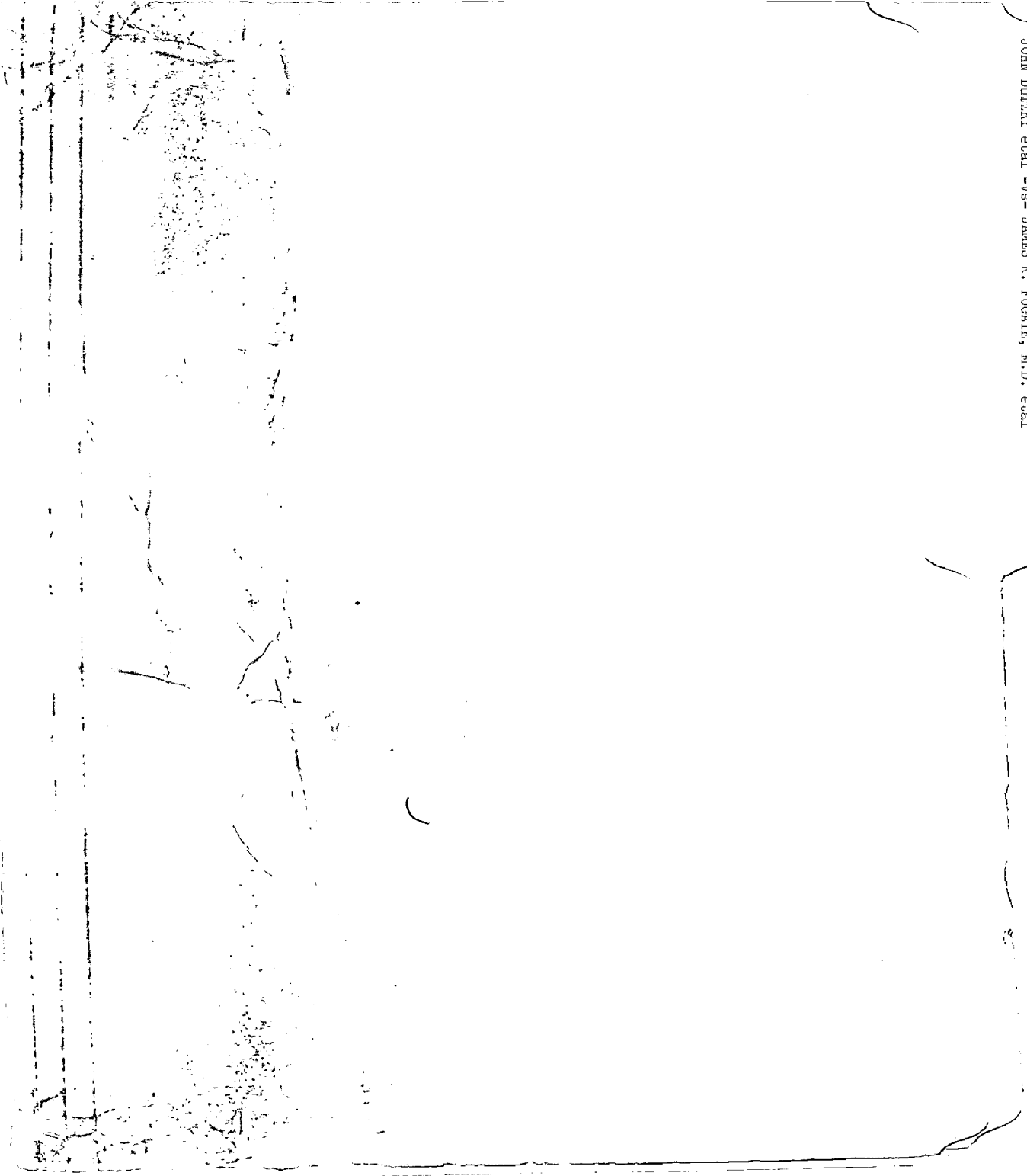


01-301-CD

JOHN DITNEY et al -vs- JAMES K. FUGATE, M.D. et al



No. 01-301-CD

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased,
and John D. Duttry, in his own right

vs.

JAMES K. FUGATE, MD.,

DUBOIS REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER,

GATEWAY INSTITUTE and CLINIC, INC.,
a Pennsylvania Corporation,

JEFFREY P. KARLS, DO, individually and
t/a REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC,

JEFFREY W. RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional Corporation,
Jeffrey Rice, DMD and

JAY L. ARLICK, DMD, PC., a Pennsylvania
Professional Corporation,

BOWSER CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S PHARMACY and
t/a TREASURE LAKE PHARMACY,

THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH.

HARRY S. COHEN, Esq.
Harry S. Cohen & Assoc.
985 Two Chatham Center,
PGH 15219 412-281-3000

GILES L. GACA, Esq.
Gaca Matis Baum & Rizza
300 Four PPG Place
PGH 15222-5404
412-338-4750

MICHAEL A. SOSNOWSKI, Esq.
Pfaff, McIntyre, Dugas, Hartye &
Schmitt, PO Box 533, Hollidaysburg
16648-0533 696-9399

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Grant Building, PGH 15219

HOWARD CHAJSON, Esq.
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Two PPG Place, Suite 400
PGH 15222-5402
412-281-7272

JOHN W. BLASKO, Esq.
McQuaide Blasko, 811
University Dr., State College
16801 238-4926

JULIE NORD, Esq.
Davis, McFarland & Carroll, P.C.
One Gateway Center, 10th Flr.
PGH 15222 412-281-0737
same as above

MICHAEL F. COYNE
PROTHONOTARY

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS

MICHAEL E. LAMB
DEPUTY PROTHONOTARY

THOMAS R. SOLOMICH
SOLICITOR



County of Allegheny

FIRST FLOOR CITY-COUNTY BUILDING
414 GRANT STREET • PITTSBURGH, PA 15219-2469
PHONE (412) 350-4200 • FAX (412) 350-5260

February 20, 2001

Allen D. Bietz, Prothonotary
Clearfield County
E. Market & N. Second Avenue
Clearfield, PA 16830

COPY

IN RE:
GD00-12637

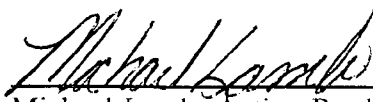
John Duttry vs James Fugate

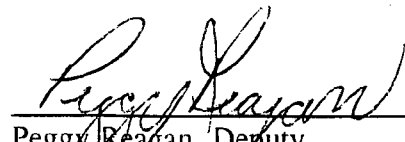
Dear Mr. Bietz:

We are transferring the above captioned case to your county, as per order of Court dated January 18, 2001, Strassburger, J.

Please acknowledge receipt of the file, by entering your case number below and returning this letter to us, attn: Peggy Reagan.

Yours truly,

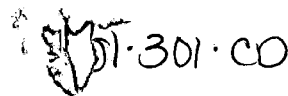

Michael Lamb, Acting Prothonotary


Peggy Reagan, Deputy
(412) 350-4205

No. 01-301-CD

3.1.01

Date Filed


[\[Home\]](#)

Allegheny County Prothonotary Civil Docket Report

GD-00-012637 *****CASE TRANSFERRED TO CLEARFIELD COUNTY*****

Run Date: 02/20/2001
Run Time: 01:58:11 PM

Court Type:	General Docket	Related Cases:	
Case Type:	Contract	Jury Requested:	Yes
Judge:	Strassburger III Eugene B.	Amount In Dispute:	\$--
Current Status:	Case Transferred		

Parties							
-- Litigants --							
ID	LName	FName	MI	Type	Address	Phone	Attorney
@923498	Duttry	John	D.	Plaintiff	379 Treasure Lake DuBois PA ?	--	--
@923499	Estate of Mary Jo Duttry	---	---	Plaintiff	Box 379 Treasure Lake DeBois PA ?	--	--
@923726	Bowser Corporation	---	---	Defendant	241 W. Long Ave. DuBois PA 15801	--	--
@923738	Bowser R.P.H.	Cynthia	D	Defendant	241 W. Long Ave. DuBois PA 15801	--	--
@923736	Bowser R.P.H.	Thomas	E	Defendant	241 W. Long Ave. DuBois PA 15801	--	--
ALLDEFT	Defendants	All	---	Defendant	No Default Address Available	--	--
@923504	Dubois Regional Medical Center Inc.	---	---	Defendant	100 Hospital Avenue DuBois PA 15801	--	--
@927599	Fugate M.D.	James	K	Defendant	No Default Address Available	--	Gaca Giles J,
@923502	Fugate M.D.	James	K.	Defendant	Gateway Institute & Clinic 100 Caldwell Drive DuBois PA 15801	--	Gaca Giles J,
@923507	Gateway Institute & Clinic Inc.	---	---	Defendant	102 Hospital Avenue DuBois PA 15801	--	Grimm Robert J,
@923723	Jeffrey W. Rice and Jay L. Arlick D.M.D. P.C.	---	---	Defendant	90 Beaver Dr. DuBois PA 15801	--	Neely Allen P.,
@923717	Karls D.O.	Jeffrey	P	Defendant	UPMC, RD3 Box 219 New Bethlehem PA 16242	--	Otto Wilbur McCoy,
@923721	Rice D.M.D.	Jeffrey	W	Defendant	109 Front St. DuBois PA 15801	--	Neely Allen P.,
@694285	UPMC Presbyterian	---	---	Defendant	200 Lothrop Street Pittsburgh PA 15213	--	Otto Wilbur McCoy,
-- Attorney --							
ID	LName	FName	MI	Type	Address	Phone	
00581	Gaca	Giles	J	Defendant's Attorney	Gaca, Matis Baum & Rizza P.C. 300 Four PPG Place Pittsburgh PA 15222-5404	()3384750	
00581	Gaca	Giles	J	Defendant's Attorney	Gaca, Matis Baum & Rizza P.C. 300 Four PPG Place Pittsburgh PA 15222-5404	()3384750	
55381	Grimm	Robert	J	Defendant's	Israel Wood & Puntill, P.C. Suite 501 Grant	(412)	

				Attorney	Building Pittsburgh PA 15211	3911114
65302	Neely	Allen	P.	Defendant's Attorney	811 University Drive State College PA 16801	--
01524	Otto	Wilbur	McCoy	Defendant's Attorney	Dickie, McCamey & Chilcote Two PPG Place Suite 400 Pittsburgh PA 15222-5402	()2817272

-- 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
SHRF02	Sheriff - Allegheny County	---	---	Sheriff	Courthouse Room 111 Pittsburgh PA 15219	--

Alternative Names

ID	Name	Alternative Name
@923499	Estate of Mary Jo Duttry	Duttry administrator John D.
@923504	Dubois Regional Medical Center Inc.	Behavioral Health Center ta
@923717	Karls D.O. Jeffrey P	Redbank Family Practice-UPMC ta
@923726	Bowser Corporation	Shankel's Pharmacy ta
@923726	Bowser Corporation	Treasure Lake Pharmacy ta

Docket Entries

Filing Date	Docket Type	Docket Text	Filing Party
07/24/2000	Complaint	returnable date 8/25/00.	Duttry John D.
08/03/2000	Praeipe for Appearance	xndividually and t/a Redbank Family Practice-UPMC; UPMC Presbyterian, a Pennsylvania Corporation t/a Redbank Family Practice-UPMC By Wilbur McCoy Otto, Esq.	Karls D.O. Jeffrey P
08/10/2000	Praeipe for Appearance	By Giles J. Gaca, Esq.	Fugate M.D. James K
08/11/2000	Praeipe for Appearance	of Michael A. Sosnowski, Esquire	Dubois Regional Medical Center Inc.
08/14/2000	Petition	For change of venue pursuant to Pa.R.C.P. 1006	Defendants All
08/14/2000	Sheriff Return	UPMC-Presbyterian served with Notice of Suit & Complaint on 07/31/00 & Jeffrey W. Rice DMD, Jay L. Arlick DMD, Jeffrey Rice DMD., P.C., Dubois Regional Medical Ctr, Inc., Bowser Corp., Cynthia D. Bowser, R.PH., Thomas E. Bowser, R.PH., James K. Fugate, MD & Gateway Institute & Clinic Inc. served with Notice of Suit & Complaint on 08/01/00.	Sheriff - Allegheny County
08/21/2000	Praeipe for Appearance	by R. Grimm Esq	Gateway Institute & Clinic Inc.
08/30/2000	Praeipe for Appearance	of Howard A. Chajson and Timothy B. Finnerty, Esquires	Defendants All
09/05/2000	Praeipe for Appearance	also on behalf of Jeffrey Rice DMD, P.C. and Jay Arlick DMD, by Attorney John W. Blasko.	Rice D.M.D. Jeffrey W
		Dated 09/07/00. Ordered Affidavit shall be filed on/or before Oct. 7, 2000. Deft's. Brief shall be filed with a copy served on	

09/11/2000	Order of Court	the court and opposing counsel on/or before Oct. 23, 2000. Plt's. Brief shall be filed with a copy serve on the court and opposing counsel on/or before Nov. 7, 2000. Briefs shall not exceed 10 pages. Strassburger J. eodie copies mailed 9/8/00.	Strassburger III Eugene B.
09/15/2000	Notice of Service	of Interrogatories and Request for Production of Couments directed to Plaintiff upon all counsel of record on 09/15/00 by first class mail.	Bowser R.P.H. Thomas E
09/15/2000	Notice of Service	of Interrogatories and Request for Admissions directed to Defendants Dr. Karls and UPMC upon Howard A. Chajson Esq. on 09/14/00 by first class mail.	Duttry John D.
09/25/2000	Brief in Support	Jeffrey W. Rice D.M.D. of Petiiton to Change Venue	Jeffrey W. Rice and Jay L. Arlick D.M.D. P.C.
09/25/2000	Petition	on behalf of Jeffrey W. Rice D.M.D. to change venue	Jeffrey W. Rice and Jay L. Arlick D.M.D. P.C.
09/28/2000	Affidavit	in Reply to Petition.	Duttry John D.
09/28/2000	Reply	to petition Bowser deft's For Change of Venue	Duttry John D.
09/29/2000	Affidavit	in Support of Petition for Change of Venue.	Dubois Regional Medical Center Inc.
09/29/2000	Certificate of Service	of interrogatories and request for production of documents upon plaintiffs' attorneys by first class mail on 9/28/2000. Also filed on behalf of Jay L. Arlick.	Rice D.M.D. Jeffrey W
10/05/2000	Affidavit	in Support of Petition for Change of Venue pursuant to Pa. R.C.P. 1006(d)(1).	Bowser Corporation
10/05/2000	Answer		Fugate M.D. James K.
10/06/2000	Affidavit	in Support of Petition to Transfer filed	Fugate M.D. James K.
10/06/2000	Brief	in support of Petition to Transfer filed	Fugate M.D. James K.
10/06/2000	Notice of Service	of First Set of Interrogatories and Request for Production of Documents upon Harry S. Cohen Esq. on 10/04/00 by first class mail.	Fugate M.D. James K.
10/06/2000	Petition	for change of venue and Affidavits and Brief in support and proposed order filed	Karls D.O. Jeffrey P
10/20/2000	Brief in Support	of petiton for Change of Venue on behalf of Thomas Bowser R. PH and Cynthia D. Bowers R.PH	Bowser Corporation
10/20/2000	Petition	for change of Venue purusant to Pa. R.C.P. 1006(d)(1)	Dubois Regional Medical Center Inc.
11/06/2000	Brief in Opposition	to Petition for Change of Venue	Duttry John D.
11/14/2000	Motion	for leave to file Reply to Plt's Breif in Opposition of Petition for Change of Venue. On behalf of Thomas E. Bowers,R.PH and Cynthia D. Bower, R.PH	Bowser Corporation
11/15/2000	Order of Court	Dated 11/15/00. Order that Defendants are granted leave to file the Reply Brief attached as Exhibit "2". Strassburger J.	Bowser Corporation
11/16/2000	Reply	to Plt's Breif in Oppositioni of petitioni for Change of Venue. on behalf of Thomas E. Bowser R. PH. and Cynthia D. Bowser R. PH	Bowser Corporation
01/23/2001	Opinion	Dated 01/18/01 Opinion. Strassburger J. EODIE copies mailed 01/23/01.	Strassburger III Eugene B.
	Order of	Dated 01/18/01. Order that Deft's. Petition for change of Venue are granted and this matter is transferred to the Court	Strassburger III

01/23/2001	Court	of Commons Pleas of Clearfield County, Pa. at the cost of the Plaintiff. Strassburger J. eodie copies mailed 1/18/01.	Eugene B.
02/20/2001	Case Transferred	As per Order of Court dated 01/18/01. Case is transferred to Clearfield County, PA. Strassburger, J.	Allegheny County Prothonotary

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

01-301-00

JOHN D. DUTTRY,
Administrator of the Estate of
MARY JO DUTTRY, Deceased
and JOHN D. DUTTRY in
his own right,

Plaintiff

v.

JAMES F. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., Individually
and t/a REDBANK FAMILY PRACTICE-
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE—UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania Professional
Corporation; JEFFREY RICE, D.M.D. and
JAY L. ARLICK, D.M.D., P.C., a
Pennsylvania Professional Corporation;
BOWSER CORPORATION, a Pennsylvania
Corporation, t/a SHANKEL'S PHARMACY
and t/a TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH. and
CYNTHIA D. BOWSER, R.PH.,

Defendants

CIVIL DIVISION

No. GD00-12637

Code:

ORDER OF COURT

JUDGE
GENE STRASSBURGER

Copy sent to:

Counsel of Record
(See Page 2)

FILED
01 JAN 23 AM 7:54
PROTHONOTARY
ALLEGHENY COUNTY

FILED

MAR 01 2001
13:40 / atty Cohen pd
William A. Shaw
Prothonotary
\$7000

2001 JAN 22 PM 2:17
COURT OF COMMON PLEAS

DUTTRY v. FUGATE, et al.

No. GD00-12637

COUNSEL OF RECORD

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985 Two Chatham Center
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Pittsburgh, PA 15219

Giles J. Gaca, Esq., Counsel for James K. Fugate, M.D.
300 Four PPG Place
Pittsburgh, PA 15222

Wilbur M. Otto, Esq., Counsel for Karls/Redbank/UPMC)
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Michael A. Sosnowski, Esq., Counsel for DuBois Regional Medical Center, et al.
P. O. Box 533
Hollidaysburg, PA 16648-0533

Robert J. Grimm, Esq., Counsel for Gateway Institute
501 Grant Building
310 Grant Street
Pittsburgh, PA 15219

Marshall J. Tindall, Esq., Counsel for Bowser/Shankel/Thomas & Cynthia Bowser
One Gateway Center, 10th Floor
420 Fort Duquesne Boulevard
Pittsburgh, PA 15222

Jeffrey W. Rice, D.M.D.
90 Beaver Drive
DuBois, PA 15801

CIVIL DIVISION

Defendants

No. GD00-12637

AND NOW, this 18th day of January, 2001, consistent with the Opinion of this Court filed this date, it is hereby ORDERED that Defendants' Petitions for change of Venue are granted and this matter is transferred to the Court of Common Pleas of Clearfield County, Pennsylvania at the cost of the Plaintiff.

BY THE COURT:

Shant, J.

CIVIL DIVISION

V.

Code: 010

Type of Pleading:

Filed on Behalf of:
PLAINTIFF

HARRY S. COHEN, ESQUIRE
PA ID# 30682

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

Handwritten signature

ORIGINAL

NOTICE TO DEFEND

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 an 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 plaintiffs. 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
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, PA 15219
Telephone: (412) 261-0518

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

Case No.

Plaintiff,)

Code No. 016

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, DECEASED, and in his own right, by and through his attorneys HARRY
S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER,
ESQUIRE, and sets forth the following COMPLAINT IN CIVIL ACTION:

1. Plaintiff, JOHN D. DUTTRY, a/k/a Jack Duttry, is an adult individual at all times material residing at Box 379 Treasure Lake, DuBois, Pennsylvania in Clearfield County (hereinafter the "husband-Plaintiff").

2. MARY JO DUTTRY, Deceased, was an adult individual at all times material residing at Box 379 Treasure Lake, DuBois, Pennsylvania in Clearfield County (hereinafter the "Plaintiff-Decedent").

3. MARY JO DUTTRY died at the age of 42 on July 25, 1998 in Clearfield County Pennsylvania. The Register of Wills of Clearfield County granted Plaintiff's Letters of Administration for the Estate of Mary Jo Duttry. Plaintiff filed this Complaint on behalf of the statutory heirs of Mary Jo Duttry under the Wrongful Death Act and the Survival Act as described herein. There has been no other civil action for Wrongful Death or Survival brought for the causes of action or injuries described herein. Mary Jo Duttry died intestate with no surviving children or parents. Plaintiff, John D. Duttry, as the surviving spouse, is the only intestate heir under the Survival Act and Wrongful Death Act.

4. Defendant JAMES K. FUGATE, MD is an adult individual and at all times material hereto was a duly licensed and practicing physician and psychiatrist in the Commonwealth of Pennsylvania. At all times material, Defendant Fugate MD had usual places of business at DRMC-Behavioral Health Center, 90 Beaver Drive Suite 121-D, DuBois Pennsylvania 15801, in Clearfield County, and at Gateway Institute and Clinic, 100 Caldwell Drive, DuBois Pennsylvania 15801, in Clearfield County.

5. Defendant DUBOIS REGIONAL MEDICAL CENTER, INC., is a Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER having its principle place of business at 100 Hospital Avenue, DuBois Pennsylvania 15801, in Clearfield County (hereinafter "DRMC").

6. Defendant GATEWAY INSTITUTE AND CLINIC, INC., is a Pennsylvania Corporation having principle places of business at 102 Hospital Avenue, DuBois Pennsylvania 15801, in Clearfield County, and at 100 Caldwell Drive, DuBois Pennsylvania 15801, in Clearfield County (hereinafter "Gateway").

7. Defendant JEFFREY P. KARLS, D.O. is an adult individual and at all times material hereto was a duly licensed and practicing physician in the Commonwealth of

Pennsylvania. Defendant JEFFREY P. KARLS, D.O. practices medicine and does business as REDBANK FAMILY PRACTICE – UPMC. At all times material, Defendant Karls DO had usual places of business at REDBANK FAMILY PRACTICE – UPMC, RD 3 Box 219, New Bethlehem, Pennsylvania 16242, in Clarion County (hereinafter “Karls DO”).

8. Defendant UPMC PRESBYTERIAN is a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE – UPMC (hereinafter “Redbank-UPMC”). UPMC PRESBYTERIAN was formerly known as or is a successor in interest to Presbyterian University Hospital, formerly a Pennsylvania Corporation, and assumed all of the assets and liabilities of its predecessor corporation including its business and registered fictitious name known as Redbank-UPMC. Defendant Redbank-UPMC has its principle places of business at 200 Lothrop Street, Pittsburgh, PA 15213 in Allegheny County, and a regular place of business at RD 3 Box 219, New Bethlehem, Pennsylvania 16242, in Clarion County

9. Defendant JEFFREY W. RICE, DMD, is an adult individual and at all times material hereto was a duly licensed and practicing oral surgeon in the Commonwealth of Pennsylvania. At all times material, Defendant Rice DMD had usual places of business at 90 Beaver Drive, DuBois, Pennsylvania 15801 in Clearfield County and 109 Front Street, Clearfield, Pennsylvania in Clearfield County.

10. Defendant JEFFREY RICE, DMD, PC, is a Pennsylvania Professional Corporation having principle places of business at 90 Beaver Drive, DuBois, Pennsylvania 15801 in Clearfield County and 109 Front Street, Clearfield, Pennsylvania in Clearfield County (hereinafter “Rice DMD PC”).

11. Defendant JEFFREY W. RICE, DMD, AND JAY L. ARLICK, DMD, PC, is a Pennsylvania Professional Corporation having principle places of business at 90 Beaver Drive, DuBois, Pennsylvania 15801 in Clearfield County and 109 Front Street, Clearfield, Pennsylvania in Clearfield County (hereinafter “Rice-Arlick DMD PC”).

12. Defendant BOWSER CORPORATION is a Pennsylvania Corporation t/a SHANKEL’S PHARMACY and also t/a TREASURE LAKE PHARMACY (hereinafter collectively “Shankel’s Pharmacy”). Shankel’s Pharmacy has its principle places of business at

241 W. Long Avenue, DuBois, Pennsylvania 15801 in Clearfield County and Treasure Lake, DuBois, Pennsylvania 15801 in Clearfield County.

13. Defendants THOMAS E. BOWSER, R.PH. and CYNTHIA D. BOWSER, R.PH, are adult individuals and at all times material hereto were duly licensed, registered and practicing pharmacists in the Commonwealth of Pennsylvania. At all times material, Defendants Thomas Bowser RPh and Cynthia Bowser RPh had usual places of business at Shankel's Pharmacy, 241 W. Long Avenue, DuBois, Pennsylvania 15801 in Clearfield County and Treasure Lake Pharmacy, Treasure Lake, DuBois, Pennsylvania 15801 in Clearfield County.

14. At all times material hereto Defendant Fugate MD was an agent, ostensible agent or employee of Defendants DRMC and Gateway acting within the course and scope of his employment or agency.

15. At all times material hereto Defendant Karls DO was an agent, ostensible agent or employee of Defendant Redbank-UPMC acting within the course and scope of his employment or agency.

16. At all times material hereto Defendant Rice DMD was an agent, ostensible agent or employee of Defendants Rice DMD PC and Rice-Arlick DMD PC acting within the course and scope of his employment or agency.

17. At all times material hereto Defendants Thomas Bowser RPh. and Cynthia Bowser RPh. were acting as agents, ostensible agents or employees of Defendant Shankel's Pharmacy.

18. The Court of Common Pleas of Allegheny County has jurisdiction over these causes of action, and venue is proper before this court, in that the causes of action arose in Allegheny County, Clarion County and Clearfield County, Pennsylvania, and Defendant Redbank- UPC has its principle place of business in Allegheny County.

19. Plaintiff's wife and decedent, Mary Jo Duttry, suffered two automobile accidents in May 1995 and September. She also underwent at least two back surgeries in January 1996 and March 1997. She experienced chronic lower back pain, neck pain, headaches, leg pain and rediculopathy into the lower extremities. Plaintiff's wife and decedent, Mary Jo Duttry, suffered

from depression and anxiety.

20. From 1995 through the time of Mary Jo Duttry's death, Defendant Fugate MD was her primary treating psychiatrist for purposes of treating her chronic pain, depression and anxiety.

21. From at least February 1998 to Mary Jo Duttry's death on July 25, 1998, Defendant Fugate MD prescribed to Mary Jo Duttry large and frequent quantities of at least Valium, Trazadone Dividose, Percodan, Flurazapam, Remeron, Ambien, and Wellbutrin SR.

22. From 1995 through the time of Mary Jo Duttry's death, Defendant Karls DO was her primary treating physician ("PCP") managing her general medical care, coordinating her referrals, and prescribing medications for a number of ailments including at least chronic pain, anxiety and depression.

23. From at least February 1998 to Mary Jo Duttry's death on July 25, 1998, Defendant Karls DO prescribed to Mary Jo Duttry at least Methocarbimol and MS Contin.

24. For an uncertain period of time prior to Mary Jo Duttry's death, Defendant Rice DMD was her oral surgeon.

25. On at least July 16, 1998, Defendant Rice DMD prescribed to Mary Jo Duttry ten (10) Lortab 7.5/500 mg tablets.

26. On July 25, 1998, Mary Jo Duttry died of a massive overdose of prescription medications, and/or the toxic and synergistic effect of a combination of prescription medications, including at least Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazapam, Remeron, Ambien, and Wellbutrin SR.

27. Plaintiff believes and therefore avers that Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD each had a duty as a medical professional to exercise due diligence in prescribing pain medications, narcotics and psychiatric medications to decedent Mary Jo Duttry, and to coordinate prescriptions of such medications with other treating physicians, medical professionals and pharmacists.

28. Plaintiff believes and therefore avers that Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD each had a duty as a medical professional to exercise due diligence in prescribing pain medications, narcotics and psychiatric medications to decedent

Mary Jo Duttry, to monitor her overall prescription drug intake and to coordinate prescription medications with other treating physicians, medical professionals and pharmacists.

29. Plaintiff believes and therefore avers that Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD each had a duty as a medical professional to exercise due diligence in prescribing pain medications, narcotics and psychiatric medications to decedent Mary Jo Duttry, and to insure that medications they were prescribing were not toxic or synergistic in combination with other medications they were prescribing, or with medications they knew or should have known other medical professionals were prescribing.

30. From at least February 1998, Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD individually prescribed at least the above described narcotic medications, pain medications, and psychiatric medications, which were severally, jointly and/or collectively toxic and synergistic in nature resulting in toxic illness, worsening of her depression and anxiety, and ultimately led to her death by overdose on July 25, 1998.

31. From at least February 1998, Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD carelessly and negligently prescribed at least the above medications when they knew or should have known that she was also receiving medications for the same or related ailments from other physicians and medical practitioners.

32. From at least February 1998, Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD carelessly and negligently over-prescribed at least the above medications when they knew or should have known that she was also receiving medications for the same or related ailments from other physicians and medical practitioners.

33. From at least February 1998, Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD carelessly and negligently over-prescribed at least the above medications when they knew or should have known that the medications could be collectively toxic and synergistic in nature and would likely result in toxic illness, worsening of her depression and anxiety, and possibly overdose and death.

34. Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD breached their duties to refrain from writing or refusing to write prescriptions for medications as described above when they knew or should have known that the medications were severally, jointly and/or

collectively toxic and synergistic in nature and would likely result in toxic illness, worsening of her depression and anxiety, and possibly overdose and death.

35. From at least February 1998, Defendants Thomas Bowser RPh and Cynthia Bowser RPh carelessly and negligently filled prescriptions written by at least Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD, as described above, when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature and would likely result in toxic illness, worsening of her depression and anxiety, and possibly overdose and death.

36. From at least February 1998, Defendants Thomas Bowser RPh and Cynthia Bowser RPh carelessly and negligently dispensed medications prescribed by at least Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD, as described above, when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature and were likely to cause toxic illness, overdose or death.

37. From at least February 1998, Defendants Thomas Bowser RPh and Cynthia Bowser RPh carelessly and negligently filled prescriptions written by at least Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD, as described above, when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature, and failed to inform the prescribing medical practitioners of the likely risk to Mary Jo Duttry.

38. From at least February 1998, Defendants Thomas Bowser RPh and Cynthia Bowser RPh carelessly and negligently filled prescriptions written by at least Defendant Fugate MD, Defendant Karls DO and Defendant Rice DMD, as described above, when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature, and failed to advise the prescribing medical practitioners of the likely combined toxic and synergistic effects upon Mary Jo Duttry.

39. Defendants Thomas Bowser RPh and Cynthia Bowser RPh breached their duties to refuse to dispense prescription medications as described above when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature and would likely result in worsening of her depression and anxiety, and possibly

overdose and death.

40. By filling the above prescriptions and dispensing the above psychiatric medications and narcotics in large quantities and frequency, Defendants Thomas Bowser RPh and Cynthia Bowser RPh breached their duties to exercise the degree of care and vigilance commensurate with the harm which would likely result from dispensing the medications as described herein.

41. Defendants DRMC and Gateway were negligent in failing to have or enforce procedures to insure that their psychiatric personnel, including Dr. Fugate, properly coordinate prescriptions of pain medications, narcotics and psychiatric medications with other physicians, medical professionals and pharmacists.

42. Defendants DRMC and Gateway were negligent in failing to have or enforce procedures to insure that their psychiatric personnel, including Dr. Fugate, exercise proper care in prescribing pain medications, narcotics and psychiatric medications.

43. Defendant Redbank-UPMC was negligent in failing to have or enforce procedures to insure that their medical personnel, including Dr. Karls, properly coordinate prescriptions of pain medications, narcotics and psychiatric medications with other physicians, medical professionals and pharmacists.

44. Defendant Redbank-UPMC was negligent in failing to have or enforce procedures to insure that their medical personnel, including Dr. Karls, exercise proper care in prescribing pain medications, narcotics and psychiatric medications.

45. The carelessness and negligence of the Defendants, as described above, was a direct and proximate cause of the worsening depression, anxiety, overdose and eventual death suffered by Mary Jo Duttry on July 25, 1998.

