IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

ROBERT HAYWOOD, Individually and as personal representative of the estate of Delores Haywood (deceased)

Plaintiffs,

v.

MEDSTAR-GEORGETOWN MEDICAL CENTER, INC.

Defendant.

Civil No. 2009 CA 009656 M
Judge John Ramsey Johnson
Next Event: 10-4-10 Written Discovery Requests due

MOTION TO COMPEL DEFENDANT TO DESIGNATE A SPOKESPERSON FOR A DEPOSITION

Pursuant to Superior Court Rules of Civil Procedure, Rule 37(a)(2) & (3), the plaintiff hereby moves to compel the defendant Medstar-Georgetown Medical Center, Inc. to designate a spokesperson to testify on its behalf concerning the events that caused the fatal injury to plaintiff's decedent Delores Haywood. Grounds for this motion are set out below.

I. Factual Background

A. The Event

On March 2, 2009, Mrs. Haywood was admitted to Georgetown Medical Center for surgery on the cervical discs in her neck. Her surgeon, Leonid Selya, M.D., made a cut into the left side of Mrs. Haywood's neck and performed a fusion of three levels of Mrs. Haywood's cervical spine. As part of the surgery, Dr. Selya screwed a metal plate into the bones of Mrs. Haywood's neck. Dr. Selya placed a surgical drain to remove the blood that was anticipated to

accumulate around the metal plate. After surgery, Mrs. Haywood was under the care of the Defendant Hospital and its employees.

The neck surgery ended at approximately 1:00 p.m. Mrs. Haywood was first moved to a recovery unit and then to an ordinary hospital room at around 5:05 p.m. After her transfer to the room, Mrs. Haywood began to complain of difficulty breathing and shortness of breath. Mrs. Haywood clutched at the brace that had been placed around her neck. At approximately 9:46 p.m., Mrs. Haywood stopped breathing and experienced a respiratory and then cardiac arrest. An anesthesiologist came to her bed and intubated and resuscitated her, but it was too late. Mrs. Haywood's brain was so severely damaged by a lack of oxygen that she died on March 30, 2009.

B. Plaintiff seeks to discover the Defendant Hospital's understanding of why Mrs. Haywood stopped breathing

Plaintiff seeks discovery of two critical issues in this matter: the Defendant Hospital's understanding of why Mrs. Haywood stopped breathing; and what was done to monitor, diagnose and treat her before and during the event. See Exhibit 1 (Plaintiff's Rule 30(b)(6) Notice parts 1 (c) & (d)).

To pursue this information, on January 26, 2010, Plaintiff served Defendant Georgetown Medical Center with a detailed notice of deposition for a Rule 30(b)(6) spokesperson. See Exhibit 1. Multiple efforts to schedule and coordinate the deposition(s) of a corporate representative were made. Reminder notices were sent and repeated requests were made on March 23, 2010, May 25, 2010, June 4, 2010, June 14, 2010, June 16, 2010, June 17, 2010, in person on June 24, 2010 and again on June 28, 2010. See Plaintiff counsel's letters attached as Exhibits 2 – 8.

C. The Hospital's Tardy Objection to the Deposition Notice

Defendant provided no response to any of the topic areas identified in the Notice until April 19, 2010. See Defense counsel's letter attached as Exhibit 9. On April 19, 2010, Defense Counsel provided a list of 39 health care providers who cared for Mrs. Haywood on the day of her respiratory arrest. This letter was responsive to the category 1 (a) of Plaintiff's Notice. See Exhibit 1. The roster of 39 care providers includes: orthopedic residents; a neurosurgical resident; multiple categories of nurses; anesthesia attending physicians and resident; a general surgery resident; respiratory therapists; critical care physicians and several other categories of care providers. The hospital gave no description of the role each care provider played in Mrs. Haywood's care.

Defendant waited until June 16, 2010 to object to the January 26, 2010 Notice, stating it "failed to describe with reasonable particularity in the matters on which examination is requested." See Letter of Defense Counsel attached as Exhibit 11.

The parties are continuing to work to coordinate corporate designees to address the ancillary issues raised in the January 2010 Notice. However, the two core questions raised by Plaintiff remain in dispute. Defendant has failed to designate a witness to address the knowledge the Defendant Hospital has on the following topics:

c. All knowledge of the defendant concerning the events that led to Ms. Haywood's arrest and the cause of the arrest.

d. All knowledge of the defendant concerning the treatment the patient received after the arrest was discovered.

See Exhibit 1.

