

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

In the Matter of:

Southern Monterey County  
Memorial Hospital, Inc. d/b/a  
George L. Mee Memorial  
Hospital,

Case No. 32-RC-090886

Employer,

and

National Union of Healthcare  
Workers,

Petitioner.

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Place: Salinas, California

Dates: January 3, 2013

Pages: 1 through 234

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OFFICIAL REPORTERS

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

In the Matter of:

SOUTHERN MONTEREY COUNTY  
MEMORIAL HOSPITAL, INC. D/B/A  
GEORGE L. MEE MEMORIAL  
HOSPITAL,

Employer,

and

NATIONAL UNION OF HEALTHCARE  
WORKERS,

Petitioner.

Case No. 32-RC-090886

The above-entitled matter came on for hearing, pursuant to notice, before **CATHERINE L. VENTOLA**, Hearing Officer, at the National Labor Relations Board, Region 32, 342 Pajaro Street, Conference Room, Salinas, California 93901, on **Thursday, January 3, 2013, at 10:18 a.m.**

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Fax. 213-624-1376

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Gabriela Montoya	9	33	37	
Laurie Burden	41			
Barbara Marquez Pacheco	50	66	70	
Miguel Villarreal	73	93		
Emy Sanchez	104	123		
Henrietta Perez	135	154		
Janeel Welburn	195	205		
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**E X H I B I T S**

<b><u>EXHIBIT</u></b>	<b><u>IDENTIFIED</u></b>	<b><u>IN EVIDENCE</u></b>
<b>Board:</b>		
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1 questioning.

2           It appears from the Regional Director's order dated  
3 December 4th, 2012, that this hearing is to be held for the  
4 purposes of taking evidence concerning the supervisory status  
5 of Henrietta Perez. In due course, the hearing officer will  
6 prepare and file with the board a report and recommendation in  
7 this proceeding and will cause a copy thereof to be served on  
8 each of the parties. The procedure to be followed from that  
9 point forward is set forth in Section 102.69, Rules and  
10 Regulation.

11           Will counsel and other representatives for the parties  
12 please state their appearances for the record?

13           For the Employer?

14           MR. GOLDSTEIN: Michael Goldstein, Musick, Peeler &  
15 Garrett for the Employer.

16           HEARING OFFICER VENTOLA: And can you just identify your  
17 party representative?

18           MR. GOLDSTEIN: This is Karen Wong.

19           HEARING OFFICER VENTOLA: And for Petitioner?

20           MS. MALKANI: Latika Malkani, Seigel, LeWitter & Malkani  
21 for Petitioner, National Union of Healthcare Workers, and with  
22 me is Fred Seavey from NUHW.

23           HEARING OFFICER VENTOLA: Please be aware that supervisory  
24 status involves a statutory exclusion. The party seeking to  
25 exclude employees on these grounds bears the burden of proof.

1 You must present specific, detailed evidence in support of your  
2 position. General conclusory statements by witnesses will not  
3 be sufficient.

4 And would you please briefly, I'm going to ask the parties  
5 to identify the issues and your position on that, on the issue,  
6 on for the record?

7 MS. MALKANI: The Union's position is that the Union  
8 challenged the ballot of Henrietta Perez. One of the -- that  
9 challenge was based in part that Henrietta Perez is a statutory  
10 supervisor and engages in job duties that are not accordingly  
11 those of an employee in the bargaining unit, and that's what  
12 we're here to present evidence on.

13 HEARING OFFICER VENTOLA: And will the Employer state its  
14 position for the record?

15 MR. GOLDSTEIN: The Employer's position is that Henrietta  
16 Perez is not a supervisor. She doesn't have any of the indicia  
17 under Section 211 of the Act, and she is a bargaining unit  
18 member and her ballot should be counted.

19 HEARING OFFICER VENTOLA: All right. I've grant a request  
20 to sequester witnesses. And this means that all persons who  
21 are going to testify in this proceeding with specific  
22 exceptions may only be present in the hearing room when they  
23 are giving testimony. Each party may select one person to  
24 remain in the room and assist it with the preparation and  
25 presentation of its case. They may remain in the hearing room

1 even if they are going to testify or have testified. The order  
2 also means that from this point on until the hearing is finally  
3 closed, no witness may discuss with other potential witnesses  
4 either the testimony that they have given or that they intend  
5 to give. The best way to avoid problems is simply not to  
6 discuss the case with any other potential witnesses until after  
7 the hearing is completed.

8 Under the Rule as applied by the Board with one exception,  
9 counsel for a party may not in any manner, including by showing  
10 of transcripts of testimony, inform a witness about the content  
11 of the testimony given by a proceeding witness without express  
12 permission of the Hearing Officer. However, counsel for a  
13 party may inform counsel's own witness of the content of  
14 testimony and may show a witness transcript of testimony given  
15 by a witness for the opposing side in order to prepare for  
16 rebuttal of such testimony.

17 I expect counsel to police the sequestration order and to  
18 bring any violation of it to my attention immediately. Also it  
19 is the obligation of counsel to inform potential witnesses of  
20 their obligations under the order. It is also recommended that  
21 as witnesses leave the witness stand upon completion of their  
22 testimony, they be reminded that they are not to discuss their  
23 testimony with any other witness until the hearing is  
24 completed.

25 And Petitioner, you can call your first witness.

1 MS. MALKANI: Okay. We would call Gabriela Montoya.

2 HEARING OFFICER VENTOLA: Okay.

3 MS. MALKANI: And I will go retrieve her.

4 (Off the record at 10:24 a.m.)

5 HEARING OFFICER VENTOLA: Good morning. I'll be swearing  
6 you in.

7

8 Whereupon,

9

**GABRIELA MONTOYA**

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

12 HEARING OFFICER VENTOLA: Thank you.

13 Will you please spell your name for the court reporter?

14 THE WITNESS: Gabriela, G-A-B-R-I-L-A (sic). Montoya --

15 HEARING OFFICER VENTOLA: Your --

16 THE WITNESS: -- M-O-N-T-O-Y-A.

17 HEARING OFFICER VENTOLA: And you can take a few minutes  
18 to get situated.

19 THE WITNESS: So I want to say something. My English is  
20 my second language. I have a problems with English. If you  
21 speak slow or you speak slow for me, I appreciate it.

22 HEARING OFFICER VENTOLA: No problem. Thank you.

23 MS. MALKANI: Okay.

24

**DIRECT EXAMINATION**

25 Q BY MS. MALKANI: Ms. Montoya, good morning.

- 1 A Good morning.
- 2 Q Where are you employed?
- 3 A Mee Memorial Hospital in King City.
- 4 Q Okay. How long have you been working at Mee Memorial?
- 5 A Four years.
- 6 Q How many years?
- 7 A Four years.
- 8 Q Four?
- 9 A I'm going to be five in April.
- 10 Q What is your job classification?
- 11 A CNA.
- 12 Q And what does that stand for? Do you know? Is it
- 13 Certified Nurse Assistant?
- 14 A Certified Nurse Assistant.
- 15 Q Okay. And you've been a CNA for the full time you've been
- 16 working at Mee?
- 17 A All during CNA, all through sometimes activities, and RNA,
- 18 Respiration Nurse Assistant.
- 19 Q Okay. And right now, you're a CNA. Correct?
- 20 A Yes.
- 21 Q Okay. Where in the hospital have you worked? What units?
- 22 A Swings, SNF, OB, Med-Surg.
- 23 Q Okay. And what is -- is SNF Skilled Nursing Facility?
- 24 A Yes.
- 25 Q Okay. And what does Med-Surg stand for? Do you know?

1 A Rehabilitation -- well, they come from ICU and for a  
2 period of time they stay in Med-Surg. If they get worse they  
3 go to -- for recuperation, they go to Swing, or otherwise they  
4 go home.

5 Q Okay. Do you know Henrietta Perez?

6 A Yes, I know her.

7 Q Okay. How do you know her?

8 A She is the Activities Director.

9 Q Okay. How have you -- do you know her through working at  
10 Mee Memorial?

11 A Yes.

12 Q Okay. And how have you come to know her through your work  
13 at Mee Memorial?

14 MR. GOLDSTEIN: Objection, vague.

15 HEARING OFFICER VENTOLA: Do you understand the question?

16 THE WITNESS: No. Could you repeat --

17 MS. MALKANI: Okay.

18 THE WITNESS: -- the question, or give me some --

19 Q BY MS. MALKANI: How did you first meet Henrietta Perez at  
20 Mee Memorial?

21 A Well, when I start working I start in the afternoon, and  
22 then I moved to the morning shift. And she always do the  
23 activities and I know her through doing the activities all the  
24 time.

25 Q Okay. And you mentioned that you sometimes work in

1 Activities?

2 A Yes.

3 Q How long have you been working on Activities?

4 A Like about 20 percent or less.

5 Q About 20 percent of the time you work on Activities?

6 A Yes. And -- about the 20 percent of the month that I'm  
7 scheduled I do Activities, or less than 20 percent.

8 Q Okay. And the rest of the time you're working as --

9 A -- as a CNA.

10 Q -- a CNA?

11 A Yes.

12 Q Okay. So is it that your job position is a CNA, but  
13 sometimes you're assigned to work on Activities?

14 A Yes.

15 Q And that's about 20 percent or less of the month that  
16 you're assigned to work on Activities --

17 A Yes.

18 Q -- as a CNA.

19 A Yes.

20 Q Is that right? Okay.

21 A Yes.

22 Q And how does it come to be that you're sometimes assigned  
23 to work on Activities?

24 A Because of the schedule. They schedule us time before  
25 where we're going to be.

1 Q Okay. So the schedule comes out, sometimes you're  
2 assigned to work on Activities?

3 A Yes.

4 Q And for how many years have you been working on Activities  
5 sometimes?

6 A Three years.

7 Q Okay. And that full time has Henrietta Perez been  
8 involved with Activities?

9 A Yes.

10 Q Okay. So -- and during those three years, have you worked  
11 -- how have you worked -- have you worked with Ms. Perez on  
12 Activities?

13 A Yes. Sometimes I'm working in, well, like I told you,  
14 weekends, but I work with her in holidays and I work under her.

15 Q Okay.

16 HEARING OFFICER VENTOLA: Counsel, I'm sorry to interrupt  
17 you. Can you -- I'm not certain what Activities -- is that a  
18 particular department of the hospital? Can you --

19 MS. MALKANI: -- lay some --

20 HEARING OFFICER VENTOLA: -- lay some foundation for the  
21 term Activities as --

22 MS. MALKANI: -- sure.

23 HEARING OFFICER VENTOLA: -- it's being used by the  
24 witness?

25 MS. MALKANI: Sure.

1 Q BY MS. MALKANI: Can you explain to us, Ms. Montoya, is  
2 there an Activities Program at the hospital?

3 A Yes.

4 Q Okay. Can you explain to us what you know about that  
5 program?

6 A Well, they do different kind of activities every single  
7 day, twice a day. And I don't know if that okay.

8 Q Can you explain some of the types of activities that are  
9 done at the hospital --

10 A Okay.

11 Q -- under the Activities Program?

12 A In the morning -- in the morning, they do like a game, or  
13 some kind of cooking. In the afternoon, it's a movie or Bingo  
14 or -- yeah, something like that.

15 Q And who are these programs for? Whose the Bingo for?

16 A For the patients.

17 Q Okay.

18 A For the patients.

19 Q Okay. And are they targeting patients in any certain  
20 Units?

21 A Yes, in the dining room, it's always in the dining room.

22 Q It's held in the dining room usually --

23 A It's held in the dining room.

24 Q -- the activities?

25 A Uh-huh.

1 Q Which patients from what Units attend the activities? Is  
2 it patients from the Skilled Nursing Facility or the Swing or  
3 which areas?

4 A For both.

5 Q Okay. And do you know if -- what is Henrietta Perez --  
6 what's -- from your experience working with Henrietta Perez,  
7 what is her relation to the Activities Program?

8 A From my experience --

9 MR. GOLDSTEIN: Objection, foundation.

10 HEARING OFFICER VENTOLA: I'm going to overrule that  
11 objection. I think the witness has established that she's  
12 worked with Ms. Perez in the Activities Program.

13 Q BY MS. MALKANI: You can answer.

14 A Okay. Could --

15 Q Do you want me to ask the question again?

16 A Yes, please.

17 Q Sure. For -- what is -- from your experience working with  
18 Ms. Perez, what is your understanding of what she does with  
19 regard to the Activities Program?

20 A Okay. She does the calendar for every single day the  
21 activities that we're going to do. She directs us as a CNAs  
22 where is the patients going to be, and what time, and what's  
23 going to be the activities that day, or I don't know if I  
24 answer right or --

25 Q Who -- what do you mean by she -- so, let's talk about the

1 calendar first. Can you explain the activities calendar?

2 A Okay. She --

3 Q What is that?

4 A -- does a calendar for the whole month and she explains in  
5 that calendar what time going to be the activities and what's  
6 the activity going to be that day. So every day is a  
7 different, and she's the one who develops that calendar.

8 Q Okay. And how do you know that? Have you seen her do it?

9 A I saw her doing it, and I saw her writing in the bigger  
10 calendar.

11 Q Okay. So you've seen Ms. Perez write that calendar?

12 A Yes, I seen.

13 Q Okay. And what -- the types of activities that go on the  
14 calendar are the types of activities you've mentioned, the  
15 Bingo or the movie? Yes?

16 A Yes.

17 Q Okay. Are there also sometimes trips to leave the  
18 hospital?

19 A Yes.

20 Q Do you see those --

21 A They put --

22 Q -- on the calendar?

23 A Yes.

24 Q Can you give me some examples?

25 A They go to the Monterey Aquarium, or the Northridge Mall

1 here in Salinas, or to the Fair in King City.

2 Q Okay.

3 A Yeah.

4 Q And you said that Ms. Perez directs us as CNAs where  
5 patients are going to be.

6 A Yes.

7 Q In what ways does Ms. Perez direct CNAs to do activities?

8 A Okay. She explain or sometimes she don't explain that.  
9 She says, okay, these patients, I put this table here and I  
10 want those patients to sit in this specific table every single  
11 day. Or I don't want those patients in this place because of  
12 something, or I need the patients here at the certain time and  
13 I need them out of this place at a certain time. So that's  
14 what she does with us.

15 Q Okay. Now, as a CNA, does Ms. Perez give you these  
16 directions herself? Does she speak to you herself?

17 A If I come by myself with one patient, she tells me, okay,  
18 I don't want that patient here, I want the patient here.

19 Q Okay. And by here, you mean she tells you where to seat  
20 the patient?

21 A Yes.

22 Q Okay. Do you have any -- from your experience working in  
23 Activities, do you know who determines what activities can be  
24 done at the hospital?

25 A I --

1 MR. GOLDSTEIN: Objection, foundation.

2 HEARING OFFICER VENTOLA: You can ask her some questions  
3 as to --

4 MS. MALKANI: Yeah.

5 HEARING OFFICER VENTOLA: -- her knowledge of that.

6 Q BY MS. MALKANI: From working on Activities, have you come  
7 to any -- have you learned who determines what activities can  
8 be done at the hospital?

9 A Yes.

10 MR. GOLDSTEIN: Objection --

11 THE WITNESS: Henrietta Perez.

12 MR. GOLDSTEIN: -- lack of foundation. It was the same  
13 question.

14 MS. MALKANI: Well, I'm asking her about her experience,  
15 and she's going to testify about an actual conversation she  
16 had.

17 HEARING OFFICER VENTOLA: I'll allow the question.

18 MS. MALKANI: Okay.

19 Q BY MS. MALKANI: How did you come to learn who determines  
20 what activities are done at the hospital?

21 A Well, one day I was doing Activities, and a religious  
22 people come and ask me if they can come and pray for the  
23 patients, and I told them --

24 Q Hold on.

25 MS. MALKANI: Do you want her to repeat that?

1 HEARING OFFICER VENTOLA: Can we establish a foundation  
2 for when and the time and the date?

3 MS. MALKANI: Okay.

4 MR. GOLDSTEIN: Can I also assert another objection? On  
5 relevance of who comes up with what activities are done is  
6 irrelevant to the issue of whether or not Ms. Perez supervises  
7 any employees and activities. It's not --

8 MS. MALKANI: It goes --

9 MR. GOLDSTEIN: -- pertinent to the issues here.

10 HEARING OFFICER VENTOLA: Counsel, do you want to respond  
11 to that objection?

12 MS. MALKANI: Yeah. It's directly relevant in that it  
13 goes to whether or not she's exercising independent judgment or  
14 performing tasks that are of a routine or clerical nature in  
15 terms of determining the -- there's already been testimony that  
16 she's the one that writes the master calendar for Activities.

17 So in terms of who does -- who's involved in that planning  
18 and who's purse -- the other thing that's relevant is  
19 ostensible authority is relevant. If other employees regard  
20 her as a supervisor and regard her as the one in charge of the  
21 program, that is directly relevant to supervisor. And I could  
22 pull up a citation if needed on that, actually.

23 HEARING OFFICER VENTOLA: I'll allow the question. But  
24 let's lay a foundation for the dates of any conversations --

25 MS. MALKANI: Okay.

1 HEARING OFFICER VENTOLA: -- that she's going to be  
2 discussing.

3 MS. MALKANI: Okay.

4 Q BY MS. MALKANI: You were just describing a conversation  
5 or an event, a time when a religious group came to the  
6 hospital, Ms. Montoya. Do you recall that?

7 A The time?

8 Q When was that? When did the religious group come?

9 A Well, it was last year when I was doing Activities. In  
10 the afternoon, they come and they ask me if they can pray --

11 Q Okay. Hold on. Let me --

12 A Okay.

13 Q -- ask you some more questions about when it was. So it  
14 was in 2012? We're now finally --

15 A Oh, yeah.

16 Q -- 2013. Was it 2012 you think?

17 A 2000 and -- okay. We are in 2013. Last year -- no, the  
18 year before, 2011.

19 Q Okay. Do you recall when? When in 2011, if you remember.

20 A She was in vacations when I was doing Activities.

21 Q Who was on vacation?

22 A Around -- Henrietta Perez.

23 Q When this incident occurred?

24 A Yes.

25 Q Okay. So does that -- does knowing that she was on

1 vacation help you remember when it was?

2 A Probably was between July and August, between those  
3 months.

4 Q Of 2011?

5 A Of 2011.

6 Q Okay. So you described a conversation. And what time of  
7 day was it?

8 A In the afternoon.

9 Q Okay. And where --

10 A Probably around 1 and 2:00.

11 Q Okay.

12 A Probably at that time.

13 Q Okay.

14 MR. GOLDSTEIN: I'm going to object on relevance of the  
15 time period.

16 MS. MALKANI: Okay.

17 HEARING OFFICER VENTOLA: Are we getting -- I'm -- can you  
18 quickly get to the point of the conversation that she's having  
19 with this outer group?

20 MS. MALKANI: Yes.

21 HEARING OFFICER VENTOLA: Thanks.

22 MS. MALKANI: Okay.

23 HEARING OFFICER VENTOLA: Continue.

24 MS. MALKANI: Okay.

25 HEARING OFFICER VENTOLA: I'll overrule her objection and

1 allow a few more questions on this.

2 MS. MALKANI: Okay.

3 THE WITNESS: Okay. They come and --

4 Q BY MS. MALKANI: What happened when the religious group  
5 came?

6 A -- they come and ask me if they can pray to the patients,  
7 and I told them that I don't have the authority to let them to  
8 the patients. They have to ask Henrietta, but she is on  
9 vacations, and I told them to -- I told Michelle that she works  
10 sometimes with Henrietta. And she says that she going to call  
11 Henrietta in order to tell these people to come and pray --

12 Q Okay. So --

13 A -- and preach to the patients.

14 Q -- first of all, can you please tell us who Michelle is?

15 A She works with Henrietta.

16 Q Okay. Do you know her last name?

17 A Pina, but I don't know nothing else for her.

18 Q Okay. And you asked Michelle about it, and Michelle went  
19 and called -- do you know if Michelle -- what did Michelle say  
20 to you, as best as you can recall?

21 A Well, she says that she going to call Henrietta, but I'm  
22 not sure if she did or not.

23 Q Okay. Did the religious group, were they allowed to pray  
24 that day?

25 A Not that day. I saw them, like, two, two or three times

1 after that, but I didn't see them again.

2 Q Okay. And when you saw them come to the hospital and  
3 pray, was Ms. Perez on vacation still or had she returned?

4 A No, she returned.

5 Q Okay. Now, what is your -- currently, when you're  
6 assigned to -- currently what's your regular shift as a CNA?  
7 Do you have a certain shift times?

8 A 7 to 3.

9 Q Okay. And on the days that you're assigned to work on  
10 Activities, are your shift times still 7 to 3?

11 A Sometimes. But --

12 Q Okay. And -- on the days when you're assigned to work on  
13 Activities, do you know who sets your shift times?

14 A When it's a regular day, it's a schedule, 7 to 3, but in  
15 when it's a holiday, Mrs. Perez tell somebody to tell me or  
16 sometimes she tell me --

17 MR. GOLDSTEIN: Objection, triple hearsay.

18 HEARING OFFICER VENTOLA: Do you want to --

19 MS. MALKANI: She -- okay.

20 HEARING OFFICER VENTOLA: I mean, do you want to respond  
21 to the objection?

22 MS. MALKANI: I mean, it goes to weight. Hearsay goes to  
23 weight in terms of she can testify as to whether -- what --  
24 she's testifying about Ms. Perez giving her directions as to  
25 start times and end times. So it goes to whether or not she's

1 scheduling, which goes to supervisory status.

2 HEARING OFFICER VENTOLA: Okay. I'll allow the evidence  
3 and give it whatever weight it's accorded.

4 You can answer the question.

5 THE WITNESS: Well, at the beginning, when I start doing  
6 the activities, she told me that activities start at 7:30.

7 HEARING OFFICER VENTOLA: When --

8 Q BY MS. MALKANI: And who is she? Who is she? Who is  
9 talking to you?

10 A Henrietta Perez.

11 Q Okay.

12 A She tolds me that 7:30, and when it's holidays, sometimes  
13 it start at 9 or 8 or depends.

14 HEARING OFFICER VENTOLA: Can you clarify whether the  
15 witness is talking about when her schedule starts or when  
16 activities start?

17 MS. MALKANI: Okay.

18 Q BY MS. MALKANI: Are you -- with -- is Ms. Perez -- when  
19 Ms. Perez told you when Activities start, is she telling you  
20 what hours you're going to be working that day or is she  
21 telling you what hours you're working on Activities?

22 A What hours I'm going to work in Activities. Like, if I'm  
23 going to --

24 Q So -- okay. When you're assigned to work on Activities --

25 A Yes.

1 Q -- does Ms. Perez tell you what time to come to the  
2 hospital and work that day?

3 A Yes.

4 Q Okay. So when you're assigned to work on Activities, and  
5 Ms. Perez tells you Activities start at 7:30, do you come to  
6 work at 7 or do you come to work at 7:30 that day?

7 A At 7:30.

8 Q Okay. And on holidays, when Ms. Perez sometimes tells you  
9 that work starts -- that activities will start at a late -- she  
10 tell -- strike that.

11 On holidays, does Ms. Perez also sometimes tell you to  
12 come to work at a time different from 7 a.m.?

13 A Yes, she tells me.

14 Q Okay. And what time do you have to come to work -- what  
15 does she tell you to -- when does she tell you to come to work  
16 on holidays sometimes?

17 A At 9:00. She tolds me a day before when she saws who's  
18 going to be in Activities.

19 Q Okay. And when you were working on Activities, how do you  
20 know what time to take a break?

21 A Well, she tells me, we're going to take a break right now,  
22 or you go and take your break. And then I'm going -- Mrs.  
23 Perez is telling me what time I'm going to take my break.

24 Q Okay. Do you -- when you're working on Activities, do you  
25 even tell Ms. Perez what time to take a break?

1 A No.

2 Q Do you ever tell her what time she should take a break?

3 A No, never. I didn't even try, you know.

4 Q Okay. And when Ms. Perez assigns you tasks, when you're  
5 working on Activities, does she direct you on how to do your  
6 work?

7 A Yes --

8 MR. GOLDSTEIN: Objection.

9 THE WITNESS: -- she does.

10 MR. GOLDSTEIN: It assumes facts not in evidence,  
11 overbroad.

12 MS. MALKANI: She's --

13 MR. GOLDSTEIN: I don't think we've heard any testimony  
14 about her being assigned that role.

15 HEARING OFFICER VENTOLA: Can you just rephrase your  
16 question?

17 MS. MALKANI: Sure.

18 Q BY MS. MALKANI: Does Ms. Perez assign you work?

19 A Yes, she does.

20 Q Can you give us some examples of Ms. Perez assigning you  
21 work?

22 A Oh, she tells me, example, go and bring the coffee and  
23 start passing the coffee to the patients, and ask them what  
24 they want.

25 Q Okay. And can you give me some other examples of how she

1 assigns you work?

2 A Start bringing the people to the activities and I'm going  
3 to do the paperwork, so bring the people, fix them in these  
4 places, and at that time you're going to take them out, or --

5 Q Okay. Now, when you're working on Activities, do you ever  
6 tell Ms. Perez to do some of these tasks, like to distribute  
7 the coffee?

8 A No.

9 Q Why not?

10 A Because I'm working under her.

11 Q Okay. Now, when Ms. Perez assigns you takes as you've  
12 described, does she tell you how to do those tasks?

13 A The beginning she was telling me, but I learned how to do  
14 it.

15 Q Okay. So at the beginning, did she -- how did you know  
16 how to do activities?

17 A She was -- how do you say this word -- teaching me how to  
18 do it.

19 Q Okay. Have you seen Ms. Perez give assigned tasks to any  
20 co-workers?

21 A Yes, sometimes she does.

22 Q Can you give us some examples?

23 A Like if this patient is not shaved, she says, okay, who's  
24 the CNA of this patient? She -- he needs to be shaved.

25 Q Okay. Can you give any other examples of Ms. Perez

1 assigning work to co-workers?

2 A Well, like -- like I say, she all the activities, she is  
3 telling us what to do in the dining room, or she tell -- she  
4 give us a list of people that she needs in the place and --

5 Q Okay. In the activities place?

6 A In the activities.

7 Q Okay. Now, when she gives you these directions, does she  
8 give you these -- does Ms. Perez give you these directions  
9 directly or do you get these directions from someone else?

10 A No, she does directly with us.

11 Q Do you know -- have you ever seen Ms. Perez review  
12 Michelle's work?

13 A Yes.

14 MR. GOLDSTEIN: Objection, vague. Lack of foundation.

15 HEARING OFFICER VENTOLA: Will you --

16 MS. MALKANI: I can ask more specific, maybe rephrase.

17 HEARING OFFICER VENTOLA: -- will you explain to the  
18 witness what you mean by review?

19 MS. MALKANI: Sure.

20 Q BY MS. MALKANI: Have you ever seen Ms. Perez make -- has  
21 Ms. Perez ever made it -- made any comments about Michelle  
22 Pina's work?

23 A Well, it was a time, I don't remember exactly when it was.  
24 And what happened with Michelle, she get behind with the  
25 paperwork and Henrietta Perez was telling that she -- she's not

1 doing her job like she's supposed to do it, and she was helping  
2 her to be in the position to be. So she was behind and she  
3 helped Michelle to do the paper.

4 Q Okay.

5 A That she was telling that she don't understand why  
6 Michelle it was so behind in that paper if she was checking all  
7 the charts that they supposed to fill it out some papers.

8 Q So you saw Ms. Perez checking some charts. Can you  
9 explain to us what those charts are? Do you know?

10 A No.

11 Q Okay. You saw Ms. Perez checking some charts.

12 A It's the big, big chart that the doctors keep in place to  
13 see what the patient is doing and all the things that the  
14 patients. And they have to fill it out some papers inside  
15 about activities. I don't know which papers --

16 Q About the activities that the patients are engaged in?

17 A Yes.

18 Q Okay. And who fills out those charts, about the patients  
19 that act -- the activities that the patients are engaged in?

20 A Michelle and Henrietta -- and Michelle.

21 Q Okay. And was Ms. Perez checking Ms. Pina's work on those  
22 charts?

23 A Yes.

24 MR. GOLDSTEIN: Objection, lack of foundation.

25 HEARING OFFICER VENTOLA: I think we need to lay a

1 foundation --

2 MS. MALKANI: Okay.

3 HEARING OFFICER VENTOLA: -- for this testimony.

4 MS. MALKANI: Okay.

5 Q BY MS. MALKANI: Do you -- what was -- what did you see  
6 Ms. Perez doing with -- about -- with those charts?

7 A Well, Michelle have the big, old -- he has a big, old  
8 cabinet, and she keep the keys and I don't know where Michelle  
9 was. And Henrietta call Michelle to bring the keys and she  
10 open it and she start checking all the papers.

11 Q And what do you mean by checking all the papers? What was  
12 Ms. Perez doing?

13 A Keeping the -- getting all the charts, all the envelopes  
14 and check if Michelle is in current time with the patients'  
15 papers.

16 Q Okay. And was Michelle --

17 MR. GOLDSTEIN: Objection, I move to strike on lack of  
18 foundation.

19 HEARING OFFICER VENTOLA: Can -- I'm going to ask for some  
20 more questions about the date of this incident, where she was.  
21 I'm not certain what -- when this happened or --

22 MS. MALKANI: Okay. Okay.

23 Q BY MS. MALKANI: When did this happen? Was that --

24 A I don't remember exactly when it was happened.

25 Q -- was it 2012? Was it -- how -- when was it?

1 A No, it was in 2000 -- I don't remember. It happens but I  
2 don't remember exactly when it was.

3 Q Okay. Where was -- where did this occur?

4 MR. GOLDSTEIN: Objection, relevance.

5 HEARING OFFICER VENTOLA: I'm going to allow some  
6 questions for her to see if she can establish a foundation for  
7 this observation.

8 Are we talking about one incident when she's observed  
9 something?

10 Q BY MS. MALKANI: Did this happen on one occasion or more  
11 than one occasion?

12 A It was more than one occasion.

13 Q Is this --

14 A It was a full week when she was doing that. But it --

15 Q So on several times for one week she was doing what you've  
16 described --

17 A Uh-huh.

18 Q -- the review?

19 A Yes.

20 Q Okay. But you don't recall when this was?

21 A No.

22 Q Okay. Where did this occur?

23 A In Activities upstairs, stairs, Swing.

24 Q Okay. Okay.

25 MS. MALKANI: I mean, I -- in terms of timing we are going

1 to have testimony, I believe, about when Michelle was employed  
2 as an Activities Coordinator which would place it within the  
3 last couple years since in it -- so I will offer that, and that  
4 will be solicited.

5 Q BY MS. MALKANI: And was Michelle present with Ms. Perez  
6 when Ms. Perez was reviewing these charts?

7 A No, she wasn't.

8 Q Okay. So Ms. Perez was talking to you about Michelle's  
9 work?

10 A She was doing some comments and directly to me, that she  
11 was doing some comments in the dining room.

12 Q Okay. And was -- what else do you recall about what Ms.  
13 Perez was saying about the charts?

14 A That she -- that Michelle, she didn't keep the papers -- I  
15 told you my English is not -- she's not keeping track on the  
16 papers of the patients and she's behind. That's what she was  
17 telling us. And she wanted everything in -- on time.