46. The carelessness and negligence of the Defendants as described herein, increased the risk that the decedent, Mary Jo Duttry, would suffer from worsening depression, anxiety, overdose and eventual death suffered by Mary Jo Duttry on July 25, 1998.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT I

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., a Pennsylvania Corporation, Defendants.

SURVIVAL ACTION

47. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

48. Plaintiff brings this Survival Action under 20 Pa. C.S.A. §3373 and 42 Pa. C.S.A. §8302.

49. As a direct and proximate result of the negligence as described above and hereinafter, Plaintiffs' Decedent, suffered and Defendants are liable for the following damages:

- a. Decedent's emotional distress, depression, pain and suffering leading up to her overdose and death on July 25, 1998;
- b. decedent's loss of income, loss of estimated future earning power less her estimated cost of personal maintenance;
- c. decedent's loss of retirement and social security income;
- d. decedent's other financial losses suffered as a result of her death;
- e. decedent's loss of enjoyment of life; and
- f. all other damages recoverable under the Survival Act.

50. Defendant Fugate MD was negligent as described above and in the following particulars:

- a. In failing to possess the requisite care, knowledge and skill of other psychiatrists in caring for Mary Jo Duttry's chronic pain, depression and anxiety;
- b. in failing to admit Mary Jo Duttry for psychiatric care and observation for Mary Jo Duttry's chronic pain, depression and anxiety;
- c. in failing to refuse to write prescriptions for pain medications, narcotics and psychiatric medications when he knew or should have known of her worsening chronic pain, depression and anxiety; and
- d. in failing to properly monitor her prescriptive drug use and coordinate prescriptions for pain medications, narcotics and psychiatric medications with other physicians, medical professionals and her pharmacists.

51. Defendant DRMC and Gateway were negligent as described above and in the

following particulars:

- a. In failing to have or enforce procedures to insure that their psychiatric personnel, including Dr. Fugate, properly coordinate prescriptions of pain medications, narcotics and psychiatric medications with other physicians, medical professionals and pharmacists; and
- b. in failing to have or enforce procedures to insure that their psychiatric personnel, including Dr. Fugate, exercise proper care in prescribing pain medications, narcotics and psychiatric medications.

52. Defendant Fugate MD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

53. Defendants DRMC's and Gateway's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

54. Defendant DRMC and Gateway are vicariously liable for the negligence of Defendant Fugate MD as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT II

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., a Pennsylvania Corporation, Defendants.

WRONGFUL DEATH ACTION

55. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

56. Plaintiff brings this action pursuant to the Pennsylvania Wrongful Death Act, 42

Pa. C.S.A. Section 8301 and Pa. R.C.P. Section 2202.

57. As a direct and proximate result of the Defendants' negligence as described herein, the Plaintiffs' Decedent suffered and Defendants are liable for the following damages.

- a. Funeral expenses for the Decedent;
- b. expenses for administration related to the Decedent's injuries; and
- c. such other injuries and damages as may be compensable under the Wrongful Death Act.

58. Defendant Fugate MD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

59. Defendants DRMC's and Gateway's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

60. Defendants DRMC and Gateway are vicariously liable for the negligence of the Defendant Fugate MD as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT III

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY P. KARLS, D.O., individually and t/a REDBANK FAMILY PRACTICE – UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE – UPMC, Defendants.

SURVIVAL ACTION

61. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

62. Plaintiff brings this Survival Action under 20 Pa. C.S.A. §3373 and 42 Pa. C.S.A. §8302.

63. Defendant Karls MD was negligent, as described herein, and in the following particulars:

- a. In failing to possess the requisite care, knowledge and skill of other primary care physicians in caring for Mary Jo Duttry's chronic pain, depression and anxiety;
- b. in failing to admit Mary Jo Duttry for psychiatric care and observation for Mary Jo Duttry's chronic pain, depression and anxiety;
- c. in failing to refuse to write prescriptions for narcotic and psychiatric medications when he knew or should have known of her worsening chronic pain, depression and anxiety; and
- d. in failing to properly monitor her prescriptive drug use and coordinate prescriptions for narcotic and psychiatric medications with other physicians, medical professionals and her pharmacists.

64. Defendant Redbank-UPMC was negligent, as described herein, and in the following particulars:

- a. In failing to have or enforce procedures to insure that their medical personnel, including Dr. Karls, properly coordinate prescriptions of pain medications, narcotics and psychiatric medications with other physicians, medical professionals and pharmacists; and
- b. in failing to have or enforce procedures to insure that their medical personnel, including Dr. Karls, exercise proper care in prescribing pain medications, narcotics and psychiatric medications.

65. Defendant Karls MD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

66. Defendant Redbank-UPMC's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

67. Defendant Redbank-UPMC is vicariously liable for the negligence of Defendant Karls MD as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT IV

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY P. KARLS, D.O., individually and t/a REDBANK FAMILY PRACTICE – UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE – UPMC, Defendants.

WRONGFUL DEATH ACTION

68. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

69. Plaintiff brings this action pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. Section 8301 and Pa. R.C.P. Section 2202.

70. As a direct and proximate result of the Defendants' negligence, as described herein, the Plaintiffs' Decedent suffered and Defendants are liable for the following damages.

- a. Funeral expenses for the Decedent;
- b. expenses for administration related to the Decedent's injuries; and
- c. such other injuries and damages as may be compensable under the Wrongful Death Act.

71. Defendant Karl's MD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

72. Defendant Redbank-UPMC's negligence as described herein was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

73. Defendant Redbank-UPMC is vicariously liable for the negligence of Defendant Karls MD as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT V

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, PC., a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, AND JAY L. ARLICK, DMD, PC, a Pennsylvania Professional Corporation, Defendants.

SURVIVAL ACTION

74. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

75. Plaintiff brings this Survival Action under 20 Pa. C.S.A. §3373 and 42 Pa. C.S.A. §8302.

76. Defendant Rice DMD was negligent, as described herein, and in the following particulars:

- a. In failing to possess the requisite care, knowledge and skill of other oral surgeons in caring for Mary Jo Duttry's chronic pain, depression and anxiety;
- b. in failing to refuse to write prescriptions for narcotic and psychiatric medications when he knew or should have known of her worsening chronic pain, depression and anxiety; and
- c. in failing to properly monitor her prescriptive drug use and coordinate prescriptions for narcotic and psychiatric medications with other physicians, medical professionals and her pharmacists.

77. Defendant Rice DMD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

78. Defendants Rice DMD PC and Rice-Arllick DMD PC are vicariously liable for the negligence of Defendant Rice MD as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly or jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT VI

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, PC., a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, AND JAY L. ARLICK, DMD, PC, a Pennsylvania Professional Corporation, Defendants.

WRONGFUL DEATH ACTION

79. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

80. Plaintiff brings this action pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. Section 8301 and Pa. R.C.P. Section 2202.

81. As a direct and proximate result of the Defendant's negligence, as described herein, the Plaintiffs' Decedent suffered and Defendants are liable for the following damages.

- a. Funeral expenses for the Decedent;
- b. expenses for administration related to the Decedent's injuries; and
- c. such other injuries and damages as may be compensable under the Wrongful Death Act.

82. Defendant Rice DMD's negligence, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

83. Defendants Rice DMD PC and Rice-Arllick DMD PC are vicariously liable for the negligence of Defendant Rice MD as described herein.

WHEREFORE, Plaintiffs demand judgment in their favor and against the Defendants in an amount in excess of the jurisdictional limits of Arbitration, jointly, severally or jointly and severally, and demand that this cause be tried before a jury.

COUNT VII

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

BOWSER CORPORATION, a Pennsylvania Corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants.

SURVIVAL ACTION

84. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

85. Plaintiff brings this Survival Action under 20 Pa. C.S.A. §3373 and 42 Pa. C.S.A. §8302.

86. Defendants Thomas Bowser RPh and Cynthia Bowser RPh were negligent, as described herein, and in the following particulars:

- a. In failing to possess the requisite care, knowledge and skill of other pharmacists in filling prescriptions and dispensing medications for Mary Jo Duttry's chronic pain, depression and anxiety;
- b. in failing to refuse to fill prescriptions or dispense medications for narcotic and psychiatric medications when he knew or should have known of her worsening chronic pain, depression and anxiety;
- c. in failing to properly monitor her prescriptive drug use and coordinate prescriptions for narcotic and psychiatric medications with other physicians, medical professionals and pharmacists;
- d. in carelessly and negligently filling prescriptions when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature;
- e. in carelessly and negligently dispensing medications when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature and were likely to cause toxic illness, overdose or death;
- f. in carelessly and negligently filling prescriptions when they knew or should have known that the medications were severally, jointly and/or collectively toxic and synergistic in nature, and failed to inform the prescribing medical practitioners of the likely risk to Mary Jo Duttry;
- g. in carelessly and negligently failing to advise the prescribing medical practitioners of the likely combined toxic and synergistic effects upon Mary Jo Duttry; and
- h. in failing to exercise the degree of care and vigilance commensurate with the harm which would likely result from dispensing the medications as described herein.

87. The negligence and carelessness of Defendants Thomas Bowser RPh and Cynthia Bowser RPh, as described herein, was a substantial factor in causing the injuries, damages and ultimately, the untimely death of the Decedent, Mary Jo Duttry.

88. Defendant Shankel's Pharmacy is vicariously liable for the negligence of Defendants Thomas Bowser RPh and Cynthia Bowser RPh as described herein.

WHEREFORE, Plaintiff respectfully demands judgement in his favor and against defendants, severally, jointly and jointly and severally, in an amount in excess of the jurisdictional limits of arbitration.

COUNT VIII

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

BOWSER CORPORATION, a Pennsylvania Corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants.

WRONGFUL DEATH ACTION

89. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

90. Plaintiff brings this action pursuant to the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. Section 8301 and Pa. R.C.P. Section 2202.

91. As a direct and proximate result of the Defendants' negligence as described herein, the Plaintiffs' Decedent suffered and Defendants are liable for the following damages.

- a. Funeral expenses for the Decedent;
- b. expenses for administration related to the Decedent's injuries; and
- c. such other injuries and damages as may be compensable under the Wrongful Death Act.

92. The negligence and carelessness of Defendants Thomas Bowser RPh and Cynthia

Defendants Thomas Bowser RPh and Cynthia Bowser RPh as described herein.

WHEREFORE, Plaintiffs demand judgment in their favor and against the Defendants in an amount in excess of the jurisdictional limits of Arbitration, jointly, severally or jointly and severally, and demand that this cause be tried before a jury.

COUNT IX

JOHN D. DUTTRY in his own right, Plaintiff,
vs.

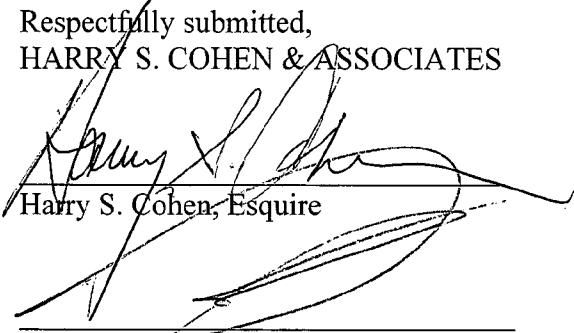
DEFENDANTS

94. The foregoing paragraphs are incorporated herein by reference and made a part hereof as though completely set forth below.

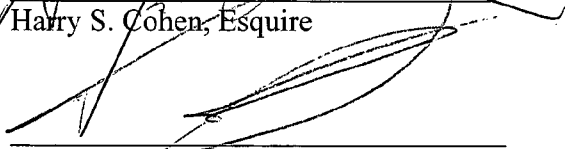
95. As a direct and proximate result of Defendants' negligence as described herein, and the injuries, damages and death suffered by the Wife-Plaintiff, the Husband-Plaintiff, John D. Duttry, suffered a loss of consortium and affection from his wife, Mary Jo Duttry, Deceased.

JURY TRIAL DEMANDED

Respectfully submitted,
HARRY S. COHEN & ASSOCIATES



Harry S. Cohen, Esquire



David J. Lozier, Esquire

VERIFICATION

The undersigned, having read the attached Complaint, verifies that the Plaintiff's Complaint are based on information furnished to counsel, as well as information gathered by counsel in the course of this lawsuit. The language of the Complaint are that of counsel and not of the signers. Signers verify that they have read the within Plaintiff's Complaint, and that they are true and correct to the best of the signers' knowledge, information and belief. To the extent that the contents of the Plaintiff's Complaint, are that of counsel, I have relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsifications to authorities.

Date: _____


John D. Duttry

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator
of the Estate of MARY JO
DUTTRY, deceased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania
Corporation; JEFFREY P. KARLS,
D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
REDBANK FAMILY PRACTICE-UPMC;
JEFFREY W. RICE, DMD; JEFFREY
RICE, DMD, PC, a Pennsylvania
Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ARLICK, DMD, PC, a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendants.

CIVIL DIVISION

G.D. No. 00-12637

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of:

JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK
FAMILY PRACTICE-UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, Defendants.

Counsel of record for this
party:

Wilbur McCoy Otto, Esq.
Pa. I.D. #01524

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

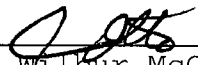
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08-03-00 09:26:20
GD-00-012637

PRAECIPE FOR APPEARANCE

TO: Michael F. Coyne, Prothonotary

KINDLY ENTER our Appearance for Defendants, JEFFREY P. KARLS, D.O., individually and t/a REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE-UPMC.

DICKIE, McCAMEY & CHILCOTE

BY: 
Wilbur McCoy Otto, Esquire
Attorney for Defendant(s)

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

Code:

Issue No:

PRAECIPE FOR APPEARANCE

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581

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

(412) 338-4750 JACKIE01

08-10-00

10:43:36

GD-00-12637

JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

To: Prothonotary of Allegheny County

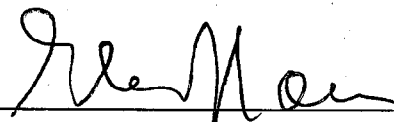
Kindly enter our appearance on behalf of James K. Fugate, M.D., Defendant, in the above-captioned case.

This case will be handled by Giles J. Gaca, Esquire.

JURY TRIAL DEMANDED.

GACA MATIS BAUM & RIZZA

By: _____



Giles J. Gaca, Esquire

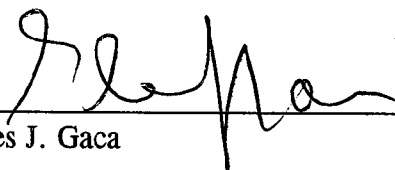
Attorneys for James K. Fugate, M.D.,
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing
Praecipe for Appearance upon all counsel of record by United States, First-class mail, postage
prepaid, this 10th day of August, 2000.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219

GACA MATIS BAUM & RIZZA



Giles J. Gaca

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

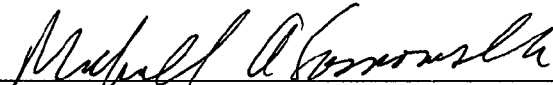
Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

I CERTIFY THAT A TRUE AND CORRECT COPY
OF THE WITHIN HAS BEEN SERVED ON ALL
COUNSEL OF RECORD THIS 9TH DAY OF
AUGUST, 2000.


Attorneys for Named Defendant

CIVIL DIVISION

No. GD 00 – 12637

Code: 010

Type of Pleading:
**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on behalf of Defendant:
**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
PFAFF, MCINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581
FAX (814) 696-9399

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PA
CIVIL DIVISION

No. GD 00 – 12637

JURY TRIAL DEMANDED

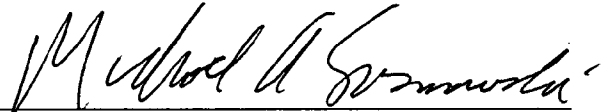
PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter my appearance as counsel of record for the Defendants, **DUBOIS**

REGIONAL MEDICAL CENTER, in the above-captioned action.

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT



Attorneys for Defendant,
DUBOIS REGIONAL MEDICAL CENTER
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

13565 115
NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.
You are hereby notified that on July 24, 2000
a COMPLAINT has been (filed/reinstated) in this case
and you are required to serve the same on or before the
23rd day of August, 2000
MICHAEL F. COYNE, PROTHONOTARY

Copster, deputy

SHERIFF

SURCHARGE

MILEAGE

205

93

298

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE - UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE - UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H;

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

No. GD --00-12637

Code: 010

Type of Pleading:
COMPLAINT IN CIVIL ACTION

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA. 15219
Firm I.D. #813
Phone: (412) 281-3000

PROTHONOTARY
ALLEGHENY COUNTY
JUL 14 PM 2:50

FILED

ATTEST
JUL 25 PM 3:53

SHERIFF'S OFFICE
COUNTY OF ALLEGHENY

[Signature]
SHERIFF

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: Duttry

DEFT.: UPMC - Presbyterian

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 200 LOTHROP STREET
PITTSBURGH, PA 15219

MUNICIPALITY OR CITY WARD: _____

DATE: 7-25 10:00

ATTY'S PHONE: (412) 281-2000

CASE#: 6D00-12637

EXPIRES: _____

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

ATTY: David J. Lorie Esq.

ADDRESS: 985 TWO CHATHAM CTR
PITTSBURGH, PA 15219

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 deputize 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 hearby CERTIFY and RETURN that on the 31 day of July, 2000, at 1240 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. Monaghan & A. Gurni
- ☐ 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: Don Masior (DEPUTY)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: 3



13565
CLEARFIELD \$75.00 7-26
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:

DUTTRY

CASE#: 6A 00-12637

EXPIRES:

DEFT.:

Jeffrey W. Rice & Jay L. Arlick DMD

VS.

DEFT.:

DEFT.:

GARNISHEE:

ADDRESS:

109 Front Street
Clearfield PA

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

MUNICIPALITY OR CITY WARD:

ATTY:

David J. Lorier

DATE:

7-25-00

ADDRESS:

985 TWO Chatham Ctr
Pittsburgh, PA 15219

ATTY'S PHONE:

(412) 281-3000

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

NOW:

Benjamin Cook
Clearfield

19

I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 1st day of Aug, 19 2000, at
9:13 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.

Denise Welker PIC

☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____



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: Duthey

DEFT.: Jeffrey W. Rice. D.M.D VS.

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 109 Front Street
Clear Field PA

MUNICIPALITY OR CITY WARD: _____

DATE: 7-24 2000

ATTY'S PHONE: (412) 281-3000

CASE#: GD-0012637

EXPIRES: _____

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

ATTY: David J. Lozier, Esq.

ADDRESS: 985 Two Chatham Cir
Pittsburgh, PA 15219

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

NOW: By order of Clear Field County I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 15th day of Aug, 19 2000, at 9:13 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.
Denise Weiker, PIC
- ☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____

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: Duttry

DEFT.: Jeffrey Rice, DMD. P.C. VS.

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 109 Front Street
Clearfield, PA

MUNICIPALITY OR CITY WARD: _____

DATE: 7-25 10:00

ATTY'S PHONE: (412) 281-3000

CASE#: 6D00-12637

EXPIRES: _____

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

ATTY: David J. Loyer

ADDRESS: 985 Two Chatham Ctr

Pittsburgh PA 15219

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

NOW: Remy O'Dell Clearfield 19 2000, I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 15th day of Aug, 19 2000, at
9:13 o'clock A.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.
Denise Welker, PIC
- ☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____

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: OUTTRY

DEFT.: Dubois Regional Medical Center, Inc.

DEFT.:

DEFT.:

DEFT.: T/A Behavioral Health Center

ADDRESS: 100 Hospital Avenue
Dubois, PA 15801

MUNICIPALITY OR CITY WARD:

DATE: 7-25 132000

ATTY'S PHONE: (412) 281-3000

ATTY: David J. Lozier

ADDRESS: 985 TWO Chatham Ctr.
Pittsburgh PA 15219

CASE#: GD-00-12637

EXPIRES:

- ☐ 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: 11:45 11-25-00 I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize the Sheriff of Clearfield 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 15th day of Aug, 19 2000, at 11:45 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.
Mary Jo Fish, PIC
- ☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____



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: Duttry

VS.

DEFT.: Bowser Corporation

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 241 W. Long Avenue

DuBoise, PA 15801

MUNICIPALITY OR CITY WARD: _____

DATE: 7-25-00

ATTY'S PHONE: (412) 281-3000

CASE#: GD 00-12637

EXPIRES: _____

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

ATTY: David J. Lorier

ADDRESS: 985 Two Chatham Ctr

Pittsburgh PA 15219

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

NOW: Long up Clearfield 19_____, I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 hearby CERTIFY and RETURN that on the 1st day of Aug, 192000 at 12:05 o'clock PM 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.
Thomas Bowser, PIC
- ☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____

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:

Duthey

DEFT:

CYNTHIA D Bowser R.P.H.

VS.

CASE#: 00-12637

EXPIRES:

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

DEFT:

GARNISHEE:

ADDRESS: 241 W. Long Avenue
Dobois, PA 15801

MUNICIPALITY OR CITY WARD:

ATTY: David J. Lozier

DATE: 7-25-00

ADDRESS: 985 TWO Chatham CTR

ATTY'S PHONE: (412) 281-3200

Pittsburgh PA 15219

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

NOW: Benjamin Clearfield 19 Aug I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize the Sheriff of Clearfield 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 1st day of Aug, 19 2000, at 12:05 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.

Thomas Bowser, PIC

- ☐ 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____



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: Duttry

DEFT.: Thomas E. Bowser, R.P.H. ^{VS.}

DEFT.: _____

DEFT.: _____

GARNISHEE: _____

ADDRESS: 241 W Long Avenue
DuBois PA 15801

MUNICIPALITY OR CITY WARD: _____

DATE: 7-25 2000

ATTY'S PHONE: (412) 281-3000

CASE#: GD00-12637

EXPIRES: _____

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

ATTY: David J. Lorier

ADDRESS: 985 Two Chatham Ctr
Pittsburgh PA 15219

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

NOW: Very Cop Clear Field 19 _____ I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 hearby CERTIFY and RETURN that on the 15th day of Aug, 19 2000, at 12:10 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____

B565

Clearfield 875.00 7-26

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:

DUTTRY

DEFT.:

James K. Fugate, M.D.

DEFT.:

DEFT.:

Gateways Institute & Clinic

ADDRESS:

100 Caldwell Drive

DuBois, PA 15801

MUNICIPALITY OR CITY WARD:

ATTY:

David J. Lozier, Esq.

DATE:

7-24-2000

ADDRESS:

985 Two Chatham Ctr
Pittsburgh, PA 15219

ATTY'S PHONE:

(412) 281-3000

CASE#:

EXPIRES:

- ☐ 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:

Rey OP Clerk
Clear Field

I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 hearby CERTIFY and RETURN that on the 15th day of Aug, 19 2000, at 12:45 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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT:



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:

Duttry

DEFT.:

DEFT.:

DEFT.:

GARNISHEE:

ADDRESS:

100 Caldwell Drive
Dubois, PA 15801

MUNICIPALITY OR CITY WARD:

DATE: 2-25

13 00

ATTY'S PHONE:

(412) 281-3000

ATTY:

David J. Lozier, Esq.

ADDRESS:

985 Two Chatham Ctr.
Pittsburgh, PA 15219

CASE#:

6D-00-12637

EXPIRES:

- ☐ 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:

Renny Co Clerk
Pittsburgh, PA

19

I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize 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 13th day of Aug, 19 2000, at 12:45 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.
Renny Perfoot, PIC
- ☐ 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

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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)

White Copy - Sheriff

Pink Copy - Attorney

DISTRICT: _____



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.: 01-301-CD

Issue No:

PETITION FOR CHANGE OF VENUE
PURSUANT TO PA. R.C.P. 1006(d)(1)

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

2000 AUG 14 PM 3:24
COURT OF COMMON PLEAS

00 AUG 14 PM 3:35
ALLEGHENY COUNTY



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. And Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Petition for Change of Venue

Pursuant to PA. R.C.P. Rule 1006 (d)(1) and in support thereof aver as follows:

1. Plaintiff commenced the instant action by filing a complaint in The Court of Common Pleas of Allegheny County, Pennsylvania on or about July 24, 2000.

2. Although venue may be lawful in Allegheny County as Defendant Redbank-UPMC has its principal place of business in Allegheny County, this action should be transferred to Clearfield County for the following reasons.

3. While Defendant Redbank-UPMC has a principal place of business in Allegheny County, it appears from the complaint that all medical care, treatment and evaluations which form the basis of Plaintiffs' complaint occurred either in Redbank-UPMC located in New Bethlehem, Clarion County, Pennsylvania and/or in Clearfield County.

4. Despite the fact that Redbank-UPMC is located in both Allegheny County and Clarion County, the remaining parties all reside or have a principal place of business in Clearfield County, with the exception of Defendant Karls whose practice is in Clarion County.

5. Therefore it is believed and averred that all medical records and relevant information regarding Plaintiff's cause of action are located in Clearfield County with the exception of records and/or information from Defendant Karls and/or Defendant Redbank-UPMC.

6. It is believed and averred that all locations where medical care, treatment and evaluation which are the basis of Plaintiff's complaint are located in Clearfield County with the exception of care, treatment or evaluations rendered by either Defendant Karls and/or Redbank-UPMC, both of which are located in Clarion County.

7. It is suspected that all witness work and/or reside in Clearfield County with the exception of Defendant Karls and/or any personnel of Redbank-UPMC both of which are located in Clarion County.

8. Defendants, Shankel's Pharmacy and the Bowsers, also maintain that Plaintiff's chosen forum of Allegheny County is oppressive to them.

9. The Clearfield County Courthouse located in Clearfield, Clearfield County, Pennsylvania is approximately three hours from The Court of Common Pleas of Allegheny County.

10. The Allegheny County forum does not provide any access to the sources of proof.

11. The Allegheny County forum does not provide availability of compulsory process for attendance of unwilling witnesses.

12. The Allegheny County forum poses undue costs upon obtaining attendance of willing witnesses.

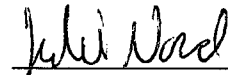
13. The Allegheny County forum does not provide any practical view of premises if such would be appropriate to the action.

14. The Allegheny County forum presents undue expenses and hardships to all the parties and witnesses with the possible exception of Defendant Karls and/or personnel from Redbank-UPMC.

15. As Plaintiffs live in Clearfield County, Plaintiffs will not be prejudiced by the transfer of this action to Clearfield County.

WHEREFORE, Defendants, Bowser Corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. And Cynthia D. Bowser, R. PH., request that this Honorable Court transfer this action to The Court of Common Pleas of Clearfield County.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Marshall, Esquire

PA. I.D. #38575

Julie L. Nord, Esquire

PA I.D. #76126

Attorneys for Bowser Corporation, t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**BRIEF IN SUPPORT OF PETITION
FOR CHANGE OF VENUE**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.

Defendants.

BRIEF IN SUPPORT OF PETITION FOR CHANGE OF VENUE

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. And Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Brief in Support of Petition for Change of Venue Pursuant to PA. R.C.P. Rule 1006 (d)(1) and in support thereof aver as follows:

On or about July 24, 2000, Plaintiffs filed a complaint in the Court of Common Pleas of Allegheny County, Pennsylvania. Plaintiffs claim in paragraph 18 of their complaint that venue is proper in Allegheny County due to the fact that Defendant Redbank-UPMC has a principal place of business in Allegheny County. However, Defendants also aver that Defendant Redbank-UPMC has a regular place of business in New Bethlehem, Clarion County. Furthermore, with the exception of Dr. Karls who maintains a principal place of business in Clarion County, the remaining parties, including Plaintiffs, all reside and/or maintain a principal place of business in Clearfield County,

Under the principle of *forum non conveniens*, the trial court has discretion to transfer the case to a forum where the action could originally have been brought. Pa.R.Civ.P., Rule 1006 (d)(1); *Dulaney v. Consolidated Rail Corporation*, ___ Pa.Super. ___, ___, 715 A.2d 1217, 1218 (1998). "An abuse of discretion occurs when the judge misapplies the law or exercises his judgment in a manner that is manifestly unreasonable or the result of bias, prejudice or ill will." *Id.*, citing, *Johnson v. Henkels & McCoy, Inc.*, ___ Pa.Super. ___, 707 A.2d 237 (1997).

In *Dulaney v. Consolidated Rail Corporation*, the Superior Court was presented with the question of whether the trial court abused its discretion in granting the defendant's petition for change of venue from Philadelphia County to Allegheny County based on *forum non conveniens*. ___ Pa.Super. at ___, 715 A.2d at 218. In that case, plaintiff's cause of action stemmed from an accident that occurred in Ohio. Plaintiff resided in West Virginia and worked out of the defendant's office in Allegheny County at the time of the accident. Moreover, all of the witnesses to the accident and plaintiff's medical providers resided in Ohio, West Virginia and

Western Pennsylvania. The only connection to Philadelphia County was that the defendant conducted business in Philadelphia County. *Id.* at ___, 715 A.2d at 218, 219.

In assessing the issue of whether the trial court abused its discretion in transferring the action from Philadelphia County to Allegheny County, the Superior Court embraced the following principles espoused by the Supreme Court in *Cheeseman v. Lethal Exterminator, Inc.*, 549 Pa. 200, 701 A.2d 156 (1997):

A petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant .

[T]he defendant may meet its burden of showing that the plaintiff's choice of forum is vexatious to him by establishing with facts on the record that the plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff himself. **Alternatively, the defendant may meet its burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute. But, we must stress that the defendant must show more than that the chosen forum is merely inconvenient to him.**

Dulaney, ___ Pa.Super. at ___, 715 A.2d at 1219, *quoting*, *Cheeseman*, 549 Pa. at 213, 701 A.2d at 162. (emphasis added).

Applying the aforementioned law to the facts in *Dulaney*, the Superior Court found that defendant "has demonstrated that a trial in [plaintiff's] chosen forum would have been oppressive and that trial in Allegheny County would be more convenient because of easier access to all of the witnesses and other sources of proof." *Dulaney*, Pa.Super. at ___, 715 A.2d at 1219. Consequently, the Superior Court determined that the lower court did not abuse its discretion when it granted defendant's petition to transfer venue based on *forum non conveniens*. *Id.*

Based on Plaintiff's complaint, all of the alleged events occurred in either Clearfield and/or Clarion County with the majority of the events occurring in Clearfield County. Moreover, Plaintiffs, as well as Shankel's Pharmacy and the Bowers, are located in Clearfield County.

Similar to the facts presented in *Dulaney*, Plaintiffs' chosen forum has only one known connection to the action. In *Dulaney* the only nexus Philadelphia County had to the case was that one of the Defendants conducted business in that county. Here, the *only* known connection Allegheny County has to this matter is that Defendant Redbank-UPMC maintains a principal place of business in Allegheny County. The mere fact that Defendant Redbank-UPMC maintains a principal place of business in Allegheny but that all of the alleged actions occurred in the Clarion County office makes Plaintiffs' choice of forum even more tenuous in the instant case than it was in *Dulaney*.

Defendants, Shankel's Pharmacy and the Bowsers are cognizant of the law that requires them to show that the chosen forum is oppressive and not merely inconvenient to them. To buttress their position that the forum in Allegheny County is oppressive to their defense, Defendants submit that Clearfield, Clearfield County Pennsylvania is at least a three hour drive from the Court of Common Pleas of Allegheny. The location of the events which form the basis of the Plaintiff's complaint occurred in either Clearfield County and/or Clarion County with the majority of the events occurring in Clearfield County. Moreover, it is suspected that all medical records and fact witnesses will derive from Clearfield County with the possible exception of some deriving from Clarion County. Consequently, the Allegheny County forum does not provide any access to sources of proof. It does not provide availability of compulsory process for attendance of unwilling witnesses. The Allegheny County forum poses undue costs upon obtaining attendance of willing witness. It does not provide any practical view of premises if such would be appropriate to this action. Further, as Plaintiffs reside in Clearfield County, Plaintiffs would certainly not be prejudiced by the transfer of this action to Clearfield County.

For the aforementioned reasons, this Honorable Court is warranted in transferring this action to the Court of Common Pleas of Clearfield County. See McCrory v Abraham, 441

Pa.Super. 258, 657 A.2d 499 (1995) (In weighing the private interests of the parties and witnesses, the Superior Court found that the trial court did not abuse its discretion in transferring the action from Philadelphia County to Monroe County on the basis of *forum non conveniens*.)

WEHREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., respectfully requests that this Honorable Court grant the Petition for Change of Venue, Pursuant to Pa. R.C.P. 1006(d)(1) and transfer this action to the Court of Common Pleas of Clearfield County, Pennsylvania.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

PA I.D. #38575

Julie L. Nord, Esquire

PA I.D. #76126

Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2000, upon consideration of the
foregoing Petition, it is hereby ordered that:

(1) A rule is issued upon the Respondent to show cause why the Petitioners are not
entitled to the relief requested;

- (2) The respondent shall file an answer to the petition within ____ days of this date;
- (3) The petition shall be decided under Pa. R.C.P. 206.7;
- (4) Depositions shall be completed within ____ days of this date;
- (5) Argument shall be held on _____, _____, 2000 at ____ a.m./p.m. in
Courtroom _____ of the Allegheny County Courthouse; and
- (6) Notice of the entry of this order shall be provided to all parties by the Petitioner.

BY THE COURT:

_____. J.



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

ORDER

AND NOW, this _____ day of _____, 2000, upon consideration
of Defendant's Petition for Change of Venue Pursuant to Pa. R. Civ. P. Rule 1006(d)(1), and

upon determination that the convenience of the parties and the witnesses would be served substantially thereby, it is hereby ORDERED that the action is transferred to the Court of Common Pleas of Clearfield County, Pennsylvania. It is further ORDERED that the Prothonotary shall forward the record to the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania as in accordance to Pa. R. Civ. P. Rule 1006(d)(1), upon payment by the Petitioner to be taxable as costs in the case.

BY THE COURT:

_____\J.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Petition for Change of Venue Pursuant To PA. R.C.P. 1006(d)(1) and Brief in Support thereof upon all counsel of record by United States First Class Mail, postage prepaid, this 14 day of August, 2000, addressed as follows:

Harry S. Cohen, Esquire
David J. Lozier, Esquire
HARRY S. COHEN & ASSOCIATES
985 Two Chatham Center
Pittsburgh, PA 15219

(Counsel for Plaintiffs)

Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
Pittsburgh, PA 15222

(Counsel for Defendant, James K. Fugate, M.D.)

Wilbur McCoy Otto, Esquire
DICKEY, McCAMEY & CHILCOTE, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222

(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC; UPMC - Presbyterian t/a Rebank Family Practice-UPMC)

Dubois Regional Medical Center, Inc.
100 Hospital Avenue
Dubois, PA 15801

Behavioral Health Center
90 Beaver Drive, Suite 121-D
Dubois, PA 15801

Gateway Institute and Clinic, Inc.
102 Hospital Avenue
Dubois, PA 15801

Jeffrey W. Rice, D.M.D.
90 Beaver Drive
Dubois, PA 15801

Jeffrey Rice, D.M.D., P.C.
90 Beaver Drive
Dubois, PA 15801

Jay L. Arlick, D.M.D., P.C.
90 Beaver Drive
Dubois, PA 15801

DAVIES, McFARLAND & CARROLL, P.C.

BY: Julie L. Nord
M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser Corporation, t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. And Cynthia
D. Bowser, R. PH. five of the Defendants

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional
Corporation; JEFFREY RICE, D.M.D.
and JAY L. ARLICK, D.M.D., P.C. a
Pennsylvania Professional
Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. G.D. 00-12637

Code:

Issue:

Type of Pleading:

PRAECIPE FOR APPEARANCE

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

Robert J. Grimm, Esquire
PA ID No. 55381

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED

OPS#TBARR01
08-21-00 15:23:35
GD-00-012637

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. G.D. 00-12637
his own right, :

Plaintiff, :

VS. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :

Defendants. :

PRAECIPE FOR APPEARANCE

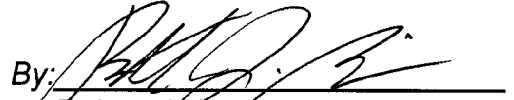
TO: Prothonotary

Please enter our appearance on behalf of defendant, **Gateway Institute and**

Clinic, Inc., a Pennsylvania corporation, in connection with the above-captioned matter.

Respectfully submitted,

ISRAEL, WOOD & PUNTIL, P.C.

By: 
Robert J. Grimm, Esquire
Attorney for Defendant,
Gateway Institute and Clinic, Inc.,
a Pennsylvania corporation

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **Praecipe for Appearance** has been sent via first class mail, postage prepaid to the following this 21st day of August, 2000:

Harry S. Cohen, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff


Robert J. Grimm, Esquire

FILED	
DATE:	8-30-00
TIME:	9:15 PM
PROTHONOTARY	
ALLEGHENY COUNTY	

H.S.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

CIVIL DIVISION

G.D. No. 00-12637

Issue No.

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of JEFFREY P. KARLS,
D.O., individually and t/a REDBANK
FAMILY PRACTICE-UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, Defendants

Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

PRAECIPE FOR APPEARANCE

TO: Michael F. Coyne
Prothonotary

Kindly enter our appearance for Defendants, Jeffrey P. Karls, D.O., individually and t/a Redbank Family Practice-UPMC; UPMC Presbyterian, a Pennsylvania Corporation t/a Redbank Family Practice-UPMC.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: Timothy B Finnerty
Howard A. Chajson, Esquire
Timothy B. Finnerty, Esquire

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Timothy B. Finnerty, Esquire, hereby certify that true and correct copies of the foregoing Praecept for Appearance have been served this 22nd day of August, 2000, by U.S.

first-class mail, postage prepaid, to:

Harry S. Cohen, Esquire
David J. Lozier, Esquire
Harry S. Cohen & Associates
985 Two Chatham Center
Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Dubois Regional Medical Center, Inc.
100 Hospital Drive
Dubois, PA 15801

Behavioral Health Center
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90 Beaver Drive
Dubois, PA 15801

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90 Beaver Drive
Dubois, PA 15801

Jay L. Arlick, D.M.D., P.C.
90 Beaver Drive
Dubois, PA 15801

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire

Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

DICKIE, McCAMEY & CHILCOTE, P.C.

By Timothy B. Finnerty
Timothy B. Finnerty, Esquire
Attorneys for Defendants

00

00 H.S.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC
INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE-
UPMC, UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a/ REDBANK
FAMILY PRACTICE-UPMC, JEFFREY
W. RICE, DMD, JEFFREY RICE, DMD,
P.C. a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C. a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH., and
CYNTHIA D. BOWERS, R.PH.,

Defendants

No.: GD 00-12637

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading:
PRAECIPE FOR ENTRY OF
APPEARANCE

Filed on Behalf of Defendants
Jeffrey W. Rice, DMD, Jeffrey Rice, DMD,
P.C. and Jay L. Arlick, DMD, P.C.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I. D. No. 06787
ALLEN P. NEELY
Court I.D. No. 65302

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
HARRY S. COHEN and
DAVID J. LOZIER

Dated: 8/31/00

OPS\$TBARR01
09-05-00 08:52:35
GD-00-012637

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.P.H., and CYNTHIA D. BOWERS, R.P.H.,

Defendants.

NO. GD-00-12637

JURY TRIAL DEMANDED

PRAECIPE FOR ENTRY OF APPEARANCE

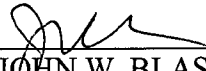
TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendants, JEFFREY W. RICE, DMD,
JEFFREY RICE, DMD, P.C. a Pennsylvania Professional Corporation and JAY L. ARLICK,
DMD, P.C. a Pennsylvania Professional Corporation , in the above matter.

We are authorized to accept service on their behalf.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By:


JOHN W. BLASKO
ALLEN P. NEELY

Attorneys for Defendants
Jeffrey W. Rice, DMD and
Jeffrey Rice, DMD, P.C. and
Jay L. Arlick, DMD, P.C.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: _____

8/31/00

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

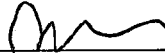
NO. GD-00-12637

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praecipe for Entry of Appearance, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of August, 2000, to the attorney(s) of record, Harry S. Cohen, and David J. Lozier, HARRY COHEN & ASSOCIATES, 985 Two Chatham Center, Pittsburgh, PA 15219 and Michael Sosnowski, P.O. Box 533, Hollidaysburg, PA 16648.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO

ALLEN P. NEELY

Attorneys for Defendants

Jeffrey W. Rice, DMD,

Jeffrey Rice, DMD, P.C., and

Jay L. Arlick, DMD, P.C.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate of
MARY JO DUTTRY, Deceased
and JOHN D. DUTTRY in
his own right,

Plaintiff

CIVIL DIVISION

No. GD00-12637

Code:

ORDER OF COURT

v.

JAMES F. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., Individually
and t/a REDBANK FAMILY PRACTICE-
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE—UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania Professional
Corporation; JEFFREY RICE, D.M.D. and
JAY L. ARLICK, D.M.D., P.C., a
Pennsylvania Professional Corporation;
BOWSER CORPORATION, a Pennsylvania
Corporation, t/a SHANKEL'S PHARMACY
and t/a TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH. and
CYNTHIA D. BOWSER, R.PH.,

JUDGE
GENE STRASSBURGER

Copy sent to:

Counsel of Record
(See Page 2)

Defendants

ALLEGHENY COUNTY
2000 SEP 11 AM 8:54

2000 SEP -8 PM 1:44
COURT OF COMMON PLEAS

DUTTRY v. FUGATE, et al.

No. GD00-12637

COUNSEL OF RECORD

Harry S. Cohen, Esq., Counsel for Plaintiff
985 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Giles J. Gaca, Esq., Counsel for James K. Fugate, M.D.
300 Four PPG Place
Pittsburgh, PA 15222

Wilbur M. Otto, Esq., Counsel for Karls/Redbank/UPMC)
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Michael A. Sosnowski, Esq., Counsel for DuBois Regional Medical Center, et al.
P. O. Box 533
Hollidaysburg, PA 16648-0533

Robert J. Grimm, Esq., Counsel for Gateway Institute
501 Grant Building
310 Grant Street
Pittsburgh, PA 15219

Marshall J. Tindall, Esq., Counsel for Bowser/Shankel/Thomas & Cynthia Bowser
One Gateway Center, 10th Floor
420 Fort Duquesne Boulevard
Pittsburgh, PA 15222

Jeffrey W. Rice, D.M.D.
90 Beaver Drive
DuBois, PA 15801

BY THE COURT:

 _____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

CIVIL DIVISION

No. GD 00-12637

Type of Pleading:

**PLAINTIFF'S NOTICE OF
SERVICE OF
INTERROGATORIES
AND REQUEST FOR
ADMISSIONS DIRECTED TO
DEFENDANTS DR. KARLS AND
UPMC**

Filed on Behalf of:
PLAINTIFF

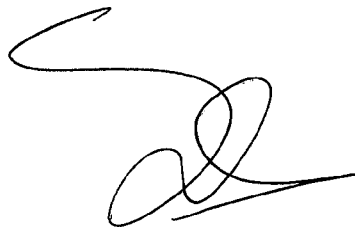
Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

JURY TRIAL DEMANDED

FILED
00 SEP 15 AM 11:42
PROthonotary
ALLEGHENY COUNTY



ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF SERVICE

TO: PROTHONOTARY

I hereby certify that a true and correct copy Plaintiffs' First Set of Interrogatories and Request for Admission Directed to Defendant, Dr. Karls and UPMC was served on the 14th day of September, 2000 by First Class U.S. Mail, postage prepaid upon the following:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222
(counsel for UPMC and Jeffrey P. Karls, M.D.)

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
(Counsel for James K. Fugate, M.D.)

Robert J. Grimm, Esquire
Israel, Wood & Puntil, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219
(counsel for Gateway Institute and Clinic, Inc.)

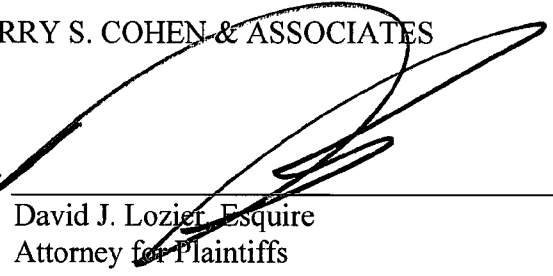
John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699
(counsel for Jeffrey Rice, DMD and
Jay L. Arlick, DMD)

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533
(counsel for Dubious Regional Medical Center)

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
(counsel for Bowser Corporation)

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH and
CYNTHIA D. BOWSER, R. PH,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No.:

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF COUMENTS
DIRECTED TO PLAINTIFF**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH and
Cynthia D. Bowser, R. PH,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

ALLEGHENY COUNTY
PROTHONOTARY
00 SEP 15 PM 3:11
FILED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased and JOHN D. DUTTRY, in
his own right,

CIVIL DIVISION

No.: GD00-12637

Plaintiff,

vs.

JAMES K. FUGATE, M.D., et al.,

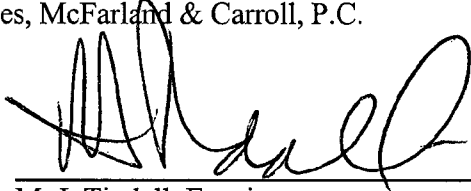
Defendants.

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF**

TO: PROTHONOTARY OF ALLEGHENY COUNTY

TAKE NOTICE that a true and correct copy of Interrogatories and Request for Production of Documents Directed to Plaintiff was served upon all counsel of record this 15th day of September, 2000, by United States First Class Mail, postage prepaid.

Davies, McFarland & Carroll, P.C.

By: 

M. J. Tindall, Esquire

Attorneys for Bowser Corporation, a
Pennsylvania Corporation, t/a Shankel's
Pharmacy and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R.PH and Cynthia D.
Bowser, R.PH

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC
INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE-
UPMC, UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a/ REDBANK
FAMILY PRACTICE-UPMC, JEFFREY
W. RICE, DMD, JEFFREY RICE, DMD,
P.C. a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C. a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH., and
CYNTHIA D. BOWERS, R.PH.,

Defendants

Dated: September 22, 2000

No.: GD 00-12637

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading:

Petition to Change Venue Pursuant to
P.A.R.C.P. 1006(d)(1)

Filed on Behalf of Defendants

Jeffrey W. Rice, DMD, Jeffrey Rice, DMD,
P.C. Jeffrey Rice, DMD and Jay L. Arlick,
DMD, P.C.

Counsel of Record for this

Party: JOHN W. BLASKO

Court I. D. No. 06787

ALLEN P. NEELY

Court I.D. No. 65302

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

811 University Drive

State College, PA 16801

(814) 238-4926

Counsel of Record for

Adverse Party:

HARRY S. COHEN and

DAVID J. LOZIER

FILED
00 SEP 25 AM 11:30
PROTHONOTARY
ALLEGHENY COUNTY



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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. GD-00-12637

JURY TRIAL DEMANDED

PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006(d)(1)
FILED BY DEFENDANTS, JEFFREY W. RICE, D.M.D., JEFFREY RICE D.M.D., P.C.,
JEFFREY RICE, D.M.D. and JAY L. ARLICK, D.M.D., P.C.

AND NOW come the above-listed Defendants, by and through their attorneys,
McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and file the within
Petition to Change of Venue, as follows:

1. The Defendants, Jeffrey W. Rice, D.M.D., Jeffrey W. Rice, D.M.D., P.C., and
JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C., file this petition pursuant to Pa.
R.C.P. 1006(d)(1) to transfer this civil action to the Court of Common Pleas of Clearfield County
for the convenience of the parties and the witnesses, for the reasons set forth below.

2. Plaintiff initiated this action, sounding in medical malpractice, by filing a complaint in the Court of Common Pleas of Allegheny County on or about July 24, 2000.

3. Dr. Rice is an oral and maxillofacial surgeon. His involvement in this case stems solely from his treatment of the Decedent on two occasions at his office in DuBois, Clearfield County.

4. Per Pa. R.C.P. 2179, this action could have been originally brought in Clearfield County, because: (1) All of the events relevant to this case took place there; (2) All of the Defendants conduct business in Clearfield County; and (3) Plaintiff and Decedent resided in Clearfield at the relevant time period.

5. While venue may be technically correct in Allegheny County because one Defendant, UPMC, apparently maintains corporate headquarters in the County, this action should be transferred to Clearfield County for the convenience of the parties and the witnesses and in the interest of judicial economy and efficiency.

6. All of the information required to support this Motion is conveniently set forth within the Plaintiff's Complaint.

- Plaintiff, John Duttry, "at all times material" resided in DuBois, **Clearfield County**; (See Complaint at ¶1)
- Decedent, Mary Jo Duttry, "at all times material" resided in DuBois, **Clearfield County**; (See Complaint at ¶2)
- Decedent, Mary Jo Duttry, died in **Clearfield County** and Letters of Administration were granted by the Register of Wills of Clearfield County; (See Complaint at ¶3)
- Defendant, Dr. Fugate, maintains offices in DuBois, **Clearfield County**; (See Complaint at ¶4)

- Defendant, DuBois Regional Medical Center, Inc., has its principal place of business in DuBois, **Clearfield County**; (See Complaint at ¶5)
- Defendant, Gateway Institute and Clinic has its principal place of business in DuBois, **Clearfield County**; (See Complaint at ¶6)
- Defendant, Dr. Karls, practices medicine and does business at Redbank Family Practice - UPMC, located in New Bethlehem, **Clarion County**; (See Complaint at ¶7)
- Defendant, UPMC Presbyterian t/a Redbank Family Practice - UPMC, maintains its principal places of business in Allegheny County, and a “regular place of business” in New Bethlehem, **Clarion County**;
- The Moving Defendants, Jeffrey W. Rice, DMD, Jeffrey Rice DMD, PC, and Jeffrey W. Rice, DMD and Jay L. Arlick, DMD, PC, maintain principal places of business in DuBois and Clearfield, **Clearfield County**; (See Complaint at ¶¶9-11)
- Defendant, Bower Corporation, has its principal place of business in DuBois, **Clearfield County**; (See Complaint at ¶12)
- Defendants Thomas E. Bowser, R.PH and Cynthia Bowser, R.PH, had “usual places of business at Shankel’s Pharmacy”, located in DuBois, **Clearfield County**;
(See Complaint at ¶13)

7. The Complaint also clearly states that all relevant events and medical care provided by the numerous Defendants was rendered in Clearfield or Clarion County.

8. In short, the only connections which may be found between this lawsuit and Allegheny County are the corporate headquarters for UPMC and the office of the Plaintiff’s Attorneys.

9. The majority of the key witnesses in this case, including the Plaintiff, are located in Clearfield County. A few witnesses are located in Clarion County. Clarion County is located one county to the West of Clearfield County.

10. In addition to the parties to this case, the testimony of employees and staff members of the various Defendants, the majority of whom are located in Clearfield County, will play a significant role in this case.

11. Other medical professionals who treated the Decedent who are not named in this case, and all of whom are located in or around Clearfield County, may possess relevant information and may be required to testify at trial.

12. Mrs. Duttry's death was investigated by the coroner of Clearfield County. The autopsy was performed by Harold Cottle, M.D., a forensic pathologist. Dr. Cottle practices in Blair County, which is contiguous to Clearfield County.

13. The county seat of Clearfield County is the town of Clearfield. Clearfield is located approximately 120 miles from Pittsburgh. The town of DuBois, where the Plaintiff and the majority of the Defendants reside, is located approximately 100 miles from Pittsburgh.

14. All medical records relevant to this case and necessary defense of Plaintiff's claims are located in Clearfield or Clinton County.

15. The time and expense of bringing these witnesses to this Court for trial or other proceedings in this action and the inconvenience to the witnesses will be substantial should this action remain in this county.

16. Attached hereto as Exhibit "A" is an Affidavit executed by the Defendant, Dr. Rice. Therein, Dr. Rice makes various averments relative to his contacts in Clearfield and surrounding counties, the demands of his professional obligations, and his lack of any contacts with Allegheny County.

17. By way of a brief summary:

- Dr. Rice maintains two professional offices in Clearfield County, in the towns of DuBois and Clearfield; he also has an office in St. Mary's, Elk County, and he sees patients on a regular basis in offices of dentists in Brookville, Jefferson County, and Bradford, McKean County.
- Dr. Rice does not conduct any business in Allegheny County.
- Dr. Rice sees an average of two-hundred (200) patients per week and conducts approximately one-hundred (100) surgical procedures, of varying degrees of difficulty, per week.
- Dr. Rice holds office hours until 9:00 p.m. two nights per week, frequently rounds on patients in local hospitals, and takes call for emergencies every night of the week.
- Dr. Rice has one partner in practice: Jay L. Arlick, D.M.D. Doctors Rice and Arlick are the only oral and maxillofacial surgeons in Clearfield County, and also the nearby counties of Elk and McKean.

(See Affidavit of Dr. Rice, attached hereto as Exhibit "A.")

18. Conducting trial outside of Clearfield County would create extreme hardship and oppression by impairing Dr. Rice's ability to respond to the needs and concerns of his patients.

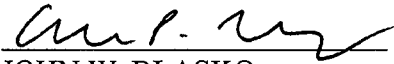
19. Conducting trial in Clearfield County would provide for the least interruption possible to Dr. Rice's surgery schedule.

20. The Plaintiff will not be prejudiced or injured by a transfer of this action to Clearfield County. In fact, the Plaintiff resides in Clearfield County.

WHEREFORE, the Defendants, JEFFREY W. RICE, D.M.D., JEFFREY RICE D.M.D., P.C., JEFFREY RICE, D.M.D. and JAY L. ARLICK, D.M.D., P.C., hereby respectfully request that Honorable Court transfer this action to the Court of Common Pleas of Clearfield County.

Respectfully Submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
ALLEN P. NEELY
Attorneys for Defendant,
JEFFREY W. RICE, D.M.D., JEFFREY
RICE D.M.D., P.C., JEFFREY RICE,
D.M.D. and JAY L. ARLICK, D.M.D., P.C.
811 University Drive
State College, PA 16801
(814) 238-4926



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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. GD-00-12637

JURY TRIAL DEMANDED

AFFIDAVIT OF JEFFREY RICE, D.M.D.

The undersigned, JEFFREY RICE, D.M.D. having been duly sworn in accordance with
law, hereby states that the following information is true and correct to the best of his knowledge,
information and belief.

1. I, Jeffrey W. Rice, D.M.D, am an oral and maxillofacial surgeon. I reside in
Clearfield County, Pennsylvania.

2. I maintain two professional offices in Clearfield County, in the towns of DuBois and Clearfield. I also maintain a professional office in St. Mary's, Elk County. I see patients on a regular basis in offices of dentists in Brookville, Jefferson County, and Bradford, McKean County. The situation as described above was the same in 1998.

3. I treated Mary Jo Duttry on two occasions, March 3, 1998 and July 16, 1998. both of these examinations took place in my office located in DuBois, Clearfield County.

4. I do not maintain any professional offices in Allegheny County, nor do I conduct any business in Allegheny County.

5. I am currently engaged full time in my practice as an oral and maxillofacial surgeon. I see an average of two-hundred (200) patients per week. I conduct an average of one-hundred (100) surgical procedures, of varying degrees of difficulty, per week. Of these surgical procedures, an average of four (4) take place in local hospitals. When I have patients in the hospital, I perform hospital rounds on a daily basis. In addition to the above, unless I am out of town for some reason, I am on call for patient emergencies every night of the week.

6. During any given week, I spend approximately fifty-five (55) hours per week meeting the various obligations of my employment.

7. Although my responsibilities and duties obviously change from time to time depending on the current circumstances, a typical work day begins at 7:30 a.m.. My professional duties usually end at 5:00 p.m., unless there is an emergency. However, I maintain office hours until 9:00 p.m. on Tuesdays and Thursdays.

8. I have one partner in practice: Jay L. Arlick, D.M.D. Dr. Arlick and I are the only oral and maxillofacial surgeons in Clearfield County. Likewise, there are no other oral and maxillofacial surgeons in the nearby counties of Elk and McKean. Furthermore, we are the only practice in North Central Pennsylvania where Medical Assistance patients are accepted.

9. The Allegheny County Courthouse is located approximately one-hundred (100) miles from my DuBois office, and one-hundred and twenty (120) miles from my Clearfield office.

10. Conducting trial outside of Clearfield County would completely impair my ability to respond to the needs and concerns of my patients, and would totally overwhelm the capacity for patient care at my office.

11. Providing for the least interruption possible to the surgery schedule is a paramount concern for me and my patients because there is from time to time a considerable waiting list for surgical procedures. Thus, a two or three week interruption in the performance of surgeries by me would result in an extreme hardship for my patients.

12. No aspects of my professional employment occur in Allegheny County. I do not live there. I do not work there. I do not see or treat patients there. I do not have privileges at any Allegheny County Hospitals. I did not care for Mrs. Duttry there. Mrs. Duttry did not reside in Allegheny County.

13. Because of my many and varied duties in and around Clearfield County, it would be an extreme hardship for me to travel to Allegheny County for this trial. Because, as a Defendant I would be obliged to attend each day of trial, I would be unable to see my patients, perform surgeries, or attend to the other obligations of my professional practice.

14. However, if this trial were to be held in Clearfield County, I could see patients before or after the trial day if needed, and I could perform the other aspects of my job before and after the trial day or, if necessary, during the lunch breaks. This way, I could still see patients with the most pressing problems, and could attend to the acute aspects of my job without significant interruption.

15. Moreover, the medical records and other evidence integral to my defense in this case are all located in Clearfield County, and thus trial in Clearfield County would provide far easier access to evidence and witnesses.

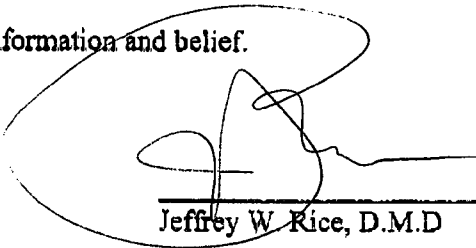
16. My colleague, Dr. Arlick, cannot adequately cover his own patient load, along with all aspects of my job in the event I am required to attend trial in Allegheny County. Consequently, many patients would suffer interruptions in their care were this trial to be held in Allegheny County.

17. For the foregoing reasons, conducting this trial in Allegheny County would cause extreme hardship and would be oppressive to me, my patients, and my colleague, Dr. Arlick.

18. Holding the trial in Clearfield County would substantially ameliorate the hardship by allowing me to continue performing the critical aspects of my job before and after trial, by eliminating unnecessary travel time, and by providing immediate access to medical records, documents, witnesses and other evidence related to my defense.

19. All of the above statements are based upon my personal knowledge, are true and correct to the best of my knowledge, information and belief.

Dated: 9-19-00



Jeffrey W. Rice, D.M.D

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CLEARFIELD } SS.

On this, the 19th day of September, 2000, before me, the undersigned notary public, personally appeared Jeffrey W. Rice, D.M.D, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.



Notary Public

(SEAL)

Notarial Seal
Kristin D. Duttry, Notary Public
DuBois, Clearfield County
My Commission Expires Jan. 30, 2003

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

CIVIL DIVISION

NO. GD-00-12637

JURY TRIAL DEMANDED

ORDER

AND NOW, this _____ day of _____, 2000 upon
consideration of Defendant's Petition for Change of Venue pursuant to Pa. R.C.P. 1006(d)(1),
and it appearing that the convenience of the parties and the witnesses would be served thereby, it
is hereby ORDERED that the action is transferred to the Court of Common Pleas of Clearfield
County. It is further ORDERED that the Prothonotary shall forward the record to the
Prothonotary of the Court of Common Pleas of Clearfield County as provided under Pa. R.C.P.
1006(d)(3), upon equal payment by all Defendants of all costs and fees therefor.

J.

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. GD-00-12637

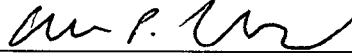
JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition for Change of Venue Pursuant to P.A.R.C.P. 1006(d)(1), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 22nd day of September, 2000, to the attorney(s) of record, Harry S. Cohen, and David J. Lozier, 985 Two Chatham Center, Pittsburgh, PA 15219, Michael Sosnowski, P.O. Box 533, Hollidaysburg, PA 16648, Giles J. Gaca, 300 Four PPG Place, Pittsburgh, PA 15222, Wilbur McCoy Otto, Two PPG Place, Suite 400, Pittsburgh, PA 15222, Robert J. Grimm, Suite 501, Grant Building,

Pittsburgh, PA 15219 and Marshall J. Tindall and Julie L. Nord, One Gateway Center, 10th Floor,
Pittsburgh, PA 15222..

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO

ALLEN P. NEELY

Attorneys for Defendants

Jeffrey W. Rice, DMD,

Jeffrey Rice, DMD, P.C.,

Jeffrey Rice, DMD, and

Jay L. Arlick, DMD, P.C.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC
INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE-
UPMC, UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a/ REDBANK
FAMILY PRACTICE-UPMC, JEFFREY
W. RICE, DMD, JEFFREY RICE, DMD,
P.C. a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C. a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH., and
CYNTHIA D. BOWERS, R.PH.,

Defendants

Dated:

September 22, 2000

No.: GD 00-12637

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading: Brief in Support of
Petition to Change Venue Pursuant to
P.A.R.C.P. 1006(d)(1)

Filed on Behalf of Defendants

Jeffrey W. Rice, DMD, Jeffrey Rice, DMD,
P.C. Jeffrey Rice, DMD and Jay L. Arlick, .
DMD, P.C.

Counsel of Record for this
Party: JOHN W. BLASKO

Court I. D. No. 06787

ALLEN P. NEELY

Court I.D. No. 65302

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:

HARRY S. COHEN and
DAVID J. LOZIER

00 SEP 25 AM 11:31
ALLEGHENY COUNTY
PROthonary

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

CIVIL DIVISION

NO. GD-00-12637

JURY TRIAL DEMANDED

BRIEF IN SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006(d)(1)
FILED BY DEFENDANTS, JEFFREY W. RICE, D.M.D., JEFFREY RICE D.M.D., P.C.,
JEFFREY RICE, D.M.D. and JAY L. ARLICK, D.M.D., P.C.

Preliminary Statement:

The Defendants, Jeffrey W. Rice, D.M.D. and Jeffrey W. Rice, D.M.D., P.C., file this petition pursuant to Pa. R.C.P. 1006(d)(1) to transfer this civil action to the Court of Common Pleas of Clearfield County for the convenience of the parties and the witnesses. All medical care took place in Clearfield County, all witnesses live in or around Clearfield County, and the only contact of any sort with Allegheny County is the corporate headquarters of Defendant UPMC,

which maintains a clinic in Clarion County.

Relevant Facts:

Plaintiff initiated this action, sounding in medical malpractice, by filing a complaint in the Court of Common Pleas of Allegheny County on or about July 24, 2000. Dr. Rice is an oral and maxillofacial surgeon. His involvement in this case stems solely from his treatment of the Decedent on two occasions at his office in DuBois, Clearfield County. While venue may be technically correct in Allegheny County because one Defendant, UPMC, apparently maintains corporate headquarters in the County, a Petition has been filed by these Defendants seeking transfer to Clearfield County for the convenience of the parties and the witnesses and in the interest of judicial economy and efficiency.

The relevant facts are not in dispute. In fact, the information required to support this Motion is conveniently set forth within the Plaintiff's Complaint. Therein, Plaintiff accurately avers that at all times material to this case, the following resided and/or maintained principal places of business in Clearfield County: Plaintiff, Plaintiff's Decedent, Defendant Dr. Fugate, Defendant Gateway Institute, Defendant Dr. Rice, Defendant Bower Corporation, and Defendants Thomas E. Bowser, R.PH and Cynthia Bowser. Defendant Dr. Karls maintains offices in Clarion County. Defendant UPMC Presbyterian t/a Redbank Family Practice, maintains its principal places of business in Allegheny County, and a "regular place of business" in New Bethlehem, Clarion County. (See Complaint at ¶¶ 1 - 13). Also noted in the Complaint is the fact that Letters of Administration were granted by the Register of Wills of Clearfield County. (See Complaint at ¶3). The Complaint also clearly states that all relevant events and medical care provided by the numerous Defendants was rendered Clearfield or Clarion County.

