 Ruby change to the dayshift in the beginning of 2005?</p> <p>14 MR. GOOD: Objection.</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know whether she did change shifts</p> <p>17 in 2005?</p> <p>18 MR. GOOD: Objection.</p> <p>19 A. I don't recall.</p> <p>20 Q. Could you take a look at your record for</p> <p>21 the beginning of 2005 and see if there's any</p> <p>22 indication there that --</p> <p>23 A. I don't see anything.</p> <p>24 Q. Could you, please, take a look at Page 33?</p>
Page 71	Page 73
<p>1 presented you with a list of doctors and asked your</p> <p>2 opinion as to those mental health professionals?</p> <p>3 MR. GOOD: Objection.</p> <p>4 A. There's a message in this chart that she</p> <p>5 called and asked for a referral, and there's a name</p> <p>6 that we gave her.</p> <p>7 Q. And what was the name that you gave her?</p> <p>8 A. Dr. Waggoner, W-a-g-g-o-n-e-r.</p> <p>9 Q. Do you know whether Ms. Ruby ever saw Dr.</p> <p>10 Waggoner?</p> <p>11 MR. GOOD: Objection.</p> <p>12 A. I don't know.</p> <p>13 Q. Did you suggest that she see Dr. Waggoner?</p> <p>14 MR. GOOD: Objection.</p> <p>15 A. She asked me for the name of somebody, and</p> <p>16 I gave her a name.</p> <p>17 Q. Did you tell her whether or not you thought</p> <p>18 it was a good idea for her to see a mental health</p> <p>19 professional?</p> <p>20 A. I felt that if she felt that that would</p> <p>21 help her, to talk it out with someone, that that was</p> <p>22 certainly a good idea.</p> <p>23 MR. GOOD: So I don't keep interrupting,</p> <p>24 let me just have a continuing objection to these</p>	<p>1 A. Working days.</p> <p>2 Q. Does that refresh your recollection that</p> <p>3 Ms. Ruby had changed her shift?</p> <p>4 MR. GOOD: Objection.</p> <p>5 A. I don't know what she was working before,</p> <p>6 so I wouldn't -- I mean I made the comment she was</p> <p>7 working days, so --</p> <p>8 Q. And on this particular note, you indicate</p> <p>9 that she's sleeping better; isn't that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Dr. Giersch, you made a reference before to</p> <p>12 the fact that you didn't want to see your patient</p> <p>13 lose her seniority. What did you mean by that?</p> <p>14 A. Those are my words.</p> <p>15 Q. But what did you mean by that?</p> <p>16 A. She had built up and had worked several</p> <p>17 years and had whatever, her benefits built up and</p> <p>18 everything else, that she if she went to another job</p> <p>19 would probably have a pay cut, would probably have</p> <p>20 less holiday time.</p> <p>21 Q. Dr. Giersch, isn't it true that Teresa Ruby</p> <p>22 was never forced to work overtime?</p> <p>23 MR. GOOD: Objection.</p> <p>24 A. She -- In my notes, I make note that she</p>

