COPY

STATE OF CONNECTICUT

OFFICE OF THE CLAIMS COMMISSIONER

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TARIQ ABDULAZIZ, *

CLAIMANT, *

V. * FILE NO. 24260

STATE OF CONNECTICUT *

DEPARTMENT OF SOCIAL SERVICES, *

RESPONDENT. *

* * * * * * * * * * * * * * * * * *

DEPOSITION OF LARA K. STAUNING

Taken before Frances Teti Prentice, Licensed Shorthand Reporter 076 and Notary Public within and for the State of Connecticut, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut, on October 27, 2016, commencing at 11:54 a.m.

APPEARANCES:

FOR THE CLAIMANT:

LAW OFFICE OF MICHAEL T. KOGUT
Michael T. Kogut, Esq.
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Springfield, Massachusetts 01103
(413) 348-2167

FOR THE RESPONDENT:

STATE OF CONNECTICUT
OFFICE OF THE ATTORNEY GENERAL
Hugh Barber, Asst. Attorney General
55 Elm Street P.O. Box 120
Hartford, Connecticut 06141-0120
(860) 808-5210

ALSO PRESENT:

Tariq Abdulaziz

STIPULATIONS

IT IS STIPULATED by counsel for the parties that each party reserves the right to make specific objections in open Court to each and every question asked and the answers given thereto by the witness, reserving the right to move to strike out where applicable, except as to such objections as are directed to the form of the question.

IT IS STIPULATED by counsel for the parties that the proof of the authority of the Notary Public before whom this deposition is taken is waived.

IT IS STIPULATED AND AGREED by counsel for the parties that any defects in the Notice are waived.

IT IS FURTHER STIPULATED by counsel for the parties that the reading and signing of the deposition are waived.

LARA K. STAUNING,
of the Department of Social Services,
55 Farmington Avenue, 11th Floor, Hartford,
Connecticut 06105, date of birth 5/24/71,
having first been duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. KOGUT:

Q. Good morning. Is it Miss Stauning?

A. Ms.

Q. Ms., okay. My name is Michael Kogut. I represent the Claimant/Petitioner, Tariq Abdulaziz, in this matter pending before the Claims Commission. I appreciate you coming down, and I don't expect this will take very long.

Based on your position and your standing in the legal community, I don't feel the need to go over the basic issues in a deposition, so I'll just say that if you don't understand a question I'm asking or you want it rephrased, please just tell me and I'll be happy to do that.

Would you describe briefly your title, position and your duties and responsibilities at the Department?

A. Yes. I am a Staff Attorney 3 with the

Department of Social Services. Currently I am providing legal counsel to the Elderly Protective Services program. I do mostly probate work appearing on behalf of the Department.

Q. Okay. How long have you served in that capacity?

A. I have been working with the PSE program (sic) since 2008; however, I have been working exclusively for Protective Services since about 2014.

Q. And who do you report to?

A. I report to Alvin Wilson.

Q. Who is Alvin Wilson?

A. Alvin Wilson is my supervisor.

Q. Okay. And what -- in terms of the chain of command, where does Phyllis Hyman stand?

A. Phyllis Hyman was my former supervisor. She has since retired.

Q. Okay.

A. Alvin took her place.

Q. Okay. At some point in time within the last several years, were you assigned or did you do some work for the Department of Social Services on behalf of the ABI waiver program?

A. Yes.

Q. Who assigned you to that?

A. Phyllis Hyman.

Q. And was that still at the time when you were counsel to the Elderly Protective Services?

A. Yes.

Q. How did that come about?

A. When I initially started with the Department, I had a variety of responsibilities. One included just general administration of regulations as well as Protective Services. Protective Services has become very demanding and, as such, my duties have shifted to that program.

Q. When did you become a member of the legal staff?

A. I became a member of the legal staff on January 18, 2008.

Q. And where were you employed prior to that?

A. I worked at the Center for Medicare Advocacy.

Q. In Region 1? I'm sorry. I understand. I understand. What were your duties and responsibilities there?

A. At the Center for Medicare Advocacy, I worked as a staff attorney and I primarily worked on administrative appeals with Social Security Administration involving Medicare claims.

Q. Do you have any particular expertise, training,

experience, education in promulgation of regulations?

A. I have experience -- since working at the Department, I've developed experience.

Q. Through working on cases and assignments?

A. Yes.

Q. Any specific training or education?

A. Certainly my legal education.

Q. Where did you go to law school?

A. Western New England.

Q. When did you graduate?

A. 2000.

Q. Take any particular regulation or legislative courses at Western New England University?

A. I did take Administrative Law.

Q. Do you recall working on the promulgation of regulations for the ABI waiver program?

A. Yes.

Q. Can you describe to me briefly what you know about the ABI waiver program?

A. The ABI waiver program is a program through which individuals who have acquired brain injuries, as long as they meet all the criteria, are able to get services which would keep them in the community versus having them live, for example, in institutions.

Q. And when you were first assigned by Phyllis

Hyman to do some work on this program with regard to regulations and legislation, had you been involved with that program at all prior to that?