18 Q Okay.

19 MS. MALKANI: One second.

20 (Counsel confer)

21 Q BY MS. MALKANI: Why do you -- why did you say that you  
22 work under Ms. Perez when you work on Activities?

23 A Because she's the one who tells me what to do.

24 Q Okay.

25 A Not nobody else.

1 Q Who is -- as a CNA, who is your supervisor when you're not  
2 working on Activities?

3 A Raye Ann, I don't know the last name, and Janeel Welburn.

4 Q What's Janeel's last name?

5 A Welburn.

6 Q Welburn? Okay. And when you're working on Activities, do  
7 -- does Raye Ann give you instructions?

8 A No.

9 Q What about Janeel? When you're working on Activities,  
10 does Janeel give you instructions?

11 A No.

12 Q Okay. And when you're working on Activities, is Ms. Perez  
13 the only person who tells you what to do?

14 A Yes.

15 Q Okay.

16 MS. MALKANI: No further questions.

17 HEARING OFFICER VENTOLA: Counsel?

18 **CROSS-EXAMINATION**

19 Q BY MR. GOLDSTEIN: Ms. Montoya, isn't it true that Ms.  
20 Welburn does your performance evaluations?

21 A She does the evaluations.

22 Q And has Ms. Welburn ever written you up? Have you ever  
23 been written up?

24 A No.

25 Q So Ms. Perez has never written you up?

1 A No.

2 Q So she's never counseled you if you didn't do any of the  
3 tasks that you say she assigned to you?

4 A She -- well, she don't write anything that I -- that I'm  
5 doing, but she tells me what to do.

6 Q But you never been counseled by Ms. Perez for any reason.  
7 Correct?

8 A Yes. One time when I apply for the Activities  
9 Coordinator, she was doing the interview.

10 Q But she's never counseled you?

11 A No.

12 Q And then you said the examples of giving work or she's  
13 asked -- of assigning work is that she's asked you to bring  
14 coffee to patients, start bringing people to Activities and  
15 tells you where people should be seated in Activities. Right?

16 A Yes.

17 Q And that's it? Right? That's all she tells you to do?

18 A Well, she -- she tells me what time we're going to take a  
19 break, what time we're going to take our lunch. If we have a  
20 overtime, she -- well, she don't -- she don't write the time --  
21 the paper, she don't approve the paper, but she go with me,  
22 okay, we have overtime so we're going to turn it in the paper.

23 Q But she doesn't approve your overtime?

24 A No.

25 Q That would be Janeel or Briana (sic throughout)?

1 A Yes.

2 Q And if you were to get a raise, that would be -- have to  
3 do with Janeel or Briana. Correct?

4 A Yes.

5 Q When you come in for a particular shift depends on what  
6 activities are scheduled that day. Correct?

7 A Yes.

8 Q So if there's an activity beginning later, you don't need  
9 to come in until later. Right?

10 A Yes.

11 Q And the activities are for the patients, not for the  
12 employees. Correct?

13 A For the patients. Correct.

14 (Counsel confer)

15 MR. GOLDSTEIN: Okay. I don't have any more questions.

16 HEARING OFFICER VENTOLA: Ms. Montoya, when you do the  
17 activities, is that in a certain portion of the hospital?

18 THE WITNESS: Yes.

19 HEARING OFFICER VENTOLA: What area is that?

20 THE WITNESS: Is the dining room in the second floor.

21 Before it was in the dining room in the first floor. Now they  
22 move everything upstairs, it's in the dining room.

23 HEARING OFFICER VENTOLA: Is that all in one -- is it all  
24 part of the hospital?

25 THE WITNESS: Yes.

1 HEARING OFFICER VENTOLA: Who makes your schedule did you  
2 say?

3 THE WITNESS: My schedule is Consuelo Hernandez.

4 HEARING OFFICER VENTOLA: Who is she?

5 THE WITNESS: She's the Schedule Coordinator.

6 HEARING OFFICER VENTOLA: Did you say you normally --  
7 what's your shift that you normally work?

8 THE WITNESS: 7 to 3.

9 HEARING OFFICER VENTOLA: How many days a week?

10 THE WITNESS: Is 40 hours a week. Not a specific days.

11 HEARING OFFICER VENTOLA: And so -- do you know from  
12 looking at your schedule when you're going to be in Activities?

13 THE WITNESS: Yes.

14 HEARING OFFICER VENTOLA: And how is that indicated on a  
15 schedule?

16 THE WITNESS: With ACT, Activities. So I don't have my  
17 schedule now but --

18 HEARING OFFICER VENTOLA: And do you know who writes that  
19 on there?

20 THE WITNESS: Connie, Consuelo.

21 HEARING OFFICER VENTOLA: Okay. Are there other CNAs that  
22 are regularly assigned to Activities?

23 THE WITNESS: Yes.

24 HEARING OFFICER VENTOLA: How many CNAs do you work with  
25 when you're in doing Activities normally?

1 THE WITNESS: Well, when I'm doing Activities, it's only  
2 one person on weekends. But there is more than one person on  
3 different days, and I do --

4 HEARING OFFICER VENTOLA: When you say one person, you  
5 mean one CNA?

6 THE WITNESS: One CNA in the -- uh-huh.

7 HEARING OFFICER VENTOLA: So when you normally do it,  
8 you're the only CNA doing Activities?

9 THE WITNESS: Just -- unless it's a holiday, I'm work with  
10 Henrietta Perez.

11 HEARING OFFICER VENTOLA: How many patients are normally  
12 involved in an activity when you're the only CNA?

13 THE WITNESS: In the morning, more than 20. In the  
14 afternoon, eight, ten.

15 HEARING OFFICER VENTOLA: All right.

16 Did my questions -- do you have any further questions?

17 MS. MALKANI: Just one that came up on cross.

18 **REDIRECT EXAMINATION**

19 Q BY MS. MALKANI: You mentioned that you applied for the  
20 position of Activities Coordinator?

21 A Yes.

22 Q Do you recall when that was?

23 A No.

24 Q Okay.

25 A But I --

- 1 Q And you were interviewed for that position?
- 2 A Yes.
- 3 Q Okay. And who interviewed you for that position?
- 4 MR. GOLDSTEIN: Objection, relevance.
- 5 THE WITNESS: Janeel and Henrietta Perez.
- 6 MR. GOLDSTEIN: Objection.
- 7 HEARING OFFICER VENTOLA: I'm going to --
- 8 MR. GOLDSTEIN: She doesn't know when this took place.
- 9 HEARING OFFICER VENTOLA: Can you establish a general
- 10 timeframe?
- 11 MS. MALKANI: Okay.
- 12 Q BY MS. MALKANI: Was this approximately two years ago?
- 13 A Probably, yeah.
- 14 Q And you said Janeel Welburn and Henrietta Perez both
- 15 interviewed you for the position?
- 16 A Yes.
- 17 Q Okay.
- 18 A And both of them asked me questions.
- 19 Q Okay. And this was for the position of Activities
- 20 Coordinator?
- 21 A Coordinator.
- 22 Q And during that interview, did Ms. Perez say anything to
- 23 you about if you -- who would be the boss of the Activities
- 24 Coordinator?
- 25 A No.

1 Q Okay.

2 HEARING OFFICER VENTOLA: Again, the time of this was --  
3 you said two years ago. You mean January 2011?

4 THE WITNESS: I don't remember exactly a time, but at that  
5 time, they choose Michelle, so I don't know how long Michelle  
6 is working as a coordinator.

7 MR. GOLDSTEIN: Ms. Hearing Officer, that -- I think their  
8 documentation will show that that was 2007.

9 HEARING OFFICER VENTOLA: Okay.

10 THE WITNESS: 2007? No. No, I don't think it was in  
11 2007 --

12 MS. MALKANI: I -- there's going to be --

13 THE WITNESS: -- because --

14 MR. GOLDSTEIN: Is it -- am I wrong on that?

15 MS. MALKANI: -- contrary testimony to the time period.

16 THE WITNESS: I start working in Mee Memorial Hospital in  
17 2008. It couldn't have been --

18 MR. GOLDSTEIN: I'm sorry, 2009.

19 HEARING OFFICER VENTOLA: And just for all of us, we need  
20 to make certain that only one person is speaking at a time.  
21 The court reporter -- we'll be speaking over each other, so if  
22 someone else is speaking, if we could all remember not to  
23 speak.

24 And I don't believe -- is there a question pending --

25 MS. MALKANI: No.

1 HEARING OFFICER VENTOLA: -- and counsel, do you have any  
2 further question of this witness?

3 MR. GOLDSTEIN: No. No.

4 HEARING OFFICER VENTOLA: Thank you, ma'am, for your  
5 testimony.

6 THE WITNESS: Okay. That's all?

7 HEARING OFFICER VENTOLA: Yes.

8 THE WITNESS: Thanks God. Okay. Have a good day.

9 HEARING OFFICER VENTOLA: Thank you.

10 MR. GOLDSTEIN: Can we go off the record momentarily?

11 HEARING OFFICER VENTOLA: Off the record.

12 (Off the record at 11:04 a.m.)

13 Whereupon,

14 **LAURIE BURDEN**

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

17 THE WITNESS: I do.

18 HEARING OFFICER VENTOLA: And will you state your name for  
19 the record?

20 THE WITNESS: Laurie E. Burden.

21 HEARING OFFICER VENTOLA: Will you spell your first and  
22 last name for the Court reporter?

23 THE WITNESS: L-A-U-R-I-E, last name B-U-R-D-E-N.

24 HEARING OFFICER VENTOLA: Counsel?

25 MS. MALKANI: Thank you.

1 **DIRECT EXAMINATION**

2 Q BY MS. MALKANI: Ms. Burden, where are you employed?

3 A Mee Memorial Hospital in King City, California.

4 Q And what is your job classification?

5 A I'm a Unit Clerk. Basically administrative work that I  
6 do.

7 Q Okay. And what Unit do you work in?

8 A Med-Surg.

9 Q Okay. And how long have you been employed at Mee  
10 Memorial?

11 A Six years about two months.

12 Q Okay. Have you been a Unit Clerk in the Med-Surg  
13 Department that entire time?

14 A Yes.

15 Q Okay. Do you know Henrietta Perez?

16 A Yes.

17 Q Okay. And how do you know her?

18 A I've seen her around the hospital, and also she  
19 interviewed me.

20 Q Okay. And how did she come to interview you?

21 A I heard about a job position opening for Activities  
22 Coordinator.

23 Q Okay. And when -- just so we have some background first,  
24 when was this?

25 A This was couple years back.

1 Q Okay.

2 A And I'd actually, first of all, had spoken to Connie  
3 Hernandez happened to be the Staff Coordinator. And I'd asked  
4 her, you know, hey, if you hear about any other job openings,  
5 please let me know. And she did.

6 Q Okay.

7 A She told me about that job opening.

8 Q Okay.

9 A So I applied on the intranet for that position.

10 Q Okay. And at some point after you applied, did you  
11 participate in an interview?

12 A I did.

13 Q Okay. And how did you come -- and who interviewed you?

14 A Janeel was there, and Henrietta Perez was there.

15 Q Okay. Now, who is Janeel?

16 A Janeel is the manager for Swing and SNF.

17 Q Okay. And what is SNF?

18 A SNF is a Skilled Nursing Facility.

19 Q Okay. And do you know what Henrietta Perez does at the  
20 hospital?

21 A She is the Activities Director.

22 Q Okay. And was anyone else there for the interview?

23 A Other than Janeel and Henrietta, I don't remember anybody  
24 else.

25 Q Okay. And during the interview, did Ms. Perez say

1 anything to you about why she was there?

2 A She was Activities Director.

3 Q Okay.

4 A Yes.

5 Q And first of all, how did you know that she was Activities  
6 Director?

7 A She had stated that she was Activities Director, and also  
8 her badge said she was Activities Director as well.

9 Q Okay. And this was during the interview?

10 A Yes.

11 Q Okay. So she stated that during the interview?

12 A Yes.

13 Q Was she wearing the badge during that interview as well?

14 A Yes, she was. We're all required to wear badges at work,  
15 because at any time, like, if the State comes and, you know, we  
16 have to have our badges stating who we are.

17 HEARING OFFICER VENTOLA: Okay. And at the time that you  
18 were at the interview, did you have any understanding as to  
19 what Henrietta Perez was doing with Activities -- with regard  
20 to Activities?

21 MR. GOLDSTEIN: Objection, lack of foundation.

22 MS. MALKANI: The question is does she have any  
23 understanding.

24 HEARING OFFICER VENTOLA: You can answer the question.

25 THE WITNESS: Okay. I -- she was in charge of the

1 activities --

2 Q BY MS. MALKANI: Okay. How do you know that?

3 A -- at senior -- because she was -- her title was  
4 Activities Director.

5 Q Okay.

6 A And she was in charge of making sure that the seniors had  
7 something to do. I guess it's like required by State that they  
8 have an Activities Director.

9 Q Okay. Now, during the -- during the interview, did Ms.  
10 Perez indicate what her role was in the Activities Program?

11 A She was in charge of the program.

12 Q Okay. Did she say that to you during the interview?

13 A Yes.

14 Q Okay. And --

15 A So I'd be working under her.

16 Q Okay. So as best as you can recall, during the interview,  
17 what did Ms. Perez tell you about the Activities Program?

18 A Just basically, like, they had two -- at that time they  
19 had two places, they had the downstairs, which was the Skilled  
20 Nursing Facility, and upstairs was the Skilled -- the Swing  
21 Department. So I would be her assistant upstairs and she'd be  
22 taking care of most of the people downstairs.

23 Q Okay. And did she -- during the interview, did she --  
24 were you told who would be the boss of the Activities  
25 Coordinator?

- 1 A I'd be working under her. She would be my boss.
- 2 Q Okay. Who told you that?
- 3 A Henrietta did.
- 4 Q Okay. And when did she tell you that?
- 5 A During the interview.
- 6 Q Okay. During the interview, did Ms. Perez say anything
- 7 about who would be getting the job?
- 8 A She did not, but after they were done with me, they
- 9 thanked me. And I was getting -- as I was getting up to leave
- 10 the room, I heard her say to Janeel --
- 11 Q Okay. And who is "her"?
- 12 A Henrietta Perez.
- 13 Q Okay.
- 14 A I heard her say, "Oh, by the way, I have another excellent
- 15 candidate for the position, Michelle Pina."
- 16 Q Okay. Now, they said that -- Ms. Perez made the statement
- 17 in front of you?
- 18 A Yes.
- 19 Q Okay. And how did you react to that statement?
- 20 MR. GOLDSTEIN: Objection, relevance.
- 21 HEARING OFFICER VENTOLA: How is that relevant?
- 22 MS. MALKANI: Okay. Withdrawn.
- 23 HEARING OFFICER VENTOLA: Thanks. Thank you.
- 24 Q BY MS. MALKANI: Did you say anything in response?
- 25 A No.

1 Q Okay. Were you hired for the Activities Coordinator job?

2 A No.

3 Q Okay. Do you know who was hired for the Activities  
4 Coordinator job?

5 A Michelle Pina was.

6 Q Okay. Let me finish answering --

7 A I'm sorry.

8 Q -- asking the question. How do you know that Michelle  
9 Pina was hired for the Activities Coordinator job?

10 A A couple weeks later, I saw her walking around with  
11 Henrietta Perez, pushing a cart.

12 Q Okay. Do you know where Henrietta Perez works in the  
13 hospital?

14 A I've never been to her office. That used to be  
15 downstairs. Now, she has one upstairs because they finally  
16 moved upstairs. She has her own office. It's for the Activity  
17 (sic) Director.

18 Q Okay. And are you familiar with that -- with the upstairs  
19 office?

20 A It used to be the Medication Pyxis room for Med-Surg  
21 Department, but when we were up there, she came up and she's  
22 saying --

23 Q And who is "she"?

24 A -- I'm sorry. "She" being Henrietta Perez came up there  
25 and was stating that that was going to be her office.

1 Q Okay.

2 A It was actually, like, you know, seeing where she was  
3 going to be placing things in that department.

4 Q Okay. Do you know if any of your co-workers regard Ms.  
5 Perez as the boss?

6 MR. GOLDSTEIN: Objection, hearsay, lack of foundation.

7 HEARING OFFICER VENTOLA: You can respond to that.

8 MS. MALKANI: Well, in terms of foundation, I'm asking her  
9 if she does know, and then I'll ask her about incidents and  
10 comments. With hearsay, it goes to weight. I would assert  
11 it's relevant because it goes to the apparent or a sensible  
12 authority.

13 HEARING OFFICER VENTOLA: I'll allow you at this time to  
14 ask her about her own knowledge, her first-hand knowledge.

15 MS. MALKANI: Okay.

16 Q BY MS. MALKANI: Do you know if -- based on what you've  
17 personally seen or heard or observed, do you know if any of  
18 your co-workers regard Ms. Perez as a boss?

19 MR. GOLDSTEIN: Objection, hearsay, lack of foundation.

20 HEARING OFFICER VENTOLA: I'll allow the answer to this  
21 question.

22 THE WITNESS: Well, like, let me go back to, like, when I  
23 first applied for the job. I had told somebody I was going to  
24 be applying for the position. They stated, "She's hard to work  
25 under," and I'm, like, okay. I just thought, okay, it's no big

1 deal, it's just another job.

2 Q BY MS. MALKANI: Okay.

3 MR. GOLDSTEIN: Move to strike.

4 HEARING OFFICER VENTOLA: I'll let the answer stand, but  
5 ask another one. I would move it along.

6 MS. MALKANI: Okay.

7 Q BY MS. MALKANI: Have you participated in any other  
8 interviews at Mee Memorial?

9 A Yes. When I first got interviewed as a Unit Clerk for  
10 Med-Surg Department.

11 Q And who --

12 A Felisha Perry.

13 Q -- okay. Who interviewed you for the position of Unit  
14 Clerk?

15 A Felisha Perry was my manager -- or was the manager at that  
16 time, and she was the one that interviewed me.

17 Q Okay. And she was the manager of what department?

18 A Med-Surg and ICU Department.

19 Q Okay. And did anyone --

20 A And she's a Registered Nurse.

21 Q -- and did anyone else interview you when you interviewed  
22 for the Unit Clerk?

23 A No.

24 Q Just one person?

25 A Just one person.

1 Q Okay. Have you personally observed Ms. Perez telling any  
2 CNAs what to -- assigning tasks to any CNAs?

3 A I've heard her say, like, can you please get the patient  
4 ready -- or, I'm sorry, we call them residents over there.  
5 Please get the resident ready for Activities, whatever it be,  
6 the Bingo, Lotteria, like some of them that they play over  
7 there, or when they take them to the Salinas Valley Fair.

8 Q Okay.

9 MS. MALKANI: No further questions.

10 MR. GOLDSTEIN: I don't have any questions.

11 HEARING OFFICER VENTOLA: What's the Swing Department?

12 THE WITNESS: That's like a step above Med-Surg. When  
13 they're still not ready to go home, they just kind of like a  
14 rehab.

15 HEARING OFFICER VENTOLA: And you said that was  
16 downstairs, and the Skilled Nursing Facility is upstairs?

17 THE WITNESS: Actually, at that time the Swing was  
18 upstairs, and the SNF Department was downstairs.

19 HEARING OFFICER VENTOLA: Is the hospital two floors?

20 THE WITNESS: Yes. But when I first actually worked there,  
21 it was only one floor. And then they built a second floor.

22 HEARING OFFICER VENTOLA: Do the Swing Department patients  
23 or residents participate in Activities?

24 THE WITNESS: Yes.

25 HEARING OFFICER VENTOLA: Okay. I don't have any further

1 questions.

2 MS. MALKANI: No. I have no questions.

3 HEARING OFFICER VENTOLA: You may be excused. Thank you.

4 THE WITNESS: Oh, okay. Thank you.

5 MR. GOLDSTEIN: May we go off the record for a moment,  
6 please?

7 HEARING OFFICER VENTOLA: Yes.

8 MR. GOLDSTEIN: Thank you.

9 (Off the record at 11:21 a.m.)

10 HEARING OFFICER VENTOLA: I'm gonna swear you in, ma'am.

11 MS. PACHECO: Okay.

12 Whereupon,

13 **BARBARA MARQUEZ PACHECO**

14 having been duly sworn, was called as a witness herein and was  
15 examined and testified as follows:

16 HEARING OFFICER VENTOLA: Please state your name for the  
17 record.

18 THE WITNESS: Barbara Marquez Pacheco.

19 HEARING OFFICER VENTOLA: Will you spell the first -- spell  
20 the first and your last name?

21 THE WITNESS: B-A-R-B-A-R-A, M-A-R-Q-U-E-Z, P-A-C-H-E C-O.

22 HEARING OFFICER VENTOLA: Proceed, Counselor.

23 MS. MALKANI: Thank you.

24 **DIRECT EXAMINATION**

25 Q BY MS. MALKANI: Where are you employed?

- 1 A Mee Memorial Hospital.
- 2 Q Okay. And how long have you worked there?
- 3 A Since October of 2011.
- 4 Q And what do you do at Mee Memorial?
- 5 A I'm a Licensed Vocational Nurse.
- 6 Q Okay. And what departments do you work in?
- 7 A I fluctuate between SNF and swing.
- 8 Q And SNF is Skilled Nursing Facility?
- 9 A Correct.
- 10 Q Okay. Are you a -- do you know Henrietta Perez?
- 11 A Yes.
- 12 Q How do you know her?
- 13 A She was activities director.
- 14 Q Okay. And how did you first come to meet her?
- 15 A I first met her when I first started there, and I was
- 16 introduced to her --
- 17 Q Okay.
- 18 A -- and she introduce herself to me. That's how I met her.
- 19 Q Okay. And how did you come to know her as an activities
- 20 director?
- 21 A She introduced herself as the activities director.
- 22 Q Okay. And does a -- does the hospital have an activities
- 23 program?
- 24 A Yes.
- 25 Q What is your understanding of -- of what that activities

1 program is?

2 MR. GOLDSTEIN: Objection, foundation.

3 MS. MALKANI: I'll ask a different question.

4 Q BY MS. MALKANI: How did you come to learn about the  
5 hospital's activities program?

6 A It just so happens that they had this program that was  
7 there and it was ran by her.

8 Q Okay. And --

9 MR. GOLDSTEIN: Objection, I'm gonna move to strike the  
10 last answer. Lack of foundation.

11 HEARING OFFICER VENTOLA: I'll allow the answer to stand  
12 and give it the weight it's accorded.

13 Q BY MS. MALKANI: What is -- describe the activities  
14 program at the hospital.

15 MR. GOLDSTEIN: Objection; foundation. We haven't  
16 established that this witness works in that area, how she would  
17 come into contact with that area, what her knowledge is based  
18 upon. So in order for her to reply to that question, you need  
19 to lay some foundation.

20 Q BY MS. MALKANI: I believe you testified that you worked  
21 in the -- in --

22 A Swing.

23 Q -- SNF and swing, correct?

24 A Correct.

25 Q Okay. Are you aware if there's an activities program that

1 serves as patient -- what patients are in those departments?

2 A In the swing and SNF?

3 Q Yes.

4 A Those are long-term care people.

5 Q Okay. Can you describe that actually a little bit?

6 What -- what do those patients do?

7 A They -- that's their home. They live there.

8 Q Okay. And what's the difference between SNF and swing?

9 Can you tell me?

10 A You know what, honestly, I'm not exactly sure what the  
11 difference is between the two beds, but they do have some long-  
12 term care patients housing in swing beds.

13 Q Okay. So when you say "long-term care patients," what  
14 sort of needs do those patients have?

15 A They require 24-hour care, depending on their condition.

16 Q Okay. And how -- if you know, how does activities relate  
17 to those patients in serving those patients? What's your --  
18 what have you observed?

19 A Those patients attend activities on a daily basis.

20 Q Okay. And what types of activities do those patients  
21 attend?

22 A For example, I've seen them -- they may have like cooking.  
23 You know, they'll sit there -- like I remember a time when they  
24 were cooking Rice Krispie treats for the patients. They have  
25 people come in and sing for the patients, they have worship

1 services. And everybody is invited to those.

2 Q Okay. And are there programs that sometimes leave the  
3 hospital for those patients?

4 A Yes.

5 Q Okay. Can you give me any other examples of what sort of  
6 activities the patients engage in?

7 A For example, there was a parade a couple of months ago  
8 that was off site --

9 Q Okay.

10 A -- and then they also went to the Fair. And recently,  
11 they made a trip to the mall.

12 Q Okay.

13 A Here in Salinas.

14 Q Okay. And how have you come to be involved with  
15 activities, if at all?

16 A I happen to just come across it. And like if I'm walking  
17 around the facility and I see some of the activities that's  
18 going on and they have the people that -- I don't even -- I'm  
19 sorry. I'm --

20 Q Okay.

21 A -- not --

22 Q Okay. As an LVN --

23 A Uh-huh.

24 Q -- you attend -- you attend to patients in the skilled  
25 nursing or the swing --

- 1 A Yes --
- 2 Q -- facilities, correct?
- 3 A Yes.
- 4 Q In those departments?
- 5 A Uh-huh.
- 6 Q Okay. And the patients that you attend to, are those
- 7 patients also involved in these activities --
- 8 A Yes.
- 9 Q -- from time to time?
- 10 A Yes.
- 11 Q Okay. And how do you as an LVN come to be aware of --
- 12 of -- how have you come to be aware of the activities program?
- 13 Who has made you aware of it?
- 14 A They -- Ms. Perez did.
- 15 Q Okay. And explain to me how you have come to be aware --
- 16 how has Ms. Perez made you aware of the activities program?
- 17 A Well, she told me that she, you know, ran the program.
- 18 Q Okay. And when did she tell you this?
- 19 A Early on. When I first got hired.
- 20 Q So sometime after October 2011?
- 21 A Yes.
- 22 Q Okay. So sometime in late 2011?
- 23 A Yes, late --
- 24 Q Okay.
- 25 A -- 2011.

1 Q And do you recall -- can you describe that conversation to  
2 me?

3 A From what I recall, she just introduced herself, you know,  
4 "My name is Henrietta Perez and I run the activities program."

5 Q Okay. And did she explain to you what that activities  
6 program was?

7 A No, and that's because I had prior knowledge of activities  
8 in other facilities that I have worked in.

9 Q Okay. You've worked in other hospitals?

10 A Nursing homes, hospitals, correct.

11 Q Okay. And do you -- in the course of your work, in what  
12 way do you work with Ms. Perez? How do you come to interact  
13 with her in regard to the activities program when you're  
14 working as an LVN?

15 A As -- I'm sorry. I don't think I'm understanding the  
16 question.

17 Q Okay. How -- how does Ms. Perez -- does Ms. Perez  
18 interact with you while you're working as an LVN?

19 A Yes.

20 Q Okay. In what way does she interact with you?

21 A She may come and tell me that a certain patient is  
22 complaining of pain and then I'll have to go attend to that  
23 patient if they're in activities.

24 Q Okay. And do you have any roles and responsibilities in  
25 terms of -- do you as an LVN have to -- what is your role in --

1 in making sure a patient gets to activities or comes back from  
2 activities?

3 A No, I don't usually take them. You know, there might be  
4 some cases where I've had to take them because I've had to do a  
5 procedure and then I'll shuttle them over there myself.

6 Q Okay. And have you seen Ms. Perez assign any tasks to you  
7 or any of your co-workers?

8 A Specific tasks as in -- I'm -- I'm sorry. I'm not exactly  
9 following.

10 Q Okay. Do you work with CNAs as well?

11 A Yes, I work with --

12 Q Okay.

13 A -- CNAs.

14 Q Have you seen Ms. Perez assign any tasks to CNAs?

15 A No.

16 Q Okay. Do you know Michelle Pina?

17 A Yes.

18 Q Who is she?

19 A She is the activities coordinator.

20 Q Okay. And how do you know -- how did you come to know  
21 her?

22 A Actually, I came to know her not right away after I  
23 started working. It was sometime late -- like really late. I  
24 think it was December of 2011, approximately when I first came  
25 across her. It took me a while to get to know some of the

1 employees there.

2 Q Okay. And did you ever speak to Michelle about Ms. Perez'  
3 role in the activities program?

4 MR. GOLDSTEIN: Objection; hearsay.

5 HEARING OFFICER VENTOLA: I believe the answer to this  
6 question is did she have a conversation, so --

7 MS. MALKANI: Yes.

8 HEARING OFFICER VENTOLA: -- I believe she can answer this  
9 question. And we can --

10 THE WITNESS: Did I have a conversation with Michelle?  
11 Yes.

12 Q BY MS. MALKANI: Okay. And can you describe when that  
13 conversation occurred?

14 A It occurred approximately December of 2011 to January  
15 2012. It was around the holidays.

16 Q Okay. And is there something in particular that you --  
17 makes you recall that it was around the holidays?

18 A It was late. That's -- that's around the time when I had  
19 first come across her. And --

20 Q First come across --

21 A -- in the conversation that --

22 Q -- Ms. Pina --

23 A Yes.

24 Q -- Michelle Pina? Okay.

25 A Yes, Ms. Pina.

1 Q Okay. And how was it that you came to have a conversation  
2 with Ms. Pina about the activities program?

3 A Somebody came in requesting -- it was like singers or  
4 something like that that they had -- or a guitarist --  
5 something to do with music I recall -- and they had wanted to  
6 come in and perform, and they happened to be there that day.  
7 And the only person that was there was Michelle because  
8 Ms. Perez was on vacation. So I -- the next best person to  
9 call was Michelle, and that's how I came across Michelle.

10 Q Okay. So -- so this -- the musicians came to you and you  
11 called Michelle?

12 A Yes.

13 Q Okay. And what did you say to Michelle?

14 A That they had --

15 MR. GOLDSTEIN: Objection. Just in case she -- I want to  
16 object on hearsay. What she said obviously is not hearsay, but  
17 I'm just fearful that she's going to say what Michelle said.  
18 So if you're gonna rule that it's admissible, then fine, but I  
19 just wanted to get the objection out now that it's hearsay.  
20 And any -- any conversation between her and Michelle Pina is  
21 hearsay.

22 HEARING OFFICER VENTOLA: So if you can answer the question  
23 that counsel asked of you, which is I believe what you told  
24 Ms. Pina.

25 THE WITNESS: Yeah, Ms. Pina. Okay. I told Ms. Pina that

1 there was a group here; I didn't know who they were, but that  
2 they had wanted to perform. And so that's why I called her.  
3 And then she came down and spoke with them.

4 Q BY MS. MALKANI: Okay. And did you see Michelle speaking  
5 with the singers? Were you there for that conversation?

6 A I was there for that conversation but I was not paying  
7 attention to what they were saying to each other.

8 Q Okay. And did you have a conversation with Michelle, a  
9 subsequent conversation with Michelle, about whether the  
10 singers could -- or whether the musicians could come in and do  
11 an activity?

12 MR. GOLDSTEIN: Objection; hearsay.

13 HEARING OFFICER VENTOLA: Again, I --

14 MS. MALKANI: I think it goes --

15 HEARING OFFICER VENTOLA: -- believe this is the --

16 MS. MALKANI: -- to weight.

17 HEARING OFFICER VENTOLA: Well, I think the question asked  
18 was there a conversation.

19 THE WITNESS: Yes, there was a conversation.

20 HEARING OFFICER VENTOLA: Okay.

21 MS. MALKANI: Okay. And now I am --

22 HEARING OFFICER VENTOLA: I anticipate you will --

23 MS. MALKANI: -- gonna ask about the substance of the  
24 conversation that she had with Michelle --

25 THE WITNESS: That --

1 MS. MALKANI: -- both what she said and what --

2 HEARING OFFICER VENTOLA: So you're offering it for the  
3 truth of the matter asserted?

4 MS. MALKANI: I'm offering it for the understanding -- yes,  
5 but also for the understanding as to -- the understanding that  
6 both this employee and --

7 HEARING OFFICER VENTOLA: Well, I --

8 MS. MALKANI: -- had --

9 HEARING OFFICER VENTOLA: -- do believe --

10 MS. MALKANI: -- had about -- had about Ms. Perez' role.

11 HEARING OFFICER VENTOLA: I do believe that the answer  
12 calls for hearsay, but I will allow it and it will be given the  
13 weight that it's accorded as hearsay.

14 MS. MALKANI: Okay.

15 Q BY MS. MALKANI: You can -- can you tell us about the  
16 conversation you had with Michelle?

17 A With Ms. Pina. Basically Ms. Pina had mentioned that she  
18 had to call Ms. Perez and make sure that it was okay --

19 Q And --

20 A -- that they come in --

21 Q -- did --

22 A -- and perform or do whatever it is that they were wanting  
23 to do.

24 Q Okay. And then did you say anything in response to  
25 Ms. Pina?

1 A Oh. "Well isn't she on vacation?" You know.

2 Q And who were you referring to when you said, "Isn't she on  
3 vacation"?

4 A I was referring to Ms. Perez. You know, Ms. Perez was on  
5 vacation at that time and Ms. Pina had said she had to call and  
6 get an okay from her before she actually allowed these people -  
7 -

8 Q Okay.

9 A -- to come in.

10 Q And as best as you can recall, what -- when you said,  
11 "Isn't she on vacation," what, if anything, did Ms. Perez say  
12 back -- in response to you?

