**SUPREME COURT OF MISSISSIPPI**
**CASE # 2010-CA-01424**

**MCCOMB NURSING AND REHABILITATION CENTER, LLC** — **APPELLANT**

**V.**

**MASUMI LEE, Individually and for and on behalf of the Wrongful Death Beneficiaries of ROBERT E. LEE, Deceased** — **APPELLEE**

# BRIEF OF APPELLEE

(Oral Argument Requested)


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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Michael Taylor, Pike County Circuit Judge;

2. Masumi Lee, Appellee;

3. McComb Nursing and Rehabilitation Center, LLC, and McComb Nursing and Rehabilitation, LLC, Appellants;

4. Angela Spears, Esq., Marian S. Rosen & Associates, 1330 Post Oak Boulevard, Houston, Texas 77056, Attorney for Appellee;

5. W. Davis Frye, Esq., Bradley W. Smith, Esq., Barry W. Ford, Esq., and Ceejaye S. Peters, Esq., of Baker Donelson Bearman Caldwell & Berkowitz, P. O. Box 14167, Jackson, MS 39236, Attorneys for Appellant; and

6. W. Eric Stracener, Esq., and W. Andrew Neely, Esq., Hawkins, Stracener & Gibson, PLLC, Attorney for Appellee

W. Andrew Neely
Attorney of Record for Plaintiff

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## STATEMENT REGARDING ORAL ARGUMENT

Appellees request oral argument as they believe that it could be helpful to this Court in fully understanding the issues before it. Therefore, oral argument is requested.

## STATEMENT OF THE ISSUES

1. Whether the trial court erred in denying the Defendants' motion for directed verdict based on Defendants' argument that the Plaintiffs failed to provide expert testimony establishing that the Defendants' breach of the standard of care was the proximate cause of the Plaintiffs' decedent's fall, injuries, surgery, and other damages.

## STATEMENT OF THE CASE

### A. Course of Proceedings Below

Plaintiff/Appellee, Masumi Lee, for and on behalf of the Estate of Robert Lee (hereinafter "Plaintiff" or "Plaintiffs") filed her Complaint in this matter in the Circuit Court of Pike County on January 16, 2007, against Defendant/Appellee McComb Nursing and Rehabilitation Center, LCC (hereafter "Defendants," "McComb," or "McComb Nursing and Rehab"), the primary claim for negligence being that McComb Nursing and Rehab breached the standard of nursing care in failing to adhere to nursing standards that would have prevented Mr. Lee from falling and breaking his hip while a resident at the nursing home in January and February 2005.

Defendants answered, discovery was taken, and trial was held in the Circuit Court of Pike County in Magnolia before a properly impaneled jury from June 29 through July 1, 2010, with Circuit Court Judge Michael Taylor presiding. At the close of the Plaintiffs' case-in-chief, Defendants moved for directed verdict claiming that Plaintiffs failed to provide expert testimony establishing that the Defendants' breach of the standard of nursing care was the proximate cause of the Plaintiffs' decedent's fall, injuries, hip replacement surgery, and other damages. (T. 4:370-377, R.E. 143-150). Defendants' motion was denied, the lower court ruling that the reasonable inferences flowing from the Plaintiffs' evidence and testimony were considerable and sufficient to establish a prima facie case, and to withstand the Defendants' motion. (T. 4:377-78, R.E. 150-51). At the close of the Defendants' case, McComb renewed their motion for directed verdict. (T. 5:544, R.E. 153 ). Their motion was again denied and the case went to the jury. (T. 5:543-44, R.E. 152-53). After deliberation, the jury returned with a unanimous verdict, awarding the Plaintiffs $20,000 for reasonable medical expenses necessarily incurred by Mr. Lee, and $5,000 for Mr. Lee's pain, suffering, and mental anguish. (T. 5:592, R.E. 154).

Post-trial motions were heard, and on July 27, 2010, the trial court entered a judgment in favor of the Plaintiffs for $25,000. (R. 33, R.E. 1). McComb Nursing and Rehab has appealed the Order of the trial court denying the Defendants' motion for directed verdict on the issue of

Plaintiffs' alleged failure to offer competent evidence through expert testimony on proximate causation.

**B. Statement of the Facts**

The instant case involves one very specific incident where the Plaintiffs' decedent, Robert Lee, was allowed to fall and break his hip due to the Defendants' abject failure to properly assess and implement a fall risk care plan for Mr. Lee that would have prevented him from falling.

