

00-1495-CJ
RICHARD J. DAYKON et ux -vs- EDWARD J. MCVAY, MD et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON, and
MARY DAYKON, his wife,

Plaintiffs,

vs.

EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 00-1495-CJ

ISSUE NO.:

Praecept for Writ of Summons/
Jury Trial Demanded

Civil Action/Medical-Hospital Negligence

Filed on behalf of
Plaintiff

Counsel of record for this
Party:

John P. Gismondi, Esquire
PA I. D. # 31200

GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200

FILED

NOV 30 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

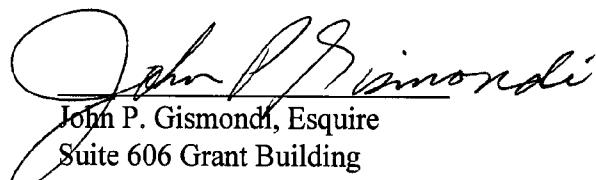
RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.) No.
EDWARD J. McVAY, M.D., and) JURY TRIAL DEMANDED
DuBOIS REGIONAL MEDICAL CENTER,)
Defendants.)

PRAECIPE FOR WRIT OF SUMMONS

TO: PROTHONOTARY

Kindly issue a Writ of Summons in the above-captioned case in excess of Twenty
Thousand (\$20,000.00) Dollars.

GISMONDI & ASSOCIATES



John P. Gismondi, Esquire
Suite 606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200
Attorney for Plaintiffs

FILED

NOV 3 0 2000
Kris W. Domondi
William A. Shaw
Prothonotary
P.O. #80,000

2 wits to Sheriff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

SUMMONS

RICHARD J. DAYKON, ETAL.

VS.

NO.: 2000-01495-CD

EDWARD J. MCVAY MD, ETAL.

**TO: EDWARD J. MCVAY MD
DUBOIS REGIONAL MEDICAL CENTER**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 11/30/2000



William A. Shaw
Prothonotary

Issuing Attorney:

John P. Gismondi
Suite 606, Grant Bldg.
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

ISSUE:
PRAECIPE FOR APPEARANCE

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Defendants

Counsel of Record for This Party:
John L. McIntyre, Esquire
PA I.D. #28015

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 12TH DAY OF DECEMBER, 2000.

Atorneys for Named Defendant

FILED

DEC 13 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

..... No. 2000 - 1495 CD

Plaintiffs

..... vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

..... Defendants

..... JURY TRIAL DEMANDED

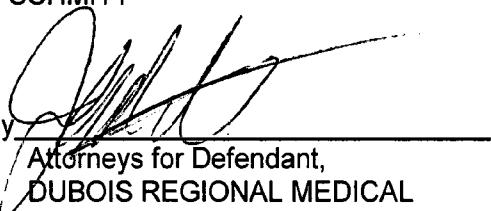
PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter my Appearance as counsel of record for **Defendant, DUBOIS
REGIONAL MEDICAL CENTER**, in the above-captioned action.

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

By



Attorneys for Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

John L. McIntyre, Esquire
PA I.D. #28015
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

DEC 13 2000
MIA:dk
William A. Shaw
Prothonotary

44

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

: No. 2000 - 1495 CD

Plaintiffs

: ISSUE:
PRAECIPE FOR RULE TO FILE
COMPLAINT

vs.

: Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

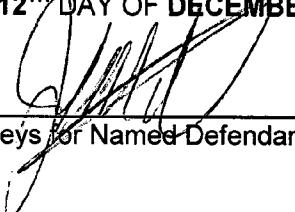
: Counsel of Record for This Party:

: John L. McIntyre, Esquire
PA I.D. #28015

Defendants

: PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 12TH DAY OF DECEMBER, 2000.



Attorneys for Named Defendant

FILED

DEC 13 2000

William A. Shaw
Prothonotary

FILED

DEC 13 2000

Michigan Rule to affy

William A. Shaw

Prothonotary

ES
McIntyre

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

Richard J. Daykon
Mary Daykon

Vs.
Edward J. McVay MD
DuBois Regional Medical Center

Case No. #2000-01495-CD

RULE TO FILE COMPLAINT

TO: Richard J. Daykon and Mary Daykon

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: December 13, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

ISSUE:
CERTIFICATE OF SERVICE OF RULE
TO FILE COMPLAINT

vs.

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

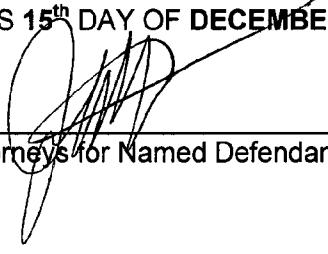
Counsel of Record for This Party:

John L. McIntyre, Esquire
PA I.D. #28015

Defendants

**PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT**
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 15th DAY OF DECEMBER, 2000.



Attorneys for Named Defendant

FILED

DEC 18 2000
11:27 pm
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife, : No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT

TO: PROTHONOTARY

You are hereby notified that on the 15th day of DECEMBER, 2000, Defendant,
DUBOIS REGIONAL MEDICAL CENTER, served a RULE upon the Plaintiffs, by mailing
the original of same via First Class Mail, postage prepaid, addressed to the plaintiffs'
counsel:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15219

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

Attorneys for Defendant,
DUBOIS REGIONAL MEDICAL CENTER

John L. McIntyre, Esquire
PA I.D. #28015
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10454

DAYKON, RICHARD J. et al

00-1495-CD

VS.

MCVAY, EDWARD J. MD, et al

SUMMONS

SHERIFF RETURNS

**NOW DECEMBER 6, 2000 AT 9:44 AM EST SERVED THE WITHIN SUMMONS ON
DUBOIS REGIONAL MEDICAL CENTER, DEFENDANT AT EMPLOYMENT,
100 HOSPITAL DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO JUDY STOTTISH, PIC, A TRUE AND ATTESTED COPY OF THE
ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: SYNDER**

**NOW DECEMBER 6, 2000 AT 9:44 AM EST SERVED THE WITHIN SUMMONS ON
EDWARD J. McVAY, MD, DEFENDANT AT EMPLOYMENT, DUBOIS OCCUPATIONAL
HEALTH CENTER, 100 HOSPITAL DRIVE, DUBOIS, CLEARFIELD COUNTY,
PENNSYLVANIA BY HANDING TO JUDY STOTTISH, ADMIN. ASST. A TRUE AND
ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE
CONTENTS THEREOF.**

SERVED BY: SYNDER

Return Costs

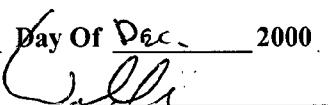
Cost	Description
33.88	SHFF. HAWKINS PD. BY: ATTY.
20.00	SURCHARGE PD. BY: ATTY.

FILED

DEC 21 2000
01304
William A. Shaw
Prothonotary
KCB

Sworn to Before Me This

20th Day Of Dec. 2000


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,


Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

VS.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

**PRAECIPE FOR RULE TO FILE
COMPLAINT**

Filed on Behalf of Edward J. McVay &
DuBois Regional Medical Center,
Defendants

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
120 Lakemont Park Blvd.
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

FILED

DEC 28 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON,

Plaintiffs,

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2000-01495

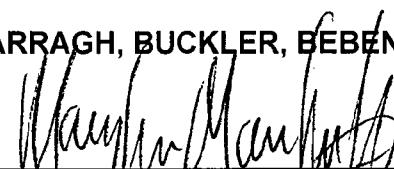
JURY TRIAL DEMANDED

PRAECIPE FOR RULE TO FILE COMPLAINT

TO THE PROTHONOTARY:

Please enter a Rule upon the Plaintiffs, Richard Daykon and Mary Daykon, to file a Complaint in the above-captioned matter within twenty (20) days of the date of service of said Rule.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendants,

Edward J. McVay & DuBois Regional

Medical Center

120 Lakemont Park Boulevard

Altoona, PA 16602

(814) 941-4600

I.D. #62175

FILED

DEC 28 2000
m (1.30) Rule to attorney
William A. Shaw
Prothonotary

600

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COPY

RICHARD DAYKON & MARY DAYKON,

CIVIL DIVISION

Plaintiffs,

No. 2000-01495

vs.

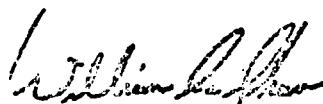
EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

JURY TRIAL DEMANDED

Defendants.

R U L E

AND NOW, this 28th day of December, 2000, upon
consideration of the foregoing Praeclipe and on Motion of Mary Lou Maierhofer,
Esquire, Counsel for the Defendants, Edward J. McVay and DuBois Regional Medical
Center, a Rule is granted on the Plaintiff to file her Complaint Sec. Leg within twenty
(20) days of service of said Rule, or Judgment of Non Pros may be entered.



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

**CERTIFICATE OF SERVICE OF RULE
TO FILE COMPLAINT**

Filed on Behalf of Defendant, Edward J.
McVay

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
120 Lakemont Park Blvd.
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

FILED

JAN 03 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants. JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT

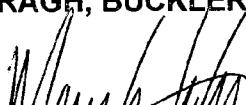
TO THE PROTHONOTARY:

You are hereby notified that on the **2nd** day of **January, 2001**, Defendant, Edward J. McVay, by and through his Counsel, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, served a Rule upon Plaintiffs, Richard Daykon and Mary Daykon, by mailing the original of same first-class mail, postage prepaid, addressed to Plaintiff's Counsel as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant,
Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #62175

FILED

JAN 03 2001

1/19/00
William A. Shaw

Prothonotary

4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Defendants.

Filed on Behalf of Defendant, Edward J.
McVay

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

WALTER FREDRICK WALL, ESQUIRE
PA I.D. #23657

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
120 Lakemont Park Blvd.
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

FILED

FEB 01 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

VS.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

JURY TRIAL DEMANDED

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of WALTER FREDRICK WALL, ESQUIRE and MARY LOU MAIERHOFER, ESQUIRE, of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC as Counsel of Record on behalf of Defendant, Edward J. McVay, in the above-captioned matter.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK

BY:

WALTER FREDRICK WALL, ESQUIRE
MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #23657
I.D. #62175

DATE: 1.31.01

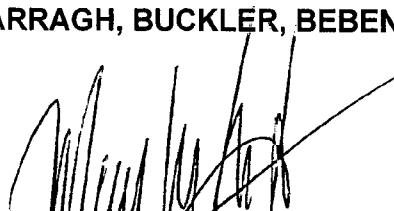
CERTIFICATE OF SERVICE

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Praeclipe for Entry of Appearance on behalf of Defendant, Edward J. McVay, was served this **31st day of January, 2001**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

WALTER FREDRICK WALL, ESQUIRE
MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #23657
I.D. #62175

FILED

FEB 01 2001

01/30/01 No
William A. Shanahan
Prosecutor

CC

ED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants. JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, WALTER F. WALL, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the 15th day of **March, 2001**, a true and correct copy of the Request for Production of Documents Directed to Plaintiffs on behalf of Defendant, Edward J. McVay, was served upon Counsel for Plaintiffs, with a copy to all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:


WALTER FREDRICK WALL, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #23657

FILED

MAR 16 2001

William A. Shaw
Prothonotary

FILED

MAR 16 2001
13:00 / NOCC
William A. Shaw
Prothonotary
C
RSP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

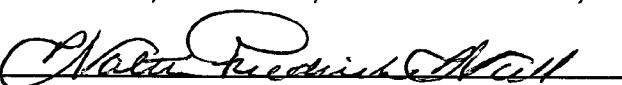
I, WALTER F. WALL, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the 15th day of March, 2001, a true and correct copy of the Interrogatories Directed to Plaintiffs on behalf of Defendant, Edward J. McVay, was served upon Counsel for Plaintiffs, with a copy to all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:


WALTER FREDRICK WALL, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #23657

FILED

MAR 16 2001

William A. Shaw
Prothonotary

FILED

MAR 16 2001
M 12 80 1100
William A. Shaw
Prothonotary
C.R.
H.R.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON, and
MARY DAYKON, his wife,

Plaintiffs,
vs.

EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 00-1495-CD

ISSUE NO.:

COMPLAINT/
Jury Trial Demanded

Civil Action/Medical-Hospital Negligence

Filed on behalf of
Plaintiff

Counsel of record for this
Party:

John P. Gismondi, Esquire
PA I. D. # 31200

GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200

FILED

MAR 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
)
Plaintiffs,)) No. 00-1495 CD
vs.)) JURY TRIAL DEMANDED
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,)
)
Defendants.)

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN
GET LEGAL HELP.**

**David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 5982**

No. 00-1495 CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.) No. 00-1495 CD
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,) JURY TRIAL DEMANDED
Defendants.)

COMPLAINT

AND NOW come the plaintiffs, Richard and Mary Daykon, by and through their attorney John P. Gismondi and Gismondi & Associates and files this action based upon the following:

1. The plaintiffs are husband and wife individuals who reside within the Commonwealth of Pennsylvania.
2. The defendant Edward J. McVay is a physician licensed to practice medicine within the Commonwealth of Pennsylvania who regularly renders medical services within Clearfield County.

3. The defendant DuBois Regional Medical Center is a non-profit corporation which operates a general medical facility within Clearfield County.

4. On or about December 4, 1998, plaintiff Richard Daykon was seen in the emergency room at DuBois Regional Medical Center, after having fallen at work and injured his spine. He was seen and treated by an agent of the defendant, Dr. G. F. Palmer. At no time during said emergency room visit was the plaintiff diagnosed with a spinal cord injury due to cervical fracture, instability or compression. Rather, the plaintiff was diagnosed with a sprain of the neck.

5. Following his discharge from the emergency room, the plaintiff Richard Daykon came under the care of defendant Dr. McVay between December 7, 1998, and December 21, 1998. At no time while he was under the care and treatment of Dr. McVay did said defendant diagnose plaintiff with a spinal cord injury caused by cervical fracture, instability or compression.

6. On December 21, 1998, the plaintiff Richard Daykon was seen by orthopedic surgeon, Dr. David R. Kraus, of Pittsburgh, PA, who immediately diagnosed the plaintiff with a cervical spinal cord injury. Dr. Kraus directly admitted the plaintiff to St. Margaret's Hospital in Pittsburgh and performed emergent surgery in order to relieve spinal cord compression.

7. At all times while the plaintiff Richard Daykon was under the care of the defendants, he was suffering from cervical spinal cord compression which went undiagnosed and untreated by the defendants.

8. As a result of the aforesaid delay in diagnosing and treating the plaintiff's cervical spinal cord compression, the plaintiff has been left with permanent sequella of the spinal cord injury including, but not limited, impairment of his upper extremity function, impairment of his lower extremity function, ataxic gait, and sexual dysfunction.

9. The aforesaid permanent neurologic injury was caused by the negligence of the defendant DuBois Regional Medical Center, acting through its actual or ostensible agents, in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,

- d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.
10. In the alternative, and in addition to the above, the plaintiff's permanent neurologic injury was caused by the negligence of Dr. McVay in the following particulars:
 - a. In failing to diagnose the plaintiff's cervical spinal cord injury;
 - b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
 - c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,
 - d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.
11. As a result of the individual and/or combined negligence of the defendants, the plaintiff Richard Daykon claims damages for the following items of loss:
 - a. He has incurred in the past, and will incur in the future, substantial

medical expense;

- b. He has sustained in the past, and will sustain in the future, substantial economic loss;
- c. He has experienced in the past, and will experience in the future, substantial pain, suffering and inconvenience;
- d. He has experienced in the past, and will experience in the future, the loss of certain of the ordinary pleasures of life;
- e. He has experienced in the past, and will experience in the future, substantial bodily disfigurement.

WHEREFORE, the plaintiffs demand judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT II -- Loss of Consortium

12. Each of the above paragraphs is incorporated herein by reference.
13. As a result of the injuries to her husband, the wife-plaintiff, Mary Daykon, has lost the society, comfort and services of her spouse.

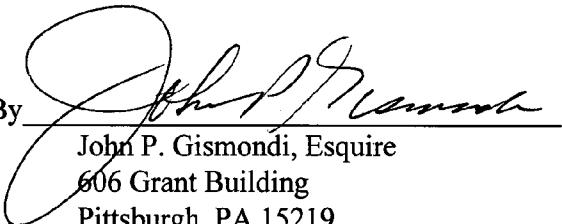
WHEREFORE, the wife-plaintiff, Mary Daykon, demands judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars.

JURY TRIAL DEMANDED.

Respectfully submitted,

GISMONDI & ASSOCIATES, P.C.

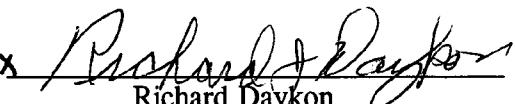
By



John P. Gismondi, Esquire
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ~~ALLEGHENY~~ Jefferson)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared, RICHARD DAYKON who, being duly sworn according to law, deposes and says that the averments of fact contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

x 
Richard Daykon

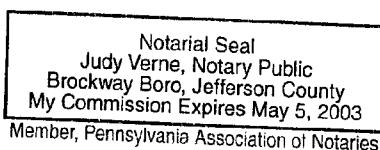
SWORN TO and subscribed before

me this 9th day of
March, 2001.

Judy Verne

Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 7th day of March, 2001, by U.S. Mail, First Class, postage pre-paid to the following:

John L. McIntyre, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Hospital

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
Counsel for Dr. Edward McVay


John P. Gismondi
John P. Gismondi, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

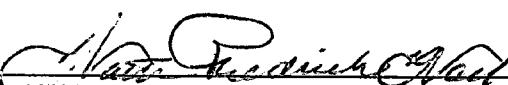
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants :

NOTICE TO PLEAD

In Accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to plead to the within ANSWER and NEW MATTER within twenty (20) days from service hereof or a Default Judgment may be entered against you.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 

WALTER FREDRICK WALL, ESQUIRE

Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657

FILED

MAR 26 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, Plaintiffs, vs. EDWARD J. MCVAY M. D. and DUBOIS REGIONAL MEDICAL CENTER, Defendants.	CIVIL DIVISION No. 2000-01495 JURY TRIAL DEMANDED
---	---

ANSWER AND NEW MATTER

NOW comes the Defendant, EDWARD J. McVAY, M.D. by and through his Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files this Answer and New Matter to Plaintiffs' Complaint of which the following is a statement:

1. The identity of the Plaintiffs is admitted. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.
2. Admitted.
3. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant.
4. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant. To the extent further response is deemed necessary, this Defendant denies same in that after reasonable investigation, this Defendant lacks

information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

5. Admitted and denied. It is admitted that Plaintiff, Richard Daykon came under the care of this Defendant and that the Plaintiff was seen on December 7, 1998, and on other occasions not set forth in Plaintiffs' Complaint. However, this Defendant did not see the patient on December 21, 1998. It is further admitted that this Defendant did not diagnose Plaintiff at any time with a spinal cord injury due to cervical fracture, or instability. It is denied, however, that this Defendant failed to diagnose the Plaintiff with suffering from spinal cord injury as a result of compression and on the contrary, such diagnosis was rendered on December 16, 1998, as a result of a review of MRI film reports previously ordered by this Defendant.

6. It is admitted that this Defendant referred the Plaintiff, Richard Daykon to Dr. David R. Kraus and scheduled an appointment for the Plaintiff to be seen by Dr. Kraus on December 21, 1998. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

7. Denied and on the contrary it is averred that at all times relevant, this Defendant provided proper medical treatment within the standard of care under the facts and circumstances therein. By way of further response, the diagnosis of cervical spinal cord compression was rendered timely and within the standard of care.

8. It is denied that any injuries and/or damages suffered by the Plaintiff was a result of a delay in diagnosis by this Defendant and on the contrary, this Defendant

rendered proper medical treatment in accordance with the applicable standard of care under the circumstances presented.

9. Neither admitted nor denied in that said allegations are directed to a party other than this answering Defendant.

10. Denied and on the contrary it is averred that this Defendant provided proper medical treatment in accordance with the applicable standard of care under the facts and circumstances presented.

11. All allegations of negligence upon this Defendant are denied as conclusions of law and for reasons set forth above and hereinafter. All allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

COUNT II – LOSS OF CONSORTIUM

12. The allegations set forth above are incorporated herein by reference thereto as if same were set forth at length.

13. To the extent this allegation alleges negligence and/or liability upon this Defendant, same are denied as conclusions of law and for reasons set forth above and hereinafter.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

NEW MATTER

14. Plaintiffs' claims against this Defendant are barred in that any and all injuries suffered by the Plaintiff are the direct, sole and proximate result of actions or inactions of others over whom this Defendant had neither the ability nor sought to control.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays this Plaintiffs' Complaint be dismissed.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657

VERIFICATION

I, EDWARD J. McVAY, M.D., do hereby verify that I have read the foregoing ANSWER AND NEW MATTER. The statements therein are true and correct to the best of my knowledge as to part, and based upon information and belief as to the rest.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.


