

1 APPLICANT'S COUNSEL: Mr. Simmons
2 WITNESS: Ms. Miller
3 DEFENSE COUNSEL NO. 1: Mr. Thompson
4 DEFENSE COUNSEL NO. 2: Ms. Livingston

5
6 WARM UP

7 Q BY MR. THOMPSON: Ms. Miller, my name is Frank
8 Thompson, and I represent Sanford Hospital and Sanford
9 Health, who adjust workers' comp claims for the hospital
10 and their / workers with job injuries. I called the depo
11 today to get some background on your past work, your
12 medical history, how you feel now, and / to give us a
13 better understanding as to where we're going to go
14 tomorrow. The best-case scenario is always to get you
15 back to / work and healthy as soon as possible. Okay?

16 A Yeah.

17 Q Have you ever had your deposition taken before?

18 A Yes.

19 Q Okay. You may recall from before that it's / a
20 question-and-answer session. Some folks come to depos
21 with many attitudes. Mine is it's totally a discovery
22 session. I can ask / questions. Mr. Simmons can ask
23 questions. Ms. Livingston can ask questions. And we
24 hope that you'll answer out loud because the court
25 reporter is going / to write down everything that we ask

1 and everything that you answer.

2 MS. LIVINGSTON: I'm sorry to interrupt, but I don't
3 think the witness knows that I / represent the Sanford's
4 Aspen facility.

5 MR. SIMMONS: No. I advised her. She is aware.

6 Q BY MR. THOMPSON: It's also important that -- as
7 you just saw, that she took your oath */ too. So,
8 please, if we ask a question and you're not certain what
9 we mean, say, "I don't know what you mean." That's an
10 acceptable / answer. We'll try to rephrase it. We don't
11 want you guessing. Okay?

12 A Yes.

13 Q And it's also important that you do answer aloud
14 so she can / type down a response. And I'm sure she'll
15 kick one of us if we're not doing it loud enough. Okay?

16 A Yes.

17 Q Have you taken anything / today that are going
18 to -- that would interfere with your being able to
19 respond today?

20 A No.

21 Q Okay. We'll talk about medicines later, too, as
22 part / of this whole session.

23 Counselor, do you have your file here with you?

24 MR. SIMMONS: Yes, I definitely do.

25 MS. LIVINGSTON: I have mine as well.

1 Q BY MR. THOMPSON: So you can / see we're not
2 coming in here blind of information. We do know that
3 actually you guys have a history of an injured worker and
4 an / attorney. He has represented you in the past; is
5 that right?

6 A Yes.

7 Q We have records of some of those old injuries.
8 Some of them are -- / may be relevant, and others of
9 them may not; so I'm not going to try to waste your time
10 on irrelevant things. If I */ do get sidetracked, I'm
11 sure Mr. Simmons will bring it to my attention. Do you
12 know that you have an agreed medical evaluation set up /
13 in March, March 23, of next year?

14 A Yes.

15 Q That will be with Dr. Sophia Winters, and we
16 would hope that you will be able to / attend that. If
17 there's any reason beforehand that something comes up,
18 please let your counsel know so that we can make a timely
19 change in / the schedule. Okay?

20 A Yes.

21 Q Dr. Winters is someone who's a surgeon that has
22 been involved in workers' compensation for a long time;
23 so she should / perform the kind of evaluation that we
24 all need to move your claim forward.

25 Okay?

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A Yes.

Q You just gave your address to the court reporter, / and that's on Christopher Avenue, isn't it?

A Correct.

Q How long have you lived at that address?

A A year and a half.

Q Who lives there with / you?

A Only me.

Q Just by yourself?

A Yes.

Q You have children, don't you?

A Negative.

Q I recall at one time I saw that you -- in the record / you did have some children.

A No.

Q You've never had any kids?

MR. SIMMONS: Objection, Counsel. That's argumentative.

MS. LIVINGSTON: I'll join in that objection.

MR. SIMMONS: You should answer, though.