A. No, I have not.

Q. Did she ever tell you why she selected you for that assignment?

A. No.

Q. Was it simply because of just spreading work around within the Department?

A. I don't know.

Q. Okay. Do you recall what you were first assigned to do and when?

A. With regard to the ABI waiver program?

Q. Correct.

A. I think, as I recall, it was a regulation that needed to be worked on, and I was assigned to work with Dorian Long on that.

Q. Who is Dorian Long?

A. Dorian Long is the manager of the ABI waiver -- former manager of the ABI waiver program.

Q. And do you recall with any more specificity what you were requested to do?

A. It was a regulation that was at the very beginning stages of being drafted, so it hadn't been developed to a final degree for -- to be noticed. And

so that's what the goal was; was to draft the regulation and get it into a format that was appropriate for notification.

Q. Was that in 2013?

A. The work probably started earlier than that, 2009 maybe.

Q. Do you recall what you initially did beginning in 2009?

A. Reviewed the regulation both for substance and/or drafting conventions. Our Regulations Review Committee is very particular about how our regulations are written, so that was one of the responsibilities that I was given.

Q. Prior to doing that, Miss Stauning, can you tell us how many other drafting or work you had done on regulations for promulgation in the state of Connecticut?

A. I was assigned to work on the regulations generally, so I did have, by that time, quite a bit of experience in drafting regulations and putting them through the promulgation process. At that time, there was only four attorneys in the office.

Q. Did you work with anybody else in the Legal Department other than Phyllis Hyman, on this project?

A. Not to my recollection.

Q. Okay. And did you work with anybody in the Department outside the Legal Department?

A. No.

Q. Did you consult with anybody outside the Legal Department relative to drafting and working on the regulation?

A. Yes.

Q. Who would that have been?

A. Dorian Long.

Q. Anyone else?

A. At one point in the process, we did receive public comment.

Q. Would you say that again, please.

A. At one point in the promulgation process, we did receive public comment. So I received comment from outside, if that's --

Q. Do you recall when that was in the process?

A. It would have been after the Notice of Intent was filed.

Q. Did you prepare the Notice of Intent?

A. I did.

Q. In drafting or reviewing and drafting the regulation which ultimately came to fruition in 2013, do you recall reviewing the 1999 policy of the ABI waiver program?

A. No.

Q. Did you review any policies in existence prior to 2013?

A. I began working on the regulation in 2008 or 2009, as I mentioned. There was a draft at that point. Other than that, I was not aware of any other documents.

Q. Do you know who drafted it?

A. I do not.

Q. Do you know what the purpose -- let me strike that.

What was your understanding of the purpose for the new regulation?

A. The new regulation was necessary to provide guidance with regard to the administration of the program.

(Stauning Exhibit No. 1, Administrative Regulations, one-page document, marked for identification.)

BY MR. KOGUT:

Q. If you would just take a minute, Ms. Stauning, and look at what has been marked as Stauning Exhibit No. 1.

A. Okay.

Q. Do you recall seeing this Notice of Intent?

A. Yes, I do.
Q. You prepared this?
A. Yes.
Q. For publication in the Connecticut Law Journal?
A. Yes.
Q. It was published on March 26, 2013?
A. Yes.
Q. With an effective date of regulation, April 1, 2013?
A. Yes.
Q. Based on your training and experience and knowledge, was that an acceptable period of time for publication on March 26th and implementation on April 1st?
A. Yes. Under the statute, that is permitted.
Q. And you cited Statute 17b-260b?
A. That's -- I'm sorry; can you clarify?
Q. I'll withdraw that question.
When you say under the statute, yes, do you mean you're referring to 17b-10?
A. Yes.
Q. Do you know whether you referred to 17b-10(a), (b) or (c)?
A. I did not specify in the notice.
Q. Why is that?

A. I can't say.

Q. Okay. Do you recall what sections (a), (b) and (c) were?

A. I would have to reference the law to make sure that I . . .

Q. Sure, I understand. If I suggested to you that section (a) said that the regulation had to be in clear and concise language, would that refresh your memory?

A. I can't say for sure if that's what's in section (a).

Q. If I suggested to you section (b) said notice must be given within 20 days after adoption, would that refresh your memory of what section (b) is?

A. Yes.

Q. If I suggested to you that section (c) of 17b-10 said that the regulation had to be forwarded to the LRRC within a hundred and twenty days after publication, would that refresh your memory as to section (c)?

A. Yes.

Q. And in your estimation, were any or all of those performed?

A. Section (a) and (b), yes. There were some delays with regards to section (c).

Q. What were those delays?

A. Due to changes in the program as well as public comment, there were reasons why the regulation was not submitted to regs review within that hundred-and-twenty-day period.

Q. Could you restate that?

A. Because of issues regarding changes within the program itself as well as -- I think I said changes in the program as well as public comment, we delayed submitting it to regs review.