Edward J. McVay, M.D.

DATE: 03/21/2001

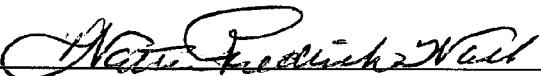
CERTIFICATE OF SERVICE

I, Walter Fredrick Wall, Esquire, Counsel for Defendant, Edward J. McVay, M.D. hereby certify that on the 23rd day of March, 2001, a true and correct copy of the Answer and New Matter filed on behalf of this Defendant was served upon Counsel of record by U.S. Mail, postage prepaid, as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600

FILED

MAR 26 2001
11:07 AM
SAC
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

ISSUE:
PRAECIPE FOR WRIT OF SUMMONS
TO JOIN ADDITIONAL DEFENDANT

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

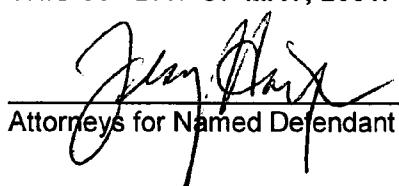
Defendants

Counsel of Record for This Party:

Frank J. Hartye, Esquire
PA I.D. #25568

**PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT**
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 11th DAY OF MAY, 2001.



Attorneys for Named Defendant

FILED

MAY 18 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

JURY TRIAL DEMANDED

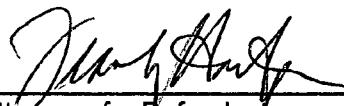
**PRAECIPE FOR WRIT OF SUMMONS
TO JOIN ADDITIONAL DEFENDANT**

TO: PROTHONOTARY

Kindly issue a Writ of Summons to Join Additional Defendant in the above-captioned case against GEORGE F. PALMER, JR., D.O., c/o DuBois Regional Medical Center, 100 Hospital Avenue, DuBois, PA 15801 on behalf of Defendant, DUBOIS REGIONAL MEDICAL CENTER.

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

By


Atorneys for Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

2001
5

FILED *cc shff*
m1332481
MAY 18 2001 Writ issued to
William A. Shaw *shff*
Prothonotary *EAS*

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

**Richard J. Daykon
Mary Daykon**

Vs.

NO.: 2000-01495-CD

**Edward J. McVay MD
DuBois Regional Medical Center**

Vs.

George F. Palmer D.O. Jr.

**TO: George F. Palmer, Jr., D.O.
c/o DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801**

To the above named Additional Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 05/181/2001

William A. Shaw
Prothonotary

Issuing Attorney:

Frank J. Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

MOTION TO COMPEL

Filed on Behalf of Defendant, Edward J.
McVay

Counsel of Record for this Party:

**MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175**

WALTER FREDRICK WALL, ESQUIRE
PA I.D. #23657

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.
Firm No. 198
120 Lakemont Park Blvd.
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

W.A. SHAW

Mar 31 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON,	CIVIL DIVISION
Plaintiffs,	No. 2000-01495
vs.	
EDWARD J. MCVAY M. D. and	
DUBOIS REGIONAL MEDICAL	
CENTER,	JURY TRIAL DEMANDED
Defendants.	

ORDER OF COURT

NOW this _____ day of _____, 2001, upon consideration of the Motion to Compel filed by Defendant, Edward J. McVay, M.D., and after hearing upon the same, the Court does hereby Order, Direct and Decree that Plaintiffs produce within fifteen (15) days the Answers to Interrogatories and Response to the Request for Production of Documents served by this Defendant.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and
DUBOIS REGIONAL MEDICAL
CENTER, JURY TRIAL DEMANDED

Defendants.

R U L E

NOW THIS 6 day of June, 2001, a Rule is hereby issued upon
Plaintiffs, Richard Daykon and Mary Daykon, to show cause, if any there should be,
why the Motion to Compel of Defendant, Edward J. McVay, M.D., should not be
granted.

Said Rule Returnable the 2nd day of July, 2001, at 2:00 o'clock,
PM, Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.



FILED

JUN 07 2001

William A. Shaw
Prothonotary

FILED

JUN 07 2001
MILLER, CATHY WELCH
William A. Shaw
Prothonotary
ES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and
DUBOIS REGIONAL MEDICAL
CENTER, JURY TRIAL DEMANDED

Defendants.

MOTION TO COMPEL

NOW comes the Defendant, EDWARD J. McVAY, M.D. by and through his
Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files this
Motion to Compel of which the following is a statement:

1. Plaintiffs commenced this litigation by filing a Writ of Summons on November 30, 2000.
2. Plaintiffs thereafter filed a Complaint on or about March 16, 2001.
3. On or about March 15, 2001 this Defendant served upon Plaintiffs a Request for Production of Documents and Interrogatories.
4. As of the date of the filing of this Motion to Compel, Plaintiffs have failed to respond to this discovery pursuant to the Pennsylvania Rules of Civil Procedure.
5. Defendant is extremely prejudiced by the Plaintiffs' failure to respond to the outstanding discovery.

WHEREFORE, Defendant, EDWARD J. McVAY, M.D., prays this Honorable Court enter an Order compelling the Plaintiffs to produce within fifteen days the Answers to the Interrogatories and Response to the Request for Production of Documents served by this Defendant.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By _____

MARY LOU MAIERHOFER, ESQUIRE, ID# 62175
WALTER FREDRICK WALL, ESQUIRE, ID#23657
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and JURY TRIAL DEMANDED
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

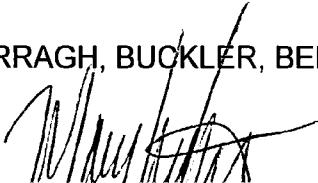
CERTIFICATE OF SERVICE

I, Mary Lou Maierhofer, Esquire, Counsel for Defendant, Edward J. McVay, M.D. hereby certify that on the **30th day of May, 2001**, a true and correct copy of the Motion to Compel, filed on behalf of this Defendant was served upon Counsel of record by U.S. Mail, postage prepaid, as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 

MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
I.D.# 62175

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11024

DAYKON, RICHARD J. & MARY

00-1495-CD

VS.

MCVAY, EDWARD, MD; DUBOIS REGIONAL MEDICAL CENTER -VS- GEOR

WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW MAY 25, 2001 AT 11:15 AM DST SERVED THE WITHIN WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT ON GEORGE F. PALMER, JR., D.O., DEFENDANT, AT EMPLOYMENT, DUBOIS REGIONAL MEDICAL CENTER, 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARGE KENNIS, RISK MANAGEMENT COORDINATOR, A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

Return Costs

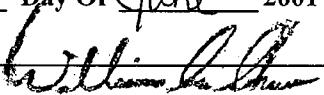
Cost	Description
33.22	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

JUN 05 2001
0110-23am
William A. Shaw
Prothonotary

Sworn to Before Me This

5th Day Of June 2001



WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,


Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and JURY TRIAL DEMANDED
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CERTIFICATE OF SERVICE

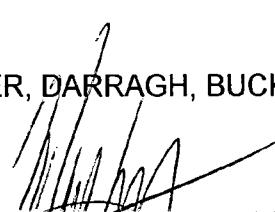
I, Mary Lou Maierhofer, Esquire, Counsel for Defendant, Edward J. McVay, M.D. hereby certify that on the 8th day of June, 2001, a true and correct copy of the Rule to Show Cause why the Motion to Compel of Defendant, Edward J. McVay, M.D. should not be granted, scheduled for hearing on July 2, 2001 at 2:00 p.m., Court Room One of the Clearfield County Courthouse, was served upon Counsel of record by U.S. Mail, postage prepaid, as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By _____


MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 62175

FILED

JUN 11 2001

William A. Stew
Prothonotary

FILED
JUN 1 35 2001
William A. ~~Shay~~
Prothonotary

W
cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

VS.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants. JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, WALTER F. WALL, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the 12th day of July, 2001, a true and correct copy of the Answers to Interrogatories Directed to Dr. McVay on behalf of Defendant, Edward J. McVay, was served upon Counsel for Plaintiffs, with a copy to all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

Walter F. Wall
WALTER FREDRICK WALL, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #23657

FILED

13 2001

William A. Shaw
Prothonotary

FILED

13 2001
111
LJ M 144 no cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON
and MARY DAYKON,

Plaintiffs,

CIVIL DIVISION

No: 2000-01495-CD

vs.

EDWARD J. McVAY, M.D.;
DuBOIS REGIONAL
MEDICAL CENTER,

Defendants,

PRAECIPE FOR APPEARANCE

Civil Action/Medical-Hospital Negligence

vs.

GEORGE F. PALMER, JR., D.O.,

JURY TRIAL DEMANDED

Additional
Defendant.

Filed on Behalf of Additional Defendant:
GEORGE F. PALMER, JR., D.O.

Counsel of Record for This Party:

DEBORAH D. OLSZEWSKI, ESQUIRE
Pa. I.D. No.: 30691

OLSZEWSKI & QUINLIN, P.C.
Firm No.: 512

Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, Pennsylvania 15222-2302

(412) 644-0200

FILED

JUL 16 2001

William A. Shaw
Prothonotary

PRAECIPE FOR APPEARANCE

TO: William A. Shaw, Prothonotary
P.O. Box 549
Clearfield, PA 16830

KINDLY ENTER our Appearance in the above-captioned matter on behalf of
Additional Defendant, George F. Palmer, Jr., D.O.

OLSZEWSKI & QUINLIN, P.C.

BY: 
Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

CERTIFICATE OF SERVICE

I, the undersigned authority, hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon all parties either individually or through counsel, as listed below on JULY 12, 2001 by:

[] HAND DELIVERY

[X] FIRST CLASS MAIL, POSTAGE PREPAID AT PITTSBURGH, PA

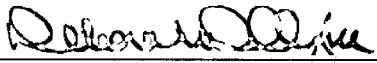
[] CERTIFIED MAIL

[] FAX TRANSMISSION

John P. Gismondi, Esquire
606 Grant Building
Pittsburgh, PA 15219

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

OLSZEWSKI & QUINLIN, P.C.

BY: 
Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

FILED

JUL 16 2001

WILLIAM A. SHAW
Prothonotary
KFC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

No. 2000 – 1495 CD

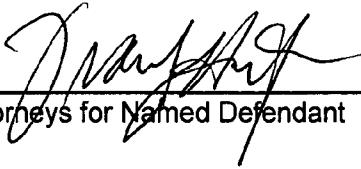
ISSUE:
ANSWER AND NEW MATTER
TO PLAINTIFFS' COMPLAINT ON
BEHALF OF DUBOIS REGIONAL
MEDICAL CENTER

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Counsel of Record for This Party
Frank J. Hartye, Esquire
PA I.D. #25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 Fax

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 16th DAY OF JULY, 2001.



Attorneys for Named Defendant

FILED

JUL 18 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife, : No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

JURY TRIAL DEMANDED

**ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT
ON BEHALF OF DUBOIS REGIONAL MEDICAL CENTER**

AND NOW, comes the defendant, DUBOIS REGIONAL MEDICAL CENTER, by and
through its attorneys, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the
following Answer and New Matter to Plaintiffs' Complaint and in support sets forth the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. In response to Paragraph No. 4 of the Plaintiffs' Complaint, it is admitted that on
or about December 4, 1998, plaintiff was seen in the Emergency Room at Dubois Regional
Medical Center. It is admitted that he was seen and treated by Dr. Palmer. Dr. Palmer, the
Emergency Room physician is and was an independent contractor and not an agent, servant or
employee of the defendant. Strict proof of same is demanded at trial.
5. The allegations of Paragraph No. 5 of Plaintiffs' Complaint are directed to
another party and thus, no response is required from this answering defendant.

6. After reasonable investigation, DRMC is without sufficient knowledge or information as to the truth of these averments, and therefore, they are denied as stated. Strict proof is demanded at trial.

7. The allegations contained in Paragraph No. 7 are denied in accordance with Pa. R.C.P. 1029 and strict proof of said averments is demanded at the time of trial.

8. In response to Paragraph No. 8 of the Plaintiffs' Complaint, said averment constitutes legal/medical conclusions to which no response is required. By way of further answer, it is denied that improper treatment was given. Further, it is denied that the plaintiff's condition is the result of any diagnosis or treatment by this defendant, and strict proof of all claims for injuries, damages and causation is demanded at the time of trial.

9. In response to Paragraph No. 9 of the Plaintiffs' Complaint, said allegations constitute legal/medical conclusions to which no response is required. Insofar as a response is required, it is denied that any agent, servant or employee of Dubois Regional Medical Center acted in a negligent manner. Strict proof of said averments is demanded at trial. By way of further answer, at all times, all employees acted appropriately within the standard of hospital care.

10. The allegations contained in Paragraph No. 10 are not directed to defendant Dubois Regional Medical Center and, therefore, no further response is required.

11. In response to Paragraph No. 11 of the Plaintiffs' Complaint, after reasonable investigation this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of plaintiff's claims of injuries and/or damages, as contained in these paragraphs. By way of further answer, it is denied that plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for injuries and damages as contained in Paragraph No. 11 in the Plaintiffs' Complaint, and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count I of Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

12. Defendant incorporates by reference, the previous paragraphs of the within Answer and New Matter as though the same were set forth herein at length.

13. In response to Paragraph No. 13 of the Plaintiffs' Complaint, after reasonable investigation, this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of Mary Daykon's claims or injuries as contained in this paragraph. By way of further answer, it is denied that the plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for plaintiff's wife for damages as contained in Paragraph No. 13 of the Plaintiffs' Complaint and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count II of the Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

NEW MATTER

By way of further answer and in the nature of affirmative defenses, Dubois Regional Medical Center sets forth the following:

14. At no time did any hospital employee or agent or ostensible agent administer any improper care to Richard J. Daykon.

15. Richard J. Daykon did not sustain any injuries or damages as the result of the conduct of the staff, employees, agents and servants of Dubois Regional Medical Center.

16. The defendant, Dubois Regional Medical Center, hereby pleads and is entitled to any and all defenses available under the Health Care Malpractice Services Act, 40 P.S. Section 1301, et. Seq.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that the Plaintiffs' Complaint be dismissed with prejudice and judgment be entered in its favor.

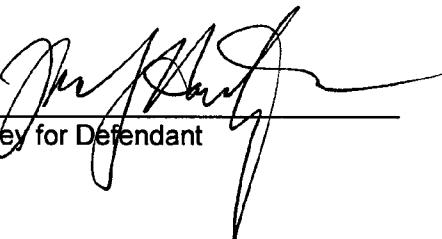
PFAFF, MCINTYRE, DUGAS, HARTYE
& SCHMITT



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER
FRANK J. HARTYE, ESQUIRE
PA. I.D. No. 28015
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581

TO RICHARD J. DAYKON and MARY
DAYKON, HIS WIFE:

You are hereby notified to file a written response to the enclosed New Matter within **twenty (20) days** from service hereof or a judgment may be entered against you.


Attorney for Defendant

VERIFICATION

I, **Marge Kennis, Risk Manager**, do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER

Marge Kennis
Marge Kennis, Risk Management Coordinator

Date: 7/6/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 - 1495 CD
Plaintiffs	:	NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS DATED JULY 20, 2001
vs.	:	Filed on behalf of Defendant, DUBOIS REGIONAL MEDICAL CENTER
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	Counsel of Record for This Party Frank J. Hartye, Esquire PA I.D. #25568
Defendants	:	PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT P.O. Box 533 Hollidaysburg, PA 16648 (814) 696-3581 (814) 696-9399 Fax
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 20TH DAY OF JULY, 2001.

Frank J. Hartye, Esq.
Attnys for Named Defendant

FILED

JUL 23 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO PLAINTIFFS DATED JULY 20, 2001**

TO: PROTHONOTARY

You are hereby notified that on the **20TH** day of **JULY, 2001**, Defendant DuBois
Regional Medical Center served Interrogatories and Request for Production of
Documents Directed to Plaintiffs Dated July 20, 2001 by mailing the original of same via
First Class U.S. Mail, postage prepaid, addressed to the following:

John P. Gismondi, Esquire
Grant Building, Suite 606
310 Grant Street
Pittsburgh, PA 15219

PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT

Frank J. Hartye, Esq.
Attorneys for Defendant DuBois Regional
Medical Center
FRANK J. HARTYE, ESQUIRE
PA I.D #: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED NO
CC
JUL 23 2001
KBA

William A. Shaw
Prothonotary

CERTIFICATE
PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

IN THE MATTER OF:

DAYKON

-VS-

MCVAY, M.D., ET AL

COURT OF COMMON PLEAS

TERM, 2000

CASE NO: 2000-01495

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of WALTER WALL, ESQUIRE
certifies that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

MCS on behalf of

DATE: 07/30/2001

WALTER WALL, ESQUIRE
Attorney for DEFENDANT

(1) *Walter Wall, Esquire*
2000-01495
FILED

AUG 01 2001
m10391 no cc
William A. Shaw
Prothonotary

DE11-005880 76660-L01

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

DAYKON

TERM, 2000

-VS-

CASE NO: 2000-01495

MCVAY, M.D., ET AL

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND
THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

DAVID R. KRAUS, M.D.	MEDICAL RECORDS & XRAYS
ST. MARGARET HOSPITAL	MEDICAL AND X-RAY(S)
GUY GERHART, M.D.	MEDICAL RECORDS & XRAYS
MRI WESTERN PENNSYLVANIA	MEDICAL RECORDS & XRAYS

TO: JOHN P. GISMONDI, ESQUIRE
FRANK J. HARTYE, ESQUIRE

MCS on behalf of WALTER WALL, ESQUIRE intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 07/10/2001

MCS on behalf of

WALTER WALL, ESQUIRE
Attorney for DEFENDANT

CC: WALTER WALL, ESQUIRE
DIANA M. OPALISKY

- MSI-102478
- 336629
-
-

Any questions regarding this matter, contact:

THE MCS GROUP, INC.
300 LAWYERS BUILDING
PITTSBURGH, PA 15219
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

Edward J. McVay MD

*

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: Dr. Kraus
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

TELEPHONE: (412) 642-4420

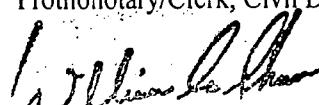
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DAVID R. KRAUS, M.D.
200 DELAFIELD ROAD
SUITE#1040

PITTSBURGH, PA 15215

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. *****TO INCLUDE PATIENT ID SHEET****
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: from: 12-21-1998 to the present.

Subject : RICHARD DAYKON
753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

RECORDED ON COMPUTER

SEARCHED INDEXED

FILED SERIALIZED

INDEXED

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

Edward J. McVay MD

*

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: St. MArgarets Hospital

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

TELEPHONE: (412) 642-4420

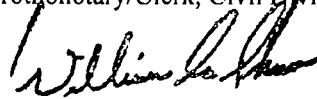
SUPREME COURT ID #

ATTORNEY FOR Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**ST. MARGARET HOSPITAL
815 FREEPORT ROAD**

PITTSBURGH, PA 15215

**RE: 76660
RICHARD DAYKON**

TO INCLUDE 12-21-98

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, relating to any examination, consultation, care or treatment of patient.

CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: up to and including the present.

Subject : RICHARD DAYKON

753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

SEARCHED INDEXED SERIALIZED FILED

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

Edward J. McVay MD

*

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: Dr. Gerhart
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

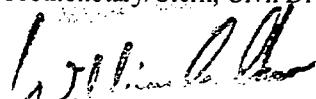
TELEPHONE: (412) 642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division



Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GUY GERHART, M.D.
C/O DUBOIS MEDICAL CTR.
P.O. BOX 447

DUBOIS, PA 15801

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. *****TO INCLUDE PATIENT ID SHEET****
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: up to and including the present.

Subject : RICHARD DAYKON

753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

76660-011803
76660-LO3

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

*

Edward J. McVay MD

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: MRI of Western PA
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.
Altoona, Pa 16602

TELEPHONE: (412) 642-4420

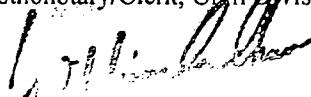
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MRI WESTERN PENNSYLVANIA
127 ANDERSON STREET
SUITE 115

PITTSBURGH, PA 15212

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. ***TO INCLUDE PATIENT ID SHEET**
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: for 12-14-1998 only.

Subject : RICHARD DAYKON
753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

Edward J. McVay MD

*

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: Dr. Kraus
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

TELEPHONE: (412) 642-4420

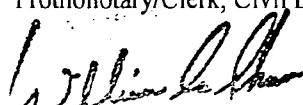
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division


William A. Shaw

Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DAVID R. KRAUS, M.D.
200 DELAFIELD ROAD
SUITE#1040

PITTSBURGH, PA 15215

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. ***TO INCLUDE PATIENT ID SHEET**
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: from: 12-21-1998 to the present.

