IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MARC FIEDLER,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	**Civil Action No. 2010 CA001788M**
	:	**Cal. 1, Judge Edelman**
LUCY WEBB HAYES NATIONAL TRAINING SCHOOL FOR DEACONESSES AND MISSIONARIES Conducting SIBLEY MEMORIAL HOSPITAL,	:	**Next Scheduled Event: Def.'s R.26(b)(4) Stmt. 1/28/11**
	:	
	:	
	:	
	:	
Defendant.	:	
	:	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO DESIGNATE A RULE 30(b)(6) SPOKESPERSON FOR DEPOSITION

COMES NOW the Defendant, **Lucy Webb Hayes National Training School For Deaconesses and Missionaries Conducting Sibley Memorial Hospital,** by and through its attorneys, **Steven A. Hamilton, Esquire, Karen S. Karlin, Esquire** and **Hamilton Altman Canale & Dillon, LLC,** and respectfully submits this Opposition to Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Spokesperson for Deposition. In support of this Opposition, Defendant respectfully refers to the Court to the attached Memorandum of Points and Authorities.

Respectfully submitted,

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MARC FIEDLER,	:
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Plaintiff,	:
	:
vs.	: **Civil Action No. 2010 CA001788M**
	: **Cal. 1, Judge Edelman**
LUCY WEBB HAYES NATIONAL	: **Next Scheduled Event:**
TRAINING SCHOOL FOR	: **Def.'s R.26(b)(4) Stmt. 1/28/11**
DEACONESSES AND MISSIONARIES	:
Conducting SIBLEY MEMORIAL	:
HOSPITAL,	:
	:
Defendant.	:
	:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO DESIGNATE A RULE 30(b)(6) SPOKESPERSON FOR DEPOSITION

COMES NOW the Defendant, **Lucy Webb Hayes National Training School For Deaconesses and Missionaries Conducting Sibley Memorial Hospital,** by and through its attorneys, **Steven A. Hamilton, Esquire, Karen S. Karlin, Esquire** and **Hamilton Altman Canale & Dillon, LLC,** and respectfully submits this Opposition to Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Spokesperson for Deposition.

I. BACKGROUND[1]

This is a medical malpractice case filed by Plaintiff Marc Fiedler against Defendant, Lucy Webb Hayes National Training School For Deaconesses and

[1] Defendant disputes much of the information set forth in the "Background" section of Plaintiff's Motion because it is not factually correct, is argumentative, and essentially restates the allegations set forth in Plaintiff's Complaint without citing to the Complaint. See Pl.'s Mem. of Pts. & Auth. at 3-4.

Missionaries Conducting Sibley Memorial Hospital ("Sibley"), on March 19, 2010 arising out of care and treatment rendered to Plaintiff following right rotator cuff surgery performed at Sibley Memorial Hospital on March 27, 2007. By way of brief background,[2] Mr. Fiedler suffers from quadriplegia due to a motor vehicle accident in 1975. (Compl. at ¶ 6). Following the rotator cuff surgery on March 27, Mr. Fiedler was transferred on March 28, 2007 from a post-surgical hospital unit to the Sibley Memorial Hospital Renaissance Skilled Nursing Facility, a skilled nursing and rehabilitation unit, prior to discharge home. The Complaint contends that the day before discharge, on April 8, 2007, an employee of Sibley advised Plaintiff that he had something on his buttock and should have a nurse look at it. (Compl. at ¶ 7). The Complaint further contends that Mr. Fiedler was discharged on April 9 and the Sibley staff "said and did nothing further about whatever was on his skin." (Id.) According to the Complaint, on April 11, 2007, a visiting nurse advised Mr. Fiedler that he had a decubitus ulcer on his left buttock, and he saw his treating physiatrist the following day, April 12, 2007. His physician advised him to return to the hospital, and Mr. Fiedler was re-admitted to Sibley on April 12. (Compl. at ¶ 8). Thereafter, Mr. Fiedler states that he required wound debridement and reconstructive surgery. (Compl. at ¶ 9).

The Complaint alleges that Defendant's employees were negligent in the treatment of Mr. Fiedler with regard to the following: (1) not giving Mr. Fiedler proper

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[2] The medical/factual history set forth in this Opposition is only a brief description of Plaintiff's condition and the care and treatment rendered at Sibley and thereafter. It is not intended to be a complete description of the medical care provided but, rather, to provide the Court with a condensed overview of the extensive medical treatment rendered for purposes of ruling on the instant Motion.

skin care to prevent development of the pressure ulcer; (2) failing to treat the ulcer promptly upon its development; and (3) discharging Mr. Fiedler prematurely to his home without instructions about taking care of the ulcer. The Complaint further alleges that the negligence of Defendant's employees caused the ulcer to develop and progress. (Compl. at ¶ 10). Defendant has denied all allegations of negligence, causation and damages.

An Initial Scheduling Order was entered on July 8, 2010 setting forth the deadlines for discovery. Since this action was filed, the parties have exchanged written discovery requests and responses, including extensive medical records for Plaintiff. Defendant also has requested to schedule to depose Plaintiff and Plaintiff's sister, who was present during times relevant to the allegations in the Complaint. To date, Plaintiff has not requested to depose any health care providers at Sibley.