Prior to admission to McComb Nursing and Rehab, Robert Lee, then 76 years old, had experienced a fall and was suffering from a mental decline, problems with gait and balance, and general weakness. (R. 3:185-86, 300, R.E. 23-24, 133). The prior fall had required a brief hospitalization at Southwest Regional Medical Center in McComb. (R. 3:185-86, 300, R.E. 23-24,133). Mr. Lee was further having issues with all activities of daily living such as bathing, showering, eating, ambulating, getting up and down, and toileting. (T. 3:188, R.E. 26). Mr. Lee's physician, in consultation with Mr. Lee and his family, decided that it would be in Mr. Lee's best interest to be admitted into McComb Nursing and Rehab for physical therapy and rehabilitation. (R. 3:185-86, 300-302, R.E. 23-24, 133-35). Mr. Lee was admitted to McComb Nursing and Rehab on January 25, 2005 (T. 3:191, R.E. 29).

Susan Lofton, a clinical nurse specialist in community health with a focus in geriatrics, was called to the stand as one of the Plaintiffs' two testifying expert witnesses. (T. 3:164-294, R.E. 2-132). Ms. Lofton was offered by the Plaintiffs as an expert in the field of nursing and was accepted by the trial court without objection by the Defendants. (T. 3:172, R.E. 10). Ms. Lofton first set forth the standard of care in regards to a nursing home's determination of whether a patient is at risk for falling upon admission to a nursing home. (T. 3:188-89, R.E. 26-27). Lofton then opined, upon her review of the chart and other relevant evidence, that Lee's intermittent confusion, history of falls, incontinence, problems with standing and walking, medications, hypertension, and history of stroke, would have placed him as a high risk for falls under nursing standards. (T.3:193-195, R.E. 31-33). Despite this, McComb Nursing and Rehab's "Fall Risk Assessment" sheet located in Mr. Lee's chart was completely blank. (T.3:191-92, R.E. 29-30). As Ms. Lofton explained, this failure

to assess was fatal to Mr. Lee's outcome as it prevented McComb from putting in place in Mr. Lee's care plan specific measures that would have prevented Mr. Lee from falling. (T. 3:196-201 R.E. 34-39). She further testified that this failure was a clear deviation in nursing standards of care. (T. 3:202, R.E. 40).

Ms. Lofton specifically testified as to the types of measures that McComb should have put in place – and could have been put in place had they properly assessed and care-planned for Mr. Lee – to prevent him from falling. (T. 3:195-96, 199, 202-04, R.E. 33-34, 37, 40-42). Ms. Lofton testified that Mr. Lee should have been consistently informed of the call light system; a bed alarm and chair "alarm" should have been put in place; padded mattresses should have been at the floor underneath his bed to lessen the impact of a fall; a consistent toileting schedule should have been instituted; he should have had assistance in getting up and down out of chairs so that he wouldn't have the urge to get up and move around on his own; and he should have had more frequent observation by nursing assistants to make sure his basic needs were being met. (T.3:195-96, 202-204, 280-81, 283, R.E. 33-34, 40-42, 118-19, 121).

Lofton then testified about Mr. Lee's fall that occurred in his room at McComb Nursing and Rehab just five days after his admission, in the late evening of January 30, 2005. (T. 3:207, R.E. 45). The nursing notes stated that the "patient was lying on the floor on left side [sic]. . . . he was okay and trying to get up to the hospital. He didn't know how to get — how he got on the floor." (T. 3:209-10, R.E. 47-48). Asked about Mr. Lee's comments cited in the nursing notes, Lofton stated "I think it shows that he was confused, he was trying to get to the hospital, which wouldn't make much sense." T. 3:210, R.E. 48). Asked whether the bed alarm was on at the time of the fall, Lofton responded that she saw no documentation that would support that in her review of the chart. (T. 3:213, R.E. 51). Lofton continued to explain that immediately post-fall only one "neuro-check" was completed and no head-to-toe examination or physical assessment of Mr. Lee's body was performed. (T.3:212, R.E. 50). It was not until the next morning that and early afternoon that it was discovered that Mr. Lee had a deformity of the left hip and a left hip fracture. (T. 3:216-17, R.E. 54-55).

Asked of her overall criticisms of that nursing home, Lofton stated the following:

> As I previously mentioned, I think there was a failure to perform comprehensive assessments when specific changes in condition occurred. For example, on 1/25/05 – and this has already been brought out, that the Fall Risk Assessment was not correctly completed on admission. Many of the parameters were just simply not addressed, they were left blank. **The information, therefore, was not gathered correctly to influence the plan of care, and Mr. Lee fell five days later breaking his hip.**

(T. 3:240-41, R.E. 78-79) (emphasis added).