Subject : RICHARD DAYKON
753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

vs

2

No. 2000-01495-CD

Edward J. McVay MD
DuBois Regional Medical Center
George F. Palmer D.O. Jr.
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: St. MArgarets Hospital
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

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THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire
ADDRESS: 120 Lakemont Park Blvd.
Altoona, Pa 16602
TELEPHONE: (412) 642-4420
SUPREME COURT ID #
ATTORNEY FOR Defendant

BY THE COURT;

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

ST. MARGARET HOSPITAL
815 FREEPORT ROAD

PITTSBURGH, PA 15215

RE: 76660
RICHARD DAYKON

TO INCLUDE 12-21-98

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, relating to any examination, consultation, care or treatment of patient.

CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: up to and including the present.

Subject : RICHARD DAYKON
753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

1. I request the following records:
2. I request the following records:

I request the following records:
1. I request the following records:
2. I request the following records:

I request the following records:
1. I request the following records:
2. I request the following records:
3. I request the following records:
4. I request the following records:

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

Edward J. McVay MD

No. 2000-01495-CD

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: Dr. Gerhart
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

TELEPHONE: (412) 642-4420

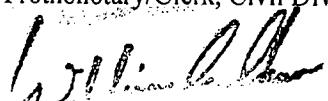
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GUY GERHART, M.D.
C/O DUBOIS MEDICAL CTR.
P.O. BOX 447

DUBOIS, PA 15801

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. ***TO INCLUDE PATIENT ID SHEET**
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: up to and including the present.

Subject : RICHARD DAYKON
753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard J. Daykon

*

Mary Daykon

Plaintiff(s)

Vs.

*

No. 2000-01495-CD

Edward J. McVay MD

*

DuBois Regional Medical Center

George F. Palmer D.O. Jr.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE
4009.22

TO: Custodian of records: MRI of Western PA
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Attached Rider

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Walter Wall, Esquire

ADDRESS: 120 Lakemont Park Blvd.

Altoona, Pa 16602

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

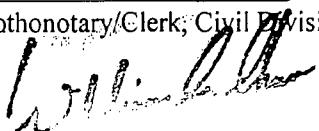
Defendant

ATTORNEY FOR:

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Friday, July 06, 2001

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MRI WESTERN PENNSYLVANIA
127 ANDERSON STREET
SUITE 115

PITTSBURGH, PA 15212

RE: 76660
RICHARD DAYKON

Any and all records, correspondence, files and memorandums, handwritten notes, original X-Rays, billing and payment records, relating to any examination, consultation, care or treatment. *****TO INCLUDE PATIENT ID SHEET****
CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED

Dates Requested: for 12-14-1998 only.

Subject : RICHARD DAYKON

753 MAIN STREET, BROCKWAY, PA 15824

Social Security #: 181-26-4706

Date of Birth: 07-03-1936

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 – 1495 CD
Plaintiffs	:	ISSUE: DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT GEORGE F. PALMER, JR., D.O.
vs.	:	Filed on behalf of Defendant, DUBOIS REGIONAL MEDICAL CENTER
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	Counsel of Record for This Party Frank J. Hartye, Esquire PA I.D. #25568
Defendants	:	PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT P.O. Box 533 Hollidaysburg, PA 16648 (814) 696-3581 (814) 696-9399 Fax
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE WITHIN WAS MAILED TO ALL COUNSEL OF RECORD THIS 22nd DAY OF AUGUST, 2001.



Attorneys for Named Defendant

FILED
AUG 23 2001

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 – 1495 CD
Plaintiffs	:	
vs.	:	
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	
Defendants	:	
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	JURY TRIAL DEMANDED

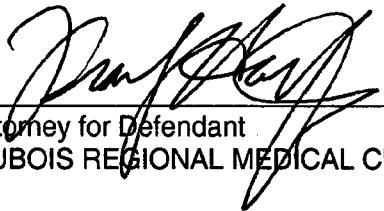
NOTICE

You have been sued in the Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER
AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET
FORTH BELOW, TO FIND OUT WHERE YOU CAN GET
LEGAL HELP.

Court Administrator
Clearfield County Courthouse
One N. 2nd Street
Clearfield, PA 16830
(814) 765-2641 ext. 5982

PFAFF, McINTYRE, DUGAS & HARTYE



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER

FRANK J. HARTYE, ESQUIRE
PA I.D.# 25568
P.O. Box 533
Hollidaysburg, PA 16648-0533
814/696-3581
814/696-9399 Fax

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 - 1495 CD
Plaintiffs	:	
vs.	:	
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	
Defendants	:	
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	JURY TRIAL DEMANDED

**DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S COMPLAINT
TO JOIN ADDITIONAL DEFENDANT GEORGE F. PALMER, JR., D.O.**

1. The Plaintiffs, Richard J. Daykon and Mary Daykon, his wife filed a Complaint against Edward J. McVay, M.D. and DuBois Regional Medical Center a copy of which is attached hereto as Exhibit "A".
2. An Answer and New Matter was filed on behalf of Edward J. McVay, M.D. a copy of which attached as Exhibit "B".
3. An Answer and New Matter has been filed on by Defendant DuBois Regional Medical Center a copy of which is attached hereto and marked as Exhibit "C".
4. The additional Defendant George F. Palmer, D.O. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania who specializes in the practice of

Emergency Medicine and who regularly renders services within Clearfield County at within Clearfield County at DuBois Regional Medical Center, DuBois, Pennsylvania.

5. In the Complaint, Plaintiff's allege the following:

"4. On or about December 4, 1998, plaintiff Richard Daykon was seen in the emergency room at DuBois Regional Medical Center, after having fallen at work and injured his spine. He was seen and treated by an agent of the defendant, Dr. G.F. Palmer. At no time during said emergency room visit was the plaintiff diagnosed with a spinal cord injury due to cervical fracture, instability or compression. Rather, the plaintiff was diagnosed with a sprain of the neck.

5. Following his discharge from the emergency room, the plaintiff Richard Daykon came under the care of defendant Dr. McVay between December 7, 1998, and December 21, 1998. At no time while he was under the care and treatment of Dr. McVay did said defendant diagnose plaintiff with a spinal cord injury caused by cervical fracture, instability or compression.

6. On December 21, 1998, the plaintiff Richard Daykon was seen by orthopedic surgeon, Dr. David R. Kraus, of Pittsburgh, PA, who immediately diagnosed the plaintiff with a cervical spinal cord injury. Dr. Kraus directly admitted the plaintiff to St. Margaret's Hospital in Pittsburgh and performed emergency surgery in order to relieve spinal cord compression.

7. At all times while the plaintiff Richard Daykon was under the care of the defendants, he was suffering from cervical spinal cord compression which went undiagnosed and untreated by the defendants.

8. As a result of the aforesaid delay in diagnosing and treating the plaintiff's cervical spinal cord compression, the plaintiff has been left with permanent sequella of the spinal cord injury including, but not limited, impairment of his upper extremity function, impairment of his lower extremity function, ataxic gait, and sexual dysfunction.

9. The aforesaid permanent neurologic injury was caused by the negligence of the defendant DuBois Regional Medical Center, acting through its actual or ostensible agents, in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,
- d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury."

6. DuBois Regional Medical Center believes, and therefore avers, that George F. Palmer, Jr., D.O. was not its employee at the time that he provided care and treatment to Richard Daykon on December 4, 1998. Dr. Palmer was an independent contractor physician with emergency medicine privileges at DuBois Regional Medical Center.

7. DuBois Regional Medical Center believes and therefore avers that the allegations in Paragraph 9 of Plaintiff's Complaint alleging negligence are in fact allegations directed to the care and treatment provided by George F. Palmer, Jr., D.O. to Mr. Daykon on December 4, 1998 and not directed to other agents servants or employees of DuBois Regional Medical Center.

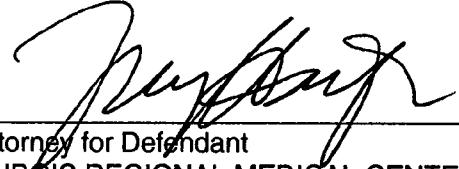
8. Defendant DuBois Regional Medical Center denies that there was any negligence or carelessness in the medical care, treatment and diagnosis of Richard Daykon and denies any liability whatsoever for Plaintiffs' alleged injuries.

9. If it is judicially determined that there was any negligence or carelessness in the medical care, treatment or diagnosis of Richard Daykon, then it is averred that additional Defendant Palmer is responsible in that he saw and treated Mr. Daykon in the emergency department at DuBois Regional Medical Center on December 4, 1998 and that as such,

additional defendant is solely liable to the Plaintiffs for any and all injuries suffered by the Plaintiff's, or is jointly or severally liable with defendant DuBois Regional Medical Center or is liable over to Defendant DuBois Regional Medical Center for indemnification and/or contribution, any and all liability on the part of Defendant DuBois Regional Medical Center being expressly denied.

WHEREFORE, defendant DuBois Regional Medical Center joins as an additional defendant George F. Palmer, Jr., D.O. and demands judgment in its favor as more specifically set forth above.

PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT


Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER

Frank J. Hartye, Esquire
PA I.D. # 25568
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581
814/696-9399 Fax

VERIFICATION

I, **GREGORY VOLPE, Risk Manager**, do hereby verify that I have read the foregoing **DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT GEORGE F. PALMER, JR., D.O.** The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER



Gregory Volpe
Gregory Volpe, Risk Manager

Date: 8-13-01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON, and
MARY DAYKON, his wife,

CIVIL DIVISION

Plaintiffs,

No. 00-1495-CD

vs.

EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

ISSUE NO.:

COMPLAINT/
Jury Trial Demanded

Civil Action/Medical-Hospital Negligence

Filed on behalf of
Plaintiff

Counsel of record for this
Party:

John P. Gismondi, Esquire
PA I. D. # 31200

GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.)
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,)
Defendants.)
No. 00-1495 CD
JURY TRIAL DEMANDED

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.) No. 00-1495 CD
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,) JURY TRIAL DEMANDED
Defendants.)

COMPLAINT

AND NOW come the plaintiffs, Richard and Mary Daykon, by and through their attorney John P. Gismondi and Gismondi & Associates and files this action based upon the following:

1. The plaintiffs are husband and wife individuals who reside within the Commonwealth of Pennsylvania.
2. The defendant Edward J. McVay is a physician licensed to practice medicine within the Commonwealth of Pennsylvania who regularly renders medical services within Clearfield County.

3. The defendant DuBois Regional Medical Center is a non-profit corporation which operates a general medical facility within Clearfield County.

4. On or about December 4, 1998, plaintiff Richard Daykon was seen in the emergency room at DuBois Regional Medical Center, after having fallen at work and injured his spine. He was seen and treated by an agent of the defendant, Dr. G. F. Palmer. At no time during said emergency room visit was the plaintiff diagnosed with a spinal cord injury due to cervical fracture, instability or compression. Rather, the plaintiff was diagnosed with a sprain of the neck.

5. Following his discharge from the emergency room, the plaintiff Richard Daykon came under the care of defendant Dr. McVay between December 7, 1998, and December 21, 1998. At no time while he was under the care and treatment of Dr. McVay did said defendant diagnose plaintiff with a spinal cord injury caused by cervical fracture, instability or compression.

6. On December 21, 1998, the plaintiff Richard Daykon was seen by orthopedic surgeon, Dr. David R. Kraus, of Pittsburgh, PA, who immediately diagnosed the plaintiff with a cervical spinal cord injury. Dr. Kraus directly admitted the plaintiff to St. Margaret's Hospital in Pittsburgh and performed emergent surgery in order to relieve spinal cord compression.

7. At all times while the plaintiff Richard Daykon was under the care of the defendants, he was suffering from cervical spinal cord compression which went undiagnosed and untreated by the defendants.

8. As a result of the aforesaid delay in diagnosing and treating the plaintiff's cervical spinal cord compression, the plaintiff has been left with permanent sequella of the spinal cord injury including, but not limited, impairment of his upper extremity function, impairment of his lower extremity function, ataxic gait, and sexual dysfunction.

9. The aforesaid permanent neurologic injury was caused by the negligence of the defendant DuBois Regional Medical Center, acting through its actual or ostensible agents, in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,

d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.

10. In the alternative, and in addition to the above, the plaintiff's permanent neurologic injury was caused by the negligence of Dr. McVay in the following particulars:

a. In failing to diagnose the plaintiff's cervical spinal cord injury;

b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;

c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,

d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.

11. As a result of the individual and/or combined negligence of the defendants, the plaintiff Richard Daykon claims damages for the following items of loss:

a. He has incurred in the past, and will incur in the future, substantial

medical expense;

- b. He has sustained in the past, and will sustain in the future, substantial economic loss;
- c. He has experienced in the past, and will experience in the future, substantial pain, suffering and inconvenience;
- d. He has experienced in the past, and will experience in the future, the loss of certain of the ordinary pleasures of life;
- e. He has experienced in the past, and will experience in the future, substantial bodily disfigurement.

WHEREFORE, the plaintiffs demand judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT II -- Loss of Consortium

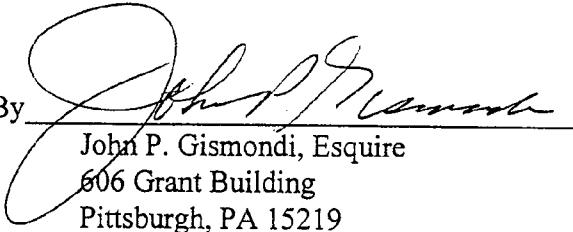
12. Each of the above paragraphs is incorporated herein by reference.
13. As a result of the injuries to her husband, the wife-plaintiff, Mary Daykon, has lost the society, comfort and services of her spouse.

WHEREFORE, the wife-plaintiff, Mary Daykon, demands judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars.

JURY TRIAL DEMANDED.

Respectfully submitted,
GISMONDI & ASSOCIATES, P.C.

By


John P. Gismondi, Esquire
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ~~ALLEGHENY~~ Jefferson) SS:

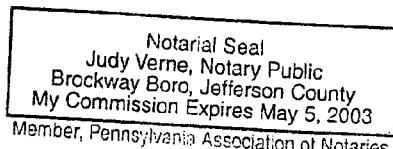
BEFORE ME, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared, RICHARD DAYKON who, being duly sworn according to law, deposes and says that the averments of fact contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Richard Daykon
Richard Daykon

SWORN TO and subscribed before
me this 9th day of
March, 2001.

Jody Vane
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 7th day of March, 2001, by U.S. Mail, First Class, postage pre-paid to the following:

John L. McIntyre, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Hospital

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
Counsel for Dr. Edward McVay


John P. Gismondi, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

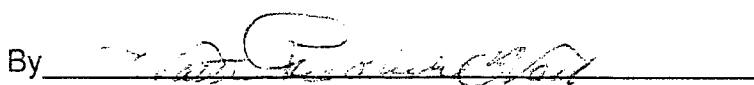
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants

NOTICE TO PLEAD

In Accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to plead to the within ANSWER and NEW MATTER within twenty (20) days from service hereof or a Default Judgment may be entered against you.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and
DUBOIS REGIONAL MEDICAL
CENTER, JURY TRIAL DEMANDED

Defendants.

ANSWER AND NEW MATTER

NOW comes the Defendant, EDWARD J. McVAY, M.D. by and through his Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files this Answer and New Matter to Plaintiffs' Complaint of which the following is a statement:

1. The identity of the Plaintiffs is admitted. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.
2. Admitted.
3. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant.
4. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant. To the extent further response is deemed necessary, this Defendant denies same in that after reasonable investigation, this Defendant lacks

information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

5. Admitted and denied. It is admitted that Plaintiff, Richard Daykon came under the care of this Defendant and that the Plaintiff was seen on December 7, 1998, and on other occasions not set forth in Plaintiffs' Complaint. However, this Defendant did not see the patient on December 21, 1998. It is further admitted that this Defendant did not diagnose Plaintiff at any time with a spinal cord injury due to cervical fracture, or instability. It is denied, however, that this Defendant failed to diagnose the Plaintiff with suffering from spinal cord injury as a result of compression and on the contrary, such diagnosis was rendered on December 16, 1998, as a result of a review of MRI film reports previously ordered by this Defendant.

6. It is admitted that this Defendant referred the Plaintiff, Richard Daykon to Dr. David R. Kraus and scheduled an appointment for the Plaintiff to be seen by Dr. Kraus on December 21, 1998. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

7. Denied and on the contrary it is averred that at all times relevant, this Defendant provided proper medical treatment within the standard of care under the facts and circumstances therein. By way of further response, the diagnosis of cervical spinal cord compression was rendered timely and within the standard of care.

8. It is denied that any injuries and/or damages suffered by the Plaintiff was a result of a delay in diagnosis by this Defendant and on the contrary, this Defendant

rendered proper medical treatment in accordance with the applicable standard of care under the circumstances presented.

9. Neither admitted nor denied in that said allegations are directed to a party other than this answering Defendant.

10. Denied and on the contrary it is averred that this Defendant provided proper medical treatment in accordance with the applicable standard of care under the facts and circumstances presented.

11. All allegations of negligence upon this Defendant are denied as conclusions of law and for reasons set forth above and hereinafter. All allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

COUNT II - LOSS OF CONSORTIUM

12. The allegations set forth above are incorporated herein by reference thereto as if same were set forth at length.

13. To the extent this allegation alleges negligence and/or liability upon this Defendant, same are denied as conclusions of law and for reasons set forth above and hereinafter.

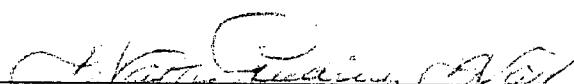
WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

NEW MATTER

14. Plaintiffs' claims against this Defendant are barred in that any and all injuries suffered by the Plaintiff are the direct, sole and proximate result of actions or inactions of others over whom this Defendant had neither the ability nor sought to control.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays this Plaintiffs' Complaint be dismissed.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 

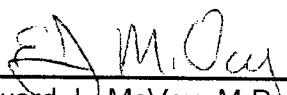
WALTER FREDRICK WALL, ESQUIRE

Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657

VERIFICATION

I, EDWARD J. McVAY, M.D., do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER**. The statements therein are true and correct to the best of my knowledge as to part, and based upon information and belief as to the rest.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.


Edward J. McVay, M.D.

DATE: 03/21/2001

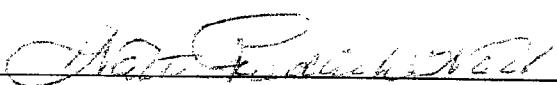
CERTIFICATE OF SERVICE

I, Walter Fredrick Wall, Esquire, Counsel for Defendant, Edward J. McVay, M.D. hereby certify that on the 23rd day of March, 2001, a true and correct copy of the Answer and New Matter filed on behalf of this Defendant was served upon Counsel of record by U.S. Mail, postage prepaid, as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

JURY TRIAL DEMANDED

ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT
ON BEHALF OF DUBOIS REGIONAL MEDICAL CENTER

AND NOW, comes the defendant, DUBOIS REGIONAL MEDICAL CENTER, by and through its attorneys, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Answer and New Matter to Plaintiffs' Complaint and in support sets forth the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. In response to Paragraph No. 4 of the Plaintiffs' Complaint, it is admitted that on or about December 4, 1998, plaintiff was seen in the Emergency Room at Dubois Regional Medical Center. It is admitted that he was seen and treated by Dr. Palmer. Dr. Palmer, the Emergency Room physician is and was an independent contractor and not an agent, servant or employee of the defendant. Strict proof of same is demanded at trial.
5. The allegations of Paragraph No. 5 of Plaintiffs' Complaint are directed to another party and thus, no response is required from this answering defendant.

EXHIBIT

"C"

6. After reasonable investigation, DRMC is without sufficient knowledge or information as to the truth of these averments, and therefore, they are denied as stated. Strict proof is demanded at trial.

7. The allegations contained in Paragraph No. 7 are denied in accordance with Pa. R.C.P. 1029 and strict proof of said averments is demanded at the time of trial.

8. In response to Paragraph No. 8 of the Plaintiffs' Complaint, said averment constitutes legal/medical conclusions to which no response is required. By way of further answer, it is denied that improper treatment was given. Further, it is denied that the plaintiff's condition is the result of any diagnosis or treatment by this defendant, and strict proof of all claims for injuries, damages and causation is demanded at the time of trial.

9. In response to Paragraph No. 9 of the Plaintiffs' Complaint, said allegations constitute legal/medical conclusions to which no response is required. Insofar as a response is required, it is denied that any agent, servant or employee of Dubois Regional Medical Center acted in a negligent manner. Strict proof of said averments is demanded at trial. By way of further answer, at all times, all employees acted appropriately within the standard of hospital care.