13 A Miss -- Ms. Pina?

14 Q I mean -- I'm sorry. Miss --

15 A Ms. Pina?

16 Q -- Pina. I misspoke.

17 A Basically everything had to go through Ms. Perez --

18 Q Okay.

19 A -- regarding activities.

20 Q Okay. Well, what is your best recollection of -- of  
21 Ms. Pina's exact words to the best -- to you?

22 A That she had to call -- that Ms. Pina had to call  
23 Ms. Perez because Ms. Perez is in charge of that program.

24 Q Okay.

25 A "Everything has to go through Ms. Perez," was her words.

1 Q Did you ever -- did you ever witness Ms. Perez instruct  
2 CNAs to prepare patients for activities?

3 A Prepare as in that she wants them in certain places or --

4 Q Did you ever witness Ms. Perez give any directions to CNAs  
5 about preparing patients for activities?

6 A She wants them placed in certain place -- spots.

7 Q Okay. What --

8 MR. GOLDSTEIN: Objection --

9 Q BY MS. MALKANI: -- what did you --

10 MR. GOLDSTEIN: -- foundation.

11 Q BY MS. MALKANI: -- witness Ms. Perez -- since the time  
12 you've been working there, have you witnessed Ms. Perez tell  
13 CNAs what to do?

14 A Yes.

15 Q On one occasion or more than one occasion?

16 A More than one occasion.

17 Q Okay. How often?

18 A I would say pretty -- I would say often.

19 Q Do you have any estimate on that? Several times a week,  
20 once a week, once a month?

21 A I only work there three days a week. So maybe just one  
22 out of these three days that I'm there. Usually I'm there  
23 three days a week. There's some days (sic) where I'm four, but  
24 it's usually three days.

25 Q Okay. And can you give me some examples of Ms. Perez

1 telling CNAs what to do?

2 A For example, if they're sitting in the dining room or  
3 they're getting ready for lunch, she'll tell them --

4 Q Okay. And who is see -- who is "they" --

5 A I'm sorry.

6 Q -- the CNAs?

7 A That Ms. Perez will tell the CNAs,, "I want this patient  
8 sitting here. I want this patient here." And -- oh, "I want  
9 the tables set up this way."

10 Q Okay.

11 A And that's what they -- they would do what she asked.

12 Q Okay. Does Ms. Perez ever tell -- have you seen Ms. Perez  
13 tell CNAs anything about a patient's appearance?

14 A Yes.

15 Q What have you seen Ms. Perez tell CNAs about a patient's  
16 appearance?

17 A That they need to be shaven before they come to activities  
18 or they need to be changed before they come to activities or to  
19 breakfast.

20 Q Okay.

21 A And that's been often.

22 Q Okay. Have you -- have you ever had interaction where a  
23 CNA was -- where you believed a CNA was gonna follow Ms. Perez  
24 directions over your directions?

25 A Yes.

1 Q Can you explain when that -- first of all, tell us when  
2 that -- when that incident occurred.

3 A I was first moved upstairs with about 18 patients. And  
4 this was in the transition when they were bringing all of the  
5 patients upstairs.

6 Q So approximately --

7 A So it's --

8 Q -- what time period was that?

9 A Yeah. Between May 2012 through August 2012. It was  
10 sometime around that time when they first got moved up there.  
11 I had a patient that I needed to give medication to and the CNA  
12 said, "Well, I need to take the patient down to worship  
13 services because Henrietta wants the patient to go to worship  
14 services." I said, "Well I need to give the patient  
15 medication." She said, "Yeah, but Henrietta wants her down  
16 there" -- wants -- I'm sorry -- "wants him down there."

17 Q Okay. And -- and what -- what happened in that  
18 interaction?

19 A I explained to the CNA that I needed to give the patient  
20 his medication and as soon as he was done, that I would gladly  
21 offer and take him down there and explain to Ms. Perez that --  
22 the reason why he was late for worship services.

23 Q Okay. And did that CNA seem worried about getting the  
24 patient to Ms. Perez on time --

25 MR. GOLDSTEIN: Objection --

1 THE WITNESS: Yes.

2 MR. GOLDSTEIN: -- calls for speculation, foundation.

3 HEARING OFFICER VENTOLA: I believe you can ask the -- you  
4 can ask the question with the witness answer it what she  
5 observed.

6 MS. MALKANI: Okay.

7 Q BY MS. MALKANI: Well, what was your -- how -- describe  
8 the demeanor of that CNA.

9 A Just that she seemed like she was gonna get yelled at.  
10 "If I don't do it, I'm gonna get yelled at." Those were her  
11 exact words.

12 Q Okay. Have you -- just a moment. Okay. No further  
13 questions.

14 A Okay. Thank you.

15 MS. MALKANI: Well, they're gonna have questions. You  
16 don't get to leave.

17 THE WITNESS: Okay.

18 **CROSS-EXAMINATION**

19 Q BY MR. GOLDSTEIN: Ms. Pacheco, in the first part of your  
20 testimony, you testified that you did not see Ms. Perez assign  
21 any tasks to CNAs. Were you being truthful when you said that?

22 A Yes.

23 Q Okay. And so in the latter part of your testimony, then  
24 you said that you did witness Ms. Perez assign some tasks to  
25 CNAs?

1 A Yes.

2 Q Were you being truthful in that testimony?

3 A Yes.

4 Q Okay. So you're telling the truth the whole time?

5 A Yes.

6 Q Even though your answers are completely different?

7 A Yes.

8 Q Okay.

9 MR. GOLDSTEIN: Thank you. I have no further questions.

10 HEARING OFFICER VENTOLA: How many beds are there in the  
11 Skilled Nursing Facility?

12 THE WITNESS: Oh, I'm sorry.

13 HEARING OFFICER VENTOLA: That's okay.

14 THE WITNESS: For the Skilled Nursing Facility? Just for  
15 the skilled part, right? The SNF beds? There's about 18 beds.  
16 I'm not exactly sure.

17 HEARING OFFICER VENTOLA: And the other department, the --

18 THE WITNESS: The swing --

19 HEARING OFFICER VENTOLA: -- swing?

20 THE WITNESS: -- side? 30 something. I'm not exactly  
21 sure. I know there's more swing beds than there is SNF beds.

22 HEARING OFFICER VENTOLA: Okay. So you -- and do you work  
23 in those two departments?

24 THE WITNESS: Yes.

25 HEARING OFFICER VENTOLA: And you work about three days a

1 week?

2 THE WITNESS: Yes.

3 HEARING OFFICER VENTOLA: And who are your supervisors?

4 THE WITNESS: Janeel Welburn and Raye Ann Houx.

5 HEARING OFFICER VENTOLA: And what are your primary duties?

6 THE WITNESS: I'm basically the Med-Nurse. I do the  
7 treatments, I give them their medications.

8 HEARING OFFICER VENTOLA: So do you interact with the  
9 Certified Nursing Assistants --

10 THE WITNESS: Yes.

11 HEARING OFFICER VENTOLA: -- the CNAs?

12 THE WITNESS: Yes.

13 HEARING OFFICER VENTOLA: And do you -- when do you have  
14 occasion to work with Ms. Perez?

15 THE WITNESS: When I go into the dining room, for example,  
16 during breakfast, we pass out medications to some of the  
17 patients that have to have certain medications with their  
18 breakfast. And sometimes if they're in bingo, you know, they  
19 have scheduled meds, so I'll have to go in there and give them  
20 their medication.

21 HEARING OFFICER VENTOLA: And is that the way that you  
22 would be interacting in the activities programs, when you would  
23 be going to the dining room where the activities are being  
24 held, to give medication?

25 THE WITNESS: Yes.

1 HEARING OFFICER VENTOLA: And so -- so what have you  
2 observed -- did you observe Ms. Perez giving tasks to CNAs?

3 THE WITNESS: Yes.

4 HEARING OFFICER VENTOLA: And -- and what -- how frequently  
5 does that happen?

6 THE WITNESS: I'm only there three days a week, so maybe  
7 like once -- maybe like once during a shift -- or, you know,  
8 during -- during one particular shift. I'm not sure if I'm  
9 explaining it clearly. Like I said, I'm only there three days  
10 a week. I'm not there seven, so --

11 HEARING OFFICER VENTOLA: So just clarify for me what  
12 you've seen. What have you heard her say to CNAs?

13 THE WITNESS: Well, I've heard her say, you know, "This  
14 patient needs to be shaven" -- or -- "changed before they come  
15 to activities." So shave them or change them before they come.  
16 And if they don't, she'll come and she'll tell me.

17 HEARING OFFICER VENTOLA: Who will tell you?

18 THE WITNESS: Ms. Perez.

19 HEARING OFFICER VENTOLA: And what will she tell you?

20 THE WITNESS: That this patient needs to be shaven. "Can  
21 you make sure that they get shaven," or, "Can you get" -- "make  
22 sure that they get changed before they come to activities?"

23 HEARING OFFICER VENTOLA: Who's responsibility is that  
24 normally?

25 THE WITNESS: The shaving and changing?

1 HEARING OFFICER VENTOLA: Uh-huh.

2 THE WITNESS: The CNAs.

3 HEARING OFFICER VENTOLA: No further questions.

4 MS. MALKANI: I have just a couple.

5 **REDIRECT EXAMINATION**

6 Q BY MS. MALKANI: The CNAs, do you know who they -- who --  
7 Janeel and Raye Ann --

8 A Uh-huh.

9 Q -- is who you report to?

10 A Correct.

11 Q Okay. Do the CNAs also report to Janeel and Raye Ann?

12 A If it's just a certain nursing issue, a patient got a skin  
13 care or something, they'll come to me.

14 Q Okay.

15 A But if it's anything that -- if there's like a problem  
16 between each other, they'll normally go to Raye Ann or to  
17 Janeel.

18 Q Okay. And when -- have you seen Ms. Perez directly tell  
19 CNAs what to do?

20 A Yes.

21 Q Okay. Can you give us some examples of that?

22 A It's just basically the whole changing, making sure that  
23 they're well-groomed before they come to activities. I've seen  
24 that.

25 Q Okay. So if Ms. Perez thinks -- if a patient comes to

1 activities and the patient is not shaven --

2 A Uh-huh.

3 Q -- Ms. Perez -- will Ms. Perez go to Janeel or Raye Ann?

4 A No.

5 Q She will talk --

6 A And that -- that -- I'm sorry. No. That I'm aware of --

7 MR. GOLDSTEIN: I'm --

8 THE WITNESS: -- no.

9 MS. MALKANI: Okay.

10 THE WITNESS: I don't -- I don't know if they'll go to  
11 them.

12 Q BY MS. MALKANI: Okay. Have you -- have you seen her tell  
13 a CNA, "Take that person back and shave them"?

14 A Yes.

15 Q Okay. Where have you -- how -- how is it that you've come  
16 to see that?

17 A I just happen to be in the hallway and they may be  
18 bringing a patient out from a room and then she'll tell them,  
19 "They need to be shaven. Go shave them before they come to  
20 activities."

21 Q Okay. And --

22 A And -- yeah?

23 Q And what does the CNA do in that instance?

24 A Take them back and shave them and then bring them back to  
25 activities.

1 Q Okay. And how do you know that? Have you seen that?

2 A Yes.

3 Q Okay.

4 MS. MALKANI: No further questions.

5 MR. GOLDSTEIN: Nothing.

6 HEARING OFFICER VENTOLA: So that is the extent of what  
7 you've seen her tell CNAs what to do?

8 THE WITNESS: Yes.

9 HEARING OFFICER VENTOLA: Okay. Thank you for your  
10 testimony.

11 THE WITNESS: Thank you. Am I done now?

12 HEARING OFFICER VENTOLA: Yes.

13 MS. MALKANI: Yes.

14 HEARING OFFICER VENTOLA: Go off the record.

15 (Off the record at 11:52 a.m.)

16 Whereupon,

17 **MIGUEL VILLAREAL**

18 having been duly sworn, was called as a witness herein and was  
19 examined and testified as follows:

20 HEARING OFFICER VENTOLA: Will you state and spell your  
21 name for the record?

22 THE WITNESS: Yes. Miguel Villarreal, M-I-G-U-E-L, V -- as  
23 in Victor -- I-L-L-A-R-R-E-A-L.

24 HEARING OFFICER VENTOLA: All right. Counsel, you may  
25 proceed.

1 MS. MALKANI: Thank you.

2 **DIRECT EXAMINATION**

3 Q BY MS. MALKANI: Where are you employed?

4 A Mee Memorial Hospital.

5 Q Okay. And what is your position at Mee Memorial?

6 A My current position is an application tech in IT.

7 Q Okay. Now, how long have you worked at Mee Memorial?

8 A Since December of 2006.

9 Q Okay.

10 A So a little over six years.

11 Q And when you began at Mee Memorial, what was your job  
12 position?

13 A CNA in SNF.

14 Q Okay. And SNF is Skilled Nursing Facility?

15 A Yes.

16 Q Okay. Did you work in any other units at that time?

17 A At that time?

18 Q Yes.

19 A No.

20 Q Okay. How long were you a CNA?

21 A Up until March of last year.

22 Q Until March of 2012?

23 A Yes.

24 Q Okay. And what units did you -- how long did you work in  
25 the SNF unit?

1 A I worked in the SNF unit until April, until Med-Surg  
2 opened upstairs. But off and on throughout my whole -- up  
3 until March of 2012 off and on I would get floated there.

4 Q Okay. And did you work full time at Mee --

5 A Yes.

6 Q And since 2006, you've worked full time?

7 A No. I was per diem in 2006 and like in '07 I became full  
8 time.

9 Q Okay. And since 2007, have you worked continuously full  
10 time at Mee?

11 A No. At one point I went part-time for a few months to go  
12 to school.

13 Q And when was that?

14 A In '08.

15 Q Okay. For a few months?

16 A Yeah. Just --

17 Q About how long?

18 A Like a semester. So maybe four months.

19 Q Okay. And aside from -- since 2007, except for those --  
20 that semester or so in 2008, have you always worked full time  
21 at Mee?

22 A Yes.

23 Q Okay. And when you were working -- when you were working  
24 in departments other than SNF as a CNA, how often were you  
25 floated to the SNF unit?

1 A It varies. Sometimes -- I work three 12s, so sometimes I  
2 would float like twice in -- in that week, sometimes once,  
3 sometimes I wouldn't float, but --

4 Q Okay. And when you say "three 12s," what do you mean by  
5 that? Can you explain it?

6 A It's -- the three 12s, it's three 12-hour shifts a week,  
7 or for each pay period, it's six 12-hour shifts.

8 Q Okay. Do you know Henrietta Perez?

9 A Yes.

10 Q How do you know her?

11 A She's the activities director.

12 Q Okay. And when did you first encounter her?

13 A In '0 -- about '07, a little after I started. She was the  
14 activity director and she -- I was introduced to her, you know,  
15 when I started, but --

16 Q Okay. Do you recall who introduced you to her?

17 A Connie. She -- yeah, Connie did. I --

18 Q Okay.

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

20 Q And --

21 A -- I believe her last name is.

22 Q And what is your understanding of the activities program  
23 at Mee Memorial?

24 A Like who runs it or -- or what it is?

25 Q Explain the program and how --

1 A Oh, it's --

2 Q How did you come to learn about it? Let's ask you that  
3 first.

4 A Oh, well, it's a program where the patients, you know, go  
5 to bingo or have lunch or breakfast. Like social breakfast or  
6 activities for patients. They just told me, you know, this is  
7 activities director -- the activities area. And every morning  
8 we would have to have our patients dressed and ready as -- you  
9 know, Henrietta would want them there at a certain time, so she  
10 would come and have the patient -- you know, make sure we had  
11 the patients ready by that time, by a certain time.

12 Q Okay. And where is the activities area you just  
13 mentioned?

14 A Well, when I was there, it was downstairs. Now I believe  
15 they moved it upstairs.

16 Q Okay.

17 MR. GOLDSTEIN: Can I get a time frame on when you were  
18 referring to when you were in the activities area?

19 THE WITNESS: What do you mean?

20 MS. MALKANI: Well, let me --

21 MR. GOLDSTEIN: What time -- what time period.

22 HEARING OFFICER VENTOLA: Counsel, you want to --

23 Q BY MS. MALKANI: Where --

24 HEARING OFFICER VENTOLA: -- direct your --

25 MS. MALKANI: Yeah.

1 HEARING OFFICER VENTOLA: -- question to when he was in the  
2 unit or when -- excuse me -- when he was working in that area?

3 Q BY MS. MALKANI: When you said -- okay. During the time  
4 that you were working as a CNA --

5 A Uh-huh.

6 Q -- where was the activities area? So from -- so begin in  
7 2006.

8 A Oh, in 2006, it was downstairs in -- in the old hospital  
9 area. And -- I want to -- they opened up upstairs April of  
10 '07, and then we started getting swing patients upstairs. So  
11 they moved -- they had an activities upstairs and they had an  
12 activities downstairs.

13 Q So there became -- two activities --

14 A Yes.

15 Q -- areas were established sometime in 2007?

16 A Yes.

17 Q After, swing patients were moved --

18 A Upstairs.

19 Q -- upstairs. Okay?

20 A And then I guess I was no longer working there when it all  
21 became upstairs. Like now it's all upstairs, SNF and swing are  
22 all upstairs, and it happened sometime after March.

23 Q Of 2012?

24 A Yeah.

25 Q Okay. And at that point --

1 A So now --

2 Q -- you moved -- you were moved to IT?

3 A Yeah.

4 Q Okay. During the time that you worked as a CNA --

5 A Uh-huh.

6 Q -- did Ms. Perez ever tell you what to do?

7 A Always. The first -- the first time I remember is one of  
8 my patients were in the activities room and they were -- they  
9 were -- they voided. You know, patients at that age do not  
10 have bladder control. So -- so she's running up and down the  
11 halls yelling for me and then starts yelling at me why I would  
12 bring a patient soaking wet to activities room. I go, "She  
13 wasn't" -- "he wasn't wet when I brought him, but I'm sorry."  
14 So she followed me into the room and was like telling me, you  
15 know, "That's" -- "You know you're not supposed to do that."  
16 Like reprimanding me. And I said, "You know, I'm sorry. You  
17 know, it won't happen again." You know, so that was the first  
18 act of her, you know -- I guess -- I always thought she was a  
19 director or supervisor or something because the way she always  
20 talked to us and treated us as CNAs.

21 Q Okay. Can you --

22 MR. GOLDSTEIN: I'll move to strike. Lack of foundation,  
23 calls for a legal conclusion.

24 MS. MALKANI: His opinion --

25 HEARING OFFICER VENTOLA: I'm gonna allow the answer, but

1 can you get a time? Can you establish the time frame --

2 MS. MALKANI: Sure.

3 HEARING OFFICER VENTOLA: -- that he's talking about?

4 MS. MALKANI: Sure.

5 Q BY MS. MALKANI: The incident when the patient voided  
6 himself and Ms. Perez reprimanded you, when was that?

7 A Well, that was in between -- I don't have a specific date,  
8 but that -- you know, I only was in SNF -- I remember being a  
9 SNF employee. So that -- I was only a SNF employee from  
10 December of 2006 to April of 2007.

11 Q Okay.

12 MR. GOLDSTEIN: I'll move to strike the last answer as  
13 irrelevant.

14 HEARING OFFICER VENTOLA: Well, I'll allow the answer to  
15 stand, but I think that we need to get up to -- to the  
16 contemporaneous time --

17 MS. MALKANI: Okay.

18 HEARING OFFICER VENTOLA: -- frame.

19 Q BY MS. MALKANI: Aside from that incident, has Ms. -- can  
20 you give me examples -- other examples of --

21 A Oh, yeah.

22 Q -- of Ms. Perez --

23 A So --

24 Q -- telling you -- let me finish the question.

25 A Oh, sorry.

1 Q -- Ms. Perez telling you what to do?

2 A Oh, yeah. So when we -- when I get floated to Med-Surg --  
3 from Med-Surg to SNF or swing, I usually work nights. So in  
4 the morning we're doing rounds and, you know, Henrietta's  
5 telling us, you know, "These patients need to be here by this  
6 time," and just certain patients. And we had to get them  
7 dressed before activities or breakfast socials or whatever.  
8 You know, she would always make sure and ask us, "Why they  
9 aren't ready?" And, you know, we would say, "You know,  
10 patients refuse." Sometimes that wasn't acceptable, I guess,  
11 for her, so she would, you know, tell us, "No. That's  
12 unacceptable. You need to get that patient dressed." But, you  
13 know, by law, the patients could refuse activities if they  
14 don't want to attend.

15 Q Okay. Now, are we talking about one occasion or more than  
16 one occasion?

17 A Oh, like every time -- not every time, but if -- you had  
18 to get certain patients -- if you didn't have your patient  
19 ready, then it would happen.

20 Q Okay. So these --

21 MR. GOLDSTEIN: I'm gonna object on -- we still don't have  
22 a time period --

23 MS. MALKANI: I'm trying to --

24 MR. GOLDSTEIN: -- when any of this took place.

25 MS. MALKANI: -- lay that right now.

1 Q BY MS. MALKANI: The -- the conversations you just spoke  
2 about --

3 A Uh-huh.

4 Q -- those were more than one occasion -- conversation --

5 A Oh, yeah. Just --

6 Q -- correct? Okay.

7 A Yeah, just any time.

8 Q So when -- when did these conversations -- how recently  
9 did these -- did these conversations take place with Ms. Perez?

10 A Up until I transferred to Med-Surg -- to IT. So any time  
11 before March of last year when -- every time I would float at  
12 night, you -- they -- she would say, "Hey, this patient and  
13 this patient" -- or -- "needs to get dressed. Why aren't they  
14 dressed?"

15 Q Okay. And you've already spoken to us about how often you  
16 would float.

17 A Uh-huh.

18 Q But how -- from the time that you did float --

19 A Uh-huh.

20 Q -- how often would you encounter Ms. Perez and have one of  
21 these conversations?

22 A How often?

23 MR. GOLDSTEIN: Objection; vague.

24 THE WITNESS: I don't know. Just --

25 HEARING OFFICER VENTOLA: Sir, when you hear an objection,

1 if you can wait to allow me --

2 THE WITNESS: Oh, I'm sorry.

3 HEARING OFFICER VENTOLA: -- a chance to rule it and then  
4 I'll tell you whether or not you can go ahead and answer the  
5 question.

6 THE WITNESS: Okay. I'm sorry.

7 HEARING OFFICER VENTOLA: Do you understand that question?

8 THE WITNESS: Yes.

9 HEARING OFFICER VENTOLA: I will allow you to answer it and  
10 overrule the objection.

11 THE WITNESS: Okay. So -- so you -- can you repeat the  
12 question because I --

13 MS. MALKANI: Sure.

14 THE WITNESS: -- all this now?

15 Q BY MS. MALKANI: When you were working -- when you were  
16 floating --

17 A Uh-huh.

18 Q -- and working in the SNF or swing units --

19 A Uh-huh.

20 Q -- okay, before March of 2012 --

21 A Uh-huh.

22 Q -- how often would you -- you would have conversations  
23 when you were -- you would have reports in the morning,  
24 correct?

25 A Yes, every morning.

- 1 Q Okay.
- 2 A Uh-huh.
- 3 Q So you were working with the night shift then?
- 4 A Yes.
- 5 Q And you would be reporting with --
- 6 A To the --
- 7 Q -- CNAs --
- 8 A -- day shift.
- 9 Q -- who were working on the day shift --
- 10 A Uh-huh.
- 11 Q -- is that correct?
- 12 A Yes.
- 13 Q Okay. And so during those reports --
- 14 A Uh-huh.
- 15 Q -- how often would you encounter Ms. Perez?
- 16 A Well, I don't have a number. It was just every time -- if
- 17 a patient wasn't ready. I don't really have a number. And I --
- 18 Q Was -- was it -- do you have any percentage of how
- 19 frequently in terms of the times you were working there? Would
- 20 you see her, you know, half the time or a quarter of the time
- 21 or --
- 22 A Maybe half the time I would see her. But when this would
- 23 happen, if it's -- see, because not every morning a patient
- 24 refused to get up.
- 25 Q Okay.

1 A Some mornings they -- they're up to getting up. And it's  
2 just up to the patient. And it's just like us, one day we  
3 decide we want to wear this or that; sometimes they don't want  
4 to get up. So I can't give you a percentage or anything, but  
5 maybe 25 percent of the time --

6 Q Okay.

7 A -- a patient doesn't want to get up.

8 Q And so if a patient was not ready for activities or not  
9 wanting to go to activities --

10 A Uh-huh.

11 Q -- at a certain time, Ms. Perez -- can you describe what  
12 her demeanor was like and how she would speak to the CNAs --

13 A Oh.

14 Q -- that you -- based on what you personally observed?

15 A Personally? She would go up to you, you know, say, "Why  
16 isn't this patient up?" "The patient refuses to get up. He  
17 wants to sleep in another hour," or whatever. "Well that's" --  
18 you know, "that's" -- you know, "No. They need to get up.  
19 They need to go to activities. You need to get them up." Or,  
20 "You have to get them up."

21 Q Okay. So Ms. Perez was giving that direction directly to  
22 the CNA?

23 A Yes, to the CNAs.

24 Q Okay. Now, was there a -- who else -- if -- working as a  
25 CNA, if you have a problem with a patient and you need the help

1 of another CNA, what are you supposed to do about it?

2 A Go -- you know, ask a CNA or ask the nurse.

3 Q Okay. And who -- who did you -- who did you report to as  
4 a CNA?

5 A To the nurses.

6 Q Okay. And is -- what -- was there also a --

7 A Oh, like --

8 Q -- supervisor?

9 A -- if I had a problem? Yeah, it would be like Janeel at  
10 that -- no. At that time it was Barbara O'Connor in '06. But  
11 in '07, Janeel as a -- was a supervisor -- or a director, so we  
12 would go and talk to her if we had a problem or --

13 Q Okay. So if you had one -- as a CNA, if you had a problem  
14 with how another CNA was doing their job, what was your  
15 understanding of what you're supposed to do?

16 A Go talk to Janeel.

17 Q Okay. And these conversations with Ms. Perez that you've  
18 described, did you perceive her to be -- what was her -- what  
19 was her tone towards the CNA?

20 A As she was our superior, because that's we thought she was  
21 or is. She is a director. She will tell us what to do and we  
22 have to listen to her.

23 Q Okay. Was she -- did you perceive it as a reprimand?

24 A Sometimes, yeah. Yeah. If you didn't get it, yeah she --  
25 a verbal, I guess, because you cannot go anywhere else.

1 Q Okay. And now you -- you --

2 MR. GOLDSTEIN: I'm gonna move to strike as irrelevant what  
3 his perception is. Whether or not he received a reprimand and  
4 whether or not he actually was reprimanded are two different  
5 things.

6 MS. MALKANI: I mean, I think you can -- sorry.

7 HEARING OFFICER VENTOLA: I -- can you describe what you  
8 mean by reprimand? Are you talking about discipline? And are  
9 you asking him if he was ever disciplined by Ms. Perez?

10 MS. MALKANI: Why don't I do that.

11 Q BY MS. MALKANI: Have you ever been disciplined by  
12 Ms. Perez?

13 A Well, I thought I was disciplined, but I guess -- well,  
14 yeah, she's --

15 Q In your understanding --

16 A Oh, yeah.

17 Q -- have you ever been --

18 A In my --

19 Q -- disciplined by --

20 A -- understanding, yeah, I was disciplined by her, because  
21 I've been disciplined by other supervisors and the same way she  
22 took -- talked to me privately in a room is the same way I've  
23 been reprimanded by other supervisors and manager -- and  
24 directors in their -- in their room, privately in their office  
25 or privately in a patient's -- empty patient's room.

1 Q Okay. And who -- during the time that you worked as a  
2 CNA, did Ms. Perez ever tell you that she was an activities  
3 director?

4 A Oh, yes.

5 MR. GOLDSTEIN: I'm gonna object on the relevance of  
6 whether or not she told him she was an activities director.  
7 It's already been administratively determined by the Region  
8 that Ms. Perez was an activities coordinator, and that's not an  
9 issue that's the subject of this hearing.

10 MS. MALKANI: And, actually --

11 MR. GOLDSTEIN: And I'm gonna object on the basis of  
12 relevance.

13 MS. MALKANI: May I speak to that?

14 HEARING OFFICER VENTOLA: You can respond.

15 MS. MALKANI: Okay. Whether or not -- what was -- what was  
16 determined by the Region goes to whether or not the title  
17 itself was something that was stipulated to or not stipulated  
18 to, which is an -- nonetheless, how employees perceived  
19 Ms. Perez in terms of her title is just one factor. In terms  
20 of how they perceived her, that goes to ostensible or apparent  
21 authority. And --

22 HEARING OFFICER VENTOLA: Well, I'm gonna just stop you  
23 right there, because the issue for this hearing is supervisory  
24 status and --

25 MS. MALKANI: Correct.

1 HEARING OFFICER VENTOLA: -- the eligibility of -- of this  
2 voter is -- is solely being determined on the basis of her  
3 supervisory status. To the extent that someone's job title is  
4 secondary indicia, that may be relevant. I will allow you --  
5 you know, you can him these questions, but the only issue set  
6 for hearing is whether or not this individual possesses  
7 statutory authority within the meaning of section 211 of the  
8 Act.

9 So to the extent that employees perceived her to have a  
10 certain title, I'll allow questioning on it, but it's -- it is  
11 clear that the only matter before us is whether the -- whether  
12 Henrietta Perez is a supervisor within the meaning of section  
13 211 of the Act.

14 MS. MALKANI: Okay. And we're offering it for that  
15 purpose, to be clear.

16 Q BY MS. MALKANI: Has -- shall I repeat the question?

17 A Yes, please.

18 Q Has Ms. Perez ever told you or indicated to you that she  
19 was an activities director?

20 A Yes. She always -- "Henrietta Perez, activity director."

21 Q When has she told you?

22 A Just in the introduction when I met her. Just you could  
23 ask her what she was and -- and also in -- when we were having  
24 a meeting for the observers, she also -- and we asked her what  
25 her title was and she said, "I'm the activity director."

1 Q Okay. And have you seen her sign any documents using the  
2 title --

3 A Oh, yeah.

4 Q -- activities director?

5 A At the -- in the patients' charts, it's H Perez, AD.  
6 That's --

7 Q And how --

8 A -- what she signs.

9 Q -- how recently have you seen --

10 MR. GOLDSTEIN: Objection --

11 Q BY MS. MALKANI: -- Ms. Perez --

12 MR. GOLDSTEIN: This is all irrelevant.

13 Q BY MS. MALKANI: -- sign --

14 HEARING OFFICER VENTOLA: Again, I ruled earlier that the  
15 only issue is the supervisory status of this. To the extent  
16 that Petitioner's arguing that the title is indicative of or  
17 bears some -- has some bearing on employee perception in that  
18 issue itself is relevant. The evidence will be admitted for  
19 that purpose.

20 MS. MALKANI: And that's what we're offering it for.

21 Q BY MS. MALKANI: How recently has Ms. Perez -- have you  
22 seen Ms. Perez sign documents where she writes AD?

23 A It's been a while. Like when I was -- I don't know, when  
24 I would go through the patient's chart just to make sure when  
25 we do the ADLs and all this stuff -- well, whenever I got

1 floated there in the -- and we have to do the ADLs for the  
2 morning, and if there's any problems at the end, there's a --  
3 like a progress note where you just write what the problem or  
4 the issue was and she would write in there.

5 Q So prior to March of 2012?

6 A Yeah. Any time. Yeah, any time.

7 Q Okay.

8 HEARING OFFICER VENTOLA: Sir, you said ADL. What does  
9 that stand for?

10 THE WITNESS: Activities of daily living.

11 HEARING OFFICER VENTOLA: And what is that?

12 THE WITNESS: To chart like how much times (sic) the  
13 patient voided; if you did like oral care, if the patients had  
14 a bowel movement, if the -- and then the progress note is if  
15 you had any issues. If the patient was combative or didn't  
16 want to get dressed or refused to get dressed that morning, you  
17 would chart all that in the ADL communication book.