Q. Was it ever submitted?

A. No.

Q. Were there any -- were there ever any public comments taken?

A. Yes.

Q. After the Notice of Intent was filed?

A. Yes.

Q. How were those done?

A. I'm sorry; can you rephrase?

Q. How were they performed? How did you receive public comment?

A. We received public comment I believe by mail.

Q. Do you recall how many commentaries there may have been?

A. I believe there was two.

(Stauning Exhibit No. 2,
two-page e-mail,
marked for identification.)

BY MR. KOGUT:

Q. Just take a look at this with your lawyer, Ms. Stauning. (Handing.)

A. Okay.

Q. Is that familiar to you, that document?

A. Yes.

Q. Okay. If you don't mind, would you just slowly read into the record the entry that you made on the 6th of March, 2013?

A. Hi, Phyllis. I'm drafting up the NOI for the ABI waiver regulation, and I wanted to include the statutory authority for operating the regulation while in the process of adopting and providing -- and provide an effective date.

So far I haven't been able to figure out the basis for treating the ABI waiver regulation as a 17b-10 regulation, so I'm not sure that we have the statutory authority to do so. For some reason, I thought we had come up with an argument to support treating the regulation as a 17b-10, but there's no supporting language in the ABI waiver statute, and I don't think it's covered by 17b-10; although, waivers are mentioned

in 17b-10(b). The ABI waiver statute really provides no help.

Quote, The Commissioner of Social Services shall seek a waiver from federal law to establish a Medicaid-financed, home and community-based program for individuals with acquired brain injury. Such waiver shall be submitted no later than October 1, 1995, end quote.

17b-10(b) provides the Department shall adopt as a regulation in accordance with the provisions of Chapter 54 any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8 and any new policy necessary to conform to -- including but not limited --

Q. Excuse me. Let me just -- are you quoting from the statute now?

A. Yes.

Q. Okay. As long as you have on the record your e-mail to Phyllis Hyman on March 6, 2013, correct?

A. Yes.

Q. Okay. And do you recall making that statement to Phyllis Hyman?

A. Yes.

Q. And has your opinion since then changed in any

way since you expressed it to her in March of 2013?

A. Yes.

Q. And why -- what changed and why?

A. I was looking at -- I was drafting the Notice of Intent and I wanted to be sure that if there was something that I needed to cite to specifically, that I did so. In doing that, I was reading the provision of 17b-10(b) very, I would say, literally and it wasn't making sense to me because I knew that the Department had several regulations under which we operate under 17b-10. And I spoke with Phyllis or I e-mailed Phyllis because I wasn't feeling confident in how I was interpreting this.

Q. Is it your opinion that regulations should not be read literally?

A. I think that regulations can be read literally; however, I should clarify that I was reading the regulations in such a way that I was reading them, I believe, more narrowly than the Department had in the past.

Q. Do you ever recall making a statement to anybody in writing or otherwise that you wanted to make sure that the regulation was left vague?

A. I can't recall a specific instance.

Q. Is it your opinion that the ultimate regulation

as promulgated was properly promulgated despite the fact it was not forwarded to the LRRC?

A. It was -- I'm sorry; can you --

MR. BARBER: I will object to the question because it calls for a legal conclusion.

MR. KOGUT: I think she can, in her capacity, offer that opinion based on her training, experience and position within the Department.

Please read back the question.

(Whereupon, the record was read back by the Court Reporter.)

A. A regulation isn't fully promulgated if it doesn't go to the Regs Review Commission. In this particular situation, 17b-10 affords us the ability to draft a policy and operate under that policy while we go through the promulgation process. So it's a way for the Department to operate under a policy while we're going through the promulgation process. So I guess the answer to that would be that it wasn't promulgated yet.

BY MR. KOGUT:

Q. When was it promulgated?

A. It has not been promulgated as of . . .

Q. So it has no legal effect?

A. No. Under 17b-10, we have the authority to

operate and implement under operating policy while in the process of promulgating.

Q. If I suggested to you that the Department had made decisions after April of 2013 with clients or participants using the 1999 regulation, would that be proper in your opinion?

A. No.

Q. Do you know of any such instances?

A. I have seen copies -- I haven't seen copies but I've heard of copies and asked that they not use those.

Q. You asked them not to use them?

A. Yes, after I became aware that it existed.

Q. Did they comply; do you know?

A. I don't know.

Q. Anybody ever respond to your offering your opinion, your advice?

A. I don't recall.

Q. Would it be fair to say that you weren't -- your job was to draft the regulation, make sure it was legally correct, the proper procedures were followed, correct?

A. Correct.

Q. And you weren't involved in any of the ABI waiver participants or care plans or any of those things?

A. No.

Q. In fact, would it be fair to say that you had little to no involvement with that side of it?

A. Correct.

Q. Probably just enough to understand what the Department was trying to do with the regulation?

A. Yes.

Q. Okay. Do you recall any discussion with anyone within your Legal Department or DSS about a federal conforming requirement?

A. I don't think I understand the question.

Q. Have you ever heard the phrase, in the context of your work on this particular regulation, "federal conforming requirement"?

A. No.

Q. When is the last time, if you remember, that you had any contact or discussion with anyone within or outside your department regarding this regulation?

A. I mean, I work in a relatively small office. So, you know, I know generally what's going on with the ABI regulation, but I'm not in any way involved in the drafting or the current promulgation process.

