

01-122-CD

MICHAEL W. SMITH SR. et al -vs- MICHAEL KUSH, MD et al

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GD-00-011536 ***CASE TRANSFERRED TO CLEARFIELD COUNTY*******

<i>Filing Date:</i>	07/05/2000	<i>Case Type:</i>	Medical/Hospital Liability
<i>Filing Time:</i>	09:01:02	<i>Court Type:</i>	General Docket
<i>Related Cases:</i>		<i>Current Status:</i>	Case Transferred
<i>Judge:</i>	Strassburger III Eugene B.	<i>Jury Requested:</i>	No
<i>Amount In Dispute:</i>	\$--		

[\[Judgment Entry\]](#) [\[Account Information\]](#) [\[Payment Input\]](#) [\[Event Scheduling\]](#) [\[Secondary Filing\]](#) [\[Associate Parties\]](#) [\[Validate Pleading\]](#)

*Click on PartyID hyperlink to see Alternative name for the party.

Parties								
-- Litigants --								
ID	LName	FName	MI	Type	Address	Phone	Attorney	
@919147	Smith Jr.	Michael	W	Plaintiff	1613 Washington Avenue Hyde PA 16843	--	Kline Thomas R.,	
@923504	Dubois Regional Medical Center Inc.	---	---	Defendant	100 Hospital Avenue DuBois PA 15801	--	Rulis Christopher,	
@919148	Kush M.D.	Michael	---	Defendant	300 Halket Street c/o Magee- Women's Hospital Pittsburgh PA 15213	--	--	
-- Attorney --								
ID	LName	FName	MI	Type	Address	Phone		
28895	Kline	Thomas	R.	Plaintiff's Attorney	1525 Locust Street Nineteenth Floor Philadelphia PA 19102	--		
34886	Rulis	Christopher	---	Defendant's Attorney	100 Fifth Avenue Pittsburgh PA 15222	(412) 3381100		
-- Non Litigants --								
ID	LName	FName	MI	Type	Address	Phone		
JSTRASSBU	Strassburger III	Eugene	B.	Judge	709 City-County Building Pittsburgh PA 15219	()3507138		
ACPROTH	Allegheny County Prothonotary	---	---	Prothonotary	No Default Address Available	(412) 3505729		
SHRF16	Sheriff - Clarion County	---	---	Sheriff	No Default Address Available	(814) 2267611		
SHRF02	Sheriff - Allegheny County	---	---	Sheriff	Courthouse Room 111 Pittsburgh PA 15219	--		

*Click on Filing Date hyperlink to update docket type, docket text and filing party.

*Click on DocketType hyperlink to see Judgments for that Docket.

Docket Entries				
Filing Date	Docket Type	Docket Text	Filing Party	Document
01/16/2001	Case Transferred	As per Order of Court dated 11/16/00. Case is transferred to Clearfield County, PA. Strassburger, J.	Allegheny County Prothonotary	No Image
12/21/2000	Praecipe to Withdraw Appearance	of James R. Hartline, Esquire	Dubois Regional Medical Center Inc.	No Image
12/14/2000	Praecipe for Appearance	of Christopher C. Rulis, Esquire	Dubois Regional Medical Center Inc.	No Image
11/21/2000	Sheriff Return	MICHAEL KUSH C/O MAGEE-WOMEN'S HOSPITAL & DUBOIS REGIONAL MEDICAL CENTER not found.	Sheriff - Allegheny County	No Image
11/17/2000	Order of Court	Dated 11/16/00. Order said Preliminary Objections are granted and the within action is transferred to Clearfield County, where venue is proper. Connor Preliminary Objections remain pending. Strassburger J. eodie copies mailed 11/17/00.	Strassburger III Eugene B.	No Image
11/08/2000	Sheriff Return	Dubois Regional Medical Center served with Reinstated Notice of Suit & Complaint on 09/20/00.	Sheriff - Allegheny County	No Image
11/03/2000	Praecipe to Withdraw Appearance	of John L. McIntyre, Esquire	Dubois Regional Medical Center Inc.	No Image
10/26/2000	Praecipe for Appearance	by James R. Hartline, Esquire	Dubois Regional Medical Center Inc.	No Image
10/24/2000	Praecipe for Appearance	by John L. McIntyre, Esq.	Dubois Regional Medical Center Inc.	No Image
10/20/2000	Preliminary Objections	Breif in Support of Preliminary Objections and Proposed Order	Dubois Regional Medical Center Inc.	No Image
09/15/2000	Praecipe to Reinstate	returnable date: 10/15/00.	Smith Jr. Michael W	No Image
09/13/2000	Sheriff Return	defendants not found.	Sheriff - Allegheny County	No Image
08/15/2000	Sheriff Return	Defendant not found.	Sheriff - Allegheny County	No Image
07/25/2000	Praecipe to Reinstate	returnable date 8/26/00.	Smith Jr. Michael W	No Image
07/05/2000	Complaint	returnable date 8/06/00.	Smith Jr. Michael W	No Image

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01-122-CD

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor,

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

CIVIL DIVISION

No. GD 2000 - 11536

ISSUE:

PRELIMINARY OBJECTIONS, BRIEF
IN SUPPORT OF PRELIMINARY
OBJECTIONS AND PROPOSED
ORDER *OF COURT* *

JUDGE GENE STRASSBURGER

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

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

* COPY SENT TO:

THOMAS R. KLINE ESQ
JAMES R. HARTLINE, ESQ
JOHN L. McINTYRE, ESQ.

2000 OCT 19 PM 2:40
COURT OF COMMON PLEAS

FILED

FEB 26 2001 No Copies
Filed by Atty Ralls
William A. Shaw Prothonotary pd. 70.00

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor, : CIVIL DIVISION
: No. GD 2000 - 11536
: Plaintiffs
: vs.
: MICHAEL KUSH, M.D. and
: DUBOIS REGIONAL MEDICAL CENTER,
: Defendants

**PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT
ON BEHALF OF DUBOIS REGIONAL MEDICAL CENTER**

AND NOW, comes the Defendant, DUBOIS REGIONAL MEDICAL CENTER, by its attorneys, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the within Preliminary Objections to the plaintiffs' Complaint and in support sets forth the following:

I. PRELIMINARY OBJECTIONS TO IMPROPER VENUE

1. In this medical malpractice action, it is alleged that minor plaintiff sustained serious and permanent neurologic injuries and damages.
2. The plaintiffs allege that the minor plaintiff received treatment from an individual defendant physician, Dr. Kush at DuBois Regional Medical Center on February 18-19, 1993. (Paragraphs 16, 17, 18, 23, 24 and 30.)
3. The within medical malpractice action centers around the birth of Michael Smith, Jr. which occurred at 7:30 a.m. on February 19, 1993, by cesarean section.

4. All of the medical care and treatment rendered to Theresa M. Bell Smith by Dr. Kush and DuBois Regional Medical Center personnel occurred in DuBois, Clearfield County, PA.

5. Mrs. Smith did not receive any care or treatment in Allegheny County, during her labor and delivery.

6. At the time of the incident complained of in the plaintiffs' Complaint, Michael Kush, M.D. was a physician licensed to practice medicine and who solely practiced in DuBois, Clearfield County, PA.

7. As of July 2000, Dr. Kush has resumed his medical practice, full time in the DuBois area, Clearfield County, PA.

8. Venue is not proper in Allegheny County and DuBois Regional Medical Center objects pursuant to Pa.R.C.P. 1028(a)(1) to the within filing of this litigation in Allegheny County.

9. Neither DuBois Regional Medical Center, nor Michael Kush, M.D., regularly conduct or transact business in Allegheny County.

WHEREFORE, the Defendant, DuBois Regional Medical Center, respectfully requests that this action be dismissed in Allegheny County and transferred to Clearfield County, the appropriate and proper venue.

II. MOTION TO STRIKE

In the alternative, DuBois Regional Medical Center files Preliminary Objections challenging the specificity of the following paragraphs of the plaintiffs' Complaint:

10. Plaintiffs' Complaint contains the following paragraphs:

43. v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith.

45. f. Failure to have and retain competent physicians and staff; and

45. g. Failure to quality and safe care within the walls of the hospital.

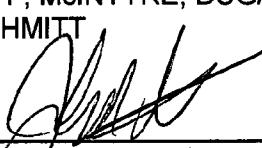
11. The above allegations in the plaintiffs' Complaint are overly broad, vague and not in compliance with the PA Rules of Civil Procedure and the applicable case law.

WHEREFORE, the Defendant, DuBois Regional Medical Center, respectfully requests that the above allegations be stricken from the plaintiffs' Complaint, or in the alternative, that the plaintiffs be required to file a more specific Complaint as to the above subparagraphs.

Respectfully submitted,

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

TO: WITHIN NAMED PARTIES

YOU ARE HEREBY NOTIFIED TO PLEAD
TO THE WITHIN PRELIMINARY OBJECTIONS
WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A DEFAULT JUDGMENT MAY BE
ENTERED AGAINST YOU.

Attorneys for Named Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor, : CIVIL DIVISION
: No. GD 2000 - 11536

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER, :

Defendants

**DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER'S
BRIEF IN SUPPORT OF ITS PRELIMINARY
OBJECTIONS TO THE PLAINTIFFS' COMPLAINT**

AND NOW, comes the Defendant, DUBOIS REGIONAL MEDICAL CENTER, by its attorneys, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the within Brief in support of its Preliminary Objections to the Plaintiffs' Complaint and in support sets forth the following:

FACTS

The plaintiffs allege that Michael Smith, Jr. has suffered serious and permanent neurologic injuries. It is alleged that the injuries and resulting damages, occurred as a result of obstetrical care provided by Michael Kush, M.D. on February 18 and 19, 1993.

According to the plaintiffs' Complaint, Mrs. Smith was pregnant and treating with her regular obstetrician, Dr. Tagala. Her water broke. Mrs. Smith was referred to DuBois Regional Medical Center (hereinafter "DRMC").

After arriving at DRMC, Mrs. Smith was examined on February 18 by Dr. Kush.

Michael Smith, Jr. was delivered by cesarean section at 7:30 a.m. on February 19, 1993.

All of the allegations in the plaintiffs' Complaint pertain to care and treatment rendered to Mrs. Smith and her infant at DRMC. DRMC is located in DuBois, Clearfield County, PA.

It is suggested in the plaintiffs' Complaint that Dr. Kush is amenable to service in Allegheny County. This is not accurate.

As of July 2000, Michael Kush, M.D. conducts his practice full time in and/or around the area of DuBois, Clearfield County, PA. Dr. Kush does not regularly practice medicine in Allegheny County. Neither Dr. Kush, nor DRMC regularly conducts business or medical treatment in Allegheny County.

The plaintiffs filed the within Complaint on or about September 14, 2000. DuBois Regional Medical Center has been served with the Complaint. To the best of the hospital's knowledge and belief, Dr. Kush has not been served. Dr. Kush is currently in DuBois. Dr. Kush cannot be served in Allegheny County.

Venue is to be evaluated at a point in time when service is properly or improperly made. In this case, Dr. Kush can only be served in or around DuBois, PA. DuBois is in Clearfield County.

According to black letter law in Pennsylvania, venue is only proper in a county where a defendant regularly resides or practices. An action can only be brought where venue is proper against at least one of the co-defendants. This action cannot be properly maintained in Allegheny County.

The Appellate Courts in Pennsylvania have held that venue is to be evaluated from the point when service is properly or improperly made. Oswald vs. Olds, 493 A.2d 699 (Pa. Super. 1985) at P. 701.

Here the facts are clear. DRMC was served in Clearfield County. As of the date of submitting this Brief, DRMC is unclear as to whether Dr. Kush has been served. DRMC can assert that as of July 2000, Dr. Kush's medical practice has been limited to the DuBois area.

For the above reasons, it is respectfully submitted that the above matter be dismissed from Allegheny County and transferred to Clearfield County, the county of proper venue.

II.

The plaintiffs have set forth certain allegations which are overly broad, incapable of response and contrary to the applicable case law.

As to the unidentified agents of DRMC, plaintiffs must provide as a minimum, facts which identify the agent by name or appropriate description; the agent's authority; and how the tortuous act of the agent either fell within the scope of or if unauthorized, were ratified by a principal. (See P.O.E. Agency, §174.)

The above is consistent with the Appellate Court decision of Alumni Association, Delta Zeta Zeta of Lambda Chi Alpha Fraternity vs. Sullivan, 535 A.2d 1095 (Pa. Super. 1994) (Footnote No. 2). It is simply not enough for the plaintiffs to allege there were certain individuals involved in the care who were employees of the hospital and that the hospital is liable for them. Plaintiffs need to identify whether these people were nurses, radiology technicians or other individuals, or somehow identify them

by shift or some other manner, so that the hospital can narrow it down what specific actions are being complained of and respond appropriately.

As to the specificity of allegations, the leading case is Conner vs. Allegheny General Hospital, 461 A.2d 600 (Pa. 1983). Hence, DRMC respectfully requests that the above allegations be stricken from the plaintiffs' Complaint, or in the alternative, that the plaintiffs be required to file a more specific Complaint.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

By 

Attorneys for Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

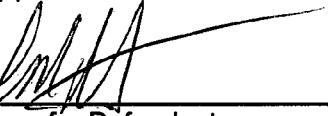
John L. McIntyre, Esquire
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Hollidaysburg, PA 16648
(814) 696-3581

CERTIFICATE OF SERVICE

I, JOHN L. McINTYRE, ESQUIRE, hereby certify that a true and correct copy of Defendant, DuBois Regional Medical Center's Preliminary Objections, Brief in Support of Preliminary Objections and Proposed Order were served by U.S. First Class Mail, postage prepaid, this 18th day of OCTOBER, 2000, as follows:

Thomas R. Kline, Esquire
KLINE & SPECTER, P.C.
19th Floor
1525 Locust Street
Philadelphia, PA 19102

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

By 

Attorneys for Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

John L. McIntyre, Esquire
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(814) 696-3581

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor,

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

CIVIL DIVISION

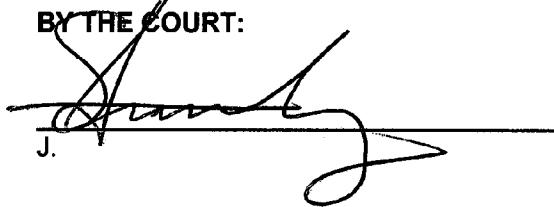
No. GD 2000 - 11536

PROPOSED ORDER

AND NOW, this 16th day of Nov, 2000, after

consideration of DuBois Regional Medical Center's Preliminary Objections to Plaintiffs'
Complaint, said Preliminary Objections are granted and the within action is transferred to
Clearfield County, where venue is proper. *Common p.o.s remain pending*

BY THE COURT:



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D.

602000-71536
RJD

Plaintiffs

vs.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Code:

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

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I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
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KLINÉ & SPECTER

A PROFESSIONAL CORPORATION
BY: THOMAS R. KLINE/AARON J. FREIWALD
ATTORNEY FOR PLAINTIFFS
ATTORNEY ID. # 28895/78028
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PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, as
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
Plaintiffs

v.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180
and

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

NO.

COMPLAINT

“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 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 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.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219
(412) 261-0518

“AVISO

“Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

“LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219
(412) 261-0518

KLINE & SPECTER
A PROFESSIONAL CORPORATION

DUBOIS REGIONAL MEDICAL CENTER

100 Hospital Avenue

Dubois, PA 15801

Defendants

:

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COMPLAINT

1. Plaintiffs Michael W. Smith, Sr. and Theresa Bell Smith are the parents and natural guardians of Michael W. Smith, Jr., a minor.

2. The Smiths reside at Box 198, 1613 Washington Avenue, Hyde, Pennsylvania 16843.

3. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania, with a professional address at 300 Halket Street, Pittsburgh, Pennsylvania 15213.

4. Defendant Dubois Regional Medical Center ("Dubois") is a corporation or other legal entity, organized and operating under the laws of the Commonwealth of Pennsylvania, with an address located at 100 Hospital Avenue, P. O. Box 447, Dubois, Pennsylvania 15801.

5. At all relevant times, defendant Kush was an agent, employee, servant or ostensible agent of defendant Dubois.

6. Defendant Kush is amenable to service in Allegheny County, regularly conducts professional business in Allegheny County, and, thus, venue in Allegheny County is proper pursuant to the Pennsylvania Rules of Civil Procedure.

7. At all relevant times, defendant Dubois acted or failed to act through its agents, servants, employees and ostensible agents, including but not limited to Dr. Kush, various labor and delivery nurses (to be identified), other nurses, technicians, therapists, residents and other hospital personnel.

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8. Defendant Dubois, on information and belief, has lost or destroyed the medical records for mother-plaintiff, except for the fetal heart monitor strips, so the names of certain hospital staff will have to be identified in the course of discovery.

9. Defendants Kush and Dubois owed a duty of care to Theresa Bell Smith regarding the labor and delivery of her child, Michael.

10. Minor-plaintiff Michael W. Smith, Jr. was born on February 19, 1993.

11. Mrs. Smith was at home on February 18, 1993 at approximately 11:55 a.m. when her water broke.

12. Her pregnancy up to that point had been uncomplicated.

13. Her EDC was April 24, 1993.

14. Mrs. Smith saw her regular obstetrician, Dr. Tagala, on February 18, 1993, after her water broke.

15. Dr. Tagala referred Mrs. Smith to defendant Dubois Regional Medical Center because of the anticipated prematurity of the baby.

16. Mrs. Smith went directly from Dr. Tagala's office to Dubois Regional Medical Center, to which she was admitted at approximately 4:10 p.m. on February 18, 1993.

17. Defendant Kush saw Mrs. Smith at approximately 6:00 p.m. on February 18, 1993, at which time he advised her that he would be the physician who would deliver her baby.

18. External fetal monitoring was not started until almost two and one half hours following admission, at 6:33 p.m.

19. Shortly after Dr. Kush's exam, Mr. Smith was told he should go home and that he would be called closer to the time when Mrs. Smith was ready to deliver or if there were any problems.

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KLINÉ & SPECTER
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20. At approximately 11:00 p.m., Mrs. Smith developed vomiting and fever to approximately 101°F.

21. Mr. Smith was called return to the hospital.

22. When Mr. Smith arrived at the hospital, Mr. and Mrs. Smith were told by the labor and delivery nurses that Dr. Kush had been paged but that he had not yet responded.

23. Throughout the evening and early morning of February 19, 1993, Mr. and Mrs. Smith were told multiple times by the Dubois nurses that Dr. Kush had been paged but that he was not responding.

24. According to notations on the fetal monitor strips, Mrs. Smith had a fever through her labor on February 19, 1993 to the time of her delivery at 7:30 a.m.

25. Mrs. Smith's fever, as tracked on the fetal monitor strips, was as follows:

2:20 a.m.	101
3:10 a.m.	101.6
3:43 a.m.	101.9
4:15 a.m.	102.5
5:00 a.m.	102.2
5:35 a.m.	102.9
5:45 a.m.	102.1

26. Mrs. Smith had a fever of approximately 104°F at the time of delivery at 7:30 a.m.

27. Throughout the early morning of February 19, 1993 to the time of delivery, the fetus was tachycardic.

28. At least one other baby was delivered at Dubois Regional Medical Center overnight on February 18-19, 1993.

29. No physician saw Mrs. Smith from the time of Dr. Kush's initial exam at approximately 6:00 p.m. on February 18, 1993 until Dr. Kush finally arrived back to the hospital more than 12 hours later, at approximately 6:30 a.m. on February 19, 1993.

30. Michael W. Smith, Jr. was delivered at 7:30 a.m. on February 19, 1993 by cesarian section.

31. The baby's Apgars were 1 at one minute and 6 at five minutes.

32. Michael required bag and mask resuscitation and intubation.

33. Dr. Kush was the physician responsible for Mrs. Smith's labor and delivery.

34. Despite numerous calls and pages from the Dubois nursing staff Dr. Kush did not respond and did not attend to his patient.

35. Because of Dr. Kush's failure to attend to Mrs. Smith during her labor and to deliver her baby at an earlier point, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

36. The nursing staff at defendant Dubois Regional Medical Center failed to respond appropriately and timely to the worsening maternal and fetal condition in light of Dr. Kush's unavailability.

37. The Dubois nurses failed to call a nursing supervisor, failed to call another physician and otherwise failed to assure that Mrs. Smith's baby was delivered at an earlier point.

38. As a result of the failure by the Dubois nursing staff to render appropriate and timely interventions and care, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

39. The injuries suffered by Michael W. Smith, Jr. were in no way attributable to any action or inaction on the part of Mr. or Mrs. Smith.

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40. Defendants' specific acts of negligence are set forth more particularly below.

41. As a result of the negligence and carelessness of defendants, Michael W. Smith, Jr., has suffered catastrophic physical injuries, permanent neurological damage, and other losses throughout his life, including the following:

- a. Profound neurological and central nervous system damage;
- b. Cerebral palsy;
- c. Spastic diplegia;
- d. Developmental delay and retardation, including motor, speech and language development;
- e. Severe insult to the body and mind;
- f. Incontinence of bowel and bladder;
- g. Blindness;
- h. Inability to speak;
- i. Inability to walk unassisted;
- j. Need for rehabilitation, speech, and occupational therapy;
- k. Feeding limitations/difficulties;
- l. Past medical and custodial bills;
- m. Future medical and custodial bills;
- n. Past and future surgeries and other medical care;
- o. Future loss of earnings and earning capacity;
- p. Physical and mental pain and suffering;
- q. Scarring;
- r. Disfigurement;

- s. Loss of life's pleasures;
- t. Mental anguish;
- u. Embarrassment; and
- v. Humiliation.

COUNT I: NEGLIGENCE

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parents of
MICHAEL W. SMITH, JR. v. DUBOIS REGIONAL MEDICAL CENTER**

42. The previous paragraphs are incorporated fully herein.

43. The negligence of defendant Dubois Regional Medical Center consisted of the following:

- a. Failure to timely deliver Michael Smith;
- b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
- c. Negligent delay in performing cesarean section delivery of Michael Smith;
- d. Failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;
- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;

- g. Failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. Failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. Failure to recognize and appreciate the severity of maternal fever;
- n. Failure to timely administer antibiotics;
- o. Failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;
- p. Failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. Failure to adequately monitor fetal status;
- r. Failure to contact an appropriate nursing supervisor;

- s. Failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. FAILURE to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. FAILURE to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. Failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. Failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. Failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

COUNT II
MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Dubois Regional Medical Center

- 44. The previous paragraphs are incorporated herein.
- 45. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to institute, implement and enforce policies and procedures relating to the timely delivery of a fetus exhibiting signs and symptoms of

fetal distress;

- b. Failure to institute, implement and enforce policies and procedures relating to the timely performance of cesarean deliveries, when such deliveries are called for;
- c. Failure to institute, implement and enforce policies and procedures relating to monitoring of labor and delivery patients;
- d. Failure to institute, implement and enforce policies and procedures relating to communication about status of labor and delivery patients among physicians, nurses and staff;
- e. Failure to institute, implement and enforce policies and procedures relating to operating room preparations for cesarean delivery;
- f. Failure to have and retain competent physicians and staff; and
- g. Failure to quality and safe care within the walls of the hospital.

**COUNT III
NEGLIGENCE**

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Michael Kush, M.D.**

- 46. The previous paragraphs are incorporated herein.
- 47. The negligence of defendant Michael Kush, M.D. consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to respond to numerous pages to attend to the labor and delivery of

Theresa Bell Smith;

- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. Failure to recognize and treat signs of maternal fever in Theresa Bell Smith;
- h. Failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

WHEREFORE, Michael W. Smith, Sr. and Theresa Bell Smith, parents of Michael W. Smith, Jr., a minor, demand judgment on each Count against defendants, jointly and severally, in

8 8
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A PROFESSIONAL CORPORATION

an amount in excess of the local arbitration limits and in excess of Fifty Thousand Dollars
(\$50,000.00), exclusive of pre-judgment interests and costs and post-judgment interests.

KLINÉ & SPECTER, P.C.

BY:


THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED:

VERIFICATION

We, Michael W. Smith, Sr. and Theresa Bell Smith, as parents and natural guardians of Michael W. Smith, Jr., minor-plaintiff herein, hereby verify that we are the plaintiffs this action in our capacity as parents and natural guardians of Michael W. Smith, Jr., a minor, and that the statements made in the foregoing Civil Action are true and correct, to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Michael W. Smith, Sr.

MICHAEL W. SMITH, SR., as parent
natural guardian of Michael W. Smith, Jr., a
minor

Theresa Bell Smith

THERESA BELL SMITH, as parent
natural guardian of Michael W. Smith, Jr., a
minor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Code:

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

FILED

00 JUL 25 PM 12:09

PROTHONOTARY
ALLEGHENY COUNTY

*Filed
Mailed*

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION
BY: THOMAS R. KLINE/AARON J. FREIWALD
ATTORNEY FOR PLAINTIFFS
ATTORNEY ID. # 28895/78028
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, as
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

NO. GD 2000-11536

v.

MICHAEL KUSH, M.D.
DUBOIS REGIONAL MEDICAL CENTER

PRAECIPE TO REINSTATE

Please reinstate the attached Complaint.

KLINÉ & SPECTER, P.C.

BY:

THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED: *7/10/00*

12644 625
JUN 30
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700
FAX (412) 350-6388

145 Hospital Ave
15801
Pax 814-298-0090
Cmt Vacant
Dennis Skosnik
Chief Deputy
R.M.

PETER R. DEFAZIO
Sheriff

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF: Michael W. and Theresa M. Smith, parents and natural
guardians of Michael W. Smith, Jr. VS.

DEFT.: Michael Kush, M.D.

DEFT.: 3

DEFT.:

GARNISHEE:

ADDRESS: c/o Magee-Women's Hospital, 300 Halket Street
Pittsburgh, PA 15213-3180

MUNICIPALITY OR CITY WARD: ATTY: Thomas R. Kline/Aaron J. Freiwald

DATE: 19 ADDRESS: 1525 Locust St., 19th Floor

ATTY'S PHONE: 215-772-1000 Philadelphia, PA 19102

CASE#: GD 2000-11536

EXPIRES: August 4, 2000

SUMMONS/PRAECIPE
 SEIZURE OR POSSESSION
 NOTICE AND COMPLAINT
 REVIVAL OR SCI FA
 INTERROGATORIES
 EXECUTION • LEVY OR GARNISHEE
 OTHER

INDICATE TYPE OF SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL POSTED OTHER LEVY SEIZED & STORED

NOW: 19 I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, with out liability on the part of such deputy herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
<u>15</u>	<u></u>	<u></u>	<u></u>	<u></u>
<u>15</u>	<u></u>	<u></u>	<u></u>	<u></u>
<u>15</u>	<u></u>	<u></u>	<u></u>	<u></u>
<u>15</u>	<u></u>	<u></u>	<u></u>	<u></u>

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 17th day of July, 2000, at 11:31 o'clock, A.M./P.M. Address Above/Address Below, County of Allegheny, Pennsylvania

I have served in the manner Described below:

Defendant(s) personally served.
 Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
 Adult in charge of Defendant's residence who refused to give name or relationship.
 Manager/other person authorized to accept deliveries of United States Mail _____
 Agent or person in charge of Defendant(s) office or usual place of business.

Other _____

Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail Receipt Envelope Returned Neither receipt or envelope returned: writ expired _____

Regular Mail Why 145 Hospital Ave. Dubois, Pa. 15801 His Page Number # 814-298-0090

You are hereby notified that on _____, 19 _____, levy was made in the case of _____
Possession/Sale has been set for _____, 19 _____ at _____ o'clock

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____ / _____ / _____ / _____ / _____

Additional Costs Due \$ _____, This is
placed on writ when returned to Prothonotary. Please check
before satisfying case.