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<p>1 had to work overtime. 2 Q. Okay. Well, Dr. Giersch, are you aware 3 that Ms. Ruby could have marked off sick at any time 4 she chose to mark off sick? 5 MR. GOOD: Objection. 6 A. I don't know how things work there. No, I 7 was not aware. 8 Q. So it's true then you're not aware that no 9 employee is forced to work when the employee is sick? 10 MR. GOOD: Objection. 11 A. It was not an issue of not working. It was 12 an issue of working overtime. 13 Q. I'm sorry. I don't understand your answer. 14 Are you aware that no employee is forced to 15 work at any time if the employee is sick and marks 16 off sick? 17 MR. GOOD: Objection. 18 A. No. 19 Q. And by "no", what do you mean? 20 MR. GOOD: Objection. 21 A. I'm not aware of what the rules are at the 22 City of Columbus. 23 Q. Okay. Thank you, Doctor. 24 So as far as you know, Teresa Ruby could</p>	<p>1 volunteering for overtime? 2 A. No. 3 Q. Dr. Giersch, just so I'm not confused, is 4 it your testimony that Teresa Ruby is seeking to be 5 released from a requirement of working overtime -- 6 MR. GOOD: Objection. 7 Q. -- when she is consulting you? 8 MR. GOOD: Objection. 9 A. No. It was my decision. 10 Q. Well, Dr. Giersch, just so I'm clear, you 11 certainly didn't force Teresa Ruby to request not to 12 be assigned overtime work? 13 MR. GOOD: Objection. 14 Q. You didn't force her to do that, did you? 15 MR. GOOD: Objection. 16 A. I wrote a note stating that I thought that 17 that was not medically good for her to be doing that. 18 Q. And did she ask you to write that note? 19 A. No, she did not. 20 MR. GOOD: Objection. Asked and answered. 21 Q. Did she agree with the note? 22 MR. GOOD: Objection. 23 A. We didn't discuss whether she agreed or 24 didn't agree.</p>
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<p>1 take sick leave when she was sick? 2 MR. GOOD: Objection. 3 A. I don't know. 4 Q. Okay. Are you aware, Dr. Ruby, that -- I'm 5 sorry. 6 Are you aware, Dr. Giersch, that Ms. Ruby 7 also had something called compensatory time? 8 MR. GOOD: Objection. 9 A. No. 10 Q. Are you aware that Ms. Ruby also had 11 vacation time? 12 MR. GOOD: Objection. 13 A. No. 14 Q. Are you aware as to the manner in which 15 overtime work is scheduled for the dispatchers? 16 MR. GOOD: Objection. 17 A. All I know is what she told me. 18 Q. Did she tell you how overtime work was 19 scheduled? 20 MR. GOOD: Objection. 21 A. She told me, I had to work 14, 16 hours, I 22 had to have four hours off. 23 MR. GOOD: Withdraw my objection. 24 Q. Did she explain to you the procedure for</p>	<p>1 Q. Dr. Giersch, are you aware that in the 2 spring of 2005, Ms. Ruby was looking for different 3 employment? 4 MR. GOOD: Objection. 5 A. I made note of that March 25th, She's 6 looking for a different job, on my note. 7 Q. What page is that? 8 A. 35. 9 Q. Now, this note indicates that she's looking 10 for another job. 11 A. Now -- 12 MR. GOOD: There wasn't a question pending. 13 She was just -- I'm not sure what she was doing. 14 THE WITNESS: I talk too much. 15 Q. Did she ask you to provide a note 16 indicating that she should have a different job? 17 MR. GOOD: Objection. 18 A. I don't recall. 19 Q. Could you, please, take a look at Page 36? 20 A. Uh-huh. I wrote that note, but that might 21 have been my idea. I don't know that she asked me. 22 Q. Do you know whether or not she submitted 23 it? 24 A. I don't know.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. In this note, why did you indicate that she 2 needed to work 40 hours or less a week? 3 A. Because I felt that the overtime was adding 4 to her physical symptoms and mental symptoms. 5 Q. But do you know whether or not she's 6 working overtime at this point? 7 MR. GOOD: Objection. 8 A. The note's not saying that. 9 Q. But if she weren't working overtime, why 10 would you conclude that overtime was aggravating her 11 symptoms? 12 MR. GOOD: Objection. 13 A. She is -- according to my note, March 25th, 14 she's being forced to work overtime. 15 Q. Are you saying, according to this note, if 16 I'm understanding your notes correctly, are you 17 indicating that Ms. Ruby told you she was forced to 18 work overtime? 19 MR. GOOD: Objection. 20 A. According to my progress note, March 25th, 21 2005, on Page 35 of the exhibit. 22 Q. So that would've come from Ms. Ruby; is 23 that correct? 24 A. That's correct.</p>	<p style="text-align: right;">Page 80</p> <p>1 marked off sick? 2 MR. GOOD: Objection. 3 A. I don't recall. 4 Q. Did you know that Teresa Ruby was suspected 5 of sick leave abuse? 6 MR. GOOD: Objection. 7 A. No. 8 Q. If you could, please, look at the record 9 for July 13th, 2004? 10 A. Uh-huh. 11 Q. I'm sorry. If you could, please, look at 12 the record for February 23rd, '04? 13 A. Is there a page number? 14 Q. Page 22. 15 A. Okay. 16 Q. As you look through that page, what is 17 the -- is there a chief complaint or is this just a 18 physical exam? 19 A. Physical exam. 20 Q. Okay. So what is this symbol -- I can't 21 read that. 22 A. ROS, review of systems. 23 Q. Review of systems. 24 A. Part of the physical. When we do</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. So you have no knowledge that she was 2 forced to work overtime? 3 MR. GOOD: Objection. 4 A. I can only go by what the patient says. 5 Q. Again, if you can take a look at Page 37, 6 is that an indication -- the line that states she 7 continues to persist different employment, is that an 8 indication that Ms. Ruby told you she's persisting in 9 looking for different employment? 10 A. That doesn't make sense. 11 Yes. 12 Q. And then after that, am I correct that 13 you've indicated, Will call if sleep doesn't improve? 14 A. Correct. 15 Q. And then the next entry on Page -- it would 16 be Page 38 for June 22nd, am I correct that that 17 begins with a statement that she is sleeping better? 18 A. Uh-huh. 19 MR. GOOD: Just note for the record that 20 she's sleeping better with Desyrel, which, I assume, 21 is a medication, not just that she's sleeping better. 22 MS. LLOYD: Okay. 23 Q. Dr. Giersch, did Ms. Ruby tell you that she 24 was required to bring in a doctor's note when she</p>	<p style="text-align: right;">Page 81</p> <p>1 physicals, we ask a series of questions. It's called 2 a review of systems. 3 Q. So I'm correct that Ms. Ruby is not 4 complaining of these things? 5 A. I'm asking these. 6 Q. I see. 7 And how do you know whether or not she 8 indicates she has these? 9 A. There's negatives in front of the ones she 10 doesn't. There's a positive, for example, on the 11 first line, occasional night sweats. 12 Q. Is there any indication here of anxiety or 13 depression? 14 A. No. It was not asked. 15 Q. Is there any indication on -- 16 Is there any reference to her work at all? 17 A. No. 18 Q. And then looking at the next, on Page -- 19 this would be Page 23, the July 13th, '04? 20 A. Uh-huh. 21 Q. Is there any reference to her work on that 22 page? 23 A. No. 24 Q. And on the entry for 8-23-04, is there any</p>