Q. Okay. But if I understand you correctly, based on your work as it was concluded with regard to this regulation, it's your opinion that it is -- it has the

force of law and was -- legally conformed to the statute that you set it.

A. It conforms with 17b-10 as well as the APA or the UAPA; I'm sorry.

Q. No, I understand.

MR. KOGUT: Just give me a couple minutes.

(Recess taken from 12:21 p.m. to 12:22 p.m.)

(Stauning Exhibit No. 3, one-page e-mail, marked for identification.)

BY MR. BARBER:

Q. If you would just take a moment, Ms. Stauning, to look at that.

A. Okay.

Q. All set?

A. Yes.

Q. Does this document look familiar to you?

A. Yes.

Q. This is authored by you?

A. Yes.

Q. Sometime in August of 2013, is that about right? I'm just going on the bottom --

A. According to the date, yes.

Q. Okay. And this was sent by you to John McCormick, Dorian Long --

A. Uh-huh.

Q. -- Singleton, Ray Singleton. Who is he?

A. He was a former deputy commissioner.

Q. Okay. And Muley --

A. Dakibu Muley was a former manager. I'm not entirely sure what his formal title was.

Q. And Effie Morris-Ferguson?

A. She's another manager of the ABI waiver program.

Q. And then you copied some other people, correct?

A. Correct.

Q. Do you recall what prompted this rather lengthy e-mail to the group?

A. I received a communication. I can't recall if it was an e-mail or a telephone call or -- it was probably either an e-mail or telephone call in which I somehow received word that, I believe her name is Julia Wilcox, an individual who had contacted me by phone with some questions about the ABI waiver regulation and whether or not providers were going to be immediately required to comply, and she had misinterpreted or misquoted to several other providers that I said something that I didn't say, so I wanted to clarify

that. It may have come through John McCormick. I don't recall because I'm responding to him, I'm assuming.

Q. Sure. By this time, was Phyllis Hyman no longer working there?

A. No, Phyllis was still working there.

Q. Any particular reason why you didn't include her?

A. I don't recall.

Q. Okay. If you look in the middle of the second paragraph which begins four lines down, The language we drafted, could you just read that sentence into the record?

A. The language we drafted with regard to some of the requirements was intentionally vague as we knew that as the process proceeded and we got public comment, we would be able to amend or add detail before the regulation was finalized.

Q. Okay. Does that refresh your memory as to whether or not you ever said the language used was vague?

A. It appears that I wrote that. I don't remember actually stating it verbally.

Q. Okay. But you're not doubting that you wrote that?

A. No.

Q. Okay. If you could go back to the other exhibit with Ms. Hyman's e-mail, on the second page here, I believe you were reading from the statute. Could you just read the last sentence of that?

A. Please let me know what you think. I may be missing something.

Q. Maybe right before that, the one that begins -- okay. Beginning with the Notice of Intent.

A. I'm trying to find where that is. Maybe you can point it out to me.

Q. From this angle, it's -- it starts before that but -- let me see.

A. Sorry.

Q. Begin with the word "provided," provided the Department of Social Services.

A. Okay. Provided the Department of Social Services prints Notice of Intent to adopt the regulation in the Connecticut Law Journal within twenty days after adopting the policy. Such policy shall be valid until the time final regulation are effective.

Q. In your opinion, was that done?

A. Yes.

Q. Okay. In twenty days?

A. Yes.

Q. Beginning publication on March 26th?

A. Yes.

Q. For implementation on April 1st?

A. Yes.

Q. So it wasn't twenty days.

A. I'm sorry. I think to understand -- this particular section of the statute actually says within twenty days of adopting the policy, so you can actually, in practice, put the policy into effect and give notice of it twenty days after it's been published. We were actually giving prior notice which is still acceptable.

Q. Okay. Are you familiar with Statute 4-168?

A. Not off the top of my head, no.

Q. Are you familiar with any requirements which require a 30-day notice period?

A. The regulation process has many, many steps and in -- during that time period, there are probably several. I don't want to speculate without looking at the statute.

Q. That's fair. Again, it's your opinion that the statute or the regulation, as adopted, as promulgated, as published, has the full force of law?

A. Yes.

Q. Okay. Thank you. That's it. Thanks for your time. Sorry to have to drag you down here.

MR. BARBER: No questions.

(Whereupon the deposition concluded and the witness was excused at 12:31 p.m.)

COURT REPORTER: Mr. Barber, before I close the record, did you want to purchase a copy of today's testimony?

MR. BARBER: Yes. I would like a copy of both depositions.

(Off record, 12:31 p.m.)