Attached to the Petition of these Defendants as Exhibit "A" is an Affidavit executed by the Defendant, Dr. Rice. Therein, Dr. Rice makes various averments relative to his contacts in Clearfield and surrounding counties, the demands of his professional obligations, and his lack of any contacts with Allegheny County. Briefly stated, Dr. Rice maintains two professional offices in Clearfield County, in the towns of DuBois and Clearfield; he also has an office in St. Mary's, Elk County, and he sees patients on a regular basis in offices of dentists in Brookville, Jefferson County, and Bradford, McKean County. He has a demanding professional schedule as an oral and maxillofacial surgeon which includes seeing approximately two-hundred (200) patients per week and the performance of approximately one-hundred surgical procedures, of varying degrees of complexity. Dr. Rice holds office hours until 9:00 p.m. two nights per week, frequently rounds on patients in local hospitals, and takes call for emergencies every night of the week. Dr. Rice has one partner in practice: Jay L. Arlick, D.M.D. Doctors Rice and Arlick are the only oral and maxillofacial surgeons in Clearfield County, and also the nearby counties of Elk and McKean

Furthermore, Dr. Rice does not practice in Allegheny County. (*See* Affidavit of Dr. Rice, attached to the Petition as Exhibit "A.")

The county seat of Clearfield County is the town of Clearfield. Clearfield is located approximately 120 miles from Pittsburgh. The town of DuBois, where the Plaintiff and the majority of the Defendants reside and/or work, is located approximately 100 miles from Pittsburgh.

Question Presented:

WHETHER THIS MATTER SHOULD BE TRANSFERRED FROM ALLEGHENY COUNTY TO DAUPHIN COUNTY BASED UPON THE DOCTRINE OF *FORUM NON CONVENIENS*?

(Suggested Answer in the Affirmative)

Discussion:

Per Pa. R.C.P. 2179, this action could have been originally brought in Clearfield County, because: (1) All of the events relevant to this case took place there; (2) All of the Defendants conduct business in Clearfield County; and (3) Plaintiff and Decedent resided in Clearfield at the relevant time period. However, as set forth above, the ties to Allegheny County are limited to the fact that UPMC, which is based in Pittsburgh, maintains a facility in New Bethlehem, Clarion County. Per case law and Pa.R.C.P. 1006(d)(1),¹ transfer to Clearfield County is appropriate.

Te Pennsylvania Supreme Court, in Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, 701 A.2d 156, (1997), clarified the appropriate standard a trial court should utilize when considering a defendant's petition to transfer venue pursuant to Pa.R.C.P. 1006(d)(1). In this regard, the Court instructed that:

a petition to transfer venue should not be granted **unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant.**

¹ Pennsylvania Rule of Civil Procedure 1006(d)(1) permits a defendant to petition for a change of venue even though the original venue chosen by the plaintiff is proper:

[f]or the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

See Pa.R.C.P. 1006(d)(1).

Cheeseman, 701 A.2d at 162 (emphasis and underlining supplied); see also Dulaney v. Consolidated Rail Corp., 715 A.2d 1217 (Pa.Super. 1998); and, Johnson v. Henkels & McCoy, Inc., 707 A.2d 237 (Pa.Super. 1997)(discussed infra). In re-defining the test that had been handed down through its earlier decisions in Scola v. AC & S, Inc., 540 Pa. 353, 657 A.2d 1234 (1995); and, Okkerse v. Howe, 521 Pa. 509, 556 A.2d 827 (1989), the Court emphasized that trial courts should not consider their own "private and public interest factors," including "court congestion," in determining whether venue should be transferred. Cheeseman, 701 A.2d at 162-163 (holding that, because "convenience to the court" is not mentioned in Rule 1006(d)(1), it should not be considered in a transfer of venue analysis).

By way of brief background, the facts of Cheeseman involved two consolidated appeals: Cheeseman v. Lethal Exterminators, Inc., a personal injury action, and Forman v. Rossman, a medical malpractice action. Cheeseman, 701 A.2d at 157-58. Both cases involved orders of the Philadelphia County Court of Common Pleas, which had granted petitions to transfer venue from Philadelphia County to Bucks County on the basis of forum non conveniens. Id. On review, the Superior Court had affirmed the lower court decisions in concluding that "a balancing of the facts" showed that a transfer of venue to Bucks County best served the "private interests of the parties and the Philadelphia courts' public interests," including the fact that the Philadelphia courts "were significantly more congested than the courts in Bucks." Id.

In reversing the Superior Court's decision, the Supreme Court began by acknowledging certain "confusing" and/or "ill-advised dicta" from its earlier decisions in Scola and Okkerse, supra, which in the words of the Court, had "caused much difficulty for lower courts in ruling on

petitions for transfer of venue pursuant to Rule 1006(d)(1).” Id. at 161. In clarifying the issue, the Court held that the trial court had committed an abuse of discretion by failing to ensure that the defendants met their burdens of demonstrating, with detailed information on the record, that the plaintiffs’ chosen forum was “oppressive or vexatious” to the defendants so as to justify transfer. Id. at 162. As developed in subsequent decisions Appellate Court decisions, see Johnson and Dulaney, infra, the Supreme Court’s holding in Cheeseman essentially permits a defendant to successfully support a requested venue change by showing either: i) that the plaintiff’s chosen forum is “vexatious” to the defendant, i.e. “designed to harass the defendant, even at some inconvenience to the plaintiff himself;” or, ii) that the plaintiff’s chosen forum is “oppressive” to the defendant, which would include a showing of “more than mere inconvenience to the defendant,” i.e. “easier access to witnesses or other sources of proof,” or “an easier ability to conduct a view of the premises involved in the dispute.” See Cheeseman, 701 A.2d at 162 (citation and footnote omitted). With the newly announced standard in mind, the Superior Court’s decision was reversed, and the consolidated cases remanded to the trial court for further proceedings in accordance with the Supreme Court’s opinion. Id. at 162-63.

The Cheeseman decision has been applied in the cases of Dulaney v. Consolidated Rail Corp., 715 A.2d 1217 (Pa.Super. 1998); and, Johnson v. Henkels & McCoy, Inc., 707 A.2d 237 (Pa.Super. 1997). In Johnson, the Superior Court simply acknowledged the Supreme Court’s recent pronouncement in Cheeseman by holding that the trial court had improperly considered the court’s “private and public interest factors,” including the court’s “substantial backlog of cases,” in transferring the case from Philadelphia County to Montgomery County. Johnson, 707 A.2d at 239-240. In reversing and remanding, the Superior Court held that it would be

necessary to hold the defendant to its burden of showing that trial in Philadelphia County would prove either “oppressive” or “vexatious” to the defendant so as to justify transfer pursuant to Pa.R.C.P. 1006(d)(1). Id.

While Cheeseman and Johnson have gone quite far in providing insight into the correct standard to be applied in the transfer of venue context, the only true Appellate Court guidance on this issue has come from the Superior Court’s 1998 decision in Dulaney v. Consolidated Rail Corp., supra, where the court used the “oppressive and vexatious” standard to uphold a trial court’s decision to transfer venue on the basis of forum non conveniens. Simply stated, the Dulaney court found a Philadelphia County forum to be “oppressive,” and therefore approved the transfer of venue from Philadelphia County to Allegheny County, where the record established that:

“the [underlying] accident occurred in Ohio, appellant [plaintiff] resided in West Virginia and worked out of Conrail’s Allegheny office, and all of the witnesses to the accident and appellant’s medical providers resided in Ohio, West Virginia or Western Pennsylvania.”

Dulaney, 715 A.2d at 1218 (emphasis added). Indeed, the Superior Court expressly recognized that the “the only connection to Philadelphia County [was] that Conrail conducts business in Philadelphia County.” Id. at 1219. The facts of this case are directly on point. In a rather straightforward opinion, the Superior Court held that, pursuant to the standard articulated in Cheeseman, the defendant had properly supported its petition for transfer by presenting detailed information of record showing that the plaintiffs’ chosen forum was “oppressive” so as to justify transfer from Philadelphia County to Allegheny County. Id.

Per Cheeseman, Johnson, Dulaney, the following direction has been provided to trial

courts considering issues of forum non conveniens: 1) a trial court retains substantial discretion in such matters that permits it to render its decision on a case-by-case / fact sensitive basis; 2) convenience of the parties and witnesses, as well as accessibility of the evidence, remain the cornerstones of any forum non conveniens analysis; and perhaps most importantly, 3) transfer of venue remains appropriate where the defendant can establish a record showing it to be either “oppressive or vexatious” to proceed with trial in the forum at issue. See Cheeseman, Johnson, Dulaney, and cases collected therein.

These principles were applied by the Lehigh County Court of Common Pleas in the case of Roth v. Lehigh Valley Hospital Center, et. al., No. 1999-C-776 (Northampton Cty., April 15, 1999)(Freedberg, P.J.) In Roth, the defendants in a medical malpractice action requested transfer of the action from Northampton County to Schuylkill County pursuant to Pa.R.C.P. 1006(d). In utilizing the Cheeseman analysis, and reviewing the evidence of record, the trial court observed that:

“the medical care and treatment rendered to plaintiff’s decedent was at Good Samaritan Regional Medical Center located in Schuylkill County with the exception of Lehigh Valley Hospital located in Lehigh County. . .all events, persons, witnesses, entities and documents associated with the care and treatment rendered to plaintiff’s decedent are within Schuylkill County. . .[and] that the Northampton County Courthouse is seventy miles from Schuylkill County.”

Roth, No. 1999-04-15 at page 4 of 5. Based upon these observations the Roth court concluded as follows:

The averments of the petition and the incorporated affidavit establish that many of the witnesses are in Schuylkill County. Some may be in Lehigh County. There is no showing that any witnesses are in Northampton County. The Schuylkill County witnesses would be required to come to Northampton County, a distance of seventy miles, for proceedings in this matter. The parties would be required to appear on a daily basis for trial. **This is the kind of record that establishes**

oppressiveness rather than mere inconvenience. Given the number of witnesses and parties who are in Schuylkill County and the seventy-mile distance between Schuylkill County and Northampton County, this case ought to be litigated in the Court of Common Pleas of Schuylkill County.

Roth, No. 1999-04-15 at page 4 of 5 (emphasis added). This case is directly on point.

That Clearfield County is the county which contains the most witnesses and evidence in this case cannot reasonably be disputed. That Clearfield County provides easier access than Allegheny County to the witnesses and evidence which may need to come from Clearfield, Clarion and Blair Counties is likewise, an indisputable geographical fact. However, even more striking than the geographical remoteness of Plaintiff's chosen forum is the extreme hardship to Defendants which would be caused by conducting this trial in Allegheny County. This hardship is detailed in the Affidavits supplied by Defendants.

Dr. Rice has submitted an extremely detailed Affidavit in support of this Petition. This Affidavit details an "average week" for him and demonstrates with specificity, how a trial in Allegheny County would adversely affect him. He would be unable to attend to his normal duties, and because of that reason, both he and his patients and his coworkers and their patients would suffer. His patients would miss appointments and necessary surgeries. Patient care would be adversely affected. Contrastingly, if the trial were held in Clearfield County, this would minimize to great extent, the interruption of his professional practice. He could arrange to see patients before or after the trial day. He could see non-surgical patients after the trial day, during evening hours, if necessary. He could access medical records within a reasonable time to answer questions and perform consultations. He could review patient charts in the evenings. In general, he could remain accessible to the patients and coworkers which comprise his professional

practice.

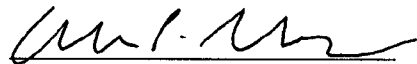
Fundamentally, it would be unjust, oppressive and unfair to burden all of the Defendants, their patients, their coworkers and their witnesses by forcing them to come to Allegheny County for trial. Defendants have an undeniable right to have all of the relevant evidence and witnesses available to them for use in their defense. Defendants have a right to confront and cross examine Plaintiff and such witnesses as Plaintiff may call with their evidence and to present their own witnesses to refute Plaintiff's claims. Plaintiff should not be permitted to frustrate the proper defense of this case by choosing a forum with no connection whatsoever to the underlying dispute.

This Petition is not based upon the Court congestion factors rejected in Cheeseman. Rather, this Petition is firmly rooted in the indicia of oppression specifically identified by the Cheeseman, Johnson, and Delaney trilogy, specifically, lack of access to necessary witnesses and evidence and general hardship to the parties. This is obviously the type of showing by the defendant that the Supreme Court intended in Cheeseman. Indeed, it is difficult to imagine any case with less connection to the forum county than this one.

Respectfully Submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By:



JOHN W. BLASKO

ALLEN P. NEELY

Attorneys for Defendant,

JEFFREY W. RICE, D.M.D., JEFFREY

RICE D.M.D., P.C., JEFFREY RICE,

D.M.D. and JAY L. ARLICK, D.M.D., P.C.

811 University Drive

State College, PA 16801

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. GD-00-12637

JURY TRIAL DEMANDED

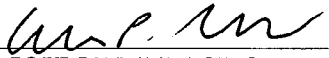
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief in Support of Petition for
Change of Venue Pursuant to PA.R.C.P. 1006(d)(1), in the above-referenced matter was mailed
by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this
22nd day of September, 2000, to the attorney(s) of record, Harry S. Cohen, and David J.

Lozier, 985 Two Chatham Center, Pittsburgh, PA 15219, Michael Sosnowski, P.O. Box 533,
Hollidaysburg, PA 16648, Giles J. Gaca, 300 Four PPG Place, Pittsburgh, PA 15222, Wilbur
McCoy Otto, Two PPG Place, Suite 400, Pittsburgh, PA 15222, Robert J. Grimm, Suite 501,

Grant Building, Pittsburgh, PA 15219 and Marshall J. Tindall and Julie L. Nord, One Gateway
Center, 10th Floor, Pittsburgh, PA 15222..

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
ALLEN P. NEELY
Attorneys for Defendants
Jeffrey W. Rice, DMD,
Jeffrey Rice, DMD, P.C.,
Jeffrey Rice, DMD, and
Jay L. Arlick, DMD, P.C.

00 SEP 28 PM 2: 23

PROthonotary
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. GD 00-12637

Type of Pleading:
**PLAINTIFF'S REPLY TO
PETITION OF BOWSER
DEFENDANT'S FOR
CHANGE OF VENUE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

**PLAINTIFF'S REPLY TO PETITION OF BOWSER DEFENDANT'S
FOR CHANGE OF VENUE**

AND NOW, comes the Plaintiff, JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, DECEASED, and in his own right, by and through his attorneys

HARRY S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE, and sets forth the following REPLY TO PETITION OF BOWSER DEFENDANT'S FOR CHANGE OF VENUE:

1. Plaintiff admits this action was commenced by Complaint filed on July 24, 2000.

2. Admitted in part and denied in part. Plaintiff admits that venue for this action may be properly had before the Court of Common Pleas of Allegheny County. Plaintiff denies, however, that the action should nonetheless be transferred to Clearfield County.

3. Plaintiff admits that Defendant Red Bank-UPMC has its principal place of business in Allegheny County but that all of the medical care at issue in this case was rendered in Clearfield and Clarion County.

4. Plaintiff admits that Defendant Red Bank-UPMC has offices in both Allegheny County and Clarion County and that the remaining Defendants reside in or have their principal places of business in Clarion and/or Clearfield Counties.

5. Denied as stated. To the contrary, Plaintiff admits that, upon information and belief, medical and employment records of Defendant Red Bank-UPMC would be located in both Allegheny County and Clarion County and that the remaining Defendants' records are most likely located in Clarion and/or Clearfield Counties. However, with the magic of modern mail and copying technology, Plaintiff has already acquired most of the relevant medical records and provided them to Counsel for all Defendants so that the location of original medical records is irrelevant.

6. Plaintiff admits that the medical care provided by Defendant Red Bank-UPMC and Defendant Dr. Karls was rendered in Clarion County and that all of the medical care at issue by the remaining defendants was rendered in Clearfield County.

7. Denied. While Plaintiff's believe that most medical witnesses foreseeable at this early stage currently work or reside in Clarion and/or Clearfield Counties, agency and employment witnesses related to Defendant Red Bank-UPMC and Defendant Dr. Karls work or reside in Allegheny and Clarion Counties

8. Denied. While the forum chosen by Plaintiff's may be inconvenient to Defendants Bowser, it was not chosen in a vexatious manner or to oppress any Defendant. To the contrary, it was a forum of convenience to at least one set of Defendants, Defendant Red Bank-UPMC and Defendant Dr. Karls, which is all that may be expected in multi-County litigation.

9. Plaintiff admits that the Clearfield County Courthouse is approximately three (3) hours from Pittsburgh.

10. Denied. To the contrary, Plaintiff admits that, upon information and belief, medical and employment records of Defendant Red Bank-UPMC would be located in both Allegheny County and Clarion County and that the remaining Defendants' records are most likely located in Clarion and/or Clearfield Counties. However, with the magic of modern mail and copying technology, Plaintiff has already acquired most of the relevant medical records and provided them to Counsel for all Defendants so that the location of original medical records is irrelevant.

11. Denied. To the contrary Pa. Rules of Court provide for issuance and service of a subpoena by any Pennsylvania court upon any person within the Commonwealth of Pennsylvania. See Pa. R.C.P. 4009.21, 4009.22 and 234.2.

12. Denied. While the forum chosen by Plaintiff's may be inconvenient to Defendants Bowser, it was not chosen in a vexatious manner or to oppress any Defendant. To the contrary, it was a forum of convenience to at least one set of Defendants, Defendant Red Bank-UPMC and Defendant Dr. Karls, which is all that may be expected in multi-County litigation. Plaintiff's counsel will gladly agree to take discovery depositions of parties and non-parties in Clearfield and Clarion County upon agreement of all counsel.

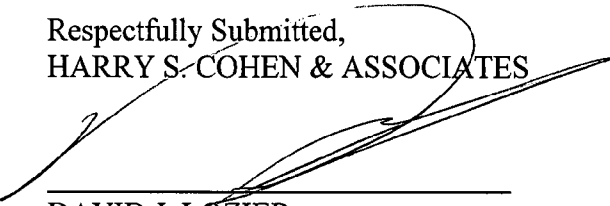
13. Denied. There is no "view" relevant at this time and "view" of locations is rarely requested in medical malpractice cases.

14. Denied. While the forum chosen by Plaintiff's may be inconvenient to Defendants Bowser, it was not chosen in a vexatious manner or to oppress any Defendant. To the contrary, it was a forum of convenience to at least one set of Defendants, Defendant Red Bank-UPMC and Defendant Dr. Karls, which is all that may be expected in multi-County litigation. Plaintiff's counsel will gladly agree to take discovery depositions of parties and non-parties in Clearfield and Clarion County upon agreement of all counsel.

15. Denied in part and admitted in part. Plaintiff admits that he resides in Clearfield County. However, he is entitled to chose any forum he deems to be convenient to himself and his counsel as well as appropriate under the rules of venue and jurisdiction, for Plaintiff that selection included Allegheny County.

WHEREFORE, Plaintiff respectfully prays that the Petition for Change of Venue be denied.

Respectfully Submitted,
HARRY S. COHEN & ASSOCIATES

By: 

DAVID J. LOZIER

VERIFICATION

The undersigned, having read the attached Complaint, verifies that the Plaintiff's Reply to Petition of Bowser Defendant's for Change of Venue are based on information furnished to counsel, as well as information gathered by counsel in the course of this lawsuit. The language of the Reply to Petition of Bowser Defendant's for Change of Venue are that of counsel and not of the signers. Signers verify that they have read the within Reply to Petition on Bowser Defendant's for Change of Venue, and that they are true and correct to the best of the signers' knowledge, information and belief. To the extent that the contents of the Reply to Petition on Bowser Defendant's for Change of Venue, are that of counsel, I have relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsifications to authorities.

Date: 9-26-00

John D. Duttry
John D. Duttry

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of Plaintiff's Reply to Petition of Bowser Defendants for Change of Venue was been served to the following by first class mail, postage prepaid on the 27th day of September, 2000:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

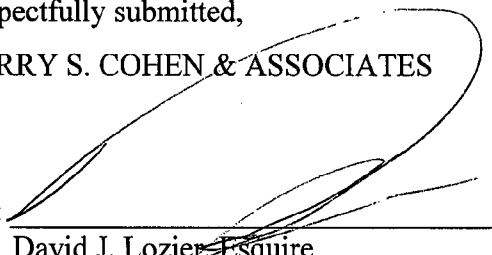
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

00 SEP 28 PM 2:23

JUDICIAL
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

No. GD 00-12637

Type of Pleading:
**PLAINTIFF'S AFFIDAVIT IN
REPLY TO PETITION
FOR CHANGE OF VENUE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

**PLAINTIFF'S AFFIDAVIT IN REPLY TO PETITION
FOR CHANGE OF VENUE**

STATE OF PENNSYLVANIA	)
	)
COUNTY OF ALLEGHENY	)

Before me, the undersigned notary public, did personally appear JOHN D. DUTTRY, and deposes and says the following:

“1. I, John D. Duttry, am the surviving spouse and Executor of the Estate of Mary Jo Duttry, deceased. Mary Jo Duttry died on July 25, 1998. In the final months before her death, Mary Jo Duttry treated with and was prescribed medications by, Dr. James Fugate, Dr. Jeffrey Karls, and Dr. Jeffrey Rice.

2. After reasonable investigation, to the best of my knowledge, the Bowser Defendants filled all of these prescriptions at Treasure Lake Pharmacy and Shankel's Pharmacy, DuBois, Clearfield County.

3. In the final months before her death, Mary Jo Duttry treated with Dr. Fugate through his offices at both the DuBois Regional Medical Center's Behavioral Health Center, in DuBois, Clearfield County, and Gateway Institute, in DuBois, Clearfield County.

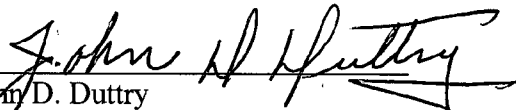
4. In the final months before her death, Mary Jo Duttry treated with Dr. Karls through his offices at Redbank Family Practice --- UPMC in New Bethlehem, Clarion County. Dr. Karl and his clinic identify themselves to their patients as employees and a subsidiary of UPMC by signs outside the clinic, the UPMC logo on their prescription sheets, See Exhibit "A", and by their description in the materials provided to me and my wife through our medical insurer, Blue Cross, See Exhibit "B". After reasonable investigation, to the best of my knowledge UPMC has its main offices in Pittsburgh, Allegheny County.

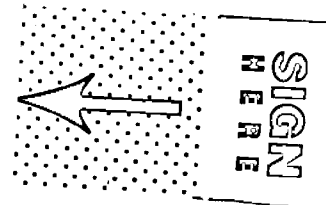
5. In the final months before her death, Mary Jo Duttry treated with Dr. Rice at his offices in DuBois, Clearfield County.

6. I understand that legally I may legally choose to file this civil suit in any county where any of the Defendants live or work or have business offices, these include Clearfield County, Clarion County and Allegheny County.

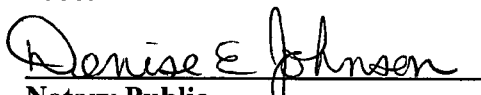
7. I consider all three of these counties to be convenient for my purposes. All three counties are within an easy drive of my home in western Clearfield County, are

convenient for my attorneys, will reduce my costs of suit, and it is convenient for
Defendants Karls and Redbank—UPMC.”

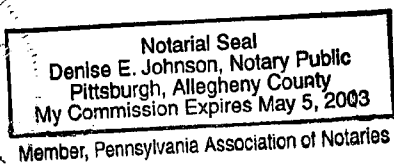

John D. Duttry



SWORN TO this 26 day of September
2000.


Notary Public

MY COMMISSION EXPIRES:



CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of Plaintiff's Affidavit in Reply to Petition of Bowser Defendants for Change of Venue was been served to the following by first class mail, postage prepaid on the 27th day of September, 2000:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

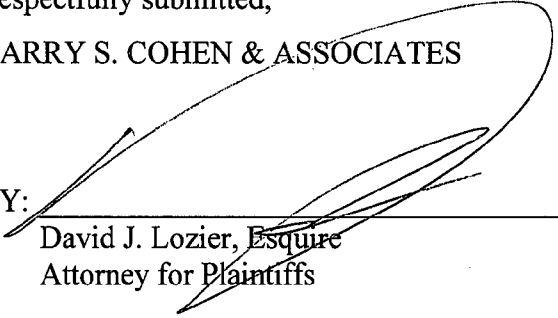
Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY:



David J. Lozier, Esquire
Attorney for Plaintiffs

GD-00-12637
CSE RV

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

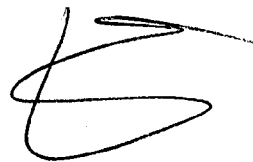
vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

CIVIL DIVISION

19



NO. GD-00-12637

JURY TRIAL DEMANDED

Type of Pleading:

**CERTIFICATE OF SERVICE OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS FOR
ANSWER BY PLAINTIFF (SET
ONE), REQUEST FOR
PRODUCTION OF
DOCUMENTS (SET TWO) AND
EXPERT INTERROGATORIES**

Date:

9/25/00

00 SEP 29 PM 1:23
JUDICIAL
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

CIVIL DIVISION

NO. GD-00-12637

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that Defendants Rices' and Arlick's First Set of Interrogatories and Request for Production of Documents, Second Request for Production of Documents and Expert Interrogatories for Answer by Plaintiff were mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 28th day of September, 2009 to the attorneys of record, David J. Lazier, Esquire, HARRY S. COHEN & ASSOCIATES, 985 Two Chatham

Center, Pittsburgh, PA 15219; Julie Nord, Esquire, One Gateway Center, 10th Floor, Pittsburgh, PA, 15222; Michael Sosonowski, Esquire, P. O. Box 533, Hollidaysburg, PA 16648; Giles J. Gaca, Esquire, 300 Four PPG Place, Pittsburgh, PA 15222; Howard Chajson, Esquire, 400 Two PPG Place, Pittsburgh, PA 15222; and Robert Grimm, Esquire, Suite 501, Grant Building, Pittsburgh, PA 15219.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO

ALLEN P. NEELY

Attorneys for Defendants

Jeffrey W. Rice, DMD.

Jeffrey Rice, DMD, P. C.,

Jeffrey Rice, DMD, and

Jay L. Arlick, DMD, P. C.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

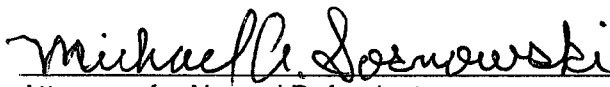
Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

I CERTIFY THAT A TRUE AND CORRECT COPY
OF THE WITHIN HAS BEEN SERVED ON ALL
COUNSEL OF RECORD THIS 28th DAY OF
SEPTEMBER, 2000.


Attorneys for Named Defendant

CIVIL DIVISION

No. GD 00 – 12637

Code: 010

Type of Pleading:

**AFFIDAVIT IN SUPPORT OF
DEFENDANT, DUBOIS REGIONAL
MEDICAL CENTER'S, PETITION FOR
CHANGE OF VENUE**

Filed on behalf of Defendant:

**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:

**MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207**

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

P.O. Box 533

Hollidaysburg, PA 16648-0533

(814) 696-3581

FAX (814) 696-9399



FILED
00 SEP 29 PM 1:46
PROthonotary
ALLEGHENY COUNTY

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PA
CIVIL DIVISION

No. GD 00 – 12637

JURY TRIAL DEMANDED

**AFFIDAVIT IN SUPPORT OF DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER'S
PETITION FOR CHANGE OF VENUE**

Gregory J. Volpe, ACSW, LSW, Manager of Social Work, Pastoral Care, Utilization Review,
Risk Management and Regulatory Compliance of DuBois Regional Medical Center, does hereby
depose and state:

1. DuBois Regional Medical Center is a Pennsylvania corporation with its
principal place of business and principal facilities located in DuBois, Clearfield County,
Pennsylvania.

2. DuBois Regional Medical Center (DRMC) does not have any facilities, nor
does it do any business in Allegheny County.

3. Any medical services rendered to decedent Mary Jo Duttry at DuBois Regional Medical
Center, including approximately eighteen (18) emergency room presentations and twelve (12)
inpatient admissions, all occurred in DuBois, Clearfield County, Pennsylvania.

4. Any employee of DRMC who assisted in the evaluation or treatment of decedent Duttry during any of her hospitalizations or emergency room presentations is a resident of Clearfield County or an adjacent county.

5. To the best of my knowledge, the vast majority of medical records, charts, laboratory studies, prescription records and other documentation pertaining to Mary Jo Duttry's medical treatment are located in Clearfield County or an adjacent county.

6. For the DuBois Regional Medical Center employees who may be witnesses to treatment rendered to decedent Duttry, as well as the medical witnesses who are affiliated with DRMC, travel to Allegheny County will require significantly greater time for them and will require the Hospital to give them time off and/or provide additional coverage than if the litigation were in Clearfield County.

7. Clearfield is approximately twenty-one (21) miles from DuBois. Pittsburgh is approximately ninety-five (95) miles from DuBois.

8. DuBois Regional Medical Center has no contact, either generally, or specifically through this case, with Allegheny County.

9. The logistical and financial burdens of conducting litigation and/or a trial in Allegheny County for DuBois Regional Medical Center is extensive for the reasons I have set forth above. However, litigating this case in Clearfield would require far less travel on the part of potential witnesses, would allow the Hospital greater access not only to its own records, but to those of other defendants in this case, and would impose a substantially lower burden than would litigating in Allegheny County.

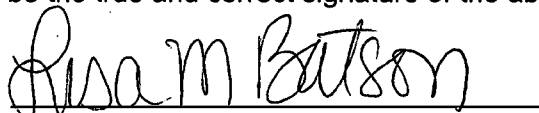

Gregory J. Volpe

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CLEARFIELD)

ss:

Personally subscribed and acknowledged before me this 26th day of September, ~~1999~~ 2000, to be the true and correct signature of the above-named party.


Notary Public

Notarial Seal
Lisa M. Batson, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 15, 2001
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I, MICHAEL A. SOSNOWSKI, ESQUIRE, hereby certify that a true and correct copy of the within **Affidavit in Support of Defendant DuBois Regional Medical Center's Petition for Change of Venue**, filed on behalf of Defendant DuBois Regional Medical Center, was served this 28th day of September, 2000 upon the following parties/counsel of record:

David Lozier, Esquire
Harry S. Cohen Associates
985 Two Chatham Center
Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Julie Nord, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Howard A. Chajson, Esquire
Dickie McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntill, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801

PFAFF, McINTYRE, DUGAS & HARTYE

By Michael A. Sosnowski
Attorneys for Defendant
DUBOIS REGIONAL MEDICAL CENTER
MICHAEL S. SOSNOWSKI, ESQUIRE
PA ID# 67207
P.O. Box 533
Hollidaysburg PA 16648-0533
(814) 696-3581
FAX: (814) 696-9399

FILED
OCT -5 PM 3:10
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

Code:

Issue No:

ANSWER

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581

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

(412) 338-4750

JURY TRIAL DEMANDED

OPS#AMYN001
10-05-00 15:11:05
GD-000-011637

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

ANSWER

JAMES K. FUGATE, M.D., Defendant, by his attorneys, Gaca Matis Baum & Rizza,
files the following Answer to Plaintiff's Complaint:

1. If any factual allegations in the Complaint are not responded to in the following paragraphs, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of said allegations.

2. Each paragraph of this Answer incorporates by reference all of the other paragraphs of the Answer.

3. All specific and implied allegations that the Defendant was acting by and through agents, servants and employees are denied. At all times Defendant acted as an independent contractor, individually and not by and through agents, servants and employees. All other persons providing health care were not acting as agents, servants and employees of Defendant.

4. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2 and 3.

5. That portion of paragraph 4 which alleges that Defendant had a usual place of business at Gateway Institute and Clinic is denied. The remaining allegations in paragraph 4 are admitted.

6. Paragraphs 5 through 13, 15 through 17, 22 through 25 and 35 through 44 are directed to other defendants and responses thereto are not required of this Defendant. However, insofar as said paragraphs may be construed to allege or imply negligence of this Defendant, said paragraphs are denied.

7. Paragraph 14 is denied. At all times, Defendant functioned as an independent contractor.

8. Paragraphs 18, 45 and 46 are denied.

9. The allegations in paragraph 19 are admitted insofar as said allegations are

consistent with complete recordations in the medical records which are incorporated by reference. Insofar as said allegations are inconsistent with, contrary to, or not recorded in said medical records, said allegations are denied.

10. In response to paragraph 20, Defendant treated Mrs. Duttry from 1995 through the time of her death as set forth in his records. Any allegations inconsistent with the treatment set forth in Defendant's records are denied.