On September 28, 2010, Plaintiff served a Rule 30(b)(6) Notice of Corporate Designee Deposition to Sibley listing fifteen separate Notice items (letters (a) through (o)) for which "Defendant Sibley Memorial Hospital is requested to designate one or more persons to testify on its behalf," as well as five categories of documents to be produced at the time of the deposition. (Attached hereto as Exh. 1). In a letter dated October 29, 2010, counsel for Sibley sent a detailed response to Plaintiff's Notice of Deposition Pursuant to Rule 30(b)(6), addressing individually the extensive list of specific Notice items to be addressed and documents requested to be produced. Before addressing each individual request in turn, counsel for Defendant noted in general that

> the majority of the matters identified by Plaintiff in the Notice are unduly burdensome and are better suited for the healthcare providers involved in Mr. Fiedler's care and treatment, not a corporate representative. Moreover, several of the proposed deposition subjects are duplicative of information and/or documents requested in Plaintiff's Interrogatories and

> Request for Production of Documents. The deposition matters identified by Plaintiff cover a broad range of issues and materials, and in order for Defendant to sufficiently designate a deponent with sufficient knowledge on the subject matters set forth in the Notice, Defendant will have to designate numerous individuals to testify on its behalf. Thus, there are more cost effective and efficient mechanisms for obtaining the information and documents that Plaintiff seeks, including the discovery requests already served, and/or deposing the healthcare providers specifically involved in Mr. Fiedler's care and treatment.

(See 10/29/10 letter, attached hereto as Exh. 2).

Thereafter, on December 1, 2010, Defendant filed Sibley's Answers to Plaintiff's Interrogatories and Response to Plaintiff's Requests for Production of Documents and exhibits thereto. The same day, counsel for Defendant sent another letter to counsel for Plaintiff, again noting that much of the information requested of a Rule 30(b)(6) deponent was included in the discovery responses. In addition, counsel for Defendant reiterated that any additional substantive information relating to the care and treatment of Mr. Fiedler during the admission at issue, and/or the condition of Mr. Fiedler at the time of discharge that Plaintiff may be seeking from a Rule 30(b)(6) deponent, should be obtained directly from the treating providers with direct knowledge of this information.

Despite the extensive information provided to counsel for Plaintiff in discovery responses and the letters from counsel for Defendant, and during a good faith meeting regarding the subject of this Motion, counsel for Plaintiff has refused to reconsider any of the extensive list of specific Notice items to be addressed and documents to be produced, and therefore filed the instant Motion. For the reasons set forth below, Plaintiff's Motion is without merit, and should be denied in its entirety.

II. RULE 30(B)(6) DEPOSITIONS

Superior Court Civil Procedure Rule 30(b)(6) provides, in pertinent part, that upon service of a Notice of Deposition:

> The organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. . . . The persons so designated shall testify as to matters known or reasonably available to the organization.

The purpose of Rule 30(b)(6) is to provide a mechanism to obtain testimony from a corporate entity on particular subjects "by having the corporation designate a natural person to speak for the entity on those subjects." See Steven S. Gensler, *Federal Rules of Civil Procedure Rules and Commentary*, 555 (2010). Therefore, Rule 30(b)(6) allows a deposing party to discover facts from a corporate entity on a particular topic. Id. However, Rule 30(b)(6) does not require a corporate entity to create or educate a single witness, when the witnesses with direct personal knowledge already exist and are available and prepared to testify regarding their personal knowledge. See e.g., Connor v. Washington Hospital Center, et al., Case No. 2008 CA 005692 M (D.C. Super. Ct. 5/7/09, Long, J.) (emphasis added) (attached hereto as Exh. 3).

In the instant case, Plaintiff makes broad, general arguments throughout his Motion regarding Plaintiff allegedly being "entitled to a corporate deposition of Sibley." (Pl.'s Mem. of Pts. & Auth. at 6.) Significantly, however, Plaintiff does not even reference in the Motion the specific Notice items set forth in Plaintiff's 30(b)(6) Notice, and/or the reasons that Plaintiff contends the Court should compel Defendant to produce a corporate designee on each of the Notice items. By contrast, as set forth in detail

below, it is Defendant's position that all of the Notice items are either duplicative, privileged, and/or the information requested already has been provided to Plaintiff in written discovery responses or is available to Plaintiff at his request. Contrary to Plaintiff's sweeping assertions, Defendant will address each of the Notice items in turn below, and set forth in detail why the Court should deny Plaintiff's Motion to Compel as to each item.

III. ARGUMENT

A. NOTICE ITEMS (a) THROUGH (d), (h) AND (i) ARE DUPLICATIVE OF INFORMATION PREVIOULSY PROVIDED AND ATTEMPT TO COMPEL DEFENDANT TO IDENTIFY A WITNESS HAVING "ALL KNOWLEDGE" OF THE DEFENDANT.