18 HEARING OFFICER VENTOLA: And is that for all patients in  
19 the SNF and swing --

20 THE WITNESS: Yes.

21 HEARING OFFICER VENTOLA: -- units?

22 THE WITNESS: Yes, ma'am.

23 HEARING OFFICER VENTOLA: Proceed.

24 MS. MALKANI: Thank you. Just one moment.

25 Q BY MS. MALKANI: When you were last a CNA, do you recall

1 approximately what your hourly wage was?

2 MR. GOLDSTEIN: Objection; relevance.

3 HEARING OFFICER VENTOLA: And how is that relevant?

4 MS. MALKANI: We're arguing that she's paid far more than  
5 CNAs.

6 MR. GOLDSTEIN: Objection; relevance.

7 MS. MALKANI: It's relevant to what is one -- it's  
8 secondary indicia as to --

9 MR. GOLDSTEIN: But if she were --

10 MS. MALKANI: -- whether or not someone's a supervisor.

11 MR. GOLDSTEIN: -- paid on a salary basis, that might be,  
12 but just whatever her wage rate is is irrelevant to the  
13 determination of whether or not she's a supervisor.

14 MS. MALKANI: It's --

15 HEARING OFFICER VENTOLA: I'll allow the answer.

16 THE WITNESS: I was making -- I'm trying to -- I'm actually  
17 trying to think. 12 -- 12 -- no. 14.10. When I -- when I  
18 was -- but this wage will be the wage that I got as a unit  
19 clerk with tele experience. It's 14.10. The -- it's a dollar  
20 difference for having tele experience.

21 Q BY MS. MALKANI: A dollar higher?

22 A Yes.

23 Q Okay. And what is that experience?

24 A It's like the monitor -- the heart monitors for the  
25 patient as a tele tech.

1 Q Okay. And as a CNA, what were -- what did you learn?

2 MR. GOLDSTEIN: Objection; relevance. They're different  
3 job classifications as well. Whether -- what he earns as a  
4 CNA, how does that bear on whether or not an activities  
5 coordinator is a supervisor?

6 HEARING OFFICER VENTOLA: Counsel, do you want to respond  
7 to that?

8 MS. MALKANI: Yeah. How much -- how much he earns -- how  
9 much the other employees who are performing similar duties earn  
10 in relation to what she earns is relevant if her earnings are  
11 substantially higher than what these other employees are doing  
12 in general; then that is one -- I mean, this is some evidence  
13 of supervisory status.

14 HEARING OFFICER VENTOLA: To the extent that -- you know,  
15 let's move along and just answer it. Go ahead and answer the  
16 question, sir, but let's move through this fairly quickly.

17 THE WITNESS: Okay. When I started as a CNA, I was making  
18 9.36 an hour. That's in 2006.

19 Q BY MS. MALKANI: Okay. Do you recall what you were making  
20 as a CNA when you --

21 A Transferred to Med-Surg?

22 Q -- transferred to Med-Surg. Yeah.

23 A It was 9.36 when I transferred to Med-Surg still.

24 Q Okay.

25 A And then it -- yeah. And then, you know, just your annual

1 increases in wages. And that's when it went to 14.

2 MS. MALKANI: Okay. No further questions.

3 **CROSS-EXAMINATION**

4 Q BY MR. GOLDSTEIN: When you were a CNA, who wrote your  
5 performance evaluations?

6 A The -- well --

7 Q Was it Barbara and Janeel?

8 A Barbara O'Connor and Janeel and Felisha.

9 Q And who is Felisha?

10 A She was a Med-Surg manager.

11 Q Okay.

12 A Or director.

13 Q Ms. Perez didn't write your performance evaluations, did  
14 she?

15 A No.

16 Q Ms. Perez, never gave you a written discipline, did she?

17 A No. None -- no other managers ever got me -- gave me a  
18 disciplinary either.

19 Q And you say that one time she talked to you privately in a  
20 room because a patient hadn't been changed?

21 A A patient was changed but voided.

22 Q Okay. And did she tell you that anything was gonna be  
23 placed in your personnel file?

24 A No. I --

25 Q And was your pay affected by that conversation?

1 A No.

2 Q Was your employment status affected by that conversation?

3 A No.

4 Q And if a patient voids on him or herself, should that be a  
5 cause for concern for someone who's a CNA?

6 A Yeah. You change the patient as soon -- or any patient --  
7 or CNA that is available would change that patient.

8 Q Okay. So if you hadn't seen it, Henrietta saw it and  
9 said, "This patient needs to get changed" --

10 A Or go change -- if she was just a CNA just like me, she  
11 would change it herself.

12 Q Right. Because a patient isn't allowed to remain in a  
13 state of having voided all over him or herself?

14 A Not at all. Never.

15 Q Okay. But that would be a bad thing, right?

16 A Oh, yeah.

17 Q All right. What could the consequences be?

18 A You could get a sore or something.

19 Q And couldn't that also be abuse and neglect?

20 A Yes. If -- if -- yeah, if the person that seen it  
21 initially seen it and left it alone, yes, it could be neglect  
22 or abuse.

23 MR. GOLDSTEIN: Okay. I have nothing more.

24 HEARING OFFICER VENTOLA: Did you testify that you  
25 encountered -- that you would have -- not every time you

1 worked, where you were required to be in the activities area,  
2 that you encountered her -- Ms. Perez?

3 THE WITNESS: No. No. I would -- I -- every time I would  
4 work, I would be -- just in patients' areas and she would come  
5 out and talk to us there outside. I -- or the only interaction  
6 I would have with the activities area is taking a patient there  
7 and dropping him or her off and --

8 HEARING OFFICER VENTOLA: And that you frequently -- or let  
9 me -- did you testify that when you had interactions with her,  
10 it was -- the -- the only times that you would, would it be  
11 when patients weren't ready?

12 THE WITNESS: Yeah -- or no. When you drop off a patient  
13 or down the halls, you know, "good morning" or whatever, you  
14 know. But that's not the only interaction we had. There was  
15 -- there was -- yes, when patients weren't ready, she would  
16 come out and, you know, tell us, you know, "Patients" -- "Why  
17 isn't the patient ready?" Ask the question. But you see her,  
18 you say good morning. Or when you drop a patient off, you say,  
19 "Hey, you know, Mr. or Mrs. so and so's here," and you just  
20 walk away. And she goes, "Okay," and you walk away.

21 HEARING OFFICER VENTOLA: So now was there a reason why  
22 you -- did you consider that -- when she would ask you why a  
23 patient wasn't ready, you considered that to be a disciplinary  
24 discussion?

25 THE WITNESS: Well, if a -- if you -- if -- yes. Because

1 if -- if you -- if the patient isn't ready and you explain it  
2 to her, you know, "The patient refused to get ready today."  
3 Or, you know, "I'm gonna get to that patient next." And she's  
4 like, "No. You need to get to that patient now." Or just not  
5 taking the refusal into any consideration, that -- I would  
6 not -- you know, that is somebody supervising you, making sure  
7 you go and do what you need to do in a timely manner, and  
8 that's, you know --

9 HEARING OFFICER VENTOLA: So with those conversations, did  
10 it -- did those occur -- how frequently did that conversation  
11 occur? You said 25 percent of the time that your patients  
12 weren't ready for activities?

13 THE WITNESS: Yeah. Or -- when I would work, I would try  
14 to have my patients ready. But at night, you don't have to get  
15 the people ready. But it would be when I'm giving report to  
16 the next coming on CNA, then the CNA would be, "Can you please  
17 help me get her ready because we need to have her in" --  
18 Henrietta would say, you know, "This patient, this patient,  
19 this patient needs to be ready by this time." So we would --  
20 the CNA would say, "Can you please help me before you go home  
21 to help get" -- "have her ready?" And we would get them ready.

22 HEARING OFFICER VENTOLA: So would you -- if you were  
23 working the night shift --

24 THE WITNESS: Uh-huh.

25 HEARING OFFICER VENTOLA: -- and you would -- would you

1 take the patient to the activities area?

2 THE WITNESS: No. But when I work day shift I would.

3 HEARING OFFICER VENTOLA: And when did you work the day  
4 shift?

5 THE WITNESS: And from '06 to '07 and then off and on  
6 through when I transferred to Med-Surg, I -- you -- and I never  
7 had a set schedule, like a set night schedule. Some days I  
8 would work -- I would be a night person but if they needed me  
9 during the day, they would just trade me and to put me in day  
10 shift or whatever.

11 HEARING OFFICER VENTOLA: But your personal encounters with  
12 Ms. Perez would occur when you were transporting patients to  
13 the activities area?

14 THE WITNESS: Or giving report to another CNA.

15 HEARING OFFICER VENTOLA: But would Ms. Perez be present  
16 when you were reporting --

17 THE WITNESS: No, she would go --

18 HEARING OFFICER VENTOLA: -- to that other CNA?

19 THE WITNESS: -- looking for us. She should go looking for  
20 us.

21 HEARING OFFICER VENTOLA: Oh. So on -- so before you  
22 left -- even when you were in the night shift, you --

23 THE WITNESS: Uh-huh.

24 HEARING OFFICER VENTOLA: -- might have an encounter with  
25 Ms. Perez?

1 THE WITNESS: Oh, yeah.

2 HEARING OFFICER VENTOLA: If she was looking for the other  
3 CNA?

4 THE WITNESS: Yes.

5 HEARING OFFICER VENTOLA: And was that separate from  
6 conversations you -- did -- you mentioned some conversations  
7 with her were in her office?

8 THE WITNESS: No. She was -- in like a room, a private  
9 room. Like a patient's room or -- you know, in a patient's  
10 room or in the hallway.

11 HEARING OFFICER VENTOLA: So would she ask you to go to a  
12 -- to leave a different area because she wanted to speak with  
13 you?

14 THE WITNESS: No. No. No.

15 HEARING OFFICER VENTOLA: Would these conversations just  
16 occur wherever you happened to be?

17 THE WITNESS: Yeah. Or if we're in the hall -- like for  
18 that -- when that patient was voided with this -- you know,  
19 when I worked in SNF or swing, I wheeled the patient and she  
20 followed me into the room and --

21 HEARING OFFICER VENTOLA: Was the patient present when she  
22 was speaking to you?

23 THE WITNESS: Yes. Just, you know, "This patient shouldn't  
24 be wet. Why was he left wet?" And I -- and I was trying to  
25 say, you know, "I did change him. I did" -- "he must have

1 voided sometime during his activities."

2 HEARING OFFICER VENTOLA: Was there ever a time when -- did  
3 she have an office when you -- during the time, I guess, before  
4 March of 2012?

5 THE WITNESS: Inside the activities room there's like  
6 another little room where she had --

7 HEARING OFFICER VENTOLA: Did she ever call you into her  
8 office to have a discussion with you?

9 THE WITNESS: No. No.

10 HEARING OFFICER VENTOLA: And other than -- so did you  
11 consider any time that she spoke to you to be disciplinary --

12 THE WITNESS: Well, yeah, because --

13 HEARING OFFICER VENTOLA: -- if it was about a --

14 THE WITNESS: Yeah, because --

15 HEARING OFFICER VENTOLA: -- patient -- and I'm sorry.

16 THE WITNESS: Oh, I'm sorry. I'm sorry.

17 HEARING OFFICER VENTOLA: The court reporter --

18 THE WITNESS: Uh-huh.

19 HEARING OFFICER VENTOLA: -- is recording this. So if we  
20 speak over each other, the transcript --

21 THE WITNESS: Oh, I'm sorry.

22 HEARING OFFICER VENTOLA: -- is gonna be unclear.

23 THE WITNESS: Okay.

24 HEARING OFFICER VENTOLA: So we need to make sure that I  
25 finish my question before you start answering.

1 THE WITNESS: Okay. I'm sorry.

2 HEARING OFFICER VENTOLA: And that's fine. It's easy to  
3 forget.

4 So any time that she spoke with you, if she had a question  
5 about a patient, you -- you considered that to be disciplinary?

6 THE WITNESS: Well, not if it was just a question. But  
7 when I did -- when that patient was voided, that was -- I felt  
8 that was like a reprimantation (sic throughout). But not --  
9 not if it's a question about a patient. It's not always being  
10 a -- being reprimanded.

11 HEARING OFFICER VENTOLA: Did you have other -- other than  
12 the incident -- was that in 2000 -- with the patient voiding --

13 THE WITNESS: Uh-huh.

14 HEARING OFFICER VENTOLA: -- were there other times like  
15 that that stand out in your mind that you thought were  
16 reprimands, or were most of these other conversations you had,  
17 did you consider not disciplinary?

18 THE WITNESS: I just thought it was part -- you know, it  
19 was part of my duty. I need to have this patient ready or this  
20 patient needs to be ready to be in activities and if the  
21 patient's not ready, she would come and say, "Hey, why isn't"  
22 -- you know, question us about it. "Why isn't the patient  
23 ready? Why he doesn't want to get up?" Or, you know -- and  
24 it's just -- you know, sometimes you take care of ten patients  
25 by yourself. Sometimes you can't have all of them ready by a

1 timely manner.

2 But the patient -- if the patient was willing to get ready  
3 and willing to get up to go to activities, the -- the patient  
4 was gonna go to activities, just maybe not at the time she  
5 wanted them to be there. So just because I was a little late,  
6 I mean, she had to come out and tell me -- or tell us, "Why  
7 isn't the patient" -- question us about it? So that's -- as  
8 her questioning about it -- not reprimanding -- I don't know.  
9 I don't know. Maybe my definition of reprimantation and yours  
10 might be different. But that's not reprimantation. But if --  
11 if my patient's gonna be there, he's gonna be there. Trust me.  
12 Like my patient's gonna have his activities.

13 HEARING OFFICER VENTOLA: Was there a discipline system  
14 that you were aware of, a disciplinary policy?

15 THE WITNESS: Not that -- no. Not until -- not even now.

16 HEARING OFFICER VENTOLA: In writing?

17 THE WITNESS: No. I've never seen it.

18 HEARING OFFICER VENTOLA: Were you ever told of any  
19 disciplinary system?

20 THE WITNESS: No.

21 HEARING OFFICER VENTOLA: And so I guess my earlier  
22 question was in interaction with her where she's questioning  
23 you about a patient --

24 THE WITNESS: Uh-huh.

25 HEARING OFFICER VENTOLA: -- when you said reprimand, is

1 that what you were referring to?

2 THE WITNESS: Well, the -- her -- her tone of voice, the  
3 way she confronted me was, I guess, yeah, reprimantation, the  
4 way she confronted me. It wasn't like, "Hey, you know, where's  
5 your patient? Is your patient" -- it was like, "Why isn't your  
6 patient ready? Why are you running late? Why did he not want  
7 to go to activities?" That's the way. It wasn't like, "Hey,  
8 you know, don't" -- or, "Hey, you know, that patient needs to  
9 be there by 9:00," you know. "Don't forget."

10 HEARING OFFICER VENTOLA: And -- and, for the record, I  
11 will -- because your tone increased when you were --

12 THE WITNESS: Yeah.

13 HEARING OFFICER VENTOLA: -- on the "why" and I need to  
14 have the record reflect that --

15 THE WITNESS: Oh, okay.

16 HEARING OFFICER VENTOLA: -- because the record doesn't  
17 pick up tones.

18 THE WITNESS: Oh.

19 HEARING OFFICER VENTOLA: So, just for the record to  
20 reflect that when you were indicating your answer, that her  
21 volume increased when she would ask you, and that's part of the  
22 reason -- is that correct, that's part of the reason why you  
23 considered it to be a reprimand?

24 THE WITNESS: Yes.

25 HEARING OFFICER VENTOLA: All right. I don't have any

1 further questions.

2 Do either counsel have any other questions?

3 MR. GOLDSTEIN: No.

4 MS. MALKANI: No.

5 HEARING OFFICER VENTOLA: Thank you, sir.

6 THE WITNESS: Thank you.

7 MR. GOLDSTEIN: Let me just call our witnesses. You have  
8 one more, right?

9 MS. MALKANI: Uh-huh.

10 MR. GOLDSTEIN: So I'll just call them to tell them to make  
11 their way over there. So --

12 HEARING OFFICER VENTOLA: Off the record.

13 (Off the record at 1:24 p.m.)

14 Whereupon,

15 **EMY SANCHEZ**

16 having been duly sworn, was called as a witness herein and was  
17 examined and testified as follows:

18 HEARING OFFICER VENTOLA: Would you state and spell your  
19 name for the record?

20 THE WITNESS: Emy Sanchez, E-M-Y; Sanchez, S-A-N-C-H-E-Z.

21 HEARING OFFICER VENTOLA: All right.

22 Go ahead.

23 **DIRECT EXAMINATION**

24 Q BY MS. MALKANI: Afternoon, Ms. Sanchez.

25 THE COURT REPORTER: Excuse me. I'm sorry.

1 Ms. Sanchez, it's not necessary to sit --

2 THE WITNESS: Oh, sorry.

3 THE COURT REPORTER: -- close to the --

4 THE WITNESS: Oh, okay.

5 THE COURT REPORTER: -- microphone.

6 THE WITNESS: Okay.

7 THE COURT REPORTER: So just relax, sit in the chair and it  
8 will pick you up fine.

9 THE WITNESS: Oh, okay.

10 THE COURT REPORTER: Thank you.

11 THE WITNESS: Thank you.

12 Q BY MS. MALKANI: Where are you employed?

13 A I'm employed at King City Mee Memorial Hospital.

14 Q How long have you been working there?

15 A I've been working there since March 2008.

16 Q Okay. And what is your current job position?

17 A I am currently employed as a CNA, but starting in (sic)  
18 the 15th, I will be an LVN. Uh-huh.

19 Q The 15th of January?

20 A This month, yeah.

21 Q Okay.

22 A In January.

23 Q Since March of 2008, have you been working as a CNA?

24 A Yes.

25 Q Okay. And are you -- do you work in any particular units

1 or departments?

2 A I've -- I -- I usually float around in the Med-Surg, OB  
3 department. Sometimes -- I'm also an RNA. Sometimes -- that's  
4 Restorative Nursing Assistant too.

5 Q Okay.

6 A Yeah.

7 Q And do you work at all in the Skilled Nursing Facility?

8 A Yes.

9 Q Okay.

10 A Uh-huh.

11 Q How -- often do you work there?

12 A I work there most of the time. Just ever since, you know,  
13 2000 -- since 2008.

14 Q Okay.

15 A And -- yeah. Uh-huh. So I just keep -- I keep floating  
16 around, but mostly I -- I work there in that department.

17 Q So if you're assigned to work through Med -- can you  
18 explain that to me? If you're assigned --

19 A Med-Surg --

20 Q -- to work through Med-Surg, does that mean that even  
21 though you're --

22 A So --

23 Q Let me finish. Even though you're assigned to work  
24 through Med-Surg, does that mean that some days you'll still be  
25 working at SNF?

1 A Yes. I'll be -- well, if -- if they are short staffed in  
2 a specific department, like Med-Surg or OB department, they  
3 will sent (sic) me over there and then the next day I'll be  
4 back to my old schedule at the -- at the SNF and skilled  
5 nursing department, yeah.

6 Q So -- so where do you -- what department -- which  
7 department -- do you primarily work at SNF?

8 A I -- I primarily work at the skills nursing department.  
9 I'm mostly floating around at the SNF. And as -- either way.  
10 It's on the same floor. I -- I float in different, you know --  
11 what they call S teams. Some working with -- well, different  
12 -- every day I'm working with different -- different patients.  
13 I don't have my own group like a permanent group of patients,  
14 which other CNAs they work with a permanent amount of group in  
15 like, say, two to three months and then they change to another  
16 group. But me, I just -- I float around different patients.

17 Q Okay.

18 A Uh-huh.

19 Q And so you -- the patients you primarily care for are in  
20 which area?

21 A Oh, SNF and -- and swing as, you know --

22 Q Okay.

23 A Yeah.

24 Q And SNF is Skilled Nursing Facility?

25 A Yes. Uh-huh.

1 Q Okay. And swing is what?

2 A Swing is like acute care area for, you know -- for  
3 patients when they're -- they're from Med-Surg and they can  
4 just stay in a particular amount of time for their care and  
5 their -- I -- early, like they're going home for -- like they  
6 just stay just for three months or -- or about a year until  
7 they get better.

8 Q And they stay --

9 A And then for -- yeah, for SNF, the skilled nursing,  
10 they're just there for -- it's like a -- a nursing home. So  
11 they stay there for a long time.

12 Q Okay. Do you know Henrietta Perez?

13 A Yes, I do.

14 Q How do you know her?

15 A She is the activity director. She managed the activity  
16 department.

17 Q Okay.

18 A Uh-huh.

19 Q And how did you come to know her?

20 A She works in the same floor as we do in -- in the -- in  
21 the SNF and swing unit department.

22 Q Okay.

23 A Uh-huh.

24 Q What is your understanding of how the activities program  
25 fits in with serving patients in the units where you work?

1 A It -- well, it's supposed -- what do you mean? I don't  
2 understand. Like --

3 Q The patients that you -- that you --

4 A Uh-huh.

5 Q -- assist --

6 A Yes. Uh-huh.

7 Q -- how do they come into contact with the activities  
8 program?

9 A They are assigned. So she'll come in the morning and --

10 Q Okay. And who is "she"?

11 A Oh, Henrietta. Henrietta Perez will come in the morning,  
12 greet the patients and inform the agenda to the patients; like  
13 at 10:00 in the morning there will be haircuts, worshipping,  
14 nail care, maybe some cooking or something. And then at 2:00  
15 -- at 1:30 she will do bingo or a movie. And if the patients  
16 are agreed to come, she will, you know, jot it down and, you  
17 know, make a list and she will tell us these patients will be  
18 adjoin (sic throughout) -- will adjoin for activities for the  
19 -- 10:00 one and the -- or the 1:30.

20 Q Okay.

21 A Uh-huh.

22 Q And how often do you directly -- so how -- how -- in what  
23 way do you come into contact with -- with Ms. Perez, as you've  
24 just described?

25 A Usually I see her three to five days a week, yeah.

1 Q Okay.

2 A So --

3 Q And does she ever tell you what to do?

4 A Yeah. There's -- there's a lot of things she tells us to  
5 do. We have to -- she'll -- she'll give us a list of the  
6 patients that she needs, that needs their haircuts or get their  
7 nail care. She'll give us a list, and if they're not there,  
8 she's, you know, "Where are those patients," like to tell  
9 them -- you know, "Well the patient's still sleeping. They  
10 didn't want to go. They changed their mind. They don't want  
11 to do it." So, you know -- or, "Just get them dressed and  
12 ready for activities for the" -- "for the program."

13 Q Okay.

14 A Uh-huh.

15 Q And does she give you any directions on how to get the  
16 patients ready for the programs?

17 A She just want (sic) them to get them shaved and clean,  
18 dress appropriately. If she doesn't see like an appropriate  
19 blouse, like it's reveal -- very revealing, she might tell us  
20 that, "Oh, turn them around. Get them a different blouse.  
21 Change them." If they're not shaved, she would tell them,  
22 "Nope." You know, "Go back. They have should be shaved." If  
23 they're -- you know, their hair is not combed or clean, "Go  
24 back. They need to be cleaned up. Pants needs to be fixed. Go  
25 back. They just need to be fixed."

1 Q Okay.

2 A Uh-huh.

3 Q And you've just given some examples. Have -- have you  
4 personally heard Ms. Perez --

5 A She --

6 Q -- has -- are these things she's told you about patients?

7 A She does this a couple of times with me. She -- I see --  
8 I experiencing those with my co-workers. So --

9 Q Okay. Can you --

10 A -- yeah.

11 Q Can you give a couple specific examples of times when she  
12 has talked to you about how you've brought a patient to  
13 activities?

14 A Like exactly the example, like if the -- if the blouse is  
15 not -- if it's too low cut or it's just kind of too revealing,  
16 she'll tell -- it was like, "Nope. That blouse has to be  
17 changed."

18 Q Okay. So is this --

19 A Yeah.

20 Q -- a specific instance you're talking about?

21 A Yes. Uh-huh.

22 Q So this is -- and when -- when did this occur?

23 A I can't -- I can't recall that. But I know -- it was not  
24 really recently. I know sometime -- like sometime during --  
25 between the summer until now, because I start --

1 Q The summer of 2012 --

2 A Yeah.

3 Q -- until now?

4 A Yeah. 2012, yeah.

5 Q There was an incident where you brought a patient to  
6 activities --

7 A Yeah.

8 Q Okay.

9 A Yeah.

10 Q And Ms. Perez didn't like the blouse she was wearing?

11 A Yes. Yeah.

12 Q Or felt it was inappropriate?

13 A Yeah. Yeah.

14 Q Okay. And what did she -- what did --

15 A Just --

16 Q When did you have this conversation with Ms. Perez?

17 A Well --

18 Q Where was it? Was it in --

19 A It was --

20 Q Sorry.

21 HEARING OFFICER VENTOLA: I'm gonna just try to remind you  
22 both that you need to wait until she's completed asking a  
23 question before you start. The record can't pick up --

24 THE WITNESS: Okay.

25 HEARING OFFICER VENTOLA: -- can't record both of your

1 voices at the same time.

2 THE WITNESS: Okay.

3 Q BY MS. MALKANI: Where were you when you had this  
4 conversation with Ms. Perez?

5 A I think I was outside of the patient's room on the way to  
6 the activity department area. Yeah.

7 Q And she saw you there and --

8 A Uh-huh. Yeah. Like --

9 Q -- what happened? Let me finish --

10 A Sorry.

11 Q -- and then I'll try to give you a chance to finish.

12 When Ms. Perez -- what did she say to you, to the best of  
13 your recollection?

14 A She told me -- like, okay, "The blouse is too low. You  
15 can see her breasts, you know, coming out." We had to change  
16 the blouse. So, you know, she said she -- or -- I mean, like  
17 you have to change the blouse. Not me -- not her. I have to  
18 change the blouse like -- you know, because she was getting  
19 patients inside the rooms too.

20 Q Okay. And what did you do?

21 A I had to change the blouse.

22 Q So you --

23 A Uh-huh.

24 Q -- took the patient back to her room and changed her?

25 A Yes, correct.

1 Q Okay. And then did you -- what happened after that?

2 A That's it. I just -- I changed the blouse and then I'm  
3 the -- I leave (sic) the patient -- you know, into something  
4 appropriate (sic) and she'll say, "Oh, that's much better," and  
5 then I will bring the patient inside.

6 Q Okay.

7 A Uh-huh.

8 Q Can you give me another example of when Ms. Perez told you  
9 something about how your patient was brought to activities?

10 A I recall when I was starting working as a CNA in '08 --  
11 MR. GOLDSTEIN: Objection; relevance.

12 HEARING OFFICER VENTOLA: Because of the time frame?  
13 Counsel, do you want to respond?

14 MS. MALKANI: It's -- I mean, it's still Ms. Perez in the  
15 same capacity, directing CNAs. So I think it's relevant.

16 THE WITNESS: Uh-huh. Well --

17 HEARING OFFICER VENTOLA: If you can, go ahead and answer  
18 the question.

19 THE WITNESS: Well, okay. Well, this is before I worked at  
20 the 3:00 to 11:00 p.m. I was -- I was -- when I started  
21 hired -- hired as a CNA, I also worked in a morning shift with  
22 her and I -- we had to get patients ready for the activities.  
23 And the patients -- and one of the male patients, he wasn't  
24 shaved, so she -- before we'll bring the patient to the  
25 activity room, she says, "Nope. That patient is not shaved.

1 Turn around. Shave the patient."

2 MS. MALKANI: Okay.

3 THE WITNESS: Uh-huh.

4 Q BY MS. MALKANI: And --

5 HEARING OFFICER VENTOLA: And, I'm sorry, that was in 2008?

6 THE WITNESS: Yes. Between 2008 or early 2009.

7 HEARING OFFICER VENTOLA: And has that happened since then?

8 THE WITNESS: I can't recall with me, but --

9 HEARING OFFICER VENTOLA: With you is --

10 THE WITNESS: No.

11 HEARING OFFICER VENTOLA: -- what I'm asking about.

12 THE WITNESS: No, not with me lately. Because once that  
13 lesson was learned, I never done (sic) that again. Like, you  
14 know --

15 Q BY MS. MALKANI: Have you seen Ms. Perez talk to any of  
16 your co-workers about how a patient was brought to activities?

17 A Yes. Basically it's --

18 Q Okay. When -- when was the most recent time you saw? Can  
19 you give us the most recent example you can think of?

20 A I can't remember because of -- like there's associating  
21 with the New Year's Eve, you know, get the patients ready and  
22 -- we had like a New Year's Eve party.

23 Q Are you talking about December 31st --

24 A Yes.

25 Q -- 2012?

1 A Yes. Uh-huh.

2 Q Okay.

3 A That was like for I think for 3:00. We had -- she wanted  
4 most of the patients to attend over there. So -- and -- and  
5 she has to have of the C -- I think two or three CNAs were  
6 there to help to assist her with -- I wasn't there. I didn't  
7 see, but --

8 MR. GOLDSTEIN: Objection. I'm gonna move to strike the  
9 entire testimony on the basis that the witness wasn't there and  
10 any report she got would have been hearsay, and it's also after  
11 the election.

12 HEARING OFFICER VENTOLA: So I'm going to --

13 I think she asked you for the most recent example of -- of  
14 when you heard her telling somebody what to do --

15 THE WITNESS: Oh, okay.

16 HEARING OFFICER VENTOLA: -- if you can just stick to that.

17 THE WITNESS: Oh, okay.

18 HEARING OFFICER VENTOLA: So that you actually heard.

19 THE WITNESS: Uh-huh -- not actually heard. Like did --

20 HEARING OFFICER VENTOLA: I'm sorry. Was that the  
21 question?

22 MS. MALKANI: That was my question, yeah.

23 THE WITNESS: Yeah. Oh, sorry. I just can't --

24 Q BY MS. MALKANI: Was -- was there another incident  
25 involving shaving where you saw her tell someone what to do?

1 A I can't remember. Oh, wait, now that I see that --  
2 whenever a patient is not shaved, I see Michelle Pina does the  
3 shaving. And I don't know if she delegated her to do the  
4 shave -- to shave those patients, because I wasn't there.

5 Q Okay.

6 A Yeah.

7 Q And who is --

8 HEARING OFFICER VENTOLA: Go ahead.

9 Q BY MS. MALKANI: Who is Michelle Pina?

10 A Michelle Pina is -- she claims to be her assistant,  
11 activity assistant.

12 Q Okay. Did Michelle tell you that she's Ms. Perez'  
13 activity assistant?

14 MR. GOLDSTEIN: Objection; hearsay.

15 THE WITNESS: Uh-huh.

16 HEARING OFFICER VENTOLA: Counsel may --

17 MS. MALKANI: I'll withdraw --

18 HEARING OFFICER VENTOLA: -- respond.

19 MS. MALKANI: -- it.

20 HEARING OFFICER VENTOLA: Okay.

21 MS. MALKANI: That's fine.

22 Q BY MS. MALKANI: Have you seen Ms. Perez tell Ms. Pina  
23 what to do?

24 A Yeah. There's things that she does a couple of times.

25 HEARING OFFICER VENTOLA: Can we lay a foundation at this

1 point?

2 MS. MALKANI: Sure.

3 HEARING OFFICER VENTOLA: Thank you.

4 Q BY MS. MALKANI: How -- have you had the occasion to  
5 observe personally -- have you personally seen Ms. Perez  
6 interact with Ms. Pina?

7 A Yes.

8 Q Okay.

9 A Uh-huh.

10 Q On more than one occasion?

11 A A couple of occasions, yeah. More than one, yeah.

12 Q Okay. How often have -- how is it that you've come to  
13 observe Ms. Perez interact with Ms. Pina?

14 A Lately usually I see them together maybe two to three  
15 times a week. Yeah.

16 Q And how is it that you come to see them together?

17 A Usually she will work on days when she's not working or if  
18 she's just not hardly working.

19 Q Okay. I don't -- I'm sorry. I didn't --

20 A Sorry.

21 Q -- understand that.

22 A Yeah.

23 Q Can you explain that to me?

24 A Yeah. She's not --

25 Q Who is "she"?

1 A Michelle Pina. She's not hardly -- she's -- she works  
2 on -- Michelle Pina usually work (sic) on days when Henrietta  
3 Perez is -- is -- is not working. Like she'll take over  
4 Henrietta or -- or -- or she's not -- or Michelle Pina's not  
5 hardly working. I usually see that she's not hardly working.  
6 But usually I just see them together like two or three times a  
7 week or usually -- or I just see her mostly in the office  
8 with -- with Henrietta Perez.