CERTIFICATE OF REPORTER

I, Frances Teti Prentice, Licensed Shorthand Reporter 076 and Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that there came before me on October 27, 2016 the following named person, to wit: LARA K. STAUNING, who was by me duly sworn to testify to the truth and nothing but the truth; that she was thereupon carefully examined upon her oath and her examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor related to nor employed by any of the parties to the action in which this deposition is taken and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal this 3rd day of November, 2016.

s/s Frances Teti Prentice

Frances Teti Prentice, Notary Public

My Commission expires: 3/31/2019

License expires: 12/2016

EXAMINATION INDEX

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EXHIBIT INDEX

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Administrative Regulations, one-page document

2 15
Two-page e-mail

3 21
One-page e-mail

- END OF EXHIBIT INDEX -

- ORIGINAL EXHIBITS HELD BY MR. KOGUT -

STATE OF CONNECTICUT
OFFICE OF THE CLAIMS COMMISSIONER

****
TARIQ ABDULAZIZ, *
CLAIMANT, *
V * FILE NO 24260
STATE OF CONNECTICUT *
DEPARTMENT OF SOCIAL SERVICES, *
RESPONDENT *
****

DEPOSITION OF LARA K. STAUNING

Taken before Frances Teti Prentice, Licensed Shorthand Reporter 076 and Notary Public within and for the State of Connecticut, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut, on October 27, 2016, commencing at 11 54 a.m.

APPEARANCES

FOR THE CLAIMANT·
LAW OFFICE OF MICHAEL T KOGUT
Michael T Kogut, Esq
75 Market Place
Springfield, Massachusetts 01103
(413) 348-2167

FOR THE RESPONDENT
STATE OF CONNECTICUT
OFFICE OF THE ATTORNEY GENERAL
Hugh Barber, Asst. Attorney General
55 Elm Street P O Box 120
Hartford, Connecticut 06141-0120
(860) 808-5210

ALSO PRESENT·
Tariq Abdulaziz

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LARA K. STAUNING,
of the Department of Social Services,
55 Farmington Avenue, 11th Floor, Hartford,
Connecticut 06105, date of birth 5/24/71,
having first been duly sworn, was examined
and testified as follows

DIRECT EXAMINATION

BY MR. KOGUT·

Q. Good morning. Is it Miss Stauning?

A. Ms.

Q. Ms., okay. My name is Michael Kogut. I represent the Claimant/Petitioner, Tariq Abdulaziz, in this matter pending before the Claims Commission. I appreciate you coming down, and I don't expect this will take very long.

Based on your position and your standing in the legal community, I don't feel the need to go over the basic issues in a deposition, so I'll just say that if you don't understand a question I'm asking or you want it rephrased, please just tell me and I'll be happy to do that.

Would you describe briefly your title, position and your duties and responsibilities at the Department?

A. Yes I am a Staff Attorney 3 with the

Page 5

Department of Social Services. Currently I am providing legal counsel to the Elderly Protective Services program. I do mostly probate work appearing on behalf of the Department.

Q. Okay. How long have you served in that capacity?

A. I have been working with the PSE program (sic) since 2008, however, I have been working exclusively for Protective Services since about 2014

Q. And who do you report to?

A. I report to Alvin Wilson.

Q. Who is Alvin Wilson?

A. Alvin Wilson is my supervisor

Q. Okay. And what -- in terms of the chain of command, where does Phyllis Hyman stand?

A. Phyllis Hyman was my former supervisor She has since retired.

Q. Okay.

A. Alvin took her place.

Q. Okay. At some point in time within the last several years, were you assigned or did you do some work for the Department of Social Services on behalf of the ABI waiver program?

A. Yes.

Q. Who assigned you to that?

Page 6

A. Phyllis Hyman.

Q. And was that still at the time when you were counsel to the Elderly Protective Services?

A. Yes

Q. How did that come about?

A. When I initially started with the Department, I had a variety of responsibilities. One included just general administration of regulations as well as Protective Services. Protective Services has become very demanding and, as such, my duties have shifted to that program.

Q. When did you become a member of the legal staff?

A. I became a member of the legal staff on January 18, 2008

Q. And where were you employed prior to that?

A I worked at the Center for Medicare Advocacy

Q. In Region 1? I'm sorry. I understand. I understand. What were your duties and responsibilities there?

A. At the Center for Medicare Advocacy, I worked as a staff attorney and I primarily worked on administrative appeals with Social Security Administration involving Medicare claims

Q. Do you have any particular expertise, training,

Page 7

experience, education in promulgation of regulations?

A. I have experience -- since working at the Department, I've developed experience.

Q. Through working on cases and assignments?

A. Yes

Q. Any specific training or education?

A. Certainly my legal education.

Q. Where did you go to law school?

A. Western New England.

Q. When did you graduate?

A. 2000

Q. Take any particular regulation or legislative courses at Western New England University?

A. I did take Administrative Law

Q. Do you recall working on the promulgation of regulations for the ABI waiver program?

A Yes.

Q. Can you describe to me briefly what you know about the ABI waiver program?

A The ABI waiver program is a program through which individuals who have acquired brain injuries, as long as they meet all the criteria, are able to get services which would keep them in the community versus having them live, for example, in institutions

Q. And when you were first assigned by Phyllis

Page 8

Hyman to do some work on this program with regard to regulations and legislation, had you been involved with that program at all prior to that?

A. No, I have not.

Q. Did she ever tell you why she selected you for that assignment?

A. No

Q. Was it simply because of just spreading work around within the Department?

A I don't know

Q. Okay. Do you recall what you were first assigned to do and when?

A With regard to the ABI waiver program?