The Plaintiffs called as their next witness a physician, Dr. Mark Meeks. (T. 4:326, R.E. 136). Dr. Meeks was qualified and accepted by the Court as an expert in the field of medicine without objection by the Defendants. (T. 4:331, R.E. 137). Dr. Meeks testified that upon review of the Mr. Lee's chart that Mr. Lee had suffered from a fall and sustained a hip fracture as a result, after which he was transferred to the local hospital for surgical repair of the hip fracture. (T.4:332-33, R.E. 138-39). Dr. Meeks further testified that as to nursing matters, he would defer to the nursing opinions of Susan Lofton, the Plaintiffs' nursing expert ("I'd have to defer to the nurse on what's expected of a nurse on initial day of assessment, from their perspective." (T.4:333-34, R.E. 139-40). Asked of his opinion as to what happened involving Mr. Lee's fractured hip, Dr. Meeks stated, with a reasonable degree of medical probability, that "Mr. Lee – it was about midnight – apparently fell out of the bed and fractured his hip at that time." (T.4:335, 349, R.E. 141, 144). He stated further that he thought it was "pretty clear from the records that he (Mr. Lee) fell from the bed on the night that he sustained a fracture and required surgical repair, and he suffered pain from that." (T.4:349, R.E. 144).

Defendants questioned Dr. Meeks on cross-examination as to his opinion on nursing care matters, specifically as to whether it was Dr. Meeks' opinion that the Defendants breached the standard of *nursing* care in their failure to assess Mr. Lee and implement fall risk procedures. (T.4: 344-45, R.E. 142-43). Dr. Meeks testified as follows:

> Q: So suffice it to say, based on your review of the medical

> records, you just couldn't find evidence to indicate that McComb breached the standard of care here?
>
> A: It was – there was some evidence – I won't say there's none – because I was concerned the fact [sic] that he had – decision-making was moderately impaired, and he had a history of dementia, that more steps weren't taken, but I was not personally comfortable enough with the evidence to say that it clearly was a breach, from my perspective.

(T.4:345, R.E. 143). On redirect, Dr. Meeks reiterated that he was not called by the Plaintiffs in this matter to give nursing opinions, but rather to opine on whether Mr. Lee's fall caused him injuries. (T.4:349, R.E. 144).

At the close of the Plaintiffs' case in chief, the Defendants moved for directed verdict, arguing that the Plaintiffs failed to provide expert testimony establishing that the Defendants' breach of the standard of nursing care was the proximate cause of the Plaintiffs' decedent's fall, injuries, surgery, and other damages. (T.4:370, R.E.145). Defendants argued, as they do here on appeal, that the Mississippi Supreme Court's ruling in *Vaughn v. Miss. Baptist Med. Cntr.*, 20 So. 3d 645, 652 (Miss. 2009), prevented the Plaintiffs' nursing expert from providing causation testimony. (T.4:370, R.E. 145). Therefore, argued the Defendants, because the Plaintiffs' physician expert did not opine that the Defendants' breached the standard of care, the Plaintiffs had failed to establish proximate causation between the breaches of standard of care, the fall, and the resulting injuries and surgery. (T.4:370-72, R.E. 145-47).

The lower court ruled as follows:

> There was considerable evidence about the standard, there was considerable testimony about allegation that the standard was breached, and there was considerable – there was testimony of why are these standards, why are these things there. Well they're there to keep people from falling, they're there to ensure patient safety. I think implicit in that was that – I got from the testimony is that there are inferences – that the testimony and the inferences flowing from that testimony are sufficient to have met the burden at this point, and that the motion is not well taken and should be overruled."

(T.4:377-78, R.E. 152-53). From this ruling, the Defendants appeal.

