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**Kowinsky vs. Advoserv of NJ: Dep. of Todd Kowinsky: 02/04/2016**

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**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY: ROBERT J. CIRILLO, CSR**

***ROBERT CIRILLO, INC.  
182 Columbia Turnpike  
Florham Park, NJ 07932  
Phone: 973-740-1331***

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( 1) SUPERIOR COURT OF NEW JERSEY  
 ( 2) LAW DIVISION: PASSAIC COUNTY  
 ( 3) DOCKET NO. L-4241-14  
 ( 4) TODD R. KOWINSKY,  
 ( 5) Plaintiff,  
 ( 6) vs.  
 ( 7) ADVOSERV OF NEW JERSEY, INC.,  
 ( 8) a corporation of the State of  
 ( 9) New Jersey  
 (10) Defendant.  
 (11) T R A N S C R I P T of the stenographic  
 (12) notes of THERESA L. TIERNAN, a Certified Shorthand  
 (13) Reporter and Notary Public of the State of New Jersey,  
 (14) taken at the offices of LAW OFFICES OF EDWARD P. AZAR,  
 (15) L.L.C., 2840 ROUTE 23 SOUTH, NEWFOUNDLAND, NEW JERSEY,  
 (16) on THURSDAY, FEBRUARY 4, 2016, commencing at 2:08  
 (17) p.m.  
 (18)  
 (19)  
 (20)  
 (21)  
 (22)  
 (23)  
 (24)  
 (25)

( 1) A P P E A R A N C E S:  
 ( 2)  
 ( 3) LAW OFFICES OF EDWARD P. AZAR L.L.P.  
 ( 4) BY: EDWARD P. AZAR, ESQ.  
 ( 5) 2840 ROUTE 23 SOUTH  
 ( 6) NEWFOUNDLAND, NEW JERSEY  
 ( 7) Attorneys for the Plaintiff.  
 ( 8) BUCHANAN, INGERSOLL & ROONEY, P.C.  
 ( 9) BY: MATTHEW A. FONTANA, ESQ., (PA OFFICE)  
 (10) AND CHRISTOPHER J. DALTON, ESQ.  
 (11) 550 BROAD STREET,  
 (12) SUITE 810  
 (13) NEWARK, NEW JERSEY 07102  
 (14) Attorneys for the Defendant.  
 (15) ALSO PRESENT:  
 (16) TODD KOWINSKY  
 (17) KATHERINE O'BRIEN  
 (18)  
 (19)  
 (20)  
 (21)  
 (22)  
 (23)  
 (24)  
 (25)

( 1)  
 ( 2) I N D E X  
 ( 3) WITNESS DIR CRS RED REC  
 ( 4) TODD KOWINSKY  
 ( 5) BY: MR. FONTANA 4  
 ( 6)  
 ( 7) E X H I B I T S  
 ( 8) NUMBER DESCRIPTION IDENT.  
 ( 9) EXHIBIT 1 JOB DESCRIPTION 8  
 (10) EXHIBIT 2 RECEIPT OF HANDBOOK  
 (11) DOCUMENT 9  
 (12) EXHIBIT 3 HANDBOOK 11  
 (13) EXHIBIT 4 SUSPENSION 31  
 (14) EXHIBIT 5 VIOLATION 35  
 (15) EXHIBIT 6 DISCIPLINE ACTION FORM 39  
 (16) EXHIBIT 7 COMPLAINT 50  
 (17) EXHIBIT 8 UNFAIR LABOR PRACTICE 75  
 (18) EXHIBIT 9 TRANSCRIPT 76  
 (19)  
 (20)  
 (21)  
 (22)  
 (23)  
 (24)  
 (25)

(1) T O D D K O W I N S K Y, 27 SEWARD AVENUE, PORT  
 (2) JERVIS, NEW YORK, being first duly sworn by the Notary,  
 (3) testifies as follows:  
 (4) DIRECT EXAMINATION BY MR. FONTANA:  
 (5) Q Todd, my name is Matthew Fontana. I'm  
 (6) an attorney for AdvoServ of New Jersey.  
 (7) Have you ever taken a deposition  
 (8) before?  
 (9) A Yeah.  
 (10) Q Great. Great.  
 (11) Just some quick reminders, you probably  
 (12) have gone through this, you know, once or twice, you  
 (13) just said. First, today your testimony is under  
 (14) oath, just as it would be if you were testifying  
 (15) before a judge or a jury. Accordingly, all of the  
 (16) penalties of perjury would attach to this deposition  
 (17) like anything else.  
 (18) We also have a court reporter here. So  
 (19) for her benefit and for really all of our benefits,  
 (20) I ask that you use clear terms like yes and no,  
 (21) rather than uh-huh or nuh-uh, and also that you  
 (22) articulate everything and don't simply gesticulate  
 (23) like by pointing because that's harder to capture in  
 (24) the record. I also ask that you try and wait for me  
 (25) to finish asking a question before you answer the

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- (1) question. I'll certainly try and wait for you to  
 (2) finish your answer before I jump into another  
 (3) question. I tend to talk quickly, so very rarely  
 (4) does somebody beat me to the punch, but just to make  
 (5) sure that you make sure I'm finished before we go  
 (6) on.  
 (7) Also, this is a very important one,  
 (8) when you answer a question, we're all going to  
 (9) assume that you understood the question. So if you  
 (10) don't understand my question or would like me to  
 (11) repeat it or anything like that, feel free to ask  
 (12) me, I'm happy to always do that.  
 (13) Additionally, if you're unsure of any  
 (14) answers, that's fine. I would never ask you to  
 (15) guess or speculate. I just want you to answer based  
 (16) on what you know, what you remember, and but one  
 (17) thing you can do, you can make approximations or  
 (18) ballpark. For example, if you remember something  
 (19) happening just before Christmas, but you don't know  
 (20) the date, it's fine to testify and say, "Oh, this  
 (21) happened just before Christmas."  
 (22) One question that I always start my  
 (23) depositions with, just before we get into the actual  
 (24) meat of it, are you under the influence of any drug  
 (25) or substance that would impair your ability to

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- (1) testify today?  
 (2) **A No, sir.**  
 (3) **Q Great. Wonderful.**  
 (4) So to start off, did you do anything to  
 (5) prepare for this deposition, and I'm not asking for  
 (6) any conversations you had with your attorney.  
 (7) **A Just read over some questions. That**  
 (8) **questionnaire. That's it.**  
 (9) **Q Did you review any documents?**  
 (10) **A Not really.**  
 (11) **Q Okay. When you say "not really", do**  
 (12) **you remember looking at any or is the answer "no"?**  
 (13) **A No.**  
 (14) **Q Okay. And we went through this once,**  
 (15) **but just for the clarity of the record, could you**  
 (16) **state your full name?**  
 (17) **A Todd Kowinsky.**  
 (18) **Q And where do you live?**  
 (19) **A 27 Seward Avenue, Port Jervis, New York.**  
 (20) **Q And have you been employed with a**  
 (21) **company called AdvoServ?**  
 (22) **A Yes.**  
 (23) **Q How long were you employed with**  
 (24) **AdvoServ?**  
 (25) **A Approximately four years.**

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- (1) **Q And what was your position or positions**  
 (2) **when you were employed with AdvoServ?**  
 (3) **A Community living specialist.**  
 (4) **Q Were you a community living specialist**  
 (5) **your entire time?**  
 (6) **A No, I was a supervisor at some points.**  
 (7) **Q Some points. When were you a**  
 (8) **supervisor?**  
 (9) **A Three months after I began there, I was asked**  
 (10) **to be a supervisor by my night shift supervisor.**  
 (11) **Q Right.**  
 (12) **A And that was taken away for some reason**  
 (13) **because I didn't make a meeting that I didn't know**  
 (14) **about, and about another eight months later I was**  
 (15) **made a supervisor again, and I was supervisor for**  
 (16) **probably a good year up until I had a heart attack**  
 (17) **on the job.**  
 (18) **Q Okay. And we'll get into the heart**  
 (19) **attack a little later in the deposition.**  
 (20) **Other than your brief times as**  
 (21) **supervisor, were you always a community living**  
 (22) **specialist? Was that always your job title?**  
 (23) **A Yes.**  
 (24) **Q Great. I'm going to show you what**  
 (25) **we'll mark as Exhibit 1.**

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- (1) (Exhibit received and marked Exhibit 1 for  
 (2) identification.)  
 (3) **MR. FONTANA: A copy for your counsel.**  
 (4) **MR. AZAR: Thank you.**  
 (5) **Q A copy for you.**  
 (6) **A Thank you.**  
 (7) **MR. FONTANA: A copy for the court**  
 (8) **reporter as well.**  
 (9) **BY MR. FONTANA:**  
 (10) **Q You can just look at that one and I'll**  
 (11) **take this one back.**  
 (12) **Todd, take a moment and review what's**  
 (13) **been marked as Exhibit 1, and let me know when**  
 (14) **you're finished reviewing it.**  
 (15) (Discussion held off the record. Back on the  
 (16) record.)  
 (17) **A I'm done.**  
 (18) **Q Great. Have you seen this document**  
 (19) **before?**  
 (20) **A No.**  
 (21) **Q Can you describe what this document is?**  
 (22) **A Basically telling you the job and the**  
 (23) **description of a community living specialist.**  
 (24) **Q And that was your job, correct?**  
 (25) **A Correct.**

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- (1) Q And you had an opportunity to review  
 (2) this document, correct?  
 (3) A Today I have, yes.  
 (4) Q Is anything in that document different  
 (5) than what your job and roles were at AdvoServ?  
 (6) A No.  
 (7) Q No. So this represents the duties you  
 (8) performed?  
 (9) A Yes.  
 (10) Q Great. And you were you are no longer  
 (11) currently employed by AdvoServ, correct?  
 (12) A Correct.  
 (13) Q I'm going to bring your attention to  
 (14) what's going to be marked as Exhibit 2.  
 (15) (Exhibit received and marked Exhibit 2 for  
 (16) identification.)  
 (17) Q Take a moment and review this.  
 (18) A Okay.  
 (19) Q I want to direct your attention to the  
 (20) bottom of what's been marked as Exhibit 2. Is that  
 (21) your signature – excuse me. Is that your name  
 (22) under the block that says "Employee Name"?  
 (23) A Yes.  
 (24) Q Okay. And is that your signature under  
 (25) the block that says "Signature"?

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- (1) A Yes.  
 (2) Q Okay. Look at paragraph three, so it's  
 (3) right here, begins with the word, "I understand".  
 (4) That states in part, "I understand and agree that my  
 (5) appointment with AdvoServ is at will, which permits  
 (6) AdvoServ or me to terminate the employment  
 (7) relationship at any time for any reason. AdvoServ  
 (8) will not modify the policy on employment at will in  
 (9) any case."  
 (10) Do you agree that's what it says there?  
 (11) A Yes.  
 (12) Q Okay. And that is your signature at  
 (13) the bottom, correct?  
 (14) A Yes.  
 (15) Q Great. Okay. Just one last question.  
 (16) On the top of that document, this is an  
 (17) acknowledgment of receipt of the handbook, correct?  
 (18) A Yes.  
 (19) Q And the date of that handbook is  
 (20) February 12th, I believe, February 15th, 2012.  
 (21) Is that correct?  
 (22) A Yes, yes.  
 (23) Q Great. Now, I'm going to show you  
 (24) what's being marked as Exhibit 3.  
 (25) (Exhibit received and marked Exhibit 3 for

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- (1) (identification.)  
 (2) Q I'll direct you to the pages in this  
 (3) exhibit to look at because it's quite lengthy. The  
 (4) first page that I want you to look at is the second  
 (5) page. It has a Bates label of 107.  
 (6) What is the date in the middle of this  
 (7) page for this handbook?  
 (8) A February 15th, 2012.  
 (9) Q So this would be the same handbook that  
 (10) you signed the authorization that you reviewed in  
 (11) the previous exhibit, Exhibit 2, correct?  
 (12) MR. AZAR: Objection, but go ahead and  
 (13) answer.  
 (14) A I don't believe the date was on when I signed  
 (15) it. It wasn't a reviso (sic), it was the same  
 (16) handbook that I was given in the beginning. We  
 (17) were just – every year we had to renew it.  
 (18) Q Okay. And every year did you review it  
 (19) when it was renewed?  
 (20) A It was never reviewed. It was just the fact  
 (21) that it was in a packet that we got every year of  
 (22) certain things that we had to sign over like it was  
 (23) like a – it was as if we a retraining period.  
 (24) Q Sure.  
 (25) A And we never actually retrained, we just got

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- (1) the book handed to us and told to sign our  
 (2) signatures and our names. So it's probably in that  
 (3) book.  
 (4) Q And so you got a book. You got a whole  
 (5) book full of stuff.  
 (6) A Yeah, a whole booklet, yeah.  
 (7) Q Okay. And in that booklet was likely  
 (8) this – this handbook?  
 (9) A Yes, but it did not have revised on it that I  
 (10) remember of.  
 (11) Q So I want you to flip to like four  
 (12) pages. It's going to be D-111 is going to be at the  
 (13) bottom, page five of the handbook. And I want you  
 (14) to take a look at the bolded parts in the center of  
 (15) the page, begins with the word "Employee" and it  
 (16) ends with the word "reason", if you could just  
 (17) review that for me.  
 (18) A Okay.  
 (19) Q That provision of this document states  
 (20) that, and I quote, "Employee handbook provisions are  
 (21) not contractual, and AdvoServ reserves the right to  
 (22) modify delete, add, amend, change, or revoke any or  
 (23) all guidelines or practices at any time for any  
 (24) reason."  
 (25) Is that correct?