Plaintiff's 30(b)(6) Notice requests that Sibley Memorial Hospital designate a corporate designee, *inter alia*, on the following issues:

a. **The identity of all health care providers who had any involvement in treating Mr. Fiedler from March 27, 2007 - April 9, 2007, or who had any assigned duties concerning Mr. Fiedler. ("Identity" includes the full name, title, last known address and other contact information if no longer employed at Sibley, and a brief description of the person's role with Mr. Fiedler.)**

b. **The identity of all supervisory personnel who worked on the units where Mr. Fiedler was treated from March 27, 2007 – April 9, 2007.**

c. **All knowledge of Defendant concerning the substantive events that led to the development of a decubitus ulcer on Mr. Fiedler's buttocks while he was an inpatient at Sibley from March 27, 2007 - April 9, 2007.**

d. **The identity of all personnel present during the substantive events that led to the development of a decubitus ulcer on Mr. Fiedler's buttocks while he was an inpatient at Sibley from March 27, 2007 - April 9, 2007.**

h. **Defendant's position on why Mr. Fiedler was discharged from Sibley on April 9, 2007, without having been examined by a wound care specialist after the staff of Sibley's Renaissance Unit noticed a wound on Mr. Fiedler's buttocks.**

i. **Defendant's position on why Mr. Fiedler was discharged from Sibley on April 9, 2007, without having been given notice by Sibley personnel that he had a decubitus ulcer on his buttocks, or any instructions for treatment of the decubitus ulcer.**

Plaintiff claims in his Motion to Compel that Sibley is "obligated to designate a spokesperson who can testify to matters that might be touched upon in other discovery." (Pl.'s Mem. of Pts. & Auth. at 6). Plaintiff concedes that Defendant has duly identified each and every treating provider and supervisor for every shift that Mr. Fiedler was admitted to Sibley Memorial Hospital, yet Plaintiff states that "[r]ather than depose all of them, Mr. Fiedler would first like to inquire about the basic subject matter each knows so that more intelligent and focused discovery can be performed." (Id.). Plaintiff further states that he "wishes to depose a Sibley representative who is knowledgeable about the topics enumerated in Mr. Fiedler's Notice, and who can provide more detailed information about these topics." (Id.)

Thus, Plaintiff acknowledges in his Motion that every treating health care provider assigned to Plaintiff and every supervisor for each shift during the time that Mr. Fiedler was admitted to Sibley Memorial Hospital from March 27, 2007 to April 9, 2007 has been identified by Defendant in response to Plaintiff's Answers to Interrogatories. (See Def.'s Answers to Interrogatories, attached hereto as Exh. 4). Counsel for Defendant has further advised counsel for Plaintiff that if Plaintiff would like to depose any of the treating providers, defense counsel will coordinate the scheduling of any such requested depositions with the treating health care providers. Thus, every health care

provider has been identified to Plaintiff, and defense counsel has agreed to produce any treating health care provider for a deposition at the request of Plaintiff.

In addition, in the Answers to Plaintiff's Interrogatories that are signed by a representative of Sibley Memorial Hospital, Defendant unequivocally maintains that, contrary to Plaintiff's contention in the Complaint, it is Defendant's position that Plaintiff did **not** have any signs or symptoms of a pressure ulcer at the time of his discharge from Sibley Memorial Hospital on April 9, 2007. Specifically, the relevant Interrogatories and Answers are as follows:

> **INTERROGATORY NO. 22:**
>
> Did Mr. Fiedler have any signs or symptoms of the development of a pressure ulcer at the time of his discharge from Sibley Memorial Hospital on April 9, 2007? If so, what were they? What did your employees do to treat this condition? Identify the specific medical record entries documenting any signs or symptoms of the development of a pressure ulcer.
>
> **ANSWER NO. 22:**
>
> Mr. Fiedler did not have any signs or symptoms of the development of a pressure ulcer at the time of his discharge from Sibley Memorial Hospital on April 9, 2007.
>
> **INTERROGATORY NO. 23:**
>
> If you deny that Mr. Fiedler had any signs or symptoms of a pressure ulcer at the time of his discharge, when do you contend he developed the pressure ulcer? Give all facts supporting your contention.
>
> **ANSWER NO. 24:**
>
> Defendant denies that Mr. Fiedler had any signs or symptoms of a pressure ulcer at the time of his discharge from the Renaissance Unit on April 9, 2010. Therefore, he developed a pressure ulcer sometime after discharge on April 9, 2009 and presentation to Sibley Memorial Hospital on April 12, 2009.

(See Def.'s Answers to Interrogatories, attached hereto as Exh. 4).

Thus, all of the information sought in Notice items (a) through (d) has been

provided to Plaintiff in discovery responses. Moreover, no corporate designee or representative could make themselves reasonably aware of "all knowledge" of a corporation, under any circumstances. Plaintiff's requests, on their face, are overbroad and unduly burdensome to allow Defendant to reasonably respond. Defendant should not be required to manufacture a witness, who lacks first-hand knowledge of the events at issue, to testify and appear for a deposition to identify treating providers who already have been identified in discovery responses, and to testify regarding "all knowledge" possessed by Defendant. There is nothing in the plain language of Rule 30(b)(6) or in any binding legal authority in this jurisdiction to support Plaintiff's contention that he is entitled to compel Defendant to produce a single corporate designee who must undertake a non-privileged investigation to address the factual issues requested in Plaintiff's Notice.

