

COMMITTEE
ON
REGIONAL
TRAINING

Litigation Planning
Jay v. Hunt & Talbot

Legal Documents
Documentary Evidence
Diagrams
Photographs

**IN THE SUPERIOR COURT
OF THE STATE OF CONFUSION
FOR THE COUNTY OF HORACE**

WINNIFRED JAY, by and through her
next friend, PAT PARKER,

CIVIL ACTION
#12345

Plaintiff,

vs.

COMPLAINT

TERRY HUNT, d.b.a. Bestcare Rest Home
and
BLAKE TALBOT, in his official capacity
as
Public Guardian for Winnifred Jay,

Defendants.

The Plaintiff, for her Complaint against the Defendant alleges:

1. WINNIFRED JAY was, at all times mentioned herein, a resident of Bestcare Rest Home, in the county of Horace, State of Confusion.
2. Terry Hunt is doing business as Bestcare Rest Home. Terry Hunt is the sole owner of Bestcare.
3. Blake Talbot is the public guardian for the County of Horace and was, at all relevant times, the guardian of Winnifred Jay.
4. On or about June 24, Yr-3, an employee of Bestcare Rest Home, Jackie O'Malley caused Winnifred Jay to be burned by allowing scalding tea to be poured over her arms and chest.
5. Bestcare Rest Home has a duty to provide reasonable care to Winnifred Jay.
6. Winnifred Jay was burned because of Bestcare Rest Home's failure to supervise, train, or employ qualified personnel.
7. Winnifred Jay suffered from numerous infected bedsores in June and July Yr-3.
8. The bedsores of Winnifred Jay were caused by the failure of Bestcare Rest

Home to turn Mrs. Jay in her bed on a regular basis.

9. Jackie O'Malley is a convicted felon who has in the past, threatened Winnifred Jay with bodily harm.
10. Bestcare Rest Home continued to employ Jackie O'Malley despite the fact that they knew of O'Malley's criminal record and prior threat to Winnifred Jay.
11. Bestcare Rest Home negligently or recklessly disregarded its duty to Winnifred Jay by failing to adequately train and supervise Jackie O'Malley, and by its employing her to care for Winnifred Jay.
12. Blake Talbot is responsible for ensuring reasonable medical care for Winnifred Jay.
13. Blake Talbot violated the duty of insuring reasonable medical care by leaving Winnifred Jay in Bestcare Rest Home despite bedsores and burns.
14. Blake Talbot violated his duty of insuring reasonable medical care by failing to discover and prevent Winnifred Jay's bedsores.
15. Defendant's acted maliciously or, in the alternative, with reckless disregard of Winnifred Jay's rights.
16. As a result of Defendants' actions Winnifred Jay suffered actual damages including medical costs, pain and suffering, and emotional distress.
17. As a result of Defendants' actions, Winnifred Jay was forced to leave Horace City, causing her to incur moving costs in the amount of \$320.00 and to leave her life long home.
18. As a result of Defendants' reckless or malicious conduct, Winnifred Jay suffered humiliation, outrage, and indignity.
19. As a direct result of the actions above, Winnifred Jay was damaged in an amount exceeding \$10,000.

PRAYER FOR RELIEF

Plaintiff prays for judgment against the Defendants jointly and severally for the amount of \$250,000 in actual and exemplary damages, together with the costs of this action and for such other and further relief as this Court may find just in the circumstances.

JURY DEMAND

Plaintiff demands a jury trial in this action.

BY:

Attorney for Plaintiff

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ANSWER OF TERRY HUNT

TERRY HUNT, d.b.a. Bestcare Rest
Home and
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as
Public Guardian for Winnifred Jay,

Defendants

1. Admits the allegations contained in paragraphs 1, 2, 3, 5, 7, and 12.
2. Denies the allegations contained in paragraphs 4, 6, 8, 9, 10, 11, and 15.
3. Is without sufficient knowledge or information as to paragraphs 13, 14, 16, 17, 18, and 19.

AFFIRMATIVE DEFENSE

If Winnifred Jay was damaged, she contributed to the damage by knocking tea over onto herself and refusing to accept medical care.

By:

Attorney for Bestcare

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ANSWER OF BLAKE TALBOT

TERRY HUNT, d.b.a. Bestcare Rest Home
and
BLAKE TALBOT, in his official capacity
as
Public Guardian for Winnifred Jay,

Defendants

1. Admits the allegations contained in paragraphs 1, 2, 3, 5, and 12.
2. Denies the allegations contained in paragraphs 13 and 14.
3. Is without sufficient knowledge or information as to paragraphs 4, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, and 19.

AFFIRMATIVE DEFENSES

Any damages caused were caused by Bestcare Rest Home and not this Defendant.

If Winnifred Jay was damaged, she contributed to the damage by knocking tea over onto herself and refusing to accept medical care.

BY:

Attorney for Defendant Talbot

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STIPULATIONS

TERRY HUNT, d.b.a. Bestcare Rest Home
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1. All documents in the case file are authentic.
2. Only the following witnesses may be called at trial:
 - Jackie O'Malley
 - Terry Hunt
 - Pat Parker
 - Blake Talbot
 - Chuckie Harrison (through his deposition)
 - Francis Jackson, M.D. (through video deposition)
3. Winnifred Jay is no longer competent to testify.
4. Medical records meet the requirements of the business records exception to the hearsay rule.
5. Aggravated Assault is a felony in the State of Confusion.
6. Confusion is a comparative negligence State.
7. There are not statutes or regulations that specify which a nursing home must do with respect to hiring and training nurse aides, treating patients with bedsores, or serving hot drinks.

8. Blake Talbot's file on Winnifred Jay consists of financial records which are irrelevant to this case, phone logs and messages, which were destroyed after Mrs. Jay left town, and correspondence which consists of the single letter from Mrs. Jay found in this packet.

9. The photograph of Winnie Jay was taken in April YR-5.

10. Winnifred Jay incurred the following expenses due to her emergency room care and follow-up medical treatment resulting from the burns and bedsores:

Ambulance	\$ 800.00
Physician Services	600.00
Medication & Supplies	116.00
Emergency Room Fee	250.00
 TOTAL:	 \$1,766.30

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DEPOSITION OF PAT PARKER

1 My name is Pat Parker. I live in Carson City, which is about 150 miles from Horace City. I
2 used to work at a local manufacturing company there until they cut back their operations and
3 laid me off. I am presently receiving unemployment insurance benefits and getting job
4 training so I can work repairing computer hardware. I am a single parent and have a son,
5 Keith, who is 6 years old.
6

7 Winnifred Jay is my aunt, but she seems more like a mother in many ways. My dad was an
8 officer in the Navy and was frequently away on his ships. Aunt Winnie is his eldest sister,
9 and much older than my dad. My mother died when I was 11 so Aunt Winnie looked after
10 me when my dad was away. I practically lived with her until I graduated from Horace City
11 High School and went to work here in Carson City. I still kept in touch with Aunt Winnie,
12 but once Keith was born it was harder to make the journey to see her.
13