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<p>1 reference to her work?</p> <p>2 A. No.</p> <p>3 Q. Is there any reference to anxiety or</p> <p>4 depression?</p> <p>5 A. No.</p> <p>6 Q. And Page 28 would be the notes for</p> <p>7 11-22-04?</p> <p>8 A. Correct.</p> <p>9 Q. Is there any reference to work on that</p> <p>10 page?</p> <p>11 A. No.</p> <p>12 Q. Is there any reference to anxiety or</p> <p>13 depression?</p> <p>14 A. No.</p> <p>15 Q. And on July -- the entry for -- Page 29,</p> <p>16 the entry for December 20, '04, is there any</p> <p>17 reference to work on that page?</p> <p>18 A. No.</p> <p>19 Q. Is there any reference to anxiety or</p> <p>20 depression?</p> <p>21 A. No.</p> <p>22 Q. Page 32, the entry for, I think --</p> <p>23 MR. GOOD: You skipped over 31.</p> <p>24 Q. Is this the page we couldn't find before?</p>	<p>1 A. That's what the medical assistant</p> <p>2 documented. I wasn't there in the room when that</p> <p>3 happened.</p> <p>4 Q. Okay. And am I correct in looking at this,</p> <p>5 Page 31, that -- Excuse me. Maybe I can rephrase</p> <p>6 that.</p> <p>7 At the bottom of the page, what does the A</p> <p>8 stand for, the capital A?</p> <p>9 A. Assessment.</p> <p>10 Q. Okay. On Page 31, the assessment, Stress</p> <p>11 related to work, am I correct that based on this page</p> <p>12 and previous pages that you are basing that</p> <p>13 assessment on what she told you?</p> <p>14 A. Not that -- she told me her headaches she</p> <p>15 had were associated with work. That's what I'm</p> <p>16 basing it on.</p> <p>17 Q. So there isn't --</p> <p>18 A. If somebody's headaches are associated with</p> <p>19 work, then, yes, I say it's a stress related to work.</p> <p>20 Q. How is it that you know her headaches are</p> <p>21 related to work?</p> <p>22 A. I'm going with what she stated to me off</p> <p>23 the history. That's all I can do.</p> <p>24 Q. So her headaches could be caused by</p>
Page 83	Page 85
<p>1 A. Oh, yes. It's out of order.</p> <p>2 That makes me feel better.</p> <p>3 Q. This is the second page of the 2-23-04</p> <p>4 entry. And there is no indication of her workplace</p> <p>5 on that second page, is there, of the 2-23-04?</p> <p>6 A. No.</p> <p>7 Q. And no indication of anxiety or depression</p> <p>8 on that page?</p> <p>9 A. But there wouldn't be, that's the physical</p> <p>10 part of it.</p> <p>11 Q. Now, on the entry for January 28th, '05 --</p> <p>12 A. I have February 28th. January 28th?</p> <p>13 Q. Page 31?</p> <p>14 A. Uh-huh.</p> <p>15 Q. On this date, you indicate that she</p> <p>16 presents with a chief complaint of depression from</p> <p>17 work; am I correct?</p> <p>18 Headache, neck and shoulder pain, nausea</p> <p>19 and depression from work; isn't that correct?</p> <p>20 A. That's what the medical assistant wrote.</p> <p>21 Q. So that's not your statement?</p> <p>22 A. No. Mine starts below.</p> <p>23 Q. So you don't know whether or not she stated</p> <p>24 that to the medical assistant?</p>	<p>1 something else, you're just indicating what she's</p> <p>2 telling you?</p> <p>3 A. She told me that they were associated with</p> <p>4 work. When she was at work, she was getting those.</p> <p>5 Q. Okay. So as I said, there could be another</p> <p>6 cause, but you're only going with what she told you,</p> <p>7 correct?</p> <p>8 MR. GOOD: Objection.</p> <p>9 A. When I ask somebody if the headaches are</p> <p>10 associated with any particular time, and she told me</p> <p>11 that they were associated with work, that's when --</p> <p>12 that's where that diagnosis is coming from.</p> <p>13 Q. Okay. Dr. Giersch, according to your</p> <p>14 records, just to clarify, we're looking at the year</p> <p>15 2005, you did not see Ms. Ruby for a doctor's</p> <p>16 appointment on 2-19; isn't that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you did not see her for a doctor's</p> <p>19 appointment on 2-20?</p> <p>20 A. Yes.</p> <p>21 Q. And you did not see her for a</p> <p>22 doctor's appointment on 2-25?</p> <p>23 A. That is correct.</p> <p>24 Q. Or 2-26?</p>