10. The allegations contained in Paragraph No. 10 are not directed to defendant Dubois Regional Medical Center and, therefore, no further response is required.

11. In response to Paragraph No. 11 of the Plaintiffs' Complaint, after reasonable investigation this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of plaintiff's claims of injuries and/or damages, as contained in these paragraphs. By way of further answer, it is denied that plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for injuries and damages as contained in Paragraph No. 11 in the Plaintiffs' Complaint, and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count I of Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

12. Defendant incorporates by reference, the previous paragraphs of the within Answer and New Matter as though the same were set forth herein at length.

13. In response to Paragraph No. 13 of the Plaintiffs' Complaint, after reasonable investigation, this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of Mary Daykon's claims or injuries as contained in this paragraph. By way of further answer, it is denied that the plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for plaintiff's wife for damages as contained in Paragraph No. 13 of the Plaintiffs' Complaint and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count II of the Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

NEW MATTER

By way of further answer and in the nature of affirmative defenses, Dubois Regional Medical Center sets forth the following:

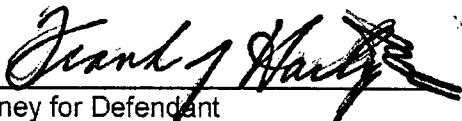
14. At no time did any hospital employee or agent or ostensible agent administer any improper care to Richard J. Daykon.

15. Richard J. Daykon did not sustain any injuries or damages as the result of the conduct of the staff, employees, agents and servants of Dubois Regional Medical Center.

16. The defendant, Dubois Regional Medical Center, hereby pleads and is entitled to any and all defenses available under the Health Care Malpractice Services Act, 40 P.S. Section 1301, et. Seq.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that the Plaintiffs' Complaint be dismissed with prejudice and judgment be entered in its favor.

PFAFF, MCINTYRE, DUGAS, HARTYE
& SCHMITT



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER
FRANK J. HARTYE, ESQUIRE
PA. I.D. No. 28015
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581

TO RICHARD J. DAYKON and MARY DAYKON, HIS WIFE:

You are hereby notified to file a written response to the enclosed New Matter within **twenty (20) days** from service hereof or a judgment may be entered against you.



Attorney for Defendant

VERIFICATION

I, Marge Kennis, Risk Manager, do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER

Marge Kennis
Marge Kennis, Risk Management Coordinator

Date: 7/6/01

FILED

BB
AUG 23 2001
SAC
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON
and MARY DAYKON,

Plaintiffs,

vs.

EDWARD J. McVAY, M.D.;
DuBOIS REGIONAL
MEDICAL CENTER,

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional
Defendant.

CIVIL DIVISION

No: 2000-01495-CD

**MOTION TO STRIKE WRIT OF
SUMMONS TO JOIN ADDITIONAL
DEFENDANT**

Civil Action/Medical-Hospital Negligence

JURY TRIAL DEMANDED

Filed on Behalf of Additional Defendant:
GEORGE F. PALMER, JR., D.O.

Counsel of Record for This Party:

DEBORAH D. OLSZEWSKI, ESQUIRE
Pa. I.D. No.: 30691

OLSZEWski & QUINLIN, P.C.
Firm No.: 512

Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, Pennsylvania 15222-2302

(412) 644-0200

FILED

AUG 27 2001

William A. Shaw
Prothonotary

MOTION TO STRIKE WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes Additional Defendant, George F. Palmer, Jr., D.O., and files the following Motion to Strike Writ of Summons to Join Additional Defendant averring in support as follows:

1. This action was initiated by Plaintiff with the filing of a Writ of Summons filed November 30, 2000.
2. A Complaint was filed on March 16, 2001.
3. A Praecipe for Writ of Summons to Join Additional Defendant was filed on May 21, 2001. Attached as Exhibit "A" is the Docket of Record from the Clearfield County Court of Common Pleas.
4. The Original Defendant has failed to meet the requirements of Pa.R.C.P. 2253.
5. The joinder is defective and must be stricken.

WHEREFORE, the Additional Defendant requests this Court to strike the joinder as untimely.

OLSZEWSKI & QUINLIN, P.C.

BY:



Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

Date: 5/16/2001

Time: 09:39 AM

Page 1 of 2

Clearfield County Court of Common Pleas

User: JKENDRICK

ROA Report

Case: 2000-01495-CD

Current Judge: John K. Reilly Jr.

Richard J. Daykon, Mary Daykon vs. Edward J. McVay MD, DuBois Regional Medical Center, George F. Palmer D.O. Jr.

Civil Other

Date	Judge	
11/30/2000	Filing: Writ of Summons Paid by: John Gismondi, Esquire Receipt number: 0052150 Dated: 11/30/2000 Amount: \$80.00 (Check) filed by John P. Gismondi, Esq. Two Writs of Summons issued to the Sheriff	No Judge
12/13/2000	Praecipe for Appearance, on behalf of DU BOIS REGIONAL MEDICAL CENTER. S/John L. McIntyre, Esq. no cc Praecipe for Rule to File Complaint, filed by s/John L. McIntyre, Esq. Rule No Judge to Atty McIntyre	No Judge
12/18/2000	Certificate of Service of Rule to File Complaint. filed by s./JOHN L. MCINTYRE, ESQ.	No Judge
12/21/2000	Sheriff Return, Summons on Defendants, So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
12/28/2000	Praecipe for Rule to File Complaint, filed by s/Mary Lou Maierhofer, Esq. RULE to atty Maierhofer.	No Judge
01/03/2001	Certificate of Service of Rule to File Complaint upon Atty Gismondi & Atty Hartye. filed by s/Mary Lou Maierhofer, Esq. no cc	No Judge
02/01/2001	Praecipe for Entry of Appearance, on behalf of Edward J. McVay. s/Walter Fredrick Wall, Esq. and Mary Lou Maierhofer, Esq. Cert of Service no cc Certificate of Service, Request for Production of Documents Directed to Plaintiffs on behalf of Defendant, Edward J. McVay served on counsel of record. Filed by s/Walter Fredrick Wall, Esq. no cc	No Judge
02/01/2001	Certificate of Service, Interrogatories Directed to Plaintiffs on behalf of Defendant served on counsel of record. Filed by s/Walter Fredrick Wall, Esq. no cc	No Judge
02/01/2001	Complaint Filed by s/John P. Gismondi, Esq. Cert. of Service no cc	No Judge
03/26/2001	Notice to Plead, filed. Answer and New Matter, filed by Walter Fredrick Wall, Esq. Certificate of Service, filed. No Certified Copies	No Judge
05/21/2001	Praecipe For Writ of Summons to Join Additional Defendant. filed by s/Frank J. Hartye, Esq. 1 cc Shff, Writ issued to Shff	No Judge
05/31/2001	Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Cert of Svc no cc	No Judge
06/05/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	John K. Reilly Jr.



Date: 07/16/2001

Time: 09:39 AM

Page 2 of 2

Clearfield County Court of Common Pleas

User: JKENDRICK

ROA Report

Case: 2000-01495-CD

Current Judge: John K. Reilly Jr.

Richard J. Daykon, Mary Daykon vs. Edward J. McVay MD, DuBois Regional Medical Center, George F. Palmer D.O. Jr.

Civil Other

Date		Judge
06/07/2001	Rule, Now This, 6th day of June, 2001, Rule issued upon Plaintiffs, Returnable 2nd day of July, 2001. by the Court, s/JKR,JR.,P.J. 2 cc atty Wall	John K. Reilly Jr.
06/11/2001	Certificate of Service, Rule to Show Cause, upon John P. Gismondi, Esq. and Frank Hartye, Esq., filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
07/13/2001	Certificate of Service, Answers to Interrogatories Directed to Dr. McVay on behalf of Defendant, Edward J. McVay, upon Counsel for Plaintiffs, filed by s/Walter Fredrick Wall, Esq. No CC	John K. Reilly Jr.
07/16/2001	Miscellaneous Payment: Copy Fee Paid by: Debrah Olszewski, Esquire Receipt number: 1828434 Dated: 07/16/2001 Amount: \$.50 (Cash)	John K. Reilly Jr.

FILED

AUG 27 2001

11914CL CATHY OBREGON

William A. Shaw

Prothonotary

CO

Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON
and MARY DAYKON,

CIVIL DIVISION

No: 2000-01495-CD

Plaintiffs,

vs.

EDWARD J. McVAY, M.D.;
DuBOIS REGIONAL
MEDICAL CENTER,

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

ORDER OF COURT

AND NOW, this _____ day of _____, 2001, it is hereby ORDERED that the Writ
to Join Additional Defendant, George F. Palmer, Jr., D.O. is hereby stricken.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON
and MARY DAYKON,

CIVIL DIVISION

No: 2000-01495-CD

Plaintiffs,

vs.

EDWARD J. McVAY, M.D.;
DuBOIS REGIONAL MEDICAL
CENTER,

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

RULE TO SHOW CAUSE

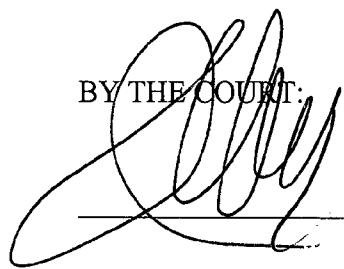
TO: DuBois Regional Medical Center

NOW this 28th day of August, 2001, upon consideration of the Motion to Strike
Writ of Summons to Join Additional Defendant, filed on behalf of George F. Palmer, Jr., D.O.,
a Rule is hereby issued upon Defendant, DuBois Regional Medical Center to Show Cause why
the Motion should not be granted. Rule Returnable the 17th day of September, 2001,
for filing written response.

FILED

AUG 28 2001
074009ccath
William A. Shaw
Prothonotary
OK
E
KBS

BY THE COURT:



_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON
and MARY DAYKON,

Plaintiffs,

vs.

EDWARD J. McVAY, M.D.;
DuBOIS REGIONAL
MEDICAL CENTER,

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional
Defendant.

CIVIL DIVISION

No: 2000-01495-CD

**CERTIFICATE OF SERVICE FOR
MOTION TO STRIKE WRIT OF SUMMONS
AND RULE TO SHOW CAUSE WHY MOTION
SHOULD NOT BE GRANTED**

Civil Action/Medical-Hospital Negligence

JURY TRIAL DEMANDED

Filed on Behalf of Additional Defendant:
GEORGE F. PALMER, JR., D.O.

Counsel of Record for This Party:

DEBORAH D. OLSZEWSKI, ESQUIRE
Pa. I.D. No.: 30691

OLSZEWNSKI & QUINLIN, P.C.
Firm No.: 512

Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, Pennsylvania 15222-2302

(412) 644-0200

FILED

SEP 04 2001

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, the undersigned authority, hereby certify that a true and correct copy of the within
MOTION TO STRIKE WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT AND
RULE TO SHOW CAUSE WHY MOTION SHOULD NOT BE GRANTED has been served
upon all parties either individually or through counsel, as listed below on August 31, 2001 by:

HAND DELIVERY

FIRST CLASS MAIL, POSTAGE PREPAID AT PITTSBURGH, PA

CERTIFIED MAIL

FAX TRANSMISSION

John P. Gismondi, Esquire
606 Grant Building
Pittsburgh, PA 15219

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

Walter F. Wall, Esquire
Rebecca Kearney Poljak, Esquire
2000 Frick Building
Pittsburgh, PA 15219

OLSZEWSKI & QUINLIN, P.C.

BY: Deborah D. Olszewski
Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, D.O., Jr.

FILED

SEP 04 2001

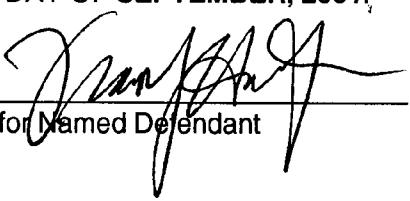
MILLS NO C
William A. Shaw
Prothonotary

cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 – 1495 CD
Plaintiffs	:	ISSUE: REPLY TO ADDITIONAL DEFENDANTS MOTION TO STRIKE WRIT OF SUMMONS
vs.	:	Filed on behalf of Defendant, DUBOIS REGIONAL MEDICAL CENTER
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	Counsel of Record for This Party Frank J. Hartye, Esquire PA I.D. #25568
Defendants	:	PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT P.O. Box 533 Hollidaysburg, PA 16648 (814) 696-3581 (814) 696-9399 Fax
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 10TH DAY OF SEPTEMBER, 2001.



Attorneys for Named Defendant

FILED

SEP 11 2001
01551000
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY DAYKON, his wife,	:	No. 2000 – 1495 CD
Plaintiffs	:	
vs.	:	
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	
Defendants	:	
vs.	:	
GEORGE F. PALMER, JR., D.O.,	:	
Defendant	:	JURY TRIAL DEMANDED

REPLY TO ADDITIONAL DEFENDANTS
MOTION TO STRIKE WRIT OF SUMMONS

AND NOW, comes the Defendants, DUBOIS REGIONAL MEDICAL CENTER, by through their attorneys, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Reply to Additional Defendants Motion to Strike Writ of Summons and in support sets forth the following:

1. Admitted.
2. Admitted.
3. Denied. The docket entry attached is not accurate. The Writ of Summons was forwarded to the Prothonotary on May 11. A Writ of Summons was issued by the Prothonotary on May 18, there is nothing on the docket to indicate why there was such a delay by the Prothonotary in issuing the Writ. In fact the docket indicates the Praecept and the Writ were not filed until May 21 which is clearly inaccurate.
4. Denied. Defendant forwarded to the Prothonotary on May 11, 2001 the Praecept for Writ of Summons well within the sixty (60) day time requirements of Pa.R.C.P. 2253. Since

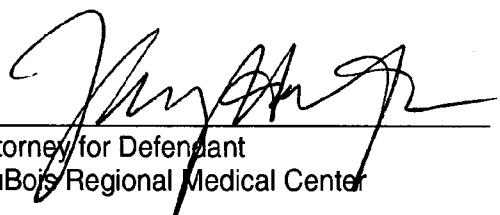
the Praeipe for Writ of Summons to Join an Additional Defendant was filed within sixty (60) days, even though the process was not issued or served within the sixty (60) day period, there is still compliance with Rule 2253. Sherry v. Trexler-Haines Gas, Inc., 541 A.2d 341 (1988).

5. Denied. Original Defendant mailed the Praeipe for Writ of Summons on May 11, 2001 within the sixty (60) day time requirement of Rule 2253. However, if the Court finds that the joinder was accomplished beyond the sixty (60) day requirement, original Defendant hereby petitions this Court pursuant to Rule 2253 to allow joinder of Dr. Palmer beyond the sixty (60) day time requirement. Original Defendant did not delay the joinder, the purpose of the sixty (60) day time frame is primarily to protect the Plaintiff from being unduly delayed in the prosecution of the action. Lawrence v. Meeker, 717 A.2d 1046 (Pa. Super. 1998). No depositions have been taken or have been scheduled and joinder at this time would not delay these proceedings.

WHEREFORE, the original Defendant, DuBois Regional Medical Center requests this Court to deny additional Defendants Motion to Strike the Writ of Summons, or in the alternative to grant original Defendant DuBois Regional Medical Center ten (10) days in which to file (or refile) its Complaint to Join Dr. Palmer as an Additional Defendant.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT



Attorney for Defendant
DuBois Regional Medical Center

Frank J. Hartye, Esquire
PA I.D. #: 25568

P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581
814/696-9399 Fax

LAW OFFICES
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT

P. O. BOX 533

ROBERT J. PFAFF
JOHN L. MCINTYRE
STEPHEN L. DUGAS
FRANK J. HARTYE
LOUIS C. SCHMITT, JR.
HEATHER A. HARRINGTON
MICHAEL A. SOSNOWSKI
KAREN L. GRABILL

HOLLIDAYSBURG, PA 16648-0533

(814) 696-3581

FAX (814) 696-9399

www.pmdhlaw.com

May 11, 2001

Our Reference: PHC 2173 MH

Prothonotary
Court of Common Pleas of
Clearfield County
Courthouse
One North Second Street
Clearfield, PA 16830

Re: Richard J. Daykon and Mary Daykon, his wife vs. Edward J.
McVay, M.D. and DuBois Regional Medical Center
No. 2000 – 1495 CD

Dear Prothonotary:

Kindly file the enclosed **Praecipe for Writ of Summons to Join Additional Defendant** on behalf of Defendant, DuBois Regional Medical Center, in the above-captioned matter. Please have the Writ of Summons issued and forward same to Sheriff for service along with the enclosed checks and Directions to Sheriff.

Thank you.

Very truly yours,


Frank J. Hartye

FJH/eh
Enclosures

cc: John P. Gismondi, Esquire
(w/Enclosure)

EXHIBIT

"A"

bcc: Susan A. Thomas, Claim Rep.
PHICO
File No. 017-HM-PA-542246

Marge Kennis, RN, Risk Management
DUBOIS REGIONAL MEDICAL CENTER

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

Richard J. Daykon
Mary Daykon

Vs.

NO.: 2000-01495-CD

Edward J. McVay MD
DuBois Regional Medical Center

Vs.

George F. Palmer D.O. Jr.

TO: **George F. Palmer, Jr., D.O.**
c/o DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

To the above named Additional Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 05/181/2001



William A. Shaw
Prothonotary

Issuing Attorney:

Frank J. Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

EXHIBIT

"B"

8357

DEPUTY SHERIFF'S EDUCATION & TRAINING ACCT.

COURT No. 00-1495-CJ

DATE May 21 2001

\$ 10.00

RECEIVED OF Maykan
vs. McVay

COMPLAINT
SUMMONS
EXECUTION
PETITIONS
OTHER

atly ck # 5782

PAID MAY 21 2001

Maykan

CHESTER A. HAWKINS, SHERIFF
CLEARFIELD COUNTY, PENNSYLVANIA

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11024

DAYKON, RICHARD J. & MARY

00-1495-CD

VS.

MCVAY, EDWARD, MD; DUBOIS REGIONAL MEDICAL CENTER.-VS- GEOR

COPY

WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW MAY 25, 2001 AT 11:15 AM DST SERVED THE WITHIN WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT ON GEORGE F. PALMER, JR., D.O., DEFENDANT, AT EMPLOYMENT, DUBOIS REGIONAL MEDICAL CENTER, 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARGE KENNIS, RISK MANAGEMENT COORDINATOR, A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

Return Costs

Cost	Description
33.22	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

So Answers,

Day Of 2001



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 - 1495 CD

Plaintiffs

ISSUE:

**DEFENDANT DUBOIS REGIONAL
MEDICAL CENTER'S COMPLAINT TO
JOIN ADDITIONAL DEFENDANT
GEORGE F. PALMER, JR., D.O.**

vs.

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Counsel of Record for This Party
Frank J. Hartye, Esquire
PA I.D. #25568

Defendants

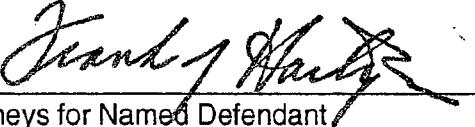
**PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT**
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 Fax

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 22nd DAY OF AUGUST, 2001.


Attorneys for Named Defendant

EXHIBIT

"C"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife, : No. 2000 - 1495 CD

Plaintiffs :
vs.
EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER, :
Defendants :
vs.
GEORGE F. PALMER, JR., D.O., :
Defendant : **JURY TRIAL DEMANDED**

NOTICE

You have been sued in the Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER
AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET
FORTH BELOW, TO FIND OUT WHERE YOU CAN GET
LEGAL HELP.

Court Administrator
Clearfield County Courthouse
One N. 2nd Street
Clearfield, PA 16830
(814) 765-2641 ext. 5982

PFAFF, McINTYRE, DUGAS & HARTYE



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER

FRANK J. HARTYE, ESQUIRE
PA I.D.# 25568
P.O. Box 533
Hollidaysburg, PA 16648-0533
814/696-3581
814/696-9399 Fax

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 – 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

JURY TRIAL DEMANDED

**DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S COMPLAINT
TO JOIN ADDITIONAL DEFENDANT GEORGE F. PALMER, JR., D.O.**

1. The Plaintiffs, Richard J. Daykon and Mary Daykon, his wife filed a Complaint against Edward J. McVay, M.D. and DuBois Regional Medical Center a copy of which is attached hereto as Exhibit "A".

2. An Answer and New Matter was filed on behalf of Edward J. McVay, M.D. a copy of which attached as Exhibit "B".

3. An Answer and New Matter has been filed on by Defendant DuBois Regional Medical Center a copy of which is attached hereto and marked as Exhibit "C".

4. The additional Defendant George F. Palmer, D.O. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania who specializes in the practice of

Emergency Medicine and who regularly renders services within Clearfield County at within Clearfield County at DuBois Regional Medical Center, DuBois, Pennsylvania.