14 Aunt Winnie was always an independent woman. Her husband died young, so she raised two
15 children alone. She was really smart, and had a quick wit. She was never afraid to speak her
16 mind. I remember that sometimes her opinions used to upset people, but I think they just
17 weren't used to having a woman be so blunt.
18

19 In May Yr-4 Aunt Winnie became unable to care for herself. I offered to have her move to
20 Carson City but she insisted in staying in Horace City where she knew people. The only
21 nursing home there was Bestcare, but I had heard good things about it from some of my dad's
22 friends. Winnie had a local guardian appointed because she wasn't able to get around by
23 herself and because I wasn't available.
24

25 I saw her in June and July Yr-4, and spoke with her a few times on the phone after that. But
26 Keith was just 2 then, and it was hard to make the time to see her. I was there for Christmas
27 Yr-4. On July 1, Yr-3, I went up to see her for her birthday. I was extremely upset with what
28 I found.
29

30 First of all, Winnie had a burn on her arms and chest. She said it was from a pot of hot tea
31 that the nurse aide had spilled on her. I can't imagine how that could happen. Second, she had
32 some large bed sores on her back and side. She was in the room farthest away from the front
33 desk, and there was a laundry room and a storage room before you got to hers.
34

35 I asked Terry Hunt what happened and she said that Winnie had kicked the nurse aide causing
36 her to spill the tea. She also said that Winnie wouldn't let the nurse aides touch her so she
37 didn't get turned in bed as often as the other patients. But she must let them change her
38 clothes and sheets! I can't imagine that a 74 year old invalid could prevent a determined staff
39 from caring for her properly.
40

41 I also talked to Blake Talbot who was Aunt Winnie's guardian. Blake told me that Winnie
42 had lost credibility with the public guardian office because she complained about everything
43 and many of her complaints were unfounded. Blake claimed to have made visits to Bestcare

1 every two weeks or so and never saw any bed sores.

2
3 After I saw Aunt Winnie, I called the doctor who had treated her in the emergency room. I
4 was satisfied that she had gotten proper care after she was taken to the clinic. I also spoke
5 with her regular family physician, Dr. Francis Jackson, who told me that Winnie had become
6 progressively more irritable in the last 6 months. Within a week after my arrival, I arranged
7 for Aunt Winnie to stay at a nursing home here in Carson City. It cost about \$320.00 to move
8 her. Since I am her only surviving relative, I feel it is my special responsibility to make sure
9 that her last years are comfortable and enjoyable.

10
11 It was very upsetting to me to see how Aunt Winnie was after a year in Bestcare. She was
12 irritated at everyone and everything. She hated everyone looking at her bedsores and burns.
13 She either didn't want to talk at all or she yelled at everyone when she wanted something. It
14 was like she didn't think she could get anything unless she yelled.

15
16 In the last year, Aunt Winnie had a stroke and has had difficulty talking. She also has become
17 more disoriented. But I feel, her care is much better now because she's never had bedsores or
18 burns or any other signs that her needs are not met.

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DEPOSITION OF TERRY HUNT

1 My name is Terry Hunt. I have lived in Horace City all my life, except when I went to
2 college at Western State College. I majored in English and minored in Health Services. I had
3 thought about going on to graduate school, but went into the service where I was a
4 communications specialist in the Navy. When I got out of the service, I worked in my father's
5 motel. Eventually I helped him run the whole thing. About 15 years ago my father died. My
6 mother was diagnosed with Alzheimers disease shortly thereafter. By this time, she had
7 turned over the motel business to me. I started out caring for her in my home and became
8 active in the local Alzheimers Support group. We worked very hard to educate people in the
9 surrounding community about the problems suffered by the elderly, especially those with
10 Alzheimer's disease.

11
12 Eventually my mother became worse and I was unable to care for her at home. I was alone
13 myself by then, and the children were grown with families of their own. I tried to find a
14 nursing home in the community so she could be near us for as long as she recognized us. I
15 became extremely frustrated because there was nothing for at least 120 miles. When I talked
16 to others in the support group, I learned that many of them had to send their loved ones away
17 because there were no nursing homes here in the more rural part of the state. I heard again
18 how much they wished there were something closer.

19
20 I never was able to find something close by for my mother, but it got an idea going in my
21 head. I thought: why not remodel the old motel into a nursing home? A warm, homey place
22 where the local people could regularly visit their grandparents and parents. So that's how I
23 started Bestcare. I was able to get some loans and remodel the motel. Fortunately, it was all
24 on one floor, and we mostly had to knock out the walls and redesign the floor plan. I added a
25 couple wings and redid all the wiring and plumbing.

26
27 Bestcare has 45 beds. Some of the rooms are singles and some of them are doubles. The
28 reception area and nurses station are by the front door. The building is a large square "U",
29 and every room has a window. We have an R.N. who is the immediate supervisor of the staff
30 which includes 2 L.P.N.s, several nurse aides, housekeeping staff, and kitchen help. I am in
31 charge of the business operations and public relations, and I have a secretary-bookkeeper to
32 assist me. I'm on the road a lot so I leave a lot of the day-to-day operations to my R.N. and
33 bookkeeper. They do a wonderful job. Several of our employees have even had their family
34 members stay here. We're a close and supportive team at Bestcare, but I insist that everyone
35 must put our residents first.

36
37 Bestcare has been quite successful. We almost always have all our beds occupied, and
38 sometimes there is even a waiting list. Most of our residents are from the small towns around
39 here. I believe in local, friendly nursing care. I am now active in the State Association of
40 Senior Citizens, and go to meetings all over the state telling them about the benefits of local
41 care to the elderly and their families. I also have spoken to the state legislature about health
42 care for the elderly. I don't know exactly how we'll meet all the needs of the elderly, but I
43 believe that small business people like myself can be very useful in setting up small nursing

1 homes like Bestcare.

2
3 Yes, I am familiar with Winnifred Jay. She came to Bestcare in May Yr-4. She was quite a
4 character. She had a loud, abrasive voice, and was quite outspoken about what she did and
5 didn't like. She used rather rough language, too. I think some of the residents didn't care for
6 that. She was a nurse during the war and I think she thought she knew more than anybody
7 else. She could be quite difficult with the girls at times, though. Sometimes she didn't want to
8 use the bedpan. Sometimes she refused to eat. Starting about 8 months before she left
9 Bestcare, Mrs. Jay started demanding this, that or the other thing. A few times she'd yell for
10 aides rather than press her call button. Several residents complained to me. I heard her
11 yelling a few times myself. We finally put her down at the end of C wing in a single room so
12 she would disturb the fewest residents. Then, a few weeks before she left, Mrs. Jay refused
13 to be turned on her bed. Every time one of the girls tried, she'd protest loudly that she could
14 turn herself. I saw it myself a few times. Of course I insisted that the staff still do it, but it
15 was taxing.

16
17 Yes, the public guardian was responsible for Mrs. Jay. She certainly couldn't care for herself.
18 Blake Talbot is the guardian--and has been guardian for many of our patients over the years.
19 In fact, I remember now that I spoke to Blake about Mrs. Jay's behavior. Blake thought that
20 we were acting completely appropriately under the circumstances. Blake said that Mrs. Jay
21 had been complaining about anything and everything for weeks. She didn't like the color of
22 the walls, she didn't like the food, she was never comfortable, and so forth. I understand that
23 she used to be a nurse herself. It may have been that she thought she knew better than anyone
24 else how to run Bestcare, but I think she just wanted Blake to visit her.