Plaintiff cites one case, In re Vitamins Antitrust Litigation, 216 F.R.D. 168, 174 (D.D.C. 2003), for the proposition that a Rule 30(b)(6) deposition may be warranted, even if it is duplicative of other discovery. (Pl.'s Mem. of Pts. & Auth. at 7). However, In re Vitamins Antitrust Litigation is not binding on this Court, nor is it even persuasive under the circumstances presented. In re Vitamins Antitrust Litigation involved a class action against various vitamin manufacturers, and the issue relating to duplicative testimony by a 30(b)(6) deponent is distinguishable from this case because it did not relate to obtaining knowledge from other individuals with first hand-knowledge of the relevant events – it related to the 30(b)(6) deponent obtaining knowledge from corporate documents. In re Vitamins Antitrust Litigation, 216 F.R.D. at 174. By contrast, in this case, requiring Defendant Sibley to manufacture a witness by undertaking an investigation would result in unduly burdensome and cumulative discovery, and would

unfairly and substantially result in Defendant incurring significant costs in completing Plaintiff's factual discovery investigation for him, at no cost to Plaintiff. Like in the Connor case, the burden to Defendant in responding to Plaintiff's 30(b)(6) Notice would be convincing, and Plaintiff has failed to demonstrate a proper basis or need for a corporate designee deposition for the Notice items outlined above. See Connor, Exh. 3 at 12.

Accordingly, the facts contained in the medical records and discovery responses, and the witnesses having personal knowledge of the relevant facts and Plaintiff's medical care and treatment, are available to Plaintiff for deposition. Defendant should not be required or compelled to present a corporate "spokesperson" to speak for each of those health care providers. Plaintiff's attempt to compel Sibley to complete Plaintiff's factual discovery and investigation for Plaintiff by having a corporate designee with no personal knowledge of Plaintiff's care and treatment interview each and every health care provider for Plaintiff, and then synthesize such discovery for Plaintiff, is wholly inappropriate, unjustified, and substantially unfair and prejudicial to Defendant.

Accordingly, based upon the arguments set forth above, Defendant submits that Plaintiff's Motion to Compel with regard to Notice items (a) through (d), (h) and (i) should be denied.

B. COMPELLING DEFENDANT TO PRODUCE A CORPORATE DESIGNEE IN RESPONSE TO NOTICE ITEMS (a) THROUGH (d), (h), (i), (l) AND (m) AND REQUEST FOR PRODUCTION OF DOCUMENTS (3) WOULD VIOLATE PRIVILEGE.

Plaintiff's Notice items impermissibly seek to compel Defendant to perform an otherwise privileged internal investigation, and to then disclose the results of the

investigation to Plaintiff. As noted above, there is nothing in the plain language of Rule 30(b)(6) or in any binding legal authority in this jurisdiction to support Plaintiff's contention that he is entitled to compel Defendant to produce a single corporate designee who must undertake a non-privileged investigation to address the factual issues requested in Plaintiff's Notice. As this Court recently espoused the Connor case, to allow such an interpretation of Rule 30(b)(6) would eradicate both the attorney work product protections established in Rule 26(b) and the peer review privilege established under District of Columbia Code § 44-801 and § 44-805. As explained by Judge Long in that case:

> The Peer Review Issue. The gathering of WHC employees who would be needed to answer the deposition question easily qualify as "reviewing" officers whose findings, evaluations, and reports are covered by the peer review statute and the case law that has developed there under. D.C. Code § 44-801(5)(E-F); Jackson v. Scott, 667 A.2d 1365, 1368 (D.C. 1995). Without repeating all of the cogent arguments of the defendant, it is rather transparent that this entire enterprise of forcing the Hospital to provide this group of deponents is an inventive attempt to evade the peer review statute. The plaintiff has not provided any convincing explanation as to why its deposition does not amount to forced exposure of a peer review.
>
> **A party should not be able to do indirectly what it cannot do directly.** The privilege applies without regard to whether the Hospital has caused a formal peer review panel to generate a formal report regarding the treatment of this patient. The instant motion should be granted because of the peer review problem alone.

See Exh. 3 at 5 (emphasis added).

Plaintiff cites only **one case** from this jurisdiction, Haywood v. Medstar-Georgetown Medical Center, Inc., 2009 CA 009656 (Ramsey Johnson, J.), and attaches

an order in that case summarily granting a Motion to Compel Defendant to Designate a Spokesperson for Deposition. (Pl.'s Mem. of Pts. & Auth. at 10 and Exh. 6). However, as set forth in Judge Johnson's order granting the plaintiff's motion in the Haywood case, the order was based upon a written motion, opposition and oral arguments made by counsel during a status hearing, none of which were provided to Defendant or the Court in this case. Therefore, it is impossible for Defendant, or this Court, to determine whether or not there is any relevance whatsoever between the facts and circumstances of the Haywood case, as compared to the instant case. (Pl.'s Mem. of Pts. & Auth. at 10 and Exh. 6).

