

2013 WL 7045448 (Mass.Super.) (Trial Filing)  
Superior Court of Massachusetts.  
Middlesex County

JEANNE STANFORD POA MARIE CLAIRE COURCHAINE, Plaintiff,

v.

KINDRED HEALTHCARE, INC. d/b/a Kindred Transitional Care and Rehabilitation-Marlborough,  
Kindred Nursing Centers East, L.L.C., Kindred Healthcare Operating, Inc., Defendants.

No. MICV201200267.  
October 28, 2013.

### **Plaintiff's First Draft Joint Pre Trial Memorandum**

Plaintiff Jeanne Stanford POA, Marie Claire Courchaine, by her attorney, Bernard J. Hamill, BBO# 218720, 50 Quincy Ave., Quincy, MA 02169, (617) 617-479-4300, bjh@hamill-law.com.

Defendants by, Damon Seligson, Esq., BBO # 632763, DiNicola, Seligson & Upton, LLP, 185 Devonshire Street, Suite 902, Boston, MA 02110.

#### **1. Agreed Upon Facts as Exhibit at Trial**

Plaintiff Jeanne Stanford is the daughter and Power of Attorney of Marie Courchaine.

Marie Courchaine was a patient/resident at Kindred Transitional Care in Marlborough also known as "Bolton Manor" during 2011.

Kindred Transitional Care in Marlborough AKA "Bolton Manor" during is a Massachusetts licensed medical facility.

Kindred Healthcare Inc., did business as Kindred Transitional Care in Marlborough also known as "Bolton Manor" during 2011.

Kindred Nursing Centers East, LLC was the license holder of the long term care facility known as Kindred Transitional Care in Marlborough also known as "Bolton Manor" during 2011.

Kindred Nursing Centers East, LLC was the operator of the long term care facility known as Kindred Transitional Care in Marlborough also known as "Bolton Manor" during 2011.

#### **2. Statement by Parties of what they expect Evidence to show**

##### ***Plaintiff's Position***

Plaintiff will prove that Marie Courchaine was an 85-year-old totally disabled Dementia patient at defendant's medical facility, who was raped, sexually battered or sexually assaulted on July 21, 2011. The evidence will show that Mrs. Courchaine sustained a 13-20 cm x 3.5 cm bruising to her right labia along with swelling. She sustained heavy bleeding with multiple blood clots the size of half dollars from her vagina. She also suffered vaginal wall abrasions. The evidence will show that she was alone with a male employee of the Defendant in the bathroom when the injury occurred. The evidence will show that the Defendant fired the male aide subsequent to the sexual assault.

Unconsented to penetration of the vagina is rape and sexual assault.

Marie Courchaine also suffered from Huntington's Chorea, and was wheelchair-bound. She was totally dependent for all of her care. She required two-person assistance for bathing and toileting. She was described in records as weak and helpless. Marie Courchaine because of her weakened condition and dementia was incapable of resisting any sexual assault. Mrs. Courchaine was incapable of self harm because of her physical incapacities. Mrs. Courchaine suffered from uncontrollable movements because of Huntington's chorea and lacked dexterity, coordination and strength.

On the evening of 7-21-2011 a male caregiver sent a second aide (who was required to assist in toileting) away so he would be alone with Mrs Courchaine in the bathroom.

During this time the injury to Mrs Courchaine occurred. The employee - aide who was alone with Courchaine then immediately destroyed all evidence of a possible sexual assault ie clothing, etc and immediately cleaned her vaginal area. He then covered up the injured area with a large pad. The Defendant facility had no medical personnel examine Mrs Courchaine's vaginal area despite the heavy bleeding. The vaginal area was not examined nor treated by defendant. Courchaine was simply put in bed with no vaginal exam or treatment.

Defendants staff knew that Mrs. Courchaine heavy bleeding large clots was not due to any past history or existing medical condition.

Nursing employees of the Defendants facility neither sent Mrs Courchaine to a Hospital nor conducted any visual examine of the vagina personally on the evening of 7-21-13.

Defendant staff put Courchaine into bed without any examination of her injured area and destroyed all evidence of the rape.