25
26 I had no idea that Mrs. Jay had serious bed sores. I knew that she had had a few in the
27 past--particularly when she put up such a fuss about being moved. She liked to think she was
28 still independent, I suppose. I was in the building on June 24 YR-3 when she was burned, but
29 I wasn't in her room when it happened. I heard about it a little while later from the aide who
30 was on duty--Jackie O'Malley. We, of course, made sure that she obtained immediate
31 medical attention from the R.N. on duty.

32
33 Jackie told me that Mrs. Jay was being served the tea that she liked in the afternoon. Jackie
34 been an aide for about a month, but knew Mrs. Jay. Jackie used to work for one of our
35 housekeepers. Jackie said that when she was serving Mrs. Jay her tea, Mrs. Jay threw up her
36 arms. The tea was knocked out of Jackie's hands instantly. I don't know what else Jackie
37 could have done.

38
39 Well, I suppose you could say Bestcare has been profitable. We're not losing money if that's
40 what you mean. We do have insurance coverage for malpractice and negligent care. I believe
41 our coverage is approximately \$500,000 per claim.

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DEPOSITION OF BLAKE TALBOT

1 My name is Blake Talbot. I live in Horace County, and have lived here for 10 years. I used
2 to live in Rosemont where I went to college for a degree in accounting. After that I came to
3 Horace County where I worked for the Department of Social Services in their financial
4 department. Six years later I became the public guardian. I became public guardian in Yr-4.
5

6 As Public Guardian I am responsible for persons who are physically or mentally unable to
7 care for themselves and who do not have anyone else in the area who can act as guardian for
8 them. I am paid a flat fee for each of my wards.
9

10 At the present time I have 400 wards. In July Yr-3 I had 312 wards. Most of these--I think
11 270-- were juveniles in the state juvenile detention center that is located here in Horace
12 County. I was also responsible for 17 senior citizens who had live-in help, and 5 senior
13 citizens who were patients at the hospital. The rest were residents of Bestcare Nursing Home.
14 That would have been around 30.
15

16 As part of my job as public guardian, I would make site visits to Bestcare. These occurred at
17 least monthly. I would make sure that my wards' bills were paid, and that their health
18 insurance providers had been properly billed by the nursing home. I would ask the staff of
19 Bestcare how the patients were doing. I didn't visit my wards every month unless there was a
20 problem or unless they specifically requested a visit. I have an office where the wards can
21 leave messages for me if they wish.
22

23 Yes, the state public guardian statute says that I am responsible for ensuring that my wards
24 receive reasonable medical care, clothing, food, housing, and other necessities of life.
25 However, I don't feel that I am primarily a social services worker. Since I have so many
26 wards, I feel my time is best spent making sure that the wards' money is being budgeted and
27 spent properly to provide for their basic needs. I trust the health care professionals at Bestcare
28 to see that their patients are receiving proper care on a day to day basis.
29

30 I remember Mrs. Winnifred Jay. She was a patient at Bestcare several years ago. She was a
31 difficult person to deal with. She called my office on almost a weekly basis, with one
32 complaint or another. For about a year, I came out to see her every week. Then I realized
33 that nothing would ever satisfy her. So I saw her only when I came out to Bestcare to review
34 the books. No I didn't see her every month. But I always asked Terry Hunt about how she
35 was doing. I returned most of Mrs. Jay's phone calls. No, not all of them. After awhile, it
36 seemed pointless since there was nothing I could do.
37

38 Mrs. Jay complained about the color of the room, the habits of her roommates, the clothes that
39 were selected for her to wear and the food at Bestcare. She used to be a nurse and thought
40 she knew better than anyone else what treatment she should receive. When she
41 something she wanted, she would raise her voice so everyone else around her could hear her.
42 Terry Hunt talked to me about how Mrs. Jay was behaving. I was afraid that Mrs. Jay was
43 going to be required to leave Bestcare. It was the only nursing home in the area and Mrs. Jay

1 did have a few friends and acquaintances here.

2
3 Finally, the Bestcare staff moved Mrs. Jay to a single room at the end of the wing so she
4 would not disturb the other residents with her voice as much when she got riled up. I thought
5 she would enjoy it because it was one of the few singles there and she wouldn't have to hear a
6 roommate snoring, or watching a TV show she didn't like, or whatever. In fact, I am quite
7 sure Mrs. Jay never said anything to me about whether the single room was unsatisfactory. I
8 did receive a letter from her in June Yr-3 complaining that there was a new nurses aide who
9 didn't seem to care about her - I think the aide's name was O'Malley - but we didn't talk about
10 it further. I had learned in the past that Mrs. Jay's complaints were often blown over.

11
12 I wasn't aware that Mrs. Jay had had bed sores. I did know that she frequently objected to
13 being touched by the staff. She resisted on several occasions, including one time that I was
14 there. I didn't think it would be proper to ask Mrs. Jay to show me her body unless she
15 wanted me to look. She never complained about bed sores. I also didn't know about how she
16 became burned until several days after it happened. Pat Parker contacted me and told me
17 about it. Pat wanted to become guardian and to move Mrs. Jay out of Bestcare. I thought that
18 if Pat wanted to be responsible for her, it might be the best thing, so I did everything I could
19 to cooperate with them.

20
21 I have never had any other complaints about Bestcare from my wards except some of the
22 usual items about the food. Oh, occasionally the residents find some of the younger staff to
23 be a little disrespectful. But I think that may reflect just a difference in generations. I think
24 Terry Hunt has done a great service to this community by providing a local nursing home
25 facility. Terry is also careful about how Bestcare bills its residents.

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DEPOSITION OF JACKIE O'MALLEY

1 My name is Jackie O'Malley. I am a resident of Horace City. I have lived here all my life. I
2 am currently employed as a meter attendant by the Horace City. I started working there a
3 year before Winnifred Jay got burned. When I hired in, I was on the housekeeping staff. and
4 changed the bedding, did the laundry and that kind of thing. After I had worked at Bestcare
5 for about eight months, one of the nurses aides quit. I guess they liked my work because they
6 asked me if I wanted the job. It paid an extra 40 cents an hour so I took it. I worked the day
7 shift from 8 a.m. until 4:00 p.m.
8

9 As a nurses aide, I was supposed to help people with their everyday needs. I served meals,
10 helped people feed themselves, change clothes, go to the bathroom, take their medicine and
11 that sort of thing. I don't have any special training or anything. They just tell you what to do
12 and you do it. Besides I'd seen what the aides do when I was a housekeeper.
13