Plaintiff also cites Wilson v. Lakner, 228 F.R.D. 524 (D.Md. 2005) in support of his flawed contention that the above Notice items are not in conflict with the work product and peer review doctrines. (Pl.'s Mem. of Pts. & Auth. at 10). However, the Lakner case is neither analogous nor persuasive to the instant case, and the holding and rationale set forth by the Court are inapposite. In Lakner, the plaintiff sued the defendant hospital and two physicians relating to claims that a sponge was left in her pelvic cavity following the birth of her baby and a hysterectomy. Lakner, 228 F.R.D. at 525-26. The plaintiff requested that the defendant hospital designate one or more persons to address the facts pertaining to the retained sponge and her condition following later surgery to remove the sponge. The discovery dispute arose because the two corporate designees offered by the defendant for a 30(b)(6) deposition did not have knowledge of the facts for which they were designated. A third person with knowledge was offered, but the status of that person as a designee was withdrawn at the deposition. The plaintiff then filed a Motion to Compel because the three witnesses offered by the defendant apparently

exhausted the designated witnesses being offered in response to the 30(b)(6) notice of deposition. By contrast, in this case, Defendant Sibley is not refusing to produce witnesses. In fact, Defendant has identified all of the treating health care providers and their supervisors, and has offered to coordinate the depositions of any providers that Plaintiff would like to depose having personal knowledge of Plaintiff's medical care and treatment, and further having knowledge of relevant facts applicable to Plaintiff's claims.

Therefore, Plaintiff's requests for the disclosure of peer review and quality assurance records and discovery should be precluded. Moreover, Plaintiff's requests for a witness to perform an internal peer review investigation as a corporate designee for "all knowledge," all "events" or all "treatment" likewise should be precluded. The "events" in this case were Plaintiff's medical care and treatment. Much of the information requested by Plaintiff regarding these "events" (*i.e.*, the medical care of Plaintiff) is documented and memorialized in Plaintiff's Sibley Memorial Hospital medical records. The full and complete medical records already have been produced to Plaintiff,[3] as well as requested applicable policies and protocols and other documents potentially relating to Plaintiff's claims. Defendant concedes that additional knowledge may be possessed by the various health care providers who were personally involved in Plaintiff's care and treatment. The institution's knowledge of the "events" is the personal knowledge of the various providers who were involved in Plaintiff's medical care and treatment. There is

[3] Counsel for Plaintiff has expressed some concern that there may be medical records that were not produced. However, as discussed in Section III(D) below, counsel for Defendant has advised Plaintiff that Defendant will produce for inspection at Sibley Memorial Hospital the original hospital records for Mr. Fiedler for the time period from March 27, 2007 to April 9, 2007. Plaintiff has not requested to schedule any such inspection.

no one more suitable to testify about the "events" involving Plaintiff on behalf of Defendant than the event participants. The event participants have been fully identified to Plaintiff, and as noted above will be produced for deposition if requested.

Lastly, it is well settled in the District of Columbia that peer review investigations are not discoverable. See D.C. Code §§ 44-801 and 44-805. As discussed by Judge Long in the Connor case, compelling a defendant to undertake an internal investigation for the alleged purposes of a corporate designee deposition would obliterate the privilege. Any investigation and analyses for litigation purposes, and as guided by counsel for defendant, would be subject to both attorney-client and work product protections, as well as party work product protections. In other words, any information generated or created to prepare a corporate designee for "all knowledge" of all "events" in a case like the present would be subject to these privileges. Furthermore, requiring a corporate designee to interview providers for Plaintiff and summarize their testimony would serve only to impose a tremendous and unfair burden on Defendant with regard to both time and costs. Plaintiff's attempt to compel Defendant to manufacture, appoint and educate a corporate designee to testify to "all knowledge" or to all "events" in this case not only would invade Defendant's privileges and work product, and circumvent well-established peer review protections, it also would require Defendant to complete Plaintiff's discovery and investigation for Plaintiff, at Defendant's cost. Accordingly, the above Notice items are both inappropriate and unreasonable.

In addition to items (a) through (d), other portions of Plaintiff's 30(b)(6) Notice are subject to privilege:

l. **Any reports or documents not contained in Mr. Fiedler's official hospital record concerning his treatment from March 27, 2007-April 9, 2007.**

m. **All steps taken to locate and produce documents and things requested in Mr. Fiedler's Request for Production of Documents.**

Request for Documents in Notice of Deposition:

3. **Any reports not contained in Mr. Fiedler's official hospital record concerning his treatment from March 27, 2007 - April 9, 2007.**

All of the above requests expressly seek documents and discovery which are privileged pursuant to the attorney-client privilege and work product doctrine, and pursuant to federal and local peer review and quality assurance privileges. Indeed, the only documents and discovery which would not be contained in the "patient's official hospital record" would be quality assurance records, risk management materials, and attorney-client communications and work product. Further, the "steps taken" to respond to Plaintiff's discovery requests would encompass only attorney-client privilege and work product and party privilege and work product in preparation for litigation. These Notice items seek the disclosure of privileged information, and are not the proper subject for a corporate designee deposition.

Accordingly, based upon the arguments set forth above, Defendant submits that Plaintiff's Motion to Compel with regard to Notice items (a) through (d) and (l) and (m) should be denied.