The next morning Mrs Courchaine's physicians assistant came in, heard about the heavy bleeding, took off the large covering bandage, discovered extensive outward bruising to the genital area and immediately send her to the Emergency Room for a Rape kit and treatment.

Mrs. Courchaine was described as afraid after the incident occurred. She was subjected to the humiliation of a rape kit examination at the hospital as well as police questioning. Police took close-up photographing of her sexual organs.

Mrs. Courchaine inexplicably received no examination or treatment on the evening of her sexual assault. She received no doctors visits or hospital treatment on the evening of her assault.

The defendant initially did not cooperate in the Police investigation of the defense. The defendant or their employees intentionally destroyed evidence of the assault. The defendants did not initiate calls to the police nor to the Department of public health as is required by law.

Mrs. Courchaine's family removed her from the facility within two days of the assault. Mrs. Courchaine was examined by a treating physician, who will testify that Courchaine was the victim of a sexual assault; that there is no other medical explanation for the combined injuries of extensive internal bleeding, external bruising and swelling of the vaginal area is observed on Mrs. Courchaine following July 21, 2011.

Kindred Marlborough was chronically understaffed during July 2011 and Courchaine's floor was understaffed at the time of the assault because Courchaine was sent to the toilet with only one aide instead of the two aides required by her care plan.

Plaintiffs will show that the male aide was unsupervised and that Mrs Courchaine was not properly monitored.

Plaintiff will show that Kindred was on notice that sexual assaults took place at their Massachusetts facilities.

Plaintiff will show that Kindred had inadequate security protecting patients from assaults by third persons.

Plaintiff will show that Mrs. Courchaine was a known risk for **abuse** while a patient at Defendants medical facility.

Plaintiff will show that Kindred violated or did not follow their own **abuse** prevention policies and procedures, nor the federal and state regulations governing **abuse** prevention.

Ann Burgess, R.N. is a Sexual Assault Nurse Expert and will testify regarding the adverse effects on Mrs. Courchaine from the sexual assault.

### *Defendant's Position*

The Defendants expect the evidence to show that Ms. Courchaine was not **abused**, raped or sexually assaulted by any agent, employee or servant of the Defendants as is alleged. The Defendants likewise expect the evidence to show that there is no basis upon which to suggest that she was raped, sexually assaulted or **abused** at the facility such that the Defendants may be liable. Instead, the Defendants expect the evidence to show that at all relevant times, including on the dates at issue in this lawsuit, the care and treatment of Ms. Courchaine was appropriate, timely, compassionate, and in accordance with the applicable standards of care required of the caregivers attending to her. Specifically, the Defendants expect the evidence to show that the cause of any vaginal bleeding that Ms. Courchaine experienced was not due to a rape, **abusive** event, or sexual assault. The Defendants likewise expect the evidence to show that the subsequent bruising that was noted the following day was not due to any rape, **abuse** or sexual assault. The Defendants expect the evidence to show that on the evening of July 21, 2011, Ms. Courchaine was being assisted in the bathroom by a certified nursing aide named Steven Gakuru as she used the toilet. Mr. Gakuru was assisting her because she was dependent on others for activities of daily living and she was one of the residents under his care. Mr. Gakuru observed blood in the toilet bowl and immediately reported the finding to the nurse on duty, Karen Pelletier. Nurse Pelletier examined and assessed Ms. Courchaine, including inquiring of her whether or not she had been assaulted, raped, or **abused**. Ms. Courchaine denied any such improper or illegal act took place. Ms. Courchaine exhibited no signs of trauma, including no signs of emotional upset or distress that would typically be associated with a sexual assault or rape. The bleeding stopped. Nurse Pelletier and Mr. Gakuru cleaned Ms. Courchaine and put her to bed. The following day, Ms. Courchaine's private-pay nurse, Judy Grivetti, visited her at the facility and noted that there was a bruise on right labia. Nurse Grivetti communicated with the facility staff who reported the bleeding event from the night before. Nurse Grivetti asked Ms. Courchaine if she had been assaulted or **abused** and Ms. Courchaine denied any such incident. Nurse Grivetti then spoke with Dr. Michele Ricard by telephone at which time it was decided to send Ms. Courchaine to the Emergency Department at Marlborough Hospital to undergo a rape kit. Ms. Courchaine was assessed at the hospital. The rape kit was performed and was negative. Ms. Courchaine's son contacted the Marlborough Police Department who investigated the alleged incident, including interviewing Mr. Gakuru. No arrests were made. The claims of rape, assault, sexual assault or **abuse** were summarily deemed to be invalid and unsubstantiated. The Department of Public Health for the Commonwealth of Massachusetts likewise investigated the claims and similarly dismissed the same as invalid and unsubstantiated.