Defendant refused to offer a witness or witnesses prepared to answer these questions on its behalf. In defense counsel's letter of June 16, 2010, Defendant stated that individual fact witnesses would not be produced as Rule 30(b)(6) deponents, but would be made available as fact witnesses. See Letter of Defense Counsel attached as Exhibit 11. On June 24, 2010, during the face-to-face meeting held to resolve this dispute, Defendant reversed course and proposed having multiple fact witnesses become the defendant's official designee to testify to "their piece of the knowledge" in response to Plaintiff's Rule 30(b)(6) notice.

As became clear at the subsequent depositions of the first two of the fact witnesses offered by the defense, the hospital is trying to shield the plaintiff from discovering the corporation's own knowledge of how the event happened. Rather, each fact witness was designated by the defense as its spokesman for that witness's own knowledge, but then each witness disclaimed any knowledge on behalf of the corporation itself. Each witness offered by the defense had no preparation to discuss anything beyond that witness's limited personal involvement in Mrs. Haywood's care.

D. Depositions taken to date have given no clue about what the hospital knows about the event.

Plaintiff has deposed the orthopedic resident responsible for Mrs. Haywood's monitoring and care after her neck surgery, Dr. Babushkina, and the anesthesiologist, Dr. de Jesus, who intubated Mrs. Haywood after she had stopped breathing and was in respiratory arrest. The depositions of these two fact witnesses provide proof of Defendant's non-compliance with Rule 30(b)(6)'s requirements.

At the outset of Dr. Babushkina's and Dr. de Jesus' depositions, counsel for the Defendant stated that each was being offered both a factual witness and as a Rule 30(b)(6)

witness to address his or her individual knowledge of the facts and their individual participation in the care of Mrs. Haywood. See deposition of Dr. Babushkina on June 29, 2010, excerpts attached as Exhibit 12 (pg. 7 – 9) & deposition of Dr. de Jesus on July 1, 2010, excerpts attached as Exhibit 13 (pg. 6-7). Defense counsel's preamble to Dr. Babushkina's deposition stated:

> MR. CEPPOS: You've noted the deposition of this physician. Prior to the deposition here today, we've had discussions concerning the scope of a 30(b)(6) deposition notice that you issued to the defendant institution. Among the items identified in your 30(b)(6), under (c) is witness with all knowledge of the defendant concerning the events that led to Ms. Haywood's arrest and cause of the arrest. We've indicated to you that the witnesses that you requested which include this physician are prepared to serve in the capacity of a 30(b)(6) witness both with regard to that item as well as knowledge of the defendant concerning the treatment the patient received after the arrest was discovered. So we are offering today Dr. Babushkina not only to testify factually, but also as a 30(b)(6) designee **to address that portion of the care that she rendered** understanding that the rule permits us to designate more than one witness to fill out the scope of the requested designation. So I want to make a record that she's being offered today in that capacity as well as an individual fact witness.
>
> MR. DOOREN: And I think we will address the issues in a different context than with Dr. Babushkina today, and your proffer of Dr. Babushkina is that she's going to talk about the facts of the care that she was involved with.
>
> MR. CEPPOS: Correct.
>
> MR. DOOREN: And she would offer those opinions in terms of a 30(b)(6) designee as to the facts of her care.
>
> MR. CEPPOS: Correct.
>
> MR. DOOREN: Our 30(b)(6) goes well beyond any individual health care provider and I think that's the rub of our dispute, and therefore I'm going to proceed with Dr. Babushkina's deposition about her factual participation, her opinions and thoughts at the time that she was rendering care and, you know, we will have to pick up the pieces with the court on the other issues.
>
> See Exhibit 12 (pg. 7-9) (emphasis added).

Defense counsel's preamble to Dr. de Jesus deposition similarly stated:

MR. CEPPOS: I want to adopt the same comments I made yesterday at Dr. Babushkina's deposition with regard to the 30(b)(6) compliance issue. We've agreed to disagree about that, but our position is that we can designate these individual hospital employees who were involved in the care and treatment of this patient to address that portion of the 30(b)(6) designation that relates to their care. And I wanted to make a record that in addition to appearing as a named factual witness for the purposes of this deposition, **we are offering Dr. de Jesus as a designee under I believe (c) and (d) of the requested designation for the purposes of addressing those matters within the designation that would relate to his care**. I believe he will not be offering any opinions with regard to etiology or causation or any contemporaneous conclusions about that, but that is for the purposes of this deposition he's being offered. I guess that concludes my initial remarks.