9 Q Okay. So -- so you see them interact together --

10 A Yeah.

11 Q -- two or three times a week?

12 A Yeah. Uh-huh.

13 Q Okay. So they do work together on certain --

14 A Yeah.

15 Q -- days or they don't? I was confused about that.

16 A They just -- they work together on certain days. It's --

17 Q But not every day?

18 A Not every day.

19 Q Okay. How -- can you give me a couple examples of -- of  
20 where you've seen them --

21 MR. GOLDSTEIN: Relevance.

22 Q BY MS. MALKANI: -- interact?

23 MR. GOLDSTEIN: Objection; relevance.

24 Q BY MS. MALKANI: How they --

25 HEARING OFFICER VENTOLA: Do you want to respond to that?

1 MS. MALKANI: I'm trying to lay a foundation for testimony  
2 about how the two interact, which is whether one is telling the  
3 other not to -- what to do or not, which is I think relevant.

4 HEARING OFFICER VENTOLA: I think the initial question was,  
5 "Have you ever seen Ms. Perez" --

6 MS. MALKANI: Tell Ms. Pina --

7 HEARING OFFICER VENTOLA: -- "tell Ms. Pina" --

8 MS. MALKANI: -- what to do.

9 HEARING OFFICER VENTOLA: -- "what to do?" And when I  
10 meant foundation, I was more -- mostly thinking --

11 MS. MALKANI: Time.

12 HEARING OFFICER VENTOLA: -- of a particular date, time and  
13 place rather than a general statement. And I believe that  
14 that -- I would allow that answer -- that question.

15 MS. MALKANI: Okay.

16 THE WITNESS: Uh-huh.

17 Q BY MS. MALKANI: Have you ever seen Ms. Perez tell  
18 Ms. Pina what to do?

19 A Yes.

20 Q Okay.

21 A A couple --

22 Q Can you name a specific instance when you've seen that?

23 A Like when they're doing nail care, she will tell Michelle  
24 Pina to work with these specific patients.

25 HEARING OFFICER VENTOLA: And, I'm sorry, do -- can we --

1 MS. MALKANI: Foundation.

2 HEARING OFFICER VENTOLA: Foundation. When did that happen  
3 and who was doing the nail care and --

4 THE WITNESS: As Michelle Pina and Henrietta Perez are  
5 doing the nail care.

6 Q BY MS. MALKANI: Okay. And when -- when did that --  
7 you're -- you're remembering a specific occasion right now?

8 A They usually do nail care every week. But I could recall  
9 on this special occasion sometime around November of I --

10 Q Okay.

11 A -- can't say -- I can't recall specifically what day or --

12 Q So --

13 A Yeah.

14 Q -- sometime in November of --

15 A Yeah.

16 Q -- 2012?

17 A Yeah, 2012.

18 Q Okay. You recall they were both doing nail care?

19 A Yeah.

20 Q And what -- in what way was Ms. Perez telling Ms. Pina  
21 what to do?

22 A The -- she will work with these patients while she worked  
23 with these specific patients. So that's what she will tell her  
24 to do. Like --

25 Q Okay.

1 A Yeah.

2 Q And have you -- did you ever -- have you ever seen

3 Ms. Pina tell Ms. Perez what to do?

4 A No.

5 Q Have you ever told Ms. Perez what to do?

6 A No.

7 Q Have you seen any other CNA ever tell Ms. Perez what to

8 do?

9 A No.

10 Q Has Ms. Perez ever assigned you additional tasks?

11 A There was a new task that we did lately. It's filling --

12 filling out patient's menu. Usually -- she used to help do it

13 before, but now there was -- I wasn't -- I don't know why it

14 was sudden (sic) changed that why, we have to end up doing it,

15 us CNAs to do -- filling out the patient's menu.

16 Q Okay. So --

17 A Yeah.

18 Q -- who -- you said she used to do the patient's --

19 A Yeah.

20 Q Hold on. Let me finish my question, please.

21 A That's okay.

22 Q You said -- who is "she" that used to fill out the

23 patients' menus previously?

24 A Henrietta Perez and sometimes Michelle Pina. Yeah.

25 Q And recently someone told you to start filling out the

1 patients' menus?

2 A It was her who said -- who said that.

3 Q Who is "she"?

4 A Henrietta Perez.

5 Q Okay. And when did Henrietta Perez tell you to start  
6 filling out the patient menus?

7 A I can't recall exactly the date, but I knew it was not  
8 more than two months ago. Like say it's November again. Uh-  
9 huh.

10 Q Of 2012?

11 A Yeah, 2012.

12 Q Okay. Have you ever assigned additional job duties, like  
13 filling out patient menus to a co-worker?

14 A For a co-worker? No.

15 Q Have you ever told a -- have you ever gone to a co-worker  
16 and said, "You need to" -- "You need to do this other duty?"

17 A No.

18 Q Okay. Has Ms. Pina ever assigned you additional job  
19 duties, like filling out patient menus?

20 A No.

21 Q Okay. Who usually assigns you additional job duties, like  
22 filling out a patient menus?

23 MR. GOLDSTEIN: Objection; vague.

24 Q BY MS. MALKANI: Or do you have a -- do you have a -- do  
25 you understand my question?

1 A Like who -- who gives us, you know, duties to do or  
2 something? It's mostly -- if we have to do these things, it  
3 has to be, you know, cleared from our managers and our  
4 supervisor. Yeah.

5 Q And who --

6 A Uh-huh.

7 Q -- who are those managers and supervisors --

8 A Our manager --

9 Q -- who usually tell --

10 A -- is --

11 Q Let me finish.

12 A Oh, sorry.

13 Q -- who usually give -- assign your job duties?

14 A Janeel Wilber, Raye Ann Houx. Raye Ann Houx is our  
15 supervisor.

16 Q Okay.

17 A Uh-huh.

18 Q And aside from Janeel and Raye Ann, does anyone other than  
19 Ms. Perez ever give you direct instructions on what to do?

20 A No. Huh-uh.

21 Q One moment.

22 MS. MALKANI: No further questions.

23 MR. GOLDSTEIN: All right. Thank you.

24 **CROSS-EXAMINATION**

25 Q BY MR. GOLDSTEIN: Do you also go -- or did you used to go

1 by the name Emy Mante?

2 A Yes, correct.

3 Q Okay.

4 A Yeah.

5 Q And you've gotten married since then?

6 A I was married since 2008, but I finally changed my last  
7 name since the beginning of 2012.

8 Q Okay. So, Ms. Sanchez, your performance evaluation is  
9 written by Janeel Wilber, right?

10 A Yes, correct.

11 Q And it's not written my Henrietta Perez?

12 A No.

13 Q You've received a -- a written discipline for absenteeism,  
14 did you not, in 2010?

15 MS. MALKANI: I'm gonna object on relevance.

16 THE WITNESS: That's okay.

17 MR. GOLDSTEIN: It's who issued her the discipline.

18 HEARING OFFICER VENTOLA: I'll allow the answer.

19 THE WITNESS: Uh-huh.

20 Q BY MR. GOLDSTEIN: You received a written discipline for  
21 absenteeism in 2010, did you not?

22 A I can't recall. But maybe so, yeah.

23 MR. GOLDSTEIN: Okay. Well, I'll have marked as Employer's  
24 Exhibit 1 a corrective action -- active -- corrective action  
25 counseling --

1 THE WITNESS: Uh-huh.

2 MR. GOLDSTEIN: I have four copies. Is that -- will he get  
3 one later? Okay.

4 HEARING OFFICER VENTOLA: Yeah.

5 MR. GOLDSTEIN: So here's two.

6 HEARING OFFICER VENTOLA: Actually, you can give him --

7 MR. GOLDSTEIN: One.

8 HEARING OFFICER VENTOLA: -- one of these now.

9 MR. GOLDSTEIN: Okay.

10 THE WITNESS: Oh, do I keep one?

11 HEARING OFFICER VENTOLA: Can you hand that back -- hand --

12 THE WITNESS: Okay.

13 HEARING OFFICER VENTOLA: -- me that? I'll let you see  
14 mine.

15 MR. GOLDSTEIN: Okay.

16 HEARING OFFICER VENTOLA: And you've marked this --

17 MR. GOLDSTEIN: Exhibit -- Employer's Exhibit 1.

18 HEARING OFFICER VENTOLA: Employer's 1.

19 THE WITNESS: Oh, I'm sorry.

20 Q BY MR. GOLDSTEIN: Okay. And does this refresh your  
21 memory as whether -- as to whether or not you got a discipline  
22 for absenteeism in 2010?

23 A Does this mean like I didn't attend to work on that day?

24 Q No. The document says what it says. Is that your  
25 signature on the document --

1 A "Approve attendance" --

2 Q -- where it says, "Employee's Signature"?

3 A Yes.

4 Q Okay. And who signed under manager's signature?

5 A Janeel.

6 Q Okay. And do you recall Janeel discussing this counseling  
7 with you?

8 A In 2010. Now I recall. And I can't remember.

9 Q Now, Henrietta's never issued you a corrective action  
10 counseling, has she?

11 A No.

12 Q So you specifically recall two occasions when Ms. Perez  
13 told you that either a patient's blouse was too -- too  
14 revealing or --

15 A Uh-huh.

16 Q -- a patient wasn't shaved, correct?

17 A Yes.

18 Q Okay. Other than on those two occasions, are there any  
19 other occasions where Ms. Perez ever told you that you needed  
20 to do something with respect to a patient?

21 A Not -- not if I could remember.

22 MR. GOLDSTEIN: Okay. I have nothing more.

23 HEARING OFFICER VENTOLA: Do you use a time clock?

24 THE WITNESS: Yes, I do.

25 HEARING OFFICER VENTOLA: And do you have to wear a

1 uniform?

2 THE WITNESS: Yes, we do.

3 HEARING OFFICER VENTOLA: And is -- is that scrubs?

4 THE WITNESS: Yes.

5 HEARING OFFICER VENTOLA: Okay. And do you receive any  
6 health insurance benefits?

7 THE WITNESS: Not from the hospital. I have my husband's  
8 insurance.

9 HEARING OFFICER VENTOLA: Would you have benefits through  
10 the hospital?

11 THE WITNESS: I had it before. But I was employed as a per  
12 diem employee because I was going to school full time, so --

13 HEARING OFFICER VENTOLA: So the hospital provided vacation  
14 and then you have -- health insurance benefits were available  
15 to you as a full-time employee?

16 THE WITNESS: Yeah. Only for full time and part-time  
17 employers (sic).

18 HEARING OFFICER VENTOLA: Okay. And do you -- do you  
19 receive overtime pay if you work overtime?

20 THE WITNESS: Yes. Uh-huh.

21 HEARING OFFICER VENTOLA: Okay. And the patient menus that  
22 you had mentioned, is that for every meal?

23 THE WITNESS: That's for every meal, correct.

24 HEARING OFFICER VENTOLA: And so that's now something the  
25 CNAs are doing?

1 THE WITNESS: Yes.

2 HEARING OFFICER VENTOLA: And are there any other employees  
3 in the activity -- is the activities department a separate  
4 department?

5 THE WITNESS: We always think it is as a different  
6 department, yeah.

7 HEARING OFFICER VENTOLA: And who are the employees in that  
8 department?

9 THE WITNESS: It's Henrietta Perez and Michelle Pina.

10 HEARING OFFICER VENTOLA: And nobody else?

11 THE WITNESS: Nobody else, except the -- I think the  
12 volunteers.

13 HEARING OFFICER VENTOLA: Okay.

14 THE WITNESS: Yeah.

15 HEARING OFFICER VENTOLA: Nothing further.

16 Does -- do either counsel have any further questions?

17 MR. GOLDSTEIN: No.

18 HEARING OFFICER VENTOLA: Thank you, ma'am, for your  
19 testimony. You're --

20 THE WITNESS: Oh, thank you very much.

21 HEARING OFFICER VENTOLA: -- finished.

22 THE WITNESS: All right then.

23 MR. GOLDSTEIN: Can we have a brief recess before I call --

24 HEARING OFFICER VENTOLA: Yes.

25 MR. GOLDSTEIN: -- my witness? Okay.

1 MS. MALKANI: Okay.

2 MR. GOLDSTEIN: Thank you. You're -- you're done, right?

3 MS. MALKANI: Well, yeah. The only thing is I do want to  
4 introduce some of the documents that you produced, which we  
5 might be willing to stip to. I don't know.

6 MR. GOLDSTEIN: Okay.

7 THE COURT REPORTER: Are we off the record?

8 HEARING OFFICER VENTOLA: Off the record. Thank you.

9 (Off the record at 1:55 p.m.)

10 HEARING OFFICER VENTOLA: All right. At this time, I'm  
11 going to receive into evidence Employer Exhibit 1 with no  
12 objection.

13 Is that correct?

14 MS. MALKANI: Correct.

15 **(Employer Exhibit Number 1 Received into Evidence)**

16 HEARING OFFICER VENTOLA: And we're entering into evidence  
17 Petitioner's Exhibits 1 through 8, which were received pursuant  
18 to a subpoena from the Employer without any objection.

19 So, P Exhibits 1 through 7 -- or 8, excuse me, are  
20 admitted into evidence.

21 **(Petitioner Exhibit Numbers 1 through 8 Received into Evidence)**

22 HEARING OFFICER VENTOLA: There is no objection as to the  
23 authenticity of P-9.

24 Counsel for the Employer, you have an objection as to  
25 the --

1 MR. GOLDSTEIN: Relevance.

2 HEARING OFFICER VENTOLA: -- relevancy of P-9.

3 Do you want to state that on the record?

4 MR. GOLDSTEIN: Yeah, I object to the relevancy of the  
5 document.

6 HEARING OFFICER VENTOLA: Counsel?

7 MS. MALKANI: Yes, under this California Code of  
8 Regulations, the first document, P-9, is the manual -- the  
9 state operations manual that governs provider certification.  
10 On page -- the pages are not marked, but I would represent  
11 that one, two, three, four pages from the end of the document,  
12 there is just discussion about a regulation that governs  
13 activities directors as a federal regulation.

14 And it's relevant for what it is, which is the  
15 responsibilities of an activities director in general at  
16 skilled nursing facilities are -- every skilled nursing  
17 facility is required to have an activities director that  
18 engages in the responsibility -- who takes on the  
19 responsibilities as stated.

20 And to the extent that Ms. Perez has been identified as  
21 the activities director at Mee Memorial Hospital, this would  
22 seem to indicate that any activities director there who was in  
23 comp -- who's working at a facility that's required to be in  
24 compliance with these federal regulations, this is the state's  
25 operations manual as to how they determine whether an

1 individual is in compliance.

2 And per this -- we submit this alongside P-10, which is --  
3 it shows that Mee Memorial Hospital in particular -- the actual  
4 title of the document of P-10 is statement of deficiencies and  
5 plan of correction.

6 So, the -- it -- P-10 is -- appears to be signed by the  
7 CEO or the form -- whatever, if he's still the CEO or the  
8 former CEO of the hospital of 9/8/10.

9 And there is a reference in terms of the plan of  
10 correction, the provider's plan of correction. In the  
11 right-hand column there is repeated reference to an activities  
12 director. The activities director is referenced as a she. The  
13 activities director is referenced separately from the SNF  
14 manager.

15 And so, all of this represents statements from the  
16 hospital that they have an activities director who effectively  
17 meets the state certification requirements.

18 MR. GOLDSTEIN: May I re --

19 MS. MALKANI: Because this is a plan of correction  
20 following a statement of deficiency. So, you know, we don't --  
21 it's a business record. And we offer it for what it is and  
22 we'll argue it.

23 MR. GOLDSTEIN: May I respond?

24 Again, the issue of whether or not Ms. Perez is an  
25 activities director is not a subject of this hearing, it's

1 whether or not she's a supervisor and whether or not there's a  
2 state regulation that may apply to someone called an activities  
3 director. That doesn't determine whether or not her day to day  
4 functions involve the indicia under Section 211 of the Act.

5 So, this document, we've got the job description from Mee  
6 Memorial. We're going to have her testify; you had other  
7 people testify, whether there's a state document out there  
8 doesn't bear on whether or not Ms. Perez is actually  
9 supervising someone.

10 If she's not following what's in whatever the state  
11 regulation is, that's a different issue. But whatever the  
12 state regulation states isn't pertinent to whether or not she's  
13 supervising. What she actually does is what is pertinent to  
14 whether or not she's a supervisor.

15 MS. MALKANI: Well --

16 MR. GOLDSTEIN: These documents don't have any bearing on  
17 that. And, you know, they may have bearing on the issue of  
18 whether or not -- on the issue of activities director, but  
19 that's not an issue that's a subject of this hearing.

20 The sole issue is whether or not she is a supervisor.

21 MS. MALKANI: Well, the regs themselves -- and, again,  
22 this is law and I think because we're having this discussion,  
23 I'm feeling like the Union would -- the Petitioner would also  
24 request briefing; we never addressed that issue so we can  
25 explain this.

1           But the state regs actually -- the state and the federal  
2   regs require that the person who is activities director,  
3   activities leader, you can call her what you want, the hospital  
4   chose to use the words activities director in the plan of  
5   correction. And we just feel like that is what it is, that's  
6   what they chose to call her.

7           But the regs also speak to supervision. And part of what  
8   activities directors or activities leaders, those terms are  
9   used interchangeably in the state licensing documentation, part  
10   of what that individual who is identified as being, you know,  
11   a -- the person who fills that title, I don't think title is  
12   dispositive, but I think it's of some bearing in that sense,  
13   part of what they're supposed to do is supervise individuals.

14          And so, the fact that the -- you know, these are -- this  
15   is the interpretation manual of what an activities director is  
16   supposed to do in terms of fulfilling these licensing  
17   requirements.

18          The hospital is subject to the licensing requirements.  
19   They have -- they -- you know, the CEO has signed a document  
20   where in their plan of correction, they reference that there's  
21   an activities director there that has been engaging -- you  
22   know, meeting the certification.

23          So --

24          HEARING OFFICER VENTOLA: All right. To the -- with  
25   respect to P-9, it seems to me that these are state -- a state

1 protocol for what -- when the State investigates a facility to  
2 determine compliance.

3 And to the extent anything in this manual or anything in  
4 this protocol -- you know, whether or not the hospital is  
5 complying with this, I don't think that this document  
6 establishes whether or not Ms. Perez would have any of the  
7 duties set forth in this document.

8 I mean, I don't think that the --

9 MS. MALKANI: Well --

10 HEARING OFFICER VENTOLA: -- but --

11 MS. MALKANI: -- if I'm --

12 HEARING OFFICER VENTOLA: -- with that being said, you  
13 know, I see in here that there is -- it says activities  
14 directors responsibilities.

15 So, to the extent that the state requires and activities  
16 director or the federal or the state and federal and that they  
17 define it in a certain way, whether or not the -- Ms. Perez  
18 actually possesses or exercises any statutory authority, I  
19 think that they're two different questions, to the extent that  
20 her duties are reflected or any duties might be discussed.

21 So, I understand your objection.

22 I'm going to allow the documents into evidence, not  
23 because they establish necessarily that Ms. Perez would -- I  
24 mean, I think you'll have to establish that through other  
25 evidence. These are just state -- this is just the state

1 manual.

2 MS. MALKANI: Right.

3 HEARING OFFICER VENTOLA: And to the extent that this P-10  
4 refers to an activities director or reflects any duties and to  
5 the extent that those would be relevant to an analysis of the  
6 authority or duties of Ms. Perez, I believe that it's arguably  
7 relevant. And I will admit both of the documents.

8 So, Petitioner's P-1 through P-10 are admitted into  
9 evidence.

10 **(Petitioner Exhibit Numbers 9 and 10 Received into Evidence)**

11 HEARING OFFICER VENTOLA: Employer counsel, do you want to  
12 call your first witness?

13 MR. GOLDSTEIN: Sure.

14 Whereupon,

15 **HENRIETTA PEREZ**

16 having been duly sworn, was called as a witness herein and was  
17 examined and testified as follows:

18 HEARING OFFICER VENTOLA: Will you please state and spell  
19 your name for the court reporter?

20 THE WITNESS: Henrietta Perez; H-E-N-R-I-E-T-T-A,  
21 P-E-R-E-Z.

22 **DIRECT EXAMINATION**

23 Q BY MR. GOLDSTEIN: Ms. Perez, who is your employer?

24 A Mee Memorial Hospital.

25 Q What's your position?

1 A Activity coordinator.

2 Q How long have you worked in the hospital?

3 A Twenty-four and a half years.

4 Q Have you sometimes also been referred to as an activities  
5 director?

6 A Yes.

7 Q Okay. And when about do you believe your job title was  
8 changed to activities coordinator?

9 A It was changed approximately, you know, maybe 2008/2009.

10 Q Are you paid by the hour or by salary?

11 A By the hour.

12 Q And if you work more than eight hours in a day, what  
13 happens?

14 A I get overtime.

15 Q Now, as an activities coordinator, can you just briefly  
16 describe what your job duties are?

17 A My job duties are to interview a resident as they come in  
18 for their likes and dislikes on activities. My job is to  
19 implement activities, prepare care plans, progress notes that  
20 go into the chart, daily visits to each resident every morning  
21 to inform them of what the activities are, state the time that  
22 the activities are starting and implement the activity of the  
23 day. There's one for the morning and one for the afternoon.

24 Q And those activities are for patients?

25 A Yes.

- 1 Q Who is your supervisor?
- 2 A Janeel Welburn.
- 3 Q What is her position?
- 4 A Department manager.
- 5 Q Are you the only activities coordinator?
- 6 A No.
- 7 Q How many others are there?
- 8 A Two, myself and one more.
- 9 Q Who is the other?
- 10 A Michelle Pina.
- 11 Q How long has she been working as an activities  
12 coordinator?
- 13 A Well, I can't remember exactly the date that she was hired  
14 as the activities person, but I want to say 2009.
- 15 Q Did you hire her?
- 16 A No.
- 17 Q Did you sit in on an interview of her?
- 18 A Yes.
- 19 Q Did you recommend to Ms. Welburn or to anybody else that  
20 she be hired?
- 21 A No.
- 22 Q Were you the one that made the hiring decision?
- 23 A No.
- 24 Q Did you sit in on interviews of anybody else?
- 25 A Of whoever the applicants were.

1 Q And did you -- why were you sitting in on the interviews?

2 A To inform them of what the position and what the job was  
3 going to be entailing, what it was going to be about.

4 Q Were they going to be working under you?

5 A Not that I understood.

6 Q What did you understand --

7 A We were going to work together; co-workers.

8 Q Do you tell Michelle Pina what to do?

9 A No, we collaborate on the calendar of the activities.

10 Q Can you describe how you and Ms. Pina collaborate?

11 A Well, before we collaborate, we have a resident council  
12 meeting once a month. And at that resident council meeting,  
13 every resident has given its opinion as to what they'd like to  
14 have as activities for that day or that month.

15 Then we work out a schedule as to what day we will be  
16 doing what. And we work together on it.

17 Q Do you assign her shifts?

18 A No.

19 Q Do you assign her patients?

20 A No.

21 Q Does -- how does she get assigned which patient she works  
22 with and how do you get assigned which patients you work with?

23 A They are assigned by -- I had the first floor, so I had --  
24 I worked the first floor only. She worked the second floor, so  
25 she took everybody on the second floor.

1 Q And since that time, has everything been consolidated  
2 to --

3 A Yes.

4 Q -- one floor? Can we get a timeframe on when things were  
5 separated on different floors?

6 A Well, we only got together on the one floor most recently,  
7 maybe four or five months ago when they moved all the residents  
8 to the second floor.

9 Q Prior to that time, activities were conducted on separate  
10 floors?

11 A Correct.

12 Q Okay. And would you and Michelle do the activities  
13 together on the same floor or would you each do activities  
14 separately on --

15 A No, they --

16 Q -- different floors?

17 A -- were separate; separate calendars for the likes of each  
18 floor and separate activities. The only time that the  
19 activities would be held together would be on Wednesdays  
20 because it was worship services.

21 Q Have you ever hired anyone?

22 A No.

23 Q Have you ever recommended to Janeel or anyone else that  
24 somebody be hired?

25 A No.

1 Q Do you have the power to transfer employees from  
2 activities to another department or from another department  
3 into activities?

4 A No.

5 Q Have you ever recommended that that happen?

6 A No.

7 Q Do you have the power to suspend employees?

8 A No.

9 Q Have you ever done that?

10 A No.

11 Q Have you ever recommended that that happen?

12 A No.

13 Q Do you have the power to lay off employees?

14 A No.

15 Q Have you ever done that?

16 A No.

17 Q Have you ever recommended that?

18 A No.

19 Q Do you have the power to promote employees?

20 A No.

21 Q Have you ever recommended that employees be promoted?

22 A No.

23 Q Do you have the power to recall employees who have been  
24 laid off?

25 A No.

- 1 Q And have you ever recommended that?
- 2 A No.
- 3 Q Do you have the power to terminate employees?
- 4 A No.
- 5 Q Have you ever recommended that anyone be terminated?
- 6 A No.
- 7 Q Have you ever issued anyone a written counseling?
- 8 A No.
- 9 Q Do you have the power to issue anyone a written  
10 counseling?
- 11 A No.
- 12 Q Have you ever recommended that anyone receive a written  
13 counseling?
- 14 A No.
- 15 Q Do you have the power to affect whether or not employees  
16 get raises?
- 17 A No.
- 18 Q Have you ever recommended that employees get raises?
- 19 A No.
- 20 Q Have you ever verbally counseled another employee?
- 21 A No.
- 22 Q Do you write performance evaluations?
- 23 A No.
- 24 Q Do you write Michelle Pina's performance evaluation?
- 25 A No.

1 Q Do you write any CNA's performance evaluations?

2 A No.

3 Q All right. I'd like to show you what's been marked as  
4 Petitioner's Exhibit 1. Can you take a moment to review that,  
5 which is the job description?

6 Okay. Have you had a chance to review the job  
7 description?

8 A Yes.

9 Q Is that your signature on the last page?

10 A Yes.

11 Q Okay. And just looking on page 1 of the job description,  
12 where it's written essential functions, numbers 1 through 5, do  
13 you think those -- do those accurately reflect what your job  
14 is?

15 A Yes.

16 Q Okay. On number 1C, it says implements the program  
17 developed and supervises those person assigned to the  
18 activities program.

19 Does that mean that you supervise the CNAs and the other  
20 activities coordinator?

21 A Well, the CNAs are not involved in the activity.

22 Okay. And Michelle, like I said, has done her own  
23 activities up until the second floor. I supervise the  
24 activities, but there's no CNAs in the activities. And --

25 Q Do you supervise the patients that are in the activities?

1 A Correct.

2 Q Okay. Some -- there's been some testimony from some CNAs  
3 that you've instructed them to have patients shaved.

4 A Uh-huh.

5 Q Have you done that?

6 A I may have, yes.

7 Q Yeah, why'd you do that?

8 A It's a dignity issue.

9 Q Now, if a patient -- if you saw a patient that wasn't  
10 shaved and the CNA didn't shave that patient, did you ever  
11 discipline that CNA?

12 A No.

13 Q Were you ever disciplined because a CNA who you told to  
14 shave a patient didn't have that patient shave?

15 A No.

16 Q Could you have been disciplined if you told a CNA to shave  
17 somebody and they didn't?

18 MS. MALKANI: Objection; calls for speculation.

19 MR. GOLDSTEIN: If she knows.

20 MS. MALKANI: I mean -- well, I think foundation too then.

21 HEARING OFFICER VENTOLA: What's your foundation  
22 objection?

23 MS. MALKANI: How does she -- does she have an  
24 understanding of what it would take for her to --

25 HEARING OFFICER VENTOLA: Do you understand that you're

1 responsible for how the CNAs perform?

2 THE WITNESS: I'm not sure if I understand correctly, what  
3 do you mean --

4 HEARING OFFICER VENTOLA: I'll let you follow --

5 THE WITNESS: -- responsible?

6 HEARING OFFICER VENTOLA: -- up with --

7 Q BY MR. GOLDSTEIN: Are you responsible for making sure  
8 that the CNAs shave their patients?

9 A It's not my responsibility to oversee them, but if I see a  
10 patient who needs something done and I ask or I say -- but that  
11 doesn't mean they'll do it.

12 Q Right. And if they didn't do it, what would you do?

13 A There's nothing I can do.

14 Q Okay.

15 A If I can't find the aide, I go to the nurse and let her  
16 know and then that's on her.

17 Q All right. And now I'd like you to take a look at -- can  
18 I have that back?

19 Thank you.

20 Employer -- I'm sorry, Petitioner's Exhibit 4, which is a  
21 performance evaluation for 2012.

22 A What's this --

23 Q No, that wasn't supposed to be in there, that's another  
24 document.

25 A Okay.

1 Q Okay. Do you recognize this as your performance  
2 evaluation?

3 A Yes, for this past year.

4 Q Okay. Who is Pam La Montagne?

5 A Pam La Montagne was our unit manager, our department  
6 manager.

7 Q So, was that Janeel's supervisor?

8 A No, at the time she was the man -- department manager.

9 Q Okay. And then Janeel -- is that Janeel Welburn's  
10 signature under evaluator signature?

11 A Yes.

12 Q Do you know what Janeel's relationship with Pam was?

13 A No.

14 Q Or whether that was just a typo that --

15 A No, Pam La Montagne did my evaluation --

16 Q Okay.

17 A -- before she left. Janeel reviewed it with me when she  
18 came onboard.

19 Q Okay. So, there was a time when Pam was your direct  
20 supervisor?

21 A Correct.

22 Q Okay. And what period of time was that?

23 A Everything before roughly around September 10th maybe, I  
24 don't know what day exactly Janeel came onboard, but --

25 Q Okay. Now, how are the activity schedules for the

1 patients determined, is that something you do?

2 A Well, we basically do activities in the morning and we do  
3 one in the afternoon. And whoever that comes or we go and  
4 bring in because they can't come by themselves, they're  
5 scheduled -- they start at 9:30 and go through until 11:15.

6 Then we prep for lunch. The patients have lunch. And  
7 then we come back about 1:30 and start the afternoon session.

8 Q Okay. Do you make up the schedules for the CNAs?

9 A No.

10 Q Do you know who does?

11 A No.

12 Q Now, say there's an activity that's supposed to start at  
13 9:30, is the -- whose responsibility is it to get the patients  
14 into the area where the activity is being held?

15 A It is the CNA's responsibilities.

16 Q Okay. And do you assign them that job of bringing the  
17 patients to the activities room?

18 A No, sir.

19 Q Who does that?

20 A I don't know.

21 Q Okay. Now, have you ever disciplined a CNA for not  
22 getting a patient to your activities on time?

23 A No.

24 Q Or for any reason for not getting a patient to activities  
25 in a certain manner or dress?

- 1 A No.
- 2 Q And do you have your own office?
- 3 A Yes.
- 4 Q Or do you share it with Michelle?
- 5 A We -- the two activity people -- the activities staff now  
6 has one office.
- 7 Q Okay. And the activities staff, meaning you and Michelle?
- 8 A Correct.
- 9 Q And how big is the office?
- 10 A Maybe from that third shelf to there.
- 11 Q Okay.
- 12 A I'm sorry.
- 13 Q Given that whoever might be reading this transcript can't  
14 see our room, so you're estimating --
- 15 A It's maybe --
- 16 Q -- maybe about --
- 17 A -- nine by ten.
- 18 Q Thank you. Thank you. Did you ever instruct CNAs that it  
19 was now their responsibility to come up with the menus for the  
20 patients?
- 21 A No, not come up with the menus. The menus come up on the  
22 trays --
- 23 Q Okay. Well --
- 24 A -- already.
- 25 Q Was there an occasion where you and Michelle used to fill

1 out the menus and now that's been changed?