14 I remember the day Winnifred Jay got burned. It was a Tuesday, about a month after I'd
15 become a nurses aide. It was late afternoon - almost the end of my shift. She was calling for
16 her tea. She was always hollering for one thing or another. She was the most obnoxious old
17 lady I worked with at Bestcare. So I brought her in her tea. She couldn't get out of bed at all,
18 so I took it over to her. I set the tray down next to her bed and handed her the teacup. She
19 started swinging her arms around and knocked the tea out of my hand. Then she really started
20 screaming. I yelled at her to shut up so I could clean up the mess she made. But she just kept
21 screaming. When I got to trying to clean the bedding, I noticed a lot of the tea had gotten on
22 her. It looked real red so I went and got the nurse. When I came back, Winnifred was
23 screaming that I had tried to hurt her. The nurse on duty said I had better get someone to take
24 Mrs. Jay to the emergency room so I did. I don't see how the old biddy can blame me when
25 it's her own fault that she was burned. We can only do so much.
26

27 I saw a few bed sores on Mrs. Jay and I told Terry Hunt. But they weren't too serious.
28 Besides, Mrs. Jay didn't like the aides to touch her very much. She wanted to put on her own
29 hand lotion, her own lipstick, and things like that. Terry said I should try to please Mrs. Jay,
30 so I gave her the medicine to put on herself. I don't know if she did.
31

32 After that, Winnifred would always yell and scream if I went into the room. Finally, after
33 about 3 days of that, Terry Hunt said I should let someone else do Winnie's wing. That suited
34 me just fine, 'cause she was real difficult. She wouldn't let you turn her, and she was always
35 telling you what to do and you could never do anything right as far as she was concerned.
36 She didn't like any of the aides to touch her. No, I never seriously threatened her. I did tell
37 her one time that if she didn't lay still and let me turn her I'd let her rot. I was just kidding,
38 though.
39

40 Mrs. Jay didn't have very many visitors. Blake Talbot was her guardian and came by every
41 so often to talk with her. Blake usually asked me how she and some of the other wards were
42 doing if we happened to meet. But I don't remember seeing Blake down in Mrs. Jay's wing
43 after we moved her.

1 A year before I started to work at Bestcare, I was convicted of aggravated assault. I knifed
2 my boyfriend. I told the judge it was self defense cause he was going to hit me, but they
3 didn't believe me. I got probation for it. I told Terry Hunt about it when I applied for the
4 housekeeping job. She already knew about it anyway. Everyone in Horace knows everyone
5 else's business. She said it didn't make any difference as long as my boyfriend didn't show up
6 at the nursing home.
7
8 I don't work at Bestcare anymore. I quit at the end of July Yr-3 to start my new job. Those
9 old people really get on your nerves after a while.
10
11

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DEPOSITION OF CHUCKIE HARRISON

This is the deposition of Chuckie Harrison taken for the purposes of trial. Present are Plaintiff's and Defense's counsel and Mr. Harrison. By previous agreement, one attorney is representing both defendants. No special stipulations have been made concerning the preservation of objections.

1 **The deponent being first duly sworn Plaintiff's attorney began as follows:**

2
3 Q: Mr. Harrison, would you please state your name.

4
5 A: My name is Chuckie K. Harrison.

6
7 Q: Is Chuckie your given name or is it a nickname?

8
9 A: Nope. That's my full name. Chuckie.

10
11 Q: And what is your current address?

12
13 A: I live right here in Bestcare. This is my room.

14
15 Q: How long have you lived here?

16
17 A: About seven years now.

18
19 Q: How old are you Mr. Harrison?

20
21 A: I'm 84.

22
23 Q: Do you know Ms. Winnifred Jay?

24
25 A: I used to. She don't live here any more though.

26
27 Q: How did you know her?

28
29 A: Well she lived here too, for about a year. We were good friends.

30
31 Q: Where was her room in relation to your room?

32
33 A: She lived across the hall and two rooms down. I used to walk down and talk to her all
34 the time. She never came up here cause she couldn't walk though.

35
36 Q: Thank you.

37
38 A: Had something wrong with her legs.

39
40 Q: How often would you talk with her?

41
42 A: I just said she couldn't walk. Had something wrong with her legs.

1 Q: I'm sorry, I said, How often would you talk with her?
2
3 A: Oh, two, three, four times a day. There isn't much to do around here except talk. I
4 would talk with her a lot. She was real smart ya know. She used to be a nurse. We
5 had a lot of fun talking.
6
7 Q: I would like to talk with you about what happened on June 24, of Yr-3. Can you tell
8 me what happened on that day?
9
10 A: Well, you're here to talk about her getting burned. I can talk about that. I couldn't say
11 that was the exact date though. Didn't write down the date. But they only burned her
12 once.
13
14 Q: Do you remember approximately when the accident took place?
15
16 A: Yea, it was the summer of Yr-3, in June, but I couldn't say the exact day.
17
18 Q: Where were you when the accident took place?
19
20 A: Right here in my room. Heard the whole thing.
21
22 Q: You didn't see what happened at all?
23
24 A: Nope, but I heard it all.
25
26 Q: Who did you hear?
27
28 A: I heard Winnie and that Jackie woman.
29
30 Q: Would you recognize Winnifred Jay's voice.
31
32 A: Oh yea. We talked a lot. She had a nice voice.
33
34 Q: You also say you heard Jackie's voice. Jackie who?
35
36 A: O'Malley. Yup. That was her last name. Jackie O'Malley.
37
38 Q: Had you talked with Ms. O'Malley before?
39
40 A: I talked with her too. She wasn't as nice as Winnie, but like I said, there ain't much to
41 do but talk around here. I would talk with everyone. And they would talk with me.
42 They didn't talk to Winnie much. They seemed to stay away from her cause she was a
43 nurse.

1 Q: Why do you say they would stay away because she was a nurse?
2
3 A: Well, Winnie would tell what they should be a doing. And they didn't like that none.
4 so-they just kinda shied away from her room.
5
6 Q: Can we go back? You said you talked with Jackie O'Malley. Would you recognize
7 Ms. O'Malley's voice?
8
9 A: Plain as day.
10
11 Q: So what did you hear that day?
12
13 A: You mean the day they burned Winnie?
14
15 Q: Yes.
16
17 A: Well, I heard Winnie. She was yelling at Jackie.
18
19 Q: Excuse me, how do you know it was Jackie O'Malley? Did you go down and see?
20
21 A: No. But it was Jackie as yelled back. So I figured it was Jackie that Winnie was
22 yelling at.
23
24 Q: Well, what did you hear Ms. Jay say?
25
26 A: She was yelling, not saying. She was yelling. "Don't burn me, don't burn me." She
27 yelled that two or three times.
28
29 Q: Are you sure that was Ms. Jay's voice.
30
31 A: Of course I'm sure.
32
33 Q: What did you hear next?
34
35 A: Well then I heard Jackie yell "Keep Still", and then Winnie started yelling real loud.
36 And it got crazy.
37
38 Q: You say Ms. Jay started yelling real loud. Did you hear what she was yelling?
39
40 A: Yea, she was yelling "Ya burned me, Ya burned me".
41
42 Q: What happened then?
43

1 A: Well, I started down there but Jackie come flying out of the room. Almost knocked
2 me over. I went over to the door, but then one of the nurses told me to git back to my
3 room. So I did. Saw them haul Winnie out later. Took her in the ambulance.
4