PETER R. DEFAZIO, Sheriff

BY: Sgt. James W. Snyder (DEPUTY)

1227/1
6/5
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 5, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
4th day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY

43
SHERIFF
SURCHARGE
MILEAGE 12
55

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

200 JUL 11 PM 22
SHERIFF'S OFFICE
COUNTY OF ALLEGHENY

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

ATTORNEY
John R. Kline
SHERIFF

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINÉ & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

00 JUL -3 AM 10:12
FBI - PHILADELPHIA
LABORATORY

KLINE & SPECTER

A PROFESSIONAL CORPORATION
THOMAS R. KLINE/AARON J. FREIWALD
BY: PLAINTIFFS
ATTORNEY FOR 28895/78028
ATTORNEY ID. #
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, as :
parents and natural guardians of :
MICHAEL W. SMITH, JR., a minor :
Plaintiffs :

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

NO.

v.

MICHAEL KUSH, M.D. :
c/o Magee-Women's Hospital :
300 Halket Street :
Pittsburgh, PA 15213-3180 :
and :

COMPLAINT

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 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 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.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

"AVISO

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

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DUBOIS REGIONAL MEDICAL CENTER :
100 Hospital Avenue :
Dubois, PA 15801 :
Defendants :

COMPLAINT

1. Plaintiffs Michael W. Smith, Sr. and Theresa Bell Smith are the parents and natural guardians of Michael W. Smith, Jr., a minor.
2. The Smiths reside at Box 198, 1613 Washington Avenue, Hyde, Pennsylvania 16843.
3. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania, with a professional address at 300 Halket Street, Pittsburgh, Pennsylvania 15213.
4. Defendant Dubois Regional Medical Center ("Dubois") is a corporation or other legal entity, organized and operating under the laws of the Commonwealth of Pennsylvania, with an address located at 100 Hospital Avenue, P. O. Box 447, Dubois, Pennsylvania 15801.
5. At all relevant times, defendant Kush was an agent, employee, servant or ostensible agent of defendant Dubois.
6. Defendant Kush is amenable to service in Allegheny County, regularly conducts professional business in Allegheny County, and, thus, venue in Allegheny County is proper pursuant to the Pennsylvania Rules of Civil Procedure.
7. At all relevant times, defendant Dubois acted or failed to act through its agents, servants, employees and ostensible agents, including but not limited to Dr. Kush, various labor and delivery nurses (to be identified), other nurses, technicians, therapists, residents and other hospital personnel.

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8. Defendant Dubois, on information and belief, has lost or destroyed the medical records for mother-plaintiff, except for the fetal heart monitor strips, so the names of certain hospital staff will have to be identified in the course of discovery.

9. Defendants Kush and Dubois owed a duty of care to Theresa Bell Smith regarding the labor and delivery of her child, Michael.

10. Minor-plaintiff Michael W. Smith, Jr. was born on February 19, 1993.

11. Mrs. Smith was at home on February 18, 1993 at approximately 11:55 a.m. when her water broke.

12. Her pregnancy up to that point had been uncomplicated.

13. Her EDC was April 24, 1993.

14. Mrs. Smith saw her regular obstetrician, Dr. Tagala, on February 18, 1993, after her water broke.

15. Dr. Tagala referred Mrs. Smith to defendant Dubois Regional Medical Center because of the anticipated prematurity of the baby.

16. Mrs. Smith went directly from Dr. Tagala's office to Dubois Regional Medical Center, to which she was admitted at approximately 4:10 p.m. on February 18, 1993.

17. Defendant Kush saw Mrs. Smith at approximately 6:00 p.m. on February 18, 1993, at which time he advised her that he would be the physician who would deliver her baby.

18. External fetal monitoring was not started until almost two and one half hours following admission, at 6:33 p.m.

19. Shortly after Dr. Kush's exam, Mr. Smith was told he should go home and that he would be called closer to the time when Mrs. Smith was ready to deliver or if there were any problems.

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20. At approximately 11:00 p.m., Mrs. Smith developed vomiting and fever to approximately 101°F.

21. Mr. Smith was called return to the hospital.

22. When Mr. Smith arrived at the hospital, Mr. and Mrs. Smith were told by the labor and delivery nurses that Dr. Kush had been paged but that he had not yet responded.

23. Throughout the evening and early morning of February 19, 1993, Mr. and Mrs. Smith were told multiple times by the Dubois nurses that Dr. Kush had been paged but that he was not responding.

24. According to notations on the fetal monitor strips, Mrs. Smith had a fever through her labor on February 19, 1993 to the time of her delivery at 7:30 a.m.

25. Mrs. Smith's fever, as tracked on the fetal monitor strips, was as follows:

2:20 a.m.	101
3:10 a.m.	101.6
3:43 a.m.	101.9
4:15 a.m.	102.5
5:00 a.m.	102.2
5:35 a.m.	102.9
5:45 a.m.	102.1

26. Mrs. Smith had a fever of approximately 104°F at the time of delivery at 7:30 a.m.

27. Throughout the early morning of February 19, 1993 to the time of delivery, the fetus was tachycardic.

28. At least one other baby was delivered at Dubois Regional Medical Center overnight on February 18-19, 1993.

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29. No physician saw Mrs. Smith from the time of Dr. Kush's initial exam at approximately 6:00 p.m. on February 18, 1993 until Dr. Kush finally arrived back to the hospital more than 12 hours later, at approximately 6:30 a.m. on February 19, 1993.

30. Michael W. Smith, Jr. was delivered at 7:30 a.m. on February 19, 1993 by cesarian section.

31. The baby's Apgars were 1 at one minute and 6 at five minutes.
32. Michael required bag and mask resuscitation and intubation.
33. Dr. Kush was the physician responsible for Mrs. Smith's labor and delivery.
34. Despite numerous calls and pages from the Dubois nursing staff Dr. Kush did not respond and did not attend to his patient.

35. Because of Dr. Kush's failure to attend to Mrs. Smith during her labor and to deliver her baby at an earlier point, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

36. The nursing staff at defendant Dubois Regional Medical Center failed to respond appropriately and timely to the worsening maternal and fetal condition in light of Dr. Kush's unavailability.

37. The Dubois nurses failed to call a nursing supervisor, failed to call another physician and otherwise failed to assure that Mrs. Smith's baby was delivered at an earlier point.

38. As a result of the failure by the Dubois nursing staff to render appropriate and timely interventions and care, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

39. The injuries suffered by Michael W. Smith, Jr. were in no way attributable to any action or inaction on the part of Mr. or Mrs. Smith.

40. Defendants' specific acts of negligence are set forth more particularly below.

41. As a result of the negligence and carelessness of defendants, Michael W. Smith, Jr., has suffered catastrophic physical injuries, permanent neurological damage, and other losses throughout his life, including the following:

- a. Profound neurological and central nervous system damage;
- b. Cerebral palsy;
- c. Spastic diplegia;
- d. Developmental delay and retardation, including motor, speech and language development;
- e. Severe insult to the body and mind;
- f. Incontinence of bowel and bladder;
- g. Blindness;
- h. Inability to speak;
- i. Inability to walk unassisted;
- j. Need for rehabilitation, speech, and occupational therapy;
- k. Feeding limitations/difficulties;
- l. Past medical and custodial bills;
- m. Future medical and custodial bills;
- n. Past and future surgeries and other medical care;
- o. Future loss of earnings and earning capacity;
- p. Physical and mental pain and suffering;
- q. Scarring;
- r. Disfigurement;

- s. Loss of life's pleasures;
- t. Mental anguish;
- u. Embarrassment; and
- v. Humiliation.

COUNT I: NEGLIGENCE

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parents of
MICHAEL W. SMITH, JR. v. DUBOIS REGIONAL MEDICAL CENTER**

- 42. The previous paragraphs are incorporated fully herein.
- 43. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;
 - e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
 - f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;

VERIFICATION

We, Michael W. Smith, Sr. and Theresa Bell Smith, as parents and natural guardians of Michael W. Smith, Jr., minor-plaintiff herein, hereby verify that we are the plaintiffs this action in our capacity as parents and natural guardians of Michael W. Smith, Jr., a minor, and that the statements made in the foregoing Civil Action are true and correct, to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Michael W. Smith, Sr.

MICHAEL W. SMITH, SR., as parent
natural guardian of Michael W. Smith, Jr., a
minor

Theresa Bell Smith

THERESA BELL SMITH, as parent
natural guardian of Michael W. Smith, Jr., a
minor

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

an amount in excess of the local arbitration limits and in excess of Fifty Thousand Dollars
(\$50,000.00), exclusive of pre-judgment interests and costs and post-judgment interests.

KLINÉ & SPECTER, P.C.

BY: 

THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED:

Theresa Bell Smith;

- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. Failure to recognize and treat signs of maternal fever in Theresa Bell Smith;
- h. Failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

WHEREFORE, Michael W. Smith, Sr. and Theresa Bell Smith, parents of Michael W. Smith, Jr., a minor, demand judgment on each Count against defendants, jointly and severally, in

fetal distress;

- b. Failure to institute, implement and enforce policies and procedures relating to the timely performance of cesarean deliveries, when such deliveries are called for;
- c. Failure to institute, implement and enforce policies and procedures relating to monitoring of labor and delivery patients;
- d. Failure to institute, implement and enforce policies and procedures relating to communication about status of labor and delivery patients among physicians, nurses and staff;
- e. Failure to institute, implement and enforce policies and procedures relating to operating room preparations for cesarean delivery;
- f. Failure to have and retain competent physicians and staff; and
- g. Failure to quality and safe care within the walls of the hospital.

**COUNT III
NEGLIGENCE**

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Michael Kush, M.D.**

46. The previous paragraphs are incorporated herein.
47. The negligence of defendant Michael Kush, M.D. consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to respond to numerous pages to attend to the labor and delivery of

- s. Failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. FAILURE to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. FAILURE to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. Failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. Failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. Failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

COUNT II

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Dubois Regional Medical Center**

- 44. The previous paragraphs are incorporated herein.
- 45. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to institute, implement and enforce policies and procedures relating to the timely delivery of a fetus exhibiting signs and symptoms of

- g. Failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. Failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. Failure to recognize and appreciate the severity of maternal fever;
- n. Failure to timely administer antibiotics;
- o. Failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;
- p. Failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. Failure to adequately monitor fetal status;
- r. Failure to contact an appropriate nursing supervisor;

51573
Reinstate
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 25, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
24th day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY

HERIFF
SURCHARGE

MILEAGE

9
34

40 00-11536

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

919147

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

SHERIFF'S OFFICE
COUNTY OF ALLEGHENY

2000 AUG 18 AM 9:21

00 SEP 13 PM 2:18

PROTHONOTARY
ALLEGHENY COUNTY

ANSWERED

SHERIFF

KLINE & SPECTER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102

AARON J. FREIWALD

215-772-1000

FAX: 215-772-1359

August 16, 2000

BY FEDERAL EXPRESS

Sheriff - Allegheny County
111 Courthouse
436 Grant Street
Pittsburgh, PA 15219-2496

**Re: Michael W. Smith, Sr. and Theresa M. Bell Smith, parents and
natural guardians of Michael W. Smith, Jr. v. Michael Kush, M.D.
and Dubois Regional Medical Center, Allegheny County,
No. G.D. 2000-11536**

Dear Sir/Madam:

Enclosed are the following:

1. A check made payable to the Sheriff's Office of Allegheny County in the amount of \$34.00;
2. A check made payable to the Sheriff's Office of Clearfield County in the amount of \$75.00;
3. A Direction of Service form, a Writ and Complaint to be served on Dubois Regional Medical Center.

If you have any questions about the enclosed, please do not hesitate to call.

Very truly yours,



AARON J. FREIWALD

AJF:ksh
Encs.

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102

AARON J. FREIWALD

215-772-1000

FAX: 215-772-1359

August 7, 2000

BY FEDERAL EXPRESS
Allegheny County Sheriff
111 Courthouse
436 Grant Street
Pittsburgh, PA 15219-2496

**Re: Michael W. Smith, Sr. and Theresa M. Bell Smith, parents and
natural guardians of Michael W. Smith, Jr. v. Michael Kush, M.D.
and Dubois Regional Medical Center, Allegheny County,
No. G.D. 2000-11536**

Dear Sir/Madam:

Enclosed is a copy of a Complaint to be served on Dubois Regional Medical Center and a Writ with Direction of Service Form. Also enclosed is a check made payable to the Sheriff of Clearfield County.

Please forward the Complaint, Direction of Service Form and the check in the amount of \$75.00 to the Sheriff of Clearfield County.

Very truly yours,


AARON J. FREIWALD

AJF:ksh
Encs.

1515
PETER R. DEFAZIO
Sheriff

0
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF Smith, et al.

VS.

DEFT. Dubois Regional Medical Center

ADD. DEFT. _____

ADD. DEFT. _____

GARNISHEE _____

ADDRESS 100 Hospital Avenue

Dubois, PA 15801

MUNICIPALITY or CITY WARD _____

ATTY Thomas R. Kline/Aaron J. Freiwald

DATE: _____ 19 _____

ADDRESS 1525 Locust St., 19th Floor

ATTY'S Phone 215-772-1000

Philadelphia, PA 19102

INDICATE TYPE OF SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL POSTED OTHER LEVY SEIZED & STORE

Now, 28 19_____, I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person or attachment without liability on the part of such deputy herein for any loss, destruction or removal of any property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: _____

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on the 28 day of 8, 19_____, at _____ o'clock A.M./P.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below:

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
- Adult in charge of Defendant's residence who refused to give name or relationship _____
- Manager/Clerk of place of lodging in which Defendant(s) reside(s) _____
- Agent or person in charge of Defendant(s) office or usual place of business _____
- Other _____
- Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail Receipt _____ Envelope Returned _____ Neither receipt or envelope returned: writ expired _____

Regular Mail Why _____

You are hereby notified that on _____, 19_____, levy was made in the case of _____
Possession/Sale has been set for _____, 19_____, at _____ o'clock.

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____ / _____ / _____ / _____ / _____

PETER R. DEFAZIO, Sheriff

Additional Costs Due \$_____, This is placed
on writ when returned to Prothonotary. Please check before
satisfying case.

By _____
Deputy _____
District _____

K155
PETER R. DEFAZIO
Sheriff

ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF Smith, et al.

VS.

DEFT. Dubois Regional Medical Center

ADD. DEFT. _____

ADD. DEFT. _____

GARNISHEE _____

ADDRESS 100 Hospital Avenue

Dubois, PA 15801

MUNICIPALITY or CITY WARD _____

ATTY Thomas R. Kline/Aaron J. Freiwald

DATE: 19

ADDRESS 1525 Locust St., 19th Floor

ATTY'S Phone 215-772-1000

Philadelphia, PA 19102

INDICATE TYPE OF SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL POSTED OTHER LEVY SEIZED & STORE

Now, 11/11/2001 19 I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depose the Sheriff of

County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomsoever is found in possession, after notifying person or attachment without liability on the part of such deputy herein for any loss, destruction or removal of any property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: _____

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on 11/11/2001 day of X, 1901 at 12:00 o'clock A.M./P.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below: _____

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
- Adult in charge of Defendant's residence who refused to give name or relationship.
- Manager/Clerk of place of lodging in which Defendant(s) reside(s).
- Agent or person in charge of Defendant(s) office or usual place of business.
- Other _____
- Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail Receipt _____ Envelope Returned _____ Neither receipt or envelope returned: writ expired _____

Regular Mail Why _____

You are hereby notified that on 11/11/2001, 1901, levy was made in the case of _____
Possession/Sale has been set for 11/11/2001, 1901 at 12:00 o'clock.

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____ / _____ / _____

PETER R. DEFAZIO, Sheriff

Additional Costs Due \$ _____, This is placed
on writ when returned to Prothonotary. Please check before
satisfying case.

By _____ Deputy _____

District _____

15155 S
Reinstate
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 25, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
24th day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY

15155 S
SHERIFF 28
SURCHARGE
MILEAGE 9
34

15155 S
1000-11536

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

SHERIFF'S OFFICE
COUNTY OF ALLEGHENY
100 AUG 18 AM 9:21

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

FILED

00 JUL 25 2012: 09

PROSECUTOR
ALLEGHENY COUNTY

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION
THOMAS R. KLINE/AARON J. FREIWALD
BY: PLAINTIFFS
ATTORNEY FOR 28895/78028
ATTORNEY ID. #
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and	:	COURT OF COMMON PLEAS
THERESA M. BELL SMITH, as	:	OF ALLEGHENY COUNTY
parents and natural guardians of	:	
MICHAEL W. SMITH, JR., a minor	:	
	:	NO. GD 2000-11536
V.	:	
MICHAEL KUSH, M.D.	:	
DUBOIS REGIONAL MEDICAL CENTER	:	

PRAECIPE TO REINSTATE

Please reinstate the attached Complaint.

KLINÉ & SPECTER, P.C.



BY:

THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED: *7/1/00*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

FILED

00 JUL 25 PH 12:09

PROSECUTOR
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D.

2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

00 JUL-3 AM10:12

FILED
00 JUL 25 2012 09
ALLEGHENY COUNTY
PROSECUTOR'S OFFICE

FILED

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION
THOMAS R. KLINE/AARON J. FREIWALD
BY: PLAINTIFFS
ATTORNEY FOR 28895/78028
ATTORNEY ID. #
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, as
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
Plaintiffs

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

NO.

v.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180
and

COMPLAINT

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 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 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.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

"AVISO

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

KLINE & SPECTER
A PROFESSIONAL CORPORATION

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

Defendants

COMPLAINT

1. Plaintiffs Michael W. Smith, Sr. and Theresa Bell Smith are the parents and natural guardians of Michael W. Smith, Jr., a minor.

2. The Smiths reside at Box 198, 1613 Washington Avenue, Hyde, Pennsylvania 16843.

3. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania, with a professional address at 300 Halket Street, Pittsburgh, Pennsylvania 15213.

4. Defendant Dubois Regional Medical Center ("Dubois") is a corporation or other legal entity, organized and operating under the laws of the Commonwealth of Pennsylvania, with an address located at 100 Hospital Avenue, P. O. Box 447, Dubois, Pennsylvania 15801.

5. At all relevant times, defendant Kush was an agent, employee, servant or ostensible agent of defendant Dubois.

6. Defendant Kush is amenable to service in Allegheny County, regularly conducts professional business in Allegheny County, and, thus, venue in Allegheny County is proper pursuant to the Pennsylvania Rules of Civil Procedure.

7. At all relevant times, defendant Dubois acted or failed to act through its agents, servants, employees and ostensible agents, including but not limited to Dr. Kush, various labor and delivery nurses (to be identified), other nurses, technicians, therapists, residents and other hospital personnel.

KLINE & SPECTER
A PROFESSIONAL CORPORATION

8. Defendant Dubois, on information and belief, has lost or destroyed the medical records for mother-plaintiff, except for the fetal heart monitor strips, so the names of certain hospital staff will have to be identified in the course of discovery.

9. Defendants Kush and Dubois owed a duty of care to Theresa Bell Smith regarding the labor and delivery of her child, Michael.

10. Minor-plaintiff Michael W. Smith, Jr. was born on February 19, 1993.

11. Mrs. Smith was at home on February 18, 1993 at approximately 11:55 a.m. when her water broke.

12. Her pregnancy up to that point had been uncomplicated.

13. Her EDC was April 24, 1993.

14. Mrs. Smith saw her regular obstetrician, Dr. Tagala, on February 18, 1993, after her water broke.

15. Dr. Tagala referred Mrs. Smith to defendant Dubois Regional Medical Center because of the anticipated prematurity of the baby.

16. Mrs. Smith went directly from Dr. Tagala's office to Dubois Regional Medical Center, to which she was admitted at approximately 4:10 p.m. on February 18, 1993.

17. Defendant Kush saw Mrs. Smith at approximately 6:00 p.m. on February 18, 1993, at which time he advised her that he would be the physician who would deliver her baby.

18. External fetal monitoring was not started until almost two and one half hours following admission, at 6:33 p.m.

19. Shortly after Dr. Kush's exam, Mr. Smith was told he should go home and that he would be called closer to the time when Mrs. Smith was ready to deliver or if there were any problems.

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

20. At approximately 11:00 p.m., Mrs. Smith developed vomiting and fever to approximately 101°F.

21. Mr. Smith was called return to the hospital.

22. When Mr. Smith arrived at the hospital, Mr. and Mrs. Smith were told by the labor and delivery nurses that Dr. Kush had been paged but that he had not yet responded.

23. Throughout the evening and early morning of February 19, 1993, Mr. and Mrs. Smith were told multiple times by the Dubois nurses that Dr. Kush had been paged but that he was not responding.

24. According to notations on the fetal monitor strips, Mrs. Smith had a fever through her labor on February 19, 1993 to the time of her delivery at 7:30 a.m.

25. Mrs. Smith's fever, as tracked on the fetal monitor strips, was as follows:

2:20 a.m.	101
3:10 a.m.	101.6
3:43 a.m.	101.9
4:15 a.m.	102.5
5:00 a.m.	102.2
5:35 a.m.	102.9
5:45 a.m.	102.1

26. Mrs. Smith had a fever of approximately 104°F at the time of delivery at 7:30 a.m.

27. Throughout the early morning of February 19, 1993 to the time of delivery, the fetus was tachycardic.

28. At least one other baby was delivered at Dubois Regional Medical Center overnight on February 18-19, 1993.

KLINE & SPECTER
A PROFESSIONAL CORPORATION

29. No physician saw Mrs. Smith from the time of Dr. Kush's initial exam at approximately 6:00 p.m. on February 18, 1993 until Dr. Kush finally arrived back to the hospital more than 12 hours later, at approximately 6:30 a.m. on February 19, 1993.

30. Michael W. Smith, Jr. was delivered at 7:30 a.m. on February 19, 1993 by cesarian section.

31. The baby's Apgars were 1 at one minute and 6 at five minutes.

32. Michael required bag and mask resuscitation and intubation.

33. Dr. Kush was the physician responsible for Mrs. Smith's labor and delivery.

34. Despite numerous calls and pages from the Dubois nursing staff Dr. Kush did not respond and did not attend to his patient.

35. Because of Dr. Kush's failure to attend to Mrs. Smith during her labor and to deliver her baby at an earlier point, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

36. The nursing staff at defendant Dubois Regional Medical Center failed to respond appropriately and timely to the worsening maternal and fetal condition in light of Dr. Kush's unavailability.

37. The Dubois nurses failed to call a nursing supervisor, failed to call another physician and otherwise failed to assure that Mrs. Smith's baby was delivered at an earlier point.

38. As a result of the failure by the Dubois nursing staff to render appropriate and timely interventions and care, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

39. The injuries suffered by Michael W. Smith, Jr. were in no way attributable to any action or inaction on the part of Mr. or Mrs. Smith.

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

40. Defendants' specific acts of negligence are set forth more particularly below.

41. As a result of the negligence and carelessness of defendants, Michael W. Smith, Jr., has suffered catastrophic physical injuries, permanent neurological damage, and other losses throughout his life, including the following:

- a. Profound neurological and central nervous system damage;
- b. Cerebral palsy;
- c. Spastic diplegia;
- d. Developmental delay and retardation, including motor, speech and language development;
- e. Severe insult to the body and mind;
- f. Incontinence of bowel and bladder;
- g. Blindness;
- h. Inability to speak;
- i. Inability to walk unassisted;
- j. Need for rehabilitation, speech, and occupational therapy;
- k. Feeding limitations/difficulties;
- l. Past medical and custodial bills;
- m. Future medical and custodial bills;
- n. Past and future surgeries and other medical care;
- o. Future loss of earnings and earning capacity;
- p. Physical and mental pain and suffering;
- q. Scarring;
- r. Disfigurement;

- s. Loss of life's pleasures;
- t. Mental anguish;
- u. Embarrassment; and
- v. Humiliation.

COUNT I: NEGLIGENCE

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parents of
MICHAEL W. SMITH, JR. v. DUBOIS REGIONAL MEDICAL CENTER**

- 42. The previous paragraphs are incorporated fully herein.
- 43. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;
 - e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
 - f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;

- g. Failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. Failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. Failure to recognize and appreciate the severity of maternal fever;
- n. Failure to timely administer antibiotics;
- o. Failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;
- p. Failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. Failure to adequately monitor fetal status;
- r. Failure to contact an appropriate nursing supervisor;

- s. Failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. FAILURE to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. FAILURE to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. Failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. Failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. Failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

COUNT II

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Dubois Regional Medical Center**

- 44. The previous paragraphs are incorporated herein.
- 45. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to institute, implement and enforce policies and procedures relating to the timely delivery of a fetus exhibiting signs and symptoms of

fetal distress;

- b. Failure to institute, implement and enforce policies and procedures relating to the timely performance of cesarean deliveries, when such deliveries are called for;
- c. Failure to institute, implement and enforce policies and procedures relating to monitoring of labor and delivery patients;
- d. Failure to institute, implement and enforce policies and procedures relating to communication about status of labor and delivery patients among physicians, nurses and staff;
- e. Failure to institute, implement and enforce policies and procedures relating to operating room preparations for cesarean delivery;
- f. Failure to have and retain competent physicians and staff; and
- g. Failure to quality and safe care within the walls of the hospital.

**COUNT III
NEGLIGENCE**

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Michael Kush, M.D.**

46. The previous paragraphs are incorporated herein.
47. The negligence of defendant Michael Kush, M.D. consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to respond to numerous pages to attend to the labor and delivery of

Theresa Bell Smith;

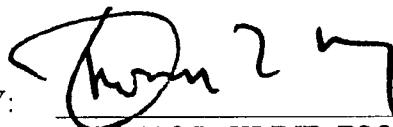
- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. Failure to recognize and treat signs of maternal fever in Theresa Bell Smith;
- h. Failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

WHEREFORE, Michael W. Smith, Sr. and Theresa Bell Smith, parents of Michael W. Smith, Jr., a minor, demand judgment on each Count against defendants, jointly and severally, in

KLINE & SPECTER
A PROFESSIONAL CORPORATION

an amount in excess of the local arbitration limits and in excess of Fifty Thousand Dollars
(\$50,000.00), exclusive of pre-judgment interests and costs and post-judgment interests.

KLINE & SPECTER, P.C.

BY: 

THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED:

VERIFICATION

We, Michael W. Smith, Sr. and Theresa Bell Smith, as parents and natural guardians of Michael W. Smith, Jr., minor-plaintiff herein, hereby verify that we are the plaintiffs this action in our capacity as parents and natural guardians of Michael W. Smith, Jr., a minor, and that the statements made in the foregoing Civil Action are true and correct, to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Michael W. Smith, Sr.

MICHAEL W. SMITH, SR., as parent
natural guardian of Michael W. Smith, Jr., a
minor

Theresa Bell Smith

THERESA BELL SMITH, as parent
natural guardian of Michael W. Smith, Jr., a
minor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D. 2000-11536

Plaintiffs

vs.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Code:

Issue No.

0651

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. NO. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

RECEIVED
00 SEP 14 AM 11:45
PROTHONOTARY
ALLEGHENY COUNTY

Received

KLINÉ & SPECTER

A Professional Corporation

BY: THOMAS R. KLINE/AARON J. FREIWALD

ATTORNEY FOR: Plaintiffs

Attorney I.D. # 28895/78028

The Nineteenth Floor

1525 Locust Street

Philadelphia, PA 19102

215-772-1000

MICHAEL W. SMITH SR. and
THERESA M. BELL SMITH, as
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor

vs.

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

G.D. 2000-11536

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER

PRAECIPE TO REINSTATE

Please reinstate the attached Complaint.

KLINÉ & SPECTER, P.C.

BY:


THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

DATED: 9/14/02

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor,

CIVIL DIVISION

No. GD 2000 - 11536

ISSUE:

PRAECIPE FOR APPEARANCE

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

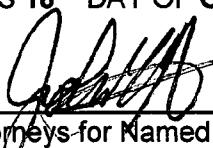
Counsel of Record for This Party:

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 18TH DAY OF OCTOBER, 2000.



Attorneys for Named Defendant

08300116ENW
10-24-00
10-24-00 11:35:07
11536



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor,

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

CIVIL DIVISION

No. GD 2000 - 11536

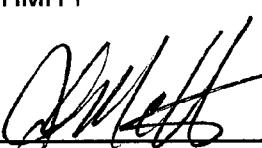
PRAECIPE FOR APPEARANCE

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

915

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR., and THERESA
M. BELL SMITH, parents and natural
guardians of MICHAEL W. SMITH, JR., a
minor,

CIVIL DIVISION

No. GD00-11536

Issue No.