The Defendants expect the evidence to show that the staff at Bolton Manor complied with the applicable standards of care as the same applied to the staff of care providers involved in Ms. Courchaine's care and residency. The Defendants expect the evidence to show that at all relevant times they complied with the applicable law (including regulations) governing the facility with respect to reporting of the alleged bleeding event; that such reporting was done in a timely manner; and that the staff and administration at the facility fully complied and cooperated with both law enforcement and regulatory authorities as the claims were investigated and dismissed. The Defendants likewise expect the evidence to show that there was no cover-up or destruction of "evidence of the rape" as is alleged by the Plaintiff. The Defendants expect the evidence to show that Ms. Courchaine's vaginal bleeding and subsequent bruising could have been self-inflicted and/or that other medically-related

process or conditions could have led to her bleeding and having a bruise of the type she experienced. The Defendants expect the evidence to show that staffing levels at Bolton Manor in 2011 were appropriate and that the facility was not “chronically understaffed” as is alleged. The Defendants expect the evidence to show that security measures at the facility were appropriate and adequate and that nothing the Defendants did or failed to do regarding security led to Ms. Courchaine's claimed injuries.

### **3. Agreed Description of Case to be read to Jury During Empanelment**

Plaintiff alleges that on July 21, 2011, Marie Courchaine was sexually assaulted while under the care of Defendants medical facility. Defendant denies any wrongdoing whatsoever, including any and all allegations of sexual assault or **elder abuse**.

### **4. Statement of Significant Legal Issues**

Plaintiff: Use of Statistics:

Defendant:

Defendants expect to challenge the Plaintiff's intended “use of statistics”.

### **5. Witness Names and Addresses**

#### ***Plaintiff Witnesses***

Judith Gravetti, N.P.

535 Page Street

Lunenburg, Massachusetts.

Jaimee Demone, M.D.

100 MLK Jr. Blvd.,

Worcester, MA 01608

Robert Bonina

James O/Malley

Marlborough Police Dept

355 Bolton ST. Marlborough, MA 01752

Karen Pelletier

146 Sherman Street,

Gardner, MA

Leanne Marois

80 Hudson Street,

Marlborough, MA.

Pierline Zenon

501 Plantation ST.

Worcester, MA

Samantha Dupont

2 Ethel Ave,

Marlborough, 01752

Maria Borges

187 Wilson Street,

Framingham, MA

Raymond Courchaine

93 Woodridge Rd

Marlboro, MA 01752

Danielle Teele

450 Boston Post Road E

#506

Marlboro, MA 01752

Gloria Drummey

16 Crescent St

Marlboro, MA 01752

Jeanne Stanford

4727 S Millrace Ln

Murray, UT 84107

Amanda Schmidt

65 Main Street,

Hudson, MA

Barbara Roach

52 Pleasant St #5,

Marlboro, MA. 01752

Bruce Hawa

3 Henry Terrace

Worcester, MA 01670

Kathryn Pacheco

31 Royal Crest Drive, Apartment 5,

Marlborough, MA.

Yvelle Fleury

Nana Birago

Valerie Sena

Tom Sullivan

Tammy Dalton

Sabine Charles

c/o Kindred Marlborough

A. Michele Ricard, MD

630 Plantation St

Worcester, MA. 01605

Dr Bisanzo

Marlborough Hospital

Marlborough, MA.

Jacob Agnes

3 Westside Drive

Acton, MA 01720

Catherine Coutts LICSW

Framingham, MA.

Yvonne Robillard

43 Berlin St

Clinton MA 01510

Adu Williams

30 Queens Way

Framingham, MA 01701

Stephen Gakuru

23 State Street

Leominster, MA. 01453

Patrice Pappalardo

21 Davis ST

North Andover, MA.