MR. DOOREN: And for the same reasons I indicated during Dr. Babushkina's deposition, I don't think it complies with the requirements of Rule 30(b)(6). I think we factually saw that borne out in Dr. Babushkina's deposition. And your proffer as to issues of etiology, causation, those were specific areas of inquiry and you're telling me that this witness is not going to address those –

MR. CEPPOS: As to his care.

MR. DOOREN: -- so I don't think that, you know, we're in compliance. And again, we will respectfully agree to disagree and we'll raise those issues and we'll move forward with Dr. de Jesus's deposition this morning.

See Exhibit 13 (pg. 6-7) (emphasis added).

At the subsequent depositions, it became clear that neither Dr. Babushkina nor Dr. de Jesus did anything to prepare to offer answers on behalf of the corporate Defendant. Neither had any information to answer the two core questions raised in Plaintiff's Rule 30(b)(6) notice. Neither Dr. Babushkina nor Dr. de Jesus was prepared to talk about anything other than his or her own care.

1. Anna Babushkina, M.D.

Anna Babushkina, M.D. was deposed on June 29, 2010. Dr. Babushkina is the orthopedic resident who was responsible for the post-operative monitoring and care of Mrs.

Haywood. See Exhibit 12 (pg. 10 -11). Dr. Babushkina did not see or examine Mrs. Haywood from the time Mrs. Haywood was transferred to the floor until after Mrs. Haywood's respiratory arrest and the code had already been completed. See Exhibit 12 (pg. 31).[1]

Dr. Babushkina testified that she did nothing to prepare to offer testimony on behalf of the Hospital's response to the Rule 30(b)(6) questions raised by the Plaintiff:

> Q. So you've done nothing to prepare to offer testimony about what the thought process is of the hospital with respect to Mrs. Haywood's condition, what caused it, how it was treated, anything like that?
>
> A. Correct.

See Exhibit 12 (pg. 91). Dr. Babushkina only reviewed her own personal entries. See Exhibit 12 (pg. 52, 83-84, 89-91).

Dr. Babushkina had no explanation for why Mrs. Haywood's neck and vocal cords were swollen or why Mrs. Haywood coded. See Exhibit 12 (pg. 68-69). Dr. Babushkina did not participate and does not know if any discussions took place at the Hospital to answer the questions raised by Plaintiff's Rule 30(b)(6) notice. See Exhibit 12 (pg. 93-4).

2. Matthew de Jesus, M.D.

Dr. de Jesus was deposed on July 1, 2010. Matthew de Jesus, M.D. is the anesthesiologist who intubated Mrs. Haywood after she had already stopped breathing and was in respiratory arrest. See Exhibit 13 (pg. 14-15). Dr. de Jesus' had no knowledge of Mrs. Haywood until he was paged during her code and he intubated her. See Exhibit 13 (pg. 14-15).

[1]Dr. Babushkina testified she did see Mrs. Haywood in the recovery room when she wrote a prescription for Valium for agitation and anxiety. See Exhibit 12 (pg. 11-13). However, Dr. Babushkina did not physically examine or speak to Mrs. Haywood at that time. See Exhibit 12 (pg. 11-13 & 97).

Dr. de Jesus testified that he did nothing to prepare to offer testimony on behalf of the Hospital's response to the Rule 30(b)(6) questions raised by the Plaintiff. Dr. de Jesus testified:

> Q. Have you done so for today? Have you looked at any of the records in this case to understand what led up to Mrs. Haywood having a respiratory arrest?
>
> MR. CEPPOS: Just a moment. To the extent that he may have reviewed records in my presence, I want to make sure that we don't waive any attorney-client communication. So you can discuss whatever you looked at, but not what we discussed.
>
> A. I looked at the records that had my name on them.
>
> Q. And that's it?
>
> A. That's correct.

See Exhibit 13 (pg. 23). Dr. de Jesus only reviewed the notes related to his own personal entries and his care. See Exhibit 13 (pg. 23). Dr. de Jesus did not review any records or information to answer the question as to the treatment Mrs. Haywood received, or to even identify the other health care providers who attended to Mrs. Haywood. See Exhibit 13 (pg. 57).