C. PLAINTIFF IMPROPERLY SEEKS A CORPORATE DESIGNEE TO GIVE EXPERT OPINIONS.

Plaintiff's 30(b)(6) Notice requests that Sibley Memorial Hospital designate a

corporate designee, *inter alia*, on the following issues:

> **e. Defendant's position on when, or over what period of time, a decubitus ulcer developed on Mr. Fiedler's buttocks while he was an inpatient at Sibley from March 27, 2007 April 9, 2007.**
>
> **f. Defendant's position on the cause of the decubitus ulcer that developed on Mr. Fiedler's buttocks while he was an inpatient at Sibley from March 27, 2007 - April 9, 2007.**
>
> **g. Defendant's position on why Sibley allowed a decubitus ulcer to develop on Mr. Fiedler's buttocks without treatment while he was an inpatient at Sibley from March 27, 2007 April 9, 2007.**

Plaintiff contends in his Motion to Compel that he is not seeking an expert opinion regarding the cause of his decubitus ulcer, but rather is asking a corporate representative "to provide the hospital's interpretation of documents and events relevant to this case. If Sibley has formed an opinion about how and why Mr. Fiedler developed a decubitus ulcer, Sibley should reveal this opinion and its basis . . . [and] what, if any, opinions have been formed by Sibley about why Mr. Fiedler developed, and was discharged from Sibley with a decubitus ulcer." (Pl.'s Mem. of Pts. & Auth. at 13). Plaintiff goes on to state that "Sibley's representative will be free to testify that Sibley has no such opinion if that is the case, or that Sibley believes that Mr. Fiedler did not have a decubitus ulcer when he was discharged from the Hospital. However, if Sibley asserts that Mr. Fiedler did not have a decubitus ulcer when he was discharged, it will have to defend this view. . . . Sibley's representative must present the basis for its opinion that Mr. Fiedler did not have a decubitus ulcer when he was discharged from Sibley." (Pl.'s Mem. of Pts. & Auth. at 13-14).

These Notice items to some extent are duplicative of information already provided in response to Plaintiff's Interrogatories. As discussed above, in the Answers to Plaintiff's Interrogatories that are signed by a representative of Sibley Memorial Hospital, Defendant already has taken the position that Plaintiff did not have any signs or symptoms of a pressure ulcer at the time of his discharge from Sibley Memorial Hospital on April 9, 2007. (See Def.'s Answers to Interrogatories, attached hereto as Exh. 4).

However, Plaintiff's further request for Defendant to identify a corporate designee to testify as to when, why and/or the cause of a decubitus ulcer that allegedly developed during the admission at issue does not seek facts or knowledge of a corporate representative, but rather an expert opinion. Defendant should not be compelled to present a corporate designee for the purposes of providing expert causation testimony or standard of care testimony, or to undertake an internal medical-expert review and investigation to determine the etiology of Plaintiff's alleged injuries in responding to a Rule 30(b)(6) Notice, particularly since Defendant denies that any such condition existed prior to discharge. (Id.) To require otherwise would improperly invade Defendant's attorney-client privilege, work product privilege and peer review protections. See supra at 12-16.

Accordingly, Plaintiff's Motion to Compel with regard to Notice items (e), (f) and (g) should be denied.

D. PLAINTIFF SEEKS POLICIES, PROCEDURES AND OTHER DOCUMENTS ALREADY PRODUCED OR RESPONDED TO IN WRITTEN DISCOVERY.

Plaintiff's 30(b)(6) Notice requests that Sibley Memorial Hospital designate a corporate designee on the following issues that Defendant already has responded to in

written discovery, as discussed in detail below.

j. Written and oral protocols, policies, and procedures for preventing inpatients from developing pressure wounds.

k. Written and oral protocols, policies, and procedures for staffing of inpatients who are at risk for pressure wounds.

Request for Documents in Notice of Deposition:

1. Written and oral protocols, policies, and procedures for preventing inpatients from developing pressure wounds.

2. Written and oral protocols, policies, and procedures for staffing of inpatients who are at risk for pressure wounds.

Plaintiff's Request for Production of Documents Numbers 6 and 7 requested the following:

REQUEST NO. 6:

All guidelines, protocols, policies, or procedures that existed at Sibley from 2003 through 2007 concerning: evaluation of patients' skin status, prevention of pressure ulcers, and treatment of pressure ulcers. Specifically identify those guidelines, protocols, policies, or procedures that were in effect during Mr. Fiedler's admissions in March – April 2007.

REQUEST NO. 7:

All guidelines, protocols, policies, or procedures that existed at Sibley from 2003 through 2007 concerning when a consultation with a wound care nurse or specialist would take place. Specifically identify those guidelines, protocols, policies, or procedures that were in effect during Mr. Fiedler's admissions in March – April 2007.

In response to those Requests, Defendant produced copies of all responsive documents in its possession as follows: Renaissance Skilled Nursing Facility Policy and Procedure for Wound Care; Pressure Ulcer Record; Staging of Pressure Sores and Documentation of Skin Assessment guidelines; Sibley Renaissance Skin Care Protocol Competency Packet; Sibley Renaissance Skin Care Manual; Sibley Renaissance Skin

Care Protocol Competency Packet; Sibley Renaissance Skin Care Manual. (See Def.'s Resp. to Pl.'s Request for Prod. of Documents, attached hereto as Exh. 5). Thus, all of the documents pertaining to Notice items (j) and (k) and Request for Documents (1) and (2) have been provided to Plaintiff, therefore Plaintiff's Motion to Compel with regard to these Notice items should be denied as duplicative.

n. The types of beds patients are placed on at Sibley and the types Mr. Fiedler was placed on from March 27, 2007 - April 9, 2007.