11. In response to paragraph 21, Defendant treated Mrs. Duttry from February, 1998, to her death as set forth in his records. That portion of paragraph 21 which alleges that Defendant prescribed large and frequent quantities of medications is denied. Defendant's treatment and prescriptions of medications were proper under the circumstances.

12. That portion of paragraph 26 which alleges that Mrs. Duttry died on July 25, 1998, is admitted. The remaining allegations of paragraph 26 are denied. The Coroner's report and the initial death certificate list the cause of death as "combined (illegal and prescription) multiple, acute drug over-dosage."

13. Paragraphs 27 through 34 are denied insofar as they allege or imply any improper conduct on behalf of Defendant. At all times, Defendant provided proper treatment to Mrs. Duttry and his prescriptions of medications were proper and reasonable with the information provided to him. Defendant's conduct did not cause or contribute to Mrs. Duttry's death.

COUNT I

14. In response to paragraph 47, Defendant incorporates by reference the paragraphs of this Answer which respond to the paragraphs incorporated in paragraph 47.

15. Paragraph 48 is denied insofar as it may be construed to allege or imply any right of recovery against Defendant.

16. Paragraphs 49 through 54 are denied.

COUNT II

17. In response to paragraph 55, Defendant incorporates by reference the paragraphs of this Answer which respond to the paragraphs incorporated in paragraph 55.

18. Paragraph 46 is denied insofar as it may be construed to allege or imply a right of recovery against Defendant.

19. Paragraphs 57 through 60 are denied.

COUNTS III THROUGH VIII

20. Paragraphs 61 through 92 are directed to other Defendants and responses thereto are not required of this Defendant. However, insofar as said paragraphs may be construed to allege or imply negligence of this Defendant, said paragraphs are denied.

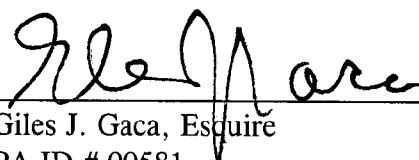
COUNT IX

21. In response to paragraph 94, Defendant incorporates by reference the paragraphs of this Answer which respond to the paragraphs incorporated in paragraph 94.

22. Paragraph 95 is denied.

WHEREFORE, Defendant denies any liability to Plaintiff and demands judgment.

GACA MATIS BAUM & RIZZA

By: 

Giles J. Gaca, Esquire

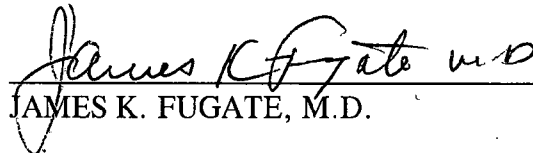
PA ID # 00581

Attorneys for James K. Fugate, M.D.,
Defendant

VERIFICATION

I, JAMES K. FUGATE, M.D., have read the foregoing ANSWER. The statements therein are 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 unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.


JAMES K. FUGATE, M.D.

Date: 10-25-02

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing ANSWER upon all counsel of record by United States, First-class mail, postage prepaid, this 4th day of October, 2000.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219
Counsel for Plaintiff

Howard A. Chajson, Esquire
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
Counsel for Karls/Redbank/UPMC

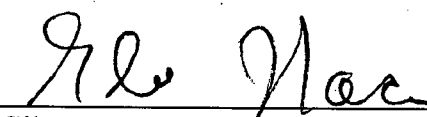
Michael A. Sosnowski, Esquire
P. O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical Center, et al.

Robert J. Grimm, Esquire
501 Grant Building
Pittsburgh, PA 15219
Counsel for Gateway Institute

Marshall J. Tindall, Esquire
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Counsel for Bowser/Shankel/Thomas & Cynthia Bowser

Alan Neely, Esquire
811 University Drive
State College, PA 16801

GACA MATIS BAUM & RIZZA


Giles J. Gaca, Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, 00 OCT -5 PM 3:41
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**AFFIDAVITS IN SUPPORT OF
PETITION FOR CHANGE OF VENUE
PURSUANT TO PA. R.C.P. 1006(d)(1)**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
three of the Defendants

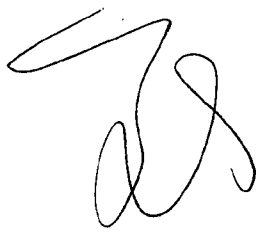
Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IS SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF CYNTHIA D. BOWSER, R.PH

I, Cynthia D. Bowser, R.PH, being duly sworn, depose and state as follows:

1. I reside in Clearfield County.

2. I am an officer of Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy.

3. Both Shankel's Pharmacy and Treasure Lake Pharmacy are located in Clearfield County.

4. My residence as well as each of the Pharmacies are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

5. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

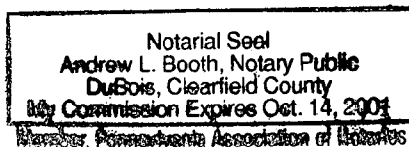
6. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

7. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to myself as a Defendant.

Cynthia D. Bowser, R.P.H.
Cynthia D. Bowser, R.P.H.,

Sworn to and subscribed before me this
4th day of Oct., 2000.

Andrew L. Booth
Notary Public



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IS SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF THOMAS E. BOWSER, R.PH

I, Thomas E. Bowser, R.PH, being duly sworn, depose and state as follows:

1. I reside in Clearfield County.

2. I am an officer of Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy.

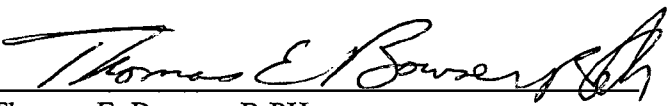
3. Both Shankel's Pharmacy and Treasure Lake Pharmacy are located in Clearfield County.

4. My residence as well as each of the Pharmacies are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

5. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

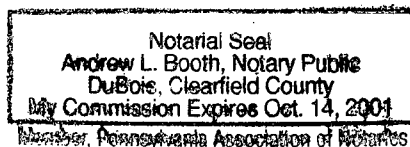
6. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

7. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to myself as a Defendant.


Thomas E. Bowser, R.PH,

Sworn to and subscribed before me this
4th day of Oct., 2000.


Notary Public



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
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HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IN SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF CYNTHIA D. BOWSER, R.PH, PRESIDENT OF BOWSER CORPORATION
t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY

I, Cynthia D. Bowser, R.PH, President of Bowser Corporation t/a Shankel's Pharmacy

and t/a Treasure Lake Pharmacy, being duly sworn, depose and state as follows:

{D0066855:2}

1. Bowser Corporation t/a/ Shankel's Pharmacy and t/a Treasure Lake Pharmacy is a Pennsylvania Corporation with its principal facilities, namely Shankel's Pharmacy and Treasure Lake Pharmacy, located in Clearfield County.

2. Bowser Corporation does not have any facilities, nor does it carry on business in Allegheny County.

3. Shankel's Pharmacy and Treasure Lake Pharmacy are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

4. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

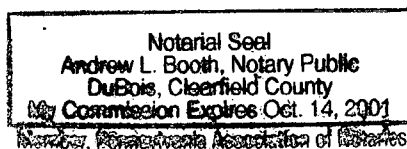
5. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

6. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to Defendant, Bowser Corporation.

Cynthia D. Bowser, R.P.H.
Cynthia D. Bowser, R.P.H., President of Bowser
Corporation t/a Shankel's Pharmacy and t/a
Treasure Lake Pharmacy

Sworn to and subscribed before me this
4th day of Oct., 2000.

Andrew L. Booth
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all known counsel of record by United States First Class Mail, postage prepaid, this 5 day of October, 2000, addressed as follows:

Harry S. Cohen, Esquire
HARRY S. COHEN & ASSOCIATES
985 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for Plaintiffs)

Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
Pittsburgh, PA 15222
(Counsel for Defendant, James K. Fugate, M.D.)

Wilbur McCoy Otto, Esquire
DICKEY, McCAMEY & CHILCOTE, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC;
UPMC - Presbyterian t/a Redbank Family Practice-UPMC)

Michael A. Sosnowski, Esquire
PFAFF, McINTRE, DUGAS,
HARTYE & SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(Counsel for Dubois Regional Medical Center, Inc.
t/a Behavioral Health Center)

Robert J. Grimm, Esquire
Israel Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219
(Counsel for Defendant, Gateway Institute and Clinic, Inc.)

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801
(Counsel for three Defenants, Jeffrey W. Rice, D.M.D., Jeffrey Rice, D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay L. Arlick, D.M.D., P.C.)

BY: Julie Nord

M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

CIVIL DIVISION

G.D. No. 00-12637

Issue No.

**PETITION FOR CHANGE OF VENUE
PURSUANT TO PA.R.C.P. 1006(d)(1),
AFFIDAVITS AND BRIEF IN SUPPORT,
AND PROPOSED ORDER**

Code:

Filed on behalf of JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK FAMILY
PRACTICE-UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, Defendants

Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED

PROthonotary
ALLEGHENY COUNTY
00 OCT -6 AM 4:02

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

PETITION FOR CHANGE OF VENUE PURSUANT TO PA.R.C.P. 1006(d)(1)

AND NOW, come the Defendants, Jeffrey P. Karls, D.O. and Redbank Family Practice -
UPMC, by and through their attorneys, Dickie, McCamey & Chilcote, P.C., and file the following

Petition for Change of Venue Pursuant to Pa.R.C.P. 1006(d)(1), and in support thereof, aver as follows:

1. Plaintiff initiated this lawsuit in the Court of Common Pleas of Allegheny County by filing a Complaint on July 24, 2000.

2. In the Complaint, Plaintiff alleges causes of action for wrongful death, survival action and loss of consortium.

3. Plaintiff is a resident of Clearfield County, Pennsylvania.

4. During the relevant time period all of the medical care and treatment rendered to Plaintiff's decedent occurred in either Clearfield or Clarion County, Pennsylvania. Indeed, Plaintiff's Complaint states that all of the relevant events and medical treatment provided by the Defendants in this matter were rendered in either Clearfield or Clarion County, Pennsylvania.

5. The majority of the relevant evidence and key witnesses in this case, including the Plaintiff, are located in either Clearfield or Clarion County, Pennsylvania.

6. Attached hereto as Exhibit "A" is an Affidavit executed by the Defendant, Dr. Jeffrey P. Karls wherein he explains his lack of contact with Allegheny County and explains how the trial of this matter in Allegheny County would have a detrimental effect on his professional obligations at Marianne Family Practice, located in Clarion County.

7. Attached hereto and marked as Exhibit "B" is an Affidavit executed by Christopher Cook, a duly authorized representative of Redbank Family Practice wherein he explains that University Services Organization, a wholly owned subsidiary of UPMC Health System, which owned Redbank at the relevant time, is headquartered in Allegheny County.

8. Redbank is not, nor was it ever, owned or operated by UPMC Presbyterian Hospital, which is headquartered in Allegheny County.

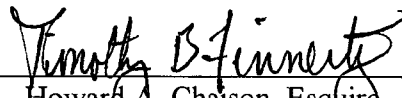
9. Plaintiff will suffer no prejudice by having this action transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

WHEREFORE, the Defendants, Jeffrey P. Karls, D.O. and Redbank Family Practice - UPMC, respectfully request that this Honorable Court transfer this action to the Court of Common Pleas of Clearfield County.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: _____


Howard A. Chajson, Esquire
Timothy B. Finnerty, Esquire

Attorneys for Defendants, Jeffrey P. Karls, D.O. and
Redbank Family Practice - UPMC

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
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Plaintiff,

v.

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REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

CIVIL DIVISION

G.D. No. 00-12637

Issue No.

**AFFIDAVIT OF JEFFREY P. KARLS,
D.O.**

Code:

Filed on behalf of JEFFREY P. KARLS,
D.O., individually and t/a REDBANK
FAMILY PRACTICE-UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, Defendants

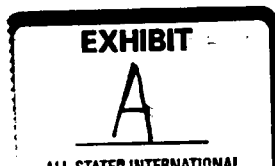
Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

AFFIDAVIT OF JEFFREY P. KARLS, D.O.

Jeffrey P. Karls, being duly sworn according to law, hereby deposes and says that
the following information is true and correct to the best of his knowledge, information and belief.

1. I, Jeffrey P. Karls, D.O., am engaged in the practice of family medicine at
Marianne Family Practice, 515 South Paint Blvd., Shippensburg, Clarion County, Pennsylvania.

2. I personally reside in Clarion County.
3. I see patients on a regular basis at my office located in Shippenville, Clarion County. In 1998 I saw patients, including Mary Jo Duttry, at Redbank Family Practice located at R.D. #3, Box 219, New Bethlehem, Clarion County, Pennsylvania.
4. When I treated Mary Jo Duttry all of the examinations took place in my office located at Redbank Family Practice in New Bethlehem, Clarion County, Pennsylvania.
5. I do not maintain any professional offices in Allegheny County, nor do I conduct any business in Allegheny County.
6. No aspect of my professional employment involves Allegheny County. I do not currently have any staff privileges at any hospital located in Allegheny County.
7. I am currently engaged full time as a family medical practitioner. I see an average of 130 patients per week. My current office hours are from 8:00 a.m. to 6:00 p.m. In addition, I am on 24 hour call one out of every five (5) weeks.
8. Conducting trial outside of Clearfield County would substantially impair my response to the medical needs of my patients.
9. The trial of this matter in Allegheny County would pose a substantial hardship to me because of the extensive travel involved, the detrimental effect the time spent in Allegheny County will have on my professional practice and because all evidence relevant to my defense in this matter is located in either Clarion County or Clearfield County.
10. My colleagues at Marianne Family Practice, Dr. Mark Maire, Dr. Janice Kenneson, Dr. Ronald Grubb, and Dr. Brenton Long will not be able to adequately provide medical care and treatment to my patients should I be required to attend trial in Allegheny

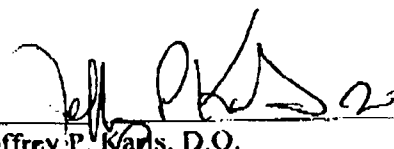
County for an extended period of time. Consequently, many of my patients would not be able to receive the medical care and treatment which I provide to them on a regular basis.

11. Based upon the above, holding the trial of this matter in Allegheny County will cause an undue hardship on my patients, my colleagues and me.

12. The trial of this matter in Clearfield County would alleviate the aforesaid undue hardships by permitting me to continue to provide the proper care and medical treatment to my patients.

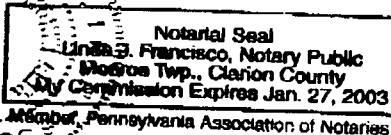
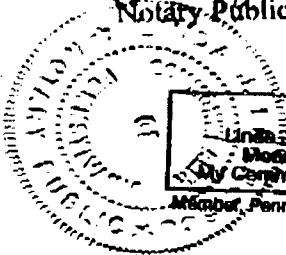
13. All of the aforesaid statements are based upon my personal knowledge and are true and correct to the best of my knowledge, information and belief.

Dated: 10/5/00


Jeffrey P. Karls, D.O.

Sworn to and subscribed before
me this 5 day of October,
2000.


Notary Public



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

CIVIL DIVISION

G.D. No. 00-12637

Issue No.

**AFFIDAVIT OF CHRISTOPHER B.
COOK**

Code:

Filed on behalf of JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK FAMILY
PRACTICE-UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, Defendants

Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED

EXHIBIT

B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

AFFIDAVIT OF CHRISTOPHER B. COOK

Christopher B. Cook, being duly sworn according to law, hereby deposes and says
that the following information is true and correct to the best of his knowledge, information and
belief.

1. I, Christopher B. Cook, ^{IS An} ~~was the~~ Administrator/ Chief Operating Officer of University Services Organization.
2. Redbank Family Practice was a family practice group owned by University Services Organization in June-July 1998.
3. Redbank Family Practice was located at R.D. #3, Box 219, New Bethlehem, Clarion County, Pennsylvania during the time relevant to this action.
4. All of Mary Jo Duttry's medical records regarding her medical care and treatment provided by Dr. Karls at Redbank Family Practice are believed to be located in Clarion County, Pennsylvania. The custodian of medical records for Redbank Family Practice is believed to be located in Clarion County, Pennsylvania.
5. All nurses and/or other witnesses from Redbank Family Practice which may have knowledge of the incidents surrounding this lawsuit are believed to reside in the vicinity of New Bethlehem, Clarion County, Pennsylvania.
6. Redbank Family Practice's sole connection to Allegheny County was that it was owned by University Services Organization, which is a wholly owned subsidiary of UPMC Health System.
7. UPMC Health System maintains its corporate headquarters at 200 Lothrop Street in Allegheny County, Pennsylvania.
8. Based upon the above, holding the trial of this matter in Allegheny County will cause an undue hardship on potential witnesses who were employed by Redbank Family Practice at the relevant time.

9. Moreover, the vast majority of witnesses and relevant evidence in this matter are located in Clearfield County, Pennsylvania, with some of the witnesses and/or relevant evidence possibly being located in Clarion County, Pennsylvania.

10. Upon information and belief no witnesses and/or relevant evidence are located in Allegheny County, Pennsylvania.

11. The trial of this matter in Clearfield County, Pennsylvania would alleviate the aforesaid undue hardships.

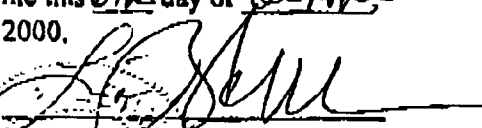
12. All of the aforesaid statements are based upon my personal knowledge and are true and correct to the best of my knowledge, information and belief.

Dated: 10-6-00

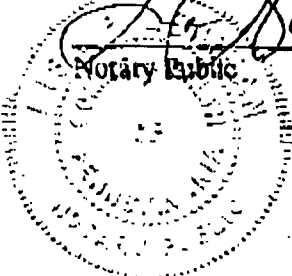


Christopher B. Cook, Administrator/ Chief
Operating Officer for University Services
Organization

Sworn to and subscribed before
me this 6th day of October
2000.



Notary Public



Notarial Seal
Lisa P. Lenihan, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Mar. 22, 2004

**BRIEF IN SUPPORT OF PETITION FOR CHANGE OF VENUE PURSUANT TO
PA.R.C.P. 1006(d)(1)**

I. FACTS

Plaintiff instituted this medical malpractice action by filing a Complaint in the Court of Common Pleas of Allegheny County on July 24, 2000. Plaintiff alleges that Defendants were negligent in the prescription of medication to Plaintiff's decedent, who allegedly died from an overdose of these medications. Defendants, Dr. Karls and Redbank Family Practice, are involved in this action arising out of the medical care and treatment Dr. Karls provided to Plaintiff's decedent in 1998. All of the treatment of Plaintiff's decedent by Dr. Karls took place at Redbank Family Practice, located in Clarion County.

All Defendants universally agree that venue is improper in Allegheny County. Accordingly, Defendants have filed a Petition for Change of Venue in response to Plaintiff's Complaint. The following facts are undisputed. Plaintiff resides in Clearfield County. All Defendants reside and/or do business in Clearfield County, except Dr. Karls and Redbank Family Practice. Dr. Karls resides in Clarion County and practices medicine there. Redbank Family Practice is located in Clarion County. All of the relevant medical care and treatment at issue in this case took place in either Clearfield or Clarion County. No treatment at issue by any of the Defendants took place in Allegheny County. Finally, all witness and/or relevant evidence are located primarily in Clearfield County, with some witnesses and/or evidence possibly being located in Clarion County. It is believed and therefore averred that no witnesses with knowledge of the facts in this case or relevant evidence are located in Allegheny County.

Dr. Karls and Redbank Family Practice are the only Defendants with any connection to Allegheny County. In 1998, Redbank Family Practice was owned by University Services Organization, a wholly owned subsidiary of UPMC Health System. UPMC Health System maintains its corporate headquarters in Allegheny County. UPMC Health System sold Redbank Family Practice on December 31, 1999.

II. ARGUMENT

The Pennsylvania Rules of Civil Procedure provide for the transfer of an action to a more appropriate court for reasons of convenience of the parties and witnesses. Pa. R.C.P. 1006(d)(1). The proper way for a party to move for change of venue is by way of petition to the court where the action was filed. *Id.* The petition for change of venue should set forth where the party would like the case to be transferred. The new location must be a county where the action could have originally been brought. Pa. R.C.P. 1006(d)(1).

A trial judge is vested with considerable discretion in determining whether to grant a petition for a change of venue. *Fox v. Pennsylvania Power and Light Company*, 315 Pa. Super. 79, 461 A.2d 805, 806 (1983). In determining whether or not to transfer venue, the court should look to the interest of the parties. *Id.* One of the considerations is the choice of forum of the plaintiff. *Scribner v. Mack Trucks*, 427 Pa. Super. 71, 628 A.2d 435, 437 (1993). However, a plaintiff's choice of forum is not unassailable, and the availability of a forum non-conveniens challenge is a necessary counter-balance to ensure fairness and practicality. *Id.* (Emphasis added). The other factors which a trial judge must consider before ordering a transfer of venue are as follows:

- (1) The relative ease of access to the sources of proof;

- (2) The availability of compulsory process for the attendance of unwilling witnesses;
- (3) The cost of obtaining the attendance of willing witnesses;
- (4) The possible need for a view of the premises;
- (5) The ability to enforce a judgment if one is obtained;
- (6) Administrative difficulties for the transferor court versus the transferee court; and
- (7) The burden of jury duty imposed upon the people of the community which have no relation to the litigation.

Brown v. Delaware Valley Transplant Program, 371 Pa. Super. 583, 538 A.2d 889, 891 (1988); Scribner, 628 A.2d at 437-438; Fox, 461 A.2d at 806.

In Scribner, the plaintiff was employed as a security guard when he was injured at a garage owned and operated by Mack Trucks in Lehigh County. Scribner, 628 A.2d at 436. The plaintiff filed a lawsuit in Northampton County for damages allegedly sustained in the accident. After the suit was initiated, Mack Trucks petitioned the court to have the action transferred to Lehigh County. The trial court granted the petition transferring the case to Lehigh County. 628 A.2d at 437.

The plaintiff in Scribner appealed the trial court's decision to transfer venue. The plaintiff contended on appeal that his original selection of forum should have been accorded the greatest weight by the common pleas court. Scribner, 628 A.2d at 437. The Superior Court disagreed with the plaintiff's argument and affirmed the decision of the trial court. Id. at 438.

The Superior Court in Scribner found that Northampton County was an inconvenient forum for the witnesses and attorneys for both parties. Scribner, 628 A.2d at 438. None of the parties worked or resided in Northampton County. Id. Furthermore, there was little connection

to Northampton County, because the accident did not occur there. The only connection to Northampton County was that Mack Trucks conducted business there. 628 A.2d at 438. The accident occurred in Lehigh County, and many of the witnesses lived and worked in Lehigh County, and ease of access to sources of proof were best obtained in Lehigh County. Furthermore, the court discounted the plaintiff's argument that Northampton County's docket was much more current than the docket in Lehigh County. The court determined that the inconvenience to the parties and witnesses outweighed the plaintiff's decision to file the lawsuit in Northampton County. 628 A.2d at 438.

Applying the various factors set forth in Scribner, Brown and Fox to the present case suggests that venue is more proper in Clearfield County than in Allegheny County. The only connection which Allegheny County has to this lawsuit is that UPMC maintains its corporate headquarters in Allegheny County and is, therefore, susceptible to being sued there. The Plaintiff lives in Clearfield County, the majority of the Defendants reside and work in Clearfield County, the majority of witnesses and relevant evidence reside and/or work in Clearfield County and the underlying actions complained of by Plaintiff occurred in either Clearfield or Clarion County.

The courts and people of Allegheny County should not be burdened with this lawsuit because they have no relation to this litigation. Indeed, to rule otherwise would permit all actions involving any UPMC affiliates throughout Pennsylvania to be brought before the Court of Common Pleas of Allegheny County. Such a ruling is contrary to the best interests of judicial economy because an undue strain on the Court of Common Pleas of Allegheny County would certainly be brought to bear.

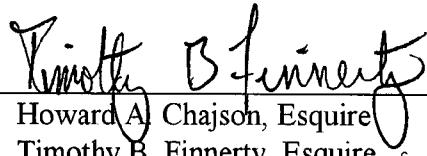
If this case were transferred to Clearfield County, it would not serve any hardship or inconvenience upon Plaintiff. The Plaintiff resides in Clearfield County and, therefore, on balance, ease of access to Clearfield County is greater than that of Allegheny County.

Transferring this case to Clearfield County would serve the convenience of all the parties and of the witnesses.

WHEREFORE, the Defendants, Jeffrey P. Karls, D.O. and Redbank Family Practice - UPMC, hereby respectfully request that this Honorable Court transfer this action to the Court of Common Pleas of Clearfield County.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 
Howard A. Chajson, Esquire
Timothy B. Finnerty, Esquire

Attorneys for Defendants, Jeffrey P. Karls, D.O. and
Redbank Family Practice - UPMC

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the Estate of
MARY JODUTTRY, deceased, and JOHN D. DUTTRY,
in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS REGIONAL,
MEDICAL CENTER, INC., a Pennsylvania corporation
t/a/ BEHAVIORAL HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a Pennsylvania
Corporation; JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania corporation t/a
REDBANK FAMILY PRACTICE-UPMC; JEFFREY W.
RICE, DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation; JEFFREY RICE
DMD, AND JAY L. ALRICK, DMD, PC, a
Pennsylvania Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER, R.PH; and
CYNTHIA D. BOWSER, R.PH,

Defendant.

ORDER OF COURT

AND NOW, to wit this ____ day of _____, 2000, upon consideration of the
foregoing Petition for Change of Venue Pursuant to Pa.R.C.P. 1006(d)(1), and for good cause
shown, it is hereby ORDERED, ADJUDGED and DECREED that the within action is transferred
to the Court of Common Pleas of Clearfield County.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I, Timothy B. Finnerty, Esquire, hereby certify that true and correct copies of the foregoing
**PETITION FOR CHANGE OF VENUE PURSUANT TO P.A.R.C.P. 1006(d)(1), AFFIDAVITS
AND BRIEF IN SUPPORT, AND PROPOSED ORDER** have been served this 6th day of
October, 2000, by U.S. first-class mail, postage prepaid, to:

Harry S. Cohen, Esquire
David J. Lozier, Esquire
Harry S. Cohen & Associates
985 Two Chatham Center
Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Dubois Regional Medical Center, Inc.
100 Hospital Drive
Dubois, PA 15801

Behavioral Health Center
90 Beaver Drive, Suite 121-D
Dubois, PA 15801

Gateway Institute and Clinic, Inc.
102 Hospital Avenue
Dubois, PA 15801

Jeffrey W. Rice, D.M.D.
90 Beaver Drive
Dubois, PA 15801

Jeffrey Rice, D.M.D., P.C.
90 Beaver Drive
Dubois, PA 15801

Jay L. Arlick, D.M.D., P.C.
90 Beaver Drive
Dubois, PA 15801

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

DICKIE, McCAMEY & CHILCOTE, P.C.

By Timothy B. Finnerty
Timothy B. Finnerty, Esquire

Attorneys for Defendants, Jeffrey P. Karls, D.O. and
Redbank Family Practice - UPMC

8

FILED
00 OCT -6 AM 1:36
F. THOMAS
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

Code:

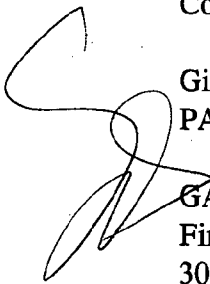
Issue No:

NOTICE OF SERVICE OF
DEFENDANT'S FIRST SET OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
PLAINTIFF

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581


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

(412) 338-4750

JURY TRIAL DEMANDED

8

NOTICE OF SERVICE OF INTERROGATORIES

TO: PROTHONOTARY OF ALLEGHENY COUNTY

Please take notice that on the 4th day of October, 2000, we served Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff upon Plaintiff's attorney, Harry S. Cohen, Esquire.

GACA MATIS BAUM & RIZZA

By: Giles J. Gaca
Giles J. Gaca, Esquire
Attorneys for James K. Fugate, M.D., Defendant

8

O

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing NOTICE OF SERVICE OF DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF upon all counsel of record by United States, First-class mail, postage prepaid, this 4th day of October, 2000.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219
Counsel for Plaintiff

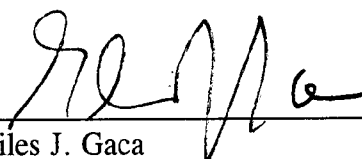
Howard A. Chajson, Esquire
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
Counsel for Karls/Redbank/UPMC

Michael A. Sosnowski, Esquire
P. O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical Center, et al.

Robert J. Grimm, Esquire
501 Grant Building
Pittsburgh, PA 15219
Counsel for Gateway Institute

Marshall J. Tindall, Esquire
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Counsel for Bowser/Shankel/Thomas & Cynthia Bowser

Alan Neely, Esquire
811 University Drive
State College, PA 16801



Giles J. Gaca

00 OCT -6 AM 1:36

PROthonotary
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

Code:

Issue No:

BRIEF IN SUPPORT OF PETITION
TO TRANSFER

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581

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

(412) 338-4750

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

BRIEF IN SUPPORT OF PETITION TO TRANSFER

James K. Fugate, M.D., defendant, by his attorneys, Gaca Matis Baum & Rizza, files the following
brief:

Defendant incorporates the Affidavit filed on behalf of the pharmacy defendants. All of the medical treatment which is relevant to the liability and damage issues in this case took place in Clearfield, Jefferson, Clarion or Elk Counties. The investigation conducted by the police department and the coroner's office took place in Clearfield County. As indicated by the exhibits attached to defendant Fugate's Affidavit, there are numerous witnesses on the liability and damage issues who reside in Clearfield, Clarion, Jefferson and Elk Counties. It would be extremely burdensome and oppressive for defendants to try this case in Allegheny County.

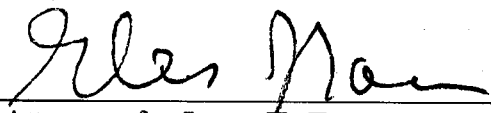
The Coroner's Field Report and the Initial Death Certificate list the cause of death as "Combined (Illegal & Prescription) Multiple, acute drug over-dosage." The Coroner's Field Report also refers to medication bottles with tablets left in the bottles. Then, there is a note with a different count for remaining tablets which appears to be made by the Brookfield Police. Harold R. Cottle, M.D., forensic pathologist, states in his final case summary: "Found dead at her home with chemical determination of combined multiple toxic drug levels (street and Rx) as the cause of death." Dr. Cottle and all persons involved with the police and coroner's investigation would be necessary witnesses at the time of trial. The Coroner's Field Report also contains a statement of "a long history of domestic violence."

Two death certificates were issued by R. Joel Heath, Clearfield County Coroner. The second death certificate issued approximately three months after the first death certificate changes the cause of death from "Combined (Illegal & Prescription) Multiple, acute drug over-dosage" to "Multiple acute drug over-dosage." Evidence will be required to explain the reason for the change in the death certificate.

The Complaint makes claim for decedent's loss of income and loss of estimated future earning power. As indicated in Dr. Fugate's Affidavit, there are indications that decedent's real estate business was failing or had failed and was involved in litigation. The business was located in Clearfield County. Certainly persons with knowledge of the business and its problems would be necessary witnesses at trial.

While only a small portion of the relevant records are attached to Dr. Fugate's Affidavit, they indicate that the liability and damage issues will be strongly contested. Numerous witnesses will be required and they all reside in the Clearfield County area.

GACA MATIS BAUM & RIZZA

By: 
Attorneys for James K. Fugate, M.D.
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF PETITION TO TRANSFER upon all counsel of record by United States, First-class mail, postage prepaid, this 4th day of October, 2000.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219
Counsel for Plaintiff

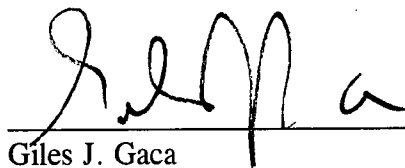
Howard A. Chajson, Esquire
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
Counsel for Karls/Redbank/UPMC

Michael A. Sosnowski, Esquire
P. O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical Center, et al.