2 A Yes, sir.

3 Q How did you learn of that change?

4 A Janeel gave it to us.

5 Q Was that change made at your direction?

6 A No, sir.

7 Q What did Janeel say?

8 A Janeel said she was giving it to the new team leaders.

9 Q So, the fact that a CNA may now be filling out a menu,  
10 that wasn't a decision that you made?

11 A No, sir.

12 HEARING OFFICER VENTOLA: Who are team leaders, I'm sorry?

13 THE WITNESS: Team leaders are this -- two CNAs, but only  
14 one at a time, will be, what I understand, is in charge of the  
15 seven or eight CNAs that are on the floor at that time.

16 So, they're an extra pair of hands to help out whenever  
17 needed type thing.

18 HEARING OFFICER VENTOLA: And the team leaders are CNAs  
19 and they're the ones that are now filling out the --

20 THE WITNESS: I don't know if they're filling them out,  
21 but it was my understanding that that was going to be given to  
22 them.

23 HEARING OFFICER VENTOLA: Sorry.

24 MR. GOLDSTEIN: Okay.

25 Q BY MR. GOLDSTEIN: Was there ever an occasion where

1 Michelle Pina was -- where you reviewed her paperwork and  
2 determined that she wasn't filling things out like she was  
3 supposed to?

4 A We do chart audits, yes.

5 Q Okay. Who instructs you to do chart audits?

6 A Pam La Montagne.

7 Q Okay. And so, there were occasions where -- does Michelle  
8 also do audits?

9 A Michelle was on vacation -- or, no, she was sick, excuse  
10 me.

11 Q Okay.

12 A She was sick at that time.

13 Q So, when was this when you had to do the chart audit?

14 A It wasn't this past year but it was the year before, she  
15 was off for like eight weeks.

16 Q Okay.

17 A So, we had to catch up with the paperwork. And so, I was  
18 told to do a chart audit.

19 Q Okay. And did you ever discuss with Michelle the results  
20 of your audit?

21 A No, I handed it in to Pam.

22 Q Okay. Did you ever tell Michelle that she was not doing  
23 the paperwork properly?

24 A No.

25 Q Did you ever counsel her for not doing the paperwork

1 properly?

2 A No.

3 Q Did you ever discipline her for not doing her paperwork --

4 A No.

5 Q -- properly? Remember to let me finish the question so --

6 A I'm sorry.

7 Q -- the court reporter can get everything.

8 Do you recall some occasion when you were on vacation when  
9 you got called regarding whether or not to approve certain  
10 singers that wanted to do an activity at the hospital?

11 A I may have been called.

12 Q Okay. Do you know -- have any reason to believe why you  
13 would have been called regarding that particular activity?

14 A I was probably called because it was straying from the  
15 activity that was on the calendar for that day.

16 Q And who is the one that makes the calendar for the  
17 activities?

18 A We do.

19 Q Okay. We is who?

20 A Me and -- Michelle and I.

21 Q Okay. Have you ever instructed CNAs that a patient needs  
22 to be changed because they voided on themselves?

23 A Yes, sir.

24 Q Okay. Why'd you do that?

25 A A dignity issue.

1 Q Did you ever write up a CNA for bringing a patient to an  
2 activity that had dirty diapers?

3 A No.

4 Q Did you ever write them up for not changing them when you  
5 asked them to?

6 A No.

7 Q Could you have written them up?

8 A No.

9 Q If patients are ever late for a particular activity, do  
10 you ever ask the CNAs why they're late?

11 A No.

12 Q Do you recall a conversation with Miguel -- did you know  
13 who Miguel Villarreal is?

14 A No.

15 Q Okay. Is he -- he's a CNA, does that ring any bells?

16 Okay.

17 A No.

18 Q Did you ever verbally counsel a male CNA?

19 A Not that I can recall.

20 Q Okay. Did you ever give any written counseling to a male  
21 CNA?

22 A No.

23 Q Did you give -- ever give a list to CNAs of patients who  
24 need haircuts?

25 A Yes, sir.

1 Q Okay. And how was that determined?

2 A It's determined because I make my daily rounds every day.  
3 I visit the patient. At that point in time, I ask the patient  
4 if they need a haircut. If they say yes, I put him on a list.  
5 I give each aide the copy so that they'll know that those  
6 patients need to come to the activities to get a haircut.

7 Say, for instance, a patient gets a shower that day, you  
8 may want to rethink giving him the shower until after he's had  
9 the haircut.

10 Q Okay. And if a patient doesn't get a haircut that you've  
11 put on the list, can you discipline the CNA for that?

12 A No.

13 Q Have you ever done that?

14 A No.

15 Q Do you recall some occasion with -- do you know a CNA name  
16 Emy Sanchez?

17 A Yes.

18 Q Do you recall some occasion where you had a discussion  
19 with her about a resident that had a revealing blouse?

20 A I don't recall the exact conversation, no.

21 Q Do you recall an occasion where you had a discussion with  
22 Emy Sanchez about a patient who had a revealing blouse and  
23 Ms. Sanchez said that you instructed her to change the blouse?

24 A Well, I may have if it was a revealing blouse because it's  
25 a dignity issue.

1 Q All right. And if she hadn't have changed the blouse,  
2 would you have written her up?

3 A No.

4 Q Did you ever tell a CNA that you were their supervisor?

5 A No.

6 Q Did you ever tell Michelle that you were their supervisor?

7 A No.

8 Q Have you ever been written up because Michelle Pina didn't  
9 do a certain task?

10 A No.

11 Q Are you held responsible for what Michelle does?

12 A I've never been informed of that.

13 Q Do you know what the interdisciplinary team is?

14 A Yes.

15 Q What is it?

16 A The interdisciplinary team is a team of all disciplines in  
17 the hospital that are -- that work around our residents.

18 Q Who's --

19 A They --

20 Q -- on the team?

21 A Dietary, social services, activity, MDS coordinator,  
22 nurse, CNA.

23 Q Are -- do you and Michelle serve on those committees?

24 A Yes.

25 Q And in -- what is the job of that committee?

1 A The job of that committee is to meet; we review each  
2 resident once every three months. Say, for instance, for  
3 example, a resident is losing weight and dietary brings it to  
4 our attention. Then we need to figure out a way of either  
5 getting more food, more intake, into that patient or by using  
6 supplements, by using -- keeping a better eye on what he  
7 intakes at breakfast and lunch and dinner, those type of  
8 things. It's a working team for the better of the patient.

9 Q So, is that just deals with manager level employees are on  
10 that team?

11 A No.

12 Q Who -- so, CNAs are also on the team?

13 A They are.

14 Q LVNs?

15 A Yes.

16 Q RNs?

17 A Yes.

18 Q Okay. Do you know anything about a patient care policy  
19 committee?

20 A No.

21 Q Okay. What about an infection control committee?

22 A No.

23 MR. GOLDSTEIN: Okay. I have nothing more.

24 **CROSS-EXAMINATION**

25 Q BY MS. MALKANI: Good afternoon, Perez.

1 A Hi.

2 Q I believe you testified that in 2008 or 2009 you believe  
3 your title changed from activities coordinator to -- I mean,  
4 I'm sorry, from activities director to activities coordinator,  
5 is --

6 A No.

7 Q -- that correct? Okay.

8 A From activity coordinator to activity director.

9 Q So, in 2008 or 2009, your title changed from activities  
10 coordinator to activity director?

11 A Yes.

12 Q Okay. And then, do you know why?

13 A No.

14 Q Okay.

15 A I was given a new badge from HR and that's --

16 Q Okay.

17 A -- what it said.

18 Q Okay. So, prior to 2009 -- 2008/2009, your title was  
19 always activities coordinator?

20 A Yes.

21 Q Okay. And after 2000 and -- when did you title change  
22 back to activities coordinator, was after the election?

23 A I think so.

24 Q Okay.

25 A Yes.

1 Q And so, at the time of the election, you had a badge that  
2 said activities director?

3 A Yes.

4 Q Okay. And you had that from 2008/2009 until after the  
5 election?

6 A Yes.

7 Q Okay. And that's why -- do you recall during the  
8 election, you may have heard about this, there was an issue and  
9 a Board agent asked you whether or not you were an activities  
10 director or --

11 MR. GOLDSTEIN: I'm --

12 Q BY MS. MALKANI: -- asked you what your title was, do you  
13 recall that conversation?

14 MR. GOLDSTEIN: I'm going to object again on that issue  
15 has been administratively determined and it's not relevant --

16 MS. MALKANI: It's --

17 MR. GOLDSTEIN: -- on this.

18 MS. MALKANI: -- a secondary -- sorry.

19 HEARING OFFICER VENTOLA: I'm going to -- for the same  
20 reasons as before, I will allow the question and give it the  
21 weight that it's accorded.

22 MS. MALKANI: Okay.

23 Q BY MS. MALKANI: Do you recall during the -- a prehearing  
24 conference, someone from the NLRB asking you what your title  
25 was?

1 A Yes.

2 Q And do you recall someone saying, wait, are you an  
3 activities director or an activities coordinator and you said  
4 I'm an activities director, I'm not an activities coordinator,  
5 correct?

6 A I don't recall that.

7 Q Okay. But at that time, you were an activities director,  
8 that was your --

9 A That's what my --

10 Q That was your job title?

11 A That is what my ID badge says.

12 Q Okay. That was what your ID badge said at that time.

13 And do you recall in 2000 and -- or prior to 2008, do you  
14 recall being named an employee of the month and being referred  
15 to as an activities director?

16 MR. GOLDSTEIN: Objection; relevance.

17 HEARING OFFICER VENTOLA: I'm assuming it's your same --

18 MS. MALKANI: Well, she just testified that her title  
19 changed from activities coordinator to activities director in  
20 2008/2009.

21 Q BY MS. MALKANI: Is that your testimony?

22 A Yes.

23 Q Okay.

24 MR. GOLDSTEIN: You know, again, this testimony of what  
25 her job title was is not relevant and whether --

1 MS. MALKANI: Well --

2 MR. GOLDSTEIN: -- at one point in time she called herself  
3 a director or a coordinator, it's not relevant to the issue of  
4 what her job duties are of whether or not she supervises  
5 anyone.

6 And going back to 2008 and 2009 and asking her what her  
7 title was and what -- whether the documents that show it,  
8 that's irrelevant to the issue here. That issue has already  
9 been determined administratively.

10 So, we're -- it's not relevant to the issues that are at  
11 hand.

12 MS. MALKANI: It is. I mean, there's even a Board case  
13 that says, you know, title alone is not dispositive of  
14 supervisor status.

15 It's clearly relevant --

16 MR. GOLDSTEIN: That's --

17 MS. MALKANI: -- it's not --

18 MR. GOLDSTEIN: That's exactly my point.

19 MS. MALKANI: And I'm not arguing that it alone is  
20 dispositive, it's one factor that I'm offering testimony on.

21 HEARING OFFICER VENTOLA: Proceed with your questioning  
22 and let's move through this.

23 MS. MALKANI: Okay.

24 Q BY MS. MALKANI: Isn't it true that you were always --  
25 well, I'm going to show -- offer a document.

1 MS. MALKANI: I'll mark this as Union -- or  
2 Petitioner's 11.

3 THE COURT REPORTER: Yes.

4 **(Petitioner Exhibit Number 11 Marked for Identification)**

5 Q BY MS. MALKANI: Please review what's been marked as  
6 Petitioner's 11 and turn your attention to the final page.

7 MR. GOLDSTEIN: Ms. Hearing Officer, this is an October  
8 2003 document. Just on its face, I'm going to object that this  
9 is nine years old. This is --

10 HEARING OFFICER VENTOLA: I do believe that we're kind of  
11 far afield at this point.

12 MS. MALKANI: And just -- I'm trying to establish that --

13 HEARING OFFICER VENTOLA: I don't think that there's  
14 any --

15 MS. MALKANI: Well --

16 HEARING OFFICER VENTOLA: -- dispute that at one point her  
17 title was activities director.

18 MR. GOLDSTEIN: We'll stipulate to the --

19 MS. MALKANI: That it was --

20 MR. GOLDSTEIN: -- that at one -- at some point in time  
21 she was called activities director and that title was changed  
22 on or about --

23 MS. MALKANI: After the election.

24 MR. GOLDSTEIN: No.

25 MS. WONG: No.

1 MS. MALKANI: Well, that's --

2 MS. WONG: No, her badge was changed after the election,  
3 after it was brought to our attention her badge was not  
4 reflective of her title. But if you look at the personnel  
5 documents, it was changed prior to.

6 MS. MALKANI: I think that --

7 MR. GOLDSTEIN: In June of --

8 MS. MALKANI: -- two --

9 MR. GOLDSTEIN: -- 2011.

10 MS. MALKANI: You know, I'm trying to establish that the  
11 two terms have been used interchangeably and that -- whoever  
12 you want to call it --

13 MR. GOLDSTEIN: It was --

14 MS. MALKANI: -- the activities director, the activities  
15 coordinator, the activities leader, she is a -- she has been  
16 a -- she was the only person until Ms. Pina came onboard.

17 If you're willing to stipulate that she was the only  
18 person who was involved with any leadership of the activities  
19 program, then --

20 MR. GOLDSTEIN: I'm not going to --

21 MS. MALKANI: I mean, if you want to just --

22 MR. GOLDSTEIN: -- stipulate to that.

23 I mean, but we're going round and round and round about an  
24 issue that is irrelevant, has already been determined. And  
25 regardless of what she's called, it's not determinative of her

1 status.

2 MS. MALKANI: But her status has never been litigated  
3 before. And this is -- you know, she's been there for 24  
4 years. What she's been doing for many, many years is  
5 consistent.

6 HEARING OFFICER VENTOLA: I would like to -- I've been  
7 allowing questions about the job title to the extent that it  
8 has bearing as secondary indicia on the issue of supervisory  
9 status which is before me. With that being in mind, I'll allow  
10 these questions.

11 But I don't really think that there's a dispute that her  
12 title at some point has been activities director. I'd like to  
13 focus on the duties that she has had as the -- in her position  
14 and what's she been doing --

15 MS. MALKANI: Okay.

16 HEARING OFFICER VENTOLA: -- in the time period, you know,  
17 that's relevant for us here today.

18 So, if you can focus your inquiries on her duties as -- in  
19 the position that she currently has or maybe how they've  
20 changed over time, today I would -- I think that that would --

21 MS. MALKANI: Okay.

22 HEARING OFFICER VENTOLA: -- help facilitate the  
23 questioning of this witness.

24 MS. MALKANI: Okay. I'll continue then.

25 Q BY MS. MALKANI: So, let me ask you, the job description

1 that -- I'll turn your attention to P-1.

2 Do you have that in --

3 MS. MALKANI: Do we have a copy?

4 Q BY MS. MALKANI: I think you have it in front of you, the  
5 job description?

6 MR. GOLDSTEIN: That's the performance evaluation.

7 HEARING OFFICER VENTOLA: Here's -- I'll give her my  
8 copy --

9 MS. MALKANI: Okay.

10 HEARING OFFICER VENTOLA: -- of P-1.

11 (Counsel confer)

12 MS. MALKANI: We do have an extra copy.

13 HEARING OFFICER VENTOLA: Yeah, thank you.

14 Q BY MS. MALKANI: This is the job description that you  
15 reviewed earlier with -- on direct examination.

16 Have these been your job duties essentially the entire  
17 time that you've been working with -- how long have you been --  
18 let me ask you this, how long have you been working with the  
19 activities program at Mee Memorial?

20 A To be perfectly honest to you, I don't remember it's been  
21 so long.

22 Q Okay.

23 A Because I started as a CNA.

24 Q Okay. Has it been at least ten years?

25 A Oh, yes.

1 Q Okay. Do you have any approximation as to how long?

2 A Maybe 15.

3 Q Okay. And how -- for -- let's take the last ten years and  
4 just focus on that.

5 Have your job duties for that time period been essentially  
6 as they are reflected in P-1?

7 A Yes, I guess.

8 Q Okay. And what -- you were asked about -- I want to  
9 direct your language to -- I mean, direct your attention to the  
10 essential function, number 1. And you were asked about item C,  
11 implements the program developed and supervises those persons  
12 assigned to the activities program. Now, throughout this  
13 document, it appears and that there are -- there's references  
14 to patients throughout this document, do you see that?

15 A Yes.

16 Q Take a moment if you need to to review it. Okay. And do  
17 you see that, that there's references to patients throughout,  
18 the word patient is used?

19 A Yes.

20 Q Okay. And the activity program is developed based on the  
21 needs of the patient, correct?

22 A Yes.

23 Q Okay. So, first of all, how do you go about doing that?

24 A We do a patient interest profile.

25 Q Okay. And so, what is that, is that a survey?

1 A No, it's an interview.

2 Q Okay. And you do those interviews yourself?

3 A Yes.

4 Q Okay. And how do you -- from those interviews, how do you  
5 assess that data?

6 A By the questions asked on the patient interest profile.

7 Q Okay. And who develops the patient interest profiles?

8 A It's a patient interest profile that was given to me to  
9 use.

10 Q Okay. And who is -- who gave it to you?

11 A My supervisors.

12 Q Okay. So, you don't develop those profiles?

13 A No.

14 Q Okay. But you do develop an activity program based on the  
15 results of those profiles, correct?

16 A Yes.

17 Q Okay. And how do you go about doing that?

18 A Once I interview a patient, ask -- you know, you ask all  
19 the questions, what do you like to do, what do you like to  
20 hear, what music do you like, all those things.

21 Then I do an act -- once the activity assessment is done,  
22 I care plan and basically try to hit those preferences that the  
23 patient likes.

24 Q Okay. And in terms of actually carrying out the program,  
25 currently there is you and then there is Ms. Pina who are

1 the -- have the title -- you say that you both have the title  
2 of activity coordinator right now, correct?

3 A Yes.

4 Q Okay. And from time to time, don't -- aren't other CNAs  
5 scheduled to work on activity programs or other employees of  
6 the hospital?

7 A Yes.

8 Q Okay. And when does that come to be?

9 A On the weekends when we are off.

10 Q Okay. And that comes about because you go to the schedule  
11 coordinator, Connie, and request that you need additional  
12 people to help with the activity programs for those days,  
13 correct?

14 A No.

15 Q You don't go to -- do you know who Connie is?

16 A Well, yes, I know who Connie is.

17 Q Okay. And Connie puts out the schedule, correct?

18 A Yes.

19 Q Okay. And don't you go to Connie and say we're doing this  
20 activity -- for example, you just did a New Year's Eve party,  
21 right?

22 A Right.

23 Q Okay. And did you ask for additional employees to help  
24 with that?

25 A I asked for help, but I don't assign who is put in that

1 position.

2 Q Okay. How do you go about making that request for help?

3 A Actually I went to Raye Ann.

4 Q Okay. Do you ever -- don't you go to Connie directly when  
5 you need help and say I need you to schedule more people and  
6 then Connie schedules them?

7 A No.

8 Q No, okay. So, in addition to you and Michelle, there are  
9 sometimes other persons assigned to work on the activities  
10 program?

11 A Yes.

12 Q Okay. And when those other persons are scheduled and  
13 assigned to work on the activities program, you tell them what  
14 to do, correct?

15 A I'm not there.

16 Q You're not there when they're --

17 HEARING OFFICER VENTOLA: I believe I'm confused.

18 And just so I don't get lost, I'm trying to follow, I  
19 thought she testified that the other people worked on the  
20 weekends when she wasn't there.

21 MS. MALKANI: Okay.

22 MR. GOLDSTEIN: She did.

23 MS. MALKANI: Okay.

24 Q BY MS. MALKANI: Okay. So, for New Year's Eve, you  
25 weren't there for the New Year's Eve event?

1 A I was there for the New Year's Eve event.

2 Q Okay. And there were other people assigned to work on  
3 that event, correct?

4 A One person. I asked Raye Ann for help, which is my unit  
5 supervisor. And she took it from there.

6 Q Okay. And who was assigned to help for New Year's Eve?

7 A Mary.

8 Q Okay. And what is Mary's job position?

9 A Mary is a RNA/CNA, slash.

10 Q Okay.

11 MR. GOLDSTEIN: I'm just going to object to --

12 Q BY MS. MALKANI: And --

13 MR. GOLDSTEIN: -- the relevance of this testimony because  
14 this event took place after the election and it's a one-time  
15 event.

16 HEARING OFFICER VENTOLA: I'm going to allow it to the  
17 extent that her duties are -- haven't changed and her  
18 authority -- I mean, I don't think the timing of the election  
19 is necessary.

20 You know, it's unlike an objections period where there's a  
21 cutoff date, I think if this is indicative of a typical kind of  
22 event, I'll allow the answer.

23 But I am -- I would like some clarification when you're  
24 asking her about assigning. I'm confused as to whether you're  
25 talking about additional CNAs bringing people to or you're

1 talking about a separate --

2 MS. MALKANI: I --

3 HEARING OFFICER VENTOLA: -- another person.

4 I'm just a little --

5 MS. MALKANI: Yeah.

6 HEARING OFFICER VENTOLA: -- confused as to what kind of  
7 assistance or help you're talking about, if you could clarify  
8 that.

9 MS. MALKANI: Well, let me ask this.

10 Q BY MS. MALKANI: Why was -- why did you ask Raye Ann for  
11 help for the New Year's Eve party?

12 A I asked Raye Ann for help because Michelle's on vacation.  
13 Michelle would normally work with me.

14 Q Okay. Are there occasions when you need to bring in  
15 additional people, additional CNAs or RNAs, to work on the  
16 activities program?

17 A No.

18 Q Okay. So, it's when Michelle's out sick or on vacation  
19 that you need to bring in an additional person to work -- help  
20 with the activities program?

21 A Generally when Michelle has been gone, I generally take  
22 the whole thing myself. That has been happening this whole two  
23 weeks that she's been gone. I am the only person in  
24 activities.

25 It happened that the day of New Year's Eve was a big

1 event, I needed to a hand. I asked Raye Ann; Raye Ann made the  
2 decision as to who to call.

3 Q Okay. And when Mary came, how did Mary know what to do,  
4 you told her what to do?

5 A She blew up balloons.

6 Q Okay. She didn't help with anything else?

7 A Well, she helped with serving the patients, bringing in  
8 the patients; she was -- we were working together.

9 Q She helped with the party?

10 A Yes.

11 Q Okay. And -- okay. Turning your attention back to P-1,  
12 do you have any explanation to why in 1C it says supervises  
13 those persons assigned to the activities program, not  
14 supervises those patients?

15 MR. GOLDSTEIN: Objection; foundation as to whether or not  
16 she wrote the document. And if she didn't write the document,  
17 she'd just be speculating as to why it says something there.

18 MS. MALKANI: I'll accept if you say she's speculating,  
19 but you offered testimony on it. So --

20 HEARING OFFICER VENTOLA: I think the question was does  
21 she have any -- does she know.

22 MR. GOLDSTEIN: Yeah.

23 HEARING OFFICER VENTOLA: So, if you know you can answer  
24 the question.

25 THE WITNESS: No.

1 Q BY MS. MALKANI: Okay. So, earlier when you testified  
2 that supervises those persons assigned to the activities  
3 program refers to patients, you don't -- you didn't write this  
4 so you don't really know if persons refers to persons or  
5 patients, correct?

6 A Correct.

7 Q Okay. And there are people -- okay.

8 Okay. I want to turn your attention to P-4.

9 If you could --

10 (Counsel confer)

11 MR. GOLDSTEIN: I think she's already got it.

12 THE COURT REPORTER: I think she has it.

13 MS. MALKANI: Okay.

14 MR. GOLDSTEIN: I think that's the --

15 MS. MALKANI: Okay.

16 MR. GOLDSTEIN: -- one you already gave her, yeah.

17 Q BY MS. MALKANI: If you could look at item number 5.

18 (Counsel confer)

19 Q BY MS. MALKANI: Seems to deal with supplies and  
20 equipment.

21 A Uh-huh, yes.

22 Q Does the activities program have a budget?

23 A Yes.

24 Q Okay. And how -- can you explain that process?

25 MR. GOLDSTEIN: Objection; relevance.

1           How does that -- having a budget help us determine whether  
2 or not she's a supervisor that has the indicia under 211 of the  
3 Act?

4           MS. MALKANI: Whether or not she's -- what level of --  
5 she's involved in in the --

6           MR. GOLDSTEIN: It's --

7           MS. MALKANI: -- program --

8           MR. GOLDSTEIN: And --

9           MS. MALKANI: -- I mean, in --

10          MR. GOLDSTEIN: She could be the --

11          MS. MALKANI: -- if she's simply --

12          MR. GOLDSTEIN: -- super queen of budgeting. It doesn't  
13 show that --

14          MS. MALKANI: Well, I'm happy to --

15          MR. GOLDSTEIN: -- she does anything --

16          MS. MALKANI: -- talk to you about it, but --

17          MR. GOLDSTEIN: -- with respect to 211.

18          MS. MALKANI: -- we're not doing it in front of the  
19 witness.

20          HEARING OFFICER VENTOLA: If you focus your question on  
21 whether or not her budgetary duties involve any other -- I  
22 agree that it doesn't seem to bear on the question of her  
23 supervisory authority.

24          So, ask a few questions and move on.

25          MS. MALKANI: Okay.

1 Q BY MS. MALKANI: What is your role in budgeting for  
2 activities?

3 A My budgeting is I get a certain amount of money to use for  
4 bingo prizes, cooking -- say, for instance, today we're making  
5 burritos and I need, you know, whatever. I go get it with the  
6 petty cash. Once I have spent as close to \$200 as I think I'm  
7 calculating because that's what I get, I have to put in a  
8 requisition to replenish that money.

9 I put in the requisition, Janeel has to sign it. And then  
10 somebody else has to sign it and then it goes out to finance to  
11 be paid.

12 Q Okay. So, there's not an overall budget that you are  
13 given --

14 A No.

15 Q -- at the beginning of the year?

16 A No.

17 Q Okay. If a CNA doesn't do what they're supposed to do,  
18 it's not your responsibility, correct?

19 A For example?

20 Q If a CNA brings a patient to you that you feel is dressed  
21 inappropriately, because a CNA has done that, you are not  
22 accountable for that, correct?

23 A Not that I know of.

24 Q And so, I believe you testified and correct me if I'm  
25 wrong, that if -- that this -- when a CNA -- you have

1 occasionally told a CNA that -- you know, spoken to a CNA about  
2 how a patient appears for an activities, but that was out of  
3 dignity issues for the patient, correct?

4 A I may have misunderstood you, I was under the impression  
5 you were asking me if I was held accountable for it.

6 Q I am. So, you're -- you don't -- you are -- okay.

7 If a CNA does something that you believe is wrong, it's  
8 not your responsibility?

9 MR. GOLDSTEIN: Objection --

10 Q BY MS. MALKANI: Correct?

11 MR. GOLDSTEIN: -- vague.

12 Q BY MS. MALKANI: For that --

13 MR. GOLDSTEIN: Vague.

14 Q BY MS. MALKANI: -- CNAs? You are not responsible for the  
15 CNAs, correct, that's what your testimony is?

16 A I'm not in charge or responsible for them.

17 Q Okay. So, if one -- if a CNA does something that's wrong,  
18 you're not responsible for that, correct?

19 A I don't know how I would be.

20 Q Okay. So, if a CNA does something that's wrong, isn't the  
21 appropriate procedure for you to go tell their boss that you  
22 believe it's inappropriate? If a co-worker does something  
23 wrong, don't you go to their -- what are you supposed to do,  
24 how are you supposed to report that?

25 MR. GOLDSTEIN: Objection; which question would you like

1 her to ask, the first, the second, the third or the fourth?

2 MS. MALKANI: I'll rephrase.

3 HEARING OFFICER VENTOLA: Rephrase your question.

4 Q BY MS. MALKANI: Is it fair to say that if a co-worker  
5 does something wrong, that what you're supposed to do is go  
6 talk to their boss?

7 A Yes.

8 Q Okay. And yet, repeatedly, if a co-worker does something  
9 that you feel is inappropriate, you've been addressing it  
10 directly with the co-worker, isn't that correct?

11 A Because I ask someone to check and change someone?

12 Q You -- if a -- yes.

13 A If a CNA -- if a patient gets -- becomes soiled in the  
14 activity, I will find the CNA; I will tell her they need to be  
15 checked and changed and hand them over.

16 Q Okay. And when you go about doing that, don't you  
17 sometimes get upset with the CNA and get -- tell them that what  
18 they're doing is -- don't you sometimes get upset with them for  
19 the fact that the patient is soiled?

20 A If I'm taking them to them it's because I just found out.

21 Q So, you've never --

22 A I don't recall a situation --

23 Q -- you've never told --

24 A -- like that.

25 Q You don't recall a situation where you've gone to a CNA

1 and basically sort of dressed them down for bringing a patient  
2 to you inappropriately?

3 A I don't recall.

4 Q Okay. So, when you testify that you've never disciplined  
5 a CNA, you were referring to written discipline, correct?

6 A I was referring to total -- how do I -- I don't discipline  
7 anybody.

8 Q Okay. What is your definition of discipline?

9 A My definition of discipline would be I ask you to do  
10 something and you don't do it, then I counsel you, then take  
11 the next step if you don't do it then.

12 Q And so, what is your understanding of discipline before  
13 anything in writing?

14 A I would imagine speaking with the person.

15 Q In an authoritative tone?

16 A I don't recall of any situations where I've done that.

17 Q Have you -- what has been your role over the years in  
18 developing the activity program in general?

19 MR. GOLDSTEIN: Objection; relevance, overbroad.

20 MS. MALKANI: Well.

21 HEARING OFFICER VENTOLA: You respond to that?

22 MS. MALKANI: Yeah, it goes to her development in --

23 HEARING OFFICER VENTOLA: When you say program, are you  
24 meaning whether bingo is an option for a day or --

25 MS. MALKANI: No, let me ask another question actually.

1 Q BY MS. MALKANI: Okay. Are you familiar with the  
2 Department of Health and Human Services certification, that  
3 there's a certification process for act -- that act -- for  
4 skilled nursing facilities?

5 A Yes.

6 Q Okay. What's your understanding of that process?

7 A The State comes once a year, reviews and leaves.

8 Q Okay. And have you ever been interviewed by State  
9 auditors in regard to those programs -- in regard to the  
10 activities program?

11 MR. GOLDSTEIN: I'm going to object at this point on  
12 relevance.

13 Again --

14 MS. MALKANI: Connecting --

15 MR. GOLDSTEIN: Again, the issue is whether or not she  
16 supervises anybody. And whether or not she's been interviewed  
17 by the Department --

18 MS. MALKANI: The hos --

19 MR. GOLDSTEIN: -- of Health and Human Services doesn't  
20 help us with that issue.

21 MS. MALKANI: If the hospital is holding her out on its  
22 plan of correction as being the activities director and is  
23 holding her out as a position of authority in terms of someone  
24 responsible for supervisory duties, then I think that's  
25 relevant. It's a party admission essentially.

1 I mean, to the extent -- and I'm trying to connect whether  
2 or not -- there's not a name in this document. And I want to  
3 find out if -- who it is that was interviewed.

4 HEARING OFFICER VENTOLA: Again, I think the inquiry here  
5 and the focus should be upon whether or not Ms. Perez is a  
6 statutory supervisor.

7 I'll allow a few questions on this, but I want to move  
8 through this.

9 MS. MALKANI: Okay.

10 HEARING OFFICER VENTOLA: And I think the document is in  
11 evidence. And I think that you've already established that  
12 there's no one else that held that position during the relevant  
13 time period.

14 So --

15 MS. MALKANI: Okay.

16 MR. GOLDSTEIN: Well, I would -- other than Michelle Pina.

17 HEARING OFFICER VENTOLA: Well, I think that --

18 MR. GOLDSTEIN: We'll have testimony about --

19 HEARING OFFICER VENTOLA: I probably misspoke.

20 MR. GOLDSTEIN: Okay.

21 MS. MALKANI: Okay.

22 HEARING OFFICER VENTOLA: But to the extent that I  
23 don't -- to the extent that this inquiry is focusing upon her  
24 stat -- the existence of whether or not she possesses  
25 supervisory authority, I think some of this is getting kind far

1 afield, that it -- there is so much secondary indicia that you  
2 get from the job title.