5 Q: Thank you.
6

7 A: It was real bad. Her kin came and took her outta here after that.
8

9 Q: I have no further questions.
10

11 **Defendants' Attorney:**
12

13 Q: Mr. Harrison, you have a hearing problem, don't you?
14

15 A: Well I don't hear as good as I used to.
16

17 Q: And in fact, you sometimes miss what people say, don't you?
18

19 A: Once in a while. If they are talking low.
20

21 Q: Are you sure about what you heard on the day of Ms. Jay's accident?
22

23 A: Yea, I'm real sure. They weren't talking low like. They was yelling to beat the band.
24 Could hear that as plain as day.
25

26 Q: Mr. Harrison, do you have any complaints about Bestcare?
27

28 A: No, they treat me real good here. Most everybody will stop and talk. I like it here.
29

30 Q: No further questions.
31

32 **AND THE DEPOSITION WAS ENDED.**
33

34 ***NOTE: Mr. Harrison died of natural causes approximately three weeks after this***
35 ***deposition was taken.***
36

**IN THE SUPERIOR COURT
OF THE STATE OF CONFUSION
FOR THE COUNTY OF HORACE**

WINNIFRED JAY, by and through her
next friend, PAT PARKER,

Plaintiff,

CIVIL ACTION
#12345

vs.

TERRY HUNT, d.b.a. Bestcare Rest Home
and
BLAKE TALBOT, in his official capacity
as Public Guardian for Winnifred Jay,

Defendants.

SUMMARY OF VIDEO DEPOSITION OF FRANCIS JACKSON, M.D.

Date of Deposition: Approximately 3 years after June Y.-3

Length of Deposition: Approximately 15 minutes

1 My name is Francis Jackson and I have been a family physician in Horace City for 15 years.
2 I received my degree in family practice from Duke University and spent a 3 year residency at
3 St. Joseph's Hospital in Horace City.
4

5 I have been Winnifred Jay's family physician for 10 years. During that time I have treated her
6 for hypertension, diabetes, insulin control, and minor illnesses such as colds. She went to
7 Bestcare Nursing Home due to a tumor that made her paraplegic.
8

9 Prior to her admission to Bestcare, Ms. Jay was able to care for her needs. Her diabetes could
10 be adversely affected if she went off her diet, but generally she was in good health for her
11 age. I saw her about once every 6 weeks prior to her admission to Bestcare. During these
12 visits I had an opportunity to observe her emotional state. She was alert and coherent. She
13 could be argumentative and would complain if she disagreed with me.
14

15 Shortly after Mrs. Jay was admitted to Bestcare, I treated her for a cold. I also made periodic
16 routine checks. I made 3 or 4 visits to Bestcare to see her in the time between her admission
17 and June Y.-3. I saw a change in her emotional state. She was more depressed and agitated.
18 This was different than before she was admitted because at that time she was not depressed.
19

20 I was aware that Mrs. Jay was developing bedsores at Bestcare because one of the nurses
21 called me. I called in a prescription for topical treatment and instructed the nurse to have Mrs.
22 Jay turned more often. Mrs. Jay knew that as a diabetic she would need to move around as
23 such as possible to avoid bedsores. I called in the prescription because I knew the staff would
24 be familiar with the diagnosis and proper treatment for bedsores, and because I saw no reason
25 to wait until I made a personal visit.
26

27 in the case of an insulin dependent diabetic, bedsores can develop within a week or two.
28 Such diabetics are more prone to bedsores because they have a circulation problem in the -
29 extremities and bedridden diabetics have decreased circulation in the areas they lie on.
30 Bedsores on such persons would take about a month to heal. I saw the bedsores after Mrs.
31 Jay had been treated for her burns. I visited her at Bestcare. There were 2 bedsores, one on
32 the right buttock, and the other on the sacral decubitus area, which is the bony area between
33 the buttocks. Bedsores are not painful, but scarring can occur. These bedsores had been
34 developing at least 3 weeks.
35

36 I saw Mrs. Jay's burns at the end of June Y.-3. These were 1st and 2nd degree. These would
37 be painful and require 3-4 weeks of treatment. They would be treated with medicated cream
38 and wrapping to prevent infection, which is the greatest risk. The second degree burns would
39 scar, and it is possible that the 1st degree burns would also scar on Mrs. Jay due to her lack of
40 circulation.
41

42 When I saw Mrs. Jay at the end of June Y.-3, she seemed even more agitated and disoriented.
43 I'm not sure she knew who I was at first. She behaved the same way toward others. She

1 seemed to dwell more on the past and had memory problems, especially with the recent past.

2
3 No, I am not a psychologist or psychiatrist. I have received training in observing
4 psychological symptoms and have used it in my practice.

5
6 Yes, a person can get bedsores with adequate care. A person with diabetes is susceptible to
7 bedsores and if that person is refusing to turn, he or she is even more susceptible to bedsores.
8 Most people who deal with nursing homes know how to deal with bedsores because they are
9 likely to occur there.

10
11 No, I cannot say based on the medical evidence, how the burns occurred. Yes, it does happen
12 that people can get more depressed when they enter a nursing home because it is the first time
13 they are unable to care for themselves. If they are already confrontational, they can become
14 more so.

15
16 Yes, Mrs. Jay generally followed any treatment I prescribed for her prior to entering Bestcare.

17
18

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Introduction

Members of the jury, the evidence and arguments in this case have been completed and I will now instruct you as to the law.

It is your duty to follow all of the instructions that I give you on the law when deciding this case.

It is your duty to determine the facts solely from the evidence in this case. You must not allow any sympathy or prejudice for or against any party in this case to affect your decisions.

I do not mean to give you the impression by anything I have said or done during these proceedings that I have any opinion as to the facts or as to what your verdict should be.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instructions 1.02 Opening Statements and Closing Arguments

Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.03 Credibility of Witnesses

You are the sole judges of the credibility of the witnesses and of the weight to be given their testimony. You may take into account a witness' ability and opportunity to observe, the witness' manner and appearance while testifying, any interest, bias or prejudice of the witness, and the reasonableness of the witness' testimony considered in the light of all the evidence.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.04 Negligence of Adult - Definition

When I use the word “negligent,” I mean that a person has failed to do something which a reasonably careful person would do, under the circumstances of this case, or that a person has done something which a reasonably careful person would not do, under the circumstances which you find existed in this case. It is for you to decide what a reasonably careful person would do or would not do under such circumstances.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.05 Ordinary Care - Adult - Definition

When I use the words “ordinary care,” I mean the care a reasonably careful person would use under the circumstances which you find existed in this case. The law does not say what a reasonably careful person would do or would not do under such circumstances. That is for you to decide.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.06 Claim against Hunt

The law of this State provides that a nursing home such as Bestcare has the duty of providing reasonable or ordinary care to its residents.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.07 Claim against Talbot

The law of this State provides that a Public Guardian has the duty to ensure that his or her wards receive reasonable medical care. Reasonable medical care is the level of care that an ordinary or reasonable person, under the same circumstances, would receive.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.08 Duty to Use Ordinary Care - Adult - Plaintiff

It was the duty of the plaintiff, in connection with this occurrence, to use ordinary care for her own safety.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.09 Definition of Proximate Cause