Dr. de Jesus did not know many aspects of the care rendered to Mrs. Haywood. Dr. de Jesus did not know if Mrs. Haywood was found on the floor or in her bed when she coded. See Exhibit 13 (pg. 24). Dr. de Jesus could not identify the nurses or other health care providers who were present when he responded to the code. See Exhibit 13 (pg. 24 – 25 & 57). Dr. de Jesus did not know if it was a man or a woman trying to ventilate Mrs. Haywood by an ambubag or if the ambubag was connected to supplemental oxygen when he arrived at the bedside for the code. See Exhibit 13 (pg. 28- 29). Dr. de Jesus did not know how long Mrs. Haywood was not breathing before he intubated her. See Exhibit 13 (pg. 37-38).

Dr. de Jesus had no explanation for why Mrs. Haywood stopped breathing and why her airway was compromised. See Exhibit 13 (pg. 41-44 & 93). Dr. de Jesus could not say what caused the injury to Mrs. Haywood's brain. See Exhibit 13 (pg. 45). Dr. de Jesus was not aware that Mrs. Haywood died. See Exhibit 13 (pg. 91).

An event at Dr. de Jesus's deposition further underscores the difficulty in obtaining a straight story in discovery about what happened to Mrs. Haywood.

Defense counsel first proffered that Dr. de Jesus would not offer any opinion about the cause of Mrs. Haywood's airway compromise. Dr. de Jesus then testified that he did not have an explanation for the cause of Mrs. Haywood's airway compromise. However, during questioning by defense counsel at the deposition, Dr. de Jesus changed his observation as recorded in the official patient record from "positive[2] neck hematoma" to "considering neck hematoma or possibility of a neck hematoma." See Exhibit 13 (pg. 111-112). Then he further changed his testimony to opine that the hematoma – a collection of bloody fluid inside her neck – was "unlikely" the cause of her stopped breathing. See Exhibit 13 (pg. 116-117). All this was in response to leading questions from his own counsel.

II. Argument

The hospital should be required to designate a spokesperson who is knowledgeable about the underlying events, for the following reasons: (1) the hospital never filed a timely objection and never timely moved for a protective order, as it was obligated to do; (2) Every corporate defendant under Rule 30(b)(6) has a duty to investigate the facts and produce someone to testify on its behalf; (3) There is no exception for hospitals from the obligations of Rule 30(b)(6).

[2] In the record, the witness wrote a plus sign with a circle around it, the universal medical symbol for "positive."

A. The Hospital Made No Timely Objection and Sought No Protective Order, and Thus Waived Its Objections.

The plaintiff's notice of Rule 30(b)(6) deposition was served on January 26, 2010. The defendant never filed any objection to the topics in the deposition notice, as required by Rule 32(d): "All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice."[3]

More important, the defendant essentially announced that it was not going the show up for a properly noticed deposition, without filing a motion for a protective order, as Rule 37(d) required it to do to preserve its objection.

Rule 37(d) states in relevant part:

> *If a party or an officer, director, or managing agent of a party* or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a *party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice* … the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.
>
> *The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).*

(Emphasis added.)

[3] On June 9, 2010 and June 16, 2010, Defendant stated for the first time that the notice did not meet the rule's specificity requirement. See Exhibits 10& 11.

As this Court knows, "[c]onfronted with a notice of deposition (or any other type of discovery) a party must either comply with the discovery demand or seek a protective order." *Bregman v. District of Columbia,* 182 F.R.D. 352, 355 (D.D.C. 1998).

The defendant having failed to take any timely action, the court should hold that the hospital has waived its objections and should order the relief requested by this motion, without even considering the hospital's other arguments.

B. Rule 30(b)(6) Requires a Corporate Defendant to Prepare a Witness to Testify on Its Behalf

When served with a Rule 30(b)(6) type Notice of Deposition:

> "[i]t is… the duty of the corporation to name one or more persons who consent to testify on its behalf and these persons must testify as to matters known or reasonably available to the corporation. Not only must the organization designate a witness, but it is responsible also to prepare the witness to answer questions on the topics identified and present the organization's knowledge on those topics. If in the course of taking the deposition it becomes apparent that the person or persons designated are not able to provide testimony on the matters specified in the notice, it is the duty of the corporation immediately to make a new designation substituting someone who can give the needed testimony. 8A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE 2d § 2103 (citation omitted). (Emphasis added).

The law under Rule 30(b)(6) is firm and unwavering in requiring every corporate defendant to prepare and produce a witness to testify on the corporation's behalf. The published cases make the following key points:

- "Under Rule 30(b)(6), when a party seeking to depose a corporation announces the subject matter of the proposed deposition, the corporation must produce someone familiar with the subject. *Reilly v. Natwest Markets Group Inc.*, 181 F.3d 253, 268 (2d Cir. 1999) (emphasis added).