THE WITNESS: No. */

END OF WARM UP

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EXAM

Q BY MR. THOMPSON: You're not married at this time?

A No.

Q Have you been married in the past?

A No.

Q Okay. Do you remember when you were first hired by / Sanford?

A Yes.

Q When?

A In May of I believe '14.

Q Actually, the information I have is May 4. You started in '14 working at Sanford / General; right?

MS. LIVINGSTON: I think you misspoke, Counsel. I have the date of hire as May 3.

MR. SIMMONS: That is my information as well.

MR. THOMPSON: Let me correct / the record.

Q Is it true you started with Sanford General on May 3, 2014?

A Yes.

Q Now, previously you had also worked for them at the / Aspen Street building; is that right?

A Yes.

Q We're distinguishing between these two different employers although they have the same parent company.

1 But / for purposes of this discussion about your
2 employers, we're talking about Sanford General; right?
3 It's just near here; right?

4 A Yes.

5 Q When you were hired at Sanford / General, into
6 what capacity were you hired?

7 A As an RN interim nurse.

8 Q How long have you been an RN?

9 A A year and a half.

10 Q And / you were certified a year and a half ago?

11 A I was licensed in, I believe, June of '14.

12 Q After your hire?

13 A That's right.

14 Q Are you */ telling me that when you were hired
15 in May of '14, you were not licensed as an RN?

16 A No. I was an interim permit RN. /

17 MS. LIVINGSTON: Objection. Vague and ambiguous.

18 MR. SIMMONS: Yeah. I think there's a double
19 negative there.

20 MR. THOMPSON: I think her answer clarified it, but
21 I will try it again.

22 Q When / you were hired in May of 2014, is it true
23 that you were not yet a certified RN?

24 A That is true. I had an / interim permit.

25 Q Okay. And in what part of the hospital did you

1 work at Sanford General?

2 A Emergency room.

3 Q During your whole employ, then, which is / about
4 two and a half years, did you always work in the
5 emergency?

6 A Yes.

7 Q Who was your supervisor there?

8 A James Jones.

9 Q Was he generally your / supervisor for the
10 entire year and a half at the Sanford emergency room?

11 A We have more than one.

12 Q Okay. Is he the one who you / worked most often
13 under?

14 A We work under all of them all the time.

15 Q Who else can you -- comes to mind?

16 A Francine Robinson, Luis Sanchez, and / Joe Tran.

17 Q These are all emergency room managers?

18 A Yes. One's a floor manager.

19 Q Okay.

20 A Was a floor manager.

21 Q How many hours a week did you */ work generally
22 in the emergency room at Sanford?

23 A 24 to 36 hours.

24

25

1 START TYPING

2 Q BY MR. THOMPSON: So it wasn't really a full-
3 time position, but 24 to 36 on the average?

4 A Yes.

5 Q Is that in a single week or / in a two-week pay
6 period?

7 A 36 hours one week, 24 hours the alternating
8 week.

9 Q Okay. And that was kind of routine?

10 A Yes. /

11 Q If I do my math correctly, that's kind of like
12 30 hours a week average?

13 A Okay.

14 Q Now, I know that the injury that brings us / all
15 here today was in late August of 2016, just a few months
16 ago; is that correct?

17 MS. LIVINGSTON: Objection. Misstates the record,
18 Counsel.

19 MR. THOMPSON: I don't / believe it does.

20 MR. SIMMONS: I don't see how it does either.

21 MR. THOMPSON: I will stand by my question.

22 MS. LIVINGSTON: I'm just making a record of my
23 objection.

24 MR. SIMMONS: You / may answer the question.

25 THE WITNESS: I don't remember it.

1 Q BY MR. THOMPSON: Were you injured in August of
2 2016?

3 A Yes.

4 Q Did you go -- did you ever return to work / at
5 Sanford General for any time after that?

6 A Yes.

7 Q What kind of work was offered you after you
8 returned to work after the injury in / late August of
9 '16?

10 A Modified duty.

11 Q Was it modified within the ER?

12 A It was in an office.

13 Q In the ER or next to */ it?

14 A Yes.

15 Q What were -- how did your activities change from
16 an ER RN in August of '16 to the modified work that
17 they / gave you following your injury?