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of Dubois Regional Medical
Center, one of the defendants

Counsel of Record for this Party:

James R. Hartline, Esquire
PA I.D. #21299

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

00 OCT 26 AM 11: 36

FILED
PROTHONOTARY
ALLEGHENY COUNTY

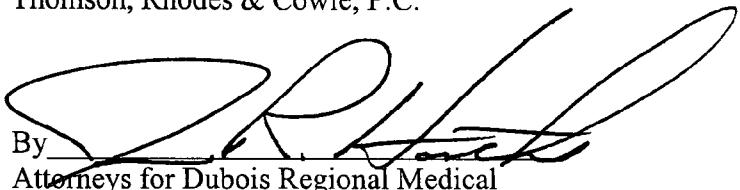
PRAECIPE FOR APPEARANCE

TO: MICHAEL F. COYNE, PROTHONOTARY

Kindly enter our appearance on behalf of Dubois Regional Medical Center, one of the defendants.

JURY TRIAL DEMANDED.

James R. Hartline, Esquire
Thomson, Rhodes & Cowie, P.C.

By 
Attorneys for Dubois Regional Medical
Center, one of the defendants

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, parents
and natural guardians of MICHAEL
W. SMITH, JR., a minor,

CIVIL DIVISION

No. GD 2000 - 11536

**ISSUE: PRAECIPE FOR WITHDRAWAL
OF APPEARANCE**

Plaintiffs

vs.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL CENTER,

Filed on behalf of Defendant,
DUBOIS REGIONAL MEDICAL
CENTER

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

Defendants

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 1st DAY OF NOVEMBER, 2000.

Atorneys for Named Defendant

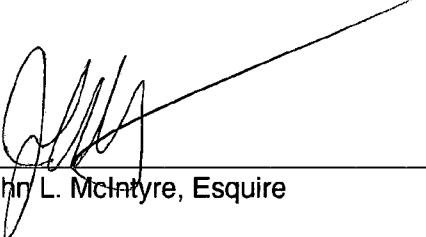
ALLEGHENY COUNTY
PROBATE COURT
SO 01 M 3 NOV 00
Q676 E 11 3

MICHAEL W. SMITH, SR. and : CIVIL DIVISION
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor, :
Plaintiffs :
vs. :
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL CENTER, :
Defendants :

PRAECIPE FOR WITHDRAWAL OF APPEARANCE

TO: PROTHONOTARY

Kindly withdraw the appearance of John L. McIntyre, Esquire, of PFAFF, McINTYRE,
DUGAS, HARTYE & SCHMITT, as counsel for DUBOIS REGIONAL MEDICAL CENTER, based on the
entry of Appearance for DUBOIS REGIONAL MEDICAL CENTER of James R. Hartline, Esquire,
THOMPSON, RHODES & COWIE, P.C.



John L. McIntyre, Esquire

Dated: November 1, 2000

17094

NOTICE OF SUIT TO SHERIFF ALLEGHENY CO. 25 ED 00-11536/1
You are hereby notified that on September 14, 2000) SHERIFF
a COMPLAINT has been (filed/reinstated) in this case) SURCHARGE
and you are required to serve the same on or before the) MILEAGE
140 IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
MICHAEL F. COYNE, PROTHONOTARY) 9
Westley, deputy) 34
MICHAEL F. COYNE, PROTHONOTARY)
CIVIL DIVISION

ST
MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

G.D. 2000-11536

Plaintiffs

vs.

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Code:

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
PRAECIPE TO REINSTATE:

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. NO. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

SHERIFF'S OFFICE
COUNTY OF ALLEGHENY
100 SEP 20 AM 10:10

FILED
NOV - 8 PM 1:10
2000
ALLEGHENY COUNTY
PROTHONOTARY

ATTEST

Peter R. Delaney

SHERIFF

17094
928
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT
436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700
FAX (412) 350-6388

PETER R. DEFAZIO
Sheriff

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF: Michael W. Smith, Sr., et al.

VS.

DEFT.: Dubois Regional Medical Center

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 100 Hospital Avenue
Dubois, PA 15801

MUNICIPALITY OR CITY WARD: _____

DATE: 19

ATTY'S PHONE: 215-772-1000

ATTY: Thomas R. Kline/Aaron J. Freiwald

ADDRESS: 1525 Locust St., 19th Floor

Philadelphia, PA 19102

CASE#: GD 2000-11536

EXPIRES: 25

SUMMONS/PRAECIPE
 SEIZURE OR POSSESSION
 NOTICE AND COMPLAINT
 REVIVAL OR SCI FA
 INTERROGATORIES
 EXECUTION • LEVY OR GARNISHEE
 OTHER

INDICATE TYPE OF SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL POSTED OTHER LEVY SEIZED & STORED

NOW: Perry W. Clegg 19 I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, with out liability on the part of such deputy herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 30 day of 9, 19 , at o'clock, A.M./P.M. Address Above/ Address Below, County of Allegheny, Pennsylvania

I have served in the manner Described below: _____

Defendant(s) personally served.
 Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
 Adult in charge of Defendant's residence who refused to give name or relationship.
 Manager/other person authorized to accept deliveries of United States Mail _____
 Agent or person in charge of Defendant(s) office or usual place of business.

 Other _____
 Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail Receipt _____ Envelope Returned _____ Neither receipt or envelope returned: writ expired _____

Regular Mail Why _____

You are hereby notified that on _____, 19 _____, levy was made in the case of _____
Possession/Sale has been set for _____, 19 _____ at _____ o'clock

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____ / _____ / _____ / _____ / _____

Additional Costs Due \$ _____, This is
placed on writ when returned to Prothonotary. Please check
before satisfying case.

PETER R. DEFAZIO, Sheriff

BY: _____
(DEPUTY)



In The Court of Common Pleas of Clearfield County, Pennsylvania
Sheriff Docket # 10215

SMITH, MICHAEL W. SR. et al

VS.

KUSH, MICHAEL, M.D. et al

GD-2000-11536

COMPLAINT & PRAECIPE TO REINSTATE

SHERIFF RETURNS

NOW SEPTEMBER 29, 2000 AT 10:00 AM DST SERVED THE WITHIN PRAECIPE TO REINSTATE & COMPLAINT ON DUBOIS REGIONAL MEDICAL CENTER, DEFENDANT AT EMPLOYMENT 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JUDITH STOTTISH, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE TO REINSTATE & COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCINTOSH

Return Costs

Cost	Description
28.21	SHFF. HAWKINS PAID BY: ATTY

Sworn to Before Me This

4th Day of October 2000
William A. Shaw

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

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

12674 65
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 5, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
4th day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY
Wester Deputy

SHERIFF 43
SURCHARGE
MILEAGE 12
55

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

6D-00-011536
SHRF
12

G.D. 2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

200 JUL 11 PM 22
SHERIFF'S OFFICE
COUNTY OF ALLEGHENY

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

ATTEST

Thomas R. Kline

SHERIFF

Clarion 7-5-00 7-12
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT
436 GRANT STREET
PITTSBURGH, PA 15219-2496
PHONE (412) 350-4700
FAX (412) 350-6388

Pink UTS
PETER R. DEFAZIO
Sheriff

DENNIS SKOSNIK
Chief Deputy

PLAINTIFF: Michael W. and Theresa M. Smith, parents and natural
guardians of Michael W. Smith, Jr. vs.

DEFT.: Dubois Regional Medical Center

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 100 Hospital Avenue
Dubois, PA 15801

MUNICIPALITY OR CITY WARD: _____

DATE: 19 _____

ATTY'S PHONE: 215-772-1000

ATTY: Thomas R. Kline/Aaron J. Freiwald

ADDRESS: 1525 Locust St., 19th Floor

Philadelphia, PA 19102

INDICATE TYPE OF SERVICE: PERSONAL PERSON IN CHARGE DEPUTIZE CERT. MAIL POSTED OTHER LEVY SEIZED & STORED

NOW: *Clarion County 19* _____, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depelize the Sheriff of County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, with out liability on the part of such deputy herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	LICENSE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 18 day of 7, 19 , at o'clock, A.M./P.M. Address Above/ Address Below, County of Allegheny, Pennsylvania

I have served in the manner Described below: _____

Defendant(s) personally served.
 Adult family member with whom said Defendant(s) reside(s). Name & Relationship _____
 Adult in charge of Defendant's residence who refused to give name or relationship.
 Manager/other person authorized to accept deliveries of United States Mail _____
 Agent or person in charge of Defendant(s) office or usual place of business.

Other _____ *Clarion County*
 Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail Receipt _____ Envelope Returned _____ Neither receipt or envelope retuned: writ expired _____

Regular Mail Why _____

You are hereby notified that on _____, 19 _____, levy was made in the case of _____
Possession/Sale has been set for _____, 19 _____ at _____ o'clock

YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.

ATTEMPTS _____ / _____ / _____ / _____ / _____ / _____ / _____

Additional Costs Due \$ _____, This is
placed on writ when returned to Prothonotary. Please check
before satisfying case.

PETER R. DEFAZIO, Sheriff

BY: _____
(DEPUTY)



6/15
12674
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 5, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
4th day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY

43
SHERIFF
SURCHARGE
MILEAGE 12
55

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

Plaintiffs

vs.

G.D. 2000-11536

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Code:

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

Issue No.

200 JUL 11 PM 22
SHERIFF'S OFFICE
COUNTY OF ALLEGHENY

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

APPEAL

John R. Kelly
SHERIFF

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D.

2000-11536

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No.

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

00 JUL -3 AM 10:12
PROSECUTORIAL
ATTORNEY

KLINE & SPECTER

A PROFESSIONAL CORPORATION
THOMAS R. KLINE/AARON J. FREIWALD
BY: PLAINTIFFS
ATTORNEY FOR 28895/78028
ATTORNEY ID. #
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, as :
parents and natural guardians of :
MICHAEL W. SMITH, JR., a minor :
Plaintiffs :

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

NO.

v.

MICHAEL KUSH, M.D. :
c/o Magee-Women's Hospital :
300 Halket Street :
Pittsburgh, PA 15213-3180 :
and :

COMPLAINT**“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 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 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.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

“AVISO

“Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

“LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

Defendants

COMPLAINT

1. Plaintiffs Michael W. Smith, Sr. and Theresa Bell Smith are the parents and natural guardians of Michael W. Smith, Jr., a minor.
2. The Smiths reside at Box 198, 1613 Washington Avenue, Hyde, Pennsylvania 16843.
3. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania, with a professional address at 300 Halket Street, Pittsburgh, Pennsylvania 15213.
4. Defendant Dubois Regional Medical Center ("Dubois") is a corporation or other legal entity, organized and operating under the laws of the Commonwealth of Pennsylvania, with an address located at 100 Hospital Avenue, P. O. Box 447, Dubois, Pennsylvania 15801.
5. At all relevant times, defendant Kush was an agent, employee, servant or ostensible agent of defendant Dubois.
6. Defendant Kush is amenable to service in Allegheny County, regularly conducts professional business in Allegheny County, and, thus, venue in Allegheny County is proper pursuant to the Pennsylvania Rules of Civil Procedure.
7. At all relevant times, defendant Dubois acted or failed to act through its agents, servants, employees and ostensible agents, including but not limited to Dr. Kush, various labor and delivery nurses (to be identified), other nurses, technicians, therapists, residents and other hospital personnel.

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8. Defendant Dubois, on information and belief, has lost or destroyed the medical records for mother-plaintiff, except for the fetal heart monitor strips, so the names of certain hospital staff will have to be identified in the course of discovery.

9. Defendants Kush and Dubois owed a duty of care to Theresa Bell Smith regarding the labor and delivery of her child, Michael.

10. Minor-plaintiff Michael W. Smith, Jr. was born on February 19, 1993.

11. Mrs. Smith was at home on February 18, 1993 at approximately 11:55 a.m. when her water broke.

12. Her pregnancy up to that point had been uncomplicated.

13. Her EDC was April 24, 1993.

14. Mrs. Smith saw her regular obstetrician, Dr. Tagala, on February 18, 1993, after her water broke.

15. Dr. Tagala referred Mrs. Smith to defendant Dubois Regional Medical Center because of the anticipated prematurity of the baby.

16. Mrs. Smith went directly from Dr. Tagala's office to Dubois Regional Medical Center, to which she was admitted at approximately 4:10 p.m. on February 18, 1993.

17. Defendant Kush saw Mrs. Smith at approximately 6:00 p.m. on February 18, 1993, at which time he advised her that he would be the physician who would deliver her baby.

18. External fetal monitoring was not started until almost two and one half hours following admission, at 6:33 p.m.

19. Shortly after Dr. Kush's exam, Mr. Smith was told he should go home and that he would be called closer to the time when Mrs. Smith was ready to deliver or if there were any problems.

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20. At approximately 11:00 p.m., Mrs. Smith developed vomiting and fever to approximately 101°F.

21. Mr. Smith was called return to the hospital.

22. When Mr. Smith arrived at the hospital, Mr. and Mrs. Smith were told by the labor and delivery nurses that Dr. Kush had been paged but that he had not yet responded.

23. Throughout the evening and early morning of February 19, 1993, Mr. and Mrs. Smith were told multiple times by the Dubois nurses that Dr. Kush had been paged but that he was not responding.

24. According to notations on the fetal monitor strips, Mrs. Smith had a fever through her labor on February 19, 1993 to the time of her delivery at 7:30 a.m.

25. Mrs. Smith's fever, as tracked on the fetal monitor strips, was as follows:

2:20 a.m.	101
3:10 a.m.	101.6
3:43 a.m.	101.9
4:15 a.m.	102.5
5:00 a.m.	102.2
5:35 a.m.	102.9
5:45 a.m.	102.1

26. Mrs. Smith had a fever of approximately 104°F at the time of delivery at 7:30 a.m.

27. Throughout the early morning of February 19, 1993 to the time of delivery, the fetus was tachycardic.

28. At least one other baby was delivered at Dubois Regional Medical Center overnight on February 18-19, 1993.

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29. No physician saw Mrs. Smith from the time of Dr. Kush's initial exam at approximately 6:00 p.m. on February 18, 1993 until Dr. Kush finally arrived back to the hospital more than 12 hours later, at approximately 6:30 a.m. on February 19, 1993.

30. Michael W. Smith, Jr. was delivered at 7:30 a.m. on February 19, 1993 by cesarian section.

31. The baby's Apgars were 1 at one minute and 6 at five minutes.

32. Michael required bag and mask resuscitation and intubation.

33. Dr. Kush was the physician responsible for Mrs. Smith's labor and delivery.

34. Despite numerous calls and pages from the Dubois nursing staff Dr. Kush did not respond and did not attend to his patient.

35. Because of Dr. Kush's failure to attend to Mrs. Smith during her labor and to deliver her baby at an earlier point, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

36. The nursing staff at defendant Dubois Regional Medical Center failed to respond appropriately and timely to the worsening maternal and fetal condition in light of Dr. Kush's unavailability.

37. The Dubois nurses failed to call a nursing supervisor, failed to call another physician and otherwise failed to assure that Mrs. Smith's baby was delivered at an earlier point.

38. As a result of the failure by the Dubois nursing staff to render appropriate and timely interventions and care, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

39. The injuries suffered by Michael W. Smith, Jr. were in no way attributable to any action or inaction on the part of Mr. or Mrs. Smith.

40. Defendants' specific acts of negligence are set forth more particularly below.

41. As a result of the negligence and carelessness of defendants, Michael W. Smith, Jr., has suffered catastrophic physical injuries, permanent neurological damage, and other losses throughout his life, including the following:

- a. Profound neurological and central nervous system damage;
- b. Cerebral palsy;
- c. Spastic diplegia;
- d. Developmental delay and retardation, including motor, speech and language development;
- e. Severe insult to the body and mind;
- f. Incontinence of bowel and bladder;
- g. Blindness;
- h. Inability to speak;
- i. Inability to walk unassisted;
- j. Need for rehabilitation, speech, and occupational therapy;
- k. Feeding limitations/difficulties;
- l. Past medical and custodial bills;
- m. Future medical and custodial bills;
- n. Past and future surgeries and other medical care;
- o. Future loss of earnings and earning capacity;
- p. Physical and mental pain and suffering;
- ..
- q. Scarring;
- r. Disfigurement;

- s. Loss of life's pleasures;
- t. Mental anguish;
- u. Embarrassment; and
- v. Humiliation.

COUNT I: NEGLIGENCE

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parents of
MICHAEL W. SMITH, JR. v. DUBOIS REGIONAL MEDICAL CENTER**

- 42. The previous paragraphs are incorporated fully herein.
- 43. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;
 - e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
 - f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;

- g. Failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. Failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. Failure to recognize and appreciate the severity of maternal fever;
- n. Failure to timely administer antibiotics;
- o. Failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;
- p. Failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. Failure to adequately monitor fetal status;
- r. Failure to contact an appropriate nursing supervisor;

- s. Failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. FAILURE to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. FAILURE to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. Failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. Failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. Failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

COUNT II

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Dubois Regional Medical Center**

- 44. The previous paragraphs are incorporated herein.
- 45. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to institute, implement and enforce policies and procedures relating to the timely delivery of a fetus exhibiting signs and symptoms of

fetal distress;

- b. Failure to institute, implement and enforce policies and procedures relating to the timely performance of cesarean deliveries, when such deliveries are called for;
- c. Failure to institute, implement and enforce policies and procedures relating to monitoring of labor and delivery patients;
- d. Failure to institute, implement and enforce policies and procedures relating to communication about status of labor and delivery patients among physicians, nurses and staff;
- e. Failure to institute, implement and enforce policies and procedures relating to operating room preparations for cesarean delivery;
- f. Failure to have and retain competent physicians and staff; and
- g. Failure to quality and safe care within the walls of the hospital.

**COUNT III
NEGLIGENCE**

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Michael Kush, M.D.**

46. The previous paragraphs are incorporated herein.
47. The negligence of defendant Michael Kush, M.D. consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to respond to numerous pages to attend to the labor and delivery of

Theresa Bell Smith;

- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. Failure to recognize and treat signs of maternal fever in Theresa Bell Smith;
- h. Failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

WHEREFORE, Michael W. Smith, Sr. and Theresa Bell Smith, parents of Michael W. Smith, Jr., a minor, demand judgment on each Count against defendants, jointly and severally, in

VERIFICATION

We, Michael W. Smith, Sr. and Theresa Bell Smith, as parents and natural guardians of Michael W. Smith, Jr., minor-plaintiff herein, hereby verify that we are the plaintiffs this action in our capacity as parents and natural guardians of Michael W. Smith, Jr., a minor, and that the statements made in the foregoing Civil Action are true and correct, to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Michael W. Smith, Sr.

MICHAEL W. SMITH, SR., as parent
natural guardian of Michael W. Smith, Jr., a
minor

Theresa Bell Smith

THERESA BELL SMITH, as parent
natural guardian of Michael W. Smith, Jr., a
minor

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

G.D. 00-11536

Issue No:

Code:

**PRAECIPE FOR
APPEARANCE**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and	)	CIVIL DIVISION
THERESA M. BELL SMITH,)	
Parents and natural guardians of	)	G.D. 00-11536
MICHAEL W. SMITH, JR, a minor,)	
Plaintiffs,	)	Issue No:
v.	)	Code:
MICHAEL KUSH, M.D. and)	
DUBOIS REGIONAL MEDICAL)	
CENTER,)	
Defendants.)	

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Would you kindly enter my appearance on behalf of **Dubois Regional Medical Center, only** in the above-captioned matter.

O'BRIEN, RULIS & BOCHICCHIO, LLC



Christopher C. Rulis, Esquire
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
PRAECIPE FOR APPEARANCE was mailed by United States Mail on this 13 day
of December, 2000, to the following:

**Thomas R. Kline, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**James R. Hartline, Esquire
Thompson, Rhodes & Cowie, P.C.
Suite 1010, Two Chatham Center
Pittsburgh, PA 15219**



**Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC**

10
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR., and THERESA
M. BELL SMITH, parents and natural
guardians of MICHAEL W. SMITH, JR., a
minor,

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants

CIVIL DIVISION

No. GD00-11536

Issue No.

**PRAECIPE FOR WITHDRAWAL OF
APPEARANCE**

Code:

Filed on behalf of Dubois Regional Medical
Center, one of the defendants

Counsel of Record for this Party:

James R. Hartline, Esquire
PA I.D. #21299

Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

FILED
00 DEC 21 AM 11:20
PROTHONOTARY
ALLEGHENY COUNTY

PRAECIPE FOR WITHDRAWAL OF APPEARANCE

TO: PROTHONOTARY OF ALLEGHENY COUNTY

Kindly withdraw our appearance on behalf of Dubois Regional Medical Center,
one of the defendants.

JURY TRIAL DEMANDED.

James R. Hartline, Esquire
Thomson, Rhodes & Cowie, P.C.

By 
Attorneys for Dubois Regional Medical
Center, one of the defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, Sr., and : Civil Division
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL W. :
SMITH, JR., a minor : No: 01-122

vs. :

MICHAEL KUSH, M.D. :
and
DUBOIS REGIONAL MEDICAL CENTER:

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of Matthew A. Casey, Esquire for plaintiffs in the above matter.

KLINÉ & SPECTER, P.C.

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiff(s)
1525 Locust Street
19th Floor
Philadelphia, PA 19102
(215) 772-1000

Dated: 1/31/01

FILED

FEB 05 2001
m/11:49 PM '01
William A. Shaw
Prothonotary

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.,
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Interrogatories Addressed to Defendant,
Michael Kush, M.D., was made this 7th day of February, 2001, upon Thomas A.
Matis, Esquire, Gaca, Matis, Baum & Rizza, P.C., 300 Four PPG Place, Pittsburgh, PA 15222-5404,
via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First
Class U.S. Mail, postage prepaid:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue
5th Floor
Pittsburgh, PA 15222

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

FILED

FEB 12 2001
m19;Olam nocc
William A. Shaw
Prothonotary

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

KLINÉ & SPECTER

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Request for Production of Documents
Addressed to Defendant, Michael Kush, M.D., was made this 7th day of February,
2001, upon Thomas A. Matis, Esquire, Gaca, Matis, Baum & Rizza, P.C., 300 Four PPG Place,
Pittsburgh, PA 15222-5404, via First Class U.S. Mail, postage prepaid; with a copy served upon the
following counsel, via First Class U.S. Mail, postage prepaid:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue
5th Floor
Pittsburgh, PA 15222

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

FEB 12 2001
M 18:49 POC
William A. Shaw
Prothonotary

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Interrogatories Addressed to Defendant, DuBois Regional Medical Center, was made this 7th day of February, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC, 100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

FEB 12 2001
m18:50 ino
William A. Shaw
Prothonotary *kd*

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Request for Production Addressed to Defendant, DuBois Regional Medical Center, was made this 7th day of February, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC, 100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

FEB 12 2001
M 18:51 no cc
William A. Shaw
Prothonotary

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, Sr., and : Civil Division
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL W. :
SMITH, JR., a minor : No: 01-122 - CO
vs.
MICHAEL KUSH, M.D. :
and
DUBOIS REGIONAL MEDICAL CENTER:

PRAEICE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

Kindly reinstate the attached Civil Action Complaint with the Court.

KLINÉ & SPECTER, P.C.

Matthew A. Casey
MATTHEW A. CASEY, ESQUIRE
Attorney for Plaintiff(s)
I.D. No. 84443
1525 Locust Street
19th Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

FEB 21 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION

G.D.

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No. *01-122-CD*

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
AARON J. FREIWALD, ESQUIRE
I.D. No. 78028
KLINER & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
1613 Washington Avenue
Hyde, PA 16843

CIVIL DIVISION
G.D.

Plaintiffs

vs.

Code:

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180

Issue No. 01-122

and

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

JURY TRIAL DEMANDED

TYPE OF PLEADING:
COMPLAINT

COUNSEL OF RECORD FOR
PLAINTIFFS:

THOMAS R. KLINE, ESQUIRE
I.D. NO. 28895
MATTHEW A. CASEY, ESQUIRE
I.D. No. 84443
KLINE & SPECTER, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION
BY: **THOMAS R. KLINE/AARON J. FREIWALD**
ATTORNEY FOR **PLAINTIFFS**
ATTORNEY ID. # **28895/78028**
THE NINETEENTH FLOOR
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, as
parents and natural guardians of
MICHAEL W. SMITH, JR., a minor
Plaintiffs

MICHAEL KUSH, M.D.
c/o Magee-Women's Hospital
300 Halket Street
Pittsburgh, PA 15213-3180
and

COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY

•
•

COMPLAINT

“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 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 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.

Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219

"AVISO

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABajo PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL

**Lawyer Referral Service
Room 920 City County Building
Pittsburgh, PA 15219**

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Avenue
Dubois, PA 15801

Defendants

COMPLAINT

1. Plaintiffs Michael W. Smith, Sr. and Theresa Bell Smith are the parents and natural guardians of Michael W. Smith, Jr., a minor.
2. The Smiths reside at Box 198, 1613 Washington Avenue, Hyde, Pennsylvania 16843.
3. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania, with a professional address at 300 Halket Street, Pittsburgh, Pennsylvania 15213.
4. Defendant Dubois Regional Medical Center ("Dubois") is a corporation or other legal entity, organized and operating under the laws of the Commonwealth of Pennsylvania, with an address located at 100 Hospital Avenue, P. O. Box 447, Dubois, Pennsylvania 15801.
5. At all relevant times, defendant Kush was an agent, employee, servant or ostensible agent of defendant Dubois.
6. Defendant Kush is amenable to service in Allegheny County, regularly conducts professional business in Allegheny County, and, thus, venue in Allegheny County is proper pursuant to the Pennsylvania Rules of Civil Procedure.
7. At all relevant times, defendant Dubois acted or failed to act through its agents, servants, employees and ostensible agents, including but not limited to Dr. Kush, various labor and delivery nurses (to be identified), other nurses, technicians, therapists, residents and other hospital personnel.

8. Defendant Dubois, on information and belief, has lost or destroyed the medical records for mother-plaintiff, except for the fetal heart monitor strips, so the names of certain hospital staff will have to be identified in the course of discovery.

9. Defendants Kush and Dubois owed a duty of care to Theresa Bell Smith regarding the labor and delivery of her child, Michael.

10. Minor-plaintiff Michael W. Smith, Jr. was born on February 19, 1993.

11. Mrs. Smith was at home on February 18, 1993 at approximately 11:55 a.m. when her water broke.

12. Her pregnancy up to that point had been uncomplicated.

13. Her EDC was April 24, 1993.

14. Mrs. Smith saw her regular obstetrician, Dr. Tagala, on February 18, 1993, after her water broke.

15. Dr. Tagala referred Mrs. Smith to defendant Dubois Regional Medical Center because of the anticipated prematurity of the baby.

16. Mrs. Smith went directly from Dr. Tagala's office to Dubois Regional Medical Center, to which she was admitted at approximately 4:10 p.m. on February 18, 1993.

17. Defendant Kush saw Mrs. Smith at approximately 6:00 p.m. on February 18, 1993, at which time he advised her that he would be the physician who would deliver her baby.

18. External fetal monitoring was not started until almost two and one half hours following admission, at 6:33 p.m.

19. Shortly after Dr. Kush's exam, Mr. Smith was told he should go home and that he would be called closer to the time when Mrs. Smith was ready to deliver or if there were any problems.

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20. At approximately 11:00 p.m., Mrs. Smith developed vomiting and fever to approximately 101°F.
21. Mr. Smith was called return to the hospital.
22. When Mr. Smith arrived at the hospital, Mr. and Mrs. Smith were told by the labor and delivery nurses that Dr. Kush had been paged but that he had not yet responded.
23. Throughout the evening and early morning of February 19, 1993, Mr. and Mrs. Smith were told multiple times by the Dubois nurses that Dr. Kush had been paged but that he was not responding.
24. According to notations on the fetal monitor strips, Mrs. Smith had a fever through her labor on February 19, 1993 to the time of her delivery at 7:30 a.m.
25. Mrs. Smith's fever, as tracked on the fetal monitor strips, was as follows:

2:20 a.m.	101
3:10 a.m.	101.6
3:43 a.m.	101.9
4:15 a.m.	102.5
5:00 a.m.	102.2
5:35 a.m.	102.9
5:45 a.m.	102.1

26. Mrs. Smith had a fever of approximately 104°F at the time of delivery at 7:30 a.m.
27. Throughout the early morning of February 19, 1993 to the time of delivery, the fetus was tachycardic.
28. At least one other baby was delivered at Dubois Regional Medical Center overnight on February 18-19, 1993.