When I use the words “proximate cause” I mean first, that there must have been a connection between the conduct of Terry Hunt and Blake Talbot, which plaintiff claims was negligent, and the injury complained of by the plaintiff, and second, that the occurrence which is claimed to have produced that injury was a natural and probable result of such conduct.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.10 More than one Proximate Cause

There may be more than one proximate cause. A cause may be proximate although it and another cause act at the same time or in combination to produce the injuries.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.11 Causation by Multiple Defendants

You may decide that the conduct of neither, one or both of the defendants was a proximate cause. If you decide that one of the defendants was negligent and that such negligence was a proximate cause of the plaintiff's injuries, it is not a defense that the conduct of the other defendant also may have been a cause of the plaintiff's injuries. Each defendant is entitled to separate consideration as to whether (his/or/her) conduct was a proximate cause of the occurrence.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.12 Burden of Proof - Definition

When I say that a party has the burden of proof on any issue, or use the expression “if you find” or “if you decide”, I mean that you must be persuaded from a consideration of all the evidence in the case, that the issue which a party has the burden of proving is more probably true than not true.

Any finding of fact you make must be based on probabilities, not possibilities. It may not be based on speculation or sympathy.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.13 Corporate Party

Defendant Hunt in this case does business as Bestcare Rest Home. Terry Hunt is entitled to the same fair treatment as any other individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.14 Burden of Proof in Negligence Cases on the Issues and Legal Effect Thereof

The plaintiff has the burden of proof on each of the following propositions:

- a. that the plaintiff was injured,
- b. that one or both of the defendants were negligent in one or more of the ways claimed by the plaintiff,
- c. that the negligence of one or both of the defendants was a proximate cause of the injuries to the plaintiff.

Your verdict will be for the plaintiff if she was injured and one or both of the defendants was or were negligent, and such negligence was a proximate cause of her injuries.

Your verdict will be for a defendant, if plaintiff was not injured or that defendant was not negligent or, if negligent, such negligence was not a proximate cause of the plaintiff's injuries.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.15 Comparative Negligence -Definition

The defendants have the burden of proof on their claim that the plaintiff was negligent in one or more of the ways claimed by the defendants, and that such negligence was a proximate contributing cause of the injuries to the plaintiff.

If you find that the plaintiff was negligent and that her negligence was a proximate cause of her injuries, this does not bar a recovery by the plaintiff against a defendant. However, the total amount of damages to which the plaintiff would otherwise be entitled shall be reduced by the percentage that plaintiff's negligence contributed as a proximate cause of her injury.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.16 Damages

You are not to discuss damages unless you have first determined that the plaintiff has suffered injuries that were proximately caused by a defendant's negligent conduct. If you find this to be the case, there are two types of damages which should be considered - compensatory or actual - and exemplary.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.17 Compensatory or Actual Damages

If you find in favor of the plaintiff on her claim of negligence, then you shall assess as the plaintiff's damages an amount which will justify and fairly compensate her for the harm and detriment proximately caused to her by each of the defendant's actions.

In assessing plaintiff's damages, you may consider the following:

- a. physical pain and suffering,
- b. mental anguish,
- c. fright and shock,
- d. out of pocket expenses,
- e. the reasonable expenses of necessary medical treatment and services. The parties have agreed on the amount of these expenses that were incurred by plaintiff.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.18 Exemplary Damages

You may award exemplary damages against a defendant if you find that the defendant acted maliciously toward the plaintiff or with reckless disregard of the plaintiff's rights, and if you find that the plaintiff suffered humiliation, outrage or indignity, as a result of the defendant's malicious or reckless conduct.

_____ Accepted _____ Rejected

PROPOSED JURY INSTRUCTIONS

JAY V. HUNT and TALBOT

Instruction 1.19 Instructions for Deliberations

Now it is time for you to deliberate on a verdict. When you go to the jury room, you should first elect a foreperson. It is the responsibility of the foreperson to ensure that deliberations progress in an orderly manner. The foreperson should also make sure that the verdict forms are filled out completely and consistently with your decisions. Your verdict need not be unanimous. You may give your verdict when _____ of you are in agreement. While you deliberate you may request any of the exhibits that were admitted into evidence, but you will not be given a written copy of these instructions.

_____ Accepted _____ Rejected

**IN THE SUPERIOR COURT
OF THE STATE OF CONFUSION
FOR THE COUNTY OF HORACE**

STATE OF CONFUSION,

Plaintiff,

Criminal Action YR-6-1543

Vs

JACKIE O'MALLEY,

Defendant.

JUDGMENT OF CONVICTION

IT IS HEREBY ADJUDGED AND DECREED, that upon verdict at trial, the Defendant, JACKIE O'MALLEY, is and is hereby found to be guilty of the crime of Aggravated Assault, a felony.

Clark Durant

Dated: March 23, YR-5

Judge

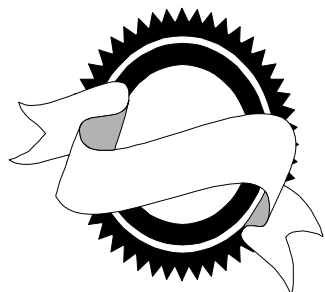
Certification

This is to certify that I am the Chief Judge of the Superior Court of the State of Confusion, County of Horace, and that the above Judgment of Conviction is a true and accurate copy of the Judgment on file with this Court.

Dated: August 1, YR-1

Alan Houseman

Chief Judge



**HORACE COUNTY
DEPARTMENT OF PUBLIC HEALTH
LICENSING DIVISION**

*** * CITATION FOR VIOLATION * ***

TO: BESTCARE NURSING HOME
c/o TERRY HUNT
406 Adams Avenue
Horace City, Confusion

PLEASE BE ADVISED that pursuant to the licensing powers of this department under Public Act 328 of 1975 the undersigned Public Health Inspector conducted the annual licensing inspection for the above facility on June 2, 19 Yr-3 . You have been found to be in violation of the following sections of the state Public Health Code:

Rule 721.1120 Kitchen Refuse

"All kitchen refuse shall be stored in a covered container."

Rule 721.111 Food Preparation

"All persons preparing food on site shall have their hair tied back or confined in a hat or hairnet."

You are ordered to take steps to correct these violations within 30 days. A reinspection will be conducted after that time. Inquiries should be directed to the undersigned.

Heloise Johnson
Inspector.
(805) 972-9254

June 2

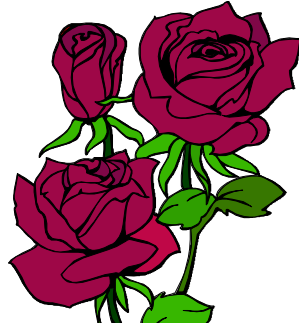
Dear Blake,

They fed me that awful stew
last night and left my light
on. I can't get that jackie
person to listen to me. She won't
change my pillows and makes me
put my own medicine on. Please
come see me.