Plaintiff's Interrogatory Number 19 and Defendant's Answer are as follows:

INTERROGATORY NO. 19:

Identify the type of bed(s) Mr. Fiedler was laying on from March 27, 2007, through April 9, 2007. If the type of bed changed during his admission, please state the date and time of each bed change.

ANSWER NO. 19:

During admission to the hospital from March 27 to March 28, 2009, Plaintiff's bed was a HIL ROM bed with a HIL ROM VersaCare mattress, which is a pressure reducing mattress. During admission to the Renaissance Unit from March 28 to April 9, 2007, Plaintiff's bed had an SPR Plus pressure redistributing low air loss mattress, which was manufactured by Gaymar Industries, Inc. See Defendant's Response to Plaintiff's Request for Production of Documents Number 10 and Exhibit 9 [sic] thereto.

In addition, Defendant's Response to Plaintiff's Request for Production of Documents Number 10 states as follows:

REQUEST NO. 10:

All documentation relating to the beds Mr. Fiedler was placed on during his admissions to Sibley in March – April 2007, including the specifications, manufacturer, and pressure reduction capacities of such beds.

RESPONSE NO. 10:

Defendant objects to this Request on the grounds that it is vague and unclear as the documents requested. Subject to and without waiving the above objections,

documentation relating to Plaintiff's beds during his admissions in March and April 2007 is included in his medical records, copies of which are in the possession of counsel for Plaintiff. In addition, during admission to the hospital from March 27 to March 28, 2009, Plaintiff's bed was a HIL ROM bed with a HIL ROM VersaCare mattress, which is a pressure reducing mattress. During admission to the Renaissance Unit from March 28 to April 9, 2007, Mr. Fiedler's bed had an SPR Plus pressure redistributing low air loss mattress, which was manufactured by Gaymar Industries, Inc. See Exhibit 8.

Thus, all of the documents pertaining to Notice item (n) have been provided to Plaintiff, therefore Plaintiff's Motion to Compel with regard to Notice item (n) should be denied as duplicative.

Request for Documents in Notice of Deposition:

4. **Inspection of the original hospital record for Mr. Fiedler from March 27, 2007 - April 9, 2007.**

Defendant has advised Plaintiff that Defendant will produce for inspection at Sibley Memorial Hospital the original hospital records for Mr. Fiedler for the time period from March 27, 2007 to April 9, 2007. Plaintiff has not requested to schedule any such inspection. There is no need for Defendant to produce a corporate designee for this Notice item, since Plaintiff can inspect the original records at his request, therefore Plaintiff's Motion to Compel with regard to Request for Production of Documents Notice item (4) should be denied.

E. PLAINTIFF'S NOTICE ITEM FOR ALL META-DATA IS IRRELEVANT, OVERLY BROAD, UNCLEAR AND UNDULY BURDENSOME.

Plaintiff's 30(b)(6) Notice requests that Sibley Memorial Hospital designate a corporate designee, *inter alia*, on the following issue:

o. **All "meta-data" for Mr. Fiedler's records from March 27, 2007 - April 9, 2007, showing the identity and timing of all persons making entries in his chart or reading any aspect of his**

records.

In the October 29, 2010 letter to counsel for Plaintiff, Defendant stated that the term "meta data" is vague, overly-broad and unclear because it does not identify or define the term "meta-data," and does not identify with any reasonable particularity what documents Plaintiff is seeking, or the basis as to why such documents would be relevant to any disputed fact in this case. Defense counsel further advised counsel for Plaintiff that at the relevant time the nursing notes in the Renaissance Unit were handwritten, and not computer-generated. Therefore, a request for a corporate designee to testify regarding "meta-data" is irrelevant as to nursing notes pertaining to nursing care rendered to Plaintiff in the Renaissance Unit at the relevant time. (See 10/29/10 letter, attached hereto as Exh. 2).

In Plaintiff's Motion to Compel, Plaintiff seemingly attempts to refine the definition of "meta-data" by stating that it is "data that provides information about other data." (Pl.'s Mem. of Pts. & Auth. at 15). Plaintiff further states that as it relates to electronically created or stored information, meta-data refers to any information about the document "not contained in the document itself," and in a hospital's electronic system shows when a patient's electronic medical record was created and by whom. (Id.)

In this case, as Plaintiff is aware from the October 29 letter (and should be aware from reviewing the chart, which does not contain any computer-generated nursing notes) that the nursing notes in the Renaissance Unit were handwritten, and not computer-generated. Therefore, the request for "meta-data" relating to the admission to the Renaissance Unit from March 28 to discharge on April 9, 2007 is irrelevant to this case. Moreover, Plaintiff's request still does not identify with any reasonable particularity what

information Plaintiff is seeking, or why the Plaintiff believes such information would be relevant to any disputed fact in this case. Moreover, Plaintiff's request is not limited in time-frame or scope, and would encompass disclosures of attorney-client privilege and work product, and disclosures of information which is not subject to discovery pursuant to federal and local peer review and quality assurance privileges. See supra at 12-16.