## SUMMARY OF THE ARGUMENT

Defendants argue in their appeal that the Plaintiffs failed to establish competent expert testimony to meet their prima facie case at trial, and specifically, that the Plaintiffs failed to establish proximate cause. Defendants urge this Court to extend its ruling in *Vaughn v. Miss. Baptist Med. Cntr.*, to prevent a qualified nurse expert from establishing that a breach in the nursing standard of care proximately caused a fall in the nursing home setting. 20 So.3d 645 (Miss. 2009). Plaintiffs urge this Court to uphold the ruling of the trial court, to wit: that Ms. Lofton was competent to testify that the Defendants' failure to assess and implement an appropriate nursing care plan for Mr. Lee proximately caused Mr. Lee to suffer from a fall in the nursing home setting. Dr. Meeks, a physician expert in this case, was not brought on by the Plaintiffs to testify as to nursing standards; rather, he was offered – and indeed testified – that Mr. Lee's fall, and the impact from the fall, caused Mr. Lee's hip fracture and resulting surgery. Regardless, any testimony by Dr. Meeks contrary to Ms. Lofton's testimony regarding nursing care standards was an issue for resolution by the trier of fact, and is not relevant to a directed verdict inquiry. Finally, Ms. Lofton was not required to use any "magic words" to establish her opinion on nursing causation, so long as the overall import of her testimony is apparent. The trial court recognized this in ruling that the inferences from the Plaintiffs' expert testimony as a whole were sufficient to meet the Plaintiffs' burden on proximate causation.

## ARGUMENT

### A. Standard of Review

For grant or denial of motion for directed verdict, the following has long been the law of this Court:

> In deciding whether a directed verdict ... should be granted, the trial judge is to look solely to the testimony on behalf of the party against whom a directed verdict is requested. [The trial judge] will take such testimony as true along with all reasonable inferences which can be drawn from that testimony which is favorable to that party, and, if it could support a verdict for that party, the directed verdict should not be given. If reasonable minds might differ as to this question, it becomes a jury issue.

*Solanki v. Ervin*, 21 So.3d 552, 556 (Miss. 2009)(quoting *White v. Thomason,* 310 So.2d 914, 916-17 (Miss.1975); *Williams v. Weeks,* 268 So.2d 340 (Miss.1972); *Jones v. Phillips,* 263 So.2d 759 (Miss.1972)). Further, "[a] directed verdict pursuant to M.R.C.P. 50(a) is not an appropriate means for the disposition of a case so long as questions of fact are raised in the proof at trial." *Id* at 556-57 (citing *Bank of Shaw v. Posey,* 573 So.2d 1355, 1361 (Miss.1990)). "When there is conflicting testimony, the jury determines the weight and worth of the witnesses' testimony and the credibility at trial." *Wallace v. Thorton*, 672 So.2d 724, 727 (Miss. 1996). Finally, the appellate courts must "consider the evidence in the light most favorable to the appellee." *Berry v. Ora L. Patten, et al.*, 51 So. 3d 934, 938 (Miss. 2010).

Applying the Court's long standing principles to the facts and evidence adduced in the instant case, this Court should find that the Plaintiffs met their burden in setting forth a prima facie case of nursing negligence.

**B. Plaintiffs' nurse expert was competent to testify that breaches in the nursing standard of care caused Mr. Lee's fall**

Defendants argue that Ms. Lofton was not competent under the law to testify that McComb Nursing and Rehab's breaches in standard of care caused Mr. Lee's fall. Appellant's Brief at 7-8. Plaintiffs would submit that the Defendants are asking this Court to extend its ruling in *Vaughn v. Miss. Baptist Med. Cntr.*, beyond its original and logical meaning. Defendants ask this Court to establish new law that would prevent a qualified nurse expert from establishing that a breach in of the nursing standard of care proximately caused a fall in the nursing home setting. Plaintiffs submit that Ms. Lofton, an eminently qualified nursing expert, was competent to testify that the

Defendants' breach of the standard of care in nursing standards caused Mr. Lee to fall.[1]

In *Vaughn*, the plaintiffs designated a nurse witness to testify that deviations in the nursing standard of care were the proximate cause of the Ms. Vaughn's staph infection. *Id* at 651. Further, the *Vaughn* nurse was designated to testify as to the timing of the onset of the staph infection, a *medical* diagnosis that contradicted the testimony of all physicians designated in the case. *Id.* This Court correctly ruled, consistent with prior case law, that nurses may not testify as to "diagnostic impressions, because nurses are not qualified to make medical diagnoses or attest to the causes of illness." *Id.* This Court further held that "nurses cannot testify as to *medical causation.*" *Id* (emphasis added).