- (1) **A Yes.**
- (2) **Q** Okay. And it also says at the bottom,
- (3) "AdvoServ reserves the right to terminate any
- (4) employee at any time for any lawful reason",
- (5) correct?
- (6) **A Yes.**
- (7) **Q** Okay. I want to draw your attention to
- (8) D-152. It's the same document, page 46.
- (9) **MR. AZAR:** D-152 is on the bottom,
- (10) bottom right.
- (11) **MR. FONTANA:** Yeah, thank you.
- (12) **MR. AZAR:** Disciplinary procedure.
- (13) **Q** Let me know when you get there.
- (14) **A I'm here.**
- (15) **Q** Okay. Just take a moment to review
- (16) this page of the handbook.
- (17) (Recess taken at 2:23 p.m. and ended at 2:27
- (18) p.m.)
- (19) **Q** And, Todd, just let me know when you're
- (20) done.
- (21) **A Yes. Okay.**
- (22) **Q** I want to draw your attention to the
- (23) fourth paragraph, third line down, begins with the
- (24) sentence, "However." It says, "However, all
- (25) applications of the grid shall be at the sole

- (1) discretion of AdvoServ."
- (2) Do you agree it says that?
- (3) **A Yes.**
- (4) **Q** Okay. All right. I want to draw your
- (5) attention to page – I believe it's 49. Just give
- (6) me one second. Page 50.
- (7) **A Okay.**
- (8) **Q** And I want to draw your attention to
- (9) the second box from the top. It says, "Sleeping on
- (10) the job."
- (11) Do you see that?
- (12) **A Yes.**
- (13) **Q** And then go over to the first column,
- (14) which says "First Offense."
- (15) Do you see that?
- (16) **A Yes.**
- (17) **Q** And then it says "Written Warning
- (18) Determination."
- (19) Do you see that?
- (20) **A Right, yes.**
- (21) **Q** And so you had agree with me that
- (22) sleeping on the job could result in termination for
- (23) a first offense.
- (24) **A If that's what you're doing, yes.**
- (25) **Q** All right. Okay. Just give me one

- (1) more second. Flip to the next page, page 51.
- (2) Again, the second box from the top.
- (3) It's, "Endangering the health and welfare of
- (4) individuals we serve, any employee or organization
- (5) guest," right?
- (6) **A Yes, yes.**
- (7) **Q** Go to the first column again, which is
- (8) "First Offense." It says, Written Warning
- (9) Determination."
- (10) Do you agree with that?
- (11) **A Yes.**
- (12) **Q** So you would agree with me that
- (13) endangering the welfare could result in termination
- (14) for a first offense.
- (15) **A If that's what they were doing, correct.**
- (16) **Q** Great. Okay.
- (17) That is all for the handbook for right
- (18) now.
- (19) So Mr. Kowinsky, I want to jump back
- (20) into your worker's compensation claim and the heart
- (21) attack that you had while you were working for
- (22) AdvoServ.
- (23) You made a worker's compensation claim
- (24) in 2011.
- (25) Is that correct?

- (1) **A Yes.**
- (2) **Q** And what was that claim for?
- (3) **A I suffered a heart attack on the job.**
- (4) **Q** Okay. Can you tell me when that
- (5) happened?
- (6) **A It was May – it was –**
- (7) **MR. AZAR:** When you had heart attack or
- (8) when you had the claim?
- (9) **Q** When you had the heart attack?
- (10) **A Yeah, it was May. It was – it was Friday,**
- (11) **May 13th. Friday the 13. I believe it was 2011.**
- (12) **Q** And to the best of your recollection,
- (13) do you remember anything that happened?
- (14) **A Yes.**
- (15) **Q** What happened?
- (16) **A I was in the house. We were walking. I was**
- (17) **walking myself to go check on houses, I was the**
- (18) **supervisor that night, and I looked in the window**
- (19) **and I seen one of the residents destroying another**
- (20) **resident's property, throwing stuff. I had went**
- (21) **into the house, which was only one other worker in**
- (22) **the house at the time, he was attending to another**
- (23) **problem, and I went to the back to attend to that**
- (24) **problem, and a gentleman started throwing stuff at**
- (25) **me, and we tried to do an intervention with him to**

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- (1) put him in a – what they call mat procedure, and I  
 (2) just tried to get him down on my own and I couldn't.  
 (3) He wrestled with me, and we also didn't have radio  
 (4) communications, which we had had at one time there,  
 (5) and we were never given batteries, and the radios  
 (6) were outdated and we never got them back.  
 (7) COURT REPORTER: Did you say mat  
 (8) procedure?  
 (9) THE WITNESS: It's actually a mat  
 (10) procedure, they call it.  
 (11) BY MR. FONTANA:  
 (12) Q And did anyone from AdvoServ provide  
 (13) any care for you when you had your heart attack?  
 (14) A Well, after everybody came and we got the  
 (15) resident under control, I went outside to get a  
 (16) breath of air and somebody had said to me, "Todd,  
 (17) you look like crap. You know, you're having a hard  
 (18) time breathing," and I was like, "Yeah, I was going  
 (19) sit down and relax for a few minutes." And thank  
 (20) God I just hung around with people and everybody  
 (21) went back and in to do that their jobs, and I had  
 (22) chest pains really bad, and I walked from UGL1 over  
 (23) to UGL3, and when I walked in the door I just  
 (24) dropped down, I had such sweating and profusive  
 (25) (sic) sweating, shakes, and the pain was horrible.

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- (1) At that time, one of the – I had asked one of the  
 (2) people, I believe his name was Randy Sirocco, to  
 (3) call an ambulance or somebody call an ambulance, I  
 (4) think I'm having a heart attack. And at that time  
 (5) they called 9-1-1. Another co-worker came over to  
 (6) check on me, and said, "We're not waiting for an  
 (7) ambulance." He drove me to the hospital in his  
 (8) vehicle.  
 (9) Q Do you know who that co-worker was?  
 (10) A Todd Smith.  
 (11) Q Todd Smith. And was Darren Blough at  
 (12) the facility that day, do you remember?  
 (13) A Not that I remember.  
 (14) Q Okay. Do you remember when you filed  
 (15) your claim for worker's comp?  
 (16) A I can't remember exactly, no.  
 (17) Q Do you remember any part of the  
 (18) process? Who you filed it with? Who you spoke  
 (19) with?  
 (20) A I spoke with an attorney, Drew Murray.  
 (21) Q What about from AdvoServ? Did you  
 (22) speak with anyone from AdvoServ to file the claim?  
 (23) A I don't believe so, not that I recall.  
 (24) Q How long were you out of work after  
 (25) your heart attack?

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- (1) A Approximately seven months.  
 (2) Q And you can ballpark it for me, if you  
 (3) want to, do you remember when you returned?  
 (4) A December of 2012, I believe.  
 (5) Q 2012 or 2011?  
 (6) A No, I had in my heart attack May, June –  
 (7) yeah, '11, yeah, '11.  
 (8) Q No, that's all right.  
 (9) And did you return to the position you  
 (10) were in prior to?  
 (11) A No.  
 (12) Q What position were you in prior to the  
 (13) heart attack?  
 (14) A I was, prior to having the heart attack, I  
 (15) was what they call a supervisor alternate.  
 (16) Q Okay. And what were you when you  
 (17) returned?  
 (18) A I was a community living specialist. My  
 (19) position had been taken from me.  
 (20) Q Now, as a supervisor alternate, were  
 (21) you still a community living specialist?  
 (22) A Yes, yes.  
 (23) Q So it was just that you would  
 (24) occasionally perform the supervisory role when the  
 (25) regularly scheduled supervisor was not available.

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- (1) Is that correct?  
 (2) A Yes. Or you could do another shift if they  
 (3) needed a supervisor, if you wanted to, you could do  
 (4) that.  
 (5) Q But you were a community living  
 (6) specialist during this whole period?  
 (7) A Yes.  
 (8) Q And that never changed, correct?  
 (9) A No.  
 (10) Q When you returned to work from your  
 (11) worker's compensation, do you believe that you were  
 (12) subject to any retaliation?  
 (13) A When I first went in and I had asked why I  
 (14) wasn't working weekends as a supervisor anymore,  
 (15) they – my – at the time the director had come to  
 (16) me and said, "Because you've been out of work for an  
 (17) extended amount of time and we feel that you need to  
 (18) get your feet wet again."  
 (19) Q Did you agree that you probably should  
 (20) start back slowly?  
 (21) A No, because there had been other people out  
 (22) for ten months longer than I had, and they came back  
 (23) and they had their position, and still do.  
 (24) Q So you felt that that was –  
 (25) A Kind of, yeah.

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- (1) Q - in retaliation.  
 (2) And who was the director?  
 (3) **A At the time it was Art Mongelli.**  
 (4) COURT REPORTER: What is it, Art?  
 (5) THE WITNESS: Arthur Mongelli.  
 (6) Q So that's one. And any other.  
 (7) **A Heather Moyer was actually the director.**  
 (8) **Arthur was the assistant director. I'm sorry.**  
 (9) Q Any other examples of how you think you  
 (10) were retaliated when you returned back to work?  
 (11) **A I was told that I had to work with a certain**  
 (12) **supervisor on her shift only, and on her days off I**  
 (13) **was to be off on her days off as well.**  
 (14) Q And what supervisor is that?  
 (15) **A Terri Outer.**  
 (16) Q And who told you that?  
 (17) **A That's how they told me my schedule was.**  
 (18) **"You're going to work under Terri until" -**  
 (19) Q Yeah. Who is the person who -  
 (20) **A I believe it was Art.**  
 (21) Q Art. Okay.  
 (22) And you and Terri were friends,  
 (23) correct?  
 (24) **A We knew each other, not as good as after we**  
 (25) **started, but we knew families, the families of each**

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- (1) **other.**  
 (2) Q Because you guys would like start  
 (3) driving to work and stuff all the time, right?  
 (4) **A Yeah.**  
 (5) Q Okay. And at the time did you complain  
 (6) to anyone about your hours or working with Terri?  
 (7) **A Well, what had happened was after a few days,**  
 (8) **Terri was - Terri was a good supervisor. She did**  
 (9) **what they asked her to come here to do and to run**  
 (10) **the shift and straighten the shift out, and she did.**  
 (11) **After a few days, I felt that she was really riding**  
 (12) **me hard, and I said, "Terri, what's the problem?**  
 (13) **Why are you being on me so hard?" And she had told**  
 (14) **me basically right out that, "I was told to**  
 (15) **watch" - well, I had threatened her because she**  
 (16) **wrote me up for something silly. One of the day**  
 (17) **shift people had worked on our night shift back**  
 (18) **half, which they call it, and he fell asleep in one**  
 (19) **of the houses and somebody called over to report it,**  
 (20) **and they texted me, and she said, "Oh, that guy is**  
 (21) **sleeping. I'm going to write him up." I texted one**  
 (22) **of our co-workers to say, "Here she comes. Watch**  
 (23) **this," as if that was going funny, because they**  
 (24) **finally caught him, he's been doing it for a while,**  
 (25) **and she felt that I was texting them warning them,**