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<p>1 A. Correct.</p> <p>2 Q. Or 2-27?</p> <p>3 A. Correct.</p> <p>4 Q. Or 3-1?</p> <p>5 A. Correct.</p> <p>6 Q. Or 3-2?</p> <p>7 A. Correct.</p> <p>8 Q. Dr. Giersch, Teresa Ruby never asked you to</p> <p>9 complete any ADA paperwork for her, did she?</p> <p>10 MR. GOOD: Objection.</p> <p>11 A. I have no idea what ADA is.</p> <p>12 Q. Have you heard of the Americans with</p> <p>13 Disabilities Act?</p> <p>14 A. A disability form?</p> <p>15 MR. GOOD: Objection.</p> <p>16 A. No, she did not. There was a --</p> <p>17 Well, I believe there's a note in here.</p> <p>18 Can you give me an idea what time period</p> <p>19 we're talking about?</p> <p>20 Q. Well, how about '05.</p> <p>21 A. Okay. On Page 147, the note is -- the</p> <p>22 message was October 7, 2004.</p> <p>23 Q. I'm sorry. October 7th, 2004?</p> <p>24 A. The last note on 147 on Exhibit 2.</p>	<p>1 Q. So there's nothing in your records that</p> <p>2 indicates that you did?</p> <p>3 A. Correct.</p> <p>4 MR. GOOD: Objection.</p> <p>5 Q. And in fact, there's a statement that you</p> <p>6 could not recommend disability?</p> <p>7 A. Yes.</p> <p>8 THE WITNESS: This may not be protocol, but</p> <p>9 do you have an idea --</p> <p>10 MS. LLOYD: Off the record.</p> <p>11 (Discussion held off the record.)</p> <p>12 BY MS. LLOYD:</p> <p>13 Q. Dr. Giersch, do you provide your patients</p> <p>14 with blank doctor's notes?</p> <p>15 A. Absolutely not.</p> <p>16 Q. Okay. Dr. Giersch, isn't it true that the</p> <p>17 last time you saw Teresa Ruby in 2005 was, I believe,</p> <p>18 October 18th, 2005?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And I believe you've already</p> <p>21 testified you didn't examine her on October 18th of</p> <p>22 2005?</p> <p>23 A. Correct.</p> <p>24 Q. And I believe you've already testified that</p>
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<p>1 Q. Okay.</p> <p>2 A. Patient calling --</p> <p>3 Are you ready?</p> <p>4 Q. Just one second. What page is it?</p> <p>5 MR. GOOD: 147.</p> <p>6 A. 147.</p> <p>7 MR. GOOD: Note my objection.</p> <p>8 Q. Yes.</p> <p>9 A. Patient calling, her commander is not</p> <p>10 willing to accept her restricted hours any longer,</p> <p>11 her union is recommending that she fill out</p> <p>12 disability forms, she says they are telling her she</p> <p>13 needs to mark off and use sick time, she has been</p> <p>14 working 40 hours a week, they have decided she needs</p> <p>15 to start back into overtime and they are 40 people</p> <p>16 down, what should she do.</p> <p>17 I responded, I cannot recommend disability,</p> <p>18 she may have to go back to unrestricted hours if they</p> <p>19 won't accept 40 hours.</p> <p>20 Q. Okay. So am I correct that you don't</p> <p>21 recall her ever presenting you with disability</p> <p>22 paperwork to complete?</p> <p>23 MR. GOOD: Objection.</p> <p>24 A. I have no idea. I don't recall.</p>	<p>1 on -- in August 2005, you concluded she was doing</p> <p>2 fine?</p> <p>3 MR. GOOD: In August of 2005?</p> <p>4 MS. LLOYD: Uh-huh.</p> <p>5 MR. GOOD: I'll object to that phrase.</p> <p>6 A. She was feeling good on medication and was</p> <p>7 still waking up feeling a little tired and a little</p> <p>8 restless.</p> <p>9 Q. But she's feeling good?</p> <p>10 MR. GOOD: Objection.</p> <p>11 A. That's --</p> <p>12 Q. Or she felt better?</p> <p>13 A. She was better, she still had issues.</p> <p>14 Q. Okay. Dr. Giersch, do you know anything</p> <p>15 about the emergency nature of Teresa Ruby's work as a</p> <p>16 dispatcher?</p> <p>17 MR. GOOD: Objection.</p> <p>18 A. I know as much as the common person knows.</p> <p>19 Q. Okay. Do you know that the dispatchers</p> <p>20 work on a 24/seven basis?</p> <p>21 MR. GOOD: Objection.</p> <p>22 A. I assume so. I hope so.</p> <p>23 Q. Okay. Dr. Giersch, I did want to ask you:</p> <p>24 These documents that you provided, again, without</p>

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<p>1 going through every page, 63 through approximately, I 2 think it's Page 131, are several of these pages 3 documents that have been sent to you from another 4 healthcare provider? 5 A. Correct. 6 Q. You indicated in connection with -- 7 Plaintiff's Exhibits 3 and 4, if you could 8 take a look at those, please? 9 If you could, please, take a look at those. 10 Whose handwriting is on that page? 11 A. I would be guessing. I believe it's Donna 12 Spurlock's, but I'm not positive. 13 Q. So as you sit here today, you cannot 14 identify that as Donna Spurlock's handwriting for 15 sure? 16 MR. GOOD: Objection. 17 A. I believe it to be, but I don't know. I 18 can't say. 19 Q. Okay. And I don't know if you recall your 20 testimony today, but isn't it correct that Teresa 21 Ruby did not have a medical appointment with you on 22 November 11th, 2005? 23 A. That is correct. She did not come into the 24 office in a room and be seen -- was not seen by me.</p>	<p>1 then I could say. 2 I can't verify one way or the other. 3 Q. Okay. And if I could now direct your 4 attention to the records that you've given us, 5 they're 132 through 157. 6 A. Yes. 7 Q. If you know, do these notes indicate that 8 there are messages being left for you and transmitted 9 via computer and that you respond to some messages 10 via computer? 11 A. Uh-huh. 12 Q. And the times -- 13 A. Uh-huh. 14 Q. -- indicated here is the time that the 15 message is sent and the time your response is 16 forward? 17 A. Uh-huh, yes. 18 Q. And so if you are on your computer, are you 19 in a particular place in your office? 20 A. Yes. 21 Q. And where would you be? 22 A. At my computer at the nurse's station. 23 Q. So am I correct, Dr. Giersch, that the only 24 notes that are entered by you are the ones that would</p>
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<p>1 Q. Okay. And did you direct someone to 2 complete this note? 3 A. Yes. 4 Q. How do you know that you directed someone 5 to complete this note? 6 A. Which one are we talking about? 7 Q. Oh, is -- 8 This is Exhibit 4. 9 A. Because she would not have written that out 10 if I did not ask her to. 11 Q. But you're not sure who wrote it out; isn't 12 that correct? 13 A. Well, I can't verify that this is Donna 14 Spurlock's handwriting. If I saw it -- This is blown 15 up. If I saw it maybe as a regular -- in the regular 16 size, I might be able to. 17 Q. Are you saying this is not the original? 18 A. I think it's blown up. I think it's larger 19 than it originally was. Maybe not. 20 No, because it's on letterhead. It is. 21 I just don't know. Donna hasn't worked 22 with me for several years. I just can't verify. 23 I suppose -- I was looking to see if I 24 could find some of her -- something in her writing</p>	<p>1 indicate forward by Dr. Jennifer Giersch? 2 A. My name will be there -- 3 Yes. It will say that I forwarded it by me 4 or I completed it or whatever I did. 5 Q. I guess one of the reasons I'm asking is 6 that you indicated people could use other people's 7 computers. Does anyone use your computer? 8 A. They can't use mine. That is up at the 9 front desk. 10 Q. We do have some duplication here, but I -- 11 If I could direct your attention, Dr. 12 Giersch, to 134. 13 A. Uh-huh. 14 Q. There's a -- Do you see the entry for 15 11-11-05? 16 A. Yes. 17 Q. And this reflects a message; isn't that 18 correct? 19 A. Yes. 20 Q. So am I -- 21 MR. GOOD: Let me object to that. 22 You can go ahead. 23 Q. Isn't it correct that there is an 24 indication there that says, Message?</p>