Q. Correct.

A I think, as I recall, it was a regulation that needed to be worked on, and I was assigned to work with Dorian Long on that.

Q. Who is Dorian Long?

A. Dorian Long is the manager of the ABI waiver -- former manager of the ABI waiver program.

Q. And do you recall with any more specificity what you were requested to do?

A. It was a regulation that was at the very beginning stages of being drafted, so it hadn't been developed to a final degree for -- to be noticed. And

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so that's what the goal was, was to draft the regulation and get it into a format that was appropriate for notification.

Q. Was that in 2013?

A. The work probably started earlier than that, 2009 maybe

Q. Do you recall what you initially did beginning in 2009?

A. Reviewed the regulation both for substance and/or drafting conventions. Our Regulations Review Committee is very particular about how our regulations are written, so that was one of the responsibilities that I was given.

Q. Prior to doing that, Miss Stauning, can you tell us how many other drafting or work you had done on regulations for promulgation in the state of Connecticut?

A. I was assigned to work on the regulations generally, so I did have, by that time, quite a bit of experience in drafting regulations and putting them through the promulgation process At that time, there was only four attorneys in the office.

Q. Did you work with anybody else in the Legal Department other than Phyllis Hyman, on this project?

A. Not to my recollection.

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Q. Okay. And did you work with anybody in the Department outside the Legal Department?

A. No

Q. Did you consult with anybody outside the Legal Department relative to drafting and working on the regulation?

A. Yes.

Q. Who would that have been?

A. Dorian Long.

Q. Anyone else?

A. At one point in the process, we did receive public comment.

Q. Would you say that again, please.

A. At one point in the promulgation process, we did receive public comment. So I received comment from outside, if that's --

Q. Do you recall when that was in the process?

A It would have been after the Notice of Intent was filed.

Q. Did you prepare the Notice of Intent?

A I did.

Q. In drafting or reviewing and drafting the regulation which ultimately came to fruition in 2013, do you recall reviewing the 1999 policy of the ABI waiver program?

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A. No

Q. Did you review any policies in existence prior to 2013?

A. I began working on the regulation in 2008 or 2009, as I mentioned. There was a draft at that point. Other than that, I was not aware of any other documents

Q. Do you know who drafted it?

A. I do not.

Q. Do you know what the purpose -- let me strike that.

What was your understanding of the purpose for the new regulation?

A. The new regulation was necessary to provide guidance with regard to the administration of the program.

(Stauning Exhibit No 1,
Administrative Regulations,
one-page document,
marked for identification)

BY MR. KOGUT·

Q. If you would just take a minute, Ms. Stauning, and look at what has been marked as Stauning Exhibit No. 1.

A. Okay

Q. Do you recall seeing this Notice of Intent?

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A. Yes, I do.

Q. You prepared this?

A. Yes.

Q. For publication in the Connecticut Law Journal?

A. Yes

Q. It was published on March 26, 2013?

A. Yes

Q. With an effective date of regulation, April 1, 2013?

A Yes.

Q. Based on your training and experience and knowledge, was that an acceptable period of time for publication on March 26th and implementation on April 1st?

A. Yes. Under the statute, that is permitted.

Q. And you cited Statute 17b-260b?

A That's -- I'm sorry; can you clarify?

Q. I'll withdraw that question.

When you say under the statute, yes, do you mean you're referring to 17b-10?

A. Yes

Q. Do you know whether you referred to 17b-10(a), (b) or (c)?

A I did not specify in the notice

Q. Why is that?

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A. I can't say
Q. Okay. Do you recall what sections (a), (b) and (c) were?
A. I would have to reference the law to make sure that I
Q. Sure, I understand. If I suggested to you that section (a) said that the regulation had to be in clear and concise language, would that refresh your memory?
A. I can't say for sure if that's what's in section (a)
Q. If I suggested to you section (b) said notice must be given within 20 days after adoption, would that refresh your memory of what section (b) is?
A. Yes.
Q. If I suggested to you that section (c) of 17b-10 said that the regulation had to be forwarded to the LRRC within a hundred and twenty days after publication, would that refresh your memory as to section (c)?
A Yes.
Q. And in your estimation, were any or all of those performed?
A. Section (a) and (b), yes There were some delays with regards to section (c).
Q. What were those delays?