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- (1) **which definitely wasn't the question. So after we**  
 (2) **had the little write-up from that situation, I sat**  
 (3) **with Terri and I asked her, "Terri, what is your**  
 (4) **problem with me? What is the problem?" She went**  
 (5) **into detail, and I said to her, I had told her,**  
 (6) **"Listen, you can be in a lawsuit just as much if**  
 (7) **you're going to keep harassing me, just as much as**  
 (8) **the next person can." You know, I told her, "I know**  
 (9) **what's going on here. I know they want me out of**  
 (10) **here." And she had said right out that "I was told**  
 (11) **to keep an eye on you, write you up for anything I**  
 (12) **can to get you out of here."**  
 (13) Q And who told her that?  
 (14) **A I have no idea where it came from her end. I**  
 (15) **believe she said that it came from Moyer, Heather**  
 (16) **Moyer, which I don't know who it would have come**  
 (17) **from from her.**  
 (18) Q Okay. And why would you - why were  
 (19) they trying to get - why was Heather Moyer or  
 (20) someone trying to get terminated?  
 (21) **A Because I got a worker's compensation case**  
 (22) **going against them, and, you know, that they took my**  
 (23) **position away and they knew I was a little upset**  
 (24) **about it, and I told them I thought it was very**  
 (25) **wrong, that other people had been out of work for**

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- (1) **ten months at a time with a broken leg or they had**  
 (2) **surgery, and they came back and they still had their**  
 (3) **position without any, you know, changes and had to**  
 (4) **get their feet wet.**  
 (5) Q And this was in December of 2011,  
 (6) correct?  
 (7) **A Yes.**  
 (8) Q This is right when you returned back to  
 (9) work, right?  
 (10) **A Correct, correct.**  
 (11) Q So you returned back to work, and you  
 (12) have one conversation with Art Mongelli where he  
 (13) doesn't allow to you work weekends, you have to work  
 (14) with Terri Outer, right?  
 (15) **A Correct.**  
 (16) Q Second, that you're not able to go back  
 (17) to your alternative supervisor position.  
 (18) **A Right.**  
 (19) Q And third that Terri Outer tells you  
 (20) that Heather Moyer or somebody instructed her to  
 (21) have you fired?  
 (22) **A To look whatever they could for writing me up**  
 (23) **and to get me out of there, yes.**  
 (24) Q And you weren't fired until December of  
 (25) 2013, correct?

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- (1) **A Correct.**  
 (2) **Q Two years later, correct?**  
 (3) **A Yes.**  
 (4) **Q And so we have three examples of**  
 (5) **retaliation. Any others that you think occurred**  
 (6) **when you returned back to work?**  
 (7) **A The worker's compensation. I got a**  
 (8) **settlement from them, and after I kind of got –**  
 (9) **Q Well, let's just slow down.**  
 (10) **A Well, that's retaliation and harassing about.**  
 (11) **Q You returned to work in December of**  
 (12) **'11?**  
 (13) **A Correct.**  
 (14) **Q I'm only interested in that, at that**  
 (15) **moment.**  
 (16) **A Okay.**  
 (17) **Q Any other examples from that moment**  
 (18) **where you believe you were retaliated against?**  
 (19) **A Just the fact that they took my supervisor**  
 (20) **position away from me, pretty much that was it, and**  
 (21) **they put me in the same shift with Terri every day,**  
 (22) **and I was not allowed to do anything, no overtime,**  
 (23) **no nothing.**  
 (24) **Q So that's it. No other – no other**  
 (25) **examples.**

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- (1) **A No, that's it, pretty much.**  
 (2) **Q Great. Great.**  
 (3) **How much money did you receive from**  
 (4) **your worker's compensation?**  
 (5) **A I received – it was a settlement of 125,000,**  
 (6) **which I received approximately 80,000 after the**  
 (7) **lawyer's fees and other stuff.**  
 (8) **Q And when did you receive that?**  
 (9) **A On November 2013.**  
 (10) **Q Did you believe that you were entitled**  
 (11) **to more money from yours from worker's compensation?**  
 (12) **A I didn't even know there was a settlement**  
 (13) **payment for that. I was always under the impression**  
 (14) **that worker's compensation, you just got paid what**  
 (15) **you were out of work. I had no clue about**  
 (16) **settlement until my lawyer called me and said:**  
 (17) **We're going to settle for such and such amount.**  
 (18) **Maybe I don't know, it was like I had no clue we**  
 (19) **were getting an abundance of money, nothing. I was**  
 (20) **just under the impression that when you were under**  
 (21) **worker's comp, I was never under this before, that**  
 (22) **you just got paid what you were out hurt. I had no**  
 (23) **clue that there was any settlement cases or nothing**  
 (24) **until he contacted me and told me what we were going**  
 (25) **to settle for.**

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- (1) **Q So it was a pleasant surprise?**  
 (2) **A Absolutely.**  
 (3) **Q Going back to the Terri Outer comment**  
 (4) **for a moment. Did she tell you it was because of**  
 (5) **your worker's compensation award?**  
 (6) **A No.**  
 (7) **Q Did – excuse me, strike that.**  
 (8) **Let me ask you a slightly different**  
 (9) **question.**  
 (10) **Did she tell you it was because you**  
 (11) **were out on worker's compensation that folks wanted**  
 (12) **you fired?**  
 (13) **A No.**  
 (14) **Q Did anybody bring up your time off as**  
 (15) **the reason why, for example, you couldn't be a**  
 (16) **supervisor?**  
 (17) **A Just Arthur brought it up that I was out for**  
 (18) **a while and needed to get my feet wet again.**  
 (19) **Q So that's the only time anyone**  
 (20) **mentioned specially you being out of work is the**  
 (21) **reason for something.**  
 (22) **A At that time, yes.**  
 (23) **Q You said "at that time". At a later**  
 (24) **time did someone mention it?**  
 (25) **A I had asked Heather Moyer, and asked her if**

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- (1) **she could talk to Darren, and why I wasn't allowed**  
 (2) **to be a supervisor.**  
 (3) **Q Okay. You asked Heather Moyer, though?**  
 (4) **A Yes, correct.**  
 (5) **Q And what did Heather tell you?**  
 (6) **A She just said that right now there's no –**  
 (7) **that's not in the cards right now. You just got to**  
 (8) **get your feet wet and stay where you are.**  
 (9) **Q Did she mention your time off?**  
 (10) **A No.**  
 (11) **Q Okay. So the only person who ever**  
 (12) **mentioned your time off was Art Mongelli?**  
 (13) **A Correct.**  
 (14) **Q At any point did you ever refuse a**  
 (15) **supervisor position?**  
 (16) **A Yes.**  
 (17) **Q When was that?**  
 (18) **A Probably about six months after I was back,**  
 (19) **they had openings, there was a few openings, and I**  
 (20) **had applied for first, I don't believe they chose me**  
 (21) **for the job, but the person they chose denied to do**  
 (22) **it, refused it, and then I put in for it, and they**  
 (23) **asked me what I was doing. I said I'll do that,**  
 (24) **that job, but I wanted certain stipulations down and**  
 (25) **certain ways to be done because there was people**

(1) **there at the time that were very immature, were**  
 (2) **doing things they shouldn't have been doing, and I**  
 (3) **was not going to take that position if they didn't**  
 (4) **do something with them people.**  
 (5) Q And was this a full-time supervisory  
 (6) position?  
 (7) **A That was just an alternate again.**  
 (8) Q So this for the alternate.  
 (9) **A Correct -**  
 (10) Q This was for the position you  
 (11) previously had.  
 (12) **A Correct.**  
 (13) Q And you put certain stipulations. What  
 (14) were those stipulations, if you remember?  
 (15) **A Just basically that I wasn't going to be**  
 (16) **babysitting kids that were sitting there doing**  
 (17) **illegal stuff on the campus while I was supervising.**  
 (18) Q Did you express those stipulations the  
 (19) first time you were an alternative supervisor?  
 (20) **A It really wasn't bad the first time I was an**  
 (21) **alternate supervisor.**  
 (22) Q So about six months after you returned  
 (23) to work, you were offered an alternative supervisor  
 (24) position and you declined it?  
 (25) **A Yes.**

(1) Q Great.  
 (2) And you would agree with me that  
 (3) AdvoServ didn't do anything to deny or frustrate the  
 (4) receipt of your worker's compensation award, right?  
 (5) **A Excuse me again?**  
 (6) Q Would you agree with me that AdvoServ  
 (7) did not do anything to frustrate or deny your  
 (8) receipt of your worker's compensation award, the  
 (9) \$80,000 that you got?  
 (10) **A I don't know, I have no idea.**  
 (11) Q I mean, as far as you know your lawyer  
 (12) called you and you were surprised, right?  
 (13) **A Yes.**  
 (14) Q And you pretty happy that you were  
 (15) getting \$80,000, correct?  
 (16) **A Yeah.**  
 (17) Q And that's pretty much all you knew.  
 (18) **A Yeah, but I'm sure they knew it. I mean,**  
 (19) **nothing gets by them people, trust me.**  
 (20) Q You know, I'm interested in what you  
 (21) knew. So that's all you knew -  
 (22) **A Right.**  
 (23) Q - in terms of what was going on.  
 (24) Your lawyer pretty much handled that,  
 (25) right?

(1) **A Yes.**  
 (2) Q Okay. All right. What I want to do  
 (3) now is I want to talk briefly about your discipline  
 (4) history, so I'm going to show you what I believe is  
 (5) going to be marked as Exhibit 4.  
 (6) **(Exhibit received and marked Exhibit 4 for**  
 (7) **identification.)**  
 (8) Q Todd, let me know when you're finished  
 (9) reviewing this document.  
 (10) **A Okay.**  
 (11) Q This is a - first let me ask you: Is  
 (12) that your name below the line that says "Signature  
 (13) of person taking action," and then with a little  
 (14) arrow to employee's signature?  
 (15) **A Yes.**  
 (16) Q That's your name. Okay.  
 (17) And this is a suspension, a three-day  
 (18) suspension for sleeping on the job, correct?  
 (19) **A Yes.**  
 (20) Q And the date of this suspension is  
 (21) 6/24/13, correct?  
 (22) **A Yes.**  
 (23) Q Okay. And you returned to work from  
 (24) your compensation or from your worker's comp period  
 (25) in December of, like, 2011, correct?

(1) **A Yes.**  
 (2) Q So this is after you returned to work,  
 (3) right?  
 (4) **A Yes.**  
 (5) Q Okay. And you would agree with me that  
 (6) AdvoServ could have terminated you for this pursuant  
 (7) to the disciplinary grid, right?  
 (8) MR. AZAR: Objection, but you can  
 (9) answer.  
 (10) **A Actually, they couldn't. I fought this. I**  
 (11) **actually had a meeting on this because of the fact**  
 (12) **that I wasn't sleeping, I had a major headache that**  
 (13) **night, I was taking a ten minute break sitting in**  
 (14) **the chair with my head like this, and she came.**  
 (15) MR. AZAR: For the record, for the  
 (16) record, indicating you had your hand over your eyes.  
 (17) THE WITNESS: Correct.  
 (18) **A And she thought I was sleeping. She called.**  
 (19) **One of the workers came over and said, "Kim's on the**  
 (20) **phone." I said, "All right." She got on the phone.**  
 (21) **Her exact words to me were, "Wake the fuck up."**  
 (22) Q And you served the suspension for this,  
 (23) right?  
 (24) **A I served a two-day suspension, not three.**  
 (25) Q And but you would agree with me that

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- (1) the handbook says you can be fired for a first  
 (2) offense of sleeping on the job, correct?  
 (3) **A Yes.**  
 (4) **Q Okay. And you referenced that you**  
 (5) **contested this discipline.**  
 (6) **Who did you contest the discipline**  
 (7) **with?**  
 (8) **A I had called Darren and texted him and said**  
 (9) **that I'm very sorry for what happened. I had a**  
 (10) **headache. I was just resting my head. I had a**  
 (11) **migraine headache, it won't happen again. I'm sorry**  
 (12) **for me unprofessionalism, if that's what it was.**  
 (13) **That's pretty much what I said. And he said, It's**  
 (14) **fine, Todd, we all need a break once a while. Maybe**  
 (15) **we need to look into some different things for**  
 (16) **breaks, because nobody got a chance to take a break**  
 (17) **there hardly.**  
 (18) **Q And Darren is the director of New**  
 (19) **Jersey, correct?**  
 (20) **A Yes.**  
 (21) **Q So he's like the big boss.**  
 (22) **A Well, Bob Bacon is, but Darren is one step**  
 (23) **down from him, I guess you would say.**  
 (24) **Q And you had a pretty good relationship**  
 (25) **with Darren, right?**