5. In the Complaint, Plaintiff's allege the following:

"4. On or about December 4, 1998, plaintiff Richard Daykon was seen in the emergency room at DuBois Regional Medical Center, after having fallen at work and injured his spine. He was seen and treated by an agent of the defendant, Dr. G.F. Palmer. At no time during said emergency room visit was the plaintiff diagnosed with a spinal cord injury due to cervical fracture, instability or compression. Rather, the plaintiff was diagnosed with a sprain of the neck.

5. Following his discharge from the emergency room, the plaintiff Richard Daykon came under the care of defendant Dr. McVay between December 7, 1998, and December 21, 1998. At no time while he was under the care and treatment of Dr. McVay did said defendant diagnose plaintiff with a spinal cord injury caused by cervical fracture, instability or compression.

6. On December 21, 1998, the plaintiff Richard Daykon was seen by orthopedic surgeon, Dr. David R. Kraus, of Pittsburgh, PA, who immediately diagnosed the plaintiff with a cervical spinal cord injury. Dr. Kraus directly admitted the plaintiff to St. Margaret's Hospital in Pittsburgh and performed emergency surgery in order to relieve spinal cord compression.

7. At all times while the plaintiff Richard Daykon was under the care of the defendants, he was suffering from cervical spinal cord compression which went undiagnosed and untreated by the defendants.

8. As a result of the aforesaid delay in diagnosing and treating the plaintiff's cervical spinal cord compression, the plaintiff has been left with permanent sequella of the spinal cord injury including, but not limited, impairment of his upper extremity function, impairment of his lower extremity function, ataxic gait, and sexual dysfunction.

9. The aforesaid permanent neurologic injury was caused by the negligence of the defendant DuBois Regional Medical Center, acting through its actual or ostensible agents, in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,
- d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury."

6. DuBois Regional Medical Center believes, and therefore avers, that George F. Palmer, Jr., D.O. was not its employee at the time that he provided care and treatment to Richard Daykon on December 4, 1998. Dr. Palmer was an independent contractor physician with emergency medicine privileges at DuBois Regional Medical Center.

7. DuBois Regional Medical Center believes and therefore avers that the allegations in Paragraph 9 of Plaintiff's Complaint alleging negligence are in fact allegations directed to the care and treatment provided by George F. Palmer, Jr., D.O. to Mr. Daykon on December 4, 1998 and not directed to other agents servants or employees of DuBois Regional Medical Center.

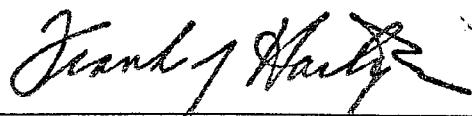
8. Defendant DuBois Regional Medical Center denies that there was any negligence or carelessness in the medical care, treatment and diagnosis of Richard Daykon and denies any liability whatsoever for Plaintiffs' alleged injuries.

9. If it is judicially determined that there was any negligence or carelessness in the medical care, treatment or diagnosis of Richard Daykon, then it is averred that additional Defendant Palmer is responsible in that he saw and treated Mr. Daykon in the emergency department at DuBois Regional Medical Center on December 4, 1998 and that as such,

additional defendant is solely liable to the Plaintiffs for any and all injuries suffered by the Plaintiff's, or is jointly or severally liable with defendant DuBois Regional Medical Center or is liable over to Defendant DuBois Regional Medical Center for indemnification and/or contribution, any and all liability on the part of Defendant DuBois Regional Medical Center being expressly denied.

WHEREFORE, defendant DuBois Regional Medical Center joins as an additional defendant George F. Palmer, Jr., D.O. and demands judgment in its favor as more specifically set forth above.

PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER

Frank J. Hartye, Esquire
PA I.D. # 25568
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581
814/696-9399 Fax

VERIFICATION

I, **GREGORY VOLPE**, Risk Manager, do hereby verify that I have read the foregoing **DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S COMPLAINT TO JOIN ADDITIONAL DEFENDANT GEORGE F. PALMER, JR., D.O.** The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER


Gregory J. Volpe, Risk Manager

Date: 8-13-01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON, and
MARY DAYKON, his wife,

CIVIL DIVISION

Plaintiffs,

No. 00-1495-CD

vs.

EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

ISSUE NO.:

COMPLAINT/
Jury Trial Demanded

Civil Action/Medical-Hospital Negligence

Filed on behalf of
Plaintiff

Counsel of record for this
Party:

John P. Gismondi, Esquire
PA I. D. # 31200

GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
)
Plaintiffs,)
)
vs.) No. 00-1495 CD
)
) JURY TRIAL DEMANDED
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,)
)
Defendants.)

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN
GET LEGAL HELP.**

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

No. 00-1495 CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.) No. 00-1495 CD
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,) JURY TRIAL DEMANDED
Defendants.)

COMPLAINT

AND NOW come the plaintiffs, Richard and Mary Daykon, by and through their attorney John P. Gismondi and Gismondi & Associates and files this action based upon the following:

1. The plaintiffs are husband and wife individuals who reside within the Commonwealth of Pennsylvania.
2. The defendant Edward J. McVay is a physician licensed to practice medicine within the Commonwealth of Pennsylvania who regularly renders medical services within Clearfield County.

3. The defendant DuBois Regional Medical Center is a non-profit corporation which operates a general medical facility within Clearfield County.

4. On or about December 4, 1998, plaintiff Richard Daykon was seen in the emergency room at DuBois Regional Medical Center, after having fallen at work and injured his spine. He was seen and treated by an agent of the defendant, Dr. G. F. Palmer. At no time during said emergency room visit was the plaintiff diagnosed with a spinal cord injury due to cervical fracture, instability or compression. Rather, the plaintiff was diagnosed with a sprain of the neck.

5. Following his discharge from the emergency room, the plaintiff Richard Daykon came under the care of defendant Dr. McVay between December 7, 1998, and December 21, 1998. At no time while he was under the care and treatment of Dr. McVay did said defendant diagnose plaintiff with a spinal cord injury caused by cervical fracture, instability or compression.

6. On December 21, 1998, the plaintiff Richard Daykon was seen by orthopedic surgeon, Dr. David R. Kraus, of Pittsburgh, PA, who immediately diagnosed the plaintiff with a cervical spinal cord injury. Dr. Kraus directly admitted the plaintiff to St. Margaret's Hospital in Pittsburgh and performed emergent surgery in order to relieve spinal cord compression.

7. At all times while the plaintiff Richard Daykon was under the care of the defendants, he was suffering from cervical spinal cord compression which went undiagnosed and untreated by the defendants.

8. As a result of the aforesaid delay in diagnosing and treating the plaintiff's cervical spinal cord compression, the plaintiff has been left with permanent sequella of the spinal cord injury including, but not limited, impairment of his upper extremity function, impairment of his lower extremity function, ataxic gait, and sexual dysfunction.

9. The aforesaid permanent neurologic injury was caused by the negligence of the defendant DuBois Regional Medical Center, acting through its actual or ostensible agents, in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,

- d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.

10. In the alternative, and in addition to the above, the plaintiff's permanent neurologic injury was caused by the negligence of Dr. McVay in the following particulars:

- a. In failing to diagnose the plaintiff's cervical spinal cord injury;
- b. In failing to take appropriate diagnostic tests to discover the plaintiff's cervical spinal cord injury;
- c. In failing to order appropriate follow-up tests and studies in order to diagnose plaintiff's cervical spinal cord injury; and,
- d. In failing to provide timely treatment for the plaintiff's cervical spinal cord injury.

11. As a result of the individual and/or combined negligence of the defendants, the plaintiff Richard Daykon claims damages for the following items of loss:

- a. He has incurred in the past, and will incur in the future, substantial

medical expense;

- b. He has sustained in the past, and will sustain in the future, substantial economic loss;
- c. He has experienced in the past, and will experience in the future, substantial pain, suffering and inconvenience;
- d. He has experienced in the past, and will experience in the future, the loss of certain of the ordinary pleasures of life;
- e. He has experienced in the past, and will experience in the future, substantial bodily disfigurement.

WHEREFORE, the plaintiffs demand judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT II – Loss of Consortium

12. Each of the above paragraphs is incorporated herein by reference.
13. As a result of the injuries to her husband, the wife-plaintiff, Mary Daykon, has lost the society, comfort and services of her spouse.

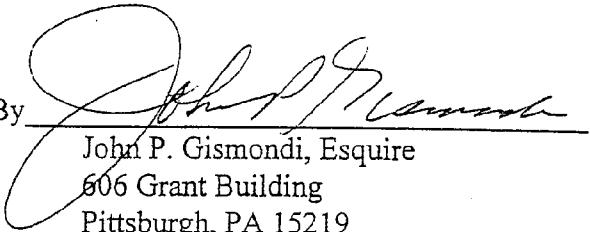
WHEREFORE, the wife-plaintiff, Mary Daykon, demands judgment against each defendant in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars.

JURY TRIAL DEMANDED.

Respectfully submitted,

GISMONDI & ASSOCIATES, P.C.

By


John P. Gismondi, Esquire
606 Grant Building
Pittsburgh, PA 15219
(412) 281-2200
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ~~ALLEGHENY~~ Jefferson) SS.
)

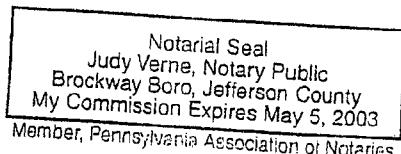
BEFORE ME, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared, RICHARD DAYKON who, being duly sworn according to law, deposes and says that the averments of fact contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Richard Daykin
Richard Daykin

SWORN TO and subscribed before
me this 9th day of
March, 2001.

Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 7th day of March, 2001, by U.S. Mail, First Class, postage pre-paid to the following:

John L. McIntyre, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Hospital

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
Counsel for Dr. Edward McVay

John P. Gismondi
John P. Gismondi, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON,; No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

VS.

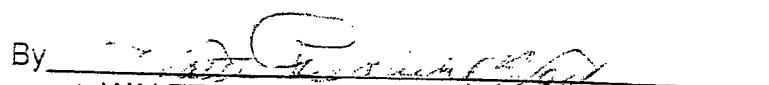
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants :

NOTICE TO PLEAD

In Accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to plead to the within ANSWER and NEW MATTER within twenty (20) days from service hereof or a Default Judgment may be entered against you.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, | CIVIL DIVISION

Plaintiffs, | No. 2000-01495

vs.

EDWARD J. MCVAY M. D. and
DUBOIS REGIONAL MEDICAL
CENTER,

JURY TRIAL DEMANDED

Defendants.

ANSWER AND NEW MATTER

NOW comes the Defendant, EDWARD J. McVAY, M.D. by and through his Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files this Answer and New Matter to Plaintiffs' Complaint of which the following is a statement:

1. The identity of the Plaintiffs is admitted. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.
2. Admitted.
3. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant.
4. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant. To the extent further response is deemed necessary, this Defendant denies same in that after reasonable investigation, this Defendant lacks

information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

5. Admitted and denied. It is admitted that Plaintiff, Richard Daykon came under the care of this Defendant and that the Plaintiff was seen on December 7, 1998, and on other occasions not set forth in Plaintiffs' Complaint. However, this Defendant did not see the patient on December 21, 1998. It is further admitted that this Defendant did not diagnose Plaintiff at any time with a spinal cord injury due to cervical fracture, or instability. It is denied, however, that this Defendant failed to diagnose the Plaintiff with suffering from spinal cord injury as a result of compression and on the contrary, such diagnosis was rendered on December 16, 1998, as a result of a review of MRI film reports previously ordered by this Defendant.

6. It is admitted that this Defendant referred the Plaintiff, Richard Daykon to Dr. David R. Kraus and scheduled an appointment for the Plaintiff to be seen by Dr. Kraus on December 21, 1998. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

7. Denied and on the contrary it is averred that at all times relevant, this Defendant provided proper medical treatment within the standard of care under the facts and circumstances therein. By way of further response, the diagnosis of cervical spinal cord compression was rendered timely and within the standard of care.

8. It is denied that any injuries and/or damages suffered by the Plaintiff was a result of a delay in diagnosis by this Defendant and on the contrary, this Defendant

rendered proper medical treatment in accordance with the applicable standard of care under the circumstances presented.

9. Neither admitted nor denied in that said allegations are directed to a party other than this answering Defendant.

10. Denied and on the contrary it is averred that this Defendant provided proper medical treatment in accordance with the applicable standard of care under the facts and circumstances presented.

11. All allegations of negligence upon this Defendant are denied as conclusions of law and for reasons set forth above and hereinafter. All allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

COUNT II - LOSS OF CONSORTIUM

12. The allegations set forth above are incorporated herein by reference thereto as if same were set forth at length.

13. To the extent this allegation alleges negligence and/or liability upon this Defendant, same are denied as conclusions of law and for reasons set forth above and hereinafter.

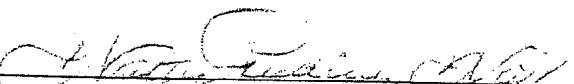
WHEREFORE, Defendant, Edward J. McVay, M.D. prays that Plaintiffs' Complaint be dismissed.

NEW MATTER

14. Plaintiffs' claims against this Defendant are barred in that any and all injuries suffered by the Plaintiff are the direct, sole and proximate result of actions or inactions of others over whom this Defendant had neither the ability nor sought to control.

WHEREFORE, Defendant, Edward J. McVay, M.D. prays this Plaintiffs' Complaint be dismissed.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 

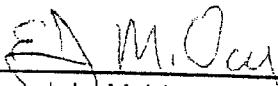
WALTER FREDRICK WALL, ESQUIRE

Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 23657

VERIFICATION

I, EDWARD J. McVAY, M.D., do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER**. The statements therein are true and correct to the best of my knowledge as to part, and based upon information and belief as to the rest.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.


Edward J. McVay, M.D.

DATE: 03/21/00

CERTIFICATE OF SERVICE

I, Walter Fredrick Wall, Esquire, Counsel for Defendant, Edward J. McVay, M.D. hereby certify that on the 23rd day of March, 2001, a true and correct copy of the Answer and New Matter filed on behalf of this Defendant was served upon Counsel of record by U.S. Mail, postage prepaid, as follows:

John P. Gismondi, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By 
WALTER FREDRICK WALL, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife, : No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

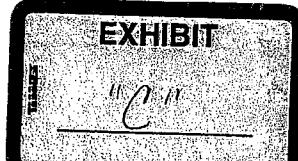
Defendants

JURY TRIAL DEMANDED

**ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT
ON BEHALF OF DUBOIS REGIONAL MEDICAL CENTER**

AND NOW, comes the defendant, DUBOIS REGIONAL MEDICAL CENTER, by and through its attorneys, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Answer and New Matter to Plaintiffs' Complaint and in support sets forth the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. In response to Paragraph No. 4 of the Plaintiffs' Complaint, it is admitted that on or about December 4, 1998, plaintiff was seen in the Emergency Room at Dubois Regional Medical Center. It is admitted that he was seen and treated by Dr. Palmer. Dr. Palmer, the Emergency Room physician is and was an independent contractor and not an agent, servant or employee of the defendant. Strict proof of same is demanded at trial.
5. The allegations of Paragraph No. 5 of Plaintiffs' Complaint are directed to another party and thus, no response is required from this answering defendant.



6. After reasonable investigation, DRMC is without sufficient knowledge or information as to the truth of these averments, and therefore, they are denied as stated. Strict proof is demanded at trial.

7. The allegations contained in Paragraph No. 7 are denied in accordance with Pa. R.C.P. 1029 and strict proof of said averments is demanded at the time of trial.

8. In response to Paragraph No. 8 of the Plaintiffs' Complaint, said averment constitutes legal/medical conclusions to which no response is required. By way of further answer, it is denied that improper treatment was given. Further, it is denied that the plaintiff's condition is the result of any diagnosis or treatment by this defendant, and strict proof of all claims for injuries, damages and causation is demanded at the time of trial.

9. In response to Paragraph No. 9 of the Plaintiffs' Complaint, said allegations constitute legal/medical conclusions to which no response is required. Insofar as a response is required, it is denied that any agent, servant or employee of Dubois Regional Medical Center acted in a negligent manner. Strict proof of said averments is demanded at trial. By way of further answer, at all times, all employees acted appropriately within the standard of hospital care.

10. The allegations contained in Paragraph No. 10 are not directed to defendant Dubois Regional Medical Center and, therefore, no further response is required.

11. In response to Paragraph No. 11 of the Plaintiffs' Complaint, after reasonable investigation this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of plaintiff's claims of injuries and/or damages as contained in these paragraphs. By way of further answer, it is denied that plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for injuries and damages as contained in Paragraph No. 11 in the Plaintiffs' Complaint, and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count I of Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

12. Defendant incorporates by reference, the previous paragraphs of the within Answer and New Matter as though the same were set forth herein at length.

13. In response to Paragraph No. 13 of the Plaintiffs' Complaint, after reasonable investigation, this answering defendant is without sufficient knowledge or information so as to form a belief as to the truth or falsity of Mary Daykon's claims or injuries as contained in this paragraph. By way of further answer, it is denied that the plaintiff received any improper care from defendant, its agents or employees. Strict proof of all claims for plaintiff's wife for damages as contained in Paragraph No. 13 of the Plaintiffs' Complaint and the cause of same is demanded at the time of trial.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that Count II of the Plaintiffs' Complaint be dismissed with prejudice and judgment entered in its favor.

NEW MATTER

By way of further answer and in the nature of affirmative defenses, Dubois Regional Medical Center sets forth the following:

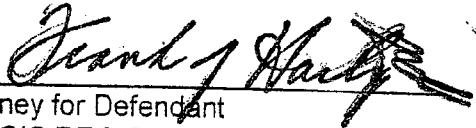
14. At no time did any hospital employee or agent or ostensible agent administer any improper care to Richard J. Daykon.

15. Richard J. Daykon did not sustain any injuries or damages as the result of the conduct of the staff, employees, agents and servants of Dubois Regional Medical Center.

16. The defendant, Dubois Regional Medical Center, hereby pleads and is entitled to any and all defenses available under the Health Care Malpractice Services Act, 40 P.S. Section 1301, et. Seq.

WHEREFORE, the defendant, DUBOIS REGIONAL MEDICAL CENTER, respectfully requests that the Plaintiffs' Complaint be dismissed with prejudice and judgment be entered in its favor.

PFAFF, MCINTYRE, DUGAS, HARTYE
& SCHMITT



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER
FRANK J. HARTYE, ESQUIRE
PA. I.D. No. 28015
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581

TO RICHARD J. DAYKON and MARY DAYKON, HIS WIFE:

You are hereby notified to file a written response to the enclosed New Matter within **twenty (20) days** from service hereof or a judgment may be entered against you.



Attorney for Defendant

VERIFICATION

I, **Marge Kennis, Risk Manager**, do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER

Marge Kennis

Marge Kennis, Risk Management Coordinator

Date: 7/6/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**RICHARD J. DAYKON, and
MARY DAYKON, his wife,**

Plaintiffs,

vs.

**EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,**

Defendants.

CIVIL DIVISION

No. 00-1495-CD

ISSUE NO.:

**REPLY TO NEW MATTER
OF DEFENDANT DuBOIS
REGIONAL MEDICAL CENTER**

Civil Action/Medical-Hospital Negligence

**Filed on behalf of
Plaintiffs**

**Counsel of record for this
Party:**

**John P. Gismondi, Esquire
PA I. D. # 31200**

**GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219**

(412) 281-2200

FILED

SEP 14 2001

No. 00-1495 CD

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON, and)	
MARY DAYKON, his wife,)	
)	
Plaintiffs,)	
)	No. 00-1495 CD
vs.)	
)	JURY TRIAL DEMANDED
EDWARD J. McVAY, M.D., and)	
DuBOIS REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	

**REPLY TO NEW MATTER OF DEFENDANT
DuBOIS REGIONAL MEDICAL CENTER**

AND NOW, come the Plaintiffs, RICHARD J. DAYKON and MARY DAYKON, his wife, by and through their counsel of record, GISMONDI & ASSOCIATES, P.C., per Rebecca Kearney Poljak, Esquire, and files the following Reply to New Matter of Defendant DuBois Regional Medical Center:

1. Plaintiffs incorporate the Complaint in Civil Action in this matter as though fully re-written herein.
2. The allegations in Paragraph 14 and 15 of Defendant's New Matter are without factual basis and merely denials of the averments of the preceding pleading and therefore no response is required. To the extent a response is required the allegations are denied.

No. 00-1495 CD

3. The allegations in Paragraph 16 of Defendant's New Matter are conclusions of law to which no response is required. To the extent that a response is required the allegations are denied.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor and against Defendant DuBois Regional Medical Center.

Respectfully submitted,

GISMONDI & ASSOCIATES, P.C.