Robert J. Grimm, Esquire
501 Grant Building
Pittsburgh, PA 15219
Counsel for Gateway Institute

Marshall J. Tindall, Esquire
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Counsel for Bowser/Shankel/Thomas & Cynthia Bowser

Alan Neely, Esquire
811 University Drive
State College, PA 16801



Giles J. Gaca

00 OCT -6 AM 1:36

PROCLAMATORY
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
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PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

Code:

Issue No:

AFFIDAVIT IN SUPPORT OF
PETITION TO TRANSFER

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581

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

(412) 338-4750

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
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SHANKEL'S PHARMACY and t/a
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THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 00-12637

AFFIDAVIT IN SUPPORT OF PETITION TO TRANSFER

James K. Fugate, M.D., defendant, by his attorneys, Gaca Matis Baum & Rizza, files the following

Affidavit in Support of the Petition for Change of Venue:

1. I am a practicing psychiatrist. Throughout the period of time which is the subject of this lawsuit, I

maintained my residence in Punxsutawney, Jefferson County, Pennsylvania and I treated Mrs. Duttry in DuBois, Clearfield County, Pennsylvania. At present my residence remains in Punxsutawney and I practice in DuBois.

2. I did not refer Mrs. Duttry for treatment outside of Clearfield County.

3. Before her death, Mrs. Duttry discussed with me the problems she was having with her real estate business and the selling of her real estate business. My office notes read as follows:

3/16/98 - "Discussed hurt & abandonment by some of staff & selling business."

3/31/98 - "Discussed problems with . . . business."

5/5/98 - "Problems with real estate work."

4. The coroner's office of Clearfield County conducted an investigation into Mrs. Duttry's death and had an autopsy performed. Attached as Exhibit "A" is the Coroner's Field Report and Autopsy Report.

5. Following Mrs. Duttry's death, an Initial Death Certificate and Corrected Death Certificate were issued. Attached as Exhibit "B" are the death certificates.

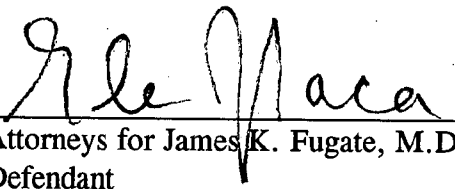
6. Mrs. Duttry had received treatment from Rhode Island Medical Services, P.C., an orthopedic group, located in St. Marys, Elk County, Pennsylvania. Attached as Exhibit "C" is the record of Rhode Island Medical Services, P.C.

7. Mrs. Duttry received psychiatric treatment at the Elk County Regional Medical Center, Ridgeway, Pennsylvania, from 6/26/97 to 7/1/97. Attached as Exhibit "D" is a partial record for that admission.

8. Mrs. Duttry received treatment from Dennis Parlavecchio, M.D., family practice physician, DuBois, Pennsylvania.

GACA MATIS BAUM & RIZZA

By:


Attorneys for James K. Fugate, M.D.,
Defendant

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF Allegheny)

SS:

Before me, the undersigned authority, personally appeared JAMES K. FUGATE, M.D., who, being duly sworn according to law, deposes and says that he is one of the defendants in the foregoing action, that he is authorized to make this Affidavit on his own behalf and that the averments of fact contained in the foregoing Affidavit in Support of Petition to Transfer are true and correct to the best of his information, belief and knowledge.

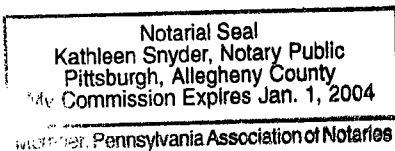
James K. Fugate
James K. Fugate, M.D.

SWORN to and SUBSCRIBED before me

this 4th day of October, 2000.

Kathleen Snyder
Notary Public

My Commission Expires:



CORONER'S FIELD REPORT AND AUTOPSY

Duttry v. Fugate
File No.: 27062



CORONER'S FIELD REPORT

07698

Crawfield County, PA
R. JOEL HEATH, CoronerTELEPHONE
(814) 339-7528ADDRESS
P.O. Box 145
Osceola Mills, PA 16666NAME Mary Jo Duttry Sex Female Race WhiteHOME ADDRESS PO Box 736 Du Bois Pa 15801Birthdate 3/12/56 Age 42 Mo. Days Soc. Sec. No. 182-44-253Date/Time Pronounced: Day 7/25/98 Time 5:37 Am Married X Never Married
of Death: Widowed Divorced Estimated: Day Time Separated Unknown CAUSE OF DEATH: a. Combined (Illegal & Prescription) Multiple
Acute drug over dosage.
b.
c. Other Significant Conditions: MANNER OF DEATH: Natural Suicide Undetermined
Accidental X Homicide Under Investigation Pronounced Dead By Dr Palmer DRMC West E.R. Location

Next of Kin (Notified):

Name John (Jack) Duttry Relationship Husband
Address PO Box 736 DuBois Telephone 375-9407Place of accident, collapse, etc.: (include township or borough) R. Tusque Lake, Sandy LuptMeans of Identification FamilyCondition of Body: Fully clothed Partially clothed ✓ Unclothed Describe Preservation: Well Preserved ✓ Decomposed Describe: Estimated Rigor: None ✓ Complete Head Arms Legs Livor: None Front Back Localized ✓Blood: Absent Present Location Time Call Recv'd 6:30 Am From Queen Time of Arrival 6:50 Am Photos Taken NO

Apparent Wounds: None ☒ Gunshot _____ Stab _____ Blunt Force _____

Describe Primary: _____

Primary Location: Head _____ Neck _____ Chest _____ Abdomen _____ Extremities _____

Hanging: Yes _____ No ☒ Means _____

Deceased Found: Date _____ Time _____ By Whom _____

Address (if different) _____

Location: Apartment _____ House _____ Townhouse _____ Other (describe) _____

Entrance By: Key _____ Cutting Chain _____ Forcing Door _____ Other (describe) _____

Condition of other doors & windows: Open _____ Closed _____ Locked _____ Unlocked _____

Body Found: Dining Room _____ Living Room _____ Bedroom _____ Kitchen _____ Attic _____

Basement _____ Other (describe) _____

Location in Room: _____

Position of body: On back _____ Face Down _____ Other (describe) _____

Conditions of Surroundings: Orderly _____ Untidy _____ Disarray _____ Normal? _____

Lights _____

Evidence of Last Food Preparation:

Where: _____

Type: _____

Related Materials and Where Found:

Mail: _____

Newspapers: _____

Vehicle Involved: Make _____ Color _____ Reg. # _____

Last Contact with Deceased: Date 7/24/98 Type of Contact: Face to Face

Name of Contact: Husband Jack Dutty Phone: 375-9407

Police or Emergency Personnel Notified By:

Name John Dutty (Jack) Relationship Husband

Address 936 Du Bois Telephone 875-9407

Date 7/25/98 Time 4:29am Manner 911

Dr. Kaelis Red Bank Clinic

Evidence of Drug Use: (Prescription and Nonprescription) Yes ☒ No ☐

List or Describe Percodan filled 7-21-98 83 tabs 13 left

MS Contin 15 mg filled 7/22/98 100 tabs 33 left / Valium 10 mg filled 7-21-98 120 tabs 6

Methocarbamol 750mg / Premarin .9mg / Tenazodone Dividua 150 mg

Doctor _____ Address _____ Phone _____

Evidence of Drug Paraphernalia: Yes _____ No ☒ Describe: _____

Evidence of Alcohol Intake: Yes _____ No ☒ Describe: _____

Weapons Present:

Gun: Yes _____ No ☒ Caliber _____ Make _____

Model _____ Serial No. _____

Knife: Yes _____ No ☒ Describe: _____

Other: (describe) _____

Disposition of Weapon(s): _____

Evidence of Sexual Deviate Practices: Yes _____ No ☒ Describe: _____

Investigating Officer: James Dellman, Ferguson Department Sandy Sp. P.D.

Disposition of Body: Mahoney - Vargen F.H.

Per Husband

Autopsy: Yes ☒ No ☐ Reason: _____

By: _____ Location _____

Blood Drawn: Yes _____ No ☒ Kit Number _____ Time _____

Valuables Retained: none

Disposition of Valuables: /

Operator's License Attached: Yes _____ No ☒ OLN _____

Mileage form _____ To _____

_____ Total Miles Traveled: _____

Telephone _____ Miscellaneous _____

7/21/98 6:30am Contacted by Renee to Go to Dene West E.R. for a 42 year old Female pt brought in with Full Cardiac Arrest. pronounced at 5:30 am by Dr Palmer. Husband stated he found her at approx 4-4:15 am lying on the couch with 1 leg on the floor. she was not breathing. Qu-Sa Ambulance was dispatched via 911 at 4:30 am. Husband had gone up to her at approx 10 pm she slept on the couch downstairs. At approx 4:00-4:15 when he returned home from returning a rental truck (accident brought him home) this is when he found her.

pt had a history 2 prior back Surg. she had a lot of Pain and was scheduled for 3rd surgery in September. She had been prescribed many med + were refilled this week.

Valium ^{10mg} Filled 7/21/98 120 tabs 69 left ACTUALLY 80 left

Percodan Filled 7/21/98 88 tabs 13 left " 50 "

ms Contin Filled 7/21/98 100 tabs 33 left " 41 left

Also on Premarin .9mg

methocarbamol 750mg TRAZODONE Dividase 150mg LT. Halden

pt also had a stent put in her heart in April of 97 BRKville Police

Spilled in Car + Home

Doreen Covale RN assisted with bagging of her hands body transported downstairs. tube still in + IV's in place

pt has a long history of Domestic Violence, pt has been 302 x2 in the past 1 1/2 yrs for depression. she would be mean + agitated

Kim Shafie Deputy Comm

LABORATORY MEDICINE AND FORENSIC PATHOLOGY
25 SYLVAN DRIVE
HOLLIDAYSBURG, PA 16860

NO. CFCA98-05

AUTOPSY REPORT FOR Clearfield County Coroner

DECEASED'S NAME Mary Jo DUTTRY

S.S. # 182-44-2383

DATE OF BIRTH 03/12/56

AGE 42

SEX F

TIME AND DATE OF DEATH Saturday, July 25, 1998, pronounced 5:37 AM

AUTOPSY DIAGNOSES

1. Combined (illegal and prescription), multiple, acute drug over-dosage.
2. Occlusive Coronary atheromatosis & calcification.
 - A) Patchy, myocardial fibrosis.
 - B) Congestive cardiac failure.
 - myocardial hypertrophy & dilatation, severe
 - congestion of viscera, severe
3. Status post-lumbar spine surgery (x2), remote.
4. Status post-Pan-Hysterectomy, remote.
5. Status post-Appendectomy, remote.
6. Hydrocele, left inguinal.

Harold R. Cottle, M.D.
Harold R. Cottle, M.D.
Forensic Pathologist

HRC/wss
09/11/98

AUTOPSY WAS PERFORMED AT THE MORGUE OF THE Bon Secours- ~~XXXXXXXXXXXX~~ HOSPITAL,
Altoona, PA ON Sun DAY July 26 . 1998 FROM 6:45 AM TO
9:15 AM BY HAROLD R. COTTLE, MD, FORENSIC PATHOLOGIST. ASST.: R.C. Goertz
WITNESSES: NONE

GROSS DESCRIPTION

EXTERNAL EXAMINATION

The body is that of a moderately obese, well-developed, well-nourished, early middle-aged white female, not previously embalmed or prepared for viewing or burial, 66 inches (168 cm) long with estimated weight of 185 lbs. When first seen in the morgue of the Bon Secours-Holy Family Hospital, Altoona, PA., the body is clad in a blue, double-knit, cotton blouse and white cotton bra both of which have been cut apart in the front by medical personnel. There is a pink, synthetic, "bikini" pair of panties with a contained vaginal pad inside (this is unstained) and blue cotton shorts with an elastic waistband and empty pockets. White cotton anklets are present on the feet but there are no shoes. No other articles of clothing are present. No jewelry, wristwatch or personal adornments or other articles are present on/or accompanying the body. The head is covered with blonde hair with very slight brown roots done in a "feather-cut" ordinary female style. There is an endotracheal tube in the mouth and an intravenous line in the right supraclavicular area. Several pin-point fresh needle marks are present overlying the heart and the anterior chest skin. One large EKG patch is present on the back and two small ones on the left side of the chest. Two plastic wrist identification bands are present, one on each side. Both hands have been sealed in brown paper bags as if by the police. A small blood smear is noted on the right hand inside the bag and the fingers show no scars, wounds, polish or sign of nail chewing. There is a 1 cm vaccination scar on the upper left deltoid region. A

single needle stick mark with a covering 3 cm gauze compress is present on the lateral aspect of the right wrist. There is a 2 cm, non-bloody, fresh and apparently post-mortem scrape mark over the upper left buttock. Tiny superficial abrasions are present overlying the upper right shin. No other sign of trauma is present. Old, straight, linear, surgical scars are present with a 15 cm, transverse and a 19 cm, longitudinal midline scar overlying the lumbar spinal region and an 18 cm, transverse suprapubic scar and a 5 cm oblique right lower quadrant scar in the skin of the abdomen. The face exhibits dried, brown, apparently vomit smears, on the forehead and right cheek. There is blood draining from the nose and mouth onto the facial surface. The head is normocephalic with no asymmetry or evidence of trauma. The eyes show 6 mm, round, regular, equal pupils surrounded by brown irides. The nose, throat and mouth show partly dried, bright red blood. The natural teeth are present and in a fairly good state of repair. The face shows blood and vomit distributed as described above. The panniculus adiposus is 7 cm thick over most of the chest and abdomen. The skeletal structures and extremities are symmetrical and show neither deformity nor any other abnormality (other than as described above). The neck, chest, well-developed female breasts, abdomen and back are, other than obesity and features described above, not remarkable. There is no rigor present and only minimal posterior dependent livor mortis is seen.

NECK

The tissues and organs of the neck are normally arranged and

related to each other with no sign of trauma, no hemorrhage or other gross abnormality no note. The thyroid is of ordinary size, shape and appearance, normally located and not grossly remarkable. The larynx and hyoid are intact, lie in the midline and show no gross abnormality within or adjacent to their structure.

CHEST

There is no evidence of trauma with normal looking subcutaneous tissue, well-developed musculature and symmetrical, intact rib cage. The pleural and pericardial cavities have smooth, glistening linings with no adhesions, fluid or blood seen. The mediastinal tissues and organs are normally arranged with no unusual feature noted. The thymus is an atrophic, faintly purplish, 12 gram remnant in the usual site.

HEART

500 grams. This shows a marked degree of dilatation and hypertrophy. The transverse diameter is 16 cm compared to a boney chest diameter of 28 cm. The myocardium is markedly flabby. The endocardium is smooth, glistening and translucent in most places. The cardiac chambers are normally formed although markedly dilated and the great vessels are in ordinary position and relationship to each other and to the cardiac chambers. The supraclavicular venous catheter comes to an end in the upper right atrium. No abnormality of the vena cava or right atrium is associated with it. The right ventricle exhibits in its upper posterior lateral region a marked endocardial white, scarred thickening involving both myocardium and adjacent parts of the chordae and valve. This is not of an ordinary

rheumatic configuration and when the tricuspid ring is cut through to open the chamber, a small metallic staple-like object is displaced and preserved. The left ventricle exhibits slight thickening as if by rheumatic disease of two chordae of the anterior mitral leaflet. No other such apparently rheumatic lesion is seen. The endocardium of the upper septal region of the upper posteroseptal region of the left ventricle seems very slightly whitened and opacified but no gross scar is seen. The cardiac dimensions are all increased but especially on the right side. Tricuspid ring 8.5 cm, Pulmonic ring 8 cm, Mitral ring 11 cm, Aortic ring 7 cm. Mitral ring to Apex 9.5 cm. Right ventricle 2-4 mm. Left ventricle 12-15 mm. The coronary arteries show a severe degree of occlusive atheromatosis with completely obstructing atheromatosis of a 2 cm length of the right coronary artery beginning approximately 1 cm from its origin. The left coronary artery, including its two major sub-divisions, anterior descending and circumflex, show marked wall thickening and lumen narrowing by atheromatosis, to a 10% remnant of luminal cross-sectional area. No other abnormality of the coronaries is noted.

LUNGS

Right 940 grams, Left 835 grams. These show severe engorgement throughout both lungs in all lobes. No focal lesion is noted and no other gross abnormality is seen. Pleural surfaces are entirely smooth and glistening. The tracheobronchial tree shows brownish discoloration and slightly mucoid, watery material resembling gastric content in both major bronchial systems. Pulmonary hilar and peribronchial lymph nodes are not grossly remarkable. The pulmonary

artery and its major branches shows no thrombus, atheromatosis or other gross abnormality and they are normally arranged.

DIAPHRAGM

This is at higher than normal levels (right 3rd rib, left 3rd interspace) but is intact and not otherwise remarkable.

AORTA

This and its major branches show minimal atheromatosis but no occlusion, thrombosis or other gross abnormality is noted.

ABDOMEN

There are right lower quadrant and anterior abdominal wall fibrous adhesions. No other adhesions, fluid or blood is seen. The umbilicus is normally arranged for an adult of this age.

LIVER

2,900 grams. This shows severe engorgement of parenchyma within a distended but intact capsule. No focal abnormality is noted. No abnormality of the hilar region is seen.

GALLBLADDER

This contains 15 ml of greenish-yellow viscid bile, is normally located and arranged with no stones or other gross abnormality to be seen.

SPLEEN

195 grams. This is somewhat soft and engorged but within an intact, smooth, glistening capsule. No other abnormality of the pulp is noted.

PANCREAS

This is slightly congested but normally located and arranged

with normally lobulated parenchyma and a duct system which is not dilated or apparently obstructed.

GI TRACT

The esophagus and stomach exhibit a superficially eroded, reddish-brown mucosa. The stomach contains 2,500 ml of gas and 200 ml of soupy, dark greenish liquid with no particles, fragments or pills recognized within it. The small bowel and colon show a moderate degree of gasy distention and the colon contains firm fecal masses throughout its distal 3/4 of length. The appendix is surgically absent.

ADRENALS

These are of ordinary size, shape and appearance, normally located and show only questionable depletion of cortical lipoid.

KIDNEYS

Right 210 grams, Left 260 grams. These are normally located with capsule that strip easily from engorged smooth surfaced cortices. Medullary pyramids, calices and pelves are of ordinary appearance, size and arrangement are present bilaterally as are ureters.

BLADDER

This contains approximately 30 ml of watery, almost colorless urine within a distended bladder which have contained approximately 200 cc before agonal or post-mortem emptying. Bladder wall is otherwise not remarkable and mucosa is smooth and pale.

UTERUS

This is surgically, totally absent.

TUBES & OVARIES

These are surgically, totally absent. A 2.5 cm, apparent hydrocele is present in the area of left inguinal canal just within the peritoneal lining. It does not exhibit any grossly recognizable ovarian remnant.

EXTERNAL GENITALIA

These are of ordinary, non-virginal appearance and arrangement for a female of this age.

BRAIN

1,320 grams. The scalp and skull show no sign of trauma of any sort. The dura and leptomeninges are normally arranged, neither discolored nor disrupted. The cerebral hemispheres show a minimal degree of apparently edematous swelling. The brain stem, pons, cerebellum, medulla and uppermost cervical cord are symmetrical and normally arranged with no indication of malformation or trauma. The uppermost cervical vertebrae are intact with no fragmentation, displacement or other sign of injury. The base of the skull and sella turcica are normally arranged, intact and not grossly remarkable. There is minimal herniation of the cerebellar tonsils at the opening of the foramen magnum but this is not of significant degree. The pituitary and pineal bodies are normally located and not grossly remarkable. The cerebral vasculature is normally arranged, shows no significant atheromatosis and is not grossly remarkable.

HRC/wss
08/03/1998

MICROSCOPIC DESCRIPTION

THYMUS: Not remarkable; 5% lymphoid.

THYROID: Not remarkable.

HEART: Widespread, multifocal, old, myocardial replacement scarring.

Marked coronary atheromatosis and calcification in larger vessels.

Left bundle area of septal endocardium shows fibrosis.

LUNGS: Moderate focal and diffuse emphysema.

LIVER: Chronic, passive congestion, moderate.

SPLEEN: Not remarkable.

PANCREAS: Not remarkable.

GI TRACT: Esophageal varices, moderate. Intestine and colon are not remarkable.

HYDROCELE: Not otherwise remarkable.

ADRENALS: Moderate lipoid depletion.

KIDNEY: Not remarkable.

PITUITARY: Not remarkable.

PINEAL: Not remarkable.

BRAIN: 27 sections of cerebral cortex, basal ganglia, corpus callosum, pons, cerebellum, medulla and cord are not remarkable.

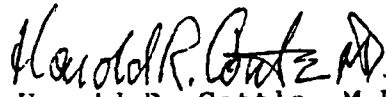
HRC/wss
09/11/98

Mary Jo DUTTRY

CFCA98-05

FINAL CASE SUMMARY

This 42 year-old with a history of drug treatment for multiple medical, psychiatric and behavioral problems was found dead at her home with chemical determination of combined multiple toxic drug levels (Street and Rx) as the cause of death.


Harold R. Cottle, M.D.
Forensic Pathologist

HRC/wss
09/11/1998



National Medical Services, Inc.
Toxicology Specialists Worldwide Since 1970

3701 Welsh Road
Willow Grove, PA 19090
Phone: (215) 657-4900
1-800-522-6671
Fax: (215) 657-2972

September 1, 1998

TO: Clearfield County Coroner
Attn: R. Joel Heath
P.O. Box 145
Osceola Mills, PA 16666

TOXICOLOGY REPORT OF: DUTTRY, Mary Jo (CFCA98-05) 42/F
NMS Control No.: 147008

SPECIMENS: One gray top tube containing ~5.5 mL blood; one red top tube containing ~6 mL blood; one lavender top tube containing ~4.5 mL blood and two white plastic containers (one containing ~20 mL urine and one containing ~100 mL gastric contents [pH~5; dark brown]) were received on 07/28/98.

EXAMINATION: Analysis Requested - Panel 8102 - Autopsy Toxicology Therapeutic and Abused Drug Screen.

SUMMARY: Based on the concentration of substances found, it can be stated with reasonable scientific certainty that, in the absence of a more competent cause, the combined effects of these compounds on respiratory, cardiac and circulatory functions are such as to represent a competent, independent cause of death.

FINDINGS:

Blood

OPIATES CROSS-REACTIVE (by Enzyme Immunoassay)	Positive
MORPHINE FREE (UNCONJUGATED) (by GC/MS)	99 nanog/mL
OXYCODONE FREE (UNCONJUGATED) (by GC/MS)	66 nanog/mL
HYDROCODONE FREE (UNCONJUGATED) (by GC/MS)	25 nanog/mL
BENZODIAZEPINES CROSS-REACTIVE (by Enzyme Immunoassay)	Positive
DIAZEPAM (by GC/MS)	620 nanog/mL
NORDIAZEPAM (by GC/MS)	750 nanog/mL
OXAZEPAM (by GC/MS)	Less than 50 nanog/mL

MIRTAZEPINE (by GC & GC/MS)	160 nanog/mL
TRAZADONE (by GC, GC/MS, & HPLC)	0.56 mcg/mL
ATROPINE (by GC & GC/MS)	~150 nanog/mL
LIDOCAINE (by GC & GC/MS)	~0.1 mcg/mL
METHOCARBAMOL (by HPLC)	2.6 mcg/mL

Other than the above findings, examination of the specimens submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

COMMENTS:

1. Morphine is a DEA Schedule II narcotic analgesic. In analgesic therapy, it is usually encountered as the parent compound, however, it is also commonly found as the metabolite of codeine and heroin. In illicit preparations from which morphine may arise, codeine may be present as a contaminant. A large portion of the morphine is bound to the blood proteins or is conjugated; that which is not bound or conjugated is termed "free morphine." In general, free morphine is the active biologic agent. Morphine has diverse effects that may include i.a. analgesia, drowsiness, nausea and respiratory depression. 6-monoacetylmorphine (6-MAM) is the 6-monoacetylated form of morphine which is pharmacologically active. It is commonly found as the result of heroin use.

Intravenous administration of 10 mg morphine produced reported peak therapeutic blood levels of 60 nanog/mL which declined to 3 nanog/mL after 36 hr. A single therapeutic 10 mg intramuscular injection produced peak blood levels of 70 nanog/mL after 10 to 20 min which declined to 10 nanog/mL after 4 hr. In two reported fatalities, free morphine blood levels were reported as 70 and 350 nanog/mL.

2. Oxycodone is a DEA Schedule II controlled semi-synthetic narcotic analgesic. It is used to control pain associated with such ailments as bursitis, injuries, simple fractures and neuralgia. The addiction liability of oxycodone is about the same as for morphine. This compound should be administered in the smallest effective dose and as infrequently as possible. The usual adult dose of the hydrochloride salt is 5 mg every 6 hr.

Following the oral administration of approximately 5 mg of oxycodone, plasma concentrations of the compound averaging 20 nanog/mL (range, 10 to 40 nanog/mL) were reported at 1 hr. post-administration.

In overdose, oxycodone can produce stupor, coma, muscle flaccidity, severe respiratory depression, hypotension and cardiac arrest. In two oxycodone-related suicides, blood concentrations of 4,300 and 14,000 nanog/mL were reported.

3. Hydrocodone is a semisynthetic narcotic analgesic. It is similar to codeine in analgesic activity and is also widely used in cough syrups for its antitussive activity. This compound is reported to be highly addictive. For relief of pain, hydrocodone, as the bitartrate salt, is only available in oral form in combination with non-opiate drugs, e.g., acetaminophen. Active metabolites of hydrocodone include hydromorphone and hydrocodol. Normal adult oral dosages range from 5 to 10 mg every 4 to 6 hr.

After a single oral administration of 10 mg, mean peak serum levels of 20 nanog/mL were reported at 1.5 hr; levels dropped to 7 nanog/mL at 8 hr.

Hydrocodone is reported to be more toxic than codeine. In overdose, it produces the same manifestations as other opiates including: drowsiness, sedation, respiratory depression, coma and death. In reported overdosage, post-mortem blood levels ranged from 130 to 7000 nanog/mL.

4. Diazepam (Valium®) is a benzodiazepine used primarily for its sedative anxiolytic or muscle relaxing effects. It is a U.S. DEA Schedule IV listed central nervous system depressant, and patients using this medication are warned accordingly, especially concerning motor functions. It is habituating, an frequently abused. It is metabolized to several pharmacologically active compounds: nordiazepam, oxazepam and temazepam. In order to evaluate the effects of this compound, concentrations of these metabolites must also be considered.

The expected diazepam concentration in a chronic steady-state regimen ranges from 100 to 400 nanog/mL with nordiazepam being in the range of 130 to 500 nanog/mL. Oxazepam and temazepam may be present in very low concentrations.

Toxic effects may be produced by blood concentrations in excess of 1500 nanog/mL; fatalities produced by diazepam alone are rare, but may occur at blood concentrations greater than 500 nanog/mL.

5. Mirtazapine is an antidepressant agent. It is administered orally usually once daily.

Steady state plasma levels following a daily regimen:

Daily Dose (MG)	Peak Range (0.7-4.8 Hrs.)	Trough Range
15	27-51 ng/mL	4.3-12 ng/mL
30	56-104 ng/mL	11-25 ng/mL
45	84-142 ng/mL	17-39 ng/mL
60	117-199 ng/mL	25-52 ng/mL
75	137-225 ng/mL	28-64 ng/mL

6. Trazodone (Desyrel®) is a structurally atypical antidepressant agent. It is prescribed for the treatment of major depression. There is a wide range of trazodone dose requirements; however, total daily oral dosages should not exceed 400 mg for outpatients and 600 mg for hospitalized patients.

The generally expected steady state therapeutic range for trazodone is 0.5 to 1.2 mcg/mL. In older patients the range may be extended to 5.0 mcg/mL.

The principal effects of trazodone overdose include drowsiness and lethargy. The CNS-depressant effects of trazodone are at least additive with other CNS-depressants, e.g., barbiturates, benzodiazepines and alcohol. Two reported fatalities related to trazodone overdose had blood concentrations of the drug of 15 and 23 mcg/mL.

7. Atropine is an anticholinergic alkaloid used in pre-anesthetic therapy to control airway secretions and as an antispasmodic to control gastrointestinal spasms. It is frequently used as an antidote in the treatment of anticholinesterase-type pesticides. It can be obtained naturally from deadly nightshade or jimson weed. Atropine is also used in resuscitative attempts.

Following a single i.m. 1.0 mg dose of atropine, peak plasma concentrations of approximately 3 nanog/mL were attained in 30 min.

Toxic effects of atropine have considerable individual variation; however, at high doses, signs and symptoms include mydriasis, hot dry reddened skin, deliriums and hallucinations. Death has been reported with a concentration of 200 nanog/mL in blood and 1.500 nanog/mL in urine.

Atropine is also used in resuscitative attempts. In resuscitative failure, most of the administered drug remains confined to the intravascular injection pathway. Concentrations such as in the present case often are still present in the blood from the heart sampled at autopsy.

8. Lidocaine is an amide type of anesthetic that is used as a topical and injectable analgesic, antiarrhythmic, and in resuscitative efforts. It is also used as a "cutting" agent in some drugs of abuse, especially cocaine.

It is generally administered as an intravenous bolus injection of 50 to 1000 mg to control arrhythmia. Plasma lidocaine concentrations of 2 to 5 mcg/mL are considered desirable for anti-arrhythmic control usually administered by continuous intravenous infusion following bolus injection.

Lidocaine is also used in resuscitative attempts. In resuscitative failure, most of the administered drug remains confined to the intravascular injection pathway. Concentrations such as in the present case often are still present in the blood from the heart sampled at autopsy.

9. Methocarbamol (Robaxin®) is used as adjunctive therapy for musculoskeletal pain. It has also been used by the IV and IM routes to terminate epileptic seizures. The normal adult oral dosage is 1.5 g 4 times daily.

Following a single oral 2 g dosage, a peak serum concentration of methocarbamol of 26 mcg/mL was reported; after 4 g, the value reported is 41 mcg/mL at 2 hr.

Signs associated with acute overdosage include extreme drowsiness, fever, hypotension, convulsions and coma. Two reported overdoses involving methocarbamol with other compounds had blood levels of methocarbamol of 320 and 525 mcg/mL.

Respectfully,



Lee M. Blum, Ph.D., DABFT
Forensic Toxicologist

LMB/pco

This analysis was performed under chain of custody. The chain of custody documentation is on file at National Medical Services, Inc.

The data generated in the determination of the results contained in this report are scheduled to be discarded eighteen (18) months from the date of the original report, unless alternate arrangements are made by you prior thereto.

The remainder of the submitted specimens are scheduled to be discarded six (6) weeks from the date of this report unless alternate arrangements are made by you prior thereto.

**** ANALYSIS SUMMARY ****

8102 - Therapeutic and Abused Drug Screen

Test No. 8102 - Drug Screen by Enzyme Immunoassay on Blood for: AMPHETAMINES, BARBITURATES, BENZODIAZEPINES, BENZOYLECGONINE (COCAINE), CANNABINOIDS (MARIHUANA), METHADONE, METHAQUALONE, OPIATES, PHENCYCLIDINE (PCP) and PROPOXYPHENE; Enzymatic Assay for: ALCOHOL.

Test No. 8660 - Opiates - Free (Unconjugated) - Gas Chromatography/Mass Spectrometry on Blood for: CODEINE - FREE (UNCONJUGATED), DIHYDROCODEINE/HYDROCODOL - FREE (UNCONJUGATED), HYDROCODONE - FREE (UNCONJUGATED), HYDROMORPHONE - FREE (UNCONJUGATED), 6-MONOACETYLMORPHINE - FREE (UNCONJUGATED), MORPHINE - FREE (UNCONJUGATED) and OXYCODONE - FREE (UNCONJUGATED).

Test No. 9329 - Benzodiazepines Panel - Gas Chromatography/Mass Spectrometry on Blood for: ALPRAZOLAM, CHLORDIAZEPOXIDE, DESALKYLFLURAZEPAM, DIAZEPAM, ESTAZOLAM, FLURAZEPAM, ALPHAHYDROXYALPRAZOLAM, HYDROXYETHYLFLURAZEPAM, HYDROXYTRIAZOLAM, LORAZEPAM, MIDAZOLAM, NORDIAZEPAM, OXAZEPAM, TEMAZEPAM and TRIAZOLAM.