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- (1) **A Absolutely.**  
 (2) **Q And you felt that Darren, you know,**  
 (3) **when you made this call, for example, he listened to**  
 (4) **your concerns.**  
 (5) **A Sure.**  
 (6) **Q And he reduced the suspension by one**  
 (7) **day?**  
 (8) **A Correct.**  
 (9) **Q Were you content with that as an**  
 (10) **appropriate result?**  
 (11) **A Actually, I was, but this I was also not**  
 (12) **supposed to have been from, what I believed at that**  
 (13) **time when this happened, put in my file as a**  
 (14) **sleeping. It was going to be something else.**  
 (15) **Q Okay.**  
 (16) **A Like a conclusive to sleeping. So that it**  
 (17) **was understandable that I wasn't a "sleeping on the**  
 (18) **job".**  
 (19) **Q Sure. Sure.**  
 (20) **A Which, I guess, they would probably say**  
 (21) **that's the same thing in their handbook by both ways**  
 (22) **that they put it, so.**  
 (23) **Q And you would actually agree with me**  
 (24) **that if you look at the "Group 2 Offenses," "placing**  
 (25) **oneself in a position conducive to sleeping" is on**

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- (1) the document?  
 (2) **A This one here?**  
 (3) **Q Yeah, look right here.**  
 (4) **MR. AZAR: Referring to the top –**  
 (5) **THE WITNESS: Correct.**  
 (6) **MR. AZAR: – top third, where it says**  
 (7) **"Group 2 Offense".**  
 (8) **MR. FONTANA: Yes.**  
 (9) **Q And you always felt that you could**  
 (10) **reach out to Darren, right, if you had concern or a**  
 (11) **problem?**  
 (12) **A Yes.**  
 (13) **Q And he was responsive and helpful?**  
 (14) **A Always.**  
 (15) **Q All right. Let's move on to Exhibit 5**  
 (16) **This is another discipline form.**  
 (17) **(Exhibit received and marked Exhibit 5 for**  
 (18) **identification.)**  
 (19) **MR. AZAR: Thank you.**  
 (20) **Q Take a second to review this and kind**  
 (21) **of like we've said, let me know when you're**  
 (22) **finished.**  
 (23) **A Yes.**  
 (24) **Q Okay. This – the day of this**  
 (25) **violation is 8/22/13, correct?**

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- (1) **A Yes.**  
 (2) **Q And that is after you returned to work**  
 (3) **from your worker's compensation period, correct?**  
 (4) **A Yes.**  
 (5) **Q Yeah. And this violation is a Group 2**  
 (6) **offense for endangering the welfare of the**  
 (7) **residents, correct?**  
 (8) **A Correct.**  
 (9) **Q And it was a two – it looks like it**  
 (10) **was a suspension for one day, correct?**  
 (11) **A I was supposed to have three, and it got**  
 (12) **knocked down again to two.**  
 (13) **Q And we'll talk about that in a sec.**  
 (14) **I want to take your eyes down to the**  
 (15) **comments. There's handwriting here.**  
 (16) **Is that your handwriting?**  
 (17) **A Yes, it is.**  
 (18) **Q And is that you who wrote, "I would**  
 (19) **like to appeal this."**  
 (20) **A Yes.**  
 (21) **Q And who did you an appeal this to?**  
 (22) **A I believe it was Darren and Kim.**  
 (23) **Q Darren and Kim. And Kim Miccus is**  
 (24) **whom?**  
 (25) **A Director of the campus.**

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- (1) Q Okay. So you appealed this to Darren  
 (2) and Kim, and once again they reduced the discipline.  
 (3) A Yes.  
 (4) Q Okay. And that was based upon your  
 (5) explanation of what occurred and this idea that  
 (6) there was proper staff coverage?  
 (7) A Correct. There was proper staff coverage.  
 (8) Nobody was in danger, and this was – this was done  
 (9) because of the fact that a worker had denied staying  
 (10) getting mandated quite a few times, and it wasn't  
 (11) fair to the next person that got mandated when  
 (12) nothing would ever happen to him.  
 (13) Q But you would agree that you did walk  
 (14) off the floor, correct?  
 (15) A No, I did not walk off the floor.  
 (16) Q So you did not walk off. So it's  
 (17) inaccurate that at 6:15 you did not walk off the  
 (18) floor?  
 (19) A At 6:15 I left. There was coverage, and I  
 (20) made sure there was coverage before I left because I  
 (21) knew I'd get in trouble from abandoning the  
 (22) residents.  
 (23) Q That's an accurate statement, that at  
 (24) 6:15 you walked off the floor and left the premises,  
 (25) correct?

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- (1) A Yes, yes.  
 (2) Q All right. You just dispute whether  
 (3) there was proper staff coverage?  
 (4) A I don't dispute, I know there was.  
 (5) Q But you dispute here that there was,  
 (6) correct?  
 (7) A There wasn't – no, there wasn't the staff  
 (8) coverage. What it was was the person that was  
 (9) mandated originally had always been refusing and it  
 (10) wasn't fair to the next person because he never got  
 (11) anything done there.  
 (12) Q So if somebody else was supposed to  
 (13) keep working, they didn't.  
 (14) A Correct.  
 (15) Q And you didn't like that.  
 (16) A No.  
 (17) Q So you decided to take that measure  
 (18) into your own hand and, kind of, protest that,  
 (19) right?  
 (20) MR. AZAR: Objection. You can answer  
 (21) it.  
 (22) A I did that because of the fact that he had  
 (23) done it three or four times, and I was always the  
 (24) person behind him that got mandated after and after  
 (25) three times I also had something to do myself that

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- (1) day, so I simply said, "I cannot stay today, Terri.  
 (2) I have to refuse."  
 (3) Q So it was like –  
 (4) A Somebody else refused it, too.  
 (5) Q – enough in enough, right?  
 (6) A Correct.  
 (7) Q Great. Okay.  
 (8) A And just for the record –  
 (9) MR. AZAR: No, there's no question  
 (10) pending.  
 (11) THE WITNESS: Oh, okay.  
 (12) MR. AZAR: Thank you.  
 (13) BY MR. FONTANA:  
 (14) Q And you would agree with me that  
 (15) according to the discipline grid, endangering the  
 (16) welfare of a resident can lead to termination for  
 (17) first offense, correct?  
 (18) A If there is endangerment, yes.  
 (19) Q Okay. All right. I want to do Exhibit  
 (20) 6 now.  
 (21) (Exhibit received and marked Exhibit 6 for  
 (22) identification.)  
 (23) Q Let me know when you've reviewed it.  
 (24) A Okay.  
 (25) Q Okay. This is a Discipline Action

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- (1) Form. When I say "this", Exhibit 6, Discipline  
 (2) Action Form, correct?  
 (3) A Yeah.  
 (4) Q And the employee's name on this form is  
 (5) Todd Kowinsky.  
 (6) A Yes.  
 (7) Q The date is December 30th, 2013,  
 (8) correct?  
 (9) A Correct.  
 (10) Q And the concern is "Behavior  
 (11) inconsistent with the professional nature of the  
 (12) organization," correct?  
 (13) A Yes.  
 (14) Q Have you seen this document before?  
 (15) A I don't think I've seen this exact one, no,  
 (16) it was something different maybe.  
 (17) Q Did you see something that referenced  
 (18) "behavior inconsistent with the professional nature  
 (19) of the organization"?  
 (20) A I'm not – not to my knowledge. I don't  
 (21) remember.  
 (22) Q Looking into the text of this document,  
 (23) it says, "When interviewed on December 16th, 2013,  
 (24) in response to concerns from co-workers about  
 (25) negative interactions and problems on the shift,

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- (1) you," presumably Todd Kowinsky stated, "This is  
 (2) bullshit. All clinicians are jackasses. And Kim  
 (3) doesn't know what the fuck she is doing. She can't  
 (4) make any decisions and can Rashad."  
 (5) COURT REPORTER: Rashad.  
 (6) MR. FONTANA: Rashad. I'm sorry, I  
 (7) always say his name wrong.  
 (8) Q Did you make that statement?  
 (9) A Yes, I did.  
 (10) Q Yes, you did.  
 (11) And you made that statement in a  
 (12) meeting with Jessica Bayer, correct?  
 (13) A Yes.  
 (14) Q And what was being discussed in that  
 (15) meeting?  
 (16) A It was a one-on-one, closed-door meeting,  
 (17) that I had asked for without other people there  
 (18) because their concerns were a lot different than our  
 (19) shift concerns were. So I asked -  
 (20) Q Would you - just a little  
 (21) clarification.  
 (22) When you said "their concerns were  
 (23) different than our concerns", who is the "their"?  
 (24) A The supervisors.  
 (25) Q So the supervisors' concerns were

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- (1) different than some of the staffs' concerns?  
 (2) A Correct.  
 (3) Q And when you say "the staff", do you  
 (4) mean other community living specialists?  
 (5) A Yes.  
 (6) Q Do you know who in particular had these  
 (7) concerns?  
 (8) A There was three or four co-workers that were  
 (9) concerned about certain things.  
 (10) Q Which ones?  
 (11) A Nańcy Filipowicz, Rob Waslyk, Terri Outer,  
 (12) Erin Garcia.  
 (13) Q Terry Outer was a supervisor, correct?  
 (14) A Correct.  
 (15) Q And what were their concerns?  
 (16) A Their concerns were that they wanted to  
 (17) switch the workers in the houses, because people  
 (18) were complaining they were always in the same  
 (19) houses. The reason why we were concerned about this  
 (20) was it was a safety issue regarding the residents, a  
 (21) few of our workers were pregnant at the time, if  
 (22) they had went to the houses where we were that we  
 (23) had capability of controlling the people - our  
 (24) clients with control of talking or knew how they  
 (25) acted after we had been in the houses for so long,

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- (1) that they would have hurt one of the other girls or  
 (2) the smaller girls that worked there or one of the  
 (3) pregnant women that worked there. So we had said if  
 (4) they put the workers that have no experience with  
 (5) these certain individuals, they're going to get  
 (6) hurt.  
 (7) Q And this is why you wanted to meet with  
 (8) Jessica Bayer, correct?  
 (9) A Correct.  
 (10) Q And it was in the context of explaining  
 (11) this concern that you made the statement, "This is  
 (12) bullshit. All clinicians are jackasses, and Kim  
 (13) doesn't know what the fuck she's doing," correct?  
 (14) A Yes. Because what had happened in this  
 (15) circumstance was the behavior analysts decided they  
 (16) were going to start moving people around because  
 (17) there was a complaint from one of the residents who  
 (18) did a daily complaint on anybody he was with under  
 (19) the care of, and he didn't like the fact that he was  
 (20) being told to go to bed, it's nighttime, and no  
 (21) reason for you to be up. He went and complained to  
 (22) one of the behavioralists (sic) while he was having  
 (23) his therapy, and said that these guys are treating  
 (24) me bad and they acted on that, which was - I  
 (25) understand their behalf, but it was not listening to

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- (1) our behalf as well either.  
 (2) Q And so you're talking about a patient  
 (3) who complained, correct?  
 (4) A A resident, correct.  
 (5) Q And that resident - excuse me, that  
 (6) resident complained about you, correct?  
 (7) A He complained about all of us.  
 (8) Q But you were one of the folks who took  
 (9) care of him, correct?  
 (10) A Yes, I was one of the three, correct.  
 (11) Q Okay. Did you bring up anything else -  
 (12) at this meeting other than your view of the  
 (13) clinicians and the jackasses?  
 (14) A We had had a little further discussion after  
 (15) this, and everything I spoke to with Jess, we had  
 (16) always spoke off the record, always spoke verbally  
 (17) to each other. We had spoke about what was going on  
 (18) and what happened, and none of a period of a time  
 (19) did this come up about how Terri's actions were -  
 (20) Outer, who was our supervisor, her job, was that was  
 (21) the indication that other people were understanding,  
 (22) but what she had said to me, I said, "Just these  
 (23) kids here don't know what they're doing. They're  
 (24) out of control." With that she had said, "Then take  
 (25) the fucking supervisor job, Todd. We need you to

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- (1) **teach these kids. We need your" –**
- (2) Q So as late as –
- (3) MR. AZAR: Well, can he finish his
- (4) sentence?
- (5) MR. FONTANA: I apologize.
- (6) MR. AZAR: Can he finish his comment?
- (7) **A She had said that, "We need someone with your**
- (8) **professionalism, with your attitude, to take care of**
- (9) **this and settle these problems down." Pretty much,**
- (10) **basically that.**
- (11) Q So as late as December 16th, 2013, and
- (12) AdvoServ still wanted you to be a supervisor.
- (13) **A That's correct, even after I spoke like this**
- (14) **to them.**
- (15) Q Okay. Now, did you mention anything
- (16) else at this meeting?
- (17) **A I had said that if it keeps up with the way**
- (18) **these people are treating other people around here**
- (19) **and the workers, that there's been talk around here**
- (20) **about union organizing again.**
- (21) MR. AZAR: Okay. I got a feeling that
- (22) this is my call. This is Yoblonsky? Okay. Can we
- (23) go off the record for five minutes?
- (24) (Recess taken at 3:00 p.m. and ended at 3:14
- (25) p.m.)