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29. No physician saw Mrs. Smith from the time of Dr. Kush's initial exam at approximately 6:00 p.m. on February 18, 1993 until Dr. Kush finally arrived back to the hospital more than 12 hours later, at approximately 6:30 a.m. on February 19, 1993.

30. Michael W. Smith, Jr. was delivered at 7:30 a.m. on February 19, 1993 by cesarian section.

31. The baby's Apgars were 1 at one minute and 6 at five minutes.

32. Michael required bag and mask resuscitation and intubation.

33. Dr. Kush was the physician responsible for Mrs. Smith's labor and delivery.

34. Despite numerous calls and pages from the Dubois nursing staff Dr. Kush did not respond and did not attend to his patient.

35. Because of Dr. Kush's failure to attend to Mrs. Smith during her labor and to deliver her baby at an earlier point, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

36. The nursing staff at defendant Dubois Regional Medical Center failed to respond appropriately and timely to the worsening maternal and fetal condition in light of Dr. Kush's unavailability.

37. The Dubois nurses failed to call a nursing supervisor, failed to call another physician and otherwise failed to assure that Mrs. Smith's baby was delivered at an earlier point.

38. As a result of the failure by the Dubois nursing staff to render appropriate and timely interventions and care, the baby was caused to suffer hypoxic ischemic brain injury, circulatory insult and resulting neurologic damage.

39. The injuries suffered by Michael W. Smith, Jr. were in no way attributable to any action or inaction on the part of Mr. or Mrs. Smith.

40. Defendants' specific acts of negligence are set forth more particularly below.

41. As a result of the negligence and carelessness of defendants, Michael W. Smith, Jr., has suffered catastrophic physical injuries, permanent neurological damage, and other losses throughout his life, including the following:

- a. Profound neurological and central nervous system damage;
- b. Cerebral palsy;
- c. Spastic diplegia;
- d. Developmental delay and retardation, including motor, speech and language development;
- e. Severe insult to the body and mind;
- f. Incontinence of bowel and bladder;
- g. Blindness;
- h. Inability to speak;
- i. Inability to walk unassisted;
- j. Need for rehabilitation, speech, and occupational therapy;
- k. Feeding limitations/difficulties;
- l. Past medical and custodial bills;
- m. Future medical and custodial bills;
- n. Past and future surgeries and other medical care;
- o. Future loss of earnings and earning capacity;
- p. Physical and mental pain and suffering;
- q. Scarring;
- r. Disfigurement;

- s. Loss of life's pleasures;
- t. Mental anguish;
- u. Embarrassment; and
- v. Humiliation.

COUNT I: NEGLIGENCE

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parents of
MICHAEL W. SMITH, JR. v. DUBOIS REGIONAL MEDICAL CENTER**

- 42. The previous paragraphs are incorporated fully herein.
- 43. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;
 - e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
 - f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;

- g. Failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. Failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. Failure to recognize and appreciate the severity of maternal fever;
- n. Failure to timely administer antibiotics;
- o. Failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;
- p. Failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. Failure to adequately monitor fetal status;
- r. Failure to contact an appropriate nursing supervisor;

- s. Failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. FAILURE to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. FAILURE to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. Failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. Failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. Failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. Failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

COUNT II

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Dubois Regional Medical Center**

- 44. The previous paragraphs are incorporated herein.
- 45. The negligence of defendant Dubois Regional Medical Center consisted of the following:
 - a. Failure to institute, implement and enforce policies and procedures relating to the timely delivery of a fetus exhibiting signs and symptoms of

fetal distress;

- b. Failure to institute, implement and enforce policies and procedures relating to the timely performance of cesarean deliveries, when such deliveries are called for;
- c. Failure to institute, implement and enforce policies and procedures relating to monitoring of labor and delivery patients;
- d. Failure to institute, implement and enforce policies and procedures relating to communication about status of labor and delivery patients among physicians, nurses and staff;
- e. Failure to institute, implement and enforce policies and procedures relating to operating room preparations for cesarean delivery;
- f. Failure to have and retain competent physicians and staff; and
- g. Failure to quality and safe care within the walls of the hospital.

**COUNT III
NEGLIGENCE**

**MICHAEL W. SMITH, SR. and THERESA BELL SMITH, parent of
Michael W. Smith, Jr. v. Michael Kush, M.D.**

- 46. The previous paragraphs are incorporated herein.
- 47. The negligence of defendant Michael Kush, M.D. consisted of the following:
 - a. Failure to timely deliver Michael Smith;
 - b. Negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;
 - c. Negligent delay in performing cesarean section delivery of Michael Smith;
 - d. Failure to respond to numerous pages to attend to the labor and delivery of

Theresa Bell Smith;

- e. Failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;
- f. Failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. Failure to recognize and treat signs of maternal fever in Theresa Bell Smith;
- h. Failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;
- i. Improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. Failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. Failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and
- l. Failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

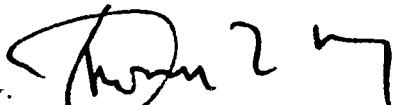
WHEREFORE, Michael W. Smith, Sr. and Theresa Bell Smith, parents of Michael W. Smith, Jr., a minor, demand judgment on each Count against defendants, jointly and severally, in

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an amount in excess of the local arbitration limits and in excess of Fifty Thousand Dollars
(\$50,000.00), exclusive of pre-judgment interests and costs and post-judgment interests.

KLINE & SPECTER, P.C.

BY:


THOMAS R. KLINE, ESQUIRE
AARON J. FREIWALD, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

DATED:

VERIFICATION

We, Michael W. Smith, Sr. and Theresa Bell Smith, as parents and natural guardians of Michael W. Smith, Jr., minor-plaintiff herein, hereby verify that we are the plaintiffs this action in our capacity as parents and natural guardians of Michael W. Smith, Jr., a minor, and that the statements made in the foregoing Civil Action are true and correct, to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Michael W. Smith, Sr.
MICHAEL W. SMITH, SR., as parent
natural guardian of Michael W. Smith, Jr., a
minor

Theresa Bell Smith
THERESA BELL SMITH, as parent
natural guardian of Michael W. Smith, Jr., a
minor

FILED

FTD 2/1/2001
MIL 04/07/01
William A. Shaw
Prothonotary
Pd \$7.00

Comp. Reinstate to atty.

2/2/01 Document
Reinstated ~~Reinstated~~ Sheriff Attorney
for service. *John S. Shaw*
Prothonotary

CLEARFIELD
IN THE COURT OF COMMON PLEAS OF ~~ALLEGHENY~~ COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

~~G.D. 00-14536~~
2001-122-CO
Issue No:

Code:

**ANSWER AND NEW
MATTER**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

FEB 28 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
) Issue No:
Plaintiffs,)
) Code:
v.)
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
)
Defendants.)

NOTICE TO PLEAD

TO THE WITHIN NAMED PLANITIFF:

You are hereby notified to file a written response to the enclosed **Answer and New Matter to Plaintiff's Complaint** within Twenty (20) days from the date of service hereof or a judgment may be entered against you.



Christopher C. Rulis, Esquire

O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

Dated: 2/26/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and	)	CIVIL DIVISION
THERESA M. BELL SMITH,)	
Parents and natural guardians of	)	2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)	
	)	Issue No:
Plaintiffs,)	
	)	Code:
V.)	
)	
MICHAEL KUSH, M.D. and)	
DUBOIS REGIONAL MEDICAL)	
CENTER,)	
)	
Defendants.)	

**ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT FILED ON BEHALF OF
DUBOIS REGIONAL MEDICAL CENTER**

AND NOW, comes the Defendant, DuBois Regional Medical Center, by and through its counsel, Christopher C. Rulis, Esquire, and O'Brien, Rulis & Bochicchio, LLC and files the within Answer and New Matter to Plaintiff's Complaint averring as follows:

1. Admitted.
2. Admitted.
3. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Three (3). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.
4. Admitted.
5. Paragraph Five (5) is a conclusion of law and therefore no response is necessary.

6. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Six (6). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

7. Paragraph Seven (7) is a conclusion of law and therefore no response is necessary.

8. Paragraph Eight (8) is admitted in part and denied in part. It is admitted that this Defendant cannot locate the medical chart of the mother. It is denied that the only records that are available are the fetal heart monitor strips. In addition to the fetal heart monitor strips other records are available including, but not limited to, the labor and delivery summary. Furthermore, this Defendant is making every effort to locate the mother's chart and if it is able to locate this chart, a copy will be made available to all parties.

9. Admitted.

10. Admitted.

11. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Eleven (11). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

12. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twelve (12). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

13. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Thirteen (13). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

14. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Fourteen (14). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

15. Admitted.

16. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Sixteen (16). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

17. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Seventeen (17). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

18. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Eighteen (18). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

19. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Nineteen (19). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

20. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twenty (20). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

21. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twenty-one (21). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

22. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twenty-two (22). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

23. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twenty-three (23). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

24. Admitted.

25. Admitted.

26. Admitted.

27. Denied. The fetal monitor strips "speak for themselves" with regard to the heart rate of the fetus.

28. Admitted.

29. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Twenty-nine (29). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Thirty-four (34). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

35. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Thirty-five (35). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

36. Denied. It is denied that the nursing staff failed to respond appropriately and timely to the maternal and fetal condition.

37. Denied. It is denied that the nursing staff failed to communicate with the appropriate personnel with regard to the condition of the baby.

38. Denied. It is denied that the nursing staff failed to render appropriate care and it is denied that the conduct of the nursing staff caused the baby to sustain hypoxic brain injury.

39. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Thirty-nine (39). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

40. Paragraph Forty (40) is a conclusion of law and therefore no response is necessary.

41. Denied. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph Forty-one (41). Accordingly, the same are denied and strict proof thereof is demanded at time of trial.

COUNT I – NEGLIGENCE

**MICHAEL W. SMITH and THERESA BELL SMITH, parents of MICHAEL W. SMITH, JR. v.
DUBOIS REGIONAL MEDICAL CENTER**

42. Defendant incorporates Paragraphs One (1) through Forty-one (41) as though set forth more fully herein.

43. Denied. It is denied that Dubois Regional Medical Center was negligent or that its employees, agents, or servants were negligent in any manner. Furthermore:

- a. It is denied that there was a failure to timely deliver Michael Smith, Jr.;
- b. It is denied that there was a negligent delay in the care rendered to Michael Smith, Jr.;
- c. It is denied that there was a negligent delay in performing a cesarean section;
- d. It is denied that there was a failure to institute the appropriate protocol;
- e. It is denied that there was a failure to appropriately treat the fetus;
- f. It is denied that there was a failure to recognize and diagnose fetal distress;
- g. It is denied that there was a failure to enact and carry out the appropriate policies and procedures;
- h. It is denied that there was a failure to properly monitor, observe, and record the condition of Michael Smith, Jr.;
- i. It is denied that there was an improper delay of necessary medical and surgical treatment to Teresa Bell Smith;
- j. It is denied that there was a failure to timely recognize and diagnose the condition of Michael Smith, Jr.;
- k. It is denied that there was a failure to communicate among the health care providers;

I. It is denied that there was a failure to recognize and diagnose Michael Smith, Jr's fetal distress;

 m. It is denied that there was a failure to recognize and appreciate the maternal fever;

 n. It is denied that there was a failure to timely administer antibiotics;

 o. It is denied that there was a failure of communication with regard to the care of Teresa Bell Smith;

 p. It is denied that there was a failure to appreciate the condition of the fetus;

 q. It is denied that there was a failure to adequately monitor the fetal status;

 r. It is denied that there was any failure of communication with regard to the nursing staff;

 s. It is denied that there was a failure to timely intervene;

 t. It is denied that there was a failure to take reasonable and necessary steps to prevent fetal distress;

 u. It is denied that there was a failure to call for appropriate and timely consultation;

 v. It is denied that there was a failure to properly resuscitate the baby;

 w. It is denied that there was a failure of timely intervention;

 x. It is denied that there was a failure to order the appropriate studies; and

 y. It is denied that there was a failure to timely deliver Michael Smith, Jr.

WHEREFORE, this Defendant, demands judgment in its favor with costs assessed against the Plaintiff.

COUNT II – NEGLIGENCE

**MICHAEL W. SMITH and THERESA BELL SMITH, parents of MICHAEL W. SMITH, JR. v.
DUBOIS REGIONAL MEDICAL CENTER**

44. Defendant incorporates Paragraphs One (1) through Forty-three (43) as though set forth more fully herein.

45. Denied. It is denied that the Defendant DRMC was negligent. Furthermore:

a. It is denied that there was a failure to institute, implement, and enforce policies and procedures regarding the timely delivery of the fetus;

b. It is denied that there was a failure to institute, implement, and enforce policies and procedures with regard to the performance of cesarean deliveries;

c. It is denied that there was a failure to institute, implement, and enforce policies and procedures with regard to the fetal monitoring;

d. It is denied that there was a failure to institute, implement, and enforce policies and procedures with regard to communication;

e. It is denied that there was a failure to institute, implement, and enforce policies with regard to operating room preparations;

f. It is denied that there was a failure to have and retain competent physicians and staff; and

g. It is denied that there was a failure to ensure quality and safe care within the walls of the hospital.

WHEREFORE, this Defendant, demands judgment in its favor with costs assessed against the Plaintiff.

COUNT III – NEGLIGENCE
MICHAEL W. SMITH and THERESA BELL SMITH, parents of MICHAEL W. SMITH, JR. v.
MICHAEL KUSH, M.D.

46. Defendant incorporates Paragraphs One (1) through Forty-five (45) as though set forth more fully herein.

47. The allegations contained in Count III are not directed to this Defendant and therefore no response is necessary.

WHEREFORE, this Defendant, demands judgment in its favor with costs assessed against the Plaintiff.

NEW MATTER

48. This Defendant incorporates its responses set forth in Paragraphs One (1) through Forty-seven (47), inclusive of this Answer, as if same were set forth at length herein.

49. Plaintiff's claims are barred by any and all applicable statutes of limitation under Pennsylvania law.

50. This Defendant pleads any failure of Plaintiff to mitigate damages, as such may be shown by the evidence developed in discovery or introduced at the time of trial.

51. To the extent justified by the facts developed in discovery and/or the evidence introduced at the time of trial, this Defendant avers that the conduct of others not a party to this action and/or factors beyond the control of this Defendant caused or contributed to the alleged injuries, and damages.

52. If, at the time of trial, it is established that the adult Plaintiffs caused or contributed to the injuries and conditions alleged herein by failing to provide accurate and thorough medical history and/or failing to obtain medical treatment or recommended medical treatment, then this Defendant pleads assumption of the risk as an affirmative defense.

53. If, at the time of trial, it is established that the adult Plaintiffs caused or contributed to the injuries and conditions alleged herein by failing to provide accurate and thorough medical history and/or failing to obtain medical treatment or recommended medical treatment, then this Defendant pleads such contributory and/or comparative negligence as an affirmative defense.

WHEREFORE, this Defendant denies any and all liability to Plaintiffs and request that judgment be entered in its favor and against the Plaintiffs and that the Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,



Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222

VERIFICATION

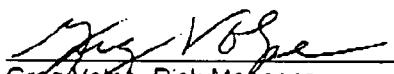
I verify that the statements made in these Answer and New Matter are true and correct.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.

Section 4904 relating to unsworn falsification to authorities.

Feb. 21, 2001

Date



Greg Volpe, Risk Manager
Dubois Regional Medical Center

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
ANSWER AND NEW MATTER was mailed by United States Mail on this 26th day of February,
2001, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

FILED

FFB 2/8/2001
07/04/01 NOCC
William A. Shaw
Prothonotary
cc: [Signature]

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION

BY:

ATTORNEY FOR

ATTORNEY ID. #

THE NINETEENTH FLOOR

1525 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19102

215-772-1000

THOMAS R. KLINE/MATTHEW A. CASEY
28895/84443
PLAINTIFFS

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

VS.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

ANSWER TO NEW MATTER

49. Denied. This paragraph states a conclusion of law to which no response is required.
50. Denied. This paragraph states a conclusion of law to which no response is required.
51. Denied. This paragraph states a conclusion of law to which no response is required.
52. Denied. This paragraph states a conclusion of law to which no response is required.
53. Denied. This paragraph states a conclusion of law to which no response is required.

KLINÉ & SPECTER, P.C.

BY: *Matthew A. Casey*

THOMAS R. KLINE
MATTHEW A. CASEY
Attorneys for Plaintiffs

Dated: 3/5/01

FILED

MAR 08 2001

William A. Shaw
Prothonotary

VERIFICATION

I, Matthew A. Casey, Esquire, hereby verify that I am attorney for plaintiff in this action; that I am authorized to sign this Verification; and that the statements made in the foregoing Answer to New Matter are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

KLINE & SPECTER, P.C.

BY: Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiff
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

Dated: 3/5/01

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of a copy of the attached Answer to New Matter was made this
5th day of March, 2001, upon the following counsel via First Class U.S. Mail,
postage prepaid:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404.

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

MAR 08 2001

M 11/17/01 cc

William A. Shaw

Prothonotary

cc

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Second Request for Production of
Documents Directed to Defendant, DuBois Regional Medical Center, was made this 5th day of
MARCH, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC,
100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a
copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

MAR 08 2001

11:10 am
William A. Shaw
Prothonotary

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Insurance Interrogatories and Request for Production of Documents Directed to Defendant, Michael Kush, M.D., was made this 21st day of MARCH, 2001, upon Thomas A. Matis, Esquire, Gaca, Matis, Baum & Rizza, P.C., 300 Four PPG Place, Pittsburgh, PA 15222-5404, via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue
5th Floor
Pittsburgh, PA 15222

KLINÉ & SPECTER, P.C.

FILED

MAR 23 2001

William A. Shaw
Prothonotary

BY: Matthew Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

114-11

FILED

MAR 23 2001
M 10:55
William A. Shaw
Prothonotary

5
KES

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Insurance Interrogatories and Request for Production of Documents Directed to Defendant, DuBois Regional Medical Center, was made this

21st day of MARCH, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC, 100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED
MAR 23 2001

William A. Shaw
Prothonotary

FILED

MAR 23 2001

O 11:03 AM '01
William A. Shaw
Prothonotary
C
KET

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

: COURT OF COMMON PLEAS
: CLEARFIELD COUNTY
: NO. 01-122-CD

ACCEPTANCE OF SERVICE

I hereby accept service of Plaintiffs' Complaint in the above-captioned action on behalf of the following defendant as of February 28, 2001:

MICHAEL KUSH, M.D.

I certify that I am authorized to do so.

GACA, MATIS, BAUM & RIZZA, P.C.

BY: Thom A. Matis

THOMAS A. MATIS
Attorney for Defendant
Michael Kush, M.D.

300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750

FILED

MAR 23 2001

William A. Shaw
Prothonotary

FILED

MAR 23 2001

W.W. Shaw
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and
THERESA M. BELL SMITH, parents
and natural guardians of Michael W.
Smith, Jr., a minor,

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 01-122

Code:

Issue No:

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on behalf of Michael Kush,
M.D., Defendant

Counsel of Record for This Party:

Thomas A. Matis, Esquire
PA I.D. 17342

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

JURY TRIAL DEMANDED

FILED

APR 06 2001
m 10:33 2001
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) No. 01-122
Smith, Jr., a minor,)
)
Plaintiffs,)
)
vs.)
)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
)
Defendants.)
)
)
)

PRAECIPE FOR ENTRY OF APPEARANCE

To: Prothonotary

Kindly enter our appearance on behalf of Michael Kush, M.D. in the in the above-captioned matter

This case will be handled by Thomas A. Matis, Esquire.

GACA MATIS BAUM & RIZZA

By: Thomas A. Matis
Thomas A. Matis, Esquire
PA ID 17342
Attorneys for Michael Kush, M.D.,
Defendant

Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing
PRAECIPE FOR ENTRY OF APPEARANCE upon all counsel of record by United States,
First-class mail, postage prepaid, this 4th day of April, 2001.

Thomas R. Kline, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchia
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA



Thomas A. Matis

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

2001-122-C.D.

Issue No:

Code:

**NOTICE OF SERVICE OF
REQUEST FOR
PRODUCTION OF
DOCUMENTS DIRECTED
TO PLAINTIFFS**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

APR 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
Plaintiffs,) Issue No:
)
v.) Code:
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
Defendants.)

NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFFS

I hereby certify that Request for Production of Documents Directed to Plaintiffs
was served upon the following individual via first class mail, postage prepaid on
April 11, 2001.

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102


Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

Date: 4/11/01

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFFS was mailed by United States Mail on this 11 day of
April, 2001, to the following:

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

FILED

APR 16 2001
M 8:54 AM
William A. Shaw
Prothonotary *Jeff*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

2001-122-C.D.

Issue No:

Code:

**NOTICE OF SERVICE OF
INTERROGATORIES
DIRECTED TO PLAINTIFFS**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

APR 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and	)	CIVIL DIVISION
THERESA M. BELL SMITH,)	
Parents and natural guardians of	)	2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)	
	)	Issue No:
Plaintiffs,)	
	)	Code:
v.)	
)	
MICHAEL KUSH, M.D. and)	
DUBOIS REGIONAL MEDICAL)	
CENTER,)	
)	
Defendants.)	

NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO PLAINTIFFS

I hereby certify that Interrogatories Directed to Plaintiffs was served upon the following individual via first class mail, postage prepaid on April 11, 2001.

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**



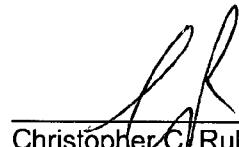
Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

Date: 4/11/00

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO PLAINTIFFS was
mailed by United States Mail on this 11 day of April, 2001, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

FILED

APR 16 2001
778-54 NOCC
William A. Shaw
Prothonotary

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Plaintiffs' Notices of Deposition of Debbie Robison, Marianne Snedden, R.N., Holly Wriglesworth, R.N., Peggy Pifer, R.N., and John Peterson, CRNA, was made this 18th day of April, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC, 100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED
APR 20 2001
William A. Shaw
Prothonotary

FILED

APR 20 2001

M/J/o:Sz/nd cc
William A. Shaw
Prothonotary

JKS

KLINE & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of the original Response of Plaintiffs to Defendant, DuBois
Regional Medical Center's, Request for Production of Documents was made this 3 day of
August, 2001, upon Christopher C. Rulis, Esquire, O'Brien, Rulis & Bochicchio, LLC,
100 Fifth Avenue, 5th Floor, Pittsburgh, PA 15222, via First Class U.S. Mail, postage prepaid; with a
copy served upon the following counsel, via First Class U.S. Mail, postage prepaid:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Matthew A. Casey
MATTHEW A. CASEY
I.D. No. 84443
Attorney for Plaintiffs

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

Aug 06 2001
10:15 AM
William A. Shaw
Prothonotary

1 CENT TO MAIL

FILED

AUG 06 2001

William A. Shaw
Prothonotary

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

MICHAEL W. SMITH, SR., and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL W. :
SMITH, JR., a minor :
: :
-vs- : : No. 01 = 122 - CD
: :
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL CENTER:

ORDER

NOW, this 1st day of July, 2002, following status conference into the above-captioned matter, upon agreement of the parties, it is the ORDER of this Court that Defendants shall forthwith provide to counsel for Plaintiff copies of all insurance policies under the terms of which coverage may be available to Plaintiff. Further, that Plaintiff shall submit expert reports of any and all experts intended to be called at trial on or before August 15, 2002, with Defendants expert reports to be submitted on or before October 15, 2002.

By the Court,

President Judge

FILED

JUL 01 2002

William A. Shaw
Prothonotary

FILED

JUL 01 2002
01313014

William A. Shaw
Prothonotary

CCD: TO: MATIS
D CASEY
XBB RUMS

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION

BY:

ATTORNEY FOR

ATTORNEY ID. #

THE NINETEENTH FLOOR

1525 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19102

215-772-1000

THOMAS R. KLINE/MATTHEW A. CASEY

28895/84443

PLAINTIFFS

MICHAEL W. SMITH, SR. and	:	COURT OF COMMON PLEAS
THERESA M. BELL SMITH,	:	
Parents and Natural Guardians of	:	CLEARFIELD COUNTY
MICHAEL W. SMITH, JR., a minor	:	
VS.	:	NO. 01-122
MICHAEL KUSH, M.D.	:	
and	:	
DUBOIS REGIONAL MEDICAL CENTER	:	

ORDER

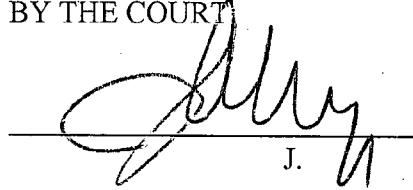
AND NOW, on this 31st day of July, 2002, upon consideration of the agreement of all parties to this matter, it is hereby ordered and decreed that the discovery deadline with regard to expert reports is hereby revised as follows:

1. Plaintiff's expert reports shall be due on September 15, 2002
2. Defendants' expert reports shall be due on November 15, 2002

BY THE COURT

FILED*(initials)*

JUL 31 2002
m933/lcc atty Casey
William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and	)	CIVIL DIVISION
THERESA M. BELL SMITH,)	
Parents and natural guardians of	)	2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)	
	)	Issue No:
Plaintiffs,)	
	)	Code:
V.)	
)	
MICHAEL KUSH, M.D. and)	
DUBOIS REGIONAL MEDICAL)	
CENTER,)	
)	
Defendants.)	

**NOTICE OF SERVICE OF RESPONSE TO PRODUCTION OF DOCUMENTS
TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER**

I hereby certify that Response to Production of Documents to Defendant, Dubois
Regional Medical Center was served upon the following individual via first class mail,
postage prepaid on Aug. 20, 2002.

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222

FILED

AUG 22 2002
m 11/02 nrc
William A. Shaw
Prothonotary



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

Date: 8/20/02

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
NOTICE OF SERVICE OF RESPONSE TO PRODUCTION OF DOCUMENTS TO
DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER was mailed by United States
Mail on this 20 day of August, 2002, to the following:

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

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

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
Plaintiffs,) Issue No:
v.) Code:
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
{ Defendants.)

**NOTICE OF SERVICE OF ANSWER TO PLAINTIFF'S INSURANCE
INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS DIRECTED TO
TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER**

I hereby certify that Defendant's Answer to Plaintiff's Insurance Interrogatories and Request for Production of Documents was served upon the following individual via first class mail, postage prepaid on Aug 19, 2002.

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222

Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHI
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #314886

UG 22 2002

Million
William A. Shaw
Prothonotary

Date: 8/19/02

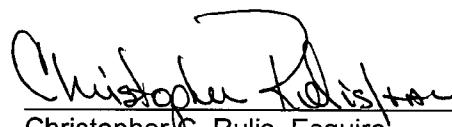
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
**NOTICE OF SERVICE OF DEFENDANT'S RESPONSE TO PLAINTIFF'S INSURANCE
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER** was mailed by United States

Mail on this 19 day of Aug, 2002, to the following:

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
) Issue No:
Plaintiffs,)
) Code:
v.)
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
)
) Defendants.)

NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES
TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER

I hereby certify that the Answers to Interrogatories to Defendant, Dubois
Regional Medical Center was served upon the following individual via first class mail,
postage prepaid on August 20, 2002.

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222

FILED
AUG 22 2002
11110212000
William A. Shaw
Prothonotary
REC'D


Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

Date: 8/26/02

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES TO DEFENDANT,
DUBOIS REGIONAL MEDICAL CENTER was mailed by United States Mail on this
20 day of Aug, 2002, to the following:

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
) Issue No:
Plaintiffs,)
) Code:
V.)
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
)
) Defendants.)

**NOTICE OF SERVICE OF RESPONSE TO PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO
TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER**

I hereby certify that Defendant's Response to Plaintiff's Second Request for Production of Documents was served upon the following individual via first class mail, postage prepaid on Aug 19, 2002.

Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222

FILED

AUG 22 2002
m11102/noc
William A. Shaw
Prothonotary

Date: 8/19/02

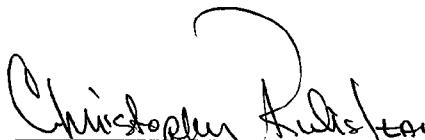

Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
**NOTICE OF SERVICE OF DEFENDANT'S RESPONSE TO PLAINTIFFS' ANSWERS TO
INTERROGATORIES TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER** was
mailed by United States Mail on this 19 day of August, 2002, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222**


Christopher C. Rulis
Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

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

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR., a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

2001-122-C.D.

Issue No:

Code:

**NOTICE OF SERVICE OF
REQUEST FOR
PRODUCTION OF
DOCUMENTS**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

**Counsel of Record for this
Party:**

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

SEP 13 2002

M 11/07/02
William A. Shaw
Prothonotary *KA*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

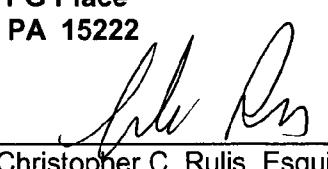
MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
) Issue No:
Plaintiffs,)
) Code:
v.)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
)
Defendants.)

**NOTICE OF SERVICE OF RESPONSE TO PLAINTIFF'S THIRD
SUPPLEMENTAL REQUEST FOR PRODUCTION
OF DOCUMENTS DIRECTED TO
TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER**

I hereby certify that Defendant's Response to Plaintiff's Third Supplemental Request for Production of Documents was served upon the following individual via first class mail, postage prepaid on Sept 11, 2002.

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222**



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

Date: 9/11/02

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
**NOTICE OF SERVICE OF DEFENDANT'S RESPONSE TO PLAINTIFF'S THIRD
SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER** was mailed by United States
Mail on this 11th day of Sept, 2002, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222**



**Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC**

KLINE & SPECTER, P.C.
 BY: Thomas R. Kline, Esquire
 Matthew A. Casey, Esquire
 Attorney I.D. Nos. 28895/84443
 1525 Locust Street, 19th Floor
 Philadelphia, PA 19102
 (215) 772-1000

Attorneys for Plaintiffs

MICHAEL W. SMITH, SR. and : COURT OF COMMON PLEAS
 THERESA M. BELL SMITH, : CLEARFIELD COUNTY
 Parents and Natural Guardians of :
 MICHAEL W. SMITH, JR., a minor :
 :
 vs. : NO. 01-122
 :
 MICHAEL KUSH, M.D. :
 and :
 DUBOIS REGIONAL MEDICAL CENTER :
 ✓

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadlines for expert reports shall be extended as follows:

- Plaintiffs' expert reports shall be due on or before November 1, 2002;
- Defense expert reports shall be due on or before January 2, 2003.

Tom A. Matis

THOMAS A. MATIS
 Attorney for Defendant
 Michael Kush, M.D.

CHRISTOPHER C. RULIS
 Attorney for Defendant
 DuBoisRegional Medical Center

Matthew A. Casey

THOMAS R. KLINE
MATTHEW A. CASEY
 Attorneys for Plaintiffs

APPROVED BY THE COURT:

9/10/02 J.

FILED

SEP 16 2002

6/2501CC att Kline
 William A. Shaw
 Prothonotary

*E
KBS*

KLINÉ & SPECTER, P.C.
 BY: Thomas R. Kliné, Esquire
 Matthew A. Casey, Esquire
 Attorney I.D Nos. 28895/84443
 1525 Locust Street, 19th Floor
 Philadelphia PA 19102
 (215) 772-1000

Attorneys for Plaintiffs

MICHAEL W. SMITH, SR. and
 THERESA M. BELL SMITH,
 Parents and Natural Guardians of
 MICHAEL W. SMITH, JR., a minor

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

vs.

NO. 01-122

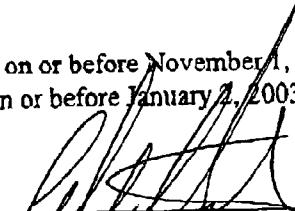
MICHAEL KUSH, M.D.
 and
 DUBOIS REGIONAL MEDICAL CENTER

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadlines for expert reports shall be extended as follows:

- Plaintiffs' expert reports shall be due on or before November 1, 2002;
- Defense expert reports shall be due on or before January 1, 2003.

 THOMAS A. MATUS
 Attorney for Defendant
 Michael Kush, M.D.


 CHRISTOPHER C. RULIS
 Attorney for Defendant
 DuBoisRegional Medical Center

 THOMAS R. KLINE
 MATTHEW A. CASEY
 Attorneys for Plaintiffs

APPROVED BY THE COURT:

9/16/02

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and
THERESA M. BELL SMITH, parents
and natural guardians of Michael W.
Smith, Jr., a minor,

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 01-122

Code:

Issue No:

~~STIPULATION~~

Filed on behalf of Michael Kush,
M.D., Defendant

Counsel of Record for This Party:

Thomas A. Matis, Esquire
PA I.D. 17342

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750

JURY TRIAL DEMANDED

FILED

JAN 02 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) No. 01-122
Smith, Jr., a minor,)
)
Plaintiffs,)
)
vs.)
)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
)
Defendants.)

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadline for expert reports shall be extended as follows:

Defense expert reports shall be due on or before February 1, 2003.

Thomas A. Matis

Thomas A. Matis, Esquire
Attorneys for Defendant,
Michael Kush, M.D.

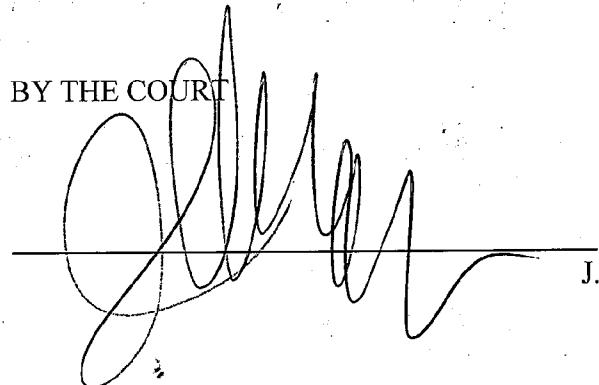
Christopher C. Rulis/TAM

Christopher C. Rulis, Esquire
Attorneys for Defendant,
DuBois Regional Medical Center

See Attached signature page.

Thomas R. Kline, Esquire *TAM*
Matthew A. Casey, Esquire
Attorneys for Plaintiffs,
Michael W. Smith, Sr., and Theresa M.
Bell Smith, Parents and Natural Guardians
of Michael W. Smith, Jr., a Minor

BY THE COURT



J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
TERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.)	
Smith, Jr., a minor,	)	No. 01-122
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL KUSH, M.D. and DUBOIS)	
REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadline for expert reports shall be extended as follows:

Defense expert reports shall be due on or before February 1, 2003.



Thomas A. Matis, Esquire
Attorneys for Defendant,
Michael Kush, M.D.

Christopher C. Rulis, Esquire
Attorneys for Defendant,
DuBois Regional Medical Center



Thomas R. Kline, Esquire
Matthew A. Casey, Esquire
Attorneys for Plaintiffs,
Michael W. Smith, Sr., and Theresa M.
Bell Smith, Parents and Natural Guardians
of Michael W. Smith, Jr., a Minor

BY THE COURT

J.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing Stipulation was this 27th day of December, 2002, delivered to counsel of record via United States First Class Mail, postage prepaid, as follows:

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchia, LLC
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA

Thomas A. Matis

Thomas A. Matis, Esquire

FILED

1CC

01/10/2003
JAN 02 2003
Amy Matis

6005

William A. Shaw
Preliminary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

2001-122-C.D.

Issue No:

Code:

**NOTICE OF SERVICE OF
SECOND SET OF
INTERROGATORIES**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis & Bochicchio
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

JAN 03 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
) Issue No:
Plaintiffs,)
) Code:
v.)
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
)
Defendants.)

NOTICE OF SERVICE OF SECOND SET OF INTEERROGATORIES
DIRECTED TO PLAINTIFF

I hereby certify that the Notice of Service of Second Set of Interrogatories was served upon the following individual via first class mail, postage prepaid on

Dec 30, 2002.

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222**



Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
Pa. I.D. #34886

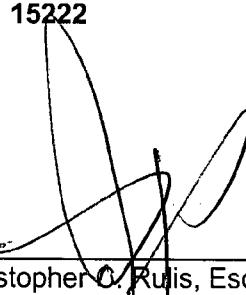
Date: Dec 30 2002

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
NOTICE OF SERVICE OF THE SECOND SET OF INTERROGATORIES was mailed
by United States Mail on this 70 day of December, 2002, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222**


Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC

FILED NO CC

M 110:23-BT
JAN 03 1963

FRB

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and
THERESA M. BELL SMITH, parents
and natural guardians of Michael W.
Smith, Jr., a minor,

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. GD 01-122

Code:

Issue No.:

STIPULATION

Filed on behalf of Michael Kush, M.D.,
Defendant

Counsel of Record for This Party:

Thomas A. Matis, Esquire
PA I.D. #17342

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

JURY TRIAL DEMANDED

FILED
FEB 06 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
THERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.	)	No. 01-122
Smith, Jr., a minor,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL KUSH, M.D. and DUBOIS)	
REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadline for expert reports shall be extended as follows:

Defense expert reports shall be due on or before March 1, 2003.

Thomas A. Matis

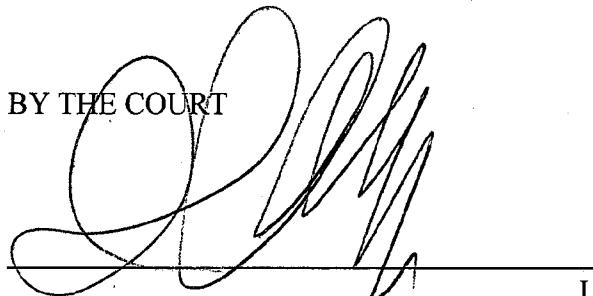
Thomas A. Matis, Esquire
Attorneys for Defendant,
Michael Kush, M.D.

Christopher C. Rulis /jsm

Christopher C. Rulis, Esquire
Attorneys for Defendant,
DuBois Regional Medical Center

See signature page attached/TAW
Thomas R. Kline, Esquire
Matthew A. Casey, Esquire
Attorneys for Plaintiffs,
Michael W. Smith, Sr., and Theresa M.
Bell Smith, Parents and Natural Guardians
of Michael W. Smith, Jr., a Minor

BY THE COURT



J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and
THERESA M. BELL SMITH, parents
and natural guardians of Michael W.
Smith, Jr., a minor,

CIVIL DIVISION

No. 01-122

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

STIPULATION

It is hereby stipulated and agreed by plaintiffs and defendants in the above-captioned action, by and through their respective attorneys of record, that the deadline for expert reports shall be extended as follows:

Defense expert reports shall be due on or before March 1, 2003.

Thomas A. Matis

Thomas A. Matis, Esquire
Attorneys for Defendant,
Michael Kush, M.D.

Christopher C. Rulifson

Christopher C. Rulifson, Esquire
Attorneys for Defendant,
DuBois Regional Medical Center

Matthew A. Casey

Thomas R. Kline, Esquire
Matthew A. Casey, Esquire
Attorneys for Plaintiffs,
Michael W. Smith, Sr., and Theresa M.
Bell Smith, Parents and Natural Guardians
of Michael W. Smith, Jr., a Minor

BY THE COURT

J.

FILED 200

Q1 3, 2003
FEB 0 C 2003

ATTY-MATIS
Clerk

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and) CIVIL DIVISION
THERESA M. BELL SMITH,)
Parents and natural guardians of) 2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)
Plaintiffs,) Issue No:
)
v.) Code:
)
MICHAEL KUSH, M.D. and)
DUBOIS REGIONAL MEDICAL)
CENTER,)
Defendants.)

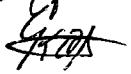
PRAECIPE TO FILE

TO THE PROTHONOTARY:

Kindly file the attached Records Subpoenas in the above-captioned matter.

Respectfully submitted,


Christopher C. Rulis
Counsel for Defendant, Dubois
Regional Medical Center

FILED ^{NO} _{cc}
M 10:49 AM
FEB 13 2003


William A. Shaw
Prothonotary

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM, 2001

-VS-

CASE NO: 2001-122CD

KUSH, M.D. & DUBOIS REG. MED CTR

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

MCS on behalf of CHRISTOPHER RULIS, 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: 01/06/2003

CHRISTOPHER RULIS, ESQUIRE
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM, 2001

-VS-

CASE NO: 2001-122CD

KUSH, M.D. & DUBOIS REG. MED CTR

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

DR. GREGORY SHEFFO	MEDICAL
GEISINGER HOSPITAL	OTHER
MILTON S. HERSHEY MEDICAL CTR.	OTHER
PRAXIDIO TAGALA, M.D.	OTHER

TO: MATTHEW CASEY, ESQUIRE

MCS on behalf of CHRISTOPHER RULIS, 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: 01/06/2003

MCS on behalf of

CHRISTOPHER RULIS, ESQUIRE
Attorney for DEFENDANT

CC: CHRISTOPHER RULIS, ESQUIRE

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

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Geisinger 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: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

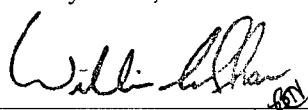
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court



Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**GEISINGER HOSPITAL
100 N. ACADEMY AVENUE**

DANVILLE, PA 17822

**RE: 86436
MICHAEL SMITH, JR.**

**ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REGIONAL MED. CTR INCLUDING THE DELIVERY RECORDS OF THERESA
BELL(SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.**

Subject : MICHAEL SMITH, JR.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Milton S. Hershey Medical Center

(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: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor

Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

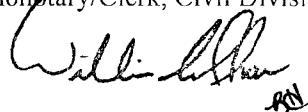
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Tuesday, January 07, 2003

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MILTON S. HERSHEY MEDICAL CTR.
P.O. BOX 850
HU24

HERSHEY, PA 17033

RE: 86436
MICHAEL SMITH, JR.

ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REGIONAL MED. CTR. INCLUDING THE DELIVERY RECORDS OF THERESA
BELL (SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.

Subject : MICHAEL SMITH, JR.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Dr. Tagala
(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:
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(Address)

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NAME: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

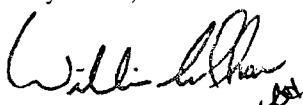
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court


Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**PRAXIDIO TAGALA, M.D.
615 THOMPSON STREET**

CLEARFIELD, PA 16830

**RE: 86436
MICHAEL SMITH, JR.**

**ALL RECORDS INCLUDING BUT NOT LIMITED TO ALL GYNECOLOGIAL AND
OBSTETRICAL AND POST-PARTUM VISTIS.**

Subject : MICHAEL SMITH, JR.

,

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

Custodian of Records: Dr. Sheffo

TO: _____

(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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NAME: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

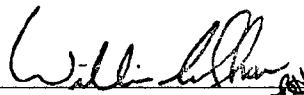
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court

Deputy



EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**DR. GREGORY SHEFFO
CENTER FOR CHILDRENS SRVS
807 DOCTOR DRIVE**

CLEARFIELD, PA 16830

**RE: 86436
MICHAEL SMITH, JR.**

Any and all records, correspondence, files and memorandums, handwritten notes, relating to any examination, consultation, care or treatment.

TO INCLUDE PATIENT ID SHEET*CERTIFICATION OF RECORDS MUST BE SIGNED & RETURNED

**Dates Requested: up to and including the present.
Subject : MICHAEL SMITH, JR.**

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Geisinger 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.

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NAME: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court


Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**GEISINGER HOSPITAL
100 N. ACADEMY AVENUE**

DANVILLE, PA 17822

**RE: 86436
MICHAEL SMITH, JR.**

**ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REGIONAL MED. CTR INCLUDING THE DELIVERY RECORDS OF THERESA
BELL(SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.**

Subject : MICHAEL SMITH, JR.

,

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

Michael W. Smith Sr.

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

V_S .

2

No. 2001-00122-CD

Michael Kush MD

2

DuBois Regional Medical Center

Defendant(s)

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

me Custodian of Records: Milton S. Hershey Medical Center

To: _____ (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:

produce the following documents or
*** SEE ATTACHED BIDER***

(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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NAME: _____
ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh PA 15222

Pittsburgh, PA 15222
TELEPHONE (412) 642-4422

TELEPHONE: (412) 642-4420
SUPREME COURT ID # _____
ATTORNEY FOR Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**MILTON S. HERSHEY MEDICAL CTR.
P.O. BOX 850
HU24**

HERSHEY, PA 17033

**RE: 86436
MICHAEL SMITH, JR.**

**ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REGIONAL MED. CTR. INCLUDING THE DELIVERY RECORDS OF THERESA
BELL (SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.**

Subject : MICHAEL SMITH, JR.

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**PRAXIDIO TAGALA, M.D.
615 THOMPSON STREET**

CLEARFIELD, PA 16830

**RE: 86436
MICHAEL SMITH, JR.**

**ALL RECORDS INCLUDING BUT NOT LIMITED TO ALL GYNECOLOGIAL AND
OBSTETRICAL AND POST-PARTUM VISTIS.**

Subject : MICHAEL SMITH, JR.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

Custodian of Records: Dr. Sheffo

TO: _____

(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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NAME: Christopher Rulis, Esquire

ADDRESS: 1005th Avenue, 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412) 642-4420

SUPREME COURT ID # _____

ATTORNEY FOR: Defendant

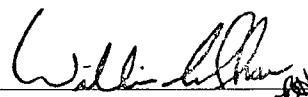
BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court

Deputy



EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**DR. GREGORY SHEFFO
CENTER FOR CHILDRENS SRVS
807 DOCTOR DRIVE**

CLEARFIELD, PA 16830

**RE: 86436
MICHAEL SMITH, JR.**

Any and all records, correspondence, files and memorandums, handwritten notes, relating to any examination, consultation, care or treatment.

TO INCLUDE PATIENT ID SHEET*CERTIFICATION OF RECORDS MUST BE SIGNED & RETURNED

**Dates Requested: up to and including the present.
Subject : MICHAEL SMITH, JR.**

CERTIFICATE
PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,

-VS-

CASE NO: 2001-00122-CD

KUSH, M.D. & DUBOIS REG. MED. CTR

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

MCS on behalf of CHRISTOPHER RULIS, 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: 12/19/2002

CHRISTOPHER RULIS, ESQUIRE
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,

-VS-

CASE NO: 2001-00122-CD

KUSH, M.D. & DUBOIS REG. MED. CTR

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

DR. GREGORY SHEFFO

MEDICAL

TO: MATTHEW CASEY, ESQUIRE

MCS on behalf of CHRISTOPHER RULIS, 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: 01/06/2003

MCS on behalf of

CHRISTOPHER RULIS, ESQUIRE
Attorney for DEFENDANT

CC: CHRISTOPHER RULIS, ESQUIRE

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

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,

-VS-

CASE NO: 2001-00122-CD

KUSH, M.D. & DUBOIS REG. MED. CTR

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

GEISINGER HOSPITAL OTHER
MILTON S. HERSHEY MEDICAL CTR. OTHER
PRAXIDIO TAGALA, M.D. OTHER

TO: MATTHEW CASEY, ESQUIRE

MCS on behalf of CHRISTOPHER RULIS, 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: 12/26/2002

MCS on behalf of

CHRISTOPHER RULIS, ESQUIRE
Attorney for DEFENDANT

CC: CHRISTOPHER RULIS, ESQUIRE

-

-

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

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Geisinger 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: Christopher Rulis, Esq.

ADDRESS: 100 5th Ave., 5th Floor

Pittsburgh, PA 15222

TELEPHONE: (412)642-4420

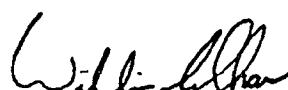
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, December 23, 2002

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GEISINGER HOSPITAL
100 N. ACADEMY AVENUE

DANVILLE, PA 17822

RE: 86045
THERESA BELL SMITH

ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO DUBOIS REG. MED. CTR. INCLUDING THE DELIVERY RECORDS OF THERESA BELL (SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.

Subject : THERESA BELL SMITH

,

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Milton S. Hershey Medical Center
(Name of Person or Entity)

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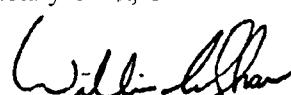
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, December 23, 2002

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MILTON S. HERSEY MEDICAL CTR.
P.O. BOX 850
HU24

HERSEY, PA 17033

RE: 86045
THERESA BELL SMITH

ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REG. MED. CTR INCLUDING DELIVERY RECORDS OF THERESA BELL(SMITH)
AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR. (M.R.#630404)

Subject : THERESA BELL SMITH

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Praxidio Tagala, M.D.

(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*******

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NAME: Christopher Rulis, Esq.

ADDRESS: 100 5th Ave., 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412)642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

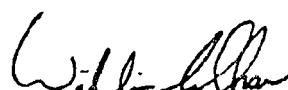
BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, December 23, 2002

Seal of the Court

Deputy



EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**PRAXIDIO TAGALA, M.D.
615 THOMPSON STREET**

CLEARFIELD, PA 16830

**RE: 86045
THERESA BELL SMITH**

**ALL RECORDS INCLUDING BUT NOT LIMITED TO ALL GYNECOLOGICAL AND
OBSTETRICAL AND POST-PARTUM VISITS.**

Subject : THERESA BELL SMITH

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DR. GREGORY SHEFFO
CENTER FOR CHILDRENS SRVS
807 DOCTOR DRIVE

CLEARFIELD, PA 16830

RE: 86045
THERESA BELL SMITH

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TO INCLUDE PATIENT ID SHEET* CERTIFICATION OF RECORDS MUST BE SIGNED & RETURNED

Dates Requested: up to and including the present.

Subject : THERESA BELL SMITH

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

*

Michael Kush MD

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Geisinger 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:

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(Address)

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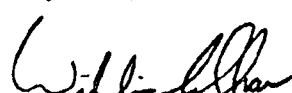
SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, December 23, 2002

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GEISINGER HOSPITAL
100 N. ACADEMY AVENUE

DANVILLE, PA 17822

RE: 86045
THERESA BELL SMITH

ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO DUBOIS REG. MED. CTR. INCLUDING THE DELIVERY RECORDS OF THERESA BELL (SMITH) AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR.

Subject : THERESA BELL SMITH

,

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

*

Michael Kush MD

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Milton S. Hershey Medical Center
(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: Christopher Rulis, Esq.

ADDRESS: 100 5th Ave., 5th Floor

Pittsburgh, PA 15222

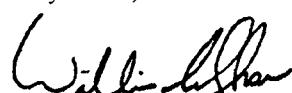
TELEPHONE: (412)642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division



Deputy

DATE: Monday, December 23, 2002

Seal of the Court

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MILTON S. HERSHEY MEDICAL CTR.
P.O. BOX 850
HU24

HERSHEY, PA 17033

RE: 86045
THERESA BELL SMITH

ALL RECORDS INCLUDING ALL RECORDS IN YOUR POSSESSION WITH REGARD TO
DUBOIS REG. MED. CTR INCLUDING DELIVERY RECORDS OF THERESA BELL(SMITH)
AND N.I.C.U. RECORDS OF MICHAEL W. SMITH, JR. (M.R.#630404)

Subject : THERESA BELL SMITH

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

*

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

*

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Praxidio Tagala, M.D.

(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: Christopher Rulis, Esq.

ADDRESS: 100 5th Ave., 5th Floor
Pittsburgh, PA 15222

TELEPHONE: (412)642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, December 23, 2002

Seal of the Court

Deputy



EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

**PRAXIDIO TAGALA, M.D.
615 THOMPSON STREET**

CLEARFIELD, PA 16830

**RE: 86045
THERESA BELL SMITH**

**ALL RECORDS INCLUDING BUT NOT LIMITED TO ALL GYNECOLOGICAL AND
OBSTETRICAL AND POST-PARTUM VISITS.**

Subject : THERESA BELL SMITH

,

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Michael W. Smith Sr.

Theresa M. Bell Smith

Michael J. Smith

Plaintiff(s)

Vs.

*

No. 2001-00122-CD

Michael Kush MD

10

DuBois Regional Medical Center

Defendant(s)

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

TO: Custodian of Records: Dr. Sheffo
(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 BIDER***

(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: Christopher Rulis, Esquire

ADDRESS: 100 5th Avenue, 5th Flr
Pgh. PA 152??

TELEPHONE: (412) 642-4420

SUPREME COURT ID #

ATTORNEY FOR: Defendant:

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Tuesday, January 07, 2003

Seal of the Court

Deputy

EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DR. GREGORY SHEFFO
CENTER FOR CHILDRENS SRVS
807 DOCTOR DRIVE

CLEARFIELD, PA 16830

RE: 86045
THERESA BELL SMITH

Any and all records, correspondence, files and memorandums, handwritten notes, relating to any examination, consultation, care or treatment.

TO INCLUDE PATIENT ID SHEET* CERTIFICATION OF RECORDS MUST BE SIGNED & RETURNED

Dates Requested: up to and including the present.
Subject : THERESA BELL SMITH

,

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

ORDER

AND NOW, this 9th day of June, 2003, following Status Conference in the above-captioned matter, it is the ORDER of this Court that the Court Administrator is directed to list said case on the next available Civil Jury Trial List, scheduled for Thursday, July 31, 2003 at 10:00 A.M.

FILED

JUN 09 2003

BY THE COURT:

JOHN K. REILLY, JR.
President Judge

William A. Shaw
Prothonotary

FILED

1cc Atty Case#
013:20464
1cc Atty Mat#
JUN 09 2003
1cc Atty Rulis

William A. Shaw
Prothonotary

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

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH, Parents
and Natural Guardians of Michael W.
Smith, Jr., a minor

-vs-

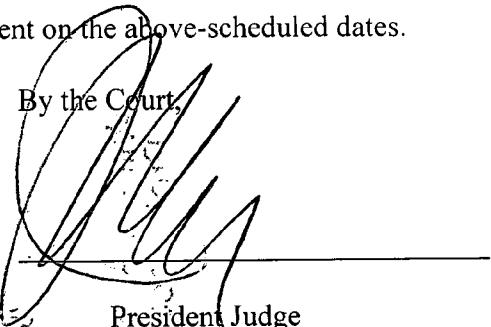
No. 01 - 122 - CD

MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL CENTER:

PRE-TRIAL ORDER

NOW, this 14th day of August, 2003, following pre-trial conference in the above-captioned matter, and upon agreement of all parties, it is the ORDER of this Court that said matter be and is hereby continued to the Call of the Civil List scheduled for Thursday, April 1, 2004, at 11:00 a.m. and jury selection on Thursday, April 29, 2004, at 9:00 a.m. It is the further ORDER of this Court that no further continuances in this matter will be granted and all counsel presently of record shall be present on the above-scheduled dates.

By the Court,



President Judge

FILED

AUG 14 2003

William A. Shaw
Prothonotary

FILED

0 3.16 2003

AUG 14 2003

William A. Shaw
Prothonotary

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

MICHAEL W. SMITH, SR., AND :

THERESA M. BELL SMITH, :

Parents and Natural :

Guardians of MICHAEL W. :

SMITH, JR., A Minor

VS. : No. 01-122-CD

MICHAEL KUSH, M.D. AND :

DUBOIS REGIONAL MEDICAL :

CENTER :

FILED

JAN 30 2004

ORDER

William A. Shaw
Prothonotary/Clerk of Courts

NOW, this 29th day of January, 2004, it is the ORDER
of this Court that a Pre-Trial Status Conference in the
above-captioned civil matter be and is hereby scheduled
for the 25th day of February, 2004, at
9:00 A .M. in Court Room No. 1 of the Clearfield
County Courthouse, Clearfield, PA, before the Honorable
Fredric J. Ammerman, President Judge. The purpose of
said conference will be to establish the day, date, time
and place for Jury Selection as well as which term of
Court the case shall be tried, specifically the estimated
length of trial time, including the day(s) and date(s) to
be fixed for trial.

The Court will also address the time constraints for completing any outstanding depositions, the filing of pre-trial motions, petitions, prayers and pleadings, including but not limited to expert reports, suggested points for charge, pre-trial memoranda/narrative statement(s) and suggested questions for voir dire.