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A Due to changes in the program as well as public comment, there were reasons why the regulation was not submitted to regs review within that hundred-and-twenty-day period.
Q. Could you restate that?
A. Because of issues regarding changes within the program itself as well as -- I think I said changes in the program as well as public comment, we delayed submitting it to regs review
Q. Was it ever submitted?
A. No
Q. Were there any -- were there ever any public comments taken?
A. Yes
Q. After the Notice of Intent was filed?
A. Yes.
Q. How were those done?
A I'm sorry, can you rephrase?
Q. How were they performed? How did you receive public comment?
A. We received public comment I believe by mail
Q. Do you recall how many commentaries there may have been?
A. I believe there was two

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(Stauning Exhibit No. 2,
two-page e-mail,
marked for identification.)
BY MR. KOGUT·
Q. Just take a look at this with your lawyer, Ms. Stauning. (Handing.)
A. Okay
Q. Is that familiar to you, that document?
A. Yes
Q. Okay. If you don't mind, would you just slowly read into the record the entry that you made on the 6th of March, 2013?
A. Hi, Phyllis. I'm drafting up the NOI for the ABI waiver regulation, and I wanted to include the statutory authority for operating the regulation while in the process of adopting and providing -- and provide an effective date
So far I haven't been able to figure out the basis for treating the ABI waiver regulation as a 17b-10 regulation, so I'm not sure that we have the statutory authority to do so For some reason, I thought we had come up with an argument to support treating the regulation as a 17b-10, but there's no supporting language in the ABI waiver statute, and I don't think it's covered by 17b-10, although, waivers are mentioned

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in 17b-10(b) The ABI waiver statute really provides no help
Quote, The Commissioner of Social Services shall seek a waiver from federal law to establish a Medicaid-financed, home and community-based program for individuals with acquired brain injury Such waiver shall be submitted no later than October 1, 1995, end quote
17b-10(b) provides the Department shall adopt as a regulation in accordance with the provisions of Chapter 54 any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8 and any new policy necessary to conform to -- including but not limited --
Q. Excuse me. Let me just -- are you quoting from the statute now?
A. Yes.
Q. Okay. As long as you have on the record your e-mail to Phyllis Hyman on March 6, 2013, correct?
A Yes
Q. Okay. And do you recall making that statement to Phyllis Hyman?
A. Yes.
Q. And has your opinion since then changed in any

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way since you expressed it to her in March of 2013?
A. Yes.
Q. And why -- what changed and why?
A. I was looking at -- I was drafting the Notice of Intent and I wanted to be sure that if there was something that I needed to cite to specifically, that I did so. In doing that, I was reading the provision of 17b-10(b) very, I would say, literally and it wasn't making sense to me because I knew that the Department had several regulations under which we operate under 17b-10 And I spoke with Phyllis or I e-mailed Phyllis because I wasn't feeling confident in how I was interpreting this.
Q. Is it your opinion that regulations should not be read literally?
A. I think that regulations can be read literally; however, I should clarify that I was reading the regulations in such a way that I was reading them, I believe, more narrowly than the Department had in the past.
Q. Do you ever recall making a statement to anybody in writing or otherwise that you wanted to make sure that the regulation was left vague?
A. I can't recall a specific instance.
Q. Is it your opinion that the ultimate regulation

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as promulgated was properly promulgated despite the fact it was not forwarded to the LRRC?
A. It was -- I'm sorry; can you --
MR. BARBER. I will object to the question because it calls for a legal conclusion.
MR. KOGUT: I think she can, in her capacity, offer that opinion based on her training, experience and position within the Department.
Please read back the question
(Whereupon, the record was read back by the Court Reporter)
A. A regulation isn't fully promulgated if it doesn't go to the Regs Review Commission. In this particular situation, 17b-10 affords us the ability to draft a policy and operate under that policy while we go through the promulgation process So it's a way for the Department to operate under a policy while we're going through the promulgation process So I guess the answer to that would be that it wasn't promulgated yet.
BY MR. KOGUT:
Q. When was it promulgated?
A. It has not been promulgated as of
Q. So it has no legal effect?
A No Under 17b-10, we have the authority to

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operate and implement under operating policy while in the process of promulgating.
Q. If I suggested to you that the Department had made decisions after April of 2013 with clients or participants using the 1999 regulation, would that be proper in your opinion?
A No
Q. Do you know of any such instances?
A. I have seen copies -- I haven't seen copies but I've heard of copies and asked that they not use those.
Q. You asked them not to use them?
A. Yes, after I became aware that it existed.
Q. Did they comply; do you know?
A. I don't know
Q. Anybody ever respond to your offering your opinion, your advice?
A. I don't recall.
Q. Would it be fair to say that you weren't -- your job was to draft the regulation, make sure it was legally correct, the proper procedures were followed, correct?
A. Correct.
Q. And you weren't involved in any of the ABI waiver participants or care plans or any of those things?

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A. No
Q. In fact, would it be fair to say that you had little to no involvement with that side of it?
A. Correct.
Q. Probably just enough to understand what the Department was trying to do with the regulation?
A. Yes
Q. Okay. Do you recall any discussion with anyone within your Legal Department or DSS about a federal conforming requirement?
A. I don't think I understand the question.
Q. Have you ever heard the phrase, in the context of your work on this particular regulation, "federal conforming requirement"?
A. No
Q. When is the last time, if you remember, that you had any contact or discussion with anyone within or outside your department regarding this regulation?
A. I mean, I work in a relatively small office. So, you know, I know generally what's going on with the ABI regulation, but I'm not in any way involved in the drafting or the current promulgation process.
Q. Okay. But if I understand you correctly, based on your work as it was concluded with regard to this regulation, it's your opinion that it is -- it has the