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- (1) MR. FONTANA: We're back on the record.
- (2) Q And, Todd, we were just in the process
- (3) of reviewing this Discipline Action Form, and I had
- (4) asked you about what happened at a meeting where you
- (5) made a statement about, you know, certain clinicians
- (6) being jackasses and bullshit, and so to pick up
- (7) where we were left off there, you do admit making
- (8) that statement, correct?
- (9) **A Yes.**
- (10) Q And would you agree with me that it was
- (11) unprofessional to use that type of language?
- (12) **A Sure.**
- (13) Q Sure. Okay.
- (14) Did you ever apologize to anyone for
- (15) making that statement?
- (16) **A I may have said "I'm sorry", but that's the**
- (17) **way I feel.**
- (18) Q Do you still feel that way to this day?
- (19) **A Being the circumstances, I would have worded**
- (20) **it a little different, but we've always spoke**
- (21) **outright like this between the two of us, and we've**
- (22) **never had an on-the-book/off-the-book**
- (23) **professionalism when we're talking one-on-one.**
- (24) **We've both swore and brought things up that whatever**
- (25) **at the time, but I would have definitely done it**

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- (1) **differently this time.**
- (2) Q And so you really felt that this was
- (3) almost like a private conversation between you and
- (4) Jessica?
- (5) **A Yes, it was a closed-door conversation, and**
- (6) **we've always been like that with each other when**
- (7) **we've had them.**
- (8) Q And were you really expressing, kind
- (9) of, your own personal thoughts?
- (10) **A At the time, yes.**
- (11) Q So that feeling was your feeling and
- (12) your anger about the clinicians, correct?
- (13) **A It was my feeling as well as some of the**
- (14) **co-workers.**
- (15) Q And when you were speaking at that
- (16) meeting, you were speaking for yourself?
- (17) **A Yes.**
- (18) Q What happened after that December 16th
- (19) meeting, to the best of your recollection?
- (20) **A Well, I know there was supposed to have been**
- (21) **changes made, which there were none in any other**
- (22) **campus, and this was supposed to across campuses all**
- (23) **over, not just ours, as we brought – as she brought**
- (24) **up at a meeting, and this was one of our complaints**
- (25) **that it wasn't going on on other shifts or other**

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- (1) **campuses just our shift. So our shift felt like we**
- (2) **were being pointed out. I think I might have just**
- (3) **went back to my daily work routine until I got a**
- (4) **text message, it was a couple of days after,**
- (5) **February, it was like two weeks later, I believe, I**
- (6) **was fired.**
- (7) Q And who texted you?
- (8) **A Darren.**
- (9) Q Darren. And he let you know that you
- (10) had been terminated?
- (11) **A Yeah, by phone. I was under the impression**
- (12) **that we were supposed to be having a meeting or**
- (13) **something, and they were going to call me, let me**
- (14) **know when, but nobody ever called, and I had worked**
- (15) **the shift the night before. I stayed up till**
- (16) **8 o'clock in the morning waiting for a phone call**
- (17) **and nobody called, so when I fell asleep I got a**
- (18) **text, I guess, you know, 9:15 or 9:30 saying that**
- (19) **they were trying to get – oh, no, about an 11**
- (20) **o'clock I got the message that I had been**
- (21) **terminated. I guess, they had said they tried a few**
- (22) **times, and I didn't answer because I was, obviously,**
- (23) **sleeping, but..**
- (24) Q And isn't it true there was a meeting
- (25) scheduled that you couldn't make and this was about

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- (1) rescheduling the meeting?  
 (2) **A No, not that I'm aware of.**  
 (3) **Q** You don't remember that.  
 (4) **A No.**  
 (5) **Q** And did Darren tell you why you had  
 (6) been terminated?  
 (7) **A Actually, I think from the text message he**  
 (8) **had said that after trying to get ahold of you so**  
 (9) **many times to discuss the situation, we feel best**  
 (10) **that we terminate each other or terminate you, or**  
 (11) **something like that. It was – I was terminated.**  
 (12) **Q** And did he tell you it was for the  
 (13) statement that you made?  
 (14) **A I don't believe at that time he did, no.**  
 (15) **Q** When do you remember the first you  
 (16) learned about why you had been fired?  
 (17) **A I actually had texted him or called him, I**  
 (18) **think. I believe I called him.**  
 (19) **Q** When did you call him?  
 (20) **A Like, I believe I called him that same day.**  
 (21) **Q** So just for clarity of the record, what  
 (22) day is this?  
 (23) **A December 30th, I believe.**  
 (24) **Q** December 30th?  
 (25) **A Yeah, I believe it was that day.**

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- (1) **Q** And the date on that document shows as  
 (2) December 30th, correct?  
 (3) **A Well, yes.**  
 (4) **Q** So this was basically the first day  
 (5) that you were terminated you were having these  
 (6) conversations with Darren?  
 (7) **A Yes.**  
 (8) **Q** All right. I'm going to show you  
 (9) what's now been marked as Exhibit 9, and this is  
 (10) your complaint – this would be Exhibit 7. Sorry  
 (11) about that. That is entirely my fault.  
 (12) **(Exhibit received and marked Exhibit 7 for**  
 (13) **identification.)**  
 (14) **Q** Now, Todd, this is the complaint you  
 (15) filed in this matter.  
 (16) Have you seen this document before?  
 (17) **A Yes.**  
 (18) **Q** Okay. I'm just going to ask you some  
 (19) questions about it.  
 (20) Before this complaint was filed, did  
 (21) you get a chance to review it?  
 (22) **A I looked over it, yes.**  
 (23) **Q** And did you look over it to make sure  
 (24) that everything in here was accurate?  
 (25) **A Yes.**

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- (1) **Q** Okay. Let's go to page three of the  
 (2) complaint. Allegation number 2, review that.  
 (3) Begins with "In" and ends with "defendant".  
 (4) **MR. AZAR:** I'm sorry.  
 (5) **MR. FONTANA:** So it's page three,  
 (6) Paragraph 2. Begins with "In" and ends with  
 (7) "defendant".  
 (8) **MR. AZAR:** Got it. Thanks.  
 (9) **A All right.**  
 (10) **Q** In that paragraph, it states that, "In  
 (11) or about November of 2013, the plaintiff received a  
 (12) substantial award from the Superior Court Worker's  
 (13) Compensation Division for the injuries he sustained  
 (14) while employed by defendant."  
 (15) Now, "defendant" in that sentence means  
 (16) AdvoServ, correct?  
 (17) **A Yes.**  
 (18) **Q** And the substantial award is the  
 (19) settlement you referenced earlier for 80 – for  
 (20) \$120,000 of which you received 80,000, correct?  
 (21) **A Yes.**  
 (22) **Q** So that's what you're talking about in  
 (23) that second paragraph.  
 (24) **A Yes.**  
 (25) **Q** And you got that in about November of

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- (1) 2013?  
 (2) **A Yes.**  
 (3) **Q** Okay. Look at the next paragraph,  
 (4) numbered three, begins with "Thereafter". Just read  
 (5) that for me.  
 (6) **A Yes.**  
 (7) **Q** Okay. It says that the relationship  
 (8) between yourself and AdvoServ rapidly deteriorated,  
 (9) presumably after the receipt of the November of 2013  
 (10) award.  
 (11) Is that correct?  
 (12) **A Yes.**  
 (13) **Q** All right. What are – can you explain  
 (14) to me how the relationship deteriorated?  
 (15) **A Well, they just weren't listening to our**  
 (16) **complaints. We were unable to speak any of our**  
 (17) **feelings. Several contacts had been tried to be**  
 (18) **made as far as what was going on with the clinicians**  
 (19) **and the staffing, but that's basically it. It was**  
 (20) **just that nobody would answer or talk to us. There**  
 (21) **was no –**  
 (22) **Q** When you say "us" and "our", who do you  
 (23) mean by that?  
 (24) **A "Us" as in the workers and "our" as in the**  
 (25) **shift.**

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- (1) Q So who are the workers?
- (2) **A The CLSs, Rob Walsyk, Nancy Filipowicz, and**
- (3) **myself.**
- (4) Q So the concern is the concern you
- (5) mentioned earlier, correct, regarding the shifting
- (6) of the employees to different houses?
- (7) **A Correct.**
- (8) Q And Upper Greenwood Lake, it has three
- (9) houses, correct?
- (10) **A Yes.**
- (11) Q And so the concern was that you'd move
- (12) from house one to house two, or house two to house
- (13) three.
- (14) **A Yes.**
- (15) Q Is that accurate?
- (16) **A Yes.**
- (17) Q Okay. Any other examples or any other
- (18) reasons that you felt the relationship was rapidly
- (19) deteriorating?
- (20) **A No.**
- (21) Q Okay. So the only thing that changed
- (22) in the relationship after November 2013 was this
- (23) issue of moving of the houses.
- (24) **A Correct.**
- (25) Q Now, that issue had come up previous,

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- (1) correct? In other words, the issue of moving folks
- (2) in the houses –
- (3) **A Yes.**
- (4) Q – started in August and September of
- (5) '13, correct?
- (6) **A No, it started in – started probably about**
- (7) **September, I'd say.**
- (8) Q So September of '13. So it started –
- (9) **A September, October.**
- (10) Q – before you received the worker's
- (11) comp award, correct?
- (12) **A Actually, I'm going to be honest with you,**
- (13) **no, it didn't. We had a meeting on December 16th**
- (14) **that we requested after we had found out they were**
- (15) **going to start switching work, so it was**
- (16) **December 16th it started.**
- (17) Q So that was when the meeting was,
- (18) correct?
- (19) **A Correct.**
- (20) Q But you requested the meeting, correct?
- (21) **A Right.**
- (22) Q So when did you first learn about that?
- (23) **A About the meeting?**
- (24) Q No, no, about the decision to change
- (25) the houses.

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- (1) **A It was probably around December 3rd.**
- (2) Q December 3rd?
- (3) **A Yeah.**
- (4) Q And what happened on December 3rd?
- (5) **A We had a – what they call a monthly meeting**
- (6) **amongst our shift, and the clinicians were there and**
- (7) **they told us that we were going to be switching**
- (8) **houses.**
- (9) Q And when was the complaint against you
- (10) by the individual you referenced earlier? That was
- (11) in November of 13, correct?
- (12) **A Yeah, I believe, yeah, December, November,**
- (13) **something like that.**
- (14) Q So it might have even been in very
- (15) early December?
- (16) **A Yeah, it could have. I don't remember. I**
- (17) **don't recall.**
- (18) Q And it's your understanding that the
- (19) reason for the meeting was because of that
- (20) complaint, correct?
- (21) **A No, they were telling us that the clinicians**
- (22) **were going to move people around as a new thing**
- (23) **campus-wide, but, yeah, they had said it was because**
- (24) **it was for the safety of us as well as the**
- (25) **residents.**

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- (1) Q And this was a campus-wide initiative.
- (2) **A Supposed to have been.**
- (3) Q This wasn't just about you.
- (4) **A It was just about our shift, I believe.**
- (5) Q Let me try and drill that down a little
- (6) more.
- (7) Was the movement targeted exclusively
- (8) at you?
- (9) **A It was targeted at our – my shift.**
- (10) Q Your shift was being moved.
- (11) **A My house mainly, yes.**
- (12) Q Your house.
- (13) **A Yes.**
- (14) Q Were any other houses being moved?
- (15) **A They were being moved because they were**
- (16) **saying that they were tired of being in the same**
- (17) **house, and it wasn't fair that they were always in**
- (18) **the same house, which they would never ever had**
- (19) **problems with before, and then the complaint came up**
- (20) **supposedly against us three workers that we were not**
- (21) **letting this person do what he wants, which you're**
- (22) **not supposed to because of their safety, and it all**
- (23) **became a big argument.**
- (24) Q A big to do?
- (25) **A And it was, again, supposed to have been**

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- (1) **campus-wide, all the campuses throughout AdvoServ**  
 (2) **and shifts and it wasn't being done prior a week**  
 (3) **before – after that.**  
 (4) Q And you mentioned that folks in other  
 (5) houses had been complaining that they wanted to  
 (6) move.  
 (7) Is that correct?  
 (8) **A Yes.**  
 (9) Q And when did those folks, when did you  
 (10) first hear about that?  
 (11) **A At the meeting actually with – well, it was**  
 (12) **at our group, it was at our shift meeting, our**  
 (13) **monthly meeting, that we had as a shift.**  
 (14) Q And that's the December 3rd meeting,  
 (15) correct?  
 (16) **A Yes, yes.**  
 (17) Q And there will be folks in all of the  
 (18) houses at that meeting, right?  
 (19) **A Yeah, most of them made it, not all of them,**  
 (20) **but pretty much everybody in between whatever**  
 (21) **houses.**  
 (22) Q So some of the folks at that meeting –  
 (23) **A Sure.**  
 (24) Q – were happy about the shift change,  
 (25) correct?