BY THE COURT,



Judge
President Judge

FILED

JAN 30 2004

19:401 wp

William A. Shaw

Prothonotary/Clerk of Courts

**CERT copies to Attorney
MATIS
RULIS**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and
THERESA M. BELL SMITH, parents
and natural guardians of Michael W.
Smith, Jr., a minor,

Plaintiffs,

vs.

MICHAEL KUSH, M.D. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

TO: All Parties

YOU ARE HEREBY NOTIFIED TO
FILE A WRITTEN RESPONSE TO
THE
ENCLOSED Answer and New Matter
WITHIN TWENTY (20) DAYS FROM
SERVICE THEREOF OR A
JUDGMENT MAY BE ENTERED
AGAINST YOU.

GACA MATIS BAUM & RIZZA

BY: Thomas A. Matis

Thomas A. Matis, Esquire

CIVIL DIVISION

No. GD 01-122

Code:

Issue No.:

ANSWER AND NEW MATTER

Filed on behalf of Michael Kush, M.D.,
Defendant

Counsel of Record for This Party:

Thomas A. Matis, Esquire
PA I.D. #17342

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

JURY TRIAL DEMANDED

FILED

JUN 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
THERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.	)	GD 01-122
Smith, Jr., a minor,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL KUSH, M.D. and DUBOIS)	
REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	
)	

ANSWER AND NEW MATTER

Defendant Michael Kush, M.D., by and through his attorneys, Gaca Matis Baum & Rizza, files the following Answer and New Matter to Plaintiffs' Complaint:

ANSWER

1. The averments of paragraph 1 of Plaintiffs' Complaint are admitted.
2. The averments of paragraph 2 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.
3. The averments of paragraph 3 of Plaintiffs' Complaint are specifically denied as stated. Defendant Michael Kush, M.D. is a physician licensed to practice medicine in the Commonwealth of Pennsylvania. His professional address is at 922 Chestnut Avenue DuBois, PA 15801
4. The averments of paragraph 4 of Plaintiffs' Complaint are admitted.

5. The averments of paragraph 5 of Plaintiffs' Complaint are specifically denied. On the contrary, Dr. Kush was an independent contractor at the times relevant to this case.

6. The averments of paragraph 6 of Plaintiffs' Complaint are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

7. The averments of paragraph 7 of Plaintiffs' Complaint are not directed to this Defendant and therefore a further responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, it is specifically denied that Dr. Kush was any agent, servant or employee of DuBois Regional Medical Center. On the contrary, Dr. Kush was at all times an independent contractor.

8. The averments of paragraph 8 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

9-10. The averments of paragraphs 9 and 10 of Plaintiffs' Complaint are admitted.

11-18. The averments of paragraphs 11 through and including 18 of Plaintiffs' Complaint are specifically denied as stated. The medical records of Mrs. Smith at DuBois Regional Medical Center that were produced by Plaintiffs' counsel are in writing, speak for themselves and are incorporated herein by reference. To the extent that the allegations of paragraphs 11 through and including 18 of Plaintiffs' Complaint are inconsistent with or are contrary to the these medical the same are denied in accordance with Pennsylvania Rules of Civil Procedure 1029(e). To the extent that the allegations of paragraphs 11 through and including 18 are not recorded in these medical records, the same are denied and strict proof of the same is

demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

19-21. The averments of paragraphs 19 through and including 21 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

22-23. The averments of paragraphs 22 through and including 23 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof. By way of further answer, the medical records of Mrs. Smith at DuBois Regional Medical Center that were produced by Plaintiffs' counsel demonstrate that Dr. Kush appropriately responded to any page or telephone call that was made to him concerning Mrs. Smith.

24. The averments of paragraph 24 of Plaintiffs' Complaint are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

25-27. The averments of paragraphs 25 through and including 27 of Plaintiffs' Complaint are specifically denied as stated. The fetal monitoring strips, together with the medical records of Mrs. Smith at DuBois Regional Medical Center that were produced by Plaintiffs' counsel are in writing, speak for themselves and are incorporated herein by reference. To the extent that the allegations of paragraphs 25 through and including 27 are inconsistent with or are contrary to these records, the same are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e). To the extent that the allegations of paragraphs

25 through and including 27 are not recorded in these records, the allegations are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

28. The averments of paragraph 28 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

29-32. The averments of paragraphs 29 through and including 32 of Plaintiffs' Complaint are specifically denied as stated. The medical records of Mrs. Smith at DuBois Regional Medical Center that were produced by Plaintiffs' counsel are in writing, speak for themselves and are incorporated herein by reference. To the extent that the allegations of paragraphs 29 through and including 32 are inconsistent with or contrary to these records the same are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e). To the extent that the allegations of paragraphs 29 through and including 32 are not recorded in these medical records the same are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

33. The averments of paragraph 33 of Plaintiffs' Complaint plead conclusions to which a responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, the averments of paragraph 33 of Plaintiffs' Complaint are specifically denied as stated. Dr. Kush was the attending physician for Mrs. Smith's labor and delivery.

34-36. The averments of paragraphs 34 through and including 36 of Plaintiffs' Complaint are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

37. The averments of paragraph 37 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

38. The averments of paragraph 38 of Plaintiffs' Complaint are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

39. The averments of paragraph 39 of Plaintiffs' Complaint are denied and strict proof of the same is demanded because this Defendant, after reasonable investigation, does not have sufficient knowledge or information to form a belief as to the truth thereof.

40-41. The averments of paragraphs 40 and 41 of Plaintiffs' Complaint, together with all subparagraphs thereunder, plead conclusions to which a responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, the averments of paragraphs 40 and 41, together with all subparagraphs thereunder, are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e). By way of further answer, it is specifically denied that this Defendant at any time acted in a negligent or careless manner. On the contrary, this defendant at all times acted appropriately and in accordance with the applicable standard of care.

42-43. The averments of paragraphs 42 and 43, together with all subparagraphs thereunder of Plaintiffs' Complaint, are not directed against this Defendant and therefore a further responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, paragraphs 1 through and including 41 of this Answer are incorporated herein by reference. To the extent that the averments of paragraph 42 and 43, together with

all subparagraphs thereunder are deemed to apply as against this defendant, the averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

44-45. The averments of paragraphs 44 and 45, together with all subparagraphs thereunder of Plaintiffs' Complaint are not directed against this Defendant and therefore a further responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, paragraphs 1 through and including 43 of this Answer are incorporated herein by reference. To the extent that paragraphs 44 and 45, together with all subparagraphs thereunder are deemed to apply as against this defendant, the same are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

46. In answer to the averments of paragraph 46 of Plaintiffs' Complaint, paragraphs 1 through and 45 of this Answer are incorporated herein by reference.

47. The averments of paragraphs 47, together with all subparagraphs thereunder of Plaintiffs' Complaint plead conclusions to which a responsive pleading is not required by the Pennsylvania Rules of Civil Procedure. By way of further answer, the averments of paragraph 47 , together with all subparagraphs thereunder are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(e).

WHEREFORE, defendant Michael Kush, M.D. denies any and all liability and demands judgment on his behalf with costs of suit sustained.

NEW MATTER

48. If it is deemed that Plaintiffs' Complaint asserts a claim on behalf of Michael W. Smith, Sr. and/or Theresa M. Bell Smith individually or in their own right then their claims are barred by the applicable two year statute of limitations.

GACA MATIS BAUM & RIZZA

By: Thomas A. Matis

Thomas A. Matis, Esquire
PA ID 17342
Attorneys for Michael Kush, M.D., Defendant

Gaca Matis Baum & Rizza
Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222
(412) 338-4750

VERIFICATION

I, Michael Kush, have read the foregoing Answer and New Matter. The statements therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to perjury or false statement to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Michael Kush
Michael Kush

Date: 5/28/04

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing was delivered to counsel of record via United States, First-Class Mail, postage prepaid this 24th day of May, 2004,

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchia, LLC
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222

Thomas A. Matis
Thomas A. Matis, Esquire

FILED
m/jr/17/2004
JUN 01 2004

no
cc
a
KED
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, Sr., and : Civil Division
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL W. :
SMITH, JR., a minor : No: 01-122

vs.

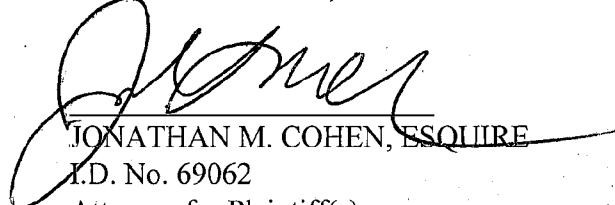
MICHAEL KUSH, M.D. :
and
DUBOIS REGIONAL MEDICAL CENTER:

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of Jonathan M. Cohen, Esquire for plaintiffs in the above matter.

KLINÉ & SPECTER, P.C.


JONATHAN M. COHEN, ESQUIRE
I.D. No. 69062
Attorney for Plaintiff(s)
1525 Locust Street
19th Floor
Philadelphia, PA 19102
(215) 772-1000

Dated: 4-17-04

FILED

APR 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL
CENTER

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

CERTIFICATE OF SERVICE

I hereby certify that service of a copy of the Entry of Appearance was made this 27th day of April, 2004, upon the following counsel via UPS:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

KLINÉ & SPECTER, P.C.

BY:

Daire J. Healy
DAIRE J. HEALY,
Legal Assistant to
JONATHAN M. COHEN
I.D. No. 69062
Attorney for Plaintiffs
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

FILED

APR 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

By: THOMAS R. KLINE/MATTHEW A. CASEY
Attorney I.D. No. 28895/84443
Attorney for Plaintiff
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

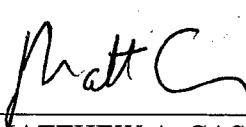
MICHAEL W. SMITH, SR. and	:	COURT OF COMMON PLEAS
THERESA M. BELL SMITH,	:	
Parents and Natural Guardians of	:	CLEARFIELD COUNTY
MICHAEL W. SMITH, JR., a minor	:	
	:	NO. 01-122
vs.	:	
MICHAEL KUSH, M.D.	:	
and	:	
DUBOIS REGIONAL MEDICAL CENTER	:	

ANSWER TO NEW MATTER

48. The allegations as set forth in paragraph 48 of Answering Defendant's New Matter consist of conclusions of law to which no response is required. To the extent a response to said allegation is required, they are specifically denied.

WHEREFORE, Plaintiff, demands judgment be entered in her favor and against Defendant, Michael Kush, M.D.

KLINÉ & SPECTER, P.C.

By: 
MATTHEW A. CASEY, ESQUIRE
Attorney I.D. No. 84443

Dated: 6/14/04

FILED

JUN 15 2004

M. A. Shaw
Prothonotary, Clerk of Courts

VERIFICATION

I, Matthew A. Casey, Esquire, counsel for plaintiff in the foregoing action, hereby verify that the statements made in Plaintiff's Reply to New Matter of Defendant, Michael Kush, M.D., are true and correct to the best of my personal knowledge or information and belief. I understand that false statements hereunder made are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

KLINÉ & SPECTER, P.C.

BY: 

THOMAS R. KLINE
MATTHEW A. CASEY
28895/84443
Attorney for Plaintiff
1525 Locust Street, 19th Floor
Philadelphia, PA 19102
(215) 772-1000

Dated: 6/14/04

CERTIFICATE OF SERVICE

I MATTHEW A. CASEY, ESQUIRE, counsel for plaintiff, hereby certifies that a copy of Plaintiff's Reply to New Matter of Defendant Lehigh Valley Hospital, was served via First Class U.S. Mail, postage prepaid, upon counsel for all defendants as follows:

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

Thomas A. Matis, Esquire
Gaca Matis Baum & Rizza
Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222

KLINÉ & SPECTER, P.C.

BY: 
THOMAS R. KLINE
MATTHEW A. CASEY
I.D. Nos. 28895/84443
Attorneys for Plaintiff

1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

Dated: 6/14/04

FILED
JUN 11 2004
11:37 AM
2004
William A. Shaw
Hennepin County Clerk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) ~~CD~~ 01-122-CD
Smith, Jr., a minor,)
Plaintiffs,)
vs.)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

CA
FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

**JOINT MOTION IN LIMINE OF DEFENDANTS
TO EXCLUDE HEARSAY IN MEDICAL RECORDS**

NOW COME defendants Michael Kush, M.D., and DuBois Regional Medical Center, by their respective attorneys, and move the Court to enter an Order to exclude from the evidence presented at the trial of this case the statements in medical records described below for the following reasons:

1. Medical records are admissible in evidence, if at all, under Pa. R.E. 803(6), "Records of Regularly Conducted Activity." Pa. Evidence §803(6)-1(g)(2d ed. 1999). The drafter's Comment to this rule explains:

"Pa. R.E. 803(6) is similar to F.R.E. 803(6), but with two differences. One difference is that Pa.R.E. 803(6) does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. See *Williams v. McClain*, Pa. 300, 510 A.2d 1374 (1987); *Commonwealth v. DiGiacomo*, 463 Pa. 449, 345 A.2d 605 (1975)."

Thus in *Phillips v. Gerhart*, 801 A.2d 568 (Pa. Super. 2002), the Court held that the trial judge had properly excluded testimony by the defendant physician describing opinions that other physicians had placed in the plaintiff's medical records, explaining:

"We have long held that a medical opinion contained in a hospital record is not admissible unless the doctor who prepared the report is available for in-court, cross-examination regarding the accuracy, reliability and veracity of his or her opinion." *Id.* at 575.

Accord, Walsh v. Kubiak, 661 A.2d 416 421 (Pa. Super. 1995) ("Because Dr. Scogna's consultation report contained an expression of his examination findings, his recommendation that Walsh should be observed and treated on an outpatient basis, and his impression that surgery was unnecessary , his statements contained in the report constituted an opinion, and as such were inadmissible hearsay to which Dr. Romy should not have been permitted to testify.").

2. Minor plaintiff's medical records contain multiple statements of diagnoses including "Cystic leucomalacia secondary to intrauterine asphyxia." The discharge summary signed by Dr. W. J. Siar explains this diagnosis with the following opinion:

"Sonography of the brain and subsequently MRI of the brain showed cystic periventricular lesions consistent with cystic leucomalacia. This defect was thought to be a result of intrauterine anoxia many weeks prior to delivery."

It is clear from the authorities cited in Paragraph 1 that these opinions and diagnoses clearly constitute inadmissible hearsay.

3. Minor plaintiff's medical records also include a Patient History signed by Dr. S. Kadam which describes his delivery as having been by "stat caesarian."

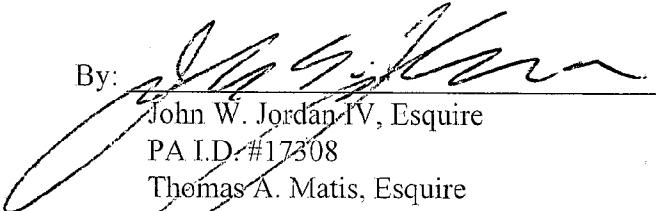
4. Pre-trial discovery has shown that, although Dr. Kadam was present when the caesarian section was performed, she was not present when the decision to perform it was made. There is no indication that she had any basis for the statement that it was performed "stat."

5. Pa. R.E. 803(6) permits the introduction into evidence only of records made "by, or from information transmitted by, a person with knowledge . . ." Since there is no evidence in this case from which it could be found that Dr. Kadam had, or had transmitted to her, knowledge

of whether or not the caesarian section was to be performed "stat", that statement constitutes inadmissible hearsay.

WHEREFORE, defendants Michael Kush, M.D. and DuBois Regional Medical Center move the Court to enter an Order excluding from evidence all parts of the medical records stating or referring to the diagnosis of cystic leucomalacia secondary to intrauterine asphyxia or to the caesarian section having been performed "stat".

GACA MATIS BAUM & RIZZA

By: 

John W. Jordan IV, Esquire

PA I.D. #17308

Thomas A. Matis, Esquire

PA I.D. #17342

Attorneys for Defendant Michael Kush, M.D.

Gaca Matis Baum & Rizza
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15219
(412) 338-4752

O'BRIEN, RULIS & BOCHICCHIO, LLC

By: 

Christopher C. Rulis, Esquire

PA I.D. #334886

Attorneys for Defendant DuBois

Regional Medical Center

100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing document upon all counsel of record in the manner indicated, this 11th day of June, 2004.

Service by UPS Next Day Air

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Service by First Class Mail

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchia
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA

By: Thomas A. Matis

Thomas A. Matis, Esquire

FILED NO. cc

310343-04
JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

66

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
THERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.	)	GD 01-122
Smith, Jr., a minor,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL KUSH, M.D. and DUBOIS)	
REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	

ORDER OF COURT

Now, this _____ day of June, 2004, upon consideration of the foregoing Motion, it is HEREBY, ORDERED, ADJUDGED and DECREED that there shall be excluded from evidence at the trial of the within action all parts of the medical records stating or referring to the diagnosis of cystic leucomalacia secondary to intrauterine asphyxia or to the caesarian section having been performed "stat".

BY THE COURT:

_____, J.

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

CP
FILED

JUN 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 15th day of June, 2004, upon consideration of the Joint Motion in Limine of Defendants to Exclude Hearsay In Medical Records, it is the ORDER of this Court that argument on said Motion is hereby scheduled for Monday, June 21, 2004 at 9:00 A.M. before the Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED
cc
Aug 15 2004
Attn: Maths, Casey, Rulins

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) GD 01-122-CD
Smith, Jr., a minor,)
Plaintiffs,)
vs.)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

CA
FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

**JOINT MOTION IN LIMINE OF DEFENDANTS
TO PRECLUDE INFERENCES FROM MISSING MEDICAL RECORDS**

NOW come defendants Michael Kush, M.D., and DuBois Regional Medical Center, by their respective attorneys, and move the Court enter an Order prohibiting plaintiffs from arguing, or introducing evidence which would tend to imply that an inference adverse to defendants could be drawn from the unavailability of medical records of plaintiff Theresa M. Bell Smith for the following reasons:

1. Plaintiffs' complaint alleged that the medical records of mother-plaintiff, Theresa M. Bell Smith, relating to her 1993 hospitalization during which minor-plaintiff, Michael W. Smith, Jr., was born had been lost or destroyed by defendant DuBois Regional Medical Center.
2. During the course of discovery many, but not all, of those records have been found.
3. At depositions taken in this action, plaintiffs' counsel has asked questions regarding Dr. Kush's access to Ms. Smith's medical records which appear intended to imply that the missing records were taken or destroyed by him. There is no evidence that Dr. Kush actually did access those records, and, even if there were, that fact would not support an inference that he tampered with them. Since numerous employees of DuBois Regional Medical Center and others

have had access to Ms. Smith's records since they were created in 1993, the jury should not be permitted to speculate about whether the absence of the Medical Center's records is due to something done by Dr. Kush. *Kline v. Ball*, 452 A.2d 727 (Pa.Super. 1982) (holding that, when only unidentified members of a group have acted improperly, no member of a group can be held liable for injuries caused by the unidentified members). In the present case, there is actually no evidence that *anyone* acted improperly.

4. The retention of hospital medical records is the responsibility of the hospital, not of the physicians who provide some of the information contained in them. 49 Pa. Code § 115.23 (describing hospitals' responsibilities for the retention of medical records), § 16.95(f) (describing the responsibilities of physicians with respect to such records). Because of this, and the fact that there is no evidence that Dr. Kush (or, for that matter, anyone else) intentionally altered or destroyed Ms. Smith's records, the inferences described in SSJI 5.06 could not properly be drawn against Dr. Kush, or against DuBois Regional Medical Center.

5. A party should not be permitted to ask the jury to draw an inference that is not supported by the evidence. *E.g., Siegal v. Stefanyszyn*, 718 A.2d 1274 (Pa.Super. 1998)(ordering a new trial in a medical malpractice action because a cautionary instruction could not cure the prejudice created by counsel's argument that the jury should draw an inference from the fact that a treating physician did not express an opinion about the standard of care, when such testimony had been prohibited by the trial judge).

6. Plaintiffs contend that Dr. Kush was an agent or ostensible agent of DuBois Regional Medical Center. (Complaint ¶ 6.) Because the claims against Dr. Kush and DuBois Regional Medical Center are thus intertwined, it would be prejudicial to Dr. Kush for the Court to instruct,

or permit plaintiffs to argue or imply, that the absence of medical records would permit an adverse inference to be drawn against DuBois Regional Medical Center. *E.g., Durkin v. Equine Clinics, Inc.*, 546 A.2d 665, 673 (Pa.Super. 1988) (holding, in a veterinary malpractice action, that admissions admissible against the defendant clinic that was the defendant veterinary's employer were properly excluded as to both defendants because of the possibility of prejudice to the veterinarian).

WHEREFORE, defendant Michael Kush, M.D., moves the Court enter an Order prohibiting plaintiffs from arguing or introducing evidence which would tend to imply, that an inference adverse to defendants could be drawn from the unavailability of medical records of plaintiff Theresa M. Bell Smith.

O'BRIEN, RULIS & BOCHICCHIO, LLC GACA MATIS BAUM & RIZZA

By: Christopher C. Rulis
Christopher C. Rulis, Esquire
PA I.D. #34886
Attorneys for Defendant DuBois
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100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

By: John W. Jordan IV
John W. Jordan IV, Esquire
PA I.D. #17308
Thomas A. Matis, Esquire
PA I.D. #17342
Attorneys for Defendant Michael Kush, M.D.
Gaca Matis Baum & Rizza
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15219
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing document upon all counsel of record in the manner indicated, this 11th day of June, 2004.

Service by UPS Next Day Air

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Service by First Class Mail

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA

Thomas A. Matis
Thomas A. Matis, Esquire

FILED NO
cc

162:43-
JUN 14 2004

W^{AS} William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
THERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.	)	GD 01-122
Smith, Jr., a minor,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL KUSH, M.D. and DUBOIS)	
REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	
)	
)	

AND NOW, this ____ day of _____, 2004 upon consideration of the foregoing, it is hereby ORDERED, ADJUDGED and DECREED that, plaintiffs be, and hereby are, prohibited from arguing at trial, or introducing evidence that would tend to imply, that an inference adverse to defendants could be drawn from the unavailability of medical records of plaintiff Theresa M. Bell Smith.

BY THE COURT:

J.

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

FILED

JUN 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 15th day of June, 2004, upon consideration of the Joint Motion in Limine of Defendants to Preclude Inferences From Missing Medical Records, it is the ORDER of this Court that argument on said Motion is hereby scheduled for Monday, June 21, 2004 at 9:00 A.M. before the Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED
cc Attns
Rulis, Casey, Matis
14th Flr
OK 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

CR

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

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and natural guardians of
MICHAEL W. SMITH, JR, a minor,

Plaintiffs,

v.

MICHAEL KUSH, M.D. and
DUBOIS REGIONAL MEDICAL
CENTER,

Defendants.

CIVIL DIVISION

2001-122-C.D.

Issue No:

Code:

**MOTION IN
LIMINE**

Filed on Behalf of:

Defendant, DuBois
Regional Medical Center

Counsel of Record for this
Party:

Christopher C. Rulis, Esquire
Pa. I.D. No: 34886

O'Brien, Rulis, Bochicchio & Sosso,
LLC.
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

JURY TRIAL DEMANDED

FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL W. SMITH, SR. and	)	CIVIL DIVISION
THERESA M. BELL SMITH,)	
Parents and natural guardians of	)	2001-122-C.D.
MICHAEL W. SMITH, JR, a minor,)	
	)	Issue No:
Plaintiffs,)	
	)	Code:
V.)	
MICHAEL KUSH, M.D. and)	
DUBOIS REGIONAL MEDICAL)	
CENTER,)	
)	
Defendants.)	

MOTION IN LIMINE

AND NOW, comes the defendant, DuBois Regional Medical Center ("DRMC") by and through its attorney Christopher C. Rulis and O'BRIEN RULIS BOCHICCHIO & SOSSO, LLC. and files the following Motion in Limine:

1. This is a medical malpractice action scheduled for trial commencing June 21, 2004.
2. Plaintiff's Pre-Trial Memorandum sets forth no less than twenty-five "THEORIES OF LIABILITY" against DRMC. (See pages 5-7 attached).
3. All expert reports have been exchanged pursuant to Order of this Honorable Court.
4. The only liability expert offered against DRMC is Dr. Douglas Phillips. Dr. Phillip's report is dated October 16, 20021 and is attached to Plaintiff's Pre-Trial Memorandum.
5. Dr. Phillips only sets forth only one theory of liability against DRMC. Dr. Phillips contends that the DRMC nursing staff was negligent in failing to contact a

nursing supervisor and/or Chairman of the Obstetrics Department "in view of their persistent inability to get Dr. Kush to appropriately and timely attend to Mrs. Smith".

6. If the Court allows the Plaintiffs to explore any other theories of liability other than the sole theory set forth in the Plaintiff's expert report, it would severely prejudice DRMC and constitute reversible error.

WHEREFORE, DRMC respectfully requests that this Honorable Court grant this Motion in Limine and precludes Plaintiffs from alleging or inferring any other theory of negligence other than the single theory set forth in Dr. Phillips' report.

Respectfully submitted,



Christopher C. Rulis, Esquire

O'BRIEN, RULIS, BOCHICCHIO & SOSSO, LLC
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

h. failure to appreciate the signs and symptoms of the deteriorating condition of Michael Smith;

i. improper delay of necessary medical and surgical treatment to Theresa Bell Smith;

j. failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;

k. failure to timely and properly communicate with other physicians, nurses and other health care providers regarding status of Theresa Bell Smith during labor and delivery; and

l. failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care.

Plaintiff has alleged negligence against defendant Dubois Regional Medical Center, M.D., for, among other things, the following:

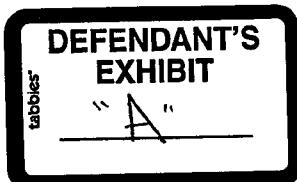
a. failure to timely deliver Michael Smith;

b. negligent delay in recognizing, diagnosing and treating severe fetal distress on February 18-19, 1993;

c. negligent delay in performing cesarean section delivery of Michael Smith;

d. failure to implement, institute, and enforce a protocol requiring the prompt delivery of a fetus exhibiting sign and symptoms of serious fetal distress;

e. failure to recognize, diagnose and treat a fetus exhibiting obvious signs and symptoms of being in serious fetal distress;



- f. failure to timely recognize, diagnose and treat fetal distress during Theresa Bell Smith's labor and delivery;
- g. failure to enact and carry out the necessary policies and procedures and practices relating to the prompt delivery of babies exhibiting serious fetal distress;
- h. failure to properly monitor, observe, and record the deteriorating condition of Michael Smith through continuous external fetal monitoring and other devices;
- i. improper delay of necessary medical and surgical treatment to Theresa Bell Smith;
- j. failure to timely recognize, diagnose, and respond to Michael Smith's prolonged fetal distress;
- k. failure to timely and properly communicate among physicians, nurses and other health care providers leading to delay in performing cesarean delivery of Michael Smith;
- l. failure to recognize, diagnose and treat Michael Smith's fetal distress in accordance with the prevailing standards of care;
- m. failure to recognize and appreciate the severity of maternal fever;
- n. failure to timely administer antibiotics;
- o. failure to contact a physician to attend to Theresa Bell Smith in light of maternal fever and fetal tachycardia;

- p. failure to appreciate significance of signs and symptoms of fetal distress, including tachycardia and fetal heart decelerations;
- q. failure to adequately monitor fetal status;
- r. failure to contact an appropriate nursing supervisor;
- s. failure to intervene in light of the evident non-responsiveness and unavailability of the attending obstetrician;
- t. failure to take all reasonable and necessary steps to prevent prolonged fetal tachycardia and fetal distress;
- u. failure to call for appropriate and timely consultations, including a physician specializing in high risk deliveries;
- v. failure to assure that physicians and other appropriate hospital personnel competent in neonatal resuscitation attended the delivery of Michael Smith;
- w. failure to intervene appropriately and in timely fashion to the persistent maternal fever throughout the labor and delivery of Michael Smith;
- x. failure to see that appropriate studies were ordered to diagnose and treat the source of infection in Theresa Bell Smith; and
- y. failure to timely deliver Michael Smith by whatever means necessary in light of prolonged fetal tachycardia, maternal fever and fetal heart decelerations.