Test No. 8102 - Drug Screen Panel II - Gas Chromatography of Extracts on Blood for: BELLADONNA-, CINCHONA-, ERGOT-, METHYLXANTHINE- AND STRYCHNOS-ALKALOIDS, AMPHETAMINE AND AMPHETAMINE-LIKE SYMPATHOMIMETICS, ANTIEPILEPTICS, ANTIHISTAMINES, ANTIPSYCHOTICS (INCLUDING PHENOTHIAZINES, TRI- AND TETRACYCLICS), BARBITURATE AND NON-BARBITURATE HYPNOSEDATIVES, LOCAL ANESTHETICS, NON-DIGITALIS CARDIOREGULATORS, NON-LSD HALLUCINOGENS, ORAL HYPOGLYCEMICS (TOLBUTAMIDE, CHLORPROPAMIDE), SYNTHETIC ANTICHLORINERGICS, AND SYNTHETIC MORPHINE SUBSTITUTE NARCOTIC ANALGESICS.

Test No. 9010 - Gas Chromatography/Mass Spectrometry on Blood for: MIRTAZEPINE, DIAZEPAM, NORDIAZEPAM, TRAZADONE, ATROPINE, OXYCODONE, LIDOCAINE and HYDROCODONE.

Test No. 8102 - Colorimetric Analysis on Blood for: SALICYLATES, ACETAMINOPHEN and ETHCHLORVYNOL.

Test No. 3075 - Mirtazapine - Gas Chromatography on Blood for: MIRTAZAPINE.

Test No. 4535 - Trazadone - High Performance Liquid Chromatography on Blood for: TRAZADONE.

Test No. 2900 - Methocarbamol - High Performance Liquid Chromatography on Blood for: METHOCARBAMOL.

***** END OF REPORT *****

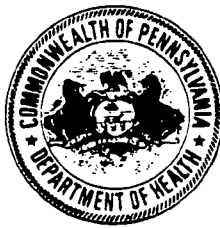
**INITIAL DEATH CERTIFICATE
CORRECTED DEATH CERTIFICATE**

**Duttry v. Fugate
File No.: 27062**



This is to certify that this is a true copy of the record which is on file in the Pennsylvania Division of Vital Records in accordance with Act 66, P.L. 304, approved by the General Assembly, June 29, 1953.

WARNING: It is illegal to duplicate this copy by photostat or photograph.



Charles Hardester
Charles Hardester
State Registrar

4674828

No.

SEP 29 1998

Date

H105.144 Rev. 1/91

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF HEALTH • VITAL RECORDS

CERTIFICATE OF DEATH (Coroner)

TYPE/PRINT
IN
PERMANENT
BLACK INK

FINAL CERTIFICATE

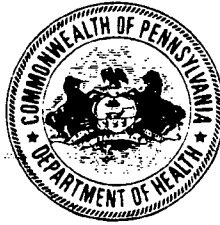
067462

NAME OF DECEDENT (First, Middle, Last) MARY Jo DUTTRY		SEX FEMALE	SOCIAL SECURITY NUMBER 182-44-2383	DATE OF DEATH (Month, Day, Year) JULY 25, 1998
AGE (Last Birthday) 42 Yrs.	DATE OF BIRTH (Month, Day, Year) 3-12-1956	BIRTHPLACE (City and State or Foreign Country) ROCKTON PA		
COUNTRY OF DEATH CLEARFIELD	CITY, BORO, TWP OF DEATH DuBois	FACILITY NAME (If not institution, give street and number) DuBois REGIONAL MEDICAL CENTER		
DECEDENT'S USUAL OCCUPATION ASSOCIATE BROKER	KIND OF BUSINESS/INDUSTRY REAL ESTATE	DECEDENT'S EDUCATION College (1-4 or 5+)		
DECEDENT'S MAILING ADDRESS (Street, City/Town, State, Zip Code) TREASURE LAKE DUBOIS PA 15801	DECEDENT'S ACTUAL RESIDENCE (See instructions on other side)	MARITAL STATUS - Married ☒ Never Married, Widowed, Divorced (Specify) MARRIED		
FATHER'S NAME (First, Middle, Last) JOSEPH M DRESSLER	MOTHER'S NAME (First, Middle, Maiden Surname) HAZEL BRUBAKER	SURVIVING SPOUSE (If wife, give maiden name) JACK D DUTTRY		
INFORMANT'S NAME (Type/Print) JACK D DUTTRY		INFORMANT'S MAILING ADDRESS (Street, City/Town, State, Zip Code) P O BOX 736 DUBOIS PA 15801		
METHOD OF DISPOSITION Burial ☐ Cremation ☒ Removal from State ☐ Other (Specify) ☐		DATE OF DISPOSITION (Month, Day, Year) JULY 28 1998		
SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH JOHN S YARGAR/bas		LICENSE NUMBER 010798 L		
NAME 24-28 must be completed by person who pronounces death.		DATE PRONOUNCED DEAD (Month, Day, Year) JULY 25, 1998		
IMMEDIATE CAUSE (Final disease or condition resulting in death) -> COMBINED (ILLEGAL + PRESCRIPTION) MULTIPLE, ACUTE DRUG OVER-DOSAGE		PART II: Other significant conditions contributing to death, but not resulting in the underlying cause given in PART I.		
WAS AN AUTOPSY PERFORMED? Yes ☒ No ☐		WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? Yes ☒ No ☐		
MANNER OF DEATH Natural ☐ Accident ☒ Suicide ☐ Homicide ☐ Pending investigation ☐ Could not be determined ☐		DATE OF INJURY (Month, Day, Year) 7/25/98		
TIME OF INJURY 5:37 A.M.		INJURY AT WORK? Yes ☐ No ☒		
PLACE OF INJURY - At home, farm, street, factory, office, building, etc. (Specify) HOME		DESCRIBE HOW INJURY OCCURRED. DRUG OVER-DOSAGE		
CERTIFYING PHYSICIAN (Physician certifying cause of death when another physician has pronounced death and completed item 23) To the best of my knowledge, death occurred due to the cause(s) and manner as stated.		SIGNATURE AND TYPE OF CERTIFIER 13 [Signature] CORONER		
*PRONOUNCING AND CERTIFYING PHYSICIAN (Physician both pronouncing death and certifying to cause of death) To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.		DATE SIGNED (Month, Day, Year) SEPT. 22, 1998		
*MEDICAL EXAMINER/CORONER On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.		NAME AND ADDRESS OF PERSON PRONOUNCING CAUSE OF DEATH (Item 27) Type or Print Clearfield Co. Coroner P.O. Box 145 Oscoda Mills, PA 16666		
REGISTRAR'S SIGNATURE AND NUMBER STATE OFFICE 37-000		DATE FILED (Month, Day, Year) SEP 28 1998		

NAME OF DECEDENT MARY Jo DUTTRY

This is to certify that this is a true copy of the record which is on file in the Pennsylvania Division of Vital Records in accordance with Act 66, P.L. 304, approved by the General Assembly, June 29, 1953.

WARNING: It is illegal to duplicate this copy by photostat or photograph.



Charles Hardester
Charles Hardester
State Registrar

4771857

No.

DEC 21 1998

Date

H105.144 Rev. 1/91

REPLACES ORIGINAL CERT. COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF HEALTH • VITAL RECORDS
FOR ITEMS: 27 SIGNED: 9-29-98
12-21-98bas

CERTIFICATE OF DEATH
(Coroner)

067462

TYPE/PRINT
IN
PERMANENT
BLACK INK

1. NAME OF DECEDENT (First, Middle, Last) Mary Jo Duttry		2. SEX female	3. SOCIAL SECURITY NUMBER 182-44-2383	4. DATE OF DEATH (Month, Day, Year) July 25, 1998
5. AGE (Last Birthday) 42 Yrs.	6. UNBORN YEAR Months Days Hours Minutes	7. DATE OF BIRTH (Month, Day, Year) 3-12-1956	8. BIRTHPLACE (City and State or Foreign Country) ROCKTON PA	9. PLACE OF DEATH (Check only one - see instructions on other side) Hospital ☐ Inpatient ☐ Outpatient ☒ DCA ☐ Other: Nursing Home ☐ Residence ☐ Other (Specify) ☐
10. COUNTY OF DEATH Clearfield	11. CITY, BORO, TWP OF DEATH DuBois	12. FACILITY NAME (If not institution, give street and number) DuBois Regional Medical Center	13. WAS DECEDENT OF HISPANIC ORIGIN? No ☐ Yes ☐ If yes, specify Cuban, Mexican, Puerto Rican, etc.	14. RACE - American Indian, Black, White, etc. (Specify) WHITE
15. DECEDENT'S USUAL OCCUPATION ASSOCIATE BROKER	16. KIND OF BUSINESS/INDUSTRY REAL ESTATE	17. WAS DECEDENT EVER IN U.S. ARMED FORCES? Yes ☐ No ☒	18. DECEDENT'S EDUCATION (Specify only highest grade completed) Elementary/Secondary ☐ College (1-4 or 5+) 12 (D-12)	19. MARITAL STATUS - Married ☐ Never Married ☐ Widowed ☐ Divorced (Specify) MARRIED
20. DECEDENT'S MAILING ADDRESS (Street, City/Town, State, Zip Code) TREASURE LAKE DUBOIS PA 15801	21. DECEDENT'S ACTUAL RESIDENCE (See instructions on other side) PA	22. Did decedent live in a township? Yes ☐ No ☒	23. Yes, decedent lived in SANDY	24. No, decedent lived within actual limits of city/town
25. FATHER'S NAME (First, Middle, Last) JOSEPH M DRESSLER	26. MOTHER'S NAME (First, Middle, Maiden Surname) HAZEL BRUBAKER	27. INFORMANT'S NAME (Type/Print) JACK D DUTTRY	28. INFORMANT'S MAILING ADDRESS (Street, City/Town, State, Zip Code) P O BOX 736 DUBOIS PA 15801	29. LOCATION - City/Town, State, Zip Code ALTOONA PA 16601-2014
30. METHOD OF DISPOSITION Burial ☐ Cremation ☐ Removal from State ☐ Donation ☐ Other (Specify) ☐	31. DATE OF DISPOSITION (Month, Day, Year) 7-28-1998	32. PLACE OF DISPOSITION - Name of Cemetery, Crematory or Other Place ALTOONA AREA CREMATORY	33. NAME AND ADDRESS OF FACILITY MOHNEY-YARGAR FUNERAL CHAPEL INC DUBOIS PA 15801	34. LICENSE NUMBER 010798 L
35. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH JOHN S YARGAR/bas	36. DATE SIGNED (Month, Day, Year) 7/25/98	37. WAS CASE REFERRED TO MEDICAL EXAMINER/CORONER? Yes ☒ No ☐	38. PART II: Other significant conditions contributing to death, but not resulting in the underlying cause given in PART I.	39. PART I: Enter the diseases, injuries or complications which caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock or heart failure. List only one cause on each line. Multiple acute drug over-dosage
40. IMMEDIATE CAUSE (Final disease or condition resulting in death) Multiple acute drug over-dosage	41. SEQUENTIALLY LIST CONDITIONS if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST	42. WAS AN AUTOPSY PERFORMED? Yes ☒ No ☐	43. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? Yes ☒ No ☐	44. MANNER OF DEATH Natural ☐ Homicide ☐ Accident ☒ Pending Investigation ☐ Suicide ☐ Could not be determined ☐
45. DATE OF INJURY (Month, Day, Year) 7/25/98	46. TIME OF INJURY 5:37 A.M.	47. PLACE OF INJURY - At home, farm, street, factory, office, building, etc. (Specify) home	48. INJURY AT WORK? Yes ☐ No ☒	49. DESCRIBE HOW INJURY OCCURRED drug over-dosage
50. CERTIFIER (Check only one) *CERTIFYING PHYSICIAN (Physician certifying cause of death when another physician has pronounced death and completed item 23) To the best of my knowledge, death occurred due to the cause(s) and manner as stated.	51. *PRONOUNCING AND CERTIFYING PHYSICIAN (Physician both pronouncing death and certifying to cause of death) To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.	52. *MEDICAL EXAMINER/CORONER On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.	53. SIGNATURE AND TITLE OF CERTIFIER R. Joel Heath Coroner	54. DATE SIGNED (Month, Day, Year) Dec. 14, 1998
55. NAME AND ADDRESS OF PERSON WHO COMPLETED CAUSE OF DEATH (Item 27) Type or Print R. Joel Heath P.O. Box 145 Osceola Mills, Pa. 16666	56. REGISTRAR'S SIGNATURE AND NUMBER STATE OFFICE 37-000	57. DATE FILED (Month, Day, Year) DEC 21 1998	58. NAME OF DECEDENT Mary Jo Duttry	59. ALIAS USED

RHODE ISLAND MEDICAL SERVICES, P.C.

Duttry v. Fugate
File No.: 27062



RHODE ISLAND MEDICAL SERVICES, P.C.
David H. Johe, M.D. - David Q. Steele, M.D. - Ted B. Eshbach, M.D.
761 Johnsonburg Road Suite 210
St. Marys, PA 15857

PATIENT # _____ Phone 375-9407

Patient Name MARY JO DUTTRY Maiden Name DRESSLER

Address P.O. BOX 736 Age 41 Date of Birth 3/12/56

City DU BOIS, PA. 15801 State PA Zip 15801

Social Security Number 182-44-2383 Family Physician DR. KARLS

Sex F Married X Single _____ Divorced _____ Separated _____ Other _____

Patient's Employer/School DUTTRY REAL ESTATE Phone 375-5899

Occupation OWNER

Allergies NONE (VALIUM, REMERON, TRAZADONE 300 mg)

Medications .9 Premarin 50mg Toprol XL Percocet 30mg (Lamox 15mg)

Spouse's Name JOHN D. DUTTRY Date of Birth 6/10/36

Spouse's Employer DUTTRY CONTRACTING Phone 375-9407

Name of Referring Physician DR. KARLS Phone 275-1112

Address REDBANK FAMILY PRACTICE

Emergency Contact JOHN D. DUTTRY Phone 375-9407

Other Emergency Contact PATRICIA BRIGGS Phone 371-0186

RESPONSIBLE PARTY/GUARANTOR

Primary Insurance _____ Group# _____ Policy# _____

Address _____ City _____ State _____ Zip _____

Policy Holder _____ Date of Birth _____

Relationship to Patient _____ Home# _____ Work# _____

Secondary Insurance _____ Group# _____ Policy# _____

Policy Holder _____ Date of Birth _____

Relationship to Patient _____ Home# _____ Work# _____

I hereby authorize the release of all medical information to any third party payer.

X Name Mary Jo Duttry Date 8/13/97
(signature)

I hereby assign all benefits to my physician.

X Name Mary Jo Duttry Date 8/13/97
(signature)

If this injury is work related or due to an accident,
please complete the back of this form.

Worker's Compensation or Accidental Injury Only

Type of Claim ☐ Work Comp ☐ Auto ☐ Other

Name Of Insurance Company _____

Address _____

City _____ State _____ Zip _____

Claim# _____ Date of Injury _____

Contact Person _____ Phone _____

Employer at Time of Injury _____

Address _____

City _____ State _____ Zip _____

Attorney Name _____

Address _____ Phone _____

City _____ State _____ Zip _____

Please describe in your own words exactly what happened to you.
(Including when and where)

WHAT ARE YOUR COMPLAINTS TODAY?

Have you filed a claim with your employer? yes / no

Has your compensation claim been approved? yes / no

If you answer no to either of the above questions we cannot
submit your bill under compensation.

HEALTH HISTORY

(Confidential)

Name MARY JO DUTTRY Today's Date 8/13/97
 Age 41 Birthdate 3/12/56 Date of last physical examination APRIL 1997
 What is your reason for visit? LOWER BACK + LEG PAIN

SYMPTOMS Check (✓) symptoms you currently have or have had in the past year.

GENERAL ☐ Chills ☒ Depression ☐ Dizziness ☐ Fainting ☐ Fever ☒ Forgetfulness ☒ Headache ☒ Loss of sleep ☒ Loss of weight ☒ Nervousness ☒ Numbness ☐ Sweats MUSCLE/JOINT/BONE Pain, weakness, numbness in: ☒ Arms <u>R</u> ☐ Hips <u>R</u> ☒ Back <u>R</u> ☐ Legs <u>R</u> ☐ Feet ☐ Neck ☐ Hands ☐ Shoulders GENITO-URINARY ☐ Blood in urine ☐ Frequent urination ☐ Lack of bladder control ☐ Painful urination	GASTROINTESTINAL ☐ Appetite poor ☐ Bloating ☐ Bowel changes ☐ Constipation ☐ Diarrhea ☐ Excessive hunger ☐ Excessive thirst ☐ Gas ☐ Hemorrhoids ☐ Indigestion ☐ Nausea ☐ Rectal bleeding ☐ Stomach pain ☐ Vomiting ☐ Vomiting blood CARDIOVASCULAR ☐ Chest pain ☐ High blood pressure ☐ Irregular heart beat ☐ Low blood pressure ☐ Poor circulation ☐ Rapid heart beat ☐ Swelling of ankles ☐ Varicose veins	EYE, EAR, NOSE, THROAT ☐ Bleeding gums ☐ Blurred vision ☐ Crossed eyes ☐ Difficulty swallowing ☐ Double vision ☐ Earache ☐ Ear discharge ☐ Hay fever ☐ Hoarseness ☐ Loss of hearing ☐ Nosebleeds ☐ Persistent cough ☐ Ringing in ears ☒ Sinus problems ☐ Vision - Flashes ☐ Vision - Halos SKIN ☒ Bruise easily ☐ Hives ☐ Itching ☐ Change in moles ☐ Rash ☐ Scars ☐ Sore that won't heal	MEN only ☐ Breast lump ☐ Erection difficulties ☐ Lump in testicles ☐ Penis discharge ☐ Sore on penis ☐ Other WOMEN only ☐ Abnormal Pap Smear ☐ Bleeding between periods ☐ Breast lump ☐ Extreme menstrual pain ☐ Hot flashes ☐ Nipple discharge ☐ Painful intercourse ☐ Vaginal discharge ☐ Other Date of last menstrual period <u>HISTORELTON</u> Date of last Pap Smear <u>APRIL 1997</u> Have you had a mammogram? <u>YES</u> Are you pregnant? <u>NO</u> Number of children <u>0</u>

CONDITIONS Check (✓) conditions you have or have had in the past.

☐ AIDS ☐ Alcoholism ☐ Anemia ☐ Anorexia ☐ Appendicitis ☐ Arthritis ☐ Asthma ☐ Bleeding Disorders ☐ Breast Lump ☐ Bronchitis ☐ Bulimia ☐ Cancer ☐ Cataracts	☐ Chemical Dependency ☐ Chicken Pox ☐ Diabetes ☐ Emphysema ☐ Epilepsy ☐ Glaucoma ☐ Goiter ☐ Gonorrhea ☐ Gout ☐ Heart Disease ☐ Hepatitis ☐ Hernia ☐ Herpes	☐ High Cholesterol ☐ HIV Positive ☐ Kidney Disease ☐ Liver Disease ☐ Measles ☒ Migraine Headaches ☐ Miscarriage ☐ Mononucleosis ☐ Multiple Sclerosis ☐ Mumps ☐ Pacemaker ☒ Pneumonia ☐ Polio	☐ Prostate Problem ☒ Psychiatric Care ☐ Rheumatic Fever ☐ Scarlet Fever ☐ Stroke ☐ Suicide Attempt ☐ Thyroid Problems ☐ Tonsillitis ☐ Tuberculosis ☐ Typhoid Fever ☐ Ulcers ☐ Vaginal Infections ☐ Venereal Disease

MEDICATIONS List medications you are currently taking

ALLERGIES To medications or substances

PREMERIN .69 VALIUM 10 MG
WELLBUTIN TOPOROL XL 50
PERLADAN REMOPRAM
TRAZADONE 3000 DALMANE 15

Pharmacy Name

Phone

(All information is strictly confidential)

FAMILY HISTORY Fill in health information about your family.

Relation	Age	State of Health	Age at Death	Cause of Death	Check (✓) if, your blood relatives had any of the following: Disease Relationship to you	
Father		GOOD	54		Arthritis, Gout	
Mother	78	POOR	78		Asthma, Hay Fever	
Brothers	38	GOOD	38		✓ Cancer	SISTER + MOTHER
	50	GOOD	50		Chemical Dependency	
	61	FAIR	61		Diabetes	
					✓ Heart Disease, Strokes	FATHER
Sisters	50	GOOD			High Blood Pressure	
	59	POOR			Kidney Disease	
	57	FAIR			Tuberculosis	
	46	FAIR			Other	

HOSPITALIZATIONS

Year Hospital Reason for Hospitalization and Outcome

2/96	METRO HEALTH CENTER, ERIE	L4-5 S-1 BACK SURG.
9/96		BACK PROBLEMS
1997	PREBYS.	BACK PROBLEMS
4/97	WEST	METAL STENTS HEART SURGERY
8/97	DUBOIS HOSP.	BACK / SEVER MEDICATION REACTION

PREGNANCY HISTORY

Year of Birth Sex of Birth Complications if any

HEALTH HABITS Check (✓) which substances you use and describe how much you use.

✓	Caffeine	
✓	Tobacco	
✓	Drugs	PERSCRIPTIONS
	Other	

Have you ever had a blood transfusion? ☐ Yes ☒ No
If yes, please give approximate dates.

SERIOUS ILLNESS/INJURIES	DATE	OUTCOME
WALKING PNEUMONIA	MAR 97	CURED

4 STEEL STINTS IN HEART VALVE	MAR 1997	

HYSTERECTOMY	11/91	

OCCUPATIONAL CONCERNS
Check (✓) if your work exposes you to the following:

✗	Stress
	Hazardous Substances
	Heavy Lifting
	Other

Your occupation:
REAL ESTATE / BROKER OWNER

I certify that the above information is correct to the best of my knowledge. I will not hold my doctor or any members of his/her staff responsible for any errors or omissions that I may have made in the completion of this form.

May J. Autty
Signature

8/13/97
Date

Reviewed By

Date

MARY JO DUTTRY

8-13-97

This is a lady well known to Dr. Steele whom I have looked at today with him. It appears that she has a herniated disk on one side and back pain on the other side. She has spondylolysis. IN discussion with Dr. Steele it appears the only thing that might help her is a laminectomy discectomy with fusion. I explained the process, procedure, risks and complications including infection, continued pain, sciatica, and other complications and the fact that she would need a blood transfusion and she understood.

David H. Johe M.D./src

David H. Johe, MD

DUTTRY, MARY JO

8-28-97

She came in today about 6 o'clock to the St. Marys office and Dr. Steele and I both talked with and her husband about what was coming up with her back surgery. We explained to her the risks and complications of surgery, including infection, deep or superficial, neurologic deficit including foot drop, continued pain in her back, the fact that she could have numbness around her incision, and the fact that she could have problems from anesthesia and would need a blood transfusion. I believe that she understood this. I explained that she may get no better, may continue to have pain in her back. We also explained that she would be on narcotics for the immediate pain but these would be tapered over about a two month period to where she would not be receiving narcotics after two months. She is scheduled for a laminectomy fusion next week. We also explained we would be putting allograft as well as autograft; that is, her own bone from her hip plus bone from a cadaver and she understood that.

Therefore, we will do her surgery.

David H. Johe, M.D. / sh

David H. Johe, MD

9-16-97

Comes back today and is doing very well. I don't see any drainage, and actually she has a pretty good back. I will see her back in 2 weeks. Hopefully on a day Dr. Steele can be here and we can both peek at her.

David H. Johe, M.D. / sh

9/23/97 Script CALLED TO DUBOIS PHAR. FOR TRAZADONE 150MG #30
ONE HS. NO REILLS / DE
PER DR. STEELE

9/29/97 Waddan Percodan #30
+ 666 pm pain

David H. Johe, MD

DUTTRY, MARY JO 9-25-97

Comes back today and her fusion looks good. She has a tremendous fusion mass which is slowly fusing in. She had a very wide laminectomy. I don't see a problem on her film. She denies anymore leaking fluid. No more headaches and I think her dura has sealed.

We talked today about narcotics. She says she has been getting prescriptions from Dr. Steele for Percodan. She wants more. I gave her one prescription for Percodan, #40, 1 q 6 to 8 h prn. We need to be careful of her because apparently she may also be getting narcotics from Dr. Vijay that she said that could become a narcotics addict from getting them from other physicians.

David H. Johe, M.D. / sh

David H. Johe, MD

12-2-97

Comes back and her x-rays look pretty good. I told her to begin walking, still wear her corset and she can get walking around the mall, not on the icy slippery surfaces. She is getting better, slow but sure. I will see her back in about 2 months with an x-ray of her L/S spine. Neurologically she intact and it is just a matter of letting thing heal.

David H. Johe, M.D. / sh

3/3/98 Letter mailed to Atty Hopkins today /rk

David H. Johe, MD

3-3-98

Comes back today and still complains of pain in her back and pain in her right buttock region. She has SLR which is negative bilaterally both sitting and lying. Pushing down with a couple of ounces of pressure on her shoulders and the top of her head does not seem to hurt, twisting her at the knees in either direction does seem to give her pain in her back. She also has pain to light touch over her incision posteriorly.

The x-rays today reveal that her fusion is taking, it looks to be in good position. Her skin is healed.

There are a couple of red flag signs with the twisting at the knees and the light touch on the lower back.

I will get her to some physical therapy and I will see her back in 3 months.

David H. Johe, M.D. / sh

David H. Johe, MD

DUTTRY, MARY JO 3-9-98

Calls and says when she does exercises she has a lot of pain -- so stop her exercises.

David H. Johe, M.D. / sh

David H. Johe, MD

3/6/98

Dr. Johe,

Mary Jo called today & said when she does her exercises she is in a lot of pain, should she continue w therapy

called

TK

3/6/98

5-28-98

Comes back today and still says that she has pain in her back. She points to the right SI joint and says it hurts here.

I probably spent a ½ hour talking to her about her problems. She is under a tremendous amount of stress right now. She is seeing Dr. James Fugate in DuBois and is on a couple of psychiatric medications as well as Percodan. She is involved with a lawsuit against some of her agents in her real estate agency and having lots of stress. There seems to be some amount of stress between her and her husband today.

I explained to her that she did not need more surgery. She did not need a rhizotomy. She does not need any of those things done. What she needs to do is unload some of the stress out of his life and she probably would feel better. She said that she went to Florida for 8 days and when she came back she felt great as all the stress was relieved. I don't think she has as much back or SI joint pain. (continued)

DUTTRY, MARY JO 5-28-98 - CONTINUED:

Her physical exam reveals nothing unusual.

It is my opinion that the best thing to do with her right now is to have her continue with Dr. Fugate and try to work through the problems of her life and I think she will feel much better. Although she likes real estate a lot, there seems to be a lot of stress in the real estate business for her especially with the law suit that is presently pending.

David H. Johe, M.D. / sh

PH JOHE

May 28, 1995 - Hunt lower back.

Description + ruptured disc L4-5 seen on MRI at L-5. Surgery Feb 1996 - recovered from surgery.

ERIE

Sept 18, 1996 - Doctor said she could go back to work & had 2nd accident. Blood in urine at that time.

March 1997 - On hospital Presley for diagnosis & pain control. Dr. Walsh - advised cholecystomy at Cleveland Clinic.

April 1997 - clot in heart artery. Had stent put in at West Penn - Dr. Garrett - no damage to heart by stress test.

Taking meds for depression & stress - Tofril 10 qm
Pavane 0.4 qm

Pain in ~~right~~ right buttock.
Goes all the way down her leg
to foot. Worse & rising in car
and some ways she sits. Gait
is always present. Brace did
not help. Worse & rising on feet.

Wellbutin -
Pablon -
Valium -
Trazodone -
Ultram -
Percocet -

Exam - LOM Lumbos in all directions

SCR + on left at 30°

SCR + on right at 50°

No reflex or neurological findings.