Furthermore, this request is vague and unduly burdensome to the extent that Plaintiff's request would require expert forensic analysis of any applicable computer systems throughout Sibley Memorial Hospital, and Plaintiff has not identified how such a forensic examination would be feasible, or whether Plaintiff would cover the substantial costs and expenses which would arguably be required for forensic experts to have access to hospital computer systems to investigate, evaluate, collect, and identify computer data. There is simply no reasonable justification for Plaintiff's discovery request through a corporate designee deposition.

Importantly, as discussed in detail above, Plaintiff can depose any treating health care provider at Sibley to determine when and why the provider may have accessed any portion of Plaintiff's hospital records and chart. The discovery requested by Plaintiff is available through depositions of the witnesses having personal knowledge of the relevant facts, and Plaintiff's request that "meta-data" be collected and produced by a corporate designee is impermissibly vague, overbroad, and unduly burdensome. Accordingly, Plaintiff's Motion to Compel with regard to Notice Item (o) should be denied.

F. RESPONDING TO PLAINTIFF'S EXTENSIVE NOTICE ITEMS WOULD RESULT IN EXTREME HARDSHIP TO DEFENDANT.

Last, but certainly not least, Plaintiff ignores the significant hardship that would inure to Defendant in responding to the extensive list of matters identified by Plaintiff in the 30(b)(6) Notice as drafted, which is not limited in any way by time-frame (*i.e.,* admission to the hospital from March 27 to 28, and/or the Renaissance Unit from March 28 to April 9, 2007) or scope. The Notice covers a broad range of issues and materials, and in order for Defendant to respond with a deponent with sufficient knowledge on each of the subject matters set forth in the Notice, Defendant would have to designate numerous individuals to testify on its behalf (*i.e,* a deponent to interview the treating providers and testify regarding their knowledge and involvement in the care and treatment of Mr. Fiedler from March 27, 2007 to April 9, 2007; a deponent with expertise regarding the nature, timing and development of decubitus ulcers; a deponent with knowledge regarding Sibley Memorial Hospital's written and oral protocols, policies and procedures pertaining to pressure wounds; a deponent with knowledge regarding the Renaissance Unit's written and oral protocols, policies and procedures pertaining to pressure wounds; a medical records custodian; a deponent with knowledge regarding the types of beds utilized on the post-surgical floor at Sibley Memorial Hospital; a deponent with knowledge regarding the types of beds utilized in the Renaissance Unit; a deponent with knowledge relating to the issue of "meta-data" and the hospital computer system).

Thus, Plaintiff's Motion to Compel "A" Rule 30(b)(6) Spokesperson for Deposition is a misnomer – it would take extensive time and effort on the part of counsel and numerous representatives of Sibley Memorial Hospital and the Sibley Memorial Hospital Renaissance Unit to respond to Plaintiff's extensive Notice. This undertaking

would be overly-burdensome and an extreme hardship that is unnecessary under the circumstances presented, for all of the reasons discussed above.

IV. CONCLUSION

Based upon the foregoing, it is manifest that the Notice items identified in Plaintiff's Rule 30(b)(6) Notice of Corporate Designee Deposition are overly broad, unduly burdensome, duplicative of information previously provided and/or available to Plaintiff, privileged, and/or are better suited for the healthcare providers involved in Plaintiff's care and treatment, not a corporate designee with no personal knowledge of the care and treatment at issue. Accordingly, Defendant respectfully requests that the Court deny Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Spokesperson for Deposition.

Respectfully submitted,

HAMILTON ALTMAN CANALE & DILLON, LLC

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2011, a copy of the foregoing was sent electronically to:

Patrick A. Malone, Esquire
Leonard W. Dooren, Esquire
Daniel C. Scialpi, Esquire
Patrick Malone & Associates, P.C.
1331 H Street, N.W.
Suite 902
Washington, D.C. 20005

The Honorable Todd E. Edelman
Superior Court of the
District of Columbia
H. Carl Moultrie I Courthouse
500 Indiana Avenue, N.W.
Washington, D.C. 20001

/s/ Steven A. Hamilton
Steven A. Hamilton

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MARC FIEDLER,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	**Civil Action No. 2010 CA001788M**
	:	**Cal. 1, Judge Edelman**
LUCY WEBB HAYES NATIONAL TRAINING SCHOOL FOR DEACONESSES AND MISSIONARIES Conducting SIBLEY MEMORIAL HOSPITAL,	:	
	:	
Defendant.	:	
	:	

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO DESIGNATE A RULE 30(b)(6) SPOKESPERSON FOR DEPOSITION

UPON CONSIDERATION of Plaintiff's Motion to Compel Defendant to Designate a Rule 30(b)(6) Spokesperson for Deposition, Defendants' Opposition thereto and the record herein, it is this _____ day of _____, 2011,

ORDERED, that the Motion is **DENIED.**

_____
The Honorable Todd E. Edelman

copies to:
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