18 A I did phone work.

19 Q Okay.

20 A And made discharge phone callbacks, discharge
21 callbacks.

22 Q Did you do any patient interviewing / other than
23 phone?

24 A Phone.

25 Q No face to face?

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A No.

Q No filing?

A No.

Q Only telephone.

Were you still working 24 to 36 hours?

A No. /

Q How many hours did you work when your work was modified?

A Four hours a week -- wait. No. Twelve hours a week. Twelve hours a week. / Three four-hour shifts one week and then two four-hours the alternating week.

Q Okay. Was your salary the same as a nurse before the / injury as the modified job after the injury?

A No.

Q Your hourly pay, was that the same?

A I don't know.

Q I can imagine that if you're / only working 12 hours a week now, you probably didn't bring a paycheck home as much as you did before; right?

MR. SIMMONS: That's argumentative. I'll object / as phrased.

MS. LIVINGSTON: I would join in that objection.

Q BY MR. THOMPSON: With only working 12 hours, is your paycheck the same as it was prior to your injury? */

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A No.

Q You don't recall if it was the same hourly rate or just fewer hours?

A I believe the hourly rate was less.

Q Do you remember / getting checks from Sanford Health, actually Travelers, that were described as wage loss?

A Yes.

Q Do you know the term "wage loss"? Are you familiar with / that word?

A Yes.

Q They were intending to give you money for the wages that you were losing because you were injured. Is that your understanding / of what "wage loss" is?

MR. SIMMONS: Mischaracterizes the testimony.

MS. LIVINGSTON: Join.

Q BY MR. THOMPSON: Do you know that wage loss is to replace the wages you were losing due to / your injury?

A Correct.

Q All right. How long did that continue?

A While I was on modified duty until August 15th.

Q Okay.

A And I still receive checks. /

1 Q Okay. Are you getting the same amount of checks
2 now in the first part of November that you were getting
3 in the first part of / August when you were still doing
4 modified work?