Rebecca Kearney Poljak
Rebecca Kearney Poljak

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 11th day
of September, 2001, by U.S. Mail, First Class, postage pre-paid to the following:

John L. McIntyre, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Hospital

Walt Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
Counsel for Dr. Edward McVay

GISMONDI & ASSOCIATES, P.C.

Rebecca Kearney Poljak
Rebecca Kearney Poljak

FILED

SEP 14 2001
M 15641noc
William A. Shaw
Prothonotary
SAC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**RICHARD J. DAYKON, and
MARY DAYKON, his wife,**

Plaintiffs,

vs.

**EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,**

Defendants.

CIVIL DIVISION

No. 00-1495-CD

ISSUE NO.:

**REPLY TO NEW MATTER
OF DEFENDANT EDWARD J.
McVAY, M.D.**

Civil Action/Medical-Hospital Negligence

**Filed on behalf of
Plaintiffs**

**Counsel of record for this
Party:**

**John P. Gismondi, Esquire
PA I. D. # 31200**

**GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219**

(412) 281-2200

FILED

SEP 14 2001

**John A. Shaw
Fleming, Shaw & Associates**

No. 00-1495 CD

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON, and)
MARY DAYKON, his wife,)
Plaintiffs,)
vs.) No. 00-1495 CD
EDWARD J. McVAY, M.D., and)
DuBOIS REGIONAL MEDICAL CENTER,) JURY TRIAL DEMANDED
Defendants.)

**REPLY TO NEW MATTER OF DEFENDANT
EDWARD J. McVAY, M.D.**

AND NOW, come the Plaintiffs, RICHARD J. DAYKON and MARY DAYKON, his wife, by and through their counsel of record, GISMONDI & ASSOCIATES, P.C., per Rebecca Kearney Poljak, Esquire, and files the following Reply to New Matter of Defendant Edward J. McVay, M.D.:

1. Plaintiffs incorporate the Complaint in Civil Action in this matter as though fully re-written herein.
2. The allegations in Paragraph 14 of Defendant's New Matter are without factual basis and are conclusions of law to which no response is required. To the extent that a response may be required the allegations are denied.

No. 00-1495 CD

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor and against Defendant Edward J. McVay, M.D.

Respectfully submitted,

GISMONDI & ASSOCIATES, P.C.

Rebecca Kearney Poljak
Rebecca Kearney Poljak

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 11th day of September, 2001, by U.S. Mail, First Class, postage pre-paid to the following:

John L. McIntyre, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Hospital

Walt Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
Counsel for Dr. Edward McVay

GISMONDI & ASSOCIATES, P.C.

Rebecca Kearney Poljak
Rebecca Kearney Poljak

FILED

SEP 14 2001
MAG/PO CC
William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

No. 2000 - 1495 CD

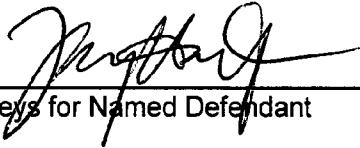
ISSUE:
PRAECIPE FOR MOTION'S COURT

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Counsel of Record for This Party
Frank J. Hartye, Esquire
PA I.D. #25568

McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 Fax

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 18TH DAY OF OCTOBER, 2001.



Attorneys for Named Defendant

FILED

OCT 27 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 – 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

JURY TRIAL DEMANDED

PRAECIPE FOR MOTION'S COURT

TO: PROTHONOTARY:

Please place the Motion to Strike Writ of Summons to Join Additional Defendant
filed on behalf of additional defendant on the next available Motion's Court date

Respectfully submitted,
McINTYRE, DUGAS, HARTYE &
SCHMITT



Attorney for Defendant
DUBOIS REGIONAL MEDICAL CENTER
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

L. Shaw

Oct 22 2001
11:30 AM NOCC
William A. Shaw
Prothonotary

CF

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and :
MARY DAYKON, his wife :
:
vs. : No. 00-1495-CD
:
EDWARD J. MCVAY, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:
vs. :
:
GEORGE F. PALMER, JR., D.O. :
:

ORDER

NOW, this 26th day of October, 2001, upon consideration of Defendant Palmer's Motion to Strike Writ of Summons to Join Additional Defendant in the above matter, a Rule is hereby issued upon the parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 5th day of December, 2001, at 9:00 A.M. in Courtroom No. (), Clearfield County Courthouse, Clearfield, PA.

FILED

OCT 26 2001

William A. Shaw
Prothonotary

BY THE COURT:

JOHN K. REILLY, JR.
President Judge

FILED

OCT 26 2001

01/12:20 p.m.

William A. Shaw *Ca*

Prothonotary

4cc atty Hartye.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

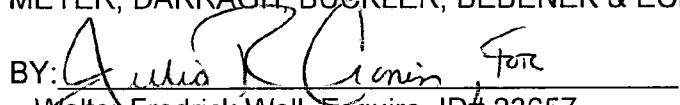
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants

TO: MARY DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of MARY DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq., of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on FRIDAY, JANUARY 4, 2002, commencing at 2:00 p.m. in the offices of SARGENT'S COURT REPORTING SERVICES, 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 
Walter Fredrick Wall, Esquire, ID# 23657
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

DATED: 11/13/01

cc: Sargent's Court Reporting Services

FILED

NOV 14 2001

W.A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants

NOTICE OF DEPOSITION

TO: RICHARD DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of RICHARD DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq., of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on FRIDAY, JANUARY 4, 2002, commencing at 1:00 p.m. in the offices of SARGENT'S COURT REPORTING SERVICES, 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:


Walter Fredrick Wall, Esquire, ID# 23657
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

DATED: 11/13/01

cc: Sargent's Court Reporting Services

FILED

NOV 14 2001
M 11381 NOCC
V.O. M. A. Shaw
Sargent's Court Reporting Services
(jk)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

TO: MARY DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of MARY DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on FRIDAY, JANUARY 4, 2002, commencing at 2:00 p.m. in the offices of SARGENT'S COURT REPORTING SERVICES , 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

Mary Lou Walewofter, Esquire, ID#62175
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

DATED:11/15/01

cc: Sargent's Court Reporting Services
Deborah Olszewski, Esquire
Frank Hartye, Esquire

FILED

NOV 16 2001
m 11.20 moce
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON,: No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

TO: MARY DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of MARY DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on FRIDAY, JANUARY 4, 2002, commencing at 2:00 p.m. in the offices of SARGENT'S COURT REPORTING SERVICES , 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: _____

Mary Lou Maierhofer, Esquire, ID#62175
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

DATED:11/15/01

cc: Sargent's Court Reporting Services
Deborah Olszewski, Esquire
Frank Hartye, Esquire

FILED

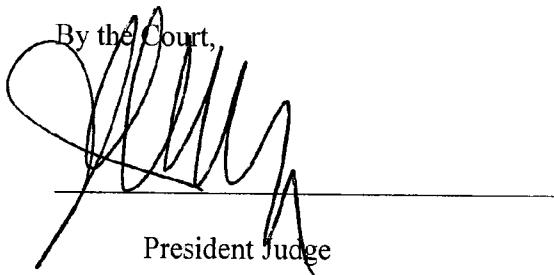
NOV 16 2001
m11.201nrc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD J. DAYKON and :
MARY DAYKON, his wife :
:
-vs- : No. 00-1495-CD
:
EDWARD J. MCVAY, M.D. and :
DUBOIS REGIONAL MEDICAL CENTER:
:
-vs- :
:
GEORGE F. PALMER, JR., D.O. :

ORDER

NOW, this 5th day of December, 2001, Motion to Strike Writ of Summons to
Join Additional Defendant filed on behalf of Additional Defendant George F. Palmer, Jr.,
D.O., shall be and is hereby dismissed.

By the Court,

President Judge

FILED

DEC 05 2001

0/3:201 was

William A. Shaw
Prothonotary

CLERK COPIES TO

OLSZEWSKI

GISMONDI

WALL WALL & MCINTIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

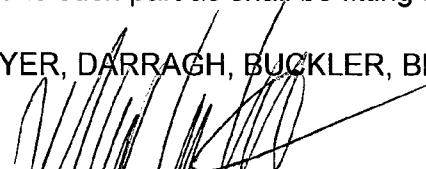
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

REVISED NOTICE OF DEPOSITION

TO: RICHARD DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of RICHARD DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on **Wednesday, March 6, 2002, commencing at 1:00 p.m.** in the offices of SARGENT'S COURT REPORTING SERVICES , 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

Mary Lou Majerhofer, Esquire, ID#62175
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

DATED: December 20, 2001

FILED

cc: Sargent's Court Reporting Services

DEC 21 2001

~12:45/ WAP

William A. Shaw
Prothonotary

~12/6
GJS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

CERTIFICATE OF SERVICE

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **20th day of December, 2001**, a true and correct copy of the Revised Notice of Deposition of Richard Daykon on behalf of Defendant, Edward J. McVay, was served upon all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' counsel)

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648
(Co defense Counsel)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for George F. Palmer, Jr.)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By _____

MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs. :

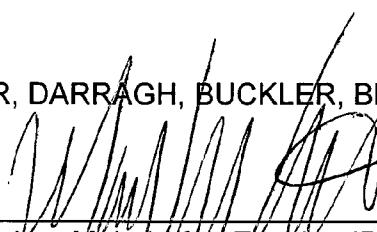
EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants :

REVISED NOTICE OF DEPOSITION

TO: MARY DAYKON
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of MARY DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq., of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on **Wednesday, March 6, 2002, commencing at 2:00 p.m.** in the offices of SARGENT'S COURT REPORTING SERVICES located at 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

Mary Lou Maierhofer, Esquire, ID#62175
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600

FILED

DATED: December 20, 2001

cc: Sargent's Court Reporting Services

DEC 21 2001

1/12:45 PM
William A. Shaw
Prothonotary

cc: 

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

: Plaintiffs : JURY TRIAL DEMANDED

: vs. :

: EDWARD J. MCVAY, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER, and GEORGE F. PALMER, :
JR. Defendants :

CERTIFICATE OF SERVICE

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **20th day of December, 2001**, a true and correct copy of the Revised Notice of Deposition of Mary Daykon on behalf of Defendant, Edward J. McVay, was served upon all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

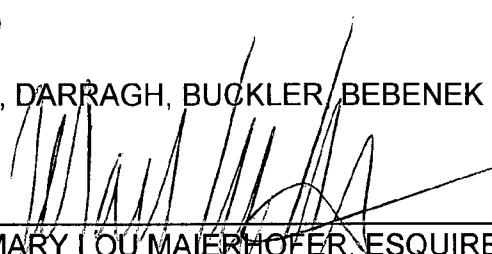
Rebecca Poljak, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' counsel)

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648
(Co defense Counsel)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for George F. Palmer, Jr.)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By _____


MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON and
MARY DAYKON,

Plaintiffs,

v.

EDWARD J. McVAY, M.D.; and
DuBOIS REGIONAL MEDICAL CENTER,
Defendants,

v.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

CIVIL DIVISION

No: 2000-01495-CD

**ANSWER, NEW MATTER AND
CROSS-CLAIM TO COMPLAINT
TO JOIN ADDITIONAL
DEFENDANT**

Civil Action/Medical-Hospital Negligence

JURY TRIAL DEMANDED

Filed on Behalf of Additional Defendant:
GEORGE F. PALMER, JR., D.O.

Counsel of Record for This Party:

DEBORAH D. OLSZEWSKI, ESQUIRE
Pa. I.D. No. 30691

OLSZEWSKI & QUINLIN, P.C.
Firm No. 512

The Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222-2302

(412) 644-0200

By: 
Deborah D. Olszewski, Esquire

FILED

FEB 04 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON and
MARY DAYKON,

CIVIL DIVISION

No: 2000-01495-CD

Plaintiffs,

v.

EDWARD J. McVAY, M.D.; and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants,

v.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

**ANSWER, NEW MATTER AND CROSS-CLAIM PURSUANT TO Pa. R.C.P. 2252 TO
COMPLAINT TO JOIN ADDITIONAL DEFENDANT**

AND NOW, comes Defendant, George F. Palmer, Jr., D.O., (hereinafter "Dr. Palmer"), by and through his attorneys, Deborah D. Olszewski, Esquire, and Olszewski & Quinlin, P.C., and files the following Answer, New Matter and Cross-Claim to Complaint to Join Additional Defendant, averring in support as follows:

1. This Defendant has been advised and avers that the Pennsylvania Rules of Civil Procedure do not require Dr. Palmer to set forth his answers or defenses except as listed below.
2. If and to the extent that any factual averment in Defendant, DuBois Regional Medical Center's Complaint to Join is not responded to in the paragraphs that follow, said allegation is denied for the reason that, after reasonable investigation this Defendant lacks sufficient information or knowledge upon which to form a belief in the truth of the averments contained therein.

3. Paragraphs 1 through 3 are neither admitted nor denied for said paragraphs involve Defendants other than Dr. Palmer.

4. Admitted.

5. It is admitted that on December 4, 1998, Plaintiff was seen in the emergency room at DuBois Regional Medical Center and that he provided a history that he fell while getting off a semi-tractor trailer, falling on his buttocks and injuring his lower and upper back area. The allegation that Dr. Palmer was an agent of DuBois Regional Medical Center is denied. On the contrary, as of December 4, 1998 Dr. Palmer was an independent contractor not under the direction or control of DuBois Regional Medical Center. The remaining allegations of subparagraph 5 of Paragraph 5 of the Complaint to Join are denied. On the contrary, the medical record is in writing and speaks for itself. The allegations contained in subparagraphs 5 through 9 of Paragraph 5 of the Complaint to Join are denied as Dr. Palmer has no knowledge or information of Plaintiff's care following the emergency room visit. Further, Dr. Palmer denies he was negligent in any sum or manner whatsoever or that he caused any injuries or damages to Plaintiff.

6. Admitted.

7. Denied. On the contrary, Dr. Palmer rendered complete and proper medical care to Plaintiff which comported with and was consistent with proper medical standards.

8. Admitted. By way of further response, Dr. Palmer denies he was negligent in the care and treatment of Plaintiff or that he caused Plaintiff any injury or damages.

9. Denied. On the contrary, the Answers to Paragraphs 5 through 8 of the Complaint to Join are incorporated by reference as though fully set forth herein. Further, Dr. Palmer denies that he is solely liable or jointly or severally liable with Defendant, DuBois Regional Medical

Center or that he is liable over to DuBois Regional Medical Center for indemnification and/or contribution

WHEREFORE, it is requested that the Complaint to Join be dismissed with proper costs and charges.

NEW MATTER

10. To the extent that evidence demonstrates that Plaintiff-Husband's alleged injuries and damages were caused by the conduct of others by circumstances beyond the control of this Defendant, this Defendant pleads superseding and/or intervening causes(s) and/or partial bar.

11. To the extent that the evidence demonstrates that Plaintiff-Husband contributed to his injuries, this Defendant pleads the contributory negligence of the Plaintiff-Husband as a complete and/or partial bar to the entirely of Plaintiffs' claims.

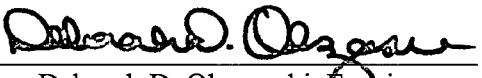
CROSS CLAIM PURSUANT TO Pa. R.C.P. 2252

12. If it is judicially determined that there was any negligence or carelessness in the medical care, treatment or diagnosis of Richard Daykon, then it is averred that DuBois Regional Medical Center is responsible in that its agents, servants and employees saw and treated Plaintiff at DuBois Regional Medical Center after December 4, 1998 and as such, Defendant DuBois Regional Medical Center is solely liable to the Plaintiffs for any and all injuries suffered by the Plaintiff or jointly and severally liable or liable over to George Palmer, Jr., D.O., for indemnification and/or contribution, any and all liability on the part of Dr. Palmer being expressly denied.

WHEREFORE, Dr. Palmer cross-claims DuBois Regional Medical Center pursuant to Pa. R.C.P. 2252(a) and demands judgment in his favor as more specifically set forth above.

Respectfully submitted,

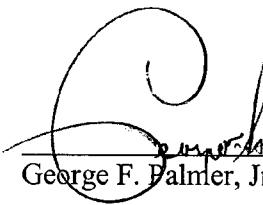
OLSZEWSKI & QUINLIN, P.C.

BY: 
Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

VERIFICATION

I verify that the statements contained in the foregoing ANSWER, NEW MATTER AND CROSS-CLAIM PURSUANT TO PA. R.C.P. 2252 TO COMPLAINT TO JOIN ADDITIONAL DEFENDANT are true and correct to the best of my knowledge, information and belief. I understand that false statements contained herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

DATE: 1-29-02


George F. Palmer, Jr., D.O.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER, NEW MATTER AND CROSS-CLAIM PURSUANT TO Pa.R.C.P. 2252 TO COMPLAINT TO JOIN ADDITIONAL DEFENDANT has been served upon all parties either individually or through counsel, as listed below on the 31st day of January, 2002 by first class mail, postage prepaid:

Rebecca Kearney Poljak, Esquire
606 Grant Building
Pittsburgh, PA 15219

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

Walter Wall, Esquire
2000 Frick Building
Pittsburgh, PA 15219

OLSZEWSKI & QUINLIN, P.C.

BY: Deborah D. Olszewska
Deborah D. Olszewska, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

FILED

FEB 04 2002

11:25 a.m.
M
William A. Shaw
Prothonotary

cc to Atty

G.O.
G.O.
G.O.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

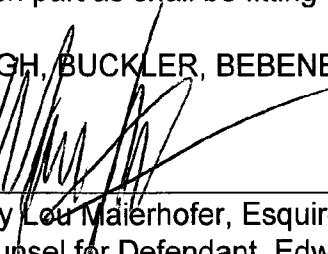
SECOND REVISED NOTICE OF DEPOSITION

TO: RICHARD DAYKON
Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of RICHARD DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on **Friday, August 2, 2002, commencing at 9:30 a.m.** in the offices of SARGENT'S COURT REPORTING SERVICES , 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: _____


Mary Lou Maierhofer, Esquire
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
ID#62175

DATE: May 24, 2002

FILED

cc: Sargent's Court Reporting Services

MAY 28 2002

m1137 no cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON, : No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs. :

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants :

CERTIFICATE OF SERVICE

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **24th day of May, 2002**, a true and correct copy of the Second Revised Notice of Deposition of Richard Daykon on behalf of Defendant, Edward J. McVay, was served upon all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

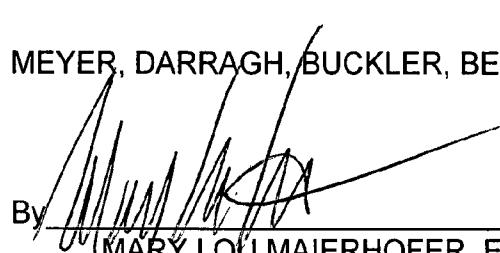
Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' counsel)

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648
(Co defense Counsel)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for George F. Palmer, Jr.)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By


MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON,; No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER, and GEORGE F. PALMER,
JR. Defendants

SECOND REVISED NOTICE OF DEPOSITION

TO: MARY DAYKON
Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211

PLEASE TAKE NOTICE that the deposition of MARY DAYKON will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter on **Friday, August 2, 2002, commencing at 11:30 a.m.** in the offices of SARGENT'S COURT REPORTING SERVICES located at 106 N. Second Street, Clearfield, Pennsylvania, at which time you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

Mary Lou Maiethofen, Esquire
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
ID#62175

FILED

DATE: May 24, 2002

cc: Sargent's Court Reporting Services

MAY 28 2002
M11371ndcc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD DAYKON & MARY DAYKON,: No. 2000-01495

Plaintiffs : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER, and GEORGE F. PALMER, :
JR. Defendants :

CERTIFICATE OF SERVICE

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **24th day of May, 2002**, a true and correct copy of the Second Revised Notice of Deposition of Mary Daykon on behalf of Defendant, Edward J. McVay, was served upon all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

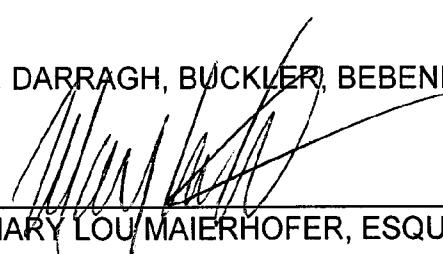
Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' counsel)

Frank Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648
(Co defense Counsel)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for George F. Palmer, Jr.)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By _____


MARY LOU MAIERHOFER, ESQUIRE
Counsel for the Defendant, Edward J. McVay, M.D.
120 Lakemont Park Blvd.
Altoona, PA 16602
(814) 941-4600
ID# 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY DAYKON, his wife,	No. 2000 – 1495 CD
Plaintiffs	STIPULATION TO AMEND NEW MATTER
vs.	Filed on behalf of Defendant, DUBOIS REGIONAL MEDICAL CENTER
EDWARD J. McVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	Counsel of Record for This Party Frank J. Hartye, Esquire PA I.D. #25568
Defendants	Heather A. Harrington, Esquire PA I.D. #62977
vs.	McINTYRE, DUGAS, HARTYE & SCHMITT
GEORGE F. PALMER, JR., D.O.,	P.O. Box 533 Hollidaysburg, PA 16648 (814) 696-3581 Phone (814) 696-9399 Fax
Defendant	

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 8th DAY OF JULY, 2002.