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- (1) **A Some of them wanted it only because they were**  
 (2) **tired of working in a certain house with certain**  
 (3) **residents, which when everybody starts there,**  
 (4) **there's a house that you work in to make or break**  
 (5) **you, it's the toughest, house and I did for two and**  
 (6) **a half years myself. So I'm not saying that it was**  
 (7) **any easier if somebody had to be replaced for a**  
 (8) **night or something, we wouldn't go and help them**  
 (9) **out, that was fine, but it was just that they were**  
 (10) **young kids, they were 21, 22. They were still wet**  
 (11) **behind the ears getting a taste of the good stuff.**  
 (12) **You know what I'm saying? It was tough in the**  
 (13) **house.**  
 (14) Q Sure.  
 (15) **A It was a dangerous situation. And half the**  
 (16) **time them kids stayed in their house anyway, so I**  
 (17) **don't –**  
 (18) Q And you thought it was just better if  
 (19) everyone stayed put, because you could get  
 (20) relationship.  
 (21) **A Yes, because the safety issues, one, like I**  
 (22) **said, if they weren't aware of a certain resident**  
 (23) **that we had in our house, he would escape out the**  
 (24) **window, he would come at you with a kitchen – with**  
 (25) **a knife that you had when you weren't looking, and**

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- (1) **he did it a couple of times to some workers on**  
 (2) **different shifts while I was there, and I knew what**  
 (3) **to look for. He had a girl by the neck with a**  
 (4) **pencil shoved in her throat, and if I didn't catch**  
 (5) **that, which I knew he would do something, but I**  
 (6) **didn't know what, that girl could have been hurt.**  
 (7) **If these guys didn't have experience with this**  
 (8) **gentleman, he would have escaped and he would have**  
 (9) **ran down the street, he would have got hit by a car,**  
 (10) **which he done on other people before, or hurt**  
 (11) **somebody. And that's what I was mainly out to look**  
 (12) **forward is for someone that knew how to handle him**  
 (13) **and experience with this person, without anybody**  
 (14) **getting hurt.**  
 (15) Q And at that meeting, did your worker's  
 (16) compensation award come up at all?  
 (17) **A No.**  
 (18) Q From December 13th to the date of your  
 (19) termination, did your worker's compensation award  
 (20) ever come up during your employment?  
 (21) **A December what?**  
 (22) Q From November of 2013, so when you got  
 (23) the award, to the date you got terminated.  
 (24) **A It had come up amongst employees with us, my**  
 (25) **workers my, co-workers, yes.**

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- (1) Q Did it ever come up among supervisors?  
 (2) **A No, I never spoke – well, Terri Outer, yes.**  
 (3) Q Did Darren ever mention it?  
 (4) **A I had never spoke with Darren about maybe**  
 (5) **twice after that. That's it.**  
 (6) Q So Kim Miccus, did she ever mention it?  
 (7) **A No.**  
 (8) Q Did Jessica Bayer mention it?  
 (9) **A No.**  
 (10) Q So it only came up amongst your  
 (11) co-workers?  
 (12) **A Correct.**  
 (13) Q Why? Did you explain that you got the  
 (14) award to your co-workers?  
 (15) **A A few of them, yeah. Other ones, I had –**  
 (16) **the one that helped me, I had offered him, you know,**  
 (17) **you know, "Do you need anything? I appreciate you**  
 (18) **helping me." And he said, "No, you take care of you**  
 (19) **and your family, you need that more than to I do."**  
 (20) **At Christmastime that year I went out and bought all**  
 (21) **my shift a Christmas present.**  
 (22) Q That was very nice.  
 (23) **A Well, you know, I got a heart, half a one,**  
 (24) **but.**  
 (25) **The one lady, Nancy, who had been in a Sandy,**

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- (1) **the tornado or hurricane, who had a beach house and**  
 (2) **her husband passed away and they were trying to get**  
 (3) **the house redone, and I bought a colored TV because**  
 (4) **I just felt she was a heart worker, she's**  
 (5) **60-something years old, and I felt bad for her.**  
 (6) Q And you did this on your own, correct?  
 (7) **A Absolutely.**  
 (8) Q Did you tell Jessica or Kim or Darren  
 (9) you were doing that?  
 (10) **A No.**  
 (11) Q Okay. I want to draw your attention  
 (12) down to paragraph eight, same page. It says, "The  
 (13) defendant began" – it begins with the word "The"  
 (14) and ends with "award."  
 (15) Could you just review that real quick?  
 (16) **A Okay.**  
 (17) Q Okay. You allege in that paragraph  
 (18) that, "The defendant," which we've already agreed is  
 (19) AdvoServ, "knew that you received a significant  
 (20) award."  
 (21) Who of defendant – who of AdvoServ  
 (22) knew?  
 (23) **A Well, when this filed, Darren knew, Bob Bacon**  
 (24) **knew, he knew from a prior meeting of being fired –**  
 (25) **of – of when I went to an appeal.**

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- (1) Q So that's a good example of asking a  
 (2) question you didn't intend to ask.  
 (3) Let me try it again. As of November of  
 (4) 2013, who at AdvoServ knew of the award?  
 (5) **A Just probably a handful of co-workers.**  
 (6) Q The ones we discussed earlier?  
 (7) **A Yes.**  
 (8) Q But Darren didn't know?  
 (9) **A I don't know.**  
 (10) Q You don't know?  
 (11) **A I don't know.**  
 (12) Q Well, you don't know one way or the  
 (13) other what they knew?  
 (14) When do you believe is the first time  
 (15) Kim Miccus learned of your award?  
 (16) **A I really don't know. I know that she must**  
 (17) **have known about it after the – after the meeting,**  
 (18) **the appeal.**  
 (19) Q The appeal meeting?  
 (20) **A Uh-huh.**  
 (21) Q So Kim and Katherine and Darren, they  
 (22) all learned, after the appeal meeting about this  
 (23) award, because you told them about it, correct?  
 (24) **A Well, at that time, yeah.**  
 (25) Q And the appeal hearing occurred after

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- (1) your termination, correct?  
 (2) **A Yeah.**  
 (3) Q Okay. Just give me a second here.  
 (4) **A Just to finish up on that.**  
 (5) Q Uh-huh.  
 (6) **A That place isn't a place to keep secrets. If**  
 (7) **one person knows something, they all know it.**  
 (8) **Here's a perfect example, the night Kim**  
 (9) **caught me, when she supposed caught me sleeping**  
 (10) **with**  
 (11) **my head down covering my eyes, she said, "I'm not**  
 (12) **going to say anything to anybody about this, just**  
 (13) **keep alert." Okay. Six hours later, I was being**  
 (14) **suspended because everybody on campus knew about**  
 (15) **it.**  
 (16) **How is that possible? That's how quick the word**  
 (17) **travels by everybody, so I'm sure everybody knew**  
 (18) **what was going on. And Todd Smith, which was a**  
 (19) **co-worker of mine, actually knew I got that, and he**  
 (20) **became a big shot supervisor after I went back. So**  
 (21) **I'm sure everybody – trust me.**  
 (22) Q Okay. I want to draw your attention to  
 (23) page seven now and it's paragraph two, and this is  
 (24) where you allege emotional distress. Just take a  
 (25) quick look at paragraph two there. There's a lot of  
 legal language in there. Just take a quick look it.  
 Let me know when you're done reading it.

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- (1) **A Okay.**  
 (2) Q Now, part of that allegation says that  
 (3) you suffered severe and substantial and continued  
 (4) emotional distress from your termination.  
 (5) Can you please identify emotional  
 (6) distress that you have suffered?  
 (7) **A I haven't had a job in two years because that**  
 (8) **was the career I picked. I went to school for it.**  
 (9) **I went to classes for it. I liked my job a lot. I**  
 (10) **went to work every day. I had a good attitude about**  
 (11) **it. I liked the people I worked with. I kept to**  
 (12) **myself about a lot of things at that place. And I**  
 (13) **figured if I just kept it going, everything would**  
 (14) **have been fine. I spoke about how I felt about a**  
 (15) **situation because I cared about my co-workers as**  
 (16) **well as everybody else, and this is where it got me.**  
 (17) **I have been through hell for two years now. I can't**  
 (18) **find a job in this career, because when I fill out**  
 (19) **applications, I have to put down that I got fired**  
 (20) **from AdvoServ for being unprofessional. If you**  
 (21) **don't put that on a application when you do it, they**  
 (22) **can get you for fraud and whatever, lying. I've**  
 (23) **lost a vehicle. I've been in and out of the**  
 (24) **hospital four times because I'm – just no money,**  
 (25) **I'm stressed to death. I've almost lost my whole**

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- (1) **family because with the arguing. I've lost TV.**  
 (2) **I've lost electric at one time. I'm just stressed**  
 (3) **out over it. I'm depressed. I didn't do nothing to**  
 (4) **deserve this. I gave them people my time 24/7. I**  
 (5) **would go work with them any day and I get treated**  
 (6) **like this.**  
 (7) Q So you feel like you were treated  
 (8) unfairly?  
 (9) A **Absolutely.**  
 (10) Q You feel like you didn't deserve to be  
 (11) fired –  
 (12) A **Absolutely not.**  
 (13) Q – for that?  
 (14) A **Absolutely not. I love my family. I love**  
 (15) **working with them people. They were my paycheck.**  
 (16) Q Why do you think you were fired?  
 (17) A **I believe because of several reasons. I was**  
 (18) **involved in a lawsuit. I was involved in a union**  
 (19) **activity to make better place to work for my**  
 (20) **workers, and –**  
 (21) Q What lawsuit were you involved in?  
 (22) A **This one here.**  
 (23) Q Got you.  
 (24) A **Because I got a worker's compensation case, I**  
 (25) **got a little money out of them, that I didn't know I**

Page 66

- (1) **was going to get. And the union, just actions, and**  
 (2) **I wouldn't have done the union action, but things**  
 (3) **have changed there for a few times after we first**  
 (4) **tried it. And it went right back to the same way it**  
 (5) **was six months later. They gave you a 50 cent raise**  
 (6) **to shut everybody up and everybody was happy, and**  
 (7) **then everything went back to normal again. Getting**  
 (8) **away with crap, people going out, not coming to**  
 (9) **work, people not doing their jobs, nobody cared. It**  
 (10) **was a poor place to work for. Nobody cared about**  
 (11) **their jobs. I went to work every day. I cared**  
 (12) **about my job.**  
 (13) Q It's very clear that you cared deeply  
 (14) about the job. Why then constantly refuse the  
 (15) alternative supervisor position, where you could  
 (16) have impacted and made some change?  
 (17) A **In this job, when you're a supervisor, I was**  
 (18) **told always, "You can be fired at will for anything**  
 (19) **they want." I was not going to lose my job over**  
 (20) **some 18, 19-year-old kid coming to work higher than**  
 (21) **a kite, puking his brains out, and being told to**  
 (22) **leave, and then nothing get down with him, but he**  
 (23) **can come back the next day. That wouldn't have been**  
 (24) **my supervisor job. That would have been my butt**  
 (25) **because I didn't do my job.**

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- (1) Q Did that happen?  
 (2) A **I didn't want that responsibility.**  
 (3) Q Was a supervisor terminated because of  
 (4) that?  
 (5) A **A supervisor was terminated for doing their**  
 (6) **job.**  
 (7) Q In your view.  
 (8) A **Absolutely.**  
 (9) Q Okay.  
 (10) A **Absolutely. And that wasn't because I knew**  
 (11) **her, I drove with her, I talked to her. It was**  
 (12) **because she was tough.**  
 (13) Q What's supervisor was that?  
 (14) A **Terri Outer. She showed me no –**  
 (15) Q Terry Outer.  
 (16) A **She showed me no favoritism.**  
 (17) Q And you and Terri and friends, right?  
 (18) A **Absolutely.**  
 (19) Q Absolutely.  
 (20) A **I was friends with everybody I worked with.**  
 (21) Q That's right.  
 (22) A **Everybody.**  
 (23) Q That's right. You bought them TVs and  
 (24) other paraphernalia when you got your award. That  
 (25) was a very nice gift, right?