Mrs. Winnieford Fay

COUNTY OF HORACE

DEPARTMENT OF SOCIAL SERVICES
21 MAIN STREET
HORACE CITY, CONFUSION



TO: Personnel Department

FROM: Executive Director's Office

DATE: May 20, 1984

RE: Description of Public Guardian Position

At your request I am setting forth the duties of the Public Guardian for Horace County. Please retain this information for purposes of evaluations and job posting if the position becomes vacant.

DUTIES

1. Collect and disburse funds for the ward's consistent with their outstanding debts and needs.
2. Arrange and pay for housing, clothing, and medical care as needed by the ward.
3. Apply for or maintain the ward's eligibility for private or public assistance.
4. Maintain an accurate accounting of all funds received or disbursed on behalf of a ward.
5. Report on the ward as may be required by the Horace County Probate Court.
6. Meet with the primary providers of care to the ward to assess and adjust the ward's needs, if necessary.
7. Meet personally with the ward to reassess the ward's needs and care.
8. Coordinate with other social services' divisions and agencies to provide appropriate care and services to the ward.

**HORACE CITY FAMILY MEDICAL CENTER
HISTORY AND PHYSICAL EXAM**

PATIENT: Winnifred Jay

CHIEF COMPLAINT: "Burns on my right shoulder and arm."

**DATE AND TIME OF
ADMITTANCE:** June 24, YR-3, 4:30 p.m.

**HISTORY OF PRESENT
ILLNESS:**

The patient is a 74 year old female with a history of insulin dependent diabetes mellitus, hypertension, and paraplegia who was admitted to the Emergency Room with burns on her upper chest and right arm. The patient states that a nurse or attendant "threw" hot tea on her which landed on her right arm and chest and burned her.

PAST MEDICAL HISTORY:

1. Insulin dependent Diabetes Mellitus for past 11 years controlled with insulin.
2. Paraplegia for the past year after removal of a paraspinous tumor.
3. Hypothyroidism diagnosed in the remote past.
4. Tonsillectomy when young.
5. 2 pregnancies. No living children.
6. Removal of paravertebral mass.
7. Left ring finger pin insertion for unknown reason.
8. Hypertension for the past 8 years.

MEDICATIONS

- Novolin insulin 70/30, 35 units SQ every morning
- Lasix 40 mg p.o. daily
- Catapres 0.2 mg p.o. three times daily
- Procardia 10 mg p.o. four times daily
- Nitrodur 10 cm squared patch daily
- Armour thyroid 3 gms p.o. daily
- Lioresal 10 mg four times daily for muscle spasms
- Anaprox 275 mg p.o. four times daily

ALLERGIES

Questionable allergy to penicillin

SOCIAL HISTORY:

The patient lived in Kansas until the age of 30 and then moved to Horace where she has lived ever since. She is widowed. Two children died in childhood. She is

bedridden and lives in an extended care nursing facility.

HABITS:

She denies the use of tobacco, alcohol, drugs, or marijuana.

FAMILY HISTORY:

Her mother and father died when she was very young. Diabetes Mellitus is present on her father's side of the family. No history of stroke.

PHYSICAL EXAM

VITAL SIGNS:

Temperature 98.1, Pulse 100, Respirations 14, Blood Pressure 160/90

GENERAL:

The patient is a moderately obese white female who appears her stated age of 74. She appears alert, oriented, and is garrulous when questioned. She is unpleasant and very uncooperative.

SKIN:

Left Lower extremity shin ulcer that is well-healed, 3 x 1.5 cm, encrusted.

Right buttock and sacral decubitus ulcers, 1 x 2 cm and 3 x 3 cm respectively, with erythema, central necrosis and a small amount of overlying puss yellow exudate.

First and second degree burns are evident over a body area of about 10% of the body surface, along the anterior (flexor) areas of the right upper and lower extremity, the right shoulder, and the upper portion of the right side of the chest, extending down to the nipple line of the right breast in one area. The large majority of the burn is first degree. Second degree burn is noted over the area of the right shoulder, about 2% of body surface area.

Pulses are good in the distal extremities, upper and lower, no evidence of constricting circumferential burns of the right arm.

HEENT:

NC/AT, PERRLA/EOMI, hazy lenses bilaterally, cornea lustulous, sclerae non-icteric. Fundoscopic exam normal. Throat and pharynx clear without lesions.

NECK: No JVD or lymphadenopathy. Trachea midline, thyroid without nodules.

LUNGS: Normal, symmetrical A-P diameter and expansion. Lungs clear.

HEART: RRR S1, S2 normal. No evidence of S3, S4, or murmur. PMI at 5th ICS at MCL.

PULSES: Carotid, brachial, radial 2+. Femoral, Dorsalis pedis, posterior tibial 1+.

ABDOMEN: Obese with surgical scars. Bowel sounds normoactive. No organomegaly, masses, or tenderness.

EXTREMITIES: Significant calf muscle wasting, normal proximal musculature. Unable to move either lower extremities.

GENITALIA: Normal. Cervix parous. Uterus small, firm. Adnexae without masses.

RECTAL: No pain, hemorrhoids, masses, or tenderness. Stool is guaiac negative.

NEUROLOGIC: Cranial Nerves II-XII intact. Sensation intact throughout. Motor function for distal lower extremities 1/5, for proximal lower extremities 3/5.

MENTAL STATUS EXAM:A & O x 3, normal long and short term memory to cursory exam.

IMPRESSION:

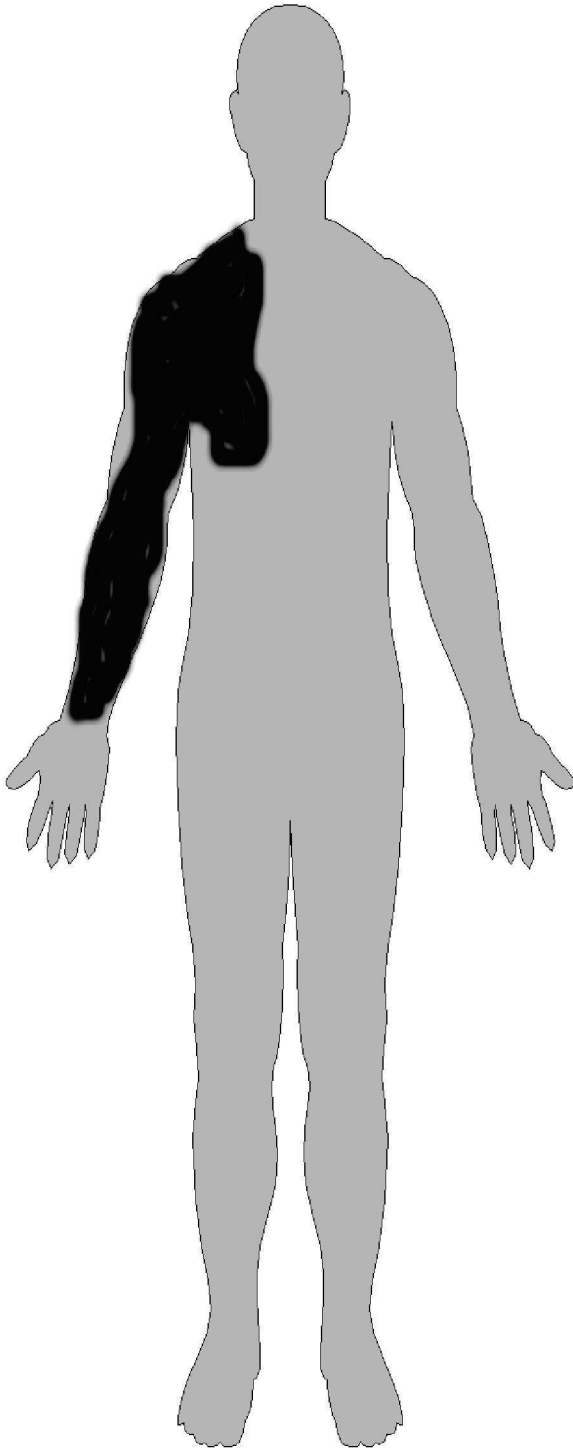
- 1) First and second degree burns - 10% body surface area.
- 2) IDDM in fair control.
- 3) Paraplegia
- 4) Hypothyroidism
- 5) Hypertension
- 6) Rule out Urinary Tract Infection