Heather A. Harrington

Attorneys for Named Defendant

FILED

JUL 09 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife, : No. 2000 - 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER, :
Defendants

vs.

GEORGE F. PALMER, JR., D.O., :
Defendant : JURY TRIAL DEMANDED

**STIPULATION TO AMEND NEW MATTER
BY DEFENDANT DuBOIS REGIONAL MEDICAL CENTER**

It is hereby stipulated and agreed by all parties, through their undersigned
counsel, that Defendant DuBois Regional Medical Center, may file an Amended New Matter, a
copy of which is attached hereto as Exhibit "A" and incorporated by reference.

Gismondi & Associates

Scott O. Glassman
Scott O.
Glassman

Rebecca Kearney Poljak, Esquire
Attorneys for Plaintiffs
Rebecca Kearney Poljak, Esquire
PA I.D. No. 27557
606 Grant Building
Pittsburgh, PA 15219
Ph: (412) 281-2200

McIntyre, Dugas, Hartye & Schmitt

Heather Harrington
Attorneys for Defendant DuBois
Regional Medical Center
Heather A. Harrington, Esquire
PA I.D. No. 62977
Post Office Box 533
Hollidaysburg, PA 16648
Ph: (814) 696-3581

**Meyer, Darragh, Buckler, Bebenek
& Eck, PLLC**


Atorneys for Edward J. McVay, M.D.
Mary Lou Maierhofer, Esquire
PA I.D. No. 62175
120 Lakemont Park Boulevard
Altoona, PA 16602
Ph: (814) 941-4600

Olszewski & Quinlin, P.C.

Atorneys for George F. Palmer, Jr., D.O.
Deborah D. Olszewski, Esquire
PA I.D. No. 30691
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222-2302
Ph: (412) 644-0200

**Meyer, Darragh, Buckler, Bebenek
& Eck, PLLC**

Attorneys for Edward J. McVay, M.D.
Mary Lou Maierhofer, Esquire
PA I.D. No. 62175
120 Lakemont Park Boulevard
Altoona, PA 16602
Ph: (814) 941-4600

Olszewski & Quinlin, P.C.

Deborah D. Olszewski

Attorneys for George F. Palmer, Jr., D.O.
Deborah D. Olszewski, Esquire
PA I.D. No. 30691
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222-2302
Ph: (412) 644-0200

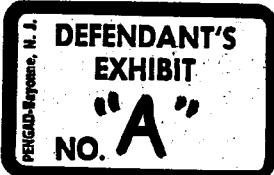
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY DAYKON, his wife, : No. 2000 - 1495 CD
Plaintiffs :
vs. :
EDWARD J. McVAY, M.D. and :
DUBOIS REGIONAL MEDICAL CENTER, :
Defendants :
vs. :
GEORGE F. PALMER, JR., D.O., :
Defendant : JURY TRIAL DEMANDED

AMENDED NEW MATTER

AND NOW, comes Defendant, DuBois Regional Medical Center, by and through its counsel, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the within Amended New Matter.

1. Defendant DuBois Regional Medical Center incorporates by reference its previously filed New Matter.
2. Defendant DuBois Regional Medical Center was insured under a policy issued by PHICO Insurance Company ("PHICO").
3. The Commonwealth Court of Pennsylvania entered an Order of Liquidation with a finding of insolvency against PHICO on February 1, 2002.
4. As a result of the Liquidation Order, the provisions of 40 P.S. § 991.1817(a) apply to Plaintiffs' claim.
5. Plaintiffs are required to exhaust first their rights under any insurance policy, including but not limited to claims under accident and health insurance, worker's compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer.



6. Any failure to exhaust other insurance bars Plaintiffs' recovery, if any, in this action.
7. Upon information and belief, bills or damages related to the loss for which Plaintiffs seek recovery in this action were paid or are payable under accident and health insurance, Blue Cross and Blue Shield, worker's compensation insurance, or other insurance.
8. The Pennsylvania Property and Casualty Insurance Guaranty Association has asserted that any amount that may be payable by it on behalf of Defendant DuBois Regional Medical Center is reduced by the amount of Plaintiffs' recovery under other insurance.
9. Plaintiffs' recovery under other insurance reduces any amount that may be found to be payable by Defendant DuBois Regional Medical Center in this action, to the same extent as the recovery reduces any amount payable by the Pennsylvania Property and Casualty Insurance Guaranty Association.

WHEREFORE, Defendant DuBois Regional Medical Center demands judgment in its favor.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By _____
Attorneys for Defendant DuBois Regional
Medical Center
Frank J. Hartye, Esquire, PA I.D. #25568
Heather A. Harrington, Esquire, PA I.D. #62977
P.O. Box 533, Hollidaysburg, PA 16648
Ph: (814) 696-3581

NOTICE TO PLEAD

TO: RICHARD J. DAYKON and MARY
DAYKON, his wife, Plaintiffs

YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE ENCLOSED
AMENDED NEW MATTER WITHIN TWENTY
(20) DAYS FROM SERVICE HEREOF OR A
JUDGMENT MAY BE ENTERED AGAINST YOU.

Attorneys for Defendant DuBois Regional
Medical Center

FILED
O/B 5134
JUL 09 2002
K&L

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

Plaintiffs

No. 2000 - 1495 CD

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

AMENDED NEW MATTER

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Counsel of Record for This Party
Frank J. Hartye, Esquire

PA I.D. #25568

Heather A. Harrington, Esquire
PA I.D. #62977

**McINTYRE, DUGAS, HARTYE
& SCHMITT**

P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581 Phone
(814) 696-9399 Fax

vs.

GEORGE F. PALMER, JR., D.O.,

Defendant

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 8th DAY OF JULY, 2002.

Frank J. Hartye
Atorneys for Named Defendant

FILED

JUL 09 2002

William A. Shaw
Prothonotary

6. Any failure to exhaust other insurance bars Plaintiffs' recovery, if any, in this action.

7. Upon information and belief, bills or damages related to the loss for which Plaintiffs seek recovery in this action were paid or are payable under accident and health insurance, Blue Cross and Blue Shield, worker's compensation insurance, or other insurance.

8. The Pennsylvania Property and Casualty Insurance Guaranty Association has asserted that any amount that may be payable by it on behalf of Defendant DuBois Regional Medical Center is reduced by the amount of Plaintiffs' recovery under other insurance.

9. Plaintiffs' recovery under other insurance reduces any amount that may be found to be payable by Defendant DuBois Regional Medical Center in this action, to the same extent as the recovery reduces any amount payable by the Pennsylvania Property and Casualty Insurance Guaranty Association.

WHEREFORE, Defendant DuBois Regional Medical Center demands judgment in its favor.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By Heather Harrington
Attorneys for Defendant DuBois Regional
Medical Center
Frank J. Hartye, Esquire, PA I.D. #25568
Heather A. Harrington, Esquire, PA I.D. #62977
P.O. Box 533, Hollidaysburg, PA 16648
Ph: (814) 696-3581

NOTICE TO PLEAD

TO: RICHARD J. DAYKON and MARY
DAYKON, his wife, Plaintiffs

YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE ENCLOSED
AMENDED NEW MATTER WITHIN TWENTY
(20) DAYS FROM SERVICE HEREOF OR A
JUDGMENT MAY BE ENTERED AGAINST YOU.

Heather Harrington
Attorneys for Defendant DuBois Regional
Medical Center

FILED

012-5184

JUL 09 2002

cc

ASD
William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and : No. 2000-1495 CD
MARY DAYKON, his wife, :
Plaintiffs, :
-vs- : **TYPE OF DOCUMENT**
EDWARD J. McVAY, M.D., and : Amended Answer and New Matter Pursuant
DUBOIS REGIONAL MEDICAL : to Pa. R.C.P. §2252(d)
CENTER, :
Defendants, :
-vs- : **FILED ON BEHALF OF**
GEORGE F. PALMER, JR., D.O., : Edward J. McVay, M.D.
Additional Defendant. : Defendant
: **COUNSEL FOR DEFENDANT**
: Mary Lou Maierhofer, Esquire
: Pennsylvania ID #62175
: **MEYER, DARRAGH, BUCKLER, BEBENEK**
: & ECK, PLLC
: 120 Lakemont Park Boulevard
: Altoona, PA 16602
: (814) 941-4600

FILED

JUL 17 2002
ml:lab/wcc
William A. Shaw
Prothonotary
E
KRS

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and
MARY DAYKON, his wife,
Plaintiffs,

-vs- : No. 2000-1495 CD

EDWARD J. McVAY, M.D., and
DUBOIS REGIONAL MEDICAL
CENTER,
Defendants,

-vs- :

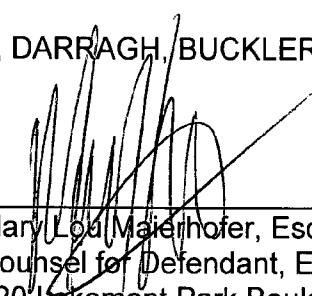
GEORGE F. PALMER, JR., D.O.,
Additional Defendant. : JURY TRIAL DEMANDED

NOTICE TO PLEAD

In Accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to plead to the within AMENDED ANSWER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) within twenty (20) days from service hereof or a Default Judgment may be entered against you.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:



Mary Lou Maierhofer, Esquire
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
PA ID #62175

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

RICHARD J. DAYKON and
MARY DAYKON, his wife,
Plaintiffs,

-vs- : No. 2000-1495 CD

EDWARD J. McVAY, M.D., and
DUBOIS REGIONAL MEDICAL
CENTER,
Defendants,

-vs-

GEORGE F. PALMER, JR., D.O.,
Additional Defendant. : JURY TRIAL DEMANDED

AMENDED ANSWER AND NEW MATTER PURSUANT TO Pa. R.C.P. §2252(d)

AND NOW COMES, Defendant, Edward J. McVay, M.D., by and through his counsel, Mary Lou Maierhofer, Esquire of the law firm, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files this Amended Answer and New Matter Pursuant to Pa. R.C.P. §2252(d), of which the following is a statement:

1. Defendant, Edward J. McVay, M.D., incorporates herein by reference the original Answer and New Matter filed on his behalf.

NEW MATTER

2. This Defendant hereby incorporates the above Paragraph One (1), the same as if fully set forth at length herein.

3. This Defendant hereby affirmatively pleads all bars, limitations and defenses applicable under the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. § 1301, et seq. and Medical Care Availability and Reduction of Error Act.

WHEREFORE, Defendant, Edward J. McVay, M.D., prays this Honorable Court to enter judgment on his behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

NEW MATTER PURSUANT TO Pa. R.C.P. §2252(d)

4. Defendant hereby incorporates the above Paragraphs One (1) through Three (3), the same as if fully set forth at length herein.

5. Defendant, Edward J. McVay, M.D., hereby asserts a crossclaim against DuBois Regional Medical Center, a PHICO-insured. PHICO is now in liquidation.

6. While this Defendant denies that Defendant, DuBois Regional Medical Center, is responsible for any injuries or damages sustained by Plaintiffs, if it is determined at trial in this case that Plaintiffs' alleged injuries are tortiously caused by Defendant, DuBois Regional Medical Center, then in that event, this Defendant claims indemnity and/or contribution from Defendant, DuBois Regional Medical Center, and for that purpose only incorporates herein by reference the allegations against Defendant, DuBois Regional Medical Center contained in Plaintiffs' Complaint.

7. Defendant hereby asserts a cross-claim against Defendant, DuBois Regional Medical Center. While this Defendant denies that the PHICO-insured named therein is responsible for any injuries or damages sustained by Plaintiffs, if it is determined at the trial of this case that Plaintiffs' alleged injuries and damages are tortiously caused by Defendant, DuBois Regional Medical Center, then and in that event, this Defendant claims

that Defendant, DuBois Regional Medical Center is alone liable to Plaintiffs and/or that Defendants are jointly or severally liable on Plaintiffs' Cause of Action.

WHEREFORE, Defendant, Edward J. McVay, M.D., prays this Honorable Court to enter judgment on his behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: _____

Mary Lou Maierhofer, Esquire
Counsel for Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
PA ID #62175

Date: July 16, 2002

VERIFICATION

I, Edward J. McVay, M.D., hereby verify that the statements set forth in the foregoing Amended Answer and New Matter Pursuant to Pa. R.C.P. §2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Edward J. McVay, M.D.

07/15/2000
Date

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and	:
MARY DAYKON, his wife,	:
Plaintiffs,	:
	:
-vs-	: No. 2000-1495 CD
	:
EDWARD J. McVAY, M.D., and	:
DUBOIS REGIONAL MEDICAL	:
CENTER,	:
Defendants,	:
	:
-vs-	:
	:
GEORGE F. PALMER, JR., D.O.,	:
Additional Defendant.	: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Mary Lou Maierhofer, Esquire of the law firm, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that on the **16th day of July, 2002**, a true and correct copy of the Amended Answer and New Matter Pursuant to Pa. R.C.P. §2252(d) on behalf of Defendant, Edward J. McVay, M.D. was served upon Counsel of record by first class U.S. mail, postage prepaid as follows:

Scott D. Glassmith, Esquire GISMONDI & ASSOCIATES Grant Building, Suite 606 Pittsburgh, PA 15211	Frank J. Hartye, Esquire Heather A. Harrington, Esquire McINTYRE, DUGAS, HARTYE & SCHMITT PO Box 533 Hollidaysburg, PA 16648
---	--

Deborah D. Olszewski, Esquire
OLSZEWISKI & QUINLIN, P.C.
The Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222-2302

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

Mary Lou Maierhofer, Esquire
Counsel for Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
PA ID #62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant

No. 2000 - 1495 CD

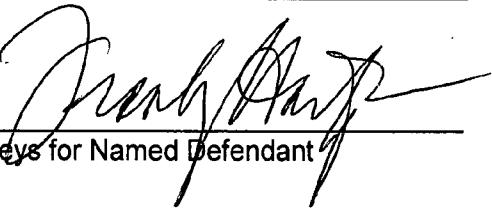
ISSUE:
REPLY TO NEW MATTER

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Counsel of Record for This Party
Frank J. Hartye, Esquire
PA I.D. #25568

**McINTYRE, DUGAS, HARTYE
& SCHMITT**
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 Fax

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 3rd DAY OF SEPTEMBER,
2002.



Attorneys for Named Defendant

FILED

SEP 04 2002
mjt:14/no CC
William A. Shaw *REB*
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and MARY
DAYKON, his wife,

No. 2000 – 1495 CD

Plaintiffs

vs.

EDWARD J. McVAY, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant

JURY TRIAL DEMANDED

REPLY TO NEW MATTER

AND NOW, comes the Defendant, DUBOIS REGIONAL MEDICAL CENTER, by
and through its attorneys, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the
following Reply to New Matter of Amended Answer and New Matter of Edward McVay,
M.D.

1. Defendant incorporates by reference its Answer and New Matter and
Replies to New Matter as though the same were set forth herein at length.
- 2-3. No response is necessary.
4. Defendant incorporates by reference the previous paragraphs of this
Reply.

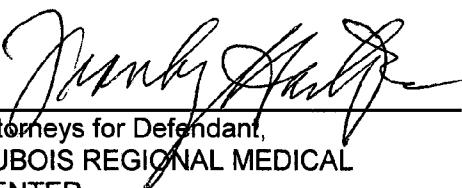
5-7. It is denied that DuBois Regional Medical Center was negligent or careless in any manner or is liable or responsible for any injuries or damages sustained by the plaintiff. It is denied that DuBois Regional Medical Center is liable for contribution and/or indemnification and therefore all of the allegations contained in paragraphs 5 through 7 of Dr. McVay's New Matter are denied.

WHEREFORE, DuBois Regional Medical Center demands judgment in its favor with costs of suit awarded to defendant.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By



Atorneys for Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

VERIFICATION

I, GREGORY J. VOLPE, RISK MANAGER of DUBOIS REGIONAL MEDICAL CENTER, do hereby verify that I have read the foregoing **REPLY TO NEW MATTER**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DUBOIS REGIONAL MEDICAL CENTER



Gregory J. Volpe, Risk Manager

Date: August 19, 2002

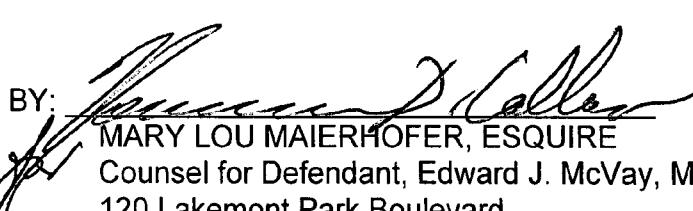
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and, MARY DAYKON, his wife,	:	No. 2000-01495- <i>CD</i>
Plaintiffs,	:	JURY TRIAL DEMANDED
vs.	:	
EDWARD J. MCVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	:	
Defendants,	:	FILED
vs.	:	SEP 20 2002
GEORGE F. PALMER, D.O.,	:	William A. Shaw Prothonotary
Additional Defendant.	:	

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant, Edward J. McVay, M.D., intends to serve a subpoena identical to the one that is attached to this notice upon ABF Freight Systems, Inc. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 
MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
Phone No.: (814) 941-4600
ID # 62175

Date: September 19, 2002

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RICHARD J. DAYKON and MARY DAYKON, his wife, *

Plaintiff (s)	*	No. 2000-01495
Vs.	*	
EDWARD J. MCVAY, M.D. and DUBOIS REGIONAL MEDICAL CENTER,	*	
Defendant (s)	*	
Vs.	*	
GEORGE F. PALMER, D.O., Additional Defendants	**	

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: ABF Freight Systems, Inc., R.R. #1, Box 114, DuBois, PA 15801
(Name of Person or Entity)

Richard Daykon - DOB: 9/3/36 and SSN: 181-26-4706
Within twenty (20) days after service of this subpoena, you are ordered by the Court to

produce the following documents or things: Copies of Richard Daykon's entire personnel file including any test results for Worker's Compensation incidents, reprimands and W2s forms as well as any other documentation contained in his personnel file.

Meyer, Darragh, 120 Lakemont Park Boulevard, Altoona, PA 16602
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Mary Lou Maierhofer, Esquire
ADDRESS: 120 Lakemont Park Boulevard
Altoona, PA 16602
TELEPHONE: (814) 941-4600
SUPREME COURT ID # 62175
ATTORNEY FOR: Defendant, Edward J. McVay, M.D.

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: September 19, 2002
Seal of the Court

Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

FILED
M 11/14/02
SEP 20 2002
NO CC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON,

CIVIL DIVISION

Plaintiffs,

No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

JURY TRIAL DEMANDED

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

CERTIFICATE OF SERVICE

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **19th day of September, 2002**, a true and correct copy of the Second Set of Interrogatories Directed to Plaintiffs on behalf of Defendant, Edward J. McVay, was served upon Counsel for Plaintiffs, with a copy to all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' Counsel)

Frank Hartye, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for DRMC)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for Dr. Palmer)

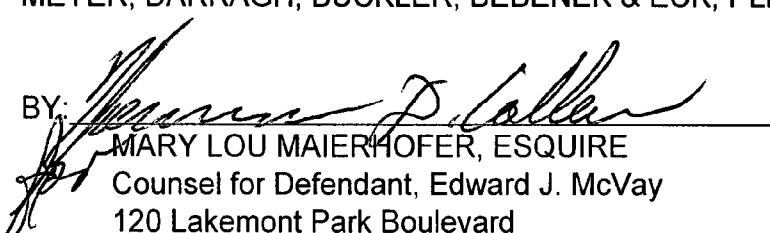
FILED

SEP 20 2002

William A. Shaw
Prothonotary

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:


MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #62175

FILED
M 1109-RE NO
SEP 20 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and, : No. 2000-01495
MARY DAYKON, his wife,

Plaintiffs, : JURY TRIAL DEMANDED
vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants, : William A. Shaw
vs. : Prothonotary

GEORGE F. PALMER, D.O.,
Additional Defendant.

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to
Rule 4009.22, Defendant, Edward J. McVay, M.D., certify that:

- (1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- (2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) no objection to the subpoena has been received, and
- (4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: _____

MARY LOU MATERHOFER, ESQUIRE
Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
Phone No.: (814) 941-4600
ID # 62175

FILED
M 11/27/02 NO cc
OCT 11 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD J. DAYKON and, : No. 2000-01495
MARY DAYKON, his wife,

Plaintiffs, : JURY TRIAL DEMANDED

vs.