3 MS. MALKANI: Right.

4 HEARING OFFICER VENTOLA: And if we're not honing in on  
5 the key things, I just want you to focus your inquiry.

6 MS. MALKANI: Okay. Well -- okay.

7 Q BY MS. MALKANI: The -- who -- sorry.

8 So, when the States come by -- the State auditors came by,  
9 what do you call them, the State surveyors, auditors --

10 A Surveyors.

11 Q Okay. So, when the State surveyors came by in 2010, did  
12 they interview you concerning the activities program?

13 A I'm sure they did.

14 Q Okay. And have they interviewed you since then concerning  
15 the activities program?

16 A They come every year.

17 Q Okay. Do you recall who it is from the State that comes,  
18 the surveyor?

19 MR. GOLDSTEIN: Objection.

20 HEARING OFFICER VENTOLA: The relevance of the individual  
21 from the State, the name of the person?

22 If you recall --

23 MS. MALKANI: Okay. I'm --

24 HEARING OFFICER VENTOLA: -- the answer, --

25 MS. MALKANI: -- just trying to tie it --

1 HEARING OFFICER VENTOLA: -- you can answer it.

2 MS. MALKANI: -- to the -- okay.

3 THE WITNESS: I'm sorry, I don't recall.

4 Q BY MS. MALKANI: Okay.

5 A They --

6 Q So, but you have been interviewed by the State in regard  
7 to the activities program, correct?

8 A Yes.

9 Q Okay.

10 MS. MALKANI: No further questions.

11 HEARING OFFICER VENTOLA: I had a few questions about --  
12 and this is just to make certain that I'm understanding some of  
13 the testimony.

14 There are activities that are planned for patients and/or  
15 residents every day?

16 THE WITNESS: Seven days a week.

17 HEARING OFFICER VENTOLA: And who does what you do on the  
18 weekends when you're not there?

19 THE WITNESS: It's whoever gets scheduled.

20 HEARING OFFICER VENTOLA: Is that person a CNA?

21 THE WITNESS: Generally.

22 HEARING OFFICER VENTOLA: And --

23 THE WITNESS: But not usually -- not always, I mean.

24 HEARING OFFICER VENTOLA: And during the week when you are  
25 there, what's your schedule?

1 THE WITNESS: 7 to 3:30.

2 HEARING OFFICER VENTOLA: And what's Ms. Pina's schedule?

3 THE WITNESS: 8 to 4:30.

4 HEARING OFFICER VENTOLA: Are there any duties that you  
5 have that she doesn't have?

6 THE WITNESS: No.

7 HEARING OFFICER VENTOLA: Do you have any benefits that  
8 are unavailable to other employees?

9 THE WITNESS: I have the same medical, dental, vision that  
10 everybody else has.

11 HEARING OFFICER VENTOLA: Do you use a time clock?

12 THE WITNESS: Yes, ma'am.

13 HEARING OFFICER VENTOLA: And since you're -- do you  
14 participate in the evaluation process in any way?

15 THE WITNESS: Of other employees or patients?

16 HEARING OFFICER VENTOLA: Of other employees, thank you.

17 THE WITNESS: No, ma'am.

18 HEARING OFFICER VENTOLA: And are you familiar with  
19 whether the employer has a progressive disciplinary program?

20 THE WITNESS: No, ma'am.

21 HEARING OFFICER VENTOLA: But you've never issued any  
22 written warning or any documented verbal warning?

23 THE WITNESS: No, ma'am.

24 HEARING OFFICER VENTOLA: Have you ever recommended that  
25 one be issued?

1 THE WITNESS: No, ma'am.

2 HEARING OFFICER VENTOLA: And with respect to any  
3 corrective action that would result for a state investigation  
4 or audit, are you responsible for talking to other employees  
5 about any deficiencies?

6 THE WITNESS: No. No.

7 HEARING OFFICER VENTOLA: And I got a little confused  
8 about the timing of your -- of what your position title is.  
9 Currently your title is?

10 THE WITNESS: Activity coordinator.

11 HEARING OFFICER VENTOLA: Is that how you describe  
12 yourself when you meet people, new employees?

13 THE WITNESS: That is the way I used to address myself  
14 before I got a new ID badge. But my certificate says activity  
15 coordinator.

16 HEARING OFFICER VENTOLA: What certificate do you mean by  
17 that, I'm sorry?

18 THE WITNESS: It's a course I took a Cabrillo College to  
19 receive myself as an activity coordinator.

20 HEARING OFFICER VENTOLA: And so, your badge currently  
21 says activities coordinator?

22 THE WITNESS: Yes, ma'am.

23 HEARING OFFICER VENTOLA: And when did you receive that  
24 badge?

25 THE WITNESS: I would say roughly three-and-a-half, four

1 weeks ago.

2 HEARING OFFICER VENTOLA: And prior to that, your badge  
3 said activity director?

4 THE WITNESS: Yes.

5 HEARING OFFICER VENTOLA: And when your badge said  
6 activity director, is that how you described yourself to --  
7 when you would meet new hires or other employees?

8 THE WITNESS: Actually, I just generally say activities.

9 HEARING OFFICER VENTOLA: Okay. And when did Ms. Pina --  
10 when was she hired, did you say?

11 THE WITNESS: I'm not exact on the date or the --

12 HEARING OFFICER VENTOLA: The general timeframe.

13 THE WITNESS: General timeframe, I want to say 2008/2009.

14 HEARING OFFICER VENTOLA: And then, so other than the  
15 people who would work on the weekends, you and Ms. Pina are the  
16 only people regularly assigned to the activities program?

17 THE WITNESS: Yes.

18 HEARING OFFICER VENTOLA: You've used the term unit  
19 sometimes, is -- or department, is the activities program in a  
20 particular department?

21 THE WITNESS: No.

22 HEARING OFFICER VENTOLA: So, when you say a unit  
23 supervisor or a department supervisor, would that be in the  
24 skilled nursing facility?

25 THE WITNESS: In the skilled nursing unit.

1 HEARING OFFICER VENTOLA: The skilled nursing unit.

2 So, is the activities program part of the skilled nursing  
3 unit?

4 THE WITNESS: Yes.

5 HEARING OFFICER VENTOLA: And when you say -- and I'm  
6 probably going to mispronounce her name, I'm sorry, is it  
7 J-O -- Janelle Wilburn (sic)?

8 MR. GOLDSTEIN: Janeel.

9 HEARING OFFICER VENTOLA: Janeel Welburn, what is -- is  
10 she the head of the skilled nursing unit?

11 THE WITNESS: She's the department manager.

12 HEARING OFFICER VENTOLA: And the department is the  
13 skilled nursing department?

14 THE WITNESS: Well, skilled nursing swing --

15 HEARING OFFICER VENTOLA: Department?

16 THE WITNESS: -- department.

17 HEARING OFFICER VENTOLA: Okay. And so, the activities  
18 program is part of that -- falls under that umbrella, the --

19 THE WITNESS: Yes.

20 HEARING OFFICER VENTOLA: -- skilled nursing and swing?

21 And the head of that is -- who is the head of that  
22 department?

23 THE WITNESS: Of the whole unit?

24 HEARING OFFICER VENTOLA: Uh-huh.

25 THE WITNESS: Janeel Welburn.

1 HEARING OFFICER VENTOLA: And so, Pam La Montagne was her  
2 predecessor?

3 THE WITNESS: Yes.

4 HEARING OFFICER VENTOLA: Is there anybody that's -- are  
5 there any other managers other than Ms. Welburn in the -- of  
6 the SNF swing department?

7 THE WITNESS: I want to say Raye Ann is under her, I  
8 think.

9 HEARING OFFICER VENTOLA: Okay. And what's Raye Ann's  
10 title?

11 THE WITNESS: I want to say unit supervisor, isn't it?  
12 Unit supervisor.

13 HEARING OFFICER VENTOLA: And the -- and that's, I guess,  
14 what I -- what's the unit that she's supervisor, who is --

15 THE WITNESS: The same.

16 HEARING OFFICER VENTOLA: The same.

17 And so, are they in over -- do they have the overall  
18 authority over all of the CNAs who are also assigned to  
19 those -- to that area?

20 THE WITNESS: I would expect so.

21 HEARING OFFICER VENTOLA: So, with respect to the number  
22 of CNAs, do you ever request more CNAs be assigned because of a  
23 particular activity?

24 THE WITNESS: No.

25 HEARING OFFICER VENTOLA: Do you have any -- do you play

1 any role in the scheduling of CNAs at all?

2 THE WITNESS: No.

3 HEARING OFFICER VENTOLA: Would any of the activities  
4 affect the start times of CNAs?

5 THE WITNESS: No.

6 HEARING OFFICER VENTOLA: Do you tell CNAs when they can  
7 take their breaks?

8 THE WITNESS: No.

9 HEARING OFFICER VENTOLA: Who does that?

10 THE WITNESS: They're written on a piece of paper on the  
11 wall and they just follow the list.

12 HEARING OFFICER VENTOLA: And who creates that piece of  
13 paper?

14 THE WITNESS: Actually, I've seen them do it themselves;  
15 they make their own assignments. The assignments are by teams  
16 and they're assigned team 1, team 2.

17 And every two-and-a-half months or three months, I can't  
18 remember which one, they go to the next team. They alternate  
19 teams; they move.

20 HEARING OFFICER VENTOLA: So, CNAs are rotated among  
21 teams?

22 THE WITNESS: Uh-huh. Yes, ma'am.

23 HEARING OFFICER VENTOLA: Do you play any role in the  
24 assignment of CNAs to a particular team?

25 THE WITNESS: No.

1 HEARING OFFICER VENTOLA: And how those CNAs take their  
2 break then is a function of whatever team they're on?

3 THE WITNESS: Yes, it's assigned by the team.

4 HEARING OFFICER VENTOLA: And who's in charge of the team?  
5 I know earlier you mentioned a new position --

6 THE WITNESS: Team leader.

7 HEARING OFFICER VENTOLA: Has there -- is the team leader  
8 in charge of each team of CNAs?

9 THE WITNESS: To be perfectly frank, I don't know exactly  
10 what her job title or duties are. All I know, she's a team  
11 leader and I've seen her going around helping.

12 HEARING OFFICER VENTOLA: And when you say she, who do you  
13 mean?

14 THE WITNESS: It depends on who they assign that day for a  
15 team leader.

16 HEARING OFFICER VENTOLA: Oh, the team leader varies from  
17 day to day?

18 THE WITNESS: It's what I've seen.

19 HEARING OFFICER VENTOLA: Okay. So, with respect to  
20 whether CNAs work overtime, do you play any role in that?

21 THE WITNESS: No.

22 HEARING OFFICER VENTOLA: And I think you testified  
23 earlier that you weren't certain of the reason for the change  
24 in your title?

25 THE WITNESS: No, I do not.

1 HEARING OFFICER VENTOLA: And that -- but that your duties  
2 never changed, is that right?

3 THE WITNESS: The duties and the -- and everything is the  
4 same.

5 HEARING OFFICER VENTOLA: And have you ever told any CNAs  
6 that they need to do it -- that they work under you or that you  
7 will be in -- that you're in charge of them?

8 THE WITNESS: No.

9 HEARING OFFICER VENTOLA: Who does the -- do you do the  
10 actual -- and forgive me for some of these questions.

11 Are you the person that actually like calls bingo or  
12 coordinate or cooks or does that -- like conducts the activity?

13 THE WITNESS: Yes.

14 HEARING OFFICER VENTOLA: Okay. And does CNAs participate  
15 in that process of the actual activity itself?

16 THE WITNESS: Except when it comes to eating, they'll come  
17 and eat when we make food.

18 HEARING OFFICER VENTOLA: Okay. And if I've already asked  
19 this, I'm sorry, I apologize, when -- so your badge changed  
20 about three-and-a-half weeks ago.

21 When your badge said activity director, did you -- is that  
22 how you announced yourself, identified yourself at that time?

23 THE WITNESS: Activities; activity director.

24 HEARING OFFICER VENTOLA: Okay. I don't think I have any  
25 further questions.

1 Do you have any further questions?

2 MR. GOLDSTEIN: No.

3 MS. MALKANI: Just a couple.

4 **CROSS-EXAMINATION CONTINUED**

5 Q BY MS. MALKANI: I think you testified that Mary worked  
6 with you at the New Year's Eve party?

7 A Yes.

8 Q Okay. How -- did you tell Mary -- a situation like that,  
9 do you tell her when to take break and when to take lunch?

10 A No, she tells me.

11 Q She tells you when to take break and lunch?

12 A No, she tells me, "I'm going on my break."

13 Q Okay. And does she ask you if it's okay?

14 A No.

15 Q I mean, don't you have to work it out since there's only  
16 two of you there?

17 A No, she goes on her break. She tells me, "I'm going on my  
18 break," and she goes on her break.

19 Q Okay. And what about you and Michelle, don't -- do you --  
20 does Michelle ask you can I go on break now?

21 A Michelle has a schedule because she goes to pick up her  
22 child. So, she takes breaks at odd times, so she goes whenever  
23 she goes.

24 Q Okay. You don't have any role in when Michelle takes a  
25 break, you don't coordinate it?

1 A No, the only thing I say when we're done passing trays is,  
2 "I'm going on my lunch," or actually one of the aides will tell  
3 me when to go take my lunch.

4 Q Okay.

5 HEARING OFFICER VENTOLA: Do people have -- does -- do  
6 all -- do you have the same number of breaks and break time as  
7 the other employees?

8 THE WITNESS: I take break in the morning, my lunch break  
9 and a break in the afternoon.

10 HEARING OFFICER VENTOLA: And are the morning and  
11 afternoon breaks 15 minutes?

12 THE WITNESS: Yes.

13 HEARING OFFICER VENTOLA: And the lunch break is how long?

14 THE WITNESS: Thirty.

15 HEARING OFFICER VENTOLA: And is that the same break  
16 period time allotted to other employees?

17 THE WITNESS: As far as I know.

18 HEARING OFFICER VENTOLA: And so, you've testified that  
19 you sort of self-schedule your break whenever you -- I mean,  
20 your break whenever you have time?

21 THE WITNESS: Generally, uh-huh.

22 HEARING OFFICER VENTOLA: Who is the aide that you would  
23 say would tell you when to take a break?

24 THE WITNESS: It would be Kuldeep Mann and Daria Sanchez.

25 HEARING OFFICER VENTOLA: And who are they?

1 THE WITNESS: They're two CNAs.

2 HEARING OFFICER VENTOLA: And why would they have -- why  
3 would tell you when to take a break?

4 THE WITNESS: We take -- when the trays come up for lunch,  
5 for instance, and they -- by that time, by the time 11:30 comes  
6 around, the trays are all up; all of the aides have already had  
7 their lunch, Michelle Pina and I have not.

8 So, once we pass out all the trays in the dining room,  
9 they'll say, "Okay. Henrietta, we've got this. You go to  
10 lunch."

11 HEARING OFFICER VENTOLA: Okay. And did -- do the morning  
12 and afternoon activities normally occur at the same time every  
13 day?

14 THE WITNESS: Yes.

15 HEARING OFFICER VENTOLA: And what time is that again?

16 THE WITNESS: Continuity is very important for our  
17 patients, that they stay in that same realm. So, generally we  
18 start the morning one by 9:30.

19 HEARING OFFICER VENTOLA: And when does it finish?

20 THE WITNESS: That finishes about 11:15.

21 HEARING OFFICER VENTOLA: Do the CNAs stay in the activity  
22 room during the activity or do they come back when it's  
23 concluded for the most part?

24 THE WITNESS: They don't stay and they don't come back.

25 HEARING OFFICER VENTOLA: What do you mean by that?

1 THE WITNESS: Well, they don't come back. I set up for  
2 lunch, so I get all the patients arranged in lunch. They don't  
3 come back until it's time to pass trays.

4 HEARING OFFICER VENTOLA: For lunch?

5 THE WITNESS: At 11:30.

6 HEARING OFFICER VENTOLA: Okay. And then after the lunch  
7 is over, the patients are returned to their rooms?

8 THE WITNESS: By the CNAs.

9 HEARING OFFICER VENTOLA: All right. And then is --

10 THE WITNESS: Because I'm at lunch.

11 HEARING OFFICER VENTOLA: I'm sorry, when are the -- when  
12 is the afternoon activity?

13 THE WITNESS: 1:30.

14 HEARING OFFICER VENTOLA: And how long does that last?

15 THE WITNESS: An hour-and-a-half.

16 HEARING OFFICER VENTOLA: And do CNAs stay during that  
17 activity or do they drop them off and then return and pick them  
18 up when it's over?

19 THE WITNESS: They don't do either.

20 HEARING OFFICER VENTOLA: Okay.

21 THE WITNESS: I go get them and I take them back.

22 HEARING OFFICER VENTOLA: You go get all of the -- each  
23 individual patient?

24 THE WITNESS: Yes, ma'am.

25 HEARING OFFICER VENTOLA: And how many beds are there

1 again in that --

2 THE WITNESS: Sixty -- well, between -- depending, it  
3 could run 55 to 60.

4 HEARING OFFICER VENTOLA: So, for the afternoon, you're  
5 responsible for bringing all of the --

6 THE WITNESS: Everybody who wishes to come.

7 HEARING OFFICER VENTOLA: Okay. And how many people is  
8 that normally?

9 THE WITNESS: That could be anywhere from 18 to 20.

10 HEARING OFFICER VENTOLA: Does that change -- do you know  
11 who wants to come by -- do they tell you at the beginning of  
12 the week they want to --

13 THE WITNESS: At the beginning of the day.

14 HEARING OFFICER VENTOLA: Every day you --

15 THE WITNESS: When I --

16 HEARING OFFICER VENTOLA: -- do that?

17 THE WITNESS: Yes and then I have to sometimes remind them  
18 before the activity because they'll have forgotten.

19 HEARING OFFICER VENTOLA: Why don't the CNAs bring them to  
20 the afternoon session like they do for the morning?

21 THE WITNESS: They don't bring them for the morning, I  
22 generally pick them up too.

23 HEARING OFFICER VENTOLA: Now, I'm -- okay.

24 I'm sorry, I was under the impression that CNAs brought  
25 people to the lunchroom, but that's not correct?

1 THE WITNESS: No, Michelle and I bring them. Maybe I'll  
2 be passing the coffee and Michelle's bringing them.

3 HEARING OFFICER VENTOLA: Okay.

4 THE WITNESS: Or I'll be bringing them and Michelle will  
5 be passing the coffee.

6 HEARING OFFICER VENTOLA: So, if you get to the room --  
7 when would you -- are most people dressed by 9:30?

8 THE WITNESS: No, not usually.

9 What happens is I bring whatever is available and ready to  
10 come. And then the stragglers come a little later. You know,  
11 they just come when they're finished because some of them have  
12 exercises or physical therapy.

13 HEARING OFFICER VENTOLA: Do they come on their own then?

14 THE WITNESS: Either the physical therapist or their RNA  
15 or I'll go get them.

16 HEARING OFFICER VENTOLA: Okay. So, what time do you --  
17 does it take a while to gather everybody and get them down to  
18 the room for the 9:30?

19 THE WITNESS: Let me clarify, at 9:30, we start our social  
20 hour. And at 9:30, we start passing out coffee and everybody  
21 just kind of chitchats and we get reality awareness, today  
22 is --

23 HEARING OFFICER VENTOLA: Okay.

24 THE WITNESS: -- today is, you know, such and such.

25 Okay. At 10:00, the actual activity starts. So, we have

1 a half-hour leeway to get everybody in there.

2 HEARING OFFICER VENTOLA: Okay. While you're leaving --  
3 when you're going and getting some people, is anybody in the  
4 room or the patients are just -- the residents are just with  
5 themselves?

6 THE WITNESS: This -- generally there is Michelle or I --

7 HEARING OFFICER VENTOLA: Okay.

8 THE WITNESS: -- depending on who is bringing and who is  
9 serving the coffee.

10 HEARING OFFICER VENTOLA: Okay. Thank you.

11 I don't have anything further.

12 MS. MALKANI: No further questions.

13 MR. GOLDSTEIN: Nothing.

14 You're excused.

15 HEARING OFFICER VENTOLA: Thank you for your testimony.

16 You're excused.

17 MR. GOLDSTEIN: Can we have a ten minute break?

18 HEARING OFFICER VENTOLA: Yes.

19 MR. GOLDSTEIN: Okay. Thank you.

20 (Off the record at 3:41 p.m.)

21 HEARING OFFICER VENTOLA: -- record.

22 Good afternoon.

23 MS. WELBURN: Hi.

24 HEARING OFFICER VENTOLA: I'm going to swear you in and  
25 then you'll be questioned.

1 Whereupon,

2

**JANEEL WELBURN**

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

5

**DIRECT EXAMINATION**

6 Q BY MR. GOLDSTEIN: Ms. Welburn, what's your -- who is your  
7 employer?

8 THE COURT REPORTER: Excuse me.

9 MR. GOLDSTEIN: Oh, I'm sorry.

10 THE COURT REPORTER: Could we have the witness state and  
11 spell your name --

12 HEARING OFFICER VENTOLA: Sorry.

13 MR. GOLDSTEIN: I'm sorry, I'm just --

14 THE COURT REPORTER: -- for the record please?

15 MR. GOLDSTEIN: -- getting ahead of myself.

16 THE WITNESS: Janeel Welburn; J-A-N-E-E-L, W-E-L-B-U-R-N.

17 MR. GOLDSTEIN: I good?

18 THE COURT REPORTER: I'm --

19 MR. GOLDSTEIN: All right.

20 Q BY MR. GOLDSTEIN: Ms. Welburn, who is your employer?

21 A Mee Memorial Hospital.

22 Q What is your current job title?

23 A SNF, which is skilled nursing facility manager.

24 Q How long have you had that position?

25 A Since September 24th of 2012.

1 Q Did you, prior to September 24th, 2012, also work at Mee  
2 Memorial Hospital?

3 A Yes.

4 Q And what was your position prior to that?

5 A Director of skilled and acute services.

6 Q When did you last hold that position?

7 A September 7th, 2011.

8 Q The position that you held in 2011, how long did you hold  
9 that position?

10 A Oh, well, I changed titles a few times, but I had been at  
11 Mee Memorial from November of 2006 through September of 2011.

12 Q In some sort of director or manager role?

13 A Yes.

14 Q Okay.

15 A House supervisor, skilled nursing manager and then  
16 director of skilled and acute services.

17 Q Okay. And so, you had about a one-year break between 2006  
18 and 2012 when you weren't working at Mee Memorial?

19 A Yes.

20 Q Okay. Can you just brief -- we've had a lot of testimony  
21 about it today, but can you just briefly describe what the  
22 activities program is at Mee Memorial?

23 A The activities program is designed to meet the social and  
24 needs of our residents. It includes things like bingo, music,  
25 worship services, pet therapy, one-on-one activities if needed

1 depending on the residents' needs.

2 Q How many people work in the activities program?

3 A I have two full-time people.

4 Q And who are they?

5 A Henrietta Perez and Michelle Pina.

6 Q And what are their job titles?

7 A Activities coordinator.

8 Q Are there -- do they perform any jobs -- let me withdraw  
9 that and rephrase it.

10 Is there any job function that Michelle Pina performs that  
11 Henrietta Perez does not perform?

12 A No.

13 Q Is there any job function that Henrietta Perez performs  
14 that Michelle Pina does not perform?

15 A No.

16 Q So, do they do essentially the same thing?

17 A Yes.

18 Q All right. And are you both of those individuals'  
19 director supervisors?

20 A Yes.

21 Q Does -- back when Michelle Pina was first hired to be an  
22 activity coordinator, do you recall if Ms. Perez sat in on  
23 interviews?

24 A I don't really remember. I don't remember.

25 Q Okay. Whose decision was it to hire Ms. Pinas (sic)?

1 A Mine.

2 Q Was it Ms. Perez's decision?

3 A No.

4 Q Could she recommend who could be hired?

5 A She could give her opinion to me.

6 Q Would that matter?

7 A No.

8 Q Do you recall if other people were interviewed for the  
9 position?

10 A I don't recall. I recall I did have another unit clerk  
11 who expressed interest in it. I remember discussing it with  
12 her, she was a 12-hour employee and was attending or trying to  
13 attend LVN school. And working five days a week was not going  
14 to work for her. So, I don't think she ever applied for it.

15 Q Did Ms. Perez ever give you instructions to hire Ms. Pina?

16 A No.

17 Q Did she ever tell you that anyone should ever be hired?

18 A No.

19 Q Now, does Ms. Perez assign work to Ms. Pina?

20 A They work collaboratively together to meet the needs of  
21 the residents.

22 Q So, what do you mean by they work collaboratively  
23 together?

24 A They work together to develop the activities calendar,  
25 what activities are going to be held, how -- maybe one person

1 will do a morning activity so the other person can do their  
2 paperwork.

3 Q Does Ms. Perez have power over Ms. Pina to tell her what  
4 to do?

5 A No.

6 Q If Ms. Pina doesn't do a task, could Ms. Perez write her  
7 up?

8 A No.

9 Q Has she ever done that?

10 A No.

11 Q Has she ever told you that Ms. Pina should be written up?

12 A No.

13 Q Has Ms. Perez ever told you that a CNA should be written  
14 up?

15 A No.

16 Q Do you also supervise CNAs in the skilled nursing  
17 facility?

18 A Yes.

19 Q How many?

20 A Oh, I have roughly 80 to 82 employees of those. I have --

21 Q It doesn't have to be exact.

22 A I don't know.

23 Q Okay.

24 A Let's say six, eight --

25 Q And, now --

- 1 A So, maybe 25 to 30 CNAs I have.
- 2 Q Okay. And is there someone else named Raye Ann?
- 3 A Yes.
- 4 Q Who is that?
- 5 A She is my unit supervisor.
- 6 Q Now, is she subordinate to you or is she your supervisor?
- 7 A She is subordinate to me.
- 8 Q Okay. And so, does -- do the CNAs report directly to Raye
- 9 Ann?
- 10 A No, they report -- everybody is my direct report, but she
- 11 does have supervisor -- supervisory duties over them.
- 12 Q Okay. Does Ms. Perez have any supervisory duties over
- 13 the CNAs?
- 14 A No.
- 15 Q Does Ms. Perez have the power to transfer or recommend
- 16 transfer of any employees?
- 17 A No.
- 18 Q Does she have the power to suspend or recommend suspension
- 19 of any employees?
- 20 A No.
- 21 Q Does she have the power to recall from suspension or
- 22 recommend recall from suspension?
- 23 A No.
- 24 Q Does she have the power to promote employees or recommend
- 25 that employees be promoted?

1 A No.

2 Q Does she have the power to terminate employees or  
3 recommend that employees be terminated?

4 A No.

5 Q Does she have the power to discipline employees?

6 A No.

7 Q Has she ever disciplined employees?

8 A No.

9 Q Does she have the power to reward employees for jobs well  
10 done?

11 A No.

12 Q Does she have the power to tell CNAs what to do?

13 A No, except in the fact that I expect all of my employees,  
14 if they see a need, to bring that to the person's attention.

15 Q When you say a need, what do you mean by that?

16 A If a call light is going off, if a resident needs to use  
17 the bathroom, if the stacks haven't been passed, I would expect  
18 anybody who noticed that to ask the person whose assignment it  
19 was to do that.

20 Q What about if a patient soils himself, would you expect  
21 Henrietta to -- that if she noticed it to tell a CNA that?

22 A Yes and I would expect my CNAs also to notice that and to  
23 ask the person assigned to take care of that.

24 Q Okay. Now, do you hold Henrietta Perez responsible for  
25 any work done by CNAs?

1 A No.

2 Q Do you hold Henrietta Perez responsible for any work done  
3 by Michelle Pina?

4 A No.

5 Q Does Ms. Perez make assignments for CNAs?

6 A No.

7 Q Does Ms. Perez write Ms. Pina's performance evaluation?

8 A No.

9 Q Does she write performance evaluations for any CNAs?

10 A No.

11 Q Does Ms. Perez determine when any employees take breaks?

12 A No.

13 Q Does Ms. Perez determine which CNAs float into activities?

14 A No.

15 Q Who makes up the assignment sheets for CNAs?

16 A We have teams and they go by a month. Raye Ann then takes  
17 that information and she puts it on the daily assignment sheets  
18 depending on if we have new admissions or call-offs or  
19 whatever.

20 Q Have you -- since Michelle was hired, have you done any  
21 interviews for act -- other activities coordinators?

22 A No.

23 Q Do you do Michelle's performance evaluations?

24 A Yes.

25 Q And you do Henrietta's performance evaluations?

1 A Yes.

2 Q Have you ever written up Michelle?

3 A Yes.

4 Q I'd like to -- I'd like you to take a look at what's been  
5 marked as Petitioner's Exhibit 1; I'll give you a copy of this.

6 Do you recognize that document?

7 A It's a job description for activities coordinator in the  
8 skilled nursing facility.

9 Q And did you sign that document?

10 A I did not.

11 Q Okay. Who did under the manager?

12 A Pam La Montagne.

13 Q Do you know who that is?

14 A Yes.

15 Q Who is she?

16 A She was the skilled nursing unit supervisor prior to my  
17 departing in 2011. And she -- no, she was the skilled nursing  
18 manager actually, I apologize. She had been promoted to  
19 manager, so she was the skilled nursing manager at that time.

20 Q Okay. And would Michelle Pina have the same job  
21 description as Henrietta?

22 A Yes.

23 Q Okay. I'd like you -- to show you what I'll mark as  
24 Employer's Exhibit 2.

25 Can you give it to the Hearing Officer?

1 A Sorry.

2 Q I think that -- no, you need to give her the other one.

3 A Give her both of them?

4 Q Yeah, the one I just handed you, the one that has  
5 Michelle's name on it.

6 A Okay.

7 HEARING OFFICER VENTOLA: Okay. Does she have a copy for  
8 herself?

9 MR. GOLDSTEIN: I can give her my copy.

10 HEARING OFFICER VENTOLA: Okay.

11 Q BY MR. GOLDSTEIN: Here.

12 And do you recognize that document?

13 A Yes, it's --

14 Q Okay.

15 A -- a job description for activities coordinator in the  
16 skilled nursing facility.

17 Q And whose name is on it?

18 A Michelle Pina.

19 Q Okay. And is that also signed by Pam?

20 A Yes.

21 Q Okay. All right.

22 MR. GOLDSTEIN: I have nothing -- let me move for receipt  
23 of Exhibit 2.

24 HEARING OFFICER VENTOLA: Any --

25 MS. MALKANI: No objection.

1 HEARING OFFICER VENTOLA: -- objection?

2 MS. MALKANI: No.

3 HEARING OFFICER VENTOLA: Exhibit 2 is admitted.

4 **(Employer Exhibit Number 2 Received into Evidence)**

5 MS. MALKANI: Okay.

6 HEARING OFFICER VENTOLA: Do you have any questions?

7 MS. MALKANI: Yeah, I do.

8 **CROSS-EXAMINATION**

9 Q BY MS. MALKANI: Good afternoon.

10 A Hi.

11 Q You testified you supervise roughly over 80 employees?

12 A Yes.

13 Q Okay. So, is it fair to say you haven't personally spent  
14 a lot of time observing Henrietta Perez and Michelle Pina  
15 interact?

16 A Correct.

17 Q And Henrietta Perez is allowed to tell CNAs to assist her  
18 with certain activities, correct?

19 MR. GOLDSTEIN: Objection; vague.

20 Q BY MS. MALKANI: Do CNAs sometimes work on the activities  
21 program?

22 A They sometimes float into the activities program, yes.

23 Q Okay. And so, sometimes there's a -- is there sometimes a  
24 need for more than two people to work on the activities  
25 program?

1 A If we're having a special event.

2 Q Okay. Like a holiday party or something like that?

3 A Yes.

4 Q And on those occasions, does that necessitate that the CNA  
5 might need to have her hours changed -- or he or her, if the  
6 activity runs a different time?

7 A It could possibly.

8 Q Okay. Because most CNAs are scheduled for the traditional  
9 healthcare shifts, 7 to 3, 3 to 11, is that correct?

10 A Yes.

11 Q Okay. And what about Henrietta Perez and Michelle Pina,  
12 what are their regular hours?

13 A Henrietta usually does 7 to 3 and Michelle does 8 to 40 so  
14 that we can have activities a little bit later into the  
15 evening.