In the present case, the Plaintiffs designated Ms. Lofton to testify and give her opinions on the nursing standard of care relating to fall prevention, McComb Nursing and Rehab's breach of those standards, and the connection between those breaches and Mr. Lee's fall. Such *nursing causation* is inapposite to the facts and law enunciated in *Vaughn*, where the plaintiffs offered a nurse expert to testify as to the medical origin – the causal connection – of a staph infection, and the diagnosis thereof. *Id.* Contrasted to the instant case, testimony from a nurse expert regarding the causal connection between the failure to adhere to nursing standards of care and an elderly person's fall in the nursing home setting are clearly within a nurse's area of expertise. In fact, it is difficult to comprehend why or how a physician would have more experience, knowledge, or training in this area to offer a more credible and authoritative opinion than that of a nurse who has devoted the majority of her nursing career to caring for elderly patients in the long-term care setting. (T. 3:165-172, R.E. 3-10). An analysis of *medical causation* such as that discussed in *Vaughn* simply has no

[1]Note that the Plaintiffs/Appellees do not argue that Ms. Lofton was competent to testify regarding the causal nexus between the fall and the *injuries and damages* caused by the fall. Plaintiffs brought on physician expert, Dr. Mark Meeks, to testify in that regard.

application the present case. Contrary to the Defendants' assertions otherwise, Ms. Lofton was competent to testify that McComb Nursing and Rehab's breaches in the nursing standard of care proximately caused Mr. Lee's fall.

**C. Ms. Lofton did, in fact, offer testimony regarding causation**

Defendants likewise argue that Ms. Lofton did not actually testify that McComb Nursing and Rehab's breaches in the standard of care proximately caused Mr. Lee to fall. Appellant's Brief at 8-9. To the contrary, as recognized by the lower court, Ms. Lofton's testimony, taken as a whole, with all reasonable inferences drawn therefrom, established her expert opinion that McComb Nursing and Rehab's breaches in the standard of care proximately caused Mr. Lee's fall. (T. 4:377-78, R.E. 152-53).

After setting forth the applicable nursing standard of care regarding fall risk assessment in a nursing home setting, Ms. Lofton opined that Mr.Lee's intermittent confusion, history of falls, incontinence, problems with standing and walking, medications, hypertension, and history of stroke, placed Mr. Lee as a high risk for falls under nursing standards. (T. 3:193-195, R.E. 31-33). Despite this, McComb Nursing and Rehab's "Fall Risk Assessment" sheet located in Mr. Lee's chart was not competed at all. (T. 191-92, R.E. 29-30). This failure, opined Ms. Lofton, prevented McComb Nursing and Rehab from putting in place a care plan designed to prevent a nursing home resident, such as Mr. Lee, from falling. (T. 3:196-201, R.E. 34-39).

Mr. Lofton then testified as to the types of measures that McComb should have put in place to prevent Mr. Lee from falling. (T. 3:195-96, 199, 202-04, R.E. 33-34, 37, 40-42). Ms. Lofton stated that Mr. Lee should have been consistently informed of the call light system; a bed alarm and chair "alarm" should have been put in place; padded mattresses should have been at the floor underneath his bed to lessen the impact of a fall; a consistent toileting schedule should have been

instituted; he should have had assistance in getting up and down so that he wouldn't have the urge to get up and move around on his own; and he should have had more frequent observation by nursing assistants to make sure his basic needs were being met. (T. 3:195-96, 202-204, 280-81, 283 R.E. 33-34, 40-42. 118-19).

Lofton then testified specifically about Mr. Lee's fall that occurred in his room at McComb Nursing and Rehab just five days after his admission in the late evening of January 30, 2005. (T. 3:207, R.E. 45). Asked about Mr. Lee's comment that he was "trying to get up to go to the hospital," Lofton stated "I think it shows that he was confused, he was trying to get to the hospital, which wouldn't make much sense." T. 3:209-10, R.E. 47-48). Asked whether the bed alarm was on at the time of the fall – a nursing standard Ms. Lofton specifically articulated – Lofton testified that she saw no documentation that would support that in her review of the chart. (T. 3:213, R.E. 51). In this testimony, Lofton was clearly articulating the causal connection between Mr. Lee's intermittent confusion and lack of a bed alarm and his fall.

Asked of her overall criticisms of that nursing home, Lofton stated the following:

> As I previously mentioned, I think there was a failure to perform comprehensive assessments when specific changes in condition occurred. For example, on 1/25/05 – and this has already been brought out, that the Fall Risk Assessment was not correctly completed on admission. Many of the parameters were just simply not addressed, they were left blank. **The information, therefore, was not gathered correctly to influence the plan of care, and Mr. Lee fell five days later breaking his hip.**

(T. 3:240-41, R.E. 78-79 ) (emphasis added).