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<p>1 MR. GOOD: Yes, but the doctor previously</p> <p>2 testified what a message was.</p> <p>3 A. Right, either the patient is standing at</p> <p>4 the front desk or -- and giving the message to Donna</p> <p>5 Spurlock or she's calling in.</p> <p>6 Q. And you can't tell from this entry which it</p> <p>7 is; is that correct?</p> <p>8 A. Again, I would say it was -- she walked in</p> <p>9 because it's created by my medical assistant who does</p> <p>10 not answer the phones.</p> <p>11 Q. But we've already established that someone</p> <p>12 else could have been using Donna Spurlock's computer,</p> <p>13 correct?</p> <p>14 MR. GOOD: Objection.</p> <p>15 A. Actually, that would be a little -- In</p> <p>16 thinking this through, that would be a little unusual</p> <p>17 because she's not up at the front desk. So that</p> <p>18 would be unusual for them to be using her name. It</p> <p>19 would be more she would be using someone else's name</p> <p>20 if she was doing something up at the front.</p> <p>21 Q. Well, isn't it true that this -- the</p> <p>22 message, the only message that's on here, is that --</p> <p>23 MR. GOOD: On that page or --</p> <p>24 Let me just object. I apologize to you.</p>	<p>1 A. And she created the message on the thing.</p> <p>2 So I really -- I'm pretty clear that that's hers.</p> <p>3 Q. Okay. And we've already indicated the</p> <p>4 total content of that message is a question to you as</p> <p>5 to what type of question the mental health person</p> <p>6 should be asking her?</p> <p>7 A. Correct.</p> <p>8 Q. And isn't it true that you respond to that?</p> <p>9 A. Yes.</p> <p>10 Q. And isn't it true that you're responding by</p> <p>11 computer?</p> <p>12 A. Correct.</p> <p>13 Q. Correct.</p> <p>14 A. This message has been sent to me by Donna</p> <p>15 Spurlock. It has been -- After I respond that way, I</p> <p>16 forward it back to Donna Spurlock.</p> <p>17 Q. Right.</p> <p>18 A. At 1:47 the message was taken, and at 2:10</p> <p>19 I responded.</p> <p>20 Q. Well, I wanted to address your response.</p> <p>21 Isn't it true that you respond, they can ask whatever</p> <p>22 they feel necessary to evaluate her for work, I can't</p> <p>23 really judge what questions are appropriate?</p> <p>24 A. Correct.</p>
Page 95	Page 97
<p>1 Q. Isn't it true that the 11-11-05 entry</p> <p>2 states -- someone wrote, Saw that work mental health</p> <p>3 person today, did not feel he was asking her question</p> <p>4 about her mental health, he asked her more about</p> <p>5 other thing not related to this, what type of</p> <p>6 question should they be asking.</p> <p>7 Isn't it true that that is the complete</p> <p>8 message that is transferred to you?</p> <p>9 A. Yes. And --</p> <p>10 Q. And then --</p> <p>11 A. -- that is created by Donna Spurlock</p> <p>12 because Donna Spurlock could not spell. So I'm</p> <p>13 sorry. That's definitely her message.</p> <p>14 Q. Well, which word is spelled incorrectly?</p> <p>15 A. Asking instead of asking.</p> <p>16 Q. Where's that?</p> <p>17 A. It doesn't read right.</p> <p>18 Q. She has "asking" spelled correctly in the</p> <p>19 first line.</p> <p>20 A. No, The whole thing doesn't read right.</p> <p>21 Her grammar was not good. Just the way it reads, to</p> <p>22 me, that's Donna Spurlock.</p> <p>23 MR. GOOD: From your experience with her?</p> <p>24 THE WITNESS: Yeah.</p>	<p>1 Q. Okay. Why is it that you can't judge what</p> <p>2 questions are appropriate?</p> <p>3 MR. GOOD: Objection.</p> <p>4 A. I'm not doing an evaluation for work.</p> <p>5 Q. Okay. Isn't it true you really don't know</p> <p>6 the circumstances of her work?</p> <p>7 MR. GOOD: Objection.</p> <p>8 A. That's not why I'm answering it that way.</p> <p>9 I can't say what questions they need to ask because</p> <p>10 they're asking the questions for work related.</p> <p>11 Q. Okay. And you don't --</p> <p>12 Is it your testimony that you don't know</p> <p>13 why she's seeing the mental health person?</p> <p>14 MR. GOOD: Objection.</p> <p>15 A. She told me she was asked by her employer</p> <p>16 to see this person.</p> <p>17 Q. And is it your testimony that you don't</p> <p>18 know the purpose of that?</p> <p>19 A. Correct.</p> <p>20 MR. GOOD: Objection.</p> <p>21 (Discussion held off the record.)</p> <p>22 MS. LLOYD: I think we can fairly</p> <p>23 quickly --</p> <p>24 MR. GOOD: Evidence to the contrary.</p>