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- (1) A **Of course it was.**  
 (2) Q Right.  
 (3) A **It was a heart.**  
 (4) Q So going back to the emotional distress  
 (5) for a moment, what doctors did you see, to the best  
 (6) of your recollection. I know that –  
 (7) MR. AZAR: That's fine.  
 (8) Q There will be someone –  
 (9) A **I was seeing psychiatrists for mental health**  
 (10) **in Port Jervis.**  
 (11) Q And were you seeing any of these folks  
 (12) prior to your termination?  
 (13) A **No.**  
 (14) Q So really it's the termination that had  
 (15) you go –  
 (16) A **Just everything. The termination. You can't**  
 (17) **work, you have no money, you have health problems.**  
 (18) **You can't – you were doing something that you**  
 (19) **wanted to do the rest of your life and it got taken**  
 (20) **away from you. Because of something silly, of**  
 (21) **speaking your mind about of how it should have been.**  
 (22) **It was nothing wrong with it.**  
 (23) Q But you would agree with me you could  
 (24) have said that differently.  
 (25) A **Absolutely.**

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- (1) Q More professionally.
- (2) **A I could very said a lot of things different,**
- (3) **so could have she. Everybody there at one time had**
- (4) **done wrong. There was a supervisor there, caused a**
- (5) **hostile work environment every morning with the foul**
- (6) **language, the "F" this, that, threatening people.**
- (7) **Calling them fat, skinny, yellow, green, blue.**
- (8) **Nothing ever happened to that lady after numerous**
- (9) **complaints, numerous. And then she got suspended**
- (10) **for ten days.**
- (11) Q Who is that?
- (12) **A It was a – what they called a – a leave of**
- (13) **absence. An administrative leave.**
- (14) Q Who is the employee?
- (15) **A Her name was Deborah Schackmann. She was a**
- (16) **PC of day shift, who did nothing but cause ruckus**
- (17) **every day when she came in there.**
- (18) **That was a person that should have been sat**
- (19) **down and spoke with, not me. I had her under**
- (20) **control –**
- (21) Q So you think Deborah Schackmann should
- (22) have been fired, right?
- (23) **A Deborah Schackmann should have been fired**
- (24) **four or five years ago.**
- (25) Q Absolutely.

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- (1) **A Before I even got there probably.**
- (2) Q Okay. Okay. Moving on, did you
- (3) receive any unemployment compensation after you were
- (4) terminated from AdvoServ?
- (5) **A Yes.**
- (6) Q You did. Do you remember how much?
- (7) **A I thinking I got \$300 a week.**
- (8) Q Do you know for how long?
- (9) **A Twenty weeks, I think it was, 24 weeks,**
- (10) **whatever New Jersey allows.**
- (11) Q Okay. And on those documents, what did
- (12) you identify as the reason for your termination?
- (13) Usually you if fill out documents to
- (14) get unemployment.
- (15) Did you have to identify why you were
- (16) fired?
- (17) **A I don't think I had to on that. I don't**
- (18) **think I did.**
- (19) Q Very well.
- (20) Do you remember ever filling out
- (21) documents?
- (22) **A I don't remember it, but I know that when I**
- (23) **left, that AdvoServ of New Jersey told me they**
- (24) **wouldn't fight my unemployment, they wouldn't fight**
- (25) **my benefits?**

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- (1) Q Who from AdvoServ told you that?
- (2) **A I think it was Darren.**
- (3) Q Was this at the appeal hearing?
- (4) **A No, that was the day I was fired.**
- (5) Q Okay.
- (6) **A By all rights he said, "You have rights to**
- (7) **your benefits and we won't fight you on that."**
- (8) **That's what I was told.**
- (9) Q Okay. Did Darren ever mention to you
- (10) at any time your unemployment – your worker's
- (11) compensation award or time being off?
- (12) **A No.**
- (13) Q Okay.
- (14) MR. FONTANA: Just as a quick side
- (15) note. I think this is covered in the document
- (16) request, but if there are any documents related to
- (17) his unemployment compensation, you know, we would
- (18) like to receive those as well.
- (19) MR. AZAR: Uh-huh, yeah.
- (20) BY MR. FONTANA:
- (21) Q Have you applied to any jobs at
- (22) employers other than AdvoServ since your
- (23) termination?
- (24) **A Yes.**
- (25) Q Did you save, like, your applications

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- (1) and things?
- (2) **A No.**
- (3) Q Okay. Do you know which employers
- (4) you've applied to?
- (5) **A I remember some of the names, yeah.**
- (6) Q Could you give me some of those names?
- (7) **A Kmart. Walmart. Shields Tires. I had**
- (8) **applied to a group home, I can't remember the name**
- (9) **of it, in Jersey somewhere. It was an on-line group**
- (10) **home or one of our co-workers that went and worked**
- (11) **for after she left AdvoServ. When I called there.**
- (12) **about the job that was in the thing one day, the**
- (13) **next day they said they were going a different route**
- (14) **with it, so I could just imagine that was because I**
- (15) **had to put that I got fired. There was other**
- (16) **places, I just can't remember right now. I applied**
- (17) **about 25 places in two years, a year and a half.**
- (18) MR. FONTANA: And, again, just for
- (19) formality's sake, to the extent that he has any
- (20) documents to that, produce those, and identify those
- (21) identify those employers as parts of our document
- (22) request.
- (23) MR. AZAR: Yes.
- (24) BY MR. FONTANA:
- (25) Q Have you been employed with another

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- (1) company since your termination?  
 (2) **A No.**  
 (3) **Q** Have you been offered employment with  
 (4) any company since your termination?  
 (5) **A No.**  
 (6) **Q** Have you received any alternative forms  
 (7) of income, like social security disability or  
 (8) anything like that?  
 (9) **A No.**  
 (10) **Q** Okay. Okay. I want to take you back  
 (11) the last question on this document, we're going to  
 (12) go back to page two, and it will be, excuse me, page  
 (13) three, allegation number nine.  
 (14) **A Page three?**  
 (15) **Q** Yeah. Page three, allegation nine  
 (16) begins with "The" and end with "award".  
 (17) **A Okay.**  
 (18) **Q** In that allegation it says, "The  
 (19) defendant's conduct and actions in asserting  
 (20) excessive disciplinary proceedings against the  
 (21) plaintiff were directly connected to the plaintiff's  
 (22) worker's compensation award."  
 (23) Is that correct?  
 (24) **A Yes.**  
 (25) **Q** Okay. So you believe that you were

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- (1) terminated because of your worker's compensation  
 (2) award, correct?  
 (3) **A I believe I was terminated for several**  
 (4) **things.**  
 (5) **Q** Was one of those things your worker's  
 (6) compensation award?  
 (7) **A I believe so, yes.**  
 (8) **Q** You believe so, yes. Okay.  
 (9) Do you remember participating in a  
 (10) National Labor Relations board hearing about a year  
 (11) ago?  
 (12) **A Yes.**  
 (13) **Q** And that hearing was because the SEIU  
 (14) filed a complain of discrimination on your behalf,  
 (15) correct?  
 (16) **A Correct.**  
 (17) **Q** Okay. I'm going to show you what's  
 (18) been marked as exhibit - where is that?  
 (19) **MR. AZAR:** The last one was seven.  
 (20) This will be eight.  
 (21) **MR. FONTANA:** Yeah. I set it down by  
 (22) accident.  
 (23) **Q** I'm going to show you what's going to  
 (24) be marked - oh, no, this is not it. I got it.  
 (25) Marked as Exhibit 8.

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- (1) (Exhibit received and marked Exhibit 8 for  
 (2) identification.)  
 (3) **Q** Just take a moment to review that  
 (4) document.  
 (5) **A Okay.**  
 (6) **Q** Okay. And this is a charge of an  
 (7) unfair labor practice, correct?  
 (8) **A Correct.**  
 (9) **Q** And this is filed against AdvoServ New  
 (10) Jersey, correct?  
 (11) **A Yes.**  
 (12) **Q** And if we read in number two, it says,  
 (13) "Basis of the charge." It's alleging here that you  
 (14) were terminated in retaliation for participation in  
 (15) protected activity, correct?  
 (16) **A Correct.**  
 (17) **Q** Do you believe that you were fired  
 (18) because of your union conduct?  
 (19) **A One of the reasons, absolutely.**  
 (20) **Q** Okay. And as part of that charge,  
 (21) there was a hearing, correct?  
 (22) **A Yes.**  
 (23) **Q** And you remember testifying at that  
 (24) hearing?  
 (25) **A Yes.**

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- (1) **Q** It was in Newark, New Jersey, correct?  
 (2) **A Yes.**  
 (3) **Q** Okay. And I asked you a series of  
 (4) questions in that hearing.  
 (5) Is that correct?  
 (6) **A Yes.**  
 (7) **Q** Okay. One of the questions I asked you  
 (8) was: "Do you believe you were terminated because of  
 (9) your worker's compensation lawsuit."  
 (10) Do you remember me asking you that  
 (11) question?  
 (12) **A Yeah, sure, possibly.**  
 (13) **Q** It was long time ago, right?  
 (14) **A Yeah.**  
 (15) **Q** So I have a copy of the transcript  
 (16) here. We can pass it out. This is one for you.  
 (17) I'm on page 94.  
 (18) **MR. AZAR:** Okay.  
 (19) **Q** This is going to be marked as an  
 (20) exhibit. We'll mark as the Exhibit 9.  
 (21) (Exhibit received and marked Exhibit 9 for  
 (22) identification.)  
 (23) **Q** So I'd like to you flip to page 94.  
 (24) And it's line three to five. Okay? And I asked you  
 (25) the question: "Do you believe you were terminated

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- (1) because of your worker's compensation lawsuit?" You  
 (2) responded, "No." Today you testified that you do  
 (3) believe your worker's compensation award was one of  
 (4) the reasons for your termination.  
 (5) Was this statement a lie?  
 (6) **A No, separate case, separate situation.**  
 (7) **Q** So your testimony is different  
 (8) depending on the situation, correct?  
 (9) **A It's the allegations and the reasons of.**  
 (10) **Q** So the allegations are what drive your  
 (11) testimony, correct?  
 (12) **A Yes.**  
 (13) **Q** So in this case you were talking about  
 (14) the unfair labor practice charge, correct?  
 (15) **A Yes.**  
 (16) **Q** And because we were talking about that,  
 (17) you said that your worker's compensation award  
 (18) played no role in the reason you were fired,  
 (19) correct?  
 (20) **A Correct.**  
 (21) **Q** But here we're talking about the  
 (22) worker's compensation lawsuit, correct?  
 (23) **A Correct.**  
 (24) **Q** And you now believe that it did play a  
 (25) role in your termination, correct?