5 A I have -- I don't know. I haven't calculated
6 it.

7 Q Okay. Let me just ask it differently.

8 A Sure. /

9 Q Are you working at all now?

10 A No.

11 Q So are you getting full temporary disability
12 right now?

13 A I think so, yes.

14 Q Before you were getting partial */ disability?

15 A Yes.

16 Q Have you worked for anyone at all to earn a
17 check since leaving Sanford as a modified employee in
18 August '15?

19 A No.

20 Q Do / you have any other source of income other
21 than the checks that you're getting from Sanford
22 Health?

23 A No.

24 Q Now, do you recall -- again, you recall / and
25 you said that you were hired by Sanford General ER as an

1 interim employee --

2 MS. LIVINGSTON: Interim what?

3 MR. SIMMONS: Can you describe that again, please.

4 THE WITNESS: Permit / nurse. Interim permit.

5 Q BY MR. THOMPSON: Okay. Who did you work for
6 just before that?

7 A A clinic.

8 Q And where is that?

9 A Fresno.

10 Q How long did you work for / the clinic?

11 A Possibly five months.

12 Q What did you do for the clinic in Fresno?

13 A I was in training.

14 Q What were you in training to become? /

15 A I was an LVN in training.

16 Q Okay. Why did you leave the clinic?

17 A I passed my state license exam and got my RN /
18 and wanted a job as an emergency room nurse.

19 Q Sanford General gave you that chance?

20 A Yes.

21 Q You weren't going to do that at the clinic; /
22 right?

23 A I'm sorry?

24 Q You would not have been doing that at the
25 clinic; correct?

1 A Correct.

2 Q Did you have any injuries while working that
3 four-month */ period at the clinic?

4 A No.

5 Q Who did you work for before then?

6 MR. SIMMONS: Excuse me, but do we really need to go
7 back that far?

8 MR. THOMPSON: I / believe it has direct bearing on
9 my case.

10 MS. LIVINGSTON: It is relevant, and I think the
11 witness should answer.

12 MR. SIMMONS: I have not instructed her to not /
13 answer. She may go ahead at this point.

14 Q BY MR. THOMPSON: Who did you work for before
15 your position at the clinic?

16 A Sierra Hills, a long-term care / home.

17 Q What city is that in?

18 A Del Mar.

19 Q At the Sierra Hills Care Center in Del Mar, did
20 you suffer any injuries while working there? /

21 A No.

22 Q How long did you work at Sierra Hills?

23 A Approximately seven months.

24 Q Were you an LVN there as well?

25 A Yes.

1 Q What were your / duties at Sierra Hills Care
2 Center in Del Mar?

3 A All duties within the scope of the practice of
4 an LVN.

5 Q And were your / responsibilities as an LVN to
6 include moving patients into chairs from beds and so
7 forth?

8 A No.

9 Q Did you turn patients?

10 A No.

11 Q Help to / the bathroom?

12 A No.

13 Q What were your duties as an LVN at the care
14 center?

15 MR. SIMMONS: Asked and answered, Counsel.
16 Objection. She just told you. */

17 MR. THOMPSON: Please state a legal objection and
18 refrain from speaking objections.

19 MR. SIMMONS: It's been asked and answered.
20 You may answer.

21 THE WITNESS: Gave meds, breathing treatments.

22 Q BY MR. THOMPSON: Okay. Who did / you work for
23 before them?

24 A High Five Medical Services.

25 Q Where is that?

1 A Was in Fresno.

2 Q What kind of a business is High Five Medical
3 Services? /

4 A Registry.

5 Q So that's a registry that you would sign up for,
6 and they'd send you out to a place that needed an LVN? /

7 A Correct.

8 Q How long did you work for the registry?

9 A I don't remember.

10 Q Now, some time ago, as we mentioned either on or
11 off the record, / you worked for Sanford Del Mar as well;
12 right?

13 A Correct.

14 Q Do you remember what period of time you worked
15 for Sanford Del Mar?

16 A I believe -- / and I could be off by a year or
17 two -- '96 through 2000.

18 Q Okay. Are you positive?

19 A Approximately. That's approximate.

20 Q Okay. What / did you do at Sanford Del Mar?

21 A ER technician.

22 Q And what does an ER tech do?

23 A We did EKGs, splints, crutches, moving
24 patients, / vital signs, hooking up to monitors.

25 Q Were you an LVN at that time?

1 A No.

2 Q Did you have any licensing at that time when */
3 you were working for Sanford Del Mar?

4 A No license.

5 Q Okay. Now, did you suffer any injuries at all
6 while working for Sanford Del Mar during / the time
7 period of '96 to 2000?

8 A Not at Sanford Del Mar.

9 Q Did you ever have an injury to your low back
10 in / your life before August of '15?

11 A Yes.

12 Q And when was the first time in your life you
13 remember having an injury to your low / back that
14 required medical care?

15 A I believe last summer.

16 Q Which would be the summer of '15?

17 A Correct.

18 Q What happened at that time?

19 A I swerved on / the freeway. Somebody almost hit
20 me, and I swerved away and then just swerved back into my
21 lane. There was no contact.

22 Q Now, I don't / know if you know, but we have
23 records from other facilities that have seen you for as
24 many as ten years. Some of these records / go way back.
25 There are some records from Dr. Stevens, Catherine

1 Stevens. Who is she at Sanford Del Mar family practice?

2 A I don't know.

3 Q People / use language differently. The word
4 "chronic," does that mean anything to you? What does
5 "chronic" mean to you?