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<p>1 MS. LLOYD: Strike that.</p> <p>2 Excuse me just one second.</p> <p>3 (Discussion held off the record.)</p> <p>4 MS. LLOYD: I have no further questions.</p> <p>5 Thank you, Dr. Giersch.</p> <p>6 I would like to put an objection on the</p> <p>7 record to Dr. Giersch's being offered as an expert</p> <p>8 witness because there has been no expert report</p> <p>9 identified, produced to us. She's offered no</p> <p>10 testimony as to an expert report.</p> <p>11 We would further object, as we said before,</p> <p>12 to any statements offered to indicate that there was</p> <p>13 any violation of HIPAA, the FMLA, or the ADA in this</p> <p>14 case. We further state plaintiff has withdrawn her</p> <p>15 FMLA claim in this case.</p> <p>16 MR. GOOD: You already stated that earlier.</p> <p>17 I have just a handful of things I'd like to follow</p> <p>18 up. You confused the record, it's important to</p> <p>19 clarify.</p> <p>20 MS. LLOYD: Objection. Strike that</p> <p>21 statement.</p> <p>22 ---</p> <p>23 REDIRECT EXAMINATION</p> <p>24 BY MR. GOOD:</p>	<p>1 A. Yes.</p> <p>2 Q. Let's go to 4-16. Well, that's the same</p> <p>3 one.</p> <p>4 Let's go to 9-12-06 on the bottom of that</p> <p>5 page. What's the first two words?</p> <p>6 A. Patient called.</p> <p>7 Q. So again, another phone call, correct?</p> <p>8 A. Yes.</p> <p>9 Q. On Page 000134, it's dated 9-12, so it</p> <p>10 would be the same one.</p> <p>11 Let's go to 000136, dated 7-8 of '05.</p> <p>12 What's the first two words?</p> <p>13 A. Patient called.</p> <p>14 Q. Let's go to 000137, dated October 7 of '04.</p> <p>15 What's the first two words?</p> <p>16 A. Patient called.</p> <p>17 Q. Let's go to below that, 12-8 of '03.</p> <p>18 What's the first two words?</p> <p>19 A. Patient called.</p> <p>20 Q. So it's clear that your staff was</p> <p>21 instructed to note the difference between a walk-in</p> <p>22 and a call, correct?</p> <p>23 MS. LLOYD: Objection. Leading.</p> <p>24 A. They noted it. They were not instructed to</p>
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<p>1 Q. Doctor, in your clinical task report, 132</p> <p>2 through 157, you previously testified that</p> <p>3 messages --</p> <p>4 MS. LLOYD: Objection. Leading.</p> <p>5 Q. You previously testified that messages</p> <p>6 indicate that an individual either called or appeared</p> <p>7 at your office, correct?</p> <p>8 MS. LLOYD: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. And in fact, if you go through the</p> <p>11 notations from your office about patient contacts, it</p> <p>12 demonstrates clearly whether a patient called or a</p> <p>13 patient did not as you look at --</p> <p>14 MS. LLOYD: Objection. Leading.</p> <p>15 Q. Let's go to Page 000132 and the entry of</p> <p>16 6-03-08. What's the first two words there?</p> <p>17 A. Patient called.</p> <p>18 Q. So that indicates it was a phone call,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Let's go to Page 000133, let's go to entry</p> <p>22 dated 4-16-08. What's the first two words there?</p> <p>23 A. Patient called.</p> <p>24 Q. That indicates a phone call, correct?</p>	<p>1 do that.</p> <p>2 Q. But it was note in the record?</p> <p>3 A. It's noted that that then means the patient</p> <p>4 called.</p> <p>5 Q. Which is difference than the other entries</p> <p>6 that indicate to that you that the patient was in</p> <p>7 your office, correct?</p> <p>8 A. The ones created by Donna Spurlock, yes.</p> <p>9 Q. Okay. Now, you were questioned on the</p> <p>10 November 11, '05 letter, would Donna Spurlock or</p> <p>11 anyone in your office, Exhibit 4, would they provide</p> <p>12 a patient with this without your direct knowledge or</p> <p>13 authorization?</p> <p>14 A. No.</p> <p>15 Q. And the words that were added that Teresa</p> <p>16 may return to work 11-12-05, would a medical</p> <p>17 assistant know that without your direction?</p> <p>18 MS. LLOYD: Objection. Leading.</p> <p>19 A. No.</p> <p>20 Q. And the bottom of the page, would you read</p> <p>21 that, please?</p> <p>22 A. For a stress-related headache.</p> <p>23 Q. And would a medical assistant put that on</p> <p>24 there without your direction?</p>