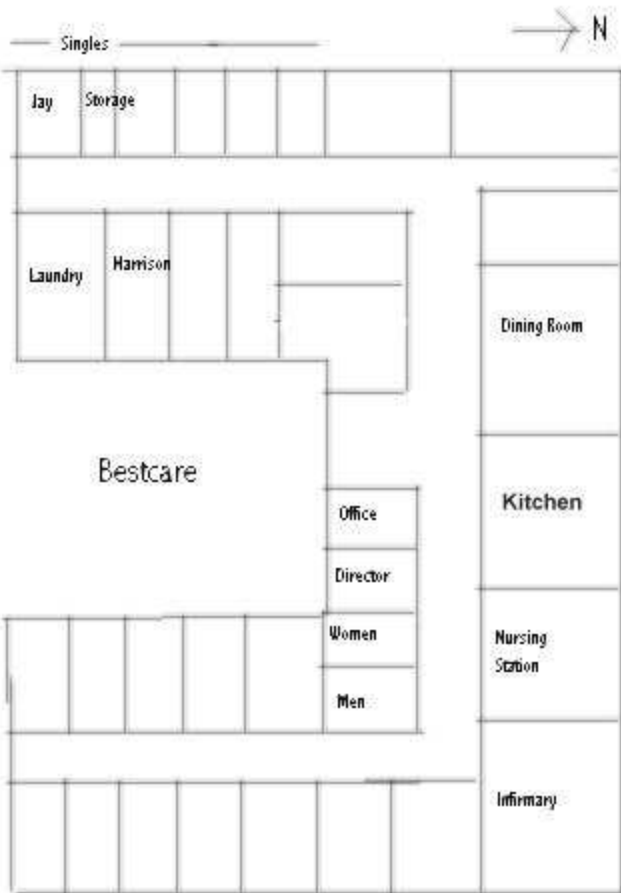
PLAN: Burn wound care, hydrotherapy, debridment if necessary. Refer to family physician, Francis Jackson, M.D. Medical management of multiple medical problems.

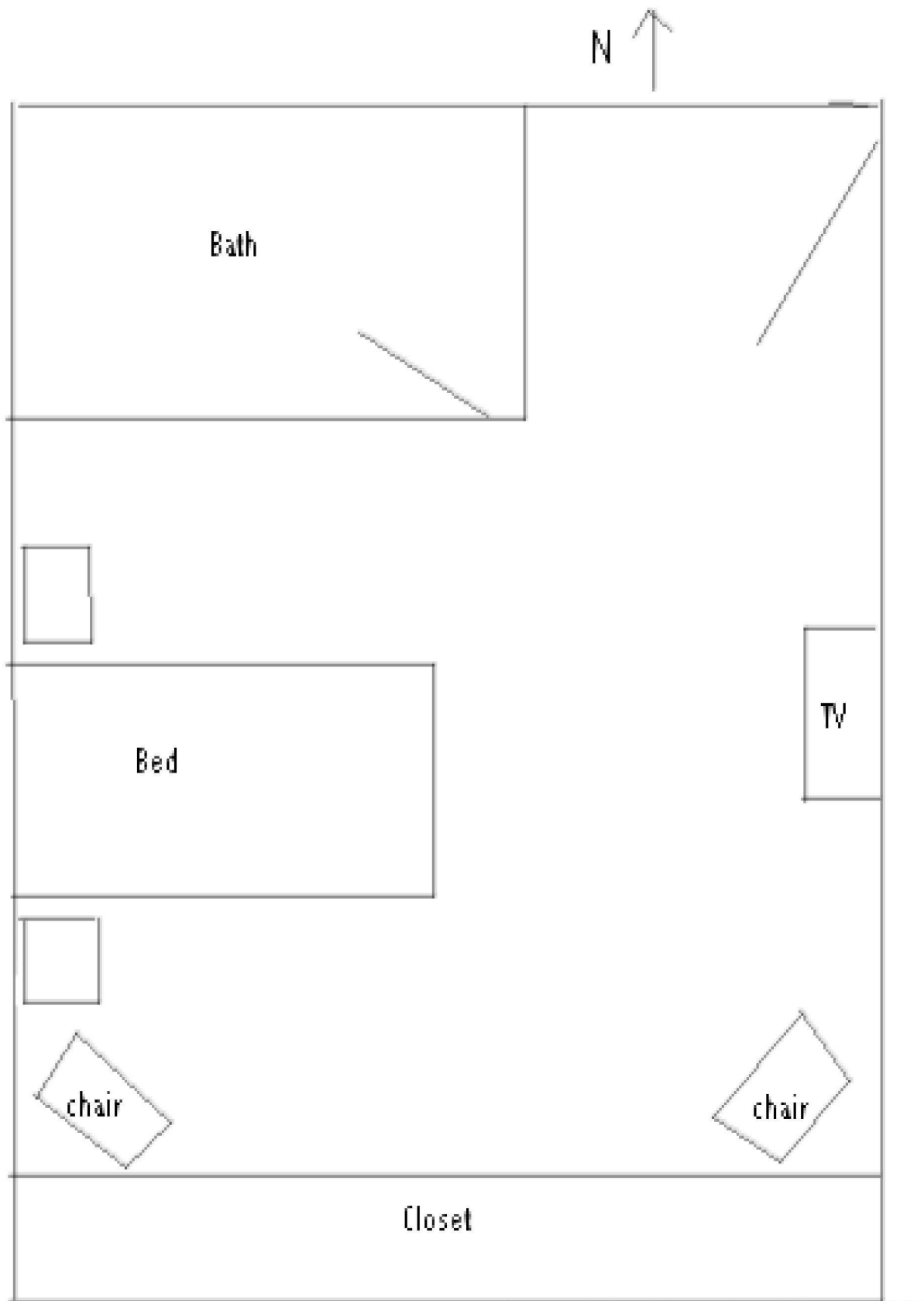
PHYSICIAN ON DUTY:

B.J.
Sydney,
M.D.

Burns observed--Winnifred Jay







WINNIFRED JAY'S ROOM



Undermine