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force of law and was -- legally conformed to the statute that you set it.
A. It conforms with 17b-10 as well as the APA or the UAPA, I'm sorry
Q. No, I understand.
MR. KOGUT: Just give me a couple minutes
(Recess taken from 12.21 p.m. to 12.22 p.m.)
(Stauning Exhibit No 3, one-page e-mail, marked for identification.)
BY MR. BARBER.
Q. If you would just take a moment, Ms. Stauning, to look at that.
A. Okay
Q. All set?
A. Yes.
Q. Does this document look familiar to you?
A. Yes.
Q. This is authored by you?
A. Yes
Q. Sometime in August of 2013, is that about right? I'm just going on the bottom --
A. According to the date, yes

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Q. Okay. And this was sent by you to John McCormick, Dorian Long --
A Uh-huh.
Q. -- Singleton, Ray Singleton. Who is he?
A He was a former deputy commissioner
Q. Okay. And Muley --
A. Dakibu Muley was a former manager I'm not entirely sure what his formal title was.
Q. And Effie Morris-Ferguson?
A. She's another manager of the ABI waiver program.
Q. And then you copied some other people, correct?
A Correct.
Q. Do you recall what prompted this rather lengthy e-mail to the group?
A. I received a communication. I can't recall if it was an e-mail or a telephone call or -- it was probably either an e-mail or telephone call in which I somehow received word that, I believe her name is Julia Wilcox, an individual who had contacted me by phone with some questions about the ABI waiver regulation and whether or not providers were going to be immediately required to comply, and she had misinterpreted or misquoted to several other providers that I said something that I didn't say, so I wanted to clarify

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that. It may have come through John McCormick. I don't recall because I'm responding to him, I'm assuming.
Q. Sure. By this time, was Phyllis Hyman no longer working there?
A. No, Phyllis was still working there.
Q. Any particular reason why you didn't include her?
A. I don't recall
Q. Okay. If you look in the middle of the second paragraph which begins four lines down, The language we drafted, could you just read that sentence into the record?
A The language we drafted with regard to some of the requirements was intentionally vague as we knew that as the process proceeded and we got public comment, we would be able to amend or add detail before the regulation was finalized.
Q. Okay. Does that refresh your memory as to whether or not you ever said the language used was vague?
A. It appears that I wrote that. I don't remember actually stating it verbally
Q. Okay. But you're not doubting that you wrote that?
A. No

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Q. Okay. If you could go back to the other exhibit with Ms. Hyman's e-mail, on the second page here, I believe you were reading from the statute. Could you just read the last sentence of that?
A. Please let me know what you think. I may be missing something.
Q. Maybe right before that, the one that begins -- okay. Beginning with the Notice of Intent.
A I'm trying to find where that is Maybe you can point it out to me.
Q. From this angle, it's -- it starts before that but -- let me see.
A. Sorry
Q. Begin with the word "provided," provided the Department of Social Services.
A. Okay Provided the Department of Social Services prints Notice of Intent to adopt the regulation in the Connecticut Law Journal within twenty days after adopting the policy Such policy shall be valid until the time final regulation are effective
Q. In your opinion, was that done?
A. Yes
Q. Okay. In twenty days?
A. Yes
Q. Beginning publication on March 26th?

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A. Yes.
Q. For implementation on April 1st?
A. Yes.
Q. So it wasn't twenty days.
A. I'm sorry I think to understand -- this particular section of the statute actually says within twenty days of adopting the policy, so you can actually, in practice, put the policy into effect and give notice of it twenty days after it's been published. We were actually giving prior notice which is still acceptable
Q. Okay. Are you familiar with Statute 4-168?
A. Not off the top of my head, no
Q. Are you familiar with any requirements which require a 30-day notice period?
A. The regulation process has many, many steps and in -- during that time period, there are probably several I don't want to speculate without looking at the statute.
Q. That's fair. Again, it's your opinion that the statute or the regulation, as adopted, as promulgated, as published, has the full force of law?
A. Yes
Q. Okay. Thank you. That's it. Thanks for your time. Sorry to have to drag you down here.
MR. BARBER. No questions

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(Whereupon the deposition concluded and the witness was excused at 12 31 p.m.)
COURT REPORTER. Mr Barber, before I close the record, did you want to purchase a copy of today's testimony?
MR. BARBER. Yes I would like a copy of both depositions
(Off record, 12 31 p.m.)

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CERTIFICATE OF REPORTER

I, Frances Teti Prentice, Licensed Shorthand Reporter 076 and Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that there came before me on October 27, 2016 the following named person, to wit: LARA K. STAUNING, who was by me duly sworn to testify to the truth and nothing but the truth, that she was thereupon carefully examined upon her oath and her examination reduced to writing under my supervision, that this deposition is a true record of the testimony given by the witness.
I further certify that I am neither attorney nor counsel for nor related to nor employed by any of the parties to the action in which this deposition is taken and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the action.
IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal this 3rd day of November, 2016

s/s _____
Frances Teti Prentice, Notary Public
My Commission expires. 3/31/2019
License expires 12/2016

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EXAMINATION INDEX

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- EXAMINATION CONCLUDED -

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