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<p style="text-align: right;">Page 102</p> <p>1 MS. LLOYD: Objection. Leading.</p> <p>2 A. No.</p> <p>3 Q. So the information contained on there could</p> <p>4 only come from you; is that correct?</p> <p>5 MS. LLOYD: Objection. Leading.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. This Exhibit 4, who would've</p> <p>8 authorized the creation of that --</p> <p>9 A. I would have.</p> <p>10 Q. -- exhibit?</p> <p>11 And how would you have authorized the</p> <p>12 creation of that exhibit?</p> <p>13 A. Verbally.</p> <p>14 Q. To whom?</p> <p>15 A. My medical assistant, Donna.</p> <p>16 Q. Okay. And would Donna have prepared that</p> <p>17 at your direction?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And the information contained on</p> <p>20 that, where would Donna have gotten that?</p> <p>21 A. From me.</p> <p>22 Q. Okay. Now, Donna Spurlock, as your medical</p> <p>23 assistant -- Strike that.</p> <p>24 Do you have individuals in your medical</p>	<p style="text-align: right;">Page 104</p> <p>1 You met with Teresa Ruby that day, didn't</p> <p>2 you?</p> <p>3 A. Yes.</p> <p>4 Q. And was that the extent of your</p> <p>5 conversation or did you have additional conversation</p> <p>6 with her?</p> <p>7 MS. LLOYD: Objection. Already testified.</p> <p>8 Q. You can answer.</p> <p>9 A. We went on about my feeling that her</p> <p>10 employer should not have to know the reason she is</p> <p>11 being seen or the reason she's being limited to a</p> <p>12 40-hour work week.</p> <p>13 Q. Any other discussion that you recall,</p> <p>14 comments made by Teresa?</p> <p>15 A. Just the fact that she felt that this had</p> <p>16 to be done; otherwise, she was going to lose her job?</p> <p>17 MR. GOOD: Okay. Doctor, again, thank you</p> <p>18 very much for your time. And I appreciate your</p> <p>19 efforts this morning. I have nothing further.</p> <p>20 MS. LLOYD: I just have a very few things.</p> <p>21 ---</p> <p>22 RE-CROSS-EXAMINATION</p> <p>23 BY MS. LLOYD:</p> <p>24 Q. Dr. Giersch, based on your testimony today,</p>
<p style="text-align: right;">Page 103</p> <p>1 office in your medical practice that their primary</p> <p>2 responsibility is to answer telephones?</p> <p>3 A. Yes.</p> <p>4 Q. And would Donna Spurlock be one that would</p> <p>5 be answering phones directly from patients?</p> <p>6 A. No.</p> <p>7 Q. So any patient that --</p> <p>8 How would a patient reach Donna Spurlock by</p> <p>9 telephone?</p> <p>10 A. They would have to leave a message for her.</p> <p>11 Q. Counsel asked you about a visit, an</p> <p>12 appointment with Teresa Ruby on October 18 of '05, if</p> <p>13 we can go to that for just a moment. And counsel</p> <p>14 noted that the chief complaints that day were</p> <p>15 depression and stress, and that the only thing you</p> <p>16 wrote --</p> <p>17 It's Page 46.</p> <p>18 A. Thank you.</p> <p>19 Q. I apologize to you.</p> <p>20 A. Okay. Go ahead.</p> <p>21 Q. -- that the only thing that you noted on</p> <p>22 there was that Teresa needed a note to state her</p> <p>23 actual diagnosis and treatment, and this was written</p> <p>24 for her and a copy was in her chart.</p>	<p style="text-align: right;">Page 105</p> <p>1 you could not find anything in your progress notes to</p> <p>2 indicate that you examined Teresa Ruby on</p> <p>3 November 11th or, in your progress notes, there was</p> <p>4 no indication that you had directed anyone to say</p> <p>5 that she has an appointment for a stress-related</p> <p>6 headache on November 11, '05?</p> <p>7 MR. GOOD: I'm going to object to the</p> <p>8 question. That's beyond the scope of what I just</p> <p>9 questioned the witness on. If that was a proper</p> <p>10 question for you to ask, you should've asked it</p> <p>11 earlier in the deposition. So let me state my</p> <p>12 objection.</p> <p>13 Doctor, you can answer it and we'll let the</p> <p>14 court decide on the appropriateness to answer.</p> <p>15 Do you need the question read back?</p> <p>16 THE WITNESS: Yes, please.</p> <p>17 Q. Dr. Giersch, isn't it true that plaintiff's</p> <p>18 counsel just asked you whether or not you directed</p> <p>19 someone to write the information that is on</p> <p>20 Plaintiff's Exhibit 4?</p> <p>21 A. Yes.</p> <p>22 Q. And isn't it true that there is no</p> <p>23 indication in your progress notes or anywhere in your</p> <p>24 records that you had an appointment with Teresa Ruby</p>