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- (1) **A One of the roles, correct, yes.**  
 (2) **Q** Correct. Okay. All right. Let's chat  
 (3) about that appeal hearing a little bit.  
 (4) You did appeal your termination,  
 (5) correct?  
 (6) **A Yes.**  
 (7) **Q** Okay. And did you hire an attorney to  
 (8) represent you in that appeal?  
 (9) **A Yes.**  
 (10) **Q** Okay. And was your attorney the  
 (11) individual who is sitting next to you now?  
 (12) **A Yes.**  
 (13) **Q** Okay. In that appeal, in that -- in  
 (14) the appeal hearing, what did you allege was the  
 (15) reason you had been terminated? Do you remember?  
 (16) **A No, I don't remember.**  
 (17) **Q** Okay. Just give me a second. Let's go  
 (18) back to page number 94 of the transcript.  
 (19) **A Okay.**  
 (20) **Q** Later on, on this page, I ask you in  
 (21) line eight, "Question: What changed your mind?"  
 (22) And you answered, "Because, number one, they didn't  
 (23) follow the by-law book to begin with, the rule book,  
 (24) and this was already set up. This was the case."  
 (25) Do you believe that AdvoServ -- that

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- (1) AdvoServ failed to follow the rules in their  
 (2) handbook in their termination of you?  
 (3) **A Absolutely.**  
 (4) **Q** Why?  
 (5) **A Because in their handbook it goes from one to**  
 (6) **four, offenses are a level, and if they had me on**  
 (7) **just a first-time offense, the first level is**  
 (8) **usually a warning or a verbal. But what they gave**  
 (9) **me this for, I was like, this is a first time I've**  
 (10) **ever had a problem like this and they're going to**  
 (11) **fire me because I spoke my piece, and I spoke how I**  
 (12) **felt in a one-on-one conversation, and it had never**  
 (13) **ever, ever, ever been brought up before after the**  
 (14) **one-on-one conversations amongst anybody except**  
 (15) **ourselves, and I was just expressing on how the**  
 (16) **place was running.**  
 (17) **Q** But you would agree with me the  
 (18) handbook says AdvoServ reserves the right to  
 (19) discipline as they see appropriate.  
 (20) **A Yeah, after the fourth offense, yeah.**  
 (21) **Q** Well, after the fourth offense or at  
 (22) any time?  
 (23) **A Well, I mean, in an offense -- well, yeah,**  
 (24) **any time, I guess.**  
 (25) **Q** So you would agree with me that

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- (1) AdvoServ does not have to follow the grid. It's  
 (2) just an advisory thing.  
 (3) **MR. AZAR:** Objection. You can answer  
 (4) the question.  
 (5) **A I always thought they followed that grid,**  
 (6) **always. I'm probably the first person that's got**  
 (7) **fired for something illegitimate as this, compared**  
 (8) **to another person who got caught smoking.**  
 (9) **Q** We were here and we read the handbook,  
 (10) correct?  
 (11) **A Yes.**  
 (12) **Q** And part of it said that AdvoServ  
 (13) reserved the right to treat it as advisory, correct?  
 (14) **A Yeah.**  
 (15) **Q** So you would agree with me that  
 (16) AdvoServ does not have to follow the grid.  
 (17) **A No.**  
 (18) **Q** Okay. And you would also agree with me  
 (19) that the handbook does not make a contract, correct?  
 (20) **MR. AZAR:** Objection, but you can  
 (21) answer.  
 (22) **A There is a contract.**  
 (23) **Q** What is the contract?  
 (24) **A You sign a contract with them every year.**  
 (25) **Q** Let me ask the question to make sure

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- (1) you understand me.  
 (2) You would agree that the handbook is  
 (3) not a contract?  
 (4) MR. AZAR: Objection, but you can  
 (5) answer.  
 (6) **A It's not nothing written in spoken, I guess,**  
 (7) **no, contract, no.**  
 (8) Q Not a contract, right. Okay. Okay.  
 (9) MR. FONTANA: Can we go off the record  
 (10) for just like three minutes?  
 (11) MR. AZAR: Absolutely.  
 (12) MR. FONTANA: I just want to make sure.  
 (13) Chris, could we step out for a quick second?  
 (14) MR. AZAR: You want us to step out?  
 (15) MR. FONTANA: No, you guys can stay.  
 (16) (Recess taken at 3:51 p.m. and ended at 3:54  
 (17) p.m.)  
 (18) Q I just a few more questions, and we  
 (19) should wrap up. And this will be going back on a  
 (20) couple of things that I missed, I made notes about.  
 (21) One question just to kind of tie this up, to make  
 (22) sure it's accurate.  
 (23) Earlier in your deposition, we went  
 (24) through two disciplines you received; one in June  
 (25) for sleeping on the job, allegedly sleeping on the

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- (1) job; and one in August for allegedly endangering the  
 (2) welfare of a child or welfare of a resident,  
 (3) correct?  
 (4) **A Yes.**  
 (5) Q You would agree with me that from your  
 (6) return to work in December of 2011 to June of 2013  
 (7) when you got the sleeping on the job discipline, you  
 (8) received no discipline in that time period, correct?  
 (9) **A Just the one from Terri for the warning for**  
 (10) **calling the other house on the cell phone.**  
 (11) Q So you received just one warning from  
 (12) Terri Outer?  
 (13) **A Yes.**  
 (14) Q Because that was it.  
 (15) **A Yes.**  
 (16) Q No other written discipline, no  
 (17) suspensions, nothing else.  
 (18) **A No.**  
 (19) Q Okay. Great.  
 (20) I want to go back briefly in a couple  
 (21) emotional distress things we were talking about.  
 (22) Are you currently still being treated  
 (23) for your cardiovascular condition?  
 (24) **A Yes.**  
 (25) Q Are you on any medications?

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- (1) **A Yes.**  
 (2) Q What medications are you on?  
 (3) **A I don't know. Out in the car, it's got the**  
 (4) **pill card on it. A bunch of them. Aspirin, I'm on**  
 (5) **a vitamin. I'm a heart or a blood thinner, cardio**  
 (6) **brand, cardio – cardio something. Coreg.**  
 (7) Q And have you been on these medications  
 (8) since you recovered from your heart attack?  
 (9) **A Yes.**  
 (10) Q Okay.  
 (11) **A And I have to get a defibrillator put in next**  
 (12) **month, supposedly.**  
 (13) Q You mentioned that you have gone to a  
 (14) psychiatrist.  
 (15) You started seeing that psychiatrist  
 (16) after your termination, correct?  
 (17) **A Yes.**  
 (18) Q Are you seeing one psychiatrist or are  
 (19) you seeing a couple?  
 (20) **A Just one.**  
 (21) Q Just one.  
 (22) Did you start seeing any other doctor  
 (23) other than that psychiatrist after your termination?  
 (24) **A I had been to a neurologist because I had a**  
 (25) **spell at the house where I couldn't remember where I**

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- (1) **was or what I was doing.**  
 (2) Q And did the neurologist conclude that  
 (3) something was wrong?  
 (4) **A I had TBI, traumatic brain injury.**  
 (5) Q And did he posit any reason give, any  
 (6) reason why or how that happened or how you sustained  
 (7) that injury?  
 (8) **A It was caused from lack of oxygen to the**  
 (9) **brain.**  
 (10) Q Likely attributable to your heart  
 (11) attack?  
 (12) **A Yeah. Well, I died twice on the table, so.**  
 (13) Q Oh, my.  
 (14) **A Yeah, I lost – so I was dead twice.**  
 (15) Q Oh, my.  
 (16) **A And, you know, I'm glad my friend saved my**  
 (17) **life. I don't know what he's doing here, but if he**  
 (18) **didn't make it to the hospital, I would have never**  
 (19) **made it there. Todd Smith drove me to the hospital**  
 (20) **in probably about three minutes from the top of the**  
 (21) **hill is eight miles to Warwick.**  
 (22) Q Wow.  
 (23) **A I was more worried about dying from the car**  
 (24) **accident, to be honest with you, but they took me to**  
 (25) **St. Anthony or Good Samaritan in Suffern, and took**

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- (1) **me right up to the emergency. They tried to put a**  
 (2) **stent, and it didn't – my body rejected the stent,**  
 (3) **so, and I passed away twice. I died on the table,**  
 (4) **literally, twice. I was lack of oxygen for, like,**  
 (5) **three minutes each time for the brain, two or three**  
 (6) **minutes.**  
 (7) Q Other than the traumatic brain injury  
 (8) related and which you saw the neurologist for, have  
 (9) you seen any other doctors related to your heart  
 (10) condition?  
 (11) **A No.**  
 (12) Q So it's the cardiovascular doctor and  
 (13) the neurologist?  
 (14) **A Right.**  
 (15) Q Other than the neurologist and the  
 (16) psychiatrist, are you seeing any other doctors  
 (17) currently?  
 (18) **A No.**  
 (19) Q So that's, those three are pretty much  
 (20) it?  
 (21) **A Yeah.**  
 (22) Q Do you have a family doctor?  
 (23) **A No.**  
 (24) Q Okay.  
 (25) MR. AZAR: Is that an answer? That was

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- (1) a shake of the head. Was that a verbal?  
 (2) COURT REPORTER: He said "no".  
 (3) **A Oh, you know, I'm sorry. Dr. Green is our**  
 (4) **family doctor. I'm sorry.**  
 (5) Q When was the last time you saw Dr.  
 (6) Green?  
 (7) **A Oh, God. Three years ago.**  
 (8) Q Okay. So it's been a while?  
 (9) **A Yeah.**  
 (10) Q *You've not seen Dr. Green recently?*  
 (11) **A No.**  
 (12) Q Okay. Has the neurologist prescribed  
 (13) any medication that you're on?  
 (14) **A The neurologist said that just fish oil and**  
 (15) **that he said if anymore leads up to it, could lead**  
 (16) **to you dementia or something down the road or**  
 (17) **Alzheimer's early. Probably taking away my driving**  
 (18) **privileges very shortly if things don't look better,**  
 (19) **just to keep an eye on things.**  
 (20) Q Have any of the doctors expressed any  
 (21) concern about you having another cardiac event?  
 (22) **A Of course.**  
 (23) Q Have any of the doctors expressed any  
 (24) concern about you returning to work?  
 (25) **A They don't want me to.**

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- (1) Q They don't want you to.  
 (2) **A No.**  
 (3) Q Okay. Have you applied for social  
 (4) security disability benefits?  
 (5) **A Yes, I did.**  
 (6) Q Have you received those?  
 (7) **A No.**  
 (8) Q Were you denied or have you just not  
 (9) heard back yet?  
 (10) **A I'm in the middle of a process of going to –**  
 (11) **with a lawyer to the appeal court or whatever they**  
 (12) **call it, at the court to get a decision.**  
 (13) Q Okay. So that's still in the process?  
 (14) **A Yeah, I've never – in like two years, year**  
 (15) **and a half, something like that.**  
 (16) MR. FONTANA: I would also make a  
 (17) request for those documents. I think they would  
 (18) fall within the mitigation things that we asked for,  
 (19) but –  
 (20) MR. AZAR: Yeah.  
 (21) MR. FONTANA: As well.  
 (22) MR. AZAR: Let me just ask. I don't  
 (23) mean to interrupt you.  
 (24) MR. FONTANA: That's fine.  
 (25) MR. AZAR: So do you have an attorney

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- (1) that's working on your social security disability.  
 (2) THE WITNESS: Yes, yes.  
 (3) MR. AZAR: Who is that attorney, do you  
 (4) know?  
 (5) THE WITNESS: Scott Goldstein.  
 (6) MR. AZAR: Scott Goldstein? Where is  
 (7) Scott Goldstein.  
 (8) THE WITNESS: In Middletown, New York.  
 (9) MR. AZAR: Okay. All right. We'll  
 (10) track down Mr. Goldstein's information.  
 (11) MR. FONTANA: Thank you very much.  
 (12) BY MR. FONTANA:  
 (13) Q Would you agree with me that all of  
 (14) these medical conditions have been a source of  
 (15) stress for you?  
 (16) **A Absolutely right now.**  
 (17) Q I mean, they're stressful in  
 (18) themselves.  
 (19) **A Right now they are, yeah. Very much.**  
 (20) Q Okay. And they pretty much been  
 (21) ongoing since the heart attack?  
 (22) **A Yeah, yes.**  
 (23) Q Okay.  
 (24) **A Since I got fired and I have no job, I have**  
 (25) **nothing, it's a lot worse. I have anxiety. I have**

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- (1) **depression, I have –**
- (2) Q Are you seeing the psychiatrist for the
- (3) anxiety and the depression?
- (4) A **Yes, yes.**
- (5) Q Okay.
- (6) MR. FONTANA: All right. That's all.
- (7) MR. AZAR: Okay.
- (8) (Concluded at 4:00 p.m.)
- (9)
- (10)
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- (25)

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- (1) CERTIFICATE OF OFFICER
- (2) I, THERESA L. TIERNAN, A Notary Public and
- (3) Certified Court Reporter of the State of New Jersey, do
- (4) hereby certify that prior to the commencement of the
- (5) examination,
- (6) T O D D K O W I N S K Y
- (7) was sworn by me to testify the truth, the whole truth
- (8) and nothing but the truth.
- (9) I DO FURTHER CERTIFY that the foregoing
- (10) is a true and correct transcript of the testimony as
- (11) taken stenographically by and before me at the time,
- (12) place and on the date herein before set forth.
- (13) I DO FURTHER CERTIFY that I am neither a
- (14) relative nor employee nor attorney nor counsel of any
- (15) of the parties to this action, and that I am neither a
- (16) relative nor employee of such attorney or counsel, and
- (17) that I am not financially interested in the action.
- (18)
- (19)
- (20) THERESA L. CARIDDI TIERNAN  
Notary Public of the State of New Jersey
- (21) C.C.R. License No. XI01210
- (22)
- (23)
- (24)
- (25)

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