- To satisfy this requirement, "[i]f the persons designated by the corporation do not possess personal knowledge of the matters set out in the deposition notice, the corporation is obligated to prepare the designees so that they may give knowledgeable and binding answers for the corporation." *U.S. v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996).
- Likewise, "[a] deponent under Rule 30(b)(6) has an affirmative obligation to educate himself as to the matters regarding the corporation." *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 43 (D. Conn. 2004) (citation omitted).
- "Thus, the duty to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved." *Taylor* at 361. "[T]he designee must not only testify about facts within the corporation's knowledge, but also its subjective beliefs and opinions." *Id*.
- Some difficulties in finding information with which to prepare a designee "do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources." *Id*. (citation omitted) "Even if the documents are voluminous and the review of the documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed." *Concerned Citizens* at 43 (citation omitted).[4]
- In sum, "Rule 30(b)(6) obligates the responding corporation to provide a witness who can answer questions regarding the subject matter listed in the notice…. If the designated deponent cannot answer those questions, then the corporation has failed to comply with its Rule 30(b)(6) obligations and may be subjected to sanctions." *Quantachrome*

[4] For a recent case requiring a corporation to prepare its witness to testify knowledgeably on its behalf, see *Coryn Group II, LLC v. O.C. Seacrets, Inc.,* 265 F.R.D. 235 (D. Md. 2010).

Corporation v. Micrometrics Instrument Corporation, 189 F.R.D. 697, 699 (S.D. Fla. 1999) (citation omitted).

- Judge Lamberth has summarized the Rule 30(b)(6) case law into "four basic duties" that the rule imposes on corporate deponents:

> First, the deponent has the duty of being knowledgeable on the subject matter identified as the area of inquiry. … Second, a deponent is under a duty to designate more than one deponent if it is necessary to do so in order to respond to the relevant areas of inquiry that are specified with reasonable particularity by the plaintiff. … Third, the designating party has a duty to prepare the witness to testify on matters not only known by the deponent, but those that should be reasonably known by the designating party. … Fourth, the designating party has a duty to substitute an appropriate deponent when it becomes apparent that the previous deponent is unable to respond to certain relevant areas of inquiry.

Myrdal v. District of Columbia, 248 F.R.D. 315, 317 (D. D.C. 2008).

C. Hospitals Must Respond to 30(b)(6) Deposition Notices Like Any Other Corporation

Nothing in the law gives hospitals special stature in their discovery obligations. Even if some information responsive to the deposition notice might have been gathered at one time within the confines of a privileged peer review investigation, that does not trump Rule 30(b)(6). This issue was squarely decided in the plaintiff's favor in *Wilson v. Lakner*, 228 F.R.D. 524 (D. Md. 2005), a case that concerned a foreign object left inside the plaintiff after a surgery at Shady Grove Adventist Hospital. Responding to the hospital's claim of peer review privilege or attorney work product privilege, Judge Messite wrote:

> The work product doctrine provides no shield to the hospital in this regard. While counsel's own investigation into the facts of the case is substantially protected by the doctrine, and while the proceedings of any investigation conducted for purposes of risk assessment or peer review may be privileged by reason of the Maryland statute, the fact remains that a designated witness or witnesses must still be prepared to respond to the 30(b)(6) notice. If that preparation means tracking much the same investigative ground that counsel and the risk management/peer review committee have already traversed, but independently of that investigation, so be it.

228 F.R.D. at 529.

The Court also said:

> There are undoubtedly persuasive policy reasons favoring confidentiality of risk assessment/peer review investigations. Indeed, the Court emphasizes that the results of the investigations *per se* are not discoverable, just as those of defense counsel's investigation may not be; but this is not the same as saying that a 30(b)(6) witness (or witnesses) is not obliged to investigate the facts of the incidents, independently of counsel's or the risk assessment/peer review team's conclusions.

228 F.R.D. at 529.

D. The Notice Described the Subject Matter with "Reasonable Particularity"

The hospital's six-months-late excuse for not producing a Rule 30(b)(6) spokesperson was its contention that the Notice of Deposition failed to describe the subject matter for inquiry with "reasonable particularity," as required by the rule. See hospital counsel's letter of June 16, 2010, Exhibit 11. Defense counsel never said what was overly vague about the notice nor suggested ways in which it could be cured. Nor did any witness come forward at a deposition to complain that he or she could not understand the nature of the inquiry. Plaintiff believes the subject matter to have been laid out in a straightforward manner. The plaintiff simply wants to know what happened to Mrs. Haywood after the surgery that caused her fatal brain damage.