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<p style="text-align: right;">Page 106</p> <p>1 for a stress-related headache on November 11th, '05?</p> <p>2 A. Yes.</p> <p>3 MR. GOOD: Objection.</p> <p>4 Q. And isn't it true there's no reference in</p> <p>5 your progress notes or in any of the records that</p> <p>6 we've seen that you directed someone to write the</p> <p>7 information that is on Plaintiff's Exhibit 4?</p> <p>8 MR. GOOD: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Dr. Ruby -- I'm sorry. I keep</p> <p>11 saying --</p> <p>12 Dr. Giersch, isn't it true with regard to</p> <p>13 the clinical task report that there are entries that</p> <p>14 do not begin, patient calling, that clearly reference</p> <p>15 the individual is calling?</p> <p>16 A. Give me a page. Give me an example.</p> <p>17 Q. Sure.</p> <p>18 On Page 137 for 8-27-03, that note begins,</p> <p>19 She is faxing over some papers later.</p> <p>20 Would that indicate to you that she is not</p> <p>21 in the office when she is saying that?</p> <p>22 MR. GOOD: Objection.</p> <p>23 A. Yes. And it's also not created by my</p> <p>24 medical assistant.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. So if Ms. Ruby were actually at work at</p> <p>2 1:47 p.m. on November 11th, she couldn't have been in</p> <p>3 your office; isn't that correct?</p> <p>4 A. Yeah.</p> <p>5 Q. And that would indicate that she had</p> <p>6 actually called in and spoke with someone; isn't that</p> <p>7 correct?</p> <p>8 A. I don't know.</p> <p>9 MS. LLOYD: Those are all the questions</p> <p>10 that I have. Thank you very much.</p> <p>11 MR. GOOD: Nothing further. Thank you.</p> <p>12 (Signature not waived.)</p> <p>13 ---</p> <p>14 Thereupon, the deposition concluded at</p> <p>15 approximately 12:56 p.m.</p> <p>16 ---</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Okay. But there are several entries here</p> <p>2 that are --</p> <p>3 For example, there are several entries</p> <p>4 related to medication that do not -- where the</p> <p>5 individual is seeking a refill on medication or the</p> <p>6 individual is calling in to the office?</p> <p>7 MR. GOOD: Objection.</p> <p>8 A. I see one, again, not created by --</p> <p>9 Q. Specifically, Dr. Giersch, with regard to</p> <p>10 11-11-05 on Page 134 --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- what time do you believe that Teresa</p> <p>13 Ruby -- according to your testimony, what time are</p> <p>14 you saying that Teresa Ruby was in your office?</p> <p>15 MR. GOOD: Objection.</p> <p>16 A. My guess is 1:47. She was in at 1:47, and</p> <p>17 I answered the message at 2:10. Donna responded at</p> <p>18 2:11 to tell the patient. So if she would get back</p> <p>19 that fast, my assumption is that the patient was out</p> <p>20 in the waiting room waiting for the answer. That's</p> <p>21 an assumption.</p> <p>22 Q. And just so we're clear for the record,</p> <p>23 would that be 1:47 p.m.?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 AFFIDAVIT</p> <p>2 ---</p> <p>3 THE STATE OF OHIO:</p> <p>4 SS:</p> <p>5 COUNTY OF FRANKLIN:</p> <p>6 I, Jennifer A. Giersch, M.D., do hereby</p> <p>7 certify that I have read the foregoing transcript of</p> <p>8 my deposition given on January 12, 2010; that</p> <p>9 together with the correction page attached hereto</p> <p>10 noting changes to form or substance, if any, it is</p> <p>11 true and correct.</p> <p>12</p> <p>13 _____</p> <p>14 Jennifer A. Giersch, M.D.</p> <p>15 ---</p> <p>16 I do hereby certify that the foregoing</p> <p>17 transcript of the deposition of Jennifer A. Giersch,</p> <p>18 M.D. was submitted to the witness for reading and</p> <p>19 signing; that after she had stated to the undersigned</p> <p>20 Notary Public that she had read and examined her</p> <p>21 deposition, she signed the same in my presence on</p> <p>22 this day of _____, 2010.</p> <p>23</p> <p>24 _____</p> <p>NOTARY PUBLIC, STATE OF OHIO</p> <p>My Commission Expires:</p> <p>---</p>

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CERTIFICATE

THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Michael A. Caswell, a Professional
Reporter and Notary Public in and for the State of
Ohio, do hereby certify that before the taking of her
said deposition, the said Jennifer A. Giersch, M.D.
was first duly sworn by me to tell the truth, the
whole truth, and nothing but the truth;

That said deposition was taken in all
respects pursuant to the stipulations of counsel
heretofore set forth; that the foregoing is the
deposition given at the said time and place by the
said Jennifer A. Giersch, M.D.;

That I am not an attorney for or relative
of either party and have no interest whatsoever in
the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my
hand and official seal of office at Columbus, Ohio,
this 13th day of January, 2010.

Michael A. Caswell
Notary Public, State of Ohio

My Commission Expires: June 28, 2014.

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C E R T I F I C A T E

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THE STATE OF OHIO:

SS:

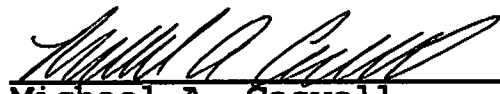
COUNTY OF FRANKLIN:

I, Michael A. Caswell, a Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that before the taking of her said deposition, the said Jennifer A. Giersch, M.D. was first duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken in all respects pursuant to the stipulations of counsel heretofore set forth; that the foregoing is the deposition given at the said time and place by the said Jennifer A. Giersch, M.D.;

That I am not an attorney for or relative of either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 13th day of January, 2010.



Michael A. Caswell
Notary Public, State of Ohio

My Commission Expires: June 28, 2014.

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