The negligence and carelessness of defendants Kush and DRMC, and the mechanism by

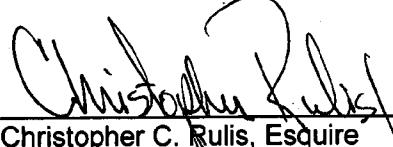
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within
Motion in Limine was mailed by United States Mail on this 10th day of June,
2004, to the following:

**Matthew Casey, Esquire
Kline & Specter, P.C.
Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102**

**Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222-5404**

**The Honorable John K. Reilly
Clearfield County Court of Common Pleas
228 Courthouse
230 E. Market Street
P.O. Box 626
Clearfield, PA 16830**



**Christopher C. Rulis, Esquire
O'BRIEN, RULIS & BOCHICCHIO, LLC**

Sped
FILED
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JUN 14 2004
cc

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
: :
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

ORDER

AND NOW, this 15th day of June, 2004, upon consideration of the Motion in Limine of Defendant, DuBois Regional Medical Center, it is the ORDER of this Court that argument on said Motion is hereby scheduled for Monday, June 21, 2004 at 9:00 A.M. before the Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

JUN 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

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1:54 PM
JUN 15 2004

cc: Shays Casey, Matis, Rulis
Rulis

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) GD 01-122
Smith, Jr., a minor,)
Plaintiffs,)
vs.)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

FILED

JUN 16 2004

William A. Shaw
Prothonotary

**DEFENDANTS' MOTION IN LIMINE TO LIMIT TESTIMONY OF PLAINTIFFS'
PROPOSED EXPERT DANIEL ADLER, M.D.**

NOW come defendants, Michael Kush, M.D., and DuBois Regional Medical Center, by their respective attorneys, and move the Court enter an Order limiting the testimony that plaintiff may adduce at trial from Daniel Adler, M.D., for the following reasons:

1. Plaintiffs commenced this action to recover damages for injuries allegedly sustained by minor plaintiff as a result of professional negligence in the course of the labor and delivery that culminated in the birth of minor plaintiff by caesarean section on February 19, 1993.
2. Dr. Kush is board certified in obstetrics and gynecology and plaintiffs' claims against him are based entirely upon the care provided by him in the practice of that surgical specialty.
3. Plaintiffs' pre-trial statement includes reports from Daniel Adler, M.D., a specialist in the medical (as opposed to surgical) specialty of pediatric neurology which expresses opinions on the standard of care provided prior to minor plaintiff's birth and also states agreement with the opinions in the report of Dr. Phillips, another expert retained by plaintiffs whose report is critical of the standard of care provided. For example, Dr. Adler's October 22, 2002, report states:

"The severity of the chorioamnionitis and increasingly hostile uterine environment, evidenced by the maternal temperature of 104°F and fetal tachycardia, were entirely preventable, as set forth by Dr. Philips in his report. If Michael Smith had not been exposed to severe and extensive chorioamnionitis and had been delivered from the hostile uterine environment more expeditiously, he would not be neurologically impaired. I have read the report of Dr. Philips and agree with the opinion set forth in that report." *Id.* at 3.

4. In *Wexler v. Hecht*, 847 A.2d 95 (Pa.Super. 2004), the Court held that the application of 40 P.S. § 1303.512 is not limited to actions which arose after the effective date of the M-Care Act, and that, in comparison with what was permitted at common law, it restricts the persons permitted to provide expert testimony with respect to the standard of care of a physician. *Id.* at 101, 103. Section 1303.512 provides:

"(a) General rule.-No person shall be competent to offer an expert medical opinion in a medical professional liability action against a physician unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section as applicable.

(b) Medical testimony.-An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, must meet the following qualifications:

- (1) Possess an unrestricted physician's license to practice medicine in any state or the District of Columbia.
- (2) Be engaged in or retired within the previous five years from active clinical practice or teaching.

Provided, however, the court may waive the requirements of this subsection for an expert on a matter other than the standard of care if the court determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

(c) Standard of care.-In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician's standard of care also must meet the following qualifications:

- (1) Be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care.

(2) Practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue, except as provided in subsection (d) or (e).

(3) In the event the defendant physician is certified by an approved board, be board certified by the same or a similar approved board, except as provided in subsection (e).

(d) Care outside speciality.-A court may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the court determines that:

(1) the expert is trained in the diagnosis or treatment of the condition, as applicable; and\

(2) the defendant physician provided care for that condition and such care was not within the physician's speciality or competence.

(e) Otherwise adequate training, experience and knowledge.-A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care if the court determines that the expert possess sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine withing the previous five-year time period."

5. In *Yacoub v. Lehigh Valley Medical Associates*, 805 A.2d 579, 592 (Pa.Super.2002)(en banc), *appeal denied*, 573 Pa. 692 825 A.2d 639 (2003), the Court, applying the more liberal common law rules, held that the trial court had properly excluded testimony by a board certified neurosurgeon as to the standard of care of internists and nurses in a malpractice action for death resulting from a ruptured brain abscess. In the present case, Dr. Adler's curriculum vitae describes his experience as entirely in pediatric neurology, and gives no indication that he is familiar with the standard of care applicable to an obstetrician and gynecologist. Nor doe sit provide an indication of any involvement in that specialty so as to qualify for a waiver under § 1303.512(e). Dr. Adler is thus not qualified to testify as to the standard of care applicable to Dr. Kush in this case.

6. In addition, testimony by Dr. Adler stating agreement with the report of Dr. Philips would constitute inadmissible hearsay. *Allen v. Kaplan*, 653 A.2d 1249, 1252 (Pa. Super. 1995)(new trial granted because an expert witness who testified at trial was permitted to bolster his testimony by pointing out that the report of another expert agreed with is opinion).

WHEREFORE, defendants move the Court enter an Order prohibiting Daniel Adler, M.D., from testifying as to standard of care or to his agreement with the report of Dr. Philips.

O'BRIEN, RULIS & BOCHICCHIO, LLC

GACA MATIS BAUM & RIZZA

By: Christopher C. Rulis
Christopher C. Rulis, Esquire
PA I.D. #34886
Attorneys for Defendant DuBois
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100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

By: John W. Jordan IV
John W. Jordan IV, Esquire
PA I.D. #17308
Thomas A. Matis, Esquire
PA I.D. #17342
Attorneys for Defendant Michael Kush,
M.D.
Gaca Matis Baum & Rizza
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing document upon all counsel of record in the manner indicated, this 15th day of June, 2004.

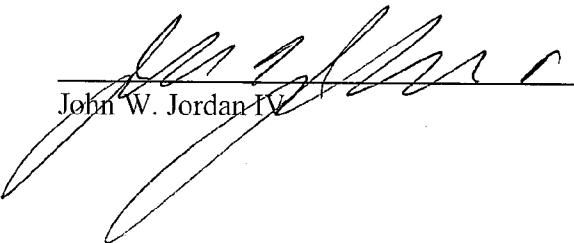
Service by UPS Next Day Air

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Service by First Class Mail

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA


John W. Jordan IV

FILED

6/16/2004 NOCC

JUN 16 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and	)	CIVIL DIVISION
THERESA M. BELL SMITH, parents)	
and natural guardians of Michael W.)	
Smith, Jr., a minor,)	GD 01-122
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REGIONAL MEDICAL CENTER,)	
)	
Defendants.)	
)	
)	

AND NOW, this _____ day of June, 2004 upon consideration of the foregoing motion,
it is hereby ORDERED, ADJUDGED and DECREED that Daniel Adler, M.D., is prohibited
from testifying at trial as to standard of care and his agreement with report of Dr. Philips.

BY THE COURT:

J.

FILED

William A. Shaw
Prothonotary

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

ORDER

AND NOW, this 16th day of June, 2004, upon consideration of Defendants' Motion in Limine to Limit Testimony of Plaintiffs' Proposed Expert Daniel Adler, M.D., it is the ORDER of this Court that argument on said Motion is hereby scheduled for Monday, June 21, 2004 at 9:00 A.M. before the Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

FILED

JUN 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

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PL 3:34&M Attns Casey, Matis, Rulis

JUN 9 6 2004

WAS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) GD 01-122
Smith, Jr., a minor,)
Plaintiffs,)
vs.)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
Defendants.)

CR
FILED

JUN 16 2004

William A. Shaw
Prothonotary

**JOINT MOTION IN LIMINE OF DEFENDANTS
TO EXCLUDE EVIDENCE OF MEDICAL EXPENSES**

NOW come defendants, Michael Kush, M.D., and DuBois Regional Medical Center, by their respective attorneys, and move the Court enter an Order excluding from the trial of this case evidence of medical expenses incurred on behalf of minor plaintiff, Michael W. Smith, Jr., for the following:

1. Plaintiffs commenced this action in 2001 to recover damages for injuries allegedly sustained by minor plaintiff during the labor and delivery which culminated in his birth by caesarean section on February 19, 1993.
2. Plaintiffs' pre-trial statement shows that they intend to present at trial evidence of medical expenses which have been or will be incurred on behalf of minor Plaintiff.
3. Medical expenses incurred on behalf of a minor Plaintiff properly constitute a claim of the minor's parents which is separate and distinct from any claim of the child. *E.g. Goldberg v. Isdaner*, 780 A.2d 654, 659 (Pa.Super. 2001), *appeal denied*, 573 Pa. 667, 820 A.2d 705 (2003)(holding that delay damages did not accrue on a claim for medical expenses incurred on

behalf of an injured child because the parents loss was financial, not a claim for "bodily injury, death or property damage" as required for the imposition of delay damages under Pa.R.C.P. 238).

4. Neither plaintiffs' complaint nor their pre-trial statement purports to assert a claim on behalf of parent plaintiffs. Any claim they might have had would clearly have been barred by the statute of limitations at the time this action was commenced, since explained in 2 Standard Pennsylvania Practice 2d § 13:85:

"Although the years of an injured person's minority are not included in the computation of time for the commencement of an action as prescribed by the applicable statute of limitations, a personal injury to a minor gives rise to two separate and distinct causes of action, one being the minor's claim for pain and suffering and for losses after minority, and the other the parents claim for medical expenses and the loss of the minor's services during minority. The latter claim is not derivative of the child's claim, and the parents do no receive the benefit of the provision tolling the statute of limitations during the child's minority, and the two-year statute of limitations may run against the parents' claim during the child's minority." (Footnotes omitted.)

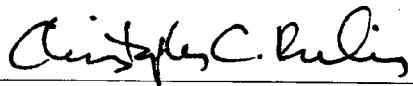
5. Since plaintiffs' claims are based upon the contention that minor plaintiff will remain dependent indefinitely, the preclusion of the assertion of a claim on his behalf for medical expenses should also extend past the time he will reach the age of 18. *See, Geiger v. Rouse*, 715 A.2d 454, 458 (Pa.Super. 1989)(holding that the duty to provide support to a daughter extended past the age of 18 because she was disabled by cerebral palsy and severe depression); 23 Pa.C.S. § 4321.

WHEREFORE, defendants move the Court enter an Order prohibiting the introduction at trial of any evidence relating to past or future medical expenses of minor Plaintiff.

O'BRIEN, RULIS & BOCHICCHIO, LLC

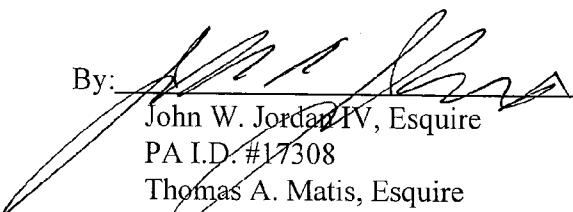
GACA MATIS BAUM & RIZZA

By:



Christopher C. Rulis, Esquire
PA I.D. #34886
Attorneys for Defendant DuBois
Regional Medical Center
100 Fifth Avenue, Fifth Floor
Pittsburgh, PA 15222
(412) 566-1717

By:



John W. Jordan IV, Esquire
PA I.D. #17308
Thomas A. Matis, Esquire
PA I.D. #17342
Attorneys for Defendant Michael
Kush, M.D.
Gaca Matis Baum & Rizza
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15219
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing document upon all counsel of record in the manner indicated, this 15th day of June, 2004.

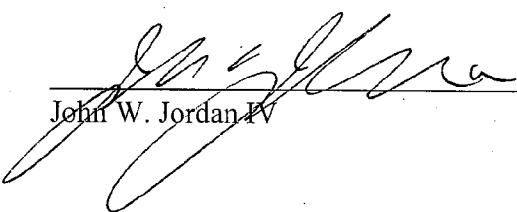
Service by UPS Next Day Air

Matthew A. Casey, Esquire
Kline & Specter, P.C.
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102

Service by First Class Mail

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio
100 Fifth Avenue, 5th Floor
Pittsburgh, PA 15222

GACA MATIS BAUM & RIZZA


John W. Jordan, Jr.

FILED
On 12:00 AM No. 4

JUN 16 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL W. SMITH, SR., and) CIVIL DIVISION
THERESA M. BELL SMITH, parents)
and natural guardians of Michael W.) GD 01-122
Smith, Jr., a minor,)
)
Plaintiffs,)
)
vs.)
)
MICHAEL KUSH, M.D. and DUBOIS)
REGIONAL MEDICAL CENTER,)
)
Defendants.)
)
)

ORDER OF COURT

AND NOW, this _____ day of June, 2004 upon consideration of the foregoing motion,
it is hereby ORDERED, ADJUDGED and DECREED that, plaintiffs be, and hereby are,
prohibited from presenting at trial any evidence relating to past or future medical expenses of
minor plaintiff, Michael W. Smith, Jr.

BY THE COURT:

J.

(A)

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

MICHAEL W. SMITH, SR. and :
THERESA M. BELL SMITH, parents :
and natural guardians of MICHAEL :
W. SMITH, JR., a minor :
: vs. : No. 01-122-CD
MICHAEL KUSH, M.D. and :
DUBOIS REGIONAL MEDICAL :
CENTER :
:

ORDER

AND NOW, this 16th day of June, 2004, upon consideration of the Joint Motion in Limine of Defendants to Exclude Evidence of Medical Expenses, it is the ORDER of this Court that argument on said Motion is hereby scheduled for **Monday, June 21, 2004 at 9:00 A.M.** before the Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FILED

JUN 16 2004

William A. Shaw
Prothonotary/Clerk of Courts


FREDRIC J. AMMERMAN
President Judge

41-
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FILED
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JUN 16 2004 Dktg. Casey, Matis, Rulis
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William A. Shaw
Prothonotary/Clerk of Courts

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KLINE & SPECTER
A PROFESSIONAL CORPORATION

By: THOMAS R. KLINE/MATTHEW A. CASEY
Attorney I.D. No. 28895/84443
Attorney for Plaintiff
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

vs.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL CENTER

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above-captioned matter settled, discontinued and ended.

KLIN & SPECTER, P.C.

BY:


THOMAS R. KLINE, ESQUIRE
MATTHEW A. CASEY, ESQUIRE
Attorneys for Plaintiffs
1525 Locust Street
Nineteenth Floor
Philadelphia, PA 19102-4997
(215) 772-1000

Dated:

9/10/04

FILED

SEP 13 2004

m/11:40/cas
William A. Shaw
Prothonotary
3 CENT TO ATTY

copy to
c/o

70. ATTY CURRINGTON
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FILED

SEP 13 2004

William A. Shaw
Prothonotary

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

CIVIL DIVISION

**Michael W. Smith Sr.
Theresa M. Bell Smith
Michael J. Smith Jr.**

Vs.

No. 2001-00122-CD

**Michael Kush MD
DuBois Regional Medical Center**

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 September 13, 2004, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$70.00 paid by Atty. Christopher Rulis and \$7.00 paid by Atty. Matthew Casey have been paid in full.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of September A.D. 2004.

William A. Shaw, Prothonotary

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

BY:

ATTORNEY FOR THOMAS R. KLINE/MATTHEW A. CASEY
ATTORNEY ID. # Plaintiffs
THE NINETEENTH FLOOR 28895/84443
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

FILED

m/11/32 by AH
JAN 31 2005

BL William A. Shaw
Prothonotary/Clerk of Courts

MICHAEL W. SMITH, SR. and
THERESA M. BELL SMITH,
Parents and Natural Guardians of
MICHAEL W. SMITH, JR., a minor

COURT OF COMMON PLEAS
CLEARFIELD COUNTY
NO. 01-122

VS.

MICHAEL KUSH, M.D.
and
DUBOIS REGIONAL MEDICAL CENTER

PETITION TO APPROVE TRUST AGREEMENT

TO: THE HONORABLE JUDGES OF SAID COURT:

This Petition to Approve Trust Agreement of Michael W. Smith, Jr., a minor, by his attorneys, Thomas R. Kline, Esquire, and Matthew A. Casey, Esquire, respectfully represents as follows:

1. By Order dated August 24, 2004, the Honorable John Reilly approved the settlement of this minor's action, which relates to claim for medical negligence at the time of

KLINÉ & SPECTER
A PROFESSIONAL CORPORATION

minor plaintiff's birth on February 19, 1993. A copy of the Order entered by Judge Reilly is attached hereto as Exhibit "A" and is incorporated herein by reference.

3. Michael W. Smith, Sr., and Theresa Bell Smith brought the captioned action on behalf of Michael W. Smith, Jr., as his parents and natural guardians.

4. Michael W. Smith, Jr., a minor, resides with his parents Michael W. Smith, Sr., and Theresa Bell Smith, h/w.

5. Pursuant to the Settlement Order, the Petitioners now submit a Trust Agreement for approval by the Court. The Trust Agreement is attached hereto as Exhibit "B" and is incorporated herein by reference.

WHEREFORE, Petitioners pray that the said Trust Agreement be approved and the said trustee thereunder be designated to receive the settlement proceeds as provided in the Settlement Order.

Respectfully submitted,
KLINÉ & SPECTER
a Professional Corporation

BY:


MATTHEW A. CASEY, ESQUIRE
1525 Locust Street - 19th Floor
Philadelphia, Pennsylvania 19102
(215) 772-1000
Attorneys for Plaintiffs

Date: 1-28-05

By: THOMAS R. KLINE/MATTHEW A. CASEY
Attorney I.D. No. 28895/84443
Attorney for Plaintiff
1525 Locust Street
The Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000

MICHAEL W. SMITH, SR. and	:	COURT OF COMMON PLEAS
THERESA M. BELL SMITH,	:	
Parents and Natural Guardians of	:	CLEARFIELD COUNTY
MICHAEL W. SMITH, JR., a minor	:	
vs.	:	NO. 01-122
MICHAEL KUSH, M.D.	:	
and	:	
DUBOIS REGIONAL MEDICAL CENTER	:	

ORDER APPROVING SETTLEMENT

AND NOW, this 24 day of July, 2004, IT IS HEREBY ORDERED
that a settlement with Michael Kush, M.D., and DuBois Regional Medical Center was reached on
June 21, 2004, in the gross present value sum of One Million Two Hundred and Fifty Thousand
Dollars (\$1,250,000.00).

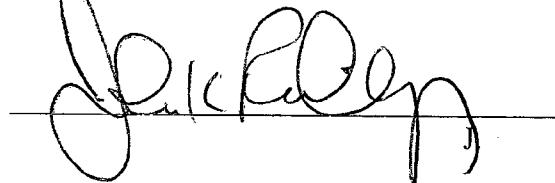
IT IS FURTHER ORDERED AND DECREED that the settlement proceeds be allocated
as follows:

- A. The settlement portion of \$250,000.00 was paid in cash by DuBois Regional Medical Center within 20 days of the execution of the Release.
- B. The additional portion of the settlement proceeds of \$1,000,000.00 is payable on behalf of DuBois Regional Medical Center by the M-Care Fund on December 31, 2004.
- C. The allocation of total settlement proceeds of \$1,250,000.00 will be as follows:

KLINE & SPECTER
A PROFESSIONAL CORPORATION

- i. To Kline & Specter, P.C., as counsel fee \$ 416,666.62
- ii. To Kline & Specter, P.C., for reimbursement of litigation costs: \$ 96,000.00
- iii. Monies to satisfy the outstanding medical lien of: DPW \$ 150,000.00
- v. To National City Bank, Pittsburgh to hold and administer the funds on behalf of minor plaintiff, lump-sum cash in the amount of: \$587,333.38

BY THE COURT:

A handwritten signature in black ink, appearing to read "Hon. Robert J. Kline", is written over a horizontal line.

VERIFICATION

Michael W. Smith, Sr. and Theresa Bell Smith, Petitioners herein, hereby verify that the facts set forth in the within Petition to Approve Trust Agreement are true and correct to the best of their knowledge, information and belief. This statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Michael W. Smith
Michael W. Smith, Sr.

Theresa Bell Smith
Theresa Bell Smith

CERTIFICATE OF SERVICE

Matthew A. Casey, counsel for plaintiffs herein, hereby certifies that a copy of the foregoing Petition to Approve Trust Agreement was served this date via regular mail upon counsel for all defendants addressed as follows:

Thomas A. Matis, Esquire
Gaca, Matis, Baum & Rizza, P.C.
300 Four PPG Place
Pittsburgh, PA 15222-5404

Christopher C. Rulis, Esquire
O'Brien, Rulis & Bochicchio, LLC
100 Fifth Avenue
5th Floor
Pittsburgh, PA 15222



Matthew A. Casey, Esquire

Dated: 1-28-05



RECYCLE

A



B

MICHAEL W. SMITH, JR.
IRREVOCABLE TRUST AGREEMENT

This irrevocable trust agreement ("Agreement") is made _____, 2004, pursuant to and as a part of the Order of The Honorable _____ of the Court of Common Pleas of Clearfield County, Pennsylvania, entered on _____, 2004 at No. 01-122, approving settlement of a personal injury claim for and on behalf of MICHAEL W. SMITH, JR. ("the Litigation"). MICHAEL W. SMITH, JR. ("MICHAEL") was born February 19, 1993.

The primary and express purpose of this irrevocable trust is to serve as a special needs trust, pursuant to 42 U.S.C. § 1396 p(d)(4)(A) and other applicable federal and state law, for the benefit of MICHAEL, who is disabled. In that regard, the trust is to provide care and benefit for MICHAEL which is supplemental to any parental legal obligation of support and that otherwise provided by government programs or benefits, without adversely affecting MICHAEL's entitlement to receive such benefits or participate in such programs. In that regard, this irrevocable trust is for the sole benefit of MICHAEL during MICHAEL's lifetime and shall be administered consistent therewith. This Agreement shall be deemed to authorize only disbursements and distributions which are reasonable in light of the express intent and purpose of this trust. Further, any obligation to make reimbursement, at MICHAEL's death, for medical assistance paid on MICHAEL's behalf shall be entitled to such disbursement priority as required by applicable law so that this trust may achieve its intended purpose as set forth above.

ARTICLE ONE

FUNDING

At the direction of the Court, the property listed in Schedule "A" attached hereto and incorporated herein is irrevocably transferred, assigned, conveyed and delivered to NATIONAL CITY BANK OF PENNSYLVANIA, IN TRUST (said trustee and any successor trustee are hereinafter referred to as "Trustee"). The Trustee shall invest and reinvest said property, shall hold said property and all investments and reinvestments thereof as a trust estate ("Trust Estate"), and shall distribute the Trust Estate's net income ("Income") and principal as set forth in this Agreement.

ARTICLE TWO

TRUST NAME

The trust hereby created may be designated the "MICHAEL W. SMITH, JR. IRREVOCABLE TRUST".

ARTICLE THREE

DISTRIBUTION DURING MICHAEL'S LIFETIME AND THEREAFTER

During the lifetime of MICHAEL, the Trustee shall pay so much of the Income and principal of the trust as it considers advisable in its discretion to, or for the benefit of, MICHAEL consistent with the trust's purpose and administration provisions. Without limiting the Trustee's discretion, the Trustee is specifically authorized to use Income or principal, to the extent it determines appropriate consistent with the trust's purpose and administration provisions, for MICHAEL's comfortable support, welfare, complete education, and personal development, including, but not limited to, supplemental medical and dental expenses, social services expenses and transportation costs. The Trustee may

pay any income tax liability of MICHAEL which results from income received by the trust which is properly reported on an income tax return of MICHAEL, and such liability may be computed based on MICHAEL's highest applicable marginal rate not MICHAEL's average tax rate, given the filing status elected on such return. The funds used to pay any such income tax liability shall be paid directly to the appropriate tax authority and shall not be available to MICHAEL. Any undistributed Income shall be added to principal no less often than annually.

Without limiting the foregoing provisions of this Article, the following shall apply.

- (1) The Trustee is specifically authorized to purchase or assist in the purchase of reasonable housing for MICHAEL, considering MICHAEL's special needs, and may pay the full cost thereof and/or the full monthly mortgage, tax, insurance, utility, maintenance or other payments therefor. However, the Trustee shall require a contribution from any member of MICHAEL's family who resides there with MICHAEL, consistent with ability to pay. The Trustee may fund any such purchase by cash or financing. The Trustee is specifically authorized to hold such residence as an asset of this trust but shall not be liable for any loss from its depreciation, deterioration or damage. Also, the Trustee may contribute to , or pay the full cost of, (i) the purchase, remodeling or expansion of a home owned by a relative or guardian of MICHAEL's with whom MICHAEL resides, so long as the Trustee's investment is maintained as an asset of the trust (whether by judgment lien, secured note or otherwise), as well as (ii) the operation and

maintenance of such home, considering MICHAEL's special needs.

Notwithstanding the foregoing provisions of this subparagraph, the Trustee shall obtain court approval prior to purchasing, or assisting in the purchase, of reasonable housing for MICHAEL.

It is specifically acknowledged that MICHAEL suffers from certain handicaps and disabilities. The Trustee is specifically authorized to retain and pay from the Trust Estate a case manager, ("Trust Consultant"), to (i) determine what social services, educational enrichment and other programs would benefit MICHAEL and are reasonable for MICHAEL to obtain, and (ii) to provide ongoing consultation in such regard, including, without limitation, to arrange MICHAEL's participation in, and acquisition of, such services or programs. Further, considering the trust's purpose and administration provisions, Trustee is authorized, in its discretion, to pay the expenses of such services and programs from the Trust Estate.

- (3) It is further specifically acknowledged that MICHAEL requires, and may require for MICHAEL's lifetime, residential care and assistance on a consistent basis. The Trustee is specifically authorized, in its discretion, to hire such caregivers, giving such preference as the Trustee determines to be appropriate (including, without limitation, considering the tax consequences thereof) to relatives of MICHAEL willing and able to provide such care, and to pay reasonable compensation for such services, or, to pay a reasonable stipend to any such relative in recognition thereof,

upon proof satisfactory to the Trustee that such care and assistance have been rendered and were required.

(4) It is also specifically acknowledged that relatives of MICHAEL with whom MICHAEL resides may require special motor vehicles in order to transport MICHAEL and, if so, the Trustee is authorized, in its discretion, to pay for their acquisition of such vehicles, as well as their expenses for maintaining, insuring and timely replacing such vehicles. The Trustee shall take a perfected security interest in any such vehicle consistent with its contribution to the acquisition thereof.