A similarly worded Notice of Deposition was served in *Wilson v. Lakner, supra*. Item 7 of the plaintiff's Notice in that case asked the hospital to produce a witness to testify about: "Any and all facts concerning and/or surrounding the incident in which Megan Wilson was found with depressed respiration on August 5, 2002, while a patient at Shady Grove Adventist Hospital." 228 F.R.D. at 526. The court ordered the hospital to produce a witness to so testify.

E. The Hospital Has No Other Excuse

The hospital in this case offered to produce a series of witnesses who would each give his or her own account of what he or she saw or heard or did concerning Mrs. Haywood, and then designate that testimony as the hospital's official Rule 30(b)(6) response for that witness's personal knowledge. The issue here is the hospital's knowledge, not the separate knowledge of each of its 39 witnesses.

Rule 30(b)(6) was specifically designed to prevent " 'bandying,' the practice in which people are deposed in turn but each disclaims knowledge of the facts that are clearly known to persons in the organization and thereby to the organization itself.'" FED.R.CIV.P. 30(b)(6) Advisory Committee Notes, 1970 Amendment, as quoted in *Myrdal v. District of Columbia,* 248 F.R.D. 315, 317 (D. D.C. 2008).

Plaintiff seeks to discover what happened to Mrs. Haywood and why she suffocated to death in her hospital bed. The Defendant Hospital seeks to bury discovery behind a parade of witnesses. The disjointed nature of Mrs. Haywood's post-operative care rests at the heart of Plaintiff's claim. Plaintiff requested that the Defendant Hospital disclose what happened to cause Mrs. Haywood to stop breathing. Rather than answer this question, the Defendant Hospital states that Plaintiff should take the depositions of the 39 health care providers who attended to Mrs. Haywood on the day she stopped breathing. Rule 30(b)(6) is designed to allow Plaintiff to discover the state of knowledge of the Defendant Hospital and prevent the bandying about of multiple fact witnesses proposed by Defendant, who then change the facts from what they recorded in the official record (as Dr. de Jesus did at his deposition).

Taking Defendant's position to its logical conclusion would require taking the depositions of 39 separate witnesses, all of whom have only a piece of the knowledge that the corporate defendant has. This is a shell game no different than British Petroleum responding to the question: "What caused the oil spill?", by providing the names of the workers on the oilrig for multiple conflicting and inconclusive depositions.

Even if Plaintiff were to take 37 more depositions, what the Defendant Hospital knows about the cause of Mrs. Haywood's respiratory arrest and the care that was rendered to her would continue to remain an unanswered question. As Judge Messite wrote under similar circumstances:

> Wilson is not obliged to depose a string of hospital employees, none of whom is able to speak for the hospital as to how the incident or incidents in question occurred….
>
> … Rule 30(b)(6) means what it says. Corporations must act responsively; they are not entitled to declare themselves mere document-gatherers. They must produce live witnesses who know or who can reasonably find out what happened in given circumstances.
>
> Defendant hospital did not do so here. It must do so now.

Wilson v. Lakner, supra, 228 F.R.D. at 529, 530.

For these reasons, the court should require the defendant hospital to produce a Rule 30(b)(6) spokesman like any other corporate defendant would have to.

Respectfully submitted,

/s/

Patrick Malone, D.C. (#397142)
Leonard W. Dooren (#454937)
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Attorneys for the Plaintiffs

CERTIFICATE OF Rule 12-I and 37 (a) GOOD FAITH EFFORTS

I HEREBY CERTIFY that on June 24, 2010, I met in person with Larry A. Ceppos, Esq. and Erica C. Mudd, Esq. to try to resolve the disputed issues raised in this motion. The in person efforts continued during depositions held on June 29, 2010 and July 1, 2010. Despite these good faith efforts, the parties were unable to resolve the issues in dispute.

The parties continue to work to complete the ancillary items identified in Plaintiff's January 2010 Rule 30(b)(6) Notice. However, the core dispute regarding a corporate witness to address the Defendant Hospital's knowledge and information regarding the cause of Mrs. Haywood's respiratory arrest and the care she received have not been resolved.

/s/
Leonard W. Dooren

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August 2010, a copy of the foregoing was sent via e-service to:

Armstrong, Donohue, Ceppos
& Vaughan, Chartered
Larry A. Ceppos, Esquire
Erica C. Mudd, Esquire
204 Monroe Street, Suite 101
Rockville, MD 20850

/s/
Leonard W. Dooren