16 Q Okay. And do they sometimes adjust their hours if it's  
17 needed for an activity?

18 A Yes.

19 Q And do they do that on their own?

20 A They usually will work it out between themselves and then  
21 they run it by me to see if it's okay with me.

22 Q Okay. And I believe you testified that you ex -- you  
23 would expect Henrietta Perez to notice if a patient needs care,  
24 correct?

25 A Yes.

1 Q For example, if they've soiled themselves, it's okay then  
2 to go to a CNA and say please change this person, correct?

3 A Yes.

4 Q Okay. Would it be fair to say though it's not okay for  
5 Henrietta Perez to go and scold a CNA if she thinks a CNA has  
6 done something wrong?

7 A It would be inappropriate for any employee to scold one  
8 another or even for a manager to scold somebody --

9 Q Okay.

10 A -- in that respect.

11 Q Okay. So, if Ms. Perez or any other -- if Ms. Perez  
12 believes that a CNA has brought someone to an activities  
13 without properly changing them or dressed inappropriately,  
14 wouldn't the -- what is Henrietta Perez supposed to do about  
15 that?

16 A I would expect that she would let the CNA know that it was  
17 inappropriate.

18 Q And in letting the CNA know that it was inappropriate,  
19 would it be fair to say that if she conveys that in a very  
20 harsh manner, it could be interpreted as discipline by the CNA?

21 MR. GOLDSTEIN: Objection; speculation, vague.

22 HEARING OFFICER VENTOLA: I think that it's -- I think you  
23 need to define discipline. I think the question --

24 MS. MALKANI: Okay.

25 HEARING OFFICER VENTOLA: -- is vague.

1 I'm going to go ahead and sustain that objection.

2 And rephrase --

3 MS. MALKANI: Okay.

4 HEARING OFFICER VENTOLA: -- your question.

5 MS. MALKANI: Okay.

6 Q BY MS. MALKANI: The first round of discipline is a verbal  
7 talking to from the manager to the -- the manager/supervisor to  
8 the employee, is that correct?

9 A Yes, but it is in writing and it is filed in their  
10 personnel file.

11 Q Okay. So, employees are never called into the office and  
12 spoken to without having it go in their personnel file without  
13 a written document?

14 A I do speak with employees.

15 Q Okay. So, sometimes there's --

16 A But it is not considered discipline, it's just considered  
17 talking and educating.

18 Q Okay. Can you help me understand what the difference is  
19 between a talking and educating than a manager -- that -- so,  
20 there's times when you've sort of done a talking and educating  
21 with an employee to help them understand how to do something  
22 better, right, because --

23 A Correct.

24 Q -- you're the manager, that's your job to do?

25 A Correct.

1 Q So, how is an employee supposed to know the difference  
2 between that and Ms. Perez talking and educating to an employee  
3 about how they've done something wrong?

4 MR. GOLDSTEIN: Objection; you're asking her to speculate  
5 about some conversation that she has no knowledge of.

6 The question is how is some conversation she has with an  
7 employee differ from conversations --

8 MS. MALKANI: I --

9 MR. GOLDSTEIN: -- that Ms. Perez has with an employee.  
10 And if she hasn't seen the conversation or heard the  
11 conversation --

12 MS. MALKANI: You know what, I'll rephrase actually.

13 Q BY MS. MALKANI: Is it -- would it be appropriate for  
14 Ms. Perez to do a similar sort of talking and educating to a  
15 co-worker, it wouldn't, correct?

16 A I encourage all of my employees to hold each other  
17 accountable, CNA to CNA, CNA to LVN, that if they notice  
18 something that is outside of what they feel is normal or right,  
19 that they should bring it to that person's attention.

20 Q Okay. But if an employee -- if a CNA believes that an  
21 employee -- but there is a difference between you giving  
22 someone a verbal talking to and education -- you could do it in  
23 a manner that it wouldn't be permissible for Ms. Perez to do --

24 MR. GOLDSTEIN: Objection --

25 Q BY MS. MALKANI: -- would you agree -- was that fair --

1 MR. GOLDSTEIN: Objection --

2 Q BY MS. MALKANI: -- would you agree with that?

3 MR. GOLDSTEIN: -- vague, compound, speculation.

4 Q BY MS. MALKANI: In other -- so, let me -- let's talk  
5 about a specific example and maybe that'll be more clear.

6 If a CNA brings in a patient to activities and Ms. Perez  
7 feels that the patient is dressed inappropriately, is it okay  
8 for Ms. Perez to yell at the CNA about it?

9 A It would not be appropriate to yell at anybody.

10 Q Okay. Is it okay for Ms. Perez to order the CNA to go  
11 back to the room and tell the CNA how to dress the person?

12 A I think it's appropriate to tell somebody that that's --  
13 that the resident needs to be taken back and redressed.

14 Q Okay. And shouldn't the CNA -- if it's a situation where  
15 one co -- one employee has -- thinks that another co-employee  
16 has done something that really is wrong like that, shouldn't  
17 the -- shouldn't that be addressed through a -- through you or  
18 Raye Ann or whoever is in those positions?

19 A I think you have to define wrong.

20 Every day, people are rushed or make mistakes and it's  
21 pointed out to them, you know, please go and redo this. That  
22 does not rise to the level of needing disciplinary action by me  
23 and I wouldn't expect that.

24 You know, if it happened over and over and over, I would  
25 expect that it would be reported to me and then I would take

1 necessary disciplinary action if needed.

2 Q Okay. Are you at all familiar with the -- well, let me  
3 ask you this, who at the hospital, if you know, is responsible  
4 for responding to the Department of Health with regard to the  
5 licensing and certification of the skilled nursing facilities?

6 MR. GOLDSTEIN: Objection; relevance.

7 HEARING OFFICER VENTOLA: Are you focusing on the  
8 activities program portion --

9 MS. MALKANI: Yeah.

10 HEARING OFFICER VENTOLA: -- of that?

11 MS. MALKANI: Yes, I am.

12 Q BY MS. MALKANI: With regard to --

13 HEARING OFFICER VENTOLA: Okay.

14 Q BY MS. MALKANI: -- the activities program, who at the  
15 hospital is responsible for responding to --

16 A I am responsible.

17 Q Okay. And in responding to -- are you famil -- well, let  
18 me show you a document.

19 MR. GOLDSTEIN: I'm just going to object to any further  
20 questioning on those documents. I think we've -- on the basis  
21 of relevance, that I think we've gotten all we can out of the  
22 documents.

23 And this witness' testimony regarding those two particular  
24 exhibits in question aren't going to shine any more light on  
25 whether or not Ms. Perez supervises anyone.

1 HEARING OFFICER VENTOLA: I'll briefly allow her to ask a  
2 few questions about the document.

3 Q BY MS. MALKANI: If you look at -- I'm going to show you a  
4 document that's been marked as Petitioner's 10.

5 Are you familiar with this document?

6 A Yes.

7 Q Okay. What is it?

8 A It's a plan of correction.

9 Q Okay. And did you have any -- what was your -- do you  
10 have any -- how are you familiar with this document?

11 A I would have been over the skilled nursing department at  
12 that time.

13 Q Okay. And do you see on pages -- I'll draw your attention  
14 to the first page, if you look at the plan of correction --

15 A Yes.

16 Q -- the providers plan of correction, do you see the  
17 references to activity director?

18 A Yes.

19 Q Okay. Does that refer to Henrietta Perez?

20 A Yes.

21 Q Okay. And if you turn to the next page, there's also  
22 references to activities director?

23 A Yes.

24 Q I'm sorry, that's the same page, I apologize.

25 I meant it's what's marked as page 4 on the top, there is

1 references to the AD?

2 A Yes.

3 Q That refers to Ms. Perez as well?

4 A Yes.

5 Q Okay. And what -- generally, what is the -- is Mee  
6 Memorial Hospital required to have an activities leader or an  
7 activities director by state licensing requirements?

8 A Yes.

9 Q Okay. And that's all -- person has always been Henrietta  
10 Perez?

11 A It has been Henrietta Perez and also Michelle Pina.

12 Q Okay. And has Mee Memorial made an effort to ensure that  
13 the activities program has been in compliance with all state  
14 regulations?

15 A Yes.

16 Q Okay. And what is this document -- what is your  
17 understanding of what this document is that's been marked as  
18 Petitioner's Exhibit 10, it's titled statement of deficiencies  
19 and plan of correction?

20 A That's exactly what it is.

21 Q Okay. And on the -- focusing on the left side column of  
22 it, where it says initial comments --

23 MR. GOLDSTEIN: I'm going to --

24 Q BY MS. MALKANI: -- are those --

25 MR. GOLDSTEIN: -- object now that we're getting beyond a

1 few questions on this document and it's got nothing to do with  
2 Ms. Perez's duties.

3 We've already had over 15 questions on this document with  
4 this witness; it's not relevant.

5 MS. MALKANI: I'm using this witness actually to lay a  
6 foundation and get an explanation of this document and how it  
7 ties into her supervisory duties.

8 It's a department of regulation -- there's an  
9 administrative department of regulation state --

10 HEARING OFFICER VENTOLA: I'll --

11 MS. MALKANI: -- that states --

12 HEARING OFFICER VENTOLA: -- allow a few more questions.

13 MS. MALKANI: Okay.

14 HEARING OFFICER VENTOLA: But I want to move on.

15 MS. MALKANI: Okay.

16 Q BY MS. MALKANI: Turning back to Petitioner's 10, the  
17 initial comments on the left, are those essentially generated  
18 by the Department of Health?

19 A Yes.

20 Q Okay. And the plan of correction, is that generated --  
21 how is that generated, from the hospital?

22 A By me.

23 Q By you, okay.

24 And so, did you write what was in the right column?

25 A Yes.

1 Q Okay. And have there been plans of corrections since this  
2 one?

3 A Yes.

4 Q Okay. And have you participated in writing the plan of  
5 correction for any of those?

6 A Yes.

7 Q Okay. Until -- for what time period?

8 MR. GOLDSTEIN: Objection; relevance.

9 HEARING OFFICER VENTOLA: What was the question, the time  
10 period?

11 MR. GOLDSTEIN: They're asking about --

12 HEARING OFFICER VENTOLA: This is August of --

13 MR. GOLDSTEIN: -- other plans of correction that she  
14 would have been involved in writing.

15 HEARING OFFICER VENTOLA: In -- since this one?

16 MS. MALKANI: Yeah.

17 HEARING OFFICER VENTOLA: Okay. So --

18 MS. MALKANI: I'm just asking --

19 Q BY MS. MALKANI: Have you --

20 MS. MALKANI: Or I'll withdraw that.

21 Q BY MS. MALKANI: Are you familiar that -- with regulations  
22 that require that an activity leader shall supervise activity  
23 program?

24 MR. GOLDSTEIN: Objection; vague.

25 HEARING OFFICER VENTOLA: I'm going to ask you to define

1 the term for her, I think you need to be -- to use what you're  
2 referring to, if you're referring to state regulations and as  
3 that term is used in that -- as it's defined in those --

4 MS. MALKANI: Okay.

5 Q BY MS. MALKANI: Are you familiar with this California  
6 Administrative Code Regulations concerning activities programs?

7 A Yes.

8 Q Okay. And are you familiar that there is a code section  
9 that talks about the requirements for an activities program?

10 A Yes.

11 Q Okay. And are you familiar that that code section  
12 specifically states that there should be an activity leader  
13 that should engage in certain --

14 MR. GOLDSTEIN: Objection --

15 HEARING OFFICER VENTOLA: If we can direct her to --

16 MR. GOLDSTEIN: -- she's misstating the --

17 Q BY MS. MALKANI: -- in every facility?

18 MR. GOLDSTEIN: -- regulations.

19 HEARING OFFICER VENTOLA: If we can direct the witness to  
20 a --

21 MR. GOLDSTEIN: Direct the --

22 HEARING OFFICER VENTOLA: -- particular page in the  
23 exhibit, we can focus the questioning that way.

24 MS. MALKANI: Okay.

25 MR. GOLDSTEIN: And, again, let me just assert the

1 objection on relevance, whether or not there's a state  
2 regulation is not relevant to whether or not Ms. Perez performs  
3 supervisory functions.

4 MS. MALKANI: Unless the hospital is saying to the  
5 State --

6 HEARING OFFICER VENTOLA: The objection is noted.

7 MS. MALKANI: Okay.

8 HEARING OFFICER VENTOLA: Let's go ahead and ask --

9 MS. MALKANI: Okay.

10 HEARING OFFICER VENTOLA: -- the witness a particular  
11 question and then relate it to Ms. Perez's duties, if --

12 Q BY MS. MALKANI: I'm going to read to you a section of the  
13 California Administrative Code and ask you if you're familiar  
14 with it, okay?

15 MR. GOLDSTEIN: Can you tell me where you're referring to  
16 please?

17 MS. MALKANI: Yes.

18 MR. GOLDSTEIN: What exhibit?

19 MS. MALKANI: The -- it's not an exhibit, it's --

20 MR. GOLDSTEIN: Then I'm going to object to reading --

21 MS. MALKANI: I mean, I can introduce --

22 MR. GOLDSTEIN: -- aloud --

23 MS. MALKANI: -- it.

24 MR. GOLDSTEIN: No, I --

25 HEARING OFFICER VENTOLA: I --

1 MS. MALKANI: It's a question, I --

2 MR. GOLDSTEIN: We don't have an exhibit.

3 MS. MALKANI: I'm asking her if she's familiar with it.

4 MR. GOLDSTEIN: I don't know what you're reading. I mean,  
5 if you're reading her something that you say comes from the  
6 California Administrative Code, I don't know whether or not  
7 that's true, I haven't seen it.

8 And, again, it --

9 HEARING OFFICER VENTOLA: Do you have copies of the --

10 MR. GOLDSTEIN: -- how does it --

11 MS. MALKANI: I can make copies, yeah.

12 Yeah, can we take a minute to make copies?

13 HEARING OFFICER VENTOLA: Yeah.

14 MS. MALKANI: Otherwise I can show it to counsel and show  
15 it to the witness, I don't necessarily need to introduce it.

16 HEARING OFFICER VENTOLA: That's fine, show it to  
17 counsel --

18 MS. MALKANI: Is that sufficient.

19 HEARING OFFICER VENTOLA: -- and then --

20 MS. MALKANI: Actually, I do have a second copy of the  
21 same document. So --

22 HEARING OFFICER VENTOLA: Let me see it.

23 MR. GOLDSTEIN: Well, I'd like to hold onto this while you  
24 question her, so --

25 THE WITNESS: Can I --

1 MS. MALKANI: Well --

2 THE WITNESS: Can I look at it?

3 MR. GOLDSTEIN: No.

4 MS. MALKANI: You know what, I -- you know, okay, I don't  
5 have another copy of it, but I have two copies.

6 MR. GOLDSTEIN: Have you ever seen it before?

7 MS. MALKANI: I'm -- can I ask the questions, counselor?

8 HEARING OFFICER VENTOLA: Do you need --

9 MR. GOLDSTEIN: No.

10 HEARING OFFICER VENTOLA: Let me -- I'm sorry, I was  
11 reading the exhibit.

12 MS. MALKANI: Here.

13 HEARING OFFICER VENTOLA: That's okay.

14 Go ahead and question her.

15 MR. GOLDSTEIN: Okay. May I have a copy?

16 MS. MALKANI: Well --

17 THE COURT REPORTER: I have a copy over here for you.

18 HEARING OFFICER VENTOLA: Give him that copy then.

19 MR. GOLDSTEIN: Okay. I'm missing the back -- do you have  
20 another page?

21 This is page 1 of 2.

22 MS. MALKANI: Do you have a second page of that?

23 MR. GOLDSTEIN: Some have things on the back, mine  
24 doesn't.

25 HEARING OFFICER VENTOLA: Let's just make a copy quickly.

1 MS. MALKANI: Thank you.

2 HEARING OFFICER VENTOLA: That one's double-sided.

3 MR. GOLDSTEIN: This one's missing.

4 HEARING OFFICER VENTOLA: Thank you.

5 THE COURT REPORTER: Sure.

6 MS. MALKANI: Can we mark this as Petitioner's next in  
7 order, I believe it's 12.

8 THE COURT REPORTER: Sure.

9 HEARING OFFICER VENTOLA: Is it 11?

10 THE COURT REPORTER: I think it's 11.

11 MS. MALKANI: I thought I marked 11 but didn't introduce  
12 it.

13 MR. GOLDSTEIN: I think it's 12.

14 THE COURT REPORTER: Right.

15 MR. GOLDSTEIN: Hold on.

16 MS. MALKANI: Oh, I'll ask the court reporter.

17 MR. GOLDSTEIN: He would know.

18 Yeah, 11 was the 2003 --

19 HEARING OFFICER VENTOLA: We didn't -- that was not --

20 MR. GOLDSTEIN: That was not --

21 HEARING OFFICER VENTOLA: -- introduced in --

22 MR. GOLDSTEIN: That was not introduced, so we're going  
23 to --

24 HEARING OFFICER VENTOLA: No.

25 MR. GOLDSTEIN: -- we're going to mark this as P-11.

1 MS. MALKANI: Was --

2 MR. GOLDSTEIN: P-11 didn't get introduced.

3 MS. MALKANI: P-11 was not marked?

4 THE COURT REPORTER: Technically, no.

5 MS. MALKANI: Okay. Perfect.

6 HEARING OFFICER VENTOLA: Oh, I thought you withdrew --

7 MR. GOLDSTEIN: Was --

8 HEARING OFFICER VENTOLA: -- it because that was the  
9 2003 --

10 MS. MALKANI: I did.

11 HEARING OFFICER VENTOLA: -- document --

12 MS. MALKANI: But I thought we --

13 MR. GOLDSTEIN: Was Employer's Exhibit 2 --

14 HEARING OFFICER VENTOLA: -- that -- okay.

15 MS. MALKANI: -- I thought we --

16 HEARING OFFICER VENTOLA: Okay.

17 MR. GOLDSTEIN: -- received?

18 THE COURT REPORTER: It was, sir.

19 MS. MALKANI: -- marked it without --

20 MR. GOLDSTEIN: Okay. Thank you.

21 MS. MALKANI: -- introducing it. So --

22 HEARING OFFICER VENTOLA: Okay.

23 Q BY MS. MALKANI: So, I'm going to show you a document that  
24 has been marked as Petitioner's 11.

25 And I'd like to draw your attention to the -- and I'll

1 represent to you that this is a section of the California  
2 Administrative Code stating requirements for an activity  
3 program.

4 Are you familiar with this regulation?

5 A Yes.

6 Q Okay. And I'd like to draw your attention to subdivision  
7 D, at the bottom of the first page of this document.

8 It states, "The activity leader at a minimum shall," do  
9 you see that?

10 A Yes.

11 Q Okay. Is there an activity leader at Mee Memorial who  
12 develops, implements and supervises the activity program?

13 A We have two.

14 Q Okay. And who is that?

15 A Henrietta Perez and Michelle Pina.

16 Q Okay. And at Mee Memorial, is there an activity leader  
17 who plans and conducts in-service training of the staff of the  
18 facility at least annually?

19 A They work with the education department to work on that  
20 in-service.

21 Q Okay. So, who is it that works with the education  
22 department to plan that in-service training?

23 A It would be Henrietta and Michelle.

24 Q Okay. And at Mee Memorial, who coordinates the activities  
25 schedule with other patient services?

1 A Henrietta and Michelle.

2 Q Okay. And are these all -- and drawing your attention to  
3 the second page, I'd ask you to review the rest of the listing  
4 under D, 4 through 10.

5 Take a moment to review those and let me know when you've  
6 done so.

7 A Okay.

8 Q Okay. Are those also all tasks that Henrietta Perez and  
9 Michelle Pina do at Mee Memorial?

10 A To different varying extents, yes.

11 Q Okay. Let's go through them then. So, number 4, maintain  
12 a current list of patients from the nursing service who are not  
13 physically able to participate in --

14 MR. GOLDSTEIN: Objection --

15 Q BY MS. MALKANI: -- activities --

16 MR. GOLDSTEIN: -- relevance.

17 Q BY MS. MALKANI: -- who does that?

18 MR. GOLDSTEIN: Objection.

19 MS. MALKANI: This goes directly to job duties.

20 MR. GOLDSTEIN: It doesn't go to supervisory status.

21 HEARING OFFICER VENTOLA: I think that the document speaks  
22 for itself. And she's indicated that they participate in those  
23 duties.

24 You -- I mean, if you want to make an argument that those  
25 are supervisory, I think that that's a separate issue.

1 MS. MALKANI: Okay.

2 HEARING OFFICER VENTOLA: Questioning the witness about  
3 it --

4 Q BY MS. MALKANI: To what extent does -- focusing your  
5 attention on number 7, developing and maintaining contacts with  
6 community agencies and organizations. Who does that in Mee  
7 Memorial?

8 MR. GOLDSTEIN: Objection; relevance.

9 Q BY MS. MALKANI: Is that Ms. Perez?

10 MR. GOLDSTEIN: Objection; relevance.

11 HEARING OFFICER VENTOLA: Again to the extent that you can  
12 link that -- she's already indicated that both of those  
13 individuals --

14 MS. MALKANI: Do all these tasks. Okay.

15 HEARING OFFICER VENTOLA: -- do that to a varying degree.  
16 To the extent that you want to argue that that establishes  
17 supervisory -- I mean if there's a factual question you want  
18 to --

19 MS. MALKANI: Okay.

20 Q BY MS. MALKANI: If a certain group comes in wanting to  
21 do -- a certain outside group wanting to do activities with  
22 patients, who makes the decision whether or not to have that  
23 group come in and do an activity with patients?

24 A Henrietta and Michelle work together on the scheduling to  
25 determine who comes in.

1 Q Okay. And you don't play a role in that decision,  
2 correct?

3 A Occasionally they'll come and ask me.

4 Q But they don't have to?

5 A No.

6 Q And is there a volunteer program that has -- has Henrietta  
7 had any role in recruiting and maintaining a volunteer program  
8 called the Pink Ladies?

9 A No.

10 Q She doesn't have any role with Pink Ladies?

11 A She can request or Michelle can request the Service League  
12 members to come and help with activities, but that is -- that's  
13 separate from our department. We can just request their help.

14 MS. MALKANI: Okay. No further questions.

15 HEARING OFFICER VENTOLA: I think I just had a couple.

16 Are you moving to introduce this?

17 MS. MALKANI: Oh, yeah. Thank you, yes.

18 MR. GOLDSTEIN: I don't object to it.

19 HEARING OFFICER VENTOLA: P-11 is received into evidence.

20 **(Petitioner Exhibit Number P-11 Received into Evidence)**

21 HEARING OFFICER VENTOLA: And just so I can kind of  
22 understand the hierarchy. Is there still a director of skilled  
23 and acute services? And is that a separate position than the  
24 SNF manager?

25 THE WITNESS: No. That was eliminated.

1 HEARING OFFICER VENTOLA: Okay. And other than yourself  
2 and Raye Ann, is she the only unit supervisor?

3 THE WITNESS: Yes.

4 HEARING OFFICER VENTOLA: So all 25 CNAs report to her and  
5 to you?

6 THE WITNESS: They report to me. She can help me. Like  
7 she helps me with evaluations. She could help me with  
8 disciplining.

9 HEARING OFFICER VENTOLA: Do the activities' coordinators  
10 participate in the -- or does Ms. Perez specifically  
11 participate in the evaluation of CNAs?

12 THE WITNESS: No.

13 HEARING OFFICER VENTOLA: Is there a wage differential  
14 between Henrietta Perez and -- in her last appraisal it  
15 appeared that she makes around 24 -- over \$20 an hour, 20.45.  
16 She might have received a raise since then.

17 THE WITNESS: Probably. I don't know exactly what she  
18 makes.

19 HEARING OFFICER VENTOLA: Is there a difference in the pay  
20 in the hourly rate between Ms. Perez and Ms. Pina?

21 THE WITNESS: Yes, based on your experience.

22 HEARING OFFICER VENTOLA: Okay. And was there a starting  
23 rate -- and Ms. Pina, are you familiar with her current salary  
24 rate, hourly rate? Excuse me.

25 THE WITNESS: I am not. I apologize.

1 HEARING OFFICER VENTOLA: With respect to -- I think those  
2 might be my only questions. Would you also refer to Ms. Pina  
3 as a -- do you know why the term "activities' director" is used  
4 in the report?

5 THE WITNESS: It was an old term, and I don't know when it  
6 changed back to Team Leader. I couldn't tell you that, but in  
7 the old definition it used to be activities director, and it  
8 listed all of the same -- basically the same requirements as in  
9 Exhibit P-11, the same as there's a director of staff  
10 development. Just Title 22 likes the term "director," and I  
11 just used it because it was a familiar -- the standard Title 22  
12 term.

13 HEARING OFFICER VENTOLA: Is there any way that you knew  
14 that you were referring to -- I think you testified that you  
15 were referring to Ms. Perez in this report by the term  
16 "activity director."

17 THE WITNESS: That's because it was done in 2010, and this  
18 survey was for downstairs, and she was downstairs, and Michelle  
19 was upstairs.

20 HEARING OFFICER VENTOLA: Was there a survey for the  
21 upstairs?

22 THE WITNESS: No.

23 HEARING OFFICER VENTOLA: Okay. But otherwise if it would  
24 have been for upstairs would you have also referred to Ms. Pina  
25 in the same fashion?

1 THE WITNESS: Yes.

2 HEARING OFFICER VENTOLA: I don't have any further  
3 questions.

4 MR. GOLDSTEIN: I have nothing.

5 HEARING OFFICER VENTOLA: Did Ms. Pina -- I have one --  
6 and I'm sorry. I thought of one more thing. Did Ms. Pina's  
7 badge say "activities' director" at some point?

8 THE WITNESS: No. I think it always said "activities'  
9 coordinator."

10 HEARING OFFICER VENTOLA: And do you know why that --

11 THE WITNESS: We were just trying to change -- at that  
12 time we had -- there were other coordinators throughout  
13 hospital wide as part of their title, and I think we were just  
14 trying to make things uniform.

15 HEARING OFFICER VENTOLA: All right. I have nothing  
16 further.

17 Does anybody else have any further questions?

18 MR. GOLDSTEIN: No.

19 HEARING OFFICER VENTOLA: All right. Thank you for your  
20 testimony. You're excused.

21 THE WITNESS: Thank you.

22 MR. GOLDSTEIN: Thank you.

23 Can we go off the record for a minute?

24 HEARING OFFICER VENTOLA: Off the record.

25 (Off the record at 4:37 p.m.)

1 MR. GOLDSTEIN: I'd like to propose the following  
2 stipulation, that Michelle Pina was on the Excelsior list, and  
3 her vote was not challenged.

4 MS. MALKANI: That's correct.

5 HEARING OFFICER VENTOLA: So stipulated. That stipulation  
6 is received.

7 MR. GOLDSTEIN: Okay, thank you.

8 Employer calls Karen Wong.  
9 Whereupon,

10 **KAREN WONG**

11 having been duly sworn, was called as a witness herein and was  
12 examined and testified as follows:

13 **DIRECT EXAMINATION**

14 Q BY MR. GOLDSTEIN: Ms. Wong, what's your job title?

15 A Chief human resources officer.

16 Q How long have you held that title?

17 A Since March of 2012.

18 Q And prior to -- and your employer is Mee Memorial  
19 Hospital?

20 A That is correct.

21 Q Prior to March of 2012 did you work for Mee Memorial  
22 Hospital?

23 A Yes.

24 Q Did you have a different job title?

25 A Director of human resources.

1 Q When did you first start at Mee Memorial?

2 A March of 2011.

3 Q When you first started at Mee Memorial in March of 2011  
4 did you do anything with respect to the job classifications of  
5 the hospital?

6 A Yes.

7 Q Could you please describe what you did.

8 A What I did is we did several audits with all the personnel  
9 files matching the job descriptions to the job titles in our  
10 Medi-Tech system. We did primary source verification audit.

11 Q What's a "Medi-Tech system"?

12 A "Medi-Tech system" is the computerized system that we use  
13 to enter all of our HR data.

14 Q And as part of that audit did you determine that certain  
15 employees had been misclassified?

16 A That is correct.

17 Q And did you determine Ms. Perez' job title had been  
18 misclassified?

19 A That is correct.

20 Q And what did you do -- what was she called on some of the  
21 documents in your system?

22 A She was listed as an activities' director. She did not  
23 have a job description with that title. Therefore, that's what  
24 triggered -- her job description title didn't match what was in  
25 Medi-Tech, and we had no other past document to refer to that

1 showed that that should have ever been changed.

2 Q Okay. I'd like you to take a look at what's been marked  
3 as Petitioner's Exhibit 3, and then also looking at Exhibit 2.  
4 Let me just look at the dates. So do you recognize those  
5 documents?

6 A Yes.

7 Q What are they?

8 A These are personal action reports.

9 Q And on one report does it identify Ms. Perez' job title as  
10 "activities' director"?

11 A Yes.

12 Q And on the next report is it identified as "activities'  
13 coordinator"?

14 A That is correct.

15 Q And why was the title changed on that document?

16 A The title was changed then based on the product of the  
17 audit that her title did not match what her job description  
18 stated, and at this point in time upon discovery 6/13 of '11  
19 her title changed to "coordinator."

20 Q And are -- did you know that Ms. Perez had a name badge  
21 that said "activities' director"?

22 A No.

23 Q When did you learn that?

24 A At the pre-conference hearing it was brought to our  
25 attention at that point in time.

1 Q For the election?

2 A Uh-huh, that's correct.

3 Q So after you saw that what'd you do?

4 A Upon discovery of anything we take action to rectify and  
5 fix things. So we have now a new badge that represents her  
6 current title.

7 Q Which is?

8 A Activities' coordinator.

9 Q And then to the best of your recollection, based upon the  
10 documents you've seen, when was the title changed to  
11 "activities' coordinator"?

12 A 6/13 of '11. And actually it was -- that's the date of  
13 the transaction, but actually it was data entered by Lori  
14 Garcia on 7/13 of 2011.

15 MR. GOLDSTEIN: Okay, thank you. I have nothing more.

16 MS. MALKANI: No questions.

17 HEARING OFFICER VENTOLA: I don't have any questions.

18 THE WITNESS: Thank you.

19 MR. GOLDSTEIN: I have nothing more.

20 HEARING OFFICER VENTOLA: All right. We'll just go off  
21 the record briefly.

22 (Off the record at 4:46 p.m.)

23 HEARING OFFICER VENTOLA: All right. And Mr. Goldstein,  
24 do you have any further witnesses?

25 MR. GOLDSTEIN: No, I don't.

1 HEARING OFFICER VENTOLA: At this time the record is  
2 closing, and I will allow the parties to file briefs. The  
3 briefs will be due within seven days, so on January 10th, 2013.

4 And I'm advising you now that requests for extensions of  
5 time will not be granted, except under the most unusual  
6 circumstances. And if you're going to request an extension of  
7 time your request must contain the specific reasons why you  
8 can't submit the brief within seven days.

9 And you need to order an expedited transcript of the  
10 hearing. I will not entertain a request for a continuance  
11 based upon the failure to obtain a copy of the transcript  
12 unless you've made arrangements for an expedited delivery of  
13 the transcript. Is that understood by the parties?

14 MS. MALKANI: Yes.

15 MR. GOLDSTEIN: Yes.

16 HEARING OFFICER VENTOLA: All right. Thank you. The  
17 hearing is now closed.

18 **(Whereupon, the hearing in the above-entitled matter was closed**  
19 **at 4:51 p.m.)**

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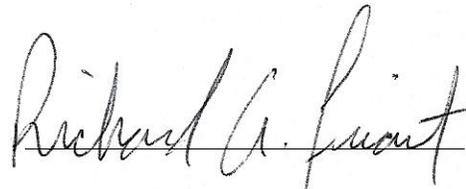
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**C E R T I F I C A T I O N**

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 32, Case 32-RC-090886, Southern Monterey County Memorial Hospital Inc. d/b/a George L. Mee Memorial Hospital, and National Union of Healthcare Workers, at the National Labor Relations Board, Region 32, 342 Pajaro Street, Conference Room, Salinas, California 93901, on Thursday, January 3, 2013, at 10:17 a.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



RICHARD A. FRIANT, CER

Official Reporter

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