6 MR. SIMMONS: Objection. Vague and ambiguous.

7 MS. LIVINGSTON: And assumes facts */ not in
8 evidence.

9 Q BY MR. THOMPSON: Do you understand the word
10 "chronic"?

11 A All the time.

12 Q Okay. Again, people use it differently.

13 There's an entry in the subpoenaed records / on page 3.

14 It's dated June 4, 2006. And I believe Dr. Stevens
15 is a doctor in Dr. Smith's office. Is Smith your /
16 family doctor?

17 A Yes.

18 Q And it says that you've had low back pain since
19 1999.

20 MS. LIVINGSTON: It says abdominal pain.

21 MR. SIMMONS: That's chronic ABD pain.

22 MS. LIVINGSTON: Abdominal pain. /

23 MR. THOMPSON: Okay. I can certainly stand
24 corrected. Lower abdominal. I see that there.

25 Q Do you recall ever treating with Dr. Smith for

1 pain --

2 A Yes.

3 Q -- at any / time?

4 When would be the first time you ever saw him for
5 low back pain?

6 A After the incident on the freeway.

7 Q And do you remember / when that might have
8 occurred?

9 A I believe it was last summer.

10 Q There's a record from August 3 of 2015 in
11 Dr. Smith's records, page 4 / of our records, showing
12 that you had had low back pain going into your lower
13 legs. When you had pain last summer after swerving in /
14 the automobile, did you notice it in your legs as well?

15 A Yes.

16 Q How much time or how many visits do you think
17 you may have */ had with your physician last summer after
18 you felt that pain in your back?

19 A I don't remember.

20 Q What is your best estimate? Did you see / your
21 physician as many -- as many times as ten for your lower
22 back pain at that time?

23 A I don't remember.

24 Q Do you know if you / were prescribed any
25 medications for your low back last year?

1 A I don't recall.

2 Q You said a moment ago that you don't recall any
3 injuries while / working at Sanford Del Mar.

4 MS. LIVINGSTON: That's been asked and answered.

5 MR. SIMMONS: But just go ahead and answer it again.

6 Q BY MR. THOMPSON: Did Mr. Simmons represent you
7 in any / workers' comp claims that were filed against
8 Sanford Del Mar?

9 A Yes.

10 Q What injury or what was he representing you for?

11 A I had an incident with / my manager, who
12 assaulted me.

13 Q I saw that there was a stress claim in here.

14 A Correct.

15 Q That may be what you're referring to.

16 A Yes.

17 Q But / there are actually two claims here. One
18 of them appears to be to your neck and shoulders and one
19 to your back.

20 MS. LIVINGSTON: There was another / claim against
21 Sanford Del Mar, but it was a stress claim and not
22 related to any physical injury.

23 Q BY MR. THOMPSON: Okay. However, one of them
24 here is */ from July of 2012 at AMR. Were you working for
25 AMR in 2012?

1 A Yes, I was.

2 Q How did that/ injury happen?

3 MR. SIMMONS: Before we get there, just to follow up
4 on our discussion with the prior claims, I do note that
5 the disputed claim against / Sanford was ultimately
6 settled.

7 MS. LIVINGSTON: And I also saw that, Counsel.

8 MR. SIMMONS: All right. You can go ahead. I'm
9 sorry.

10 Q BY MR. THOMPSON: The question before you right
11 now is / do you remember the injury at AMR which occurred
12 in or about July of 2012?

13 A Yes.

14 Q How did that injury occur?

15 A Lowering / a gurney with a patient on it.

16 Q What part of your body was injured?

17 A The neck.

18 Q Did you injure your lower back at that time? /

19 A No.

20 Q How about your mid back?

21 A No.

22 Q The records mention your right arm and shoulder.
23 Is your testimony different than what is represented in
24 the / documents?

25 A It was upper back.

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Q Or neck?

A Neck.

Q Who was your doctor at that time for treatment purposes?

A Dr. Stevens.

Q When would you estimate that / you last saw Dr. Stevens as a treating doctor?

A I don't remember.

Q Have you seen anyone in the last five years for your */ neck injury?

--o0o--

*****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY
BE SLIGHTLY DIFFERENT*****