If MICHAEL dies before the complete termination of the trust, the Trustee shall first make any reimbursement of medical assistance paid on MICHAEL's behalf which is required for the trust to be a special needs trust as set forth in the second paragraph of this Agreement and, thereafter, may pay the expenses of MICHAEL's funeral and burial, if not prepaid. Further, the Trustee may pay to MICHAEL's personal representative or, in the case of taxes, directly to the taxing authorities, such amount, if any, as said personal representative certifies to be (i) the additional death taxes, including interest and penalties, resulting from the inclusion of the Trust Estate, or any portion thereof, in MICHAEL's estate for such tax purposes, as well as (ii) the expenses of administering MICHAEL's estate. MICHAEL shall have a special testamentary power to appoint the remaining principal and any accrued or undistributed Income outright to, or on further trust for, anyone other than MICHAEL, MICHAEL's estate, or the creditors of either, or a spouse of MICHAEL's who is not a Qualified Spouse, as MICHAEL shall direct by specific reference to this trust in MICHAEL's Will. Any unappointed portion shall be

retained in a new trust so long as either of MICHAEL's parents, MICHAEL W. SMITH, SR. and THERESA M. SMITH, is living. During such period, the Trustee is authorized to pay so much of the Income and principal of the trust as it considers advisable in its discretion, for any reason or purpose whatsoever, to or for the benefit of said parents and the issue of either of them, or any one or more of said group to the exclusion of others, with no duty of equalization, and shall add any excess Income to principal, at least annually, and invest it as such. Notwithstanding the immediately foregoing sentence, absent reasons in the Trustee's judgment to do otherwise and subject to the Trustee's discretion, the Trustee shall (i) equalize distributions to, or for the benefit of, MICHAEL's parents, so long as both are living, and (ii) consider, first, MICHAEL's issue, then MICHAEL's parents and, thereafter, those most closely related to said parents, as the primary concern of the new trust. Upon the death of the survivor of MICHAEL's mother and father, or if neither of said parents survives MICHAEL, upon MICHAEL's death, the balance of the new trust, or said unappointed portion of the Trust Estate, as the case may be, shall be distributed to the then living issue of each of the said parents, per stirpes (one equal share to be created for each child of either parent, or both parents, who (which child) is either then living or then deceased with issue then living, distribution to any then deceased child's issue to be on a per stirpital basis). Should there be no such then living issue, such distribution shall be to those individuals who would have been MICHAEL's intestate heirs if MICHAEL had died at that time intestate, married, if MICHAEL has a Qualified Spouse, otherwise unmarried, domiciled in Pennsylvania and owning outright such property and no other property. If no such intestate heir is then living, such distribution shall be to one or more Charities selected by

the Trustee. For purposes of this paragraph, the Commonwealth of Pennsylvania shall not constitute an intestate heir. Each individual entitled to take a share of said balance or a share of said unappointed portion, as the case may be, upon the death of the survivor of MICHAEL's parents, or, if neither of said parents survives MICHAEL, upon MICHAEL's death, is hereinafter referred to as a "Beneficiary". The share for each Beneficiary shall be held as a separate trust ("Beneficiary's Trust") on the following terms. The Trustee shall pay to said Beneficiary, to the person having physical custody of such Beneficiary, to such Beneficiary's natural guardian or to the guardian of such Beneficiary's person or estate, in any of such cases without liability on the part of the Trustee to see to the application thereof, unless the Trustee is the distributee, or expend for such Beneficiary's benefit, so much of the Income and principal as the Trustee considers advisable in its discretion, for any reason or purpose whatsoever, and shall add any undistributed Income to principal, at least annually, and invest it as such. Such Beneficiary may also withdraw portions of the principal in accordance with the following schedule:

- (1) after such Beneficiary's thirtieth (30th) birthday, not more than one-third (1/3) of the principal on the date of such Beneficiary's thirtieth (30th) birthday; and
- (2) after such Beneficiary's thirty-fifth (35th) birthday, not more than one-half (1/2) of the principal, on the date of such Beneficiary's thirty-fifth (35th) birthday, not already subject to withdrawal; and
- (3) after such Beneficiary's fortieth (40th) birthday, any or all of the principal and any accrued or undistributed Income.

Should the trust for such Beneficiary be initially funded after said Beneficiary's thirtieth (30th) birthday, said Beneficiary's initial withdrawal right shall be based on the principal of the trust at funding and shall be one-third (1/3) of such principal if such Beneficiary has not yet attained thirty-five (35) years of age, two-thirds (2/3) of such principal if such Beneficiary has then attained thirty-five (35) years of age but not forty (40) years of age and all of such principal if such Beneficiary has then attained forty (40) years of age. If such Beneficiary dies before the complete termination of the trust, such Beneficiary shall have a special testamentary power to appoint the principal and any accumulated or undistributed Income remaining at the Beneficiary's death in the Beneficiary's trust outright to, or on further trust for, anyone other than said Beneficiary, said Beneficiary's estate, or the creditors of either, or a spouse of such Beneficiary who is not a Qualified Spouse, as such Beneficiary shall direct by specific reference to this trust in Beneficiary's Will; provided, however, that any portion such Beneficiary could have withdrawn before death such Beneficiary may appoint, by specific reference to this trust in such Beneficiary's Will, in favor of anyone. Upon the death of a Beneficiary, any unappointed portion shall be paid to such Beneficiary's then living issue, per stirpes, or, if none, to those individuals who would have been the Beneficiary's intestate heirs if the Beneficiary had died at that time intestate, married, if such Beneficiary has a Qualified Spouse, otherwise unmarried, domiciled in Pennsylvania and owning outright the property constituting such unappointed portion and no other property. For purposes of this paragraph, the Commonwealth of Pennsylvania shall not constitute an intestate heir. If no such intestate heir is then living, the unappointed portion shall be distributed to one

or more Charities selected by the Trustee. Any distribution for an individual for whom a trust is then in existence pursuant to the other provisions of this, or another, agreement may, in the discretion of the Trustee, be added to such trust.

(C) Except as otherwise expressly provided in this Agreement, if, upon the termination, or partial termination (which shall include a Beneficiary's exercise of a right of withdrawal), of any of the trusts under this Article, a share of principal is directed to be paid to any individual who is then under the age of twenty-one (21) years, or, in the opinion of the Trustee, is incapable of properly managing his or her financial affairs, such share shall not be paid out, but shall be retained by the Trustee in a separate trust. Until the beneficiary attains such age or, if later, such capability, the Trustee shall pay to said beneficiary, to a Section 529 plan for the benefit of such beneficiary, to the person having physical custody of such beneficiary, to such beneficiary's natural guardian or to the guardian of such beneficiary's person or estate, in any of such cases without liability on the part of the Trustee to see to the application thereof, or expend for such beneficiary's benefit so much of the Income and principal as it considers advisable to provide for the health, maintenance, support and education, including without limitation college and graduate school, of the beneficiary, and shall add the rest of the Income to principal, at least annually, and invest it as such. When said beneficiary attains such age or, if later, such capability, the beneficiary shall have the right to withdraw all the principal and accrued and undistributed Income, upon which event the trust shall terminate. If such beneficiary dies before such time, the Trustee is authorized in its discretion to pay part or all of the beneficiary's funeral expenses and the remaining principal and any accrued or undistributed Income shall be distributed, outright or on

further trust, to anyone other than said beneficiary, said beneficiary's estate, or the creditors of either, or a spouse of such beneficiary who is not a Qualified Spouse, as such beneficiary directs by specific reference to such beneficiary's trust under this paragraph in such beneficiary's Will, and any unappointed portion shall be paid to such beneficiary's then living issue, per stirpes, or, if none, to those persons who would have been such beneficiary's intestate heirs if such beneficiary had died at that time intestate, married, if such beneficiary has a Qualified Spouse, otherwise unmarried, domiciled in Pennsylvania and owning, outright, the property constituting such trust estate and no other property or, if none, to one or more Charities selected by the Trustee. For purposes of this paragraph, the Commonwealth of Pennsylvania shall not constitute an intestate heir. Any distribution for an individual for whom a trust is then in existence pursuant to other provisions of this Agreement may, in the discretion of the Trustee, be added to such trust.

ARTICLE FOUR

TRUST ADMINISTRATION

If the Trustee considers the principal of any trust under this Agreement to be insufficient to warrant establishing or continuing the trust, subject to any obligation to reimburse medical assistance paid on MICHAEL's behalf, the Trustee may, with the approval of a court of competent jurisdiction, pay the principal and any accrued or undistributed Income to MICHAEL, or a court-appointed guardian of the estate for MICHAEL, or, if MICHAEL is under the age of twenty-one (21) years, to a Custodian, to be selected by the Trustee, for MICHAEL under an appropriate Uniform Gifts or Transfers to Minors Act or to a Section 529 plan, for the benefit of MICHAEL, or if MICHAEL is not then living to any other beneficiary or beneficiaries entitled to the

Income of the terminated trust, or guardian or Custodian or Section 529 plan (as above provided for MICHAEL) on their behalf. If the Trustee acts under the immediately foregoing sentence, the receipt and release of the distributee will terminate absolutely the rights of all persons who might otherwise have an interest in such trust, whether vested or contingent, without notice to them and without the necessity of filing an account to the court.

Income allocated to MICHAEL or a minor may be expended for her/his benefit or may be paid to her/his natural guardian, to the guardian of her/his person or estate or to a Custodian, to be selected by the Trustee, for her/him under an appropriate Uniform Gifts or Transfers to Minors Act or to a Section 529 plan for her/his benefit, without liability on the part of the Trustee to see to the application thereof. The Trustee may also deposit amounts in an interest bearing account in MICHAEL's or the minor's name in its own banking department or elsewhere.

The income and principal of any trust as shall or may become distributable (whether the interest therein be present or future, vested or contingent, direct or indirect) in accordance with the provisions of this Agreement shall not, until the actual distribution thereof to the person or entity entitled thereto, be subject to the debts, obligations, liabilities or engagements of such person or entity, or to execution, attachment or other judicial process of whatsoever character and howsoever termed, or be assignable voluntarily, involuntarily or by operation of law or otherwise howsoever, and the distribution thereof shall not be anticipated. Nothing in this paragraph shall be construed or deemed to curtail to any extent any power of appointment provided for in this Agreement or any power, authority or discretion given to or vested in the Trustee by the

provisions of this Agreement or by law to make distribution and expenditure of income and principal of any trust in accordance with the provisions of this Agreement.

Corporate distributions of shares of the distributing corporation shall be allocated to principal, regardless of the number of shares and however described or designated by the distributing corporation.

Except as may otherwise be provided in this Agreement, the Trustee shall have the following powers, to be exercised in its discretion, in addition to and not in limitation of those granted by law: to retain assets, without duty of diversification, in kind or to sell the same, at public or private sale, at such times and upon such terms and conditions as it sees fit; to invest in any kind of property, or fractional interest therein, no matter where located, without regard to any otherwise applicable statutory or other limitations on investment by fiduciaries; to purchase policies of life insurance, to pay premiums thereon from income or principal and to exercise all rights of ownership thereover; to pledge, exchange or mortgage any real or personal property and to lease the same for any period of time, including without limitation more than either five (5) years or the term of the trust; to give or exercise options for sales, leases and exchanges; to borrow money; to lend money (including, without limitation, to any possible beneficiary hereunder); to compromise claims; to vote shares of corporate stock, in person or by proxy, in favor of or against management proposals and otherwise exercise all rights of security holders; to carry securities in the name of a nominee, including that of a clearing corporation or depository, in book entry form, unregistered or in such other form as will pass by delivery; to allocate realized capital gains to income or principal; to allocate receipts and disbursements as between income and principal; and to make distribution either in cash

or in kind. Without limiting the foregoing, the Trustee may invest in and hold property which is used as the principal or secondary residence, furniture, automobile and other items meeting the "special needs" of MICHAEL despite the fact that such property is non-productive of income.

In exercising any discretion to distribute principal or Income granted to Trustee, the Trustee shall take into consideration other readily available funds of which it has knowledge, all applicable insurance coverage and tax consequences, as well as available governmental benefits, payments and programs. No discretionary power to distribute principal or Income provided for in this Agreement shall be construed to allow the payment therefrom of any specific expense or obligation of, or for, a beneficiary which is otherwise payable by any insurance or any governmental entity or pursuant to any governmental benefit or program. Also, no such power shall be construed to allow any payment which would, if made, disqualify a beneficiary from receiving or benefiting from a governmental benefit or program to which the beneficiary is otherwise entitled.

The trusts under this Agreement shall supplement, not supplant, governmental payments, benefits and programs to the greatest extent allowed by law. The Trustee shall, in accordance with 42 USC 1396p(d)(4)(A), repay any state an amount equal to the lesser of all the Trust Estate or the amount equal to the total medical assistance paid on MICHAEL's behalf for which reimbursement is required under a state plan established under the subchapter containing 42 U.S.C. 1396p. The Trustee shall furnish a copy of its annual statement of transactions to the third party liability section of any state department which has paid medical assistance on MICHAEL's behalf for which reimbursement is required. The Trustee shall not be held responsible for any discretionary payment of any

expense or obligation which is later determined to have been properly payable by any insurance or governmental entity or pursuant to any governmental benefit or program.

Absent reasons to do otherwise, in exercising any discretion to distribute principal or Income to, or for the benefit of, any non-skip beneficiary the Trustee shall make such distribution from a generation-skipping transfer tax non-exempt trust before utilizing a generation-skipping transfer tax exempt trust.

The Trustee may resign, effective upon qualification of its successor, at any time, without stating cause, by petitioning a court of competent jurisdiction to designate and appoint a successor corporate Trustee, unless this Agreement names, or provides a procedure for naming, a successor to such resigning Trustee and such successor Trustee qualifies, in which event such successor shall serve.

A corporate Trustee shall be entitled to compensation for its services hereunder in accordance with its schedule in effect when the services are performed. For any services performed by it in connection with MICHAEL's estate, which services are normally performed by the personal representative, the corporate Trustee shall be entitled to such additional compensation as may be fair and reasonable under the circumstances, not to exceed seventy-five (75%) percent of the additional compensation to which it would be entitled as Executor if the assets of this Trust Estate were to be superimposed upon the testamentary estate of MICHAEL. Compensation may be charged to principal or income, or partly to each, in the discretion of the Trustee.

The Trustee shall be entitled to pay all expenses incurred in the administration of the trust from the trust, and to employ or appoint, and pay reasonable compensation from the trust to, accountants, depositories, investment counsel, attorneys, attorneys-in-fact,

and agents (with or without discretionary powers). In determining whether the existence of this trust for the benefit of MICHAEL has the effect of rendering MICHAEL ineligible to receive any government benefits or to participate in any government program, to which MICHAEL would otherwise be entitled, the Trustee is granted full and complete discretion to initiate or defend administrative and/or judicial proceedings related to determining such eligibility, and all costs related thereto, including reasonable attorney's fees, shall be a proper charge to the Trust Estate.

Except as may otherwise be expressly provided herein, the Trustee's exercise or nonexercise of powers and discretions in good faith, and without negligence, shall be conclusive on all persons and the Trustee shall have no liability therefor.

During MICHAEL's lifetime, the Trustee shall furnish a copy of its regular statements to MICHAEL, from and after MICHAEL's twenty-first (21st) birthday (so long as MICHAEL is, in the opinion of the Trustee, not incapacitated), as well as MICHAEL's parents, and any judicially appointed guardian of the estate of MICHAEL, at addresses designated by them. In no event shall statements be provided less often than quarterly.

If, upon the expiration of the period allowed by the applicable statutory rule against perpetuities, if any, any interest in a trust created pursuant to this Agreement is void as a perpetuity and such void interest vests in any person who is then under the age of twenty-one (21) years, such interest shall not be paid out, but the Trustee shall pay such interest to a Custodian (selected by the Trustee) for such person under an appropriate Uniform Gifts or Transfers to Minors Act or to a Section 529 plan for the benefit of such person. For purposes of measuring the period allowed by the applicable

rule against perpetuities, if any, the measuring lives shall be those of MICHAEL's great grandparents' issue, living, or in gestation, at the time of execution of this Agreement.

Except as may otherwise be provided in this Agreement, in addition to such powers, if any, as are afforded the Trustee under applicable law to separate or combine trusts, in establishing, funding, or administering the trusts provided for herein the Trustee shall have the power to separate a trust into trusts which contain the same dispositive provisions (except that if a trust is so separated some or all of the trusts resulting from such separation may be subject to different or additional testamentary powers of appointment) or combine trusts which contain the same dispositive provisions, for purposes of facilitating administration, allowing use of anyone's exemption from any generation-skipping transfer tax, transforming a trust partially exempt from any generation-skipping transfer tax into trusts which are either wholly exempt from, or fully subject to, such tax, reducing taxes or any other reason deemed by the Trustee to be in the interest of the beneficiaries. Without limiting the foregoing, any of the trusts provided for in this Agreement may be divided by the Trustee to permit or facilitate use of anyone's available exemption from the Federal generation skipping transfer tax, including without limitation so as to wholly exempt, rather than partially exempt, any trust to which such exemption is allocated. In that regard, any trust may be divided into two separate parts, each to be held as a separate trust estate as follows. "Part One" shall be that portion to which any part of anyone's exemption from the Federal generation-skipping transfer tax is, or has been, allocated, and shall have an inclusion ratio for such generation-skipping transfer tax purposes of zero. The rest shall constitute "Part Two", which shall have an inclusion ratio for Federal generation-skipping transfer tax purposes

of one. In the event the Trustee does effect such division, the terms of each trust shall be the same as those provided in this Agreement for the trust so divided, except that the Trustee may give any beneficiary of either trust a general testamentary power of appointment thereover exercisable in favor of the creditors of such beneficiary's estate and with power to direct the payment therefrom of any additional death taxes resulting from the possession of this general power.

ARTICLE FIVE

SUBSTITUTION PROVISION

MICHAEL shall have the power to acquire the trust corpus by substituting other property of an equivalent value.

ARTICLE SIX

FIDUCIARY PROVISIONS

In the event of the merger or consolidation of any corporate Trustee the resultant corporation shall become successor Trustee, without notice to any party.

No bond shall be required of the Trustee hereunder in any jurisdiction.

All powers, authorities and discretions conferred upon and granted to the Trustee named herein shall extend to and be exercisable by such Trustee's successor or successors, no matter how appointed. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee; PROVIDED, HOWEVER, that this provision shall not be deemed to abrogate the successor liability of an entity that succeeds to the assets or business of a Trustee and, thus, becomes a successor Trustee.

While observing its primary responsibility to act in the best interests of the beneficiaries, the Trustee is authorized to deal with its own institution and its affiliates on

the same basis as with unrelated institutions. By way of illustration and not limitation, the Trustee may invest in interest-bearing accounts in, or certificates of deposit issued by, its own banking department, in shares of registered investment companies for which the Trustee or an affiliate performs services for a fee, whether as custodian, transfer agent, investment advisor or otherwise, or in securities underwritten by syndicates of which the Trustee is a member, but not if purchased from the Trustee; may borrow money from its banking department; and may execute purchases and sales through its affiliated brokerage service at the affiliate's regular institutional rates so long as that service provides competitive execution. Any broker or dealer executing transactions on behalf of the trust may receive commissions that are reasonable in relation to the value of the brokerage and/or research services provided. The term "affiliate" shall include, without limitation, a parent, sister or subsidiary corporation of the corporate Trustee, or a subsidiary of a sister or subsidiary corporation.

ARTICLE SEVEN

REMOVAL POWER

MICHAEL's parents, jointly, so long as both are *sui juris*, and, thereafter, the sole parent who is *sui juris*, and, additionally, MICHAEL, jointly with such parent, or unanimously with such parents, and, if neither parent is *sui juris*, MICHAEL, individually, so long as MICHAEL is, in either event, *sui juris*, and, at such time as none of MICHAEL's parents or MICHAEL is living, the beneficiary of any trust based on whose existence the trust was created, if *sui juris*, shall have the right, by an instrument in writing delivered to the Trustee and giving twenty-one (21) days advance notice, to remove such corporate Trustee and appoint as a successor any corporate fiduciary which

is, at the time of its appointment, lawfully authorized to engage in trust business in the United States, is independent from, including not related or subordinate to, MICHAEL or anyone with a removal/appointment power as provided in this Article, (or persons controlled by MICHAEL or anyone with a removal/appointment power), and has assets held as a fiduciary, excluding the subject trust, at least four hundred (400) times the value of the subject trust at the time of the successor's appointment. Should a judicially appointed guardian of the estate be serving for (i) MICHAEL, or (ii) following MICHAEL's death, for the beneficiary of a trust based on whose existence the trust was created, the said guardian of the estate shall have the same right of removal/appointment as would MICHAEL or the beneficiary, as the case may be, under this Article if MICHAEL or the beneficiary were, respectively, *sui juris*; provided, however, that said guardian may not appoint itself Trustee hereunder. This right of removal/appointment may be exercised by any one individual (or such individual's judicially appointed guardian of the estate) no more often than once every twelve (12) months. Should a corporate fiduciary resign as Trustee of any trust under this Agreement, the person or persons, if any, who would have had the right, under the foregoing provisions of this Article, to remove that Trustee at that time (ignoring the immediately previous sentence) shall have the right to appoint a corporate fiduciary, meeting the same standards as set forth above, as successor Trustee by delivering an instrument in writing so providing to the resigning Trustee.

ARTICLE EIGHT

EXCLUSION OF ENVIRONMENTAL LIABILITY

The Trustee shall not be liable for any loss or depreciation in value sustained by

the trust as a result of the Trustee acquiring any real property upon which there is later discovered to be hazardous materials or substances requiring remedial action pursuant to any federal, state or local environmental law, unless the Trustee contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

ARTICLE NINE

ADDITIONS TO TRUST

No one may make any addition to the Trust Estate (but the foregoing provision of this Article shall not be deemed to limit payments to the Trust Estate from a structured settlement, if any, approved as part of any settlement of the Litigation).

ARTICLE TEN

ACCEPTANCE OF TRUST

NATIONAL CITY BANK OF PENNSYLVANIA expressly accepts the trust hereby created.

ARTICLE ELEVEN

IRREVOCABILITY OF TRUST

This Agreement and the trust hereby created are IRREVOCABLE, PROVIDED, HOWEVER, that the Court authorizing execution of this Agreement shall have continuing jurisdiction with regard to it, including the power to modify or terminate it. The Trustee shall serve upon each state department, which has paid medical assistance on behalf of MICHAEL for which reimbursement is required, any petition it intends to present to reform, modify or terminate this Agreement, as well as any petition under Article Three (A)(1) or Article Fifteen (B) for authorization to make any specific distribution to, or for the benefit of, MICHAEL.

ARTICLE TWELVE

GOVERNING LAW

This Agreement has been executed, delivered and accepted in the Commonwealth of Pennsylvania. This Agreement and the trust created pursuant hereto shall be governed, construed and administered according to the laws of the Commonwealth of Pennsylvania. The situs of this trust shall be Clearfield County, Pennsylvania. Notwithstanding the foregoing provisions of this Article, if at any time, in the opinion of the Trustee, it is in the best interests of the beneficiaries of any trust for the situs of the trust to be located in a jurisdiction other than the one in which the trust is administered at the time, the Trustee may remove the trust situs (and to the extent necessary or appropriate, the trust assets) to such other jurisdiction. The Trustee may elect that the law of such other jurisdiction shall govern the trust to the extent necessary or appropriate under the circumstances.

ARTICLE THIRTEEN

TITLES AND DEFINITIONS

The titles of the various articles of this Agreement are for convenience and identification purposes only. The titles shall not be deemed to be part of this Agreement for purposes of ascertaining the intent or meaning of any provision in this Agreement or for any other reason.

In this Agreement where the context so warrants the singular shall be deemed to include the plural, and vice versa, and one gender form shall be deemed to include the others or either of the others.

In this Agreement, assets that are left to, distributable to or allocated for an individual's issue who are living at a certain time "per stirpes" or on a "per stirpital" basis shall be divided in the following manner. One equal share shall be created for each then living child of that individual and one equal share shall be created for each child who is not then living but of whom any issue is then living. It is intended that even if no child of the individual is then living the division shall still be made per capita for that individual's children of whom any issue is then living. Each share for a child not then living shall be divided in the same manner into sub-shares for that child's then living issue.

"Code" means the Internal Revenue Code of 1986, as amended, or any future United States internal revenue law. References to Sections of the Code shall, at any particular time, mean the specified sections of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States internal revenue law.

An individual's "Qualified Spouse" shall mean a person who was lawfully married to such individual at the time of such individual's actual death, survived such individual by at least ten (10) days and was residing with such individual at the time of such individual's actual death or was then separated from such individual for reasons other than marital discord.

"Charity" shall mean one or more, and "Charities" shall mean more than one, governmental, charitable, religious, educational and scientific corporations, trusts, funds and other organizations (whether located in the United States or abroad) as shall be of such character that gifts thereto shall be deductible for estate tax purposes under the Code in force and effect at such time.

ARTICLE FOURTEEN

REFORMATION

The Trustee is, at any particular time during the continuance of any trust under this Agreement, authorized to reform, by a writing made and filed with the records of such trust, any of the provisions of this Agreement relating to such trust to the end and purpose that (i) burdensome tax consequences may, consistently with the purposes of such trust and this Agreement, be eliminated or minimized, and (ii) this Agreement may qualify as a special needs trust consistent with its intended purpose as described in the second paragraph of this Agreement. Any reformation shall be given such retroactive effect as may be necessary for its intended purpose and shall for all purposes be binding and conclusive in all respects on every person having any interest whatsoever in the trust estate of such trust.

ARTICLE FIFTEEN

SPECIAL PROVISIONS

(A) Notwithstanding any provision of this Agreement to the contrary, any right of a Charity under this Agreement shall not vest until such time as the Charity actually receives a distribution. Until such time, the Trustee shall not consider any Charity to be a beneficiary hereunder. The Trustee shall not be liable to any Charity ultimately receiving a distribution under this Agreement for any action taken prior to the Charity's actual receipt of the distribution under this Agreement. Further, the Trustee may make the receipt of a release in favor of the Trustee, and/or an indemnification agreement, from the Charity a condition of any distribution to a Charity.

(B) At any time during the life of MICHAEL, the Trustee may petition a Court of competent jurisdiction for authorization to make any specific distribution to, or for the benefit of, MICHAEL, regardless of whether this Agreement otherwise authorizes the Trustee to exercise its discretion to make such distribution.

ACCEPTANCE OF TRUSTEE

NATIONAL CITY BANK OF PENNSYLVANIA hereby accepts the foregoing trust upon the terms and conditions therein set forth. The Trustee shall provide a copy of this Agreement to the Special Needs Trust Depository, Department of Public Welfare, P.O. Box 8486, Harrisburg, Pennsylvania, 17105-8486.

WITNESS the due execution hereof, INTENDING TO BE LEGALLY BOUND, the day and year first written above.

NATIONAL CITY BANK OF PENNSYLVANIA

By _____
Vice President

ATTEST:

Trust Officer

SCHEDULE A

This schedule is attached to and forms a part of that certain irrevocable trust agreement known as the MICHAEL W. SMITH, JR. IRREVOCABLE TRUST, dated _____, 2004, and identifies the initial trust property held subject to that trust.

All MICHAEL W. SMITH, JR.'s rights in, to and under that certain personal injury settlement of the Litigation.

State of _____)
County of _____) ss.

On this, the _____ day of _____, 2004, before me,
_____, the undersigned officer, personally appeared
_____, who acknowledged himself/herself to be a _____
of NATIONAL CITY BANK OF PENNSYLVANIA, and that he/she as such
_____, being authorized to do so, executed the foregoing instrument
for the purposes therein contained by signing the name of NATIONAL CITY BANK OF
PENNSYLVANIA, by himself/herself as _____.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

CA

KLINÉ & SPECTER

A PROFESSIONAL CORPORATION

BY:

ATTORNEY FOR THOMAS R. KLINE/MATTHEW A. CASEY
ATTORNEY ID. # Plaintiffs
THE NINETEENTH FLOOR 28895/84443
1525 LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
215-772-1000

MICHAEL W. SMITH, SR. and	:	COURT OF COMMON PLEAS
THERESA M. BELL SMITH,	:	
Parents and Natural Guardians of	:	CLEARFIELD COUNTY
MICHAEL W. SMITH, JR., a minor	:	
	:	NO. 01-122
vs.	:	
MICHAEL KUSH, M.D. and DUBOIS REGIONAL	:	ORDER
MEDICAL CENTER	:	

AND NOW, this 1 day of Feb 2005, upon consideration of the foregoing Petition to Approve Trust Agreement, it is hereby ORDERED and DECREED that the Trust Agreement is hereby approved.

The settlement proceeds designated by this Court's Order of August 24, 2004, to be paid to the trustee on behalf of the minor plaintiff, Michael W. Smith, Jr., shall be paid to the trustee named in the said Trust Agreement, to be held, invested, disbursed, distributed and otherwise administered as provided therein.

BY THE COURT

J.

FILED

03/13/05 Atty
FEB 01 2005 Casey

William A. Shaw
Prothonotary/Clerk of Courts