KOR: Kindred Records

KOR: Marlborough Hospital

KOR: DPH

KOR Marlborough Police Dept

***Defense Witnesses***

The Defendants expect to call one or all of the following individuals as trial witnesses:

Karen Pelletier

146 Sherman Street,

Gardner, MA

Stephen Gakuru

23 State Street

Leominster, MA. 01453

Judith Grivetti, N.P.

535 Page Street

Lunenburg, Massachusetts.

Sabine Charles

Youville Hospital

Jaimee Demone, M.D.

100 MLK Jr. Blvd.,

Worcester, MA 01608

Robert Bonina

James O/Malley

Marlborough Police Dept

355 Bolton ST. Marlborough, MA 01752Leanne Marois

80 Hudson Street,

Marlborough, MA.

Pierline Zenon

501 Plantation ST.

Worcester, MA

Samantha Dupont

2 Ethel Ave,



Marlborough, 01752

Maria Borges

187 Wilson Street,

Framingham, MA

Raymond Courchaine

93 Woodridge Rd

Marlboro, MA 01752

Danielle Teele

450 Boston Post Road E

#506

Marlboro, MA 01752

Gloria Drummey

16 Crescent St

Marlboro, MA 01752

Jeanne Stanford

4727 S Millrace Ln

Murray, UT 84107

Amanda Schmidt

65 Main Street,

Hudson, MA

Barbara Roach

52 Pleasant St #5,

Marlboro, MA. 01752

Hawa Bruce

3 Henry Terrace

Worcester, MA 01670

Kathryn Pacheco

31 Royal Crest Drive, Apartment 5,

Marlborough, MA.

Tom Sullivan

Oakwood Nursing and Rehabilitation Center

Dudley, MA

Tammy Dalton

Hammersmith House Nursing and Rehabilitation

Saugus, MA

A. Michele Ricard, MD

630 Plantation St

Worcester, MA. 01605

Mark Bisanzo, M.D.

University of Massachusetts Medical Center

Worcester, MA

Agnes Jacob

3 Westside Drive

Acton, MA 01720

Catherine Coutts LICSW

Framingham, MA.

Yvonne Robillard

43 Berlin St

Clinton MA 01510

Adu Williams

30 Queens Way

Framingham, MA 01701

Patricia Pappalardo

21 Davis ST

North Andover, MA.

Keeper of Records

Marlborough Hospital

Keeper of Records

Commonwealth of Massachusetts, Department of Public Health

Keeper of Records

Marlborough Police Department

Keeper of Records

Marlborough Hills Healthcare Center

Marlborough, MA

Defendants expressly reserve the right to supplement this list of witness prior to or during trial to the extent necessary to rebut evidence offered by the Plaintiff. Defendants expressly reserve the right to call any of the witnesses identified by the Plaintiff.

**6. Expert Witness Disclosure:**

***Plaintiff Expert Witnesses:***

(a) Dr Jaimee Demone , Treating Dr.

100 MLK Jr. Blvd., Suite 300

Worcester, MA 01608

Dr DeMone, an examining/treating Physician is expected to testify in accordance with her G.L. c 233 s 79G report which is incorporated herein and previously produced. Plaintiff reserves the right to addendum this disclosure with the Deposition Transcript of Dr. DeMone to be taken by Defendant on Nov 6.

(b) Ann Wolbert Burgess, DNSc, APRN, BC

228 Highland Avenue

West Newton, MA 02465

Ann Burgess is expected to testify in accordance with Plaintiffs updated Expert Witness Supplemental Answer/Disclosure which is incorporated herein. A C.V. will be attached to Defendants Copy of Memorandum.

*Defense Expert Witnesses* The Defendants expressly reserve the right to call as an expert witness any and all of the treating providers involved in Ms. Courchaine's care and treatment with each such individual, if qualified, called to provide testimony in his her specific field of medicine or area of expertise, including without limitation, the following: Dr. Jaimee DeMone, Dr. A. Michele Ricard and/or Dr. Mark Bisanzo. The Defendants expressly reserve the right to supplement this disclosure up and during trial to the extent necessary to rebut evidence admitted during the trial.