Ms. Lofton clearly articulated the nursing standard relating to fall prevention; the Defendants' failure to adhere to those standards; the types of steps that could have been taken – but were not – to prevent Ms. Lee from falling; and the causal connection between those failures and Mr. Lee's fall. This Court has previously stated on numerous occasions that under Mississippi law,

"[T]here is no requirement that an expert use magical language in his testimony, as long as the import of the testimony is apparent." *Vandlandingham v. Patton*, 35 So.3d 1242, 1249, ¶ 37 (Miss. Ct. App. 2010); *West v. Sanders Clinic for Women, P.A.*, 661 So.2d 714, 720 (Miss. 1995); *Kelly v Frederic*, 573 So.2d 1385, 1389 (Miss. 1990). Again, the trial court correctly ruled that the expert testimony and the inferences flowing from that testimony were sufficient to withstand the Defendants' motion for directed verdict on proximate causation. (T.4:377-78, R.E. 152-53).

**D. Dr. Mark Meeks' testimony established the causal connection between Mr. Lee's fall and the resulting injury**

Plaintiffs brought on Dr. Mark Meeks for the purpose of testifying that Mr. Lee's fall caused him injuries, specifically, a broken hip and subsequent hip surgery. (T. 4: 326, R.E. 136). Dr. Meeks testified that, with a reasonable degree of medical probability, "Mr. Lee – it was about midnight – apparently fell out of the bed and fractured his hip at that time." (T.4:335, 349, R.E. 141, 144). He stated further that he thought it was "pretty clear from the records that he (Mr. Lee) fell from the bed on the night that he sustained a fracture and required surgical repair, and he suffered pain from that." (T.4:349, R.E. 34-40). Plaintiffs therefore established, with medical expert testimony, the origin and cause of Mr. Lee's damages – a hip fracture and a resulting surgery.

Defendants wish to confound the issues, arguing that because Dr. Meeks could not opine with a reasonable degree of medical certainty that the Defendants breached the standards of *nursing* care, that the Plaintiffs failed to establish causation. Appellant Brief at 8. However, it is submitted by the Plaintiffs that any testimony by Dr. Meeks contrary to that of Ms. Lofton in regards to the breach of standards of nursing care is not relevant to an analysis of whether the Plaintiffs met their burden of proof sufficient to establish a prima facie case. "When there is conflicting testimony, the jury determines the weight and worth of the witnesses' testimony and the credibility at trial."

*Wallace v. Thorton*, 672 So.2d 724, 727 (Miss. 1996). Ms. Lofton opined that the Defendants breached the standard of nursing care in failing to assess and implement a proper fall risk care plan. (T. 3:196-202, R.E. ). Any testimony to the contrary is not relevant to the instant directed verdict inquiry, but rather was a question of fact to be resolved by the jury.

## CONCLUSION

Plaintiffs brought on a nursing expert and a physician expert to establish the elements of their prima facie case. Susan Lofton articulated the applicable nursing standard of care relating to elderly nursing home patients at risk of falling, the Defendants' breach thereof, and the causal connection between the breach and Mr. Lee's fall. Consistent with the lower court's ruling, *Vaughn* should not be extended beyond its present meaning that a nurse may not testify as to medical causation. The connection between the breaches of nursing standards of care and Mr. Lee's fall require neither medical diagnoses nor an analysis of the etiology or cause of a disease or illness, such as was the case in *Vaughn*. Further, Ms. Lofton was not required to use any "magic words" to establish for the jury her opinion on the causal connection between the Defendants' breaches and Mr. Lee's fall. Dr. Meeks testified that Mr. Lee's fall caused his hip fracture and resulting surgery. Dr. Meeks' testimony regarding his opinion on the breach of the standards of nursing care is irrelevant the inquiry of whether the Plaintiffs put on sufficient proof to meet their burden of a prima facie case, as Ms. Lofton provided that opinion to establish the breach element of the Plaintiffs' claim. The trial court correctly ruled that the testimony put on by the Plaintiffs was sufficient to carry their burden of evidence for a prima facie case of nursing negligence. This Court should, therefore, affirm the ruling of the lower court.

Respectfully submitted, this the 10th day of June, 2011

**MASUMI LEE, INDIVIDUALLY, AND FOR AND ON BEHALF OF THE ESTATE OF ROBERT E. LEE, DECEASED**

By _____
W. Andrew Neely

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I, W. Andrew Neely, do hereby certify that I have this date served via U.S. mail, postage prepaid, a true and correct copy of the above and foregoing to:

Honorable Michael M. Taylor
Pike County Circuit Judge
Post Office Box 1350
Brookhaven, MS 39602

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This the 10th day of June, 2011.

W. Andrew Neely