EDWARD J. MCVAY, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants,

vs.

GEORGE F. PALMER, D.O.,

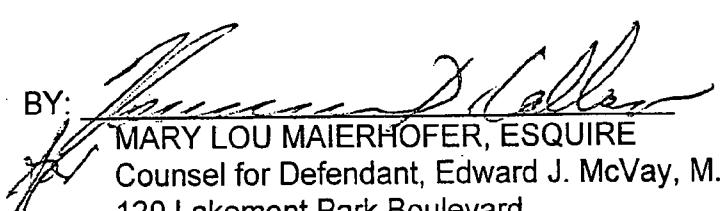
Additional Defendant.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant, Edward J. McVay, M.D., intends to serve a subpoena identical to the one that is attached to this notice upon ABF Freight Systems, Inc. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:


MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Edward J. McVay, M.D.
120 Lakemont Park Boulevard
Altoona, PA 16602
Phone No.: (814) 941-4600
ID # 62175

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RICHARD J. DAYKON and MARY DAYKON, his wife, *

Plaintiff(s) *
Vs. *
EDWARD J. MCVAY, M.D. and DUBOIS REGIONAL *
MEDICAL CENTER, *
Defendant(s) *
Vs. *
GEORGE F. PALMER, D.O.,
Additional Defendants **

No. 2000-01495

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: ABF Freight Systems, Inc., R.R. #1, Box 114, DuBois, PA 15801
(Name of Person or Entity)

Richard Daykon - DOB: 9/3/36 and SSN: 181-26-4706
Within twenty (20) days after service of this subpoena, you are ordered by the Court to

produce the following documents or things: Copies of Richard Daykon's entire personnel file including any test results for Worker's Compensation incidents, reprimands and W2s forms as well as any other documentation contained in his personnel file.

Meyer, Darragh, 120 Lakemont Park Boulevard, Altoona, PA 16602
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Mary Lou Maierhofer, Esquire
ADDRESS: 120 Lakemont Park Boulevard
Altoona, PA 16602
TELEPHONE: (814) 941-4600
SUPREME COURT ID # 62175
ATTORNEY FOR: Defendant, Edward J. McVay, M.D.

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: September 19, 2002
Seal of the Court

Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

2000-01495-CD

DATE PRESENTED

CASE NUMBER

TYPE TRIAL REQUESTED

ESTIMATED TRIAL TIME

Date Complaint Jury Non-Jury

Filed: Arbitration 7/9/01 4 days/hours

Richard J. Daykon and Mary Daykon, his wife
PLAINTIFF(S)

Edward J. McVay, M.D. and Dubois Regional
DEFENDANT(S) Medical Center Check block if a Minor
is a Party to the Case

George F. Palmer, D.O.
ADDITIONAL DEFENDANT(S)

FILED

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED 07/09/2002

Plaintiffs

7/9/01

William A. Shaw

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

Plaintiff

No Court

copy to CJA

More than

& \$25,000.00 yes no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:

Scott D. Glassmith

Scott D. Glassmith, Esquire

5422-281-2200

FOR THE PLAINTIFF

TELEPHONE NUMBER

Mary Lou Mairhofer/Frank Hartye
FOR THE DEFENDANT

814-941-4600
TELEPHONE NUMBER

Debbie Olszewski
FOR ADDITIONAL DEFENDANT

412-644-0200
TELEPHONE NUMBER

1920-21

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Self-Adhesive Stickers

FILED

DEC 09 2002

William A. Shaw
Prehistoric

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

**PROPOSED QUESTIONS OF VOIR
DIRE ON BEHALF OF DEFENDANT,
EDWARD J. MCVAY, M.D.**

Filed on Behalf of Defendant, Edward J.
McVay

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Firm No. 198
120 Lakemont Park Blvd.
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

FILED

JAN 22 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON,

Plaintiffs,

vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2000-01495

JURY TRIAL DEMANDED

**PROPOSED QUESTIONS OF VOIR DIRE ON BEHALF OF DEFENDANT,
EDWARD J. MCVAY, M.D.**

NOW, COMES the Defendant, Edward J. McVay, M.D., by and through his counsel, Mary Lou Maierhofer, Esquire of the law firm, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and submits the following Proposed Questions of Voir Dire:

1. Is there any member of this panel who is related to or acquainted with either or both of the Plaintiffs, Richard J. and Mary (Rizzo) Daykon of 753 Main Street, Brockway, PA?

Yes _____ No _____

2. Is there any member of this panel who is related to or acquainted with any of the following persons who Plaintiffs have indicated that they may call to testify at trial:

a. Guy Gerhart, M.D.;

Yes _____ No _____

b. David R. Kraus, M.D.;

Yes _____ No _____

c. G. Ali Shah, M.D.;

c. G. Ali Shah, M.D.;
Yes _____ No _____

d. Ken Danver of ABF Freight Systems, Inc., DuBois;
Yes _____ No _____

e. Kyle Hetrick, MPT;
Yes _____ No _____

f. James Kobbett, PAC;
Yes _____ No _____

g. Employees of Dubois Regional Medical Center Occupational Therapy Department;
Yes _____ No _____

h. Thomas F. Freenock, Jr., M.D.;
Yes _____ No _____

i. Joel A. Diamond, M.D., UPMC St. Margaret's;
Yes _____ No _____

j. Jeffrey Baum, M.D., UPMC St. Margaret's; and
Yes _____ No _____

k. Warren F. Ostlund, M.D., UPMC St. Margaret's.
Yes _____ No _____

3. Plaintiffs have also indicated that they may call various family members to testify at the time of trial. Is there any member of this panel who is related to or acquainted with any of Plaintiffs family members?

Yes _____ No _____

4. Is there any member of this panel who is related to, acquainted with, treated by - now or in the past, employed by - now or in the past, or does any member of this panel have any relationship whatsoever with Defendant, Edward J. McVay, M.D.?

Yes _____ No _____

5. Is there any member of this panel employed by - now or in the past - or does any member of this panel have any relationship whatsoever with DuBois Regional Medical Center?

Yes _____ No _____

6. Plaintiffs are represented by Scott D. Glassmith, Esquire, of Gismondi and Associates, 700 Grant Building, Pittsburgh, Pennsylvania. Has any member of this panel or any member of their immediate family ever been represented by Attorney Glassmith or John P. Gismondi, Esquire?

Yes _____ No _____

7. Is there any member of this panel who is related to or acquainted with any other member of this panel?

Yes _____ No _____

8. The Plaintiffs commenced this medical malpractice action alleging negligence upon all Defendants for delay and diagnosis and treatment of a spinal cord compression resulting in injury to the person of the husband-Plaintiff. Is there any member of this panel who has knowledge of or is familiar with the circumstances of the incident in question?

Yes _____ No _____

9. At the time of the incident in question, husband-Plaintiff was employed as a truck driver/salesman by ABF Freight Systems, Inc., in their DuBois terminal. Is there any member of this panel or any member of their immediate family who is now or has in the past been employed by ABF Freight Systems, Inc.?

Yes _____ No _____

10. At the time of the incident in question, wife-Plaintiff was employed by Clearfield-Jefferson Mental Health/Mental Retardation as an Early Intervention Service Coordinator. Is there any member of this panel or any member of their immediate family who is now or has in the past been employed by Clearfield-Jefferson Mental Health/Mental Retardation or is familiar with wife-Plaintiff in that capacity?

Yes _____ No _____

11. Prior to the incident in question, wife-Plaintiff had worked for Pennsylvania Elks Major Project. Is there any member of this panel or their immediate family who is now or in the past been employed by Pennsylvania Elks Major Project or is familiar with the wife-Plaintiff in that aspect?

Yes _____ No _____

12. Plaintiffs indicate that they will present the testimony of George Schoedinger, III, M.D. of St. Louis, Missouri. Is there anyone on this panel or any member of their immediate family who has treated and/or consulted with Dr. Schoedinger?

Yes _____ No _____

13. Plaintiffs indicate that they will present the testimony of David R. Kraus, M.D., of UPMC Health System, Pittsburgh, PA. Is there any member of this panel or any member of their immediate family who has treated and/or consulted with Dr. Kraus?

Yes _____ No _____

14. Defendant, Edward J. McVay, M.D., intends to present the testimony of Howard J. Senter, M.D. of Pittsburgh, Pennsylvania. Is there any member of this panel or any member of their immediate family who has treated and/or consulted with Dr. Senter?

Yes _____ No _____

15. Defendant, Edward J. McVay, M.D., intends to present the testimony of William J. Hennessey, M.D. of Greensburg, Pennsylvania. Is there any member of this panel or any member of their immediate family who has treated and/or consulted with Dr. Hennessey?

Yes _____ No _____

16. Is there any member of this panel or any member of their immediate family who has been involved in or who has been a party to any civil litigation?

Yes _____ No _____

a. Was it you?

Yes _____ No _____

b. Was it a relative and, if so, the relationship?

Yes _____ No _____ Relationship _____

c. Were you a Plaintiff?

Yes _____ No _____

d. Were you a Defendant?

Yes _____ No _____

e. Was your relative a Plaintiff?

Yes _____ No _____

f. Was your relative a Defendant?

Yes _____ No _____

g. Did the case proceed to trial?

Yes _____ No _____

h. Were you a witness in that trial?

Yes _____ No _____

i. Would it influence your ability to impartially decide this case based solely on the facts presented at trial?

Yes _____ No _____

17. Is there any member of this panel who currently or in the past has made claim against any entity for money damages as a result of alleged personal injury?

Yes _____ No _____

18. Is there any member of this panel or any member of your immediate family who has ever been involved in a claim against a physician, hospital or other health care provider as a result of the rendering of medical care and/or treatment?

Yes _____ No _____

19. Is there any member of this panel who believes that merely because Plaintiffs have brought this lawsuit that they are entitled to recover money damages?

Yes _____ No _____

20. Is there any member of this panel or any member of your immediate family who has ever had a bad experience with a physician or other healthcare provider as a result of the rendering of medical care or treatment?

Yes _____ No _____

21. Is there any member of this panel who has read in the newspaper, heard on the radio or seen on television anything which would interfere with your ability to render a fair, just and impartial verdict in this case?

Yes _____ No _____

22. Does any member of this panel or any member of their immediate family have any medical or legal training?

Yes _____ No _____ Nature _____

23. Is there any member of this panel who has previously served on a jury, whether civil?

Yes _____ No _____

24. Is there any member of this panel who has any health problems or any physical infirmity which you feel prevents you from sitting as a juror? Particularly, do you have any problem with your hearing or do you have any problem with your back or other condition that would make it difficult for you to sit and hear testimony of approximately one and a half (1 1/2) to two (2) hours duration at a time?

Yes _____ No _____

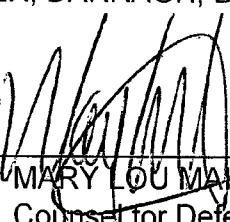
25. Is there any factor beyond those questions addressed to this panel which would indicate to any member of the panel that they would be unable to decide this case based solely on the evidence and the law as instructed by the Court?

Yes _____ No _____

26. Is there any member of this panel who, after hearing all the evidence to be presented herein and receiving the instructions by the Court hold the law applicable to this case and, thereafter, determining that the evidence fails to support a claim against the Defendant, Edward J. McVay, M.D., would be unable to return a verdict in favor of this Defendant?

Yes _____ No _____

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAHERHOFER, ESQUIRE
Counsel for Defendant, Edward J. McVay
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. #62175

Date: January 21, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD DAYKON & MARY DAYKON, CIVIL DIVISION

Plaintiffs, No. 2000-01495
vs.

EDWARD J. MCVAY & DUBOIS
REGIONAL MEDICAL CENTER,

Defendants. JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, hereby certify that on the **21st day of January, 2003**, a true and correct copy of the Proposed Questions of Voir Dire on Behalf of Defendant, Edward J. McVay, M.D., on behalf of Defendant, Edward J. McVay, was served upon Counsel for Plaintiffs, with a copy to all Counsel of Record by U.S. Mail, postage prepaid, addressed as follows:

Scott D. Glassmith, Esquire
Grant Building, Suite 606
Pittsburgh, PA 15211
(Plaintiffs' Counsel)

Frank Hartye, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for DRMC)

Deborah D. Olszewski, Esquire
Henry W. Oliver Building, Suite 614
535 Smithfield Street
Pittsburgh, PA 15222
(Counsel for Dr. Palmer)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

~~MARY LOU MAIERHOFER, ESQUIRE~~
~~Counsel for Defendant, Edward J. McVay~~
~~120 Lakemont Park Boulevard~~
~~Altoona, PA 16602~~
~~(814) 941-4600~~
~~I.D. #62175~~

FILED

NO
cc

38
M 1:39 AM
JAN 22 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD DAYKON and :
MARY DAYKON :
: :
-vs- : No. 00-1495-CD
: :
EDWARD J. MCVAY and DUBOIS :
REGIONAL MEDICAL CENTER :
: :
-vs- :
: :
GEORGE F. PALMER, JR., D.O. :
:

PRE-TRIAL ORDER

NOW, this 21st day of January, 2003, following pre-trial conference in the above-captioned matter, it is the ORDER of this Court that trial in the above-captioned matter shall be held Monday, April 14, 2003, through Thursday, April 17, 2003, commencing at 9:00 a.m. each day. Jury selection shall be had on Thursday, January 23, 2003, at 10:30 a.m.

By the Court,

President Judge

FILED

JAN 23 2003

William A. Shaw
Prothonotary

FILED

01340-881

JAN 23 2003

1CC Atty Grismondi

1CC Atty Wall

1CC Atty Maierhofer

1CC Atty McIntyre

1CC Atty Olszewski

1CC Atty Hartje

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**RICHARD J. DAYKON, and
MARY DAYKON, his wife,**

Plaintiffs,

vs.

**EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,**

Defendants,

vs.

GEORGE F. PALMER, JR., D.O.,

Additional Defendant.

CIVIL DIVISION

No. 00-1495-CD

ISSUE NO.:

**PRAECIPE TO SETTLE
AND DISCONTINUE WITH
PREJUDICE**

Civil Action/Medical-Hospital Negligence

**Filed on behalf of
Plaintiffs**

**Counsel of record for this
Party:**

**John P. Gismondi, Esquire
Pa. I.D. # 31200**

**Scott D. Glassmith, Esquire
Pa. I.D. #27557**

**GISMONDI & ASSOCIATES
Firm I.D. #858
700 Grant Building
Pittsburgh, PA 15219**

(412) 281-2200

FILED

JAN 29 2003

**William A. Shaw
Prothonotary**

No. 00-1495 CD

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION**

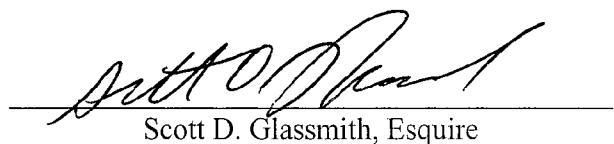
RICHARD J. DAYKON, and)	
MARY DAYKON, his wife,)	
)	
Plaintiffs,)	
)	No. 00-1495 CD
vs.)	
)	JURY TRIAL DEMANDED
EDWARD J. McVAY, M.D., and)	
DuBOIS REGIONAL MEDICAL CENTER,)	
)	
Defendants,)	
)	
vs.)	
)	
GEORGE F. PALMER, JR., D.O.,)	
)	
Additional Defendant.)	

**PRAECIPE TO SETTLE AND DISCONTINUE
WITH PREJUDICE**

To: **Prothonotary**

Kindly mark the above-captioned case settled and discontinued of record.

GISMONDI & ASSOCIATES, P.C.



Scott D. Glassmith, Esquire

CERTIFICATE OF SERVICE

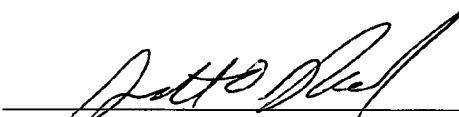
I hereby certify that a copy of the foregoing has been furnished this 27th day of January, 2003, by regular mail, postage-paid to the following:

Frank Hartye, Esquire
PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533

Mary Lou Maierhofer, Esquire
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK
120 Lakemont Park Boulevard
Altoona, PA 16602

Deborah D. Olszewski, Esquire
OLSZEWSKI & QUINLIN, P.C.
Henry W. Oliver Building
Suite 614 - 535 Smithfield Street
Pittsburgh, PA 15222

GISMONDI & ASSOCIATES, P.C.



Scott D. Glassmith, Esquire

FILED

No
cc

11:51 AM
JAN 29 2003
Cert. of Disc to Atty

Copy to C/A

William A. Shaw
Prothonotary

Ed
KSD

53.88 Shff costs
Marilyn & atty
agree

412-281-2200

Gismondi

50.11-00

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

RECEIVED
CIVIL DIVISION
JAN 29 2003
CLERK OF COURT
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Richard J. Daykon
Mary Daykon

Vs. No. 2000-01495-CD
Edward J. McVay MD
DuBois Regional Medical Center
George F. Palmer D.O. Jr.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 29, 2003 marked:

Settled and Discontinued

Record costs in the sum of \$123.22 have been paid in full by Scott D. Glassmith, Esq.

+ 63.89
187.10

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 29th day of January A.D. 2003.

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Richard J. Daykon
Mary Daykon

Vs.

No. 2000-01495-CD

Edward J. McVay MD
DuBois Regional Medical Center

George F. Palmer D.O. Jr.
Additional Defendant

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 29, 2003 marked:

Settled and Discontinued

Record costs in the sum of \$133.88 have been paid in full by Gismondi & Associates and \$43.22 paid by Pfaff, McIntyre, Dugas, Hartye & Schmitt.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of February A.D. 2003.

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

BILL OF COSTS

Richard J. Daykon, Mary Daykon,
Vs. 2000-01495-CD
Edward J. McVay MD, DuBois Regional Total \$177.10
Medical Center,

George F. Palmer D.O. Jr.,
Additional Defendant

<u>Amount</u>	<u>Document</u>	<u>Paid By</u>
\$80.00	Writ of Summons	Gismondi & Associates
\$53.88	Sheriff Return	Gismondi & Associates
\$43.22	Sheriff Return	Pfaff, McIntyre, Dugas, Hartye & Schmitt
\$		
\$		

Certified from the record this 4th day of February, 2003

WILLIAM A. SHAW
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD J. DAYKON, and
MARY DAYKON, his wife,

Plaintiffs,

vs.

EDWARD J. McVAY, M.D., and
DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 00-1495-CD

ISSUE NO.:

STIPULATION FOR DISMISSAL

Civil Action/Medical-Hospital Negligence

Filed on behalf of
Plaintiffs

Counsel of record for this
Party:

John P. Gismondi, Esquire
PA I.D. # 31200

Scott D. Glassmith, Esquire
PA I.D. #27557

GISMONDI & ASSOCIATES
Firm I.D. #858
606 Grant Building
Pittsburgh, PA 15219

(412) 281-2200

FILED

FEB 05 2003

William A. Shaw
Prothonotary

STIPULATION FOR DISMISSAL

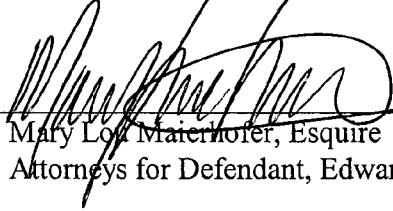
AND NOW, come the parties by their counsel, and hereby Stipulate to the Dismissal of Additional Defendant, George F. Palmer, Jr., D.O. from this lawsuit with prejudice. The caption in this matter is amended to reflect Dr. Palmer's dismissal. Plaintiffs will not proceed against DuBois Regional Medical Center for any care or treatment rendered to Richard J. Daykon by George F. Palmer, Jr., D.O.

GISMONDI & ASSOCIATES, P.C.

BY: 

Scott Glassmith, Esquire
Attorneys for Plaintiffs,
Richard Daykon and Mary Daykon

MEYER DARRAGH BUCKLER BEBENEK & ECK

BY: 

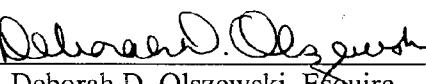
Mary Lou Maiellofer, Esquire
Attorneys for Defendant, Edward J. McVay, M.D.

McINTYRE, DUGAS, HARTYE & SCHMITT

BY: 

Frank J. Hartye, Esquire
Attorneys for Defendant, Dubois Regional
Medical Center

OLSZEWSKI & QUINLIN, P.C.

BY: 

Deborah D. Olszewski, Esquire
Attorneys for Additional Defendant,
George F. Palmer, Jr., D.O.

RECD NO
112007 CC
FEB 23 2003
copy to CIA
William A. Shaw
Notary
EKA