In addition, the Defendants expect to call:

Philip Carling, M.D.  
Director of Infectious Diseases

Carney Hospital

2100 Dorchester Avenue

Dorchester, MA 02124

Dr. Carling is a physician who is certified by the American Board of Medicine (1973) and the American Board of Infectious Diseases (1975). Presently, he is the Director of the Infectious Diseases Section within the Department of Medicine at Carney Hospital in Boston, Massachusetts. He is also involved with the Department of Hospital Epidemiology at Carney Hospital, and he is the Chairman of the Infection Control Committee. He also acts as a visiting physician at Carney Hospital where he treats patients and consults in the areas of Infectious Diseases and Internal Medicine. Dr. Carling simultaneously holds treating privileges at Boston Medical Center in Boston, Massachusetts where he treats patients and acts as a consultant in the Infectious Diseases Department. He is also an Attending Physician at Boston Medical Center. Dr. Carling has held treating and consulting privileges at Milton Hospital in Milton, Massachusetts (1975-1990) and South Shore Hospital in Weymouth, Massachusetts (1975-1983). He continues to hold treating and consulting privileges at Quincy Hospital in Quincy; HealthSouth Braintree Rehabilitation Hospital in Braintree, Massachusetts; and The Rehabilitation Hospital of the Cape and Islands in Sandwich, Massachusetts. Dr. Carling is licensed to practice medicine in the Commonwealth of Massachusetts. Since 1975 through to the present date, he has served as Director of Epidemiology at Carney Hospital, Quincy Hospital, Braintree Hospital and The Rehabilitation Hospital of the Cape and Islands. He has served on various hospital committees and Editorial Review Boards in the areas of clinical infectious diseases, and infection control and hospital epidemiology, including The American Journal of Infection Control and The Journal of Hospital Infections. Dr. Carling has served on the American Board of Internal Medicine, including as Special Consultant to the Office of the President (1986, 1988 and 1990).

Dr. Carling can be expected to testify as to the medical causes that may lead to vaginal bleeding and/or bruising in an **elderly** woman, including trauma, falling, medication, or an underlying diseases process such as malignancy (vulvar, cervical, endometrial carcinomas and hormone-secreting ovarian malignancies). Additionally, Dr. Carling can be expected to testify about medical causes such as endometrial hyperplasia as a cause of such bleeding. Furthermore, Dr. Carling can be expected to testify that benign causes of bleeding include friable mucosa associated with atrophic vaginitis, urethral caruncle, trauma, cervical erosions and endometrial polyps. Dr. Carling can be expected to testify that vaginal bleeding and bruising in the **elderly** can also occur due to atrophy of the vagina and of the endometrial lining of the uterus, along with uterine polyps and fibroid tumors. In particular, atrophy in the **elderly** occurs as hormones fail and estrogen is lost through the aging process resulting

in a thinning of the tissue lining such that the blood vessels are closer to the surface. Dr. Carling be expected to testify that such aging processes may cause bleeding and/or the bruising, and that atrophic vaginitis can result in a high susceptibility to infection, irritation and/or bruising. Finally, Dr. Carling can be expected to testify that such vaginal bleeding and bruising can be self-inflicted.

The Defendants will supplement their answer to Interrogatories with additional information regarding Dr. Carling's education and experience, including producing a copy of his curriculum vitae.

**7. Estimated Length of Trial 5 Days**

**8. Itemization of Special Damages**

**9. Certification by Counsel regarding settlement discussion**

Counsel both certify they have engaged in settlement discussions.

Dated: October 24, 2013

Respectfully Submitted,

Plaintiff Jeanne Stanford POA

Marie Claire Courchaine

by her attorney,

<<signature>>

Bernard J. Hamill

BBO# 218720

50 Quincy Ave.

Quincy, MA 02169

(617) 617-479-4300

*bjh@hamill-law.com*

Defendants by,

<<signature>>

Damon Seligson, Esq.

BBO # 632763

DiNicola, Seligson & Upton, LLP

185 Devonshire Street, Suite 902

Boston, MA 02110

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