RUN DATE: 08/25/97
RUN TIME: 1800

ST. MARYS REGIONAL MEDICAL CENTER
LABORATORY DEPARTMENT
DENNIS A. SHARKEY, JR. MD, PATHOLOGIST

PAGE 1

OUT PATIENT REPORT

NAME: DUTTRY, MARY JO
ACCT#: V80787138
UNIT#: M000803087
Phone: (814) 375-9407

AGE/SEX: 41/F
DOB: Mar 12, 1956

ATTEND DR: JOHE, DAVID H
LOCATION: PREASSESSM
ADMITTED: 08/25/97

REPORT TO: JOHE, DAVID H

SPEC #: 0825:CG00032RCOMP Collected: 08/25/97-1100 Collected By: PATT
Received: 08/25/97-1332 Received BY: LAB.PJL
Completed: 08/25/97-1415

OTHR DR: KARLS

ORDERED: PROTHROMBIN/INR, APTT

COMMENTS: Specimen Comment: INPT SURGERY ON 9/3/97
IS PATIENT ON ANTICOAGULANTS? N

Test	Result	Flag	Reference
*****COAGULATION*****			
PROTHROMBIN/INR			
> PROTHROMBIN	10.6	L	12.0-14.0 SEC
> INR	0.8	L	1.5-4.5
> APTT	25.5		0.0-35.0 SEC

SPEC #: 0825:CH00066RCOMP Collected: 08/25/97-1100 Collected By: PATT
Received: 08/25/97-1332 Received BY: LAB.PJL
Completed: 08/25/97-1350

OTHR DR: KARLS

ORDERED: CH7

COMMENTS: Specimen Comment: INPT SURGERY ON 9/3/97
Is patient fasting? N

Test	Result	Flag	Reference
*****CHEMISTRY*****			
CH7			
> GLUCOSE, BLOOD	102		70-110 MG/DL
> UREA NITROGEN	13		6-20 MG/DL
> CREATININE, SER	0.8		0.5-1.3 MG/DL
> SODIUM	138		133-145 MMOL/L
> POTASSIUM	5.3	H	3.5-5.1 MMOL/L
> CHLORIDE, BLOOD	102		98-111 MMOL/L
> TOTAL CO2 SERUM	29		21-31 MMOL/L

Name: DUTTRY, MARY JO
Acct #: V80787138

Location: PREASSESSMENT TESTING

** CONTINUED ON NEXT PAGE **

OUTPATIENT
REPORT

RUN DATE: 08/25/97
RUN TIME: 1800

ST. MARYS REGIONAL MEDICAL CENTER
LABORATORY DEPARTMENT
DENNIS A. SHARKEY, JR. MD, PATHOLOGIST

PAGE 3

OUT PATIENT REPORT

NAME: DUTTRY, MARY JO AGE/SEX: 41/F ATTEND DR: JOHE, DAVID H
ACCT#: V80787138 DOB: Mar 12, 1956 LOCATION: PREASSESSM
UNIT#: M000803087 ADMITTED: 08/25/97
Phone: (814)375-9407 REPORT TO: JOHE, DAVID H

SPEC #: 0825:U00029R COMP Collected: 08/25/97-1100 Collected By: PATIENT
Received: 08/25/97-1332 Received BY: LAB.PJL
Completed: 08/25/97-(814)

OTHR DR: KARLS

ORDERED: URINALYSIS
COMMENTS: Specimen Comment: INPT SURGERY ON 9/3/97
QUERIES: Source: URINE, CLEAN CATCH

Test	Result	Flag	Reference
*****URINALYSIS*****			
URINALYSIS			
> COLOR	YELLOW		
> APPEARANCE	CLEAR		
> SP GRAVITY, UA	1.010		1.005-1.030
> pH	5.0		5.0-9.0 UNITS
> PROTEIN, QL UA	NEGATIVE		NEGATIVE MG/DL
> GLUCOSE	NEGATIVE		NEGATIVE MG/DL
> KETONES	NEGATIVE		NEGATIVE MG/DL
> BILIRUBIN	NEGATIVE		NEGATIVE
> BLOOD	NEGATIVE		NEGATIVE
> NITRITE	NEGATIVE		NEGATIVE
> UROBILINOGEN	0.2		0.0-1.0 E.U./DL
> LEUKOCYTES	NEGATIVE		NEGATIVE

Name: DUTTRY, MARY JO
Acct #: V80787138

Location: PREASSESSMENT TESTING

** END OF REPORT **

OUTPATIENT
REPORT

RUN DATE: 08/25/97
RUN TIME: 1800

ST. MARYS REGIONAL MEDICAL CENTER
LABORATORY DEPARTMENT
DENNIS A. SHARKEY, JR. MD, PATHOLOGIST

PAGE 2

OUT PATIENT REPORT

NAME: DUTTRY, MARY JO AGE/SEX: 41/F ATTEND DR: JOHE, DAVID H
ACCT#: V80787138 DOB: Mar 12, 1956 LOCATION: PREASSESSM
UNIT#: M000803087 ADMITTED: 08/25/97
Phone: (814) 375-9407 REPORT TO: JOHE, DAVID H

SPEC #: 0825:H00050R COMP Collected: 08/25/97-1100 Collected By: PATT
Received: 08/25/97-1331 Received BY: LAB.PJL
Completed: 08/25/97-(814)

OTHR DR: KARLS

ORDERED: CBC, DIFF, MANUAL
COMMENTS: Specimen Comment: INPT SURGERY ON 9/3/97

Test	Result	Flag	Reference
*****HEMATOLOGY*****			
<u>CBC</u>			
> WBC	9.8		4.8-10.8 X10 ³
> RBC	4.46		4.20-5.40 X10 ⁶
> HGB	14.5		12.0-16.0 g/dl
> HCT	43.7		37.0-47.0 %
> MCV	98.0		81.0-99.0 fl
> MCH	32.6	H	27.0-31.0 pg
> MCHC	33.3		33.0-37.0 g/dl
> RDW	16.1	H	11.5-14.5 %
> PLATELET COUNT	323		130-400 X10 ³
> MPV	8.5		7.4-10.4 FL
<u>DIFF, MANUAL</u>			
> NEUTROPHILS	62		42-75 %
> LYMPHOCYTES	29		20-51 %
> MONOCYTES	5		2-10 %
> EOSINOPHILS	2		2-10 %
> BASOPHILS	2	H	0-1 %
> PLATELET ESTIM	ADEQUATE		
<u>RBC MORPHOLOGY</u>			
> ANISOCYTOSIS	1+		
> MACROCYTOSIS	1+		

Name: DUTTRY, MARY JO
Acct #: V80787138

Location: PREASSESSMENT TESTING

** CONTINUED ON NEXT PAGE **

OUTPATIENT
REPORT

08/25/1997 10:19:47

MARY JO DUTTRY

AGE 41

DR. JOHE

8/25/97

ADM OFFICE

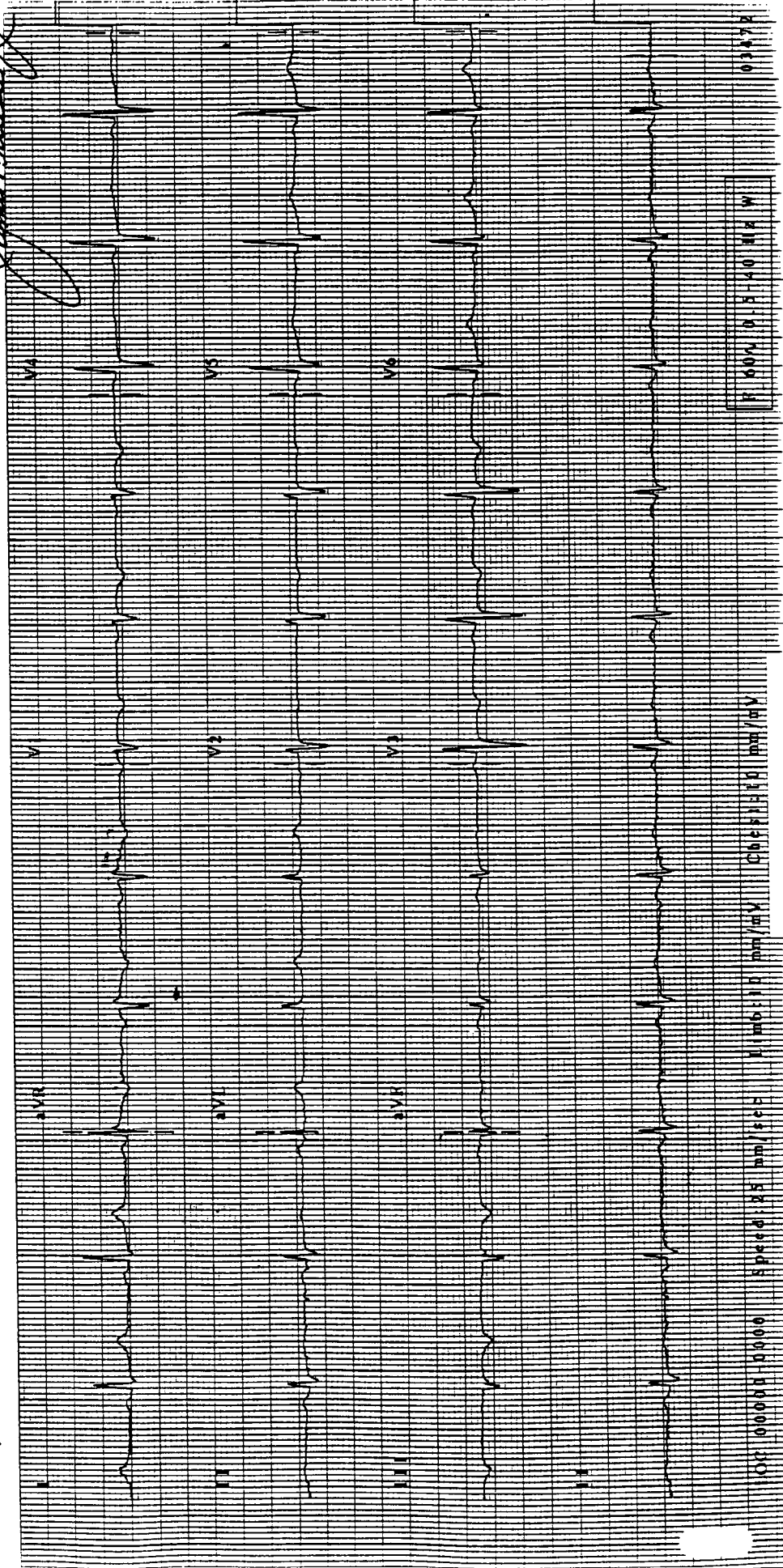
70-70 normal sinus PR .14 QRS .07 QT .36 normal

CLINICAL INTERPRETATION: No previous tracings are available for comparison. This tracing demonstrates sinus rhythm. There is relatively low voltage. Minor non-specific T wave changes especially the precordial leads are not diagnostic. There is no evidence of myocardial infarction, ventricular hypertrophy, pericarditis nor arrhythmia.

FINAL DIAGNOSIS: SINUS RHYTHM WITH NON-SPECIFIC T WAVE FLATTENING.

dict 8/25
trans 8/26

J.L. HACKETT JR, M.D./pr



100 0000-0000 Speed: 25 mm/sec Time: 10 mm/mV Chest: 10 mm/mV



ST. MARYS REGIONAL
MEDICAL CENTER
763 Johnsonburg Road St. Marys, PA 15857-3498

RADIOLOGY REPORT

PATIENT		SEX	ACCOUNT NUMBER	
DUTTRY, MARY JO		F	V80787138	
REFERRING PHYSICIAN		STATUS	LOCATION	MEDICAL RECORD NO.
JOHE, DAVID H		OUT	PAT	M000803087
ATTENDING PHYSICIAN	DATE OF BIRTH	AGE	DATE OF EXAM	RAD. #
JOHE, DAVID H	03/12/56	41	08/25/97	84401

DAVID H JOHE
761 JOHNSONBURG ROAD
ST MARYS
PA
15857
(814) 834-8640

EXAMS: 000017321 CHEST / ROUTINE PA & LATERAL

CHEST:

PA and lateral views of the chest show no significant abnormality of the heart, lungs or mediastinum and are otherwise essentially negative.

IMPRESSION: NEGATIVE CHEST.

REPORTED BY: LIN, PU CHING

CC: DAVID H JOHE

TECHNOLOGIST: VALERIE A. HANES
TRANSCRIBED DATE/TIME: 08/25/97 (1209)
TRANSCRIPTIONIST: RAD.CAR
PRINTED DATE/TIME: 08/25/97 (1309) BATCH NO: 4735

PAGE 1 DAVID H JOHE

INPATIENT RECORD **ST. MARYS REGIONAL MEDICAL CENTER** ST. MARYS, PA

ACCOUNT #: **V80787294** ADM/DATE: 09/03/97 TIME: 0329 MED. REC. #: M000803087
 TYPE: ADM SERVICE: SURGICAL FIN. CLASS: AU
 ROOM/BED: 210/1

PATIENT INFORMATION

DUTTRY, MARY JO
 PO BOX 736
 DUBOIS, PA 15801
 (814)375-9407 CLEARFIELD COUNTY

BIRTHDAY: 03/12/56 AGE: 41
 RACE: CAUCASIAN SEX: F
 RELIGION: OTHER
 MAR.STS.: MARRIED SS# 182-44-2383
 LIVING WILL: NO
 POWER OF ATTORNEY: NO

EMPLOYER INFORMATION

SELF-EMPLOYED

PERSON TO NOTIFY INFORMATION

DUTTRY, JOHN
 PO BOX 736
 DUBOIS, PA 15801
 (814)375-9407 Relationship: HU

GUARANTOR INFORMATION

DUTTRY, MARY JO
 PO BOX 736
 DUBOIS, PA 15801
 (814)375-940 G's SS#: 182-44-2383

NEXT OF KIN INFORMATION

DUTTRY, JOHN
 PO BOX 736
 DUBOIS, PA 15801
 (814)375-9407 Relationship: HU

GUARANTOR EMPLOYER

SELF-EMPLOYED

PHYSICIAN INFORMATION

ATTEND: JOHE, DAVID H
 ADMITTING: JOHE, DAVID H
 FAMILY: KARLS
 PRIM CARE:

INSURANCE INFORMATION

CNA FINANCIAL CORPORAT US 801525258
 BLUE CROSS SELECT BLUE YYZ182442383

DUTTRY, JOHN
 DUTTRY, MARY JO
 04161736

PRECERTIFICATION REQUIRED?: Y

PRECERTIFICATION PHONE: 1 800 835 42

ADDITIONAL PATIENT INFORMATION

ACCIDENT, AUTO

ACCIDENT DATE: 09/18/96 ACCIDENT TIME:

COMMENT: ALLOGRAFT, AUTOGRAFT FROM ILIAC CREST; HIT BY ANOTHER

ADMIT REASON: BACK PAIN-LAMINECTOMY, DISCECTOMY AS IND, FUSION

ADM. GAD

COPY

ST. MARYS REGIONAL MEDICAL CENTER
763 Johnsonburg Road
St. Marys, PA 15857

DISCHARGE SUMMARY

NAME: DUTTRY, MARY JO

UNIT: M000803087

DOCTOR: JOHE, DAVID H

ADMISSION: 9-03-97
DISCHARGE: 9-12-97

This is a woman who came in with problems with her back. Following her admission to the hospital she was taken to surgery where she had a very extensive operation on her back including laminectomy and fusion. A primary dural leak was repaired.

Postoperatively she did have some dural leakage but that resolved upon keeping her supine for several days. Her back wound was dry prior to discharge. She is now discharged home to be followed in the office in approximately two weeks.

DISCHARGE

MEDICATIONS: 1. Vicodin one q4 h prn pain.
Diet as tolerated.

She is told to rest, stay in her bed at home and get up only to use the toilet for the first week or two.

COMPLICATIONS: Dural leak, although this was a primary dural leak and not from her surgery.

LABORATORY VALUES: Per the chart.

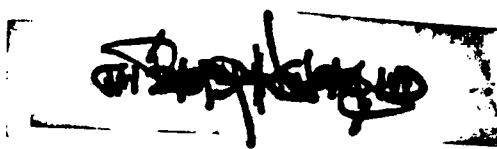
CONSULTATIONS: None.

Prognosis is favorable.

She will take approximately six months to heal with fusion.

JOHE, DAVID H

JOHDA
SRC
D: 19970911 2046
T: 09/11/97



ST. MARYS REGIONAL MEDICAL CENTER
763 Johnsonburg Road
St. Marys, PA 15857

HISTORY AND PHYSICAL EXAMINATION

NAME: DUTTRY, MARY JO

UNIT: M000803087

ROOM: LOCATION:

ADMISSION/SERVICE DATE:

DOCTOR: JOHE, DAVID H

This is a woman well known to Dr. Steele who has been followed by Dr. Steele in the past. She is from DuBois PA and is a real estate company owner. She presently takes Premarin, Toprolol, Percodan and Dalmane. She is allergic to no medications and also takes Trazodone, Valium and Remeron. She has had problems with her back for quite some time and has been evaluated by numerous doctors for this. Recently when she saw Dr. Steele in the office he felt that a laminectomy diskectomy and/or fusion of her back would be in her best interest.

In the office this was explained to her in great detail including the risks and complications, possibility of problems, what would happen with the procedure, how long she would be on different medications and she understood and agreed for the procedure.

PAST MEDICAL HISTORY,
REVIEW OF SYSTEMS,
FAMILY HISTORY:

As noted on her health history. She has had history of hysterectomy.

PHYSICAL EXAMINATION:

Reveals a somewhat depressed woman. Pupils equal and reactive to light. She seems to have normal mental status.

NECK:

Supple.

CHEST:

Clear. Regular rhythm present.

BREASTS, GU, RECTAL:

Deferred.

ABDOMEN;

Benign.

She has negative straight leg raising bilaterally. No evidence of motor weakness in her lower extremities.

A:

BACK PAIN WITH SPONDYLOLYSIS, POSSIBLE DISK.

P:

Back surgery.

David H. JOHE, MD

JOHE, DAVID H

JOHDA
SRC
D: 19970902 1910
T: 09/02/97

ST. MARYS REGIONAL MEDICAL CENTER
763 Johnsonburg Road
St. Marys, PA 15857

OPERATIVE REPORT

NAME: DUTTRY, MARY JO

UNIT: M000803087

DATE: 09/03/97

ROOM: 210

LOCATION: ST2

DOCTOR: JOHE, DAVID H

PREOPERATIVE DIAGNOSIS: Herniated Disk, L4-5 with Spondylolysis of the Lamina of L5; Pain in the Back and Sciatic Nerve Irritation.

POSTOPERATIVE DIAGNOSIS: Herniated Disk, L4-5 with Spondylolysis of the Lamina of L5; Pain in the Back and Sciatic Nerve Irritation.

SURGEON: D.H. Johe, M.D.

ASSISTANT: D.Q. Steele, M.D.

DATE: 9-03-97

OPERATION: Laminectomy, L4; Laminectomy, L5; Discectomy, L4-5, Bilateral; Repair of Primary Dural Leak; Bilateral Posterolateral Fusion, L4-L5, L-5 to the Sacrum with Allo and Autograft Including Harvesting of Right Iliac Crest Bone Graft.

GROSS FINDINGS: DESCRIBE ALL PATHOLOGICAL FINDINGS AND ALL ORGANS EXPLORED,
NORMAL AND ABNORMAL.

This is a woman who came in complaining of pain in her back and legs. Preoperatively, long discussions were carried out with her regarding her problems and pain and what to expect and the risks and complications of surgery including infection, neurovascular deficit, continued problems with her legs and/or back and she understood and agreed for the procedure. She understood that she may still continue to have pain in her back, may continue to have pain in her legs, it could get infected, she could have neurologic deficit.

After Mary Jo Duttry was brought to the OR as Mary Jo Duttry, she was given anesthesia. She then was given Kefzol antibiotics. She had Foley catheter placed and was placed in the knee-chest position. Her back was prepped with Betadine soap, Betadine solution and alcohol and draped off in a sterile fashion. Diluted solution of 1:500,000 Epinephrine and Normal Saline was instilled into the paraspinal muscles. Previous incision in her back was followed and was extended proximally and distally.

Going more distally, the lamina were scraped of the paraspinal muscles and exposed. There was a primary dural leak, as there were tremendous amount of adhesions to the lamina and these needed to be gently removed and there was a leak which was repaired with a dural silk. Following this, using Kerrison rongeurs, with care taken to protect the dural paddies, laminectomy was carried out bilaterally at L5 and L4. The dura was exposed and on the right side there was a tremendous amount of scar tissue around the nerve root which needed to be gently teased with a Freer elevator. Foraminotomies were carried out bilaterally at the L5 nerve roots. The disk was quite adherent to the underneath-side of the nerve root and dura and this was removed bilaterally at L4-5. An instrument was placed into the interspace at L4-5 and a crosstable lateral was taken during surgery to show the right level. Following this, a piece of muscle was placed over the previous dural repair, as well as Gelfoam. Thrombin-soaked Gelfoam as well as dural paddies and bipolar cautery was used throughout for epidural bleeding. Following this, the transverse process and posterolateral elements were scraped and debrided of muscle tissue down to bare bone. This was done at the L4 and L5 vertebrae as well as the sacrum. Incision was carried down over the right iliac crest and

DUTTRY, MARY JO

MO00803087

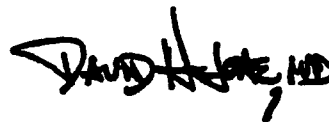
carried down deeper. Electrocautery was used for bleeders. Matchsticks were obtained on the posterior aspect of the iliac crest and iliac cortex and then using a gouge, cancellous pieces of bone in the shape of matchsticks were removed. This wound was then irrigated copiously with antibiotic solution, closed with 0 Vicryl, 2-0 Vicryl and skin staples.

Two 40 gm. jars of Allograft bone graft were chosen and these were morsalized and also placed into the posterolateral fusion as well as the fresh bone graft from the right iliac crest. This was all placed and packed in posterolaterally. Following this, the wound was copiously irrigated with antibiotic solution. Deep tissue closed with 0 Vicryl. 2-0 Vicryl was used subcutaneously and skin staples were applied to the middle back wound.

The patient awoke in the Operating Room and had dorsiflexion and plantar flexion of her toes and ankles.

She was taken to the Recovery Room in satisfactory condition.

JOHE, DAVID H



JOHDA

RMG

D: 19970903 1838

T: 09/03/97

ADVERSE REACTION/PROBLEM REPORT FORM

LifeNet strives to provide consistently high quality allograft tissue for implantation through a rigorous quality assurance program. In the event of an adverse reaction, problem, or complaint, please complete this form and forward it to LifeNet.

Patient Name: MARY JO DUTTRY
Institution / Address / Telephone: SMRMC / JOHNSONBURG RD, ST MARYS, PA
814-781-7865
Allograft Identification Number: 95-0965-020
Surgical Procedure Involved: LAMINECTOMY
Date Implanted: 9/3/97
Date Reaction / Problem Noted: _____
Description of Adverse Reaction / Problem: _____
Physician Name: DR. DAVID JONE
Physician Signature: _____

ADVERSE REACTION/PROBLEM REPORT FORM

LifeNet strives to provide consistently high quality allograft tissue for implantation through a rigorous quality assurance program. In the event of an adverse reaction, problem, or complaint, please complete this form and forward it to LifeNet.

Patient Name: MARY JO DUTTRY
Institution / Address / Telephone: SMRMC / JOHNSONBURG RD, ST MARYS, PA
814-781-7865
Allograft Identification Number: 96-1265-043
Surgical Procedure Involved: LAMINECTOMY
Date Implanted: 9/3/97
Date Reaction / Problem Noted: _____
Description of Adverse Reaction / Problem: _____
Physician Name: DR. DAVID JONE
Physician Signature: _____



ST. MARYS REGIONAL
MEDICAL CENTER
763 Johnsonburg Road St. Marys, PA 15857-3498

RADIOLOGY REPORT

PATIENT		SEX	ACCOUNT NUMBER
DUTTRY, MARY JO		F	V80787294
REFERRING PHYSICIAN	STATUS	LOCATION	MEDICAL RECORD NO.
JOHE, DAVID H	INP	210 1	M000803087
ATTENDING PHYSICIAN	DATE OF BIRTH	AGE	DATE OF EXAM
JOHE, DAVID H	03/12/56	41	09/03/97
			RAD. #
			84401

DAVID H JOHE
761 JOHNSONBURG ROAD
ST MARYS
PA
15857
(814) 834-8640

EXAMS: 000017978 SPINE SINGLE VIEW,
000017984 SPINE SINGLE VIEW

DX: LAMINECTOMY IN OR

PORTABLE LATERAL VIEWS OF THE LUMBAR SPINE IN THE OPERATING ROOM - 2 FILMS.

On the first portable lateral view of the lumbar spine, the distal portion of a radio-opaque instrument overlies the last lumbar spine spinous process. The lumbar disc spaces appear satisfactory maintained. The second lateral view of the lumbar spine demonstrates the distal portion of a radio-opaque instrument to overlie the anterior mid aspect of the next to the last lumbar disc space.

REPORTED BY: A.WILLIAM WERNER, M.D.

CC: DAVID H JOHE

TECHNOLOGIST: BETH L. HABERBEREGER
TRANSCRIBED DATE/TIME: 09/04/97 (0943)
TRANSCRIPTIONIST: RAD.DRC
PRINTED DATE/TIME: 09/04/97 (1811) BATCH NO: 4970

PAGE 1

DAVID H JOHE

SURGICAL PATHOLOGY REPORT
ST. MARYS REGIONAL MEDICAL CENTER
ST. MARYS, PA
LABORATORY DEPARTMENT

Page 1

Patient: DUTTRY, MARY JO

MR #: M000803087

Dob: 03/12/56 Age: 41 Sex: F

Submt. Doctor: JOHE, DAVID H

Specimen Number: S-2613-97

Physician: JOHE, DAVID H

Account #: V80787294

Pt Location: ST2

Procedure Date: 09/03/97

Accession Date: 09/03/97

Report Date: 09/08/97

Other Dr: 210

med rec

CLINICAL HISTORY

LBP, with sciatica

PRE OPERATIVE DIAGNOSIS

Disc L4-5

POST OPERATIVE DIAGNOSIS

Disc L4-5

TISSUE REMOVED

A) Disc L4-5 B) Lamina L4-5

***** SPECIMEN RECEIVED IN GOOD CONDITION-FIXATION ADEQUATE *****

GROSS DESCRIPTION

- A) Tissue specimen consists of a number of irregular fragments of firm pale gray and pink gray fibrocartilage, the total volume of which is approximately 20.0 ml. Representative sections are submitted.
- B) Tissue specimen consists of irregular fragments of firm red gray bone, firm pale gray and pink gray fibrous tissue, and soft red brown tissue which grossly appears to be muscle. The total volume of the specimen is approximately 40.0 ml. Representative sections are submitted.

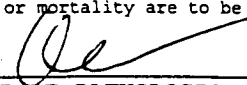
DIAGNOSIS

Focal degeneration of fibrocartilage (discectomy, L4-L5).

Viable bone (laminectomy, L4-5).

T11514|M00110 - ; T1151B|M50001 -
LAB. BJM

This report represents an opinion based on tissue submitted for examination and information furnished to the pathologist with the specimen. If the report does not agree with the attending physician's clinical impression, the pathologist should be notified immediately so that the case can be jointly reviewed. Physicians are encouraged to consult the pathologist and review their cases, particularly when treatment associated with high morbidity or mortality are to be instituted on the basis of the pathology report.


SIGNATURE OF PATHOLOGIST

DENNIS A. SHARKEY, JR., M.D.
CHIEF - DEPARTMENT OF PATHOLOGY

**PRE-SURGICAL
PATIENT INSTRUCTIONS**

DUBOIS
JMA

MARY JO BUTTER
(Patient's Name)

is scheduled to have

LAMINECTOMY DISCECTOMY
(Procedure) w/ FUSION

at St. Marys Regional Medical Center on

WEDS. 9/3/97
(Date)

The hospital will call you after 2:00 P.M. the day before surgery to tell you what time to report to the hospital the day of surgery. (If you will not be available at your home number, let the hospital telephone operator know where you can be reached.)

Your Patient Assessment Testing and Teaching (PATTT)
is scheduled for

MON. 8/25/97 9:30 AM
(Date) (Time)

If you do not have an appointment for Pre-Admission please call (814) 834-8514 between 9:00 A.M. and 4:00 P.M. as soon as possible. This appointment should be at least 3 working days, but not more than 14 days prior to your date of surgery.

Pre-admission Testing

St. Marys Regional Medical Center

763 Johnsonburg Road, St. Marys, PA 15857
(814) 834 8514

Physician: DR. JOHE

Date of Surgery: 9/3/97

Date of Admission: 9/3/97

☒ Inpatient Medical/Surgical ☐ Short Procedure Unit ☐ Intensive Care Unit ☐ Family Unit

Admission Diagnosis: HERNIATED LUMBAR DISC

Surgical Procedure: LAMINECTOMY, DISCECTOMY

Preferred Anesthetic: ☐ Monitored Anesthesia Care ☐ General Anesthesia ☐ Spinal/Epidural
☐ Regional(Plexus Block) ☐ IV Regional

Laboratory Tests to be performed during Pre-operative Testing:
(Please check appropriate tests))

CHOICE

Required Laboratory Tests for patients undergoing anesthesia and surgery

Age less than 45 years, no major health problems: CBC, UA, HCG (for females if indicated)

Age more than 45 years, no major health problems: CBC, UA, ECG (for males)

History of heart disease, use of diuretics, diabetes: CBC, UA, Chem 7, ECG (if over 45)

History of CHF, heavy smoking, pulmonary disease, bronchitis: CBC, UA, Chem 7, ECG, CXR, possibly ABG, PFT

History of liver disease: CBC, UA, Chem 16, PT/PTT, Liver Panel

☒ CBC	☒ Chem 7	☐ Chem 16	☐ Glucometer	☐ FBS
☒ PT/PTT	☐ HCG	☒ UA	☒ EKG	☒ CXR
☐ ECHO	☐ EST	☐ Persantine Thal.	☐ Carotid Doppler	☐ PFT
☐ RA ABG	☐ Liver Panel	☐ Hepatitis Panel	☐ C-Spine X Ray	☐ TSH, T3, T4
☐ Drug Level: _____		☐ Ivy Bleeding Time	☐ Other: _____	
☐ HCG on the day of surgery				
☐ Type and Screen _____ units PRBC.				
☐ Type and Crossmatch <u>2</u> Red Cross units PRBC.				
☐ Type and Crossmatch _____ Autologous units PRBC.				
☐ Perform Type and Crossmatch on the day of surgery.				

Comments:

DUBOIS VNA

DAVID A. JOHE, MD

Physician Signature

8/13/97

Date

(Orders must be signed by physician to be valid)

St. Marys Regional Medical Center
St. Marys, PA

INFORMED CONSENT FORM

Disclosure for Operation or Medical Procedure

My name is MARY JO DUTTRY. I have talked to my doctor about my condition which
is (symptoms of diagnosis) LEG PAIN.

My doctor and I talked about what might happen if we do not treat my condition. We also talked about different ways to treat it. We talked about the advantages and disadvantages of each of these different ways to treating my condition.

My doctor recommended the following operation(s) or procedure(s):

Lumbar laminectomy, dissection
as indicated, fusion with iliac crest
and allograft & my own graft

My doctor explained each operation or procedure to me and told me what s/he hopes it would do for me. S/he explained that my treatment may change depending on my condition. My doctor has also told me approximately how long it would take me to recover. My doctor *did not promise* that this would cure me or improve my condition. S/he gave me an opportunity to ask questions about my condition and the different ways to treat it. S/he answered my questions. I am satisfied with the answers.

My doctor discussed the risks of anesthesia and blood transfusion with me, including the option of auto transfusion for elective procedures.

I know there can be risks, complications or side-effects whenever someone has an operation or medical procedure. I know my doctor cannot tell me about every possible risk, complication or side-effect. We did talk about the major ones which could happen if I have the operation or procedure. I know what my doctor meant by them.

List Major Risks Discussed Which Are Specific To This Patient

infection, nerve damage,
pain in back, decreased
lifting ability.

My doctor gave me an opportunity to ask questions about these risks and any other risks I wanted to know about. S/he answered my questions. I am satisfied with the answers.

Continued On Other Side — Please Turn Over

INFORMED CONSENT FORM
Page 2.

Request For Operation Or Medical Procedure

I, MARY JO DUTTRY, request and give consent to
Dr.(s) ~~late~~ and his/her assistants to perform or administer
to me the following operation or procedure:

lumbar laminectomy, discectomy
as indicated for an orth
allograft and autograft from iliac crest

In addition, if something unexpected happens during the operation, which, in my doctor's opinion, needs treatment in addition to or different from what I requested, I also request that my doctor do, at that time, whatever s/he believes to be in my best interest. I also request my doctor to administer any necessary medications or blood transfusions chosen by him/her or his/her assistants, and I consent to the disposal and testing of any tissue or fluid removed.

I also request the use of such anesthetics as are deemed necessary by the anesthesiologist and/or his/her assistants.

St. Marys Regional Medical Center requires that the doctor(s) who seek(s) to perform your surgery or medical procedure(s) obtain your informed consent. DO NOT SIGN THIS CONSENT FORM UNLESS YOUR QUESTIONS HAVE BEEN ANSWERED.

I acknowledge that I have read and understand this consent form, or had this form read and explained to me and that the explanations referred to were made and that all blanks were filled in before I signed.

Darlene Ebert
Witness

Mary Jo Duttry
Patient

Physician's Statement

I acknowledge that the nature and purpose of this operation or medical procedure, possible alternative methods of treatment, the risks involved and the possibility of complications or unintended results were explained to the patient or his/her representative by me before the patient consented.

~~late~~
Physician

8/28/97
Date
6:30 PM

ST. MARYS REGIONAL MEDICAL CENTER
ST. MARYS, PA

CONSENT TO BLOOD/BLOOD COMPONENTS TRANSFUSION AND/OR BLOOD/
BLOOD COMPONENTS TRANSFUSION REFUSAL

Dr. Johe has explained to me that I may need one or more blood/blood component transfusion(s) while I am a patient at St. Marys Regional Medical Center or a series of transfusions as an outpatient for the following reasons: LAMINECTOMY

The doctor has explained to me in general what a transfusion is and the procedure that will be used. He/she has also explained to me that there are possible risks involved with this blood/blood component transfusion(s) including infectious hepatitis, AIDS, unexpected blood reactions and _____.

I therefore permit the doctor or such other doctors or persons as may be needed to assist him/her to give me the transfusion. No guarantees have been made to me about the outcome of the transfusion or the fitness or quality of the blood/blood components to be used.

Darlene Eckert
Witness

Mary Jo Ditty
Patient's Signature
8/28/97 6:00
Date Time am (pm)

The patient is unable to consent because: _____
I therefore consent for the patient. _____

	Signature	Relationship
Witness	_____	_____
	Date	Time am/pm

I REFUSE the blood/blood component transfusion(s) which Dr. _____ ordered. I am aware this is against the advice of the doctor.

The risks of refusing are: _____

The alternatives to it include: _____

I am refusing because: _____
I release the Medical Center, the doctor and all other persons caring for me from all responsibility for any ill effects that may result from the refusal.

Witness	Patient's Signature
_____	_____
	Date Time am/pm

I declare that I have personally explained the above information to the patient or the patient's representatives.

<u>Darlene Eckert</u>	<u>David Johe MD</u>	<u>8/28/97 6:30 PM</u>
Witness	Physician's Signature	Date/Time

PLAN OF CARE
PRESCRIPTION FOR PHYSICAL THERAPY
208 DEPOT ST.
ST. MARYS, PA 15857
814-834-0059

375-94.07

Tony Bertini
Registered Physical Therapist
Patient's Name MARY JO DUTRY
Diagnosis LBR, SP fusion
Treatment Area _____
Contra-Indications _____

Date

3/4/98

PRESCRIBED TREATMENTS

1. Paraffin _____	17. Therapeutic Exercises
2. Hydrocollator _____	a. Pulleys _____
3. Short Wave Diathermy _____	b. Progressive Resistive Exercises _____
4. Infra-Red Radiation _____	c. Passive Range of Motion _____
5. Microtherm _____	d. Active Range of Motion _____
6. Medco-sonlator _____	e. Scoliosis Program _____
7. Electrical Stimulation _____	f. Bicycle _____
8. Therapeutic Massage _____	18. Rehabilitation
9. Ultrasound _____	a. Gait Training _____
10. Traction _____	b. Crutch Walking _____
a. Cervical _____	c. Prosthetic Training _____
b. Pelvic _____	d. Muscle Re-Education _____
11. Whirlpool _____	e. Functional Activities _____
12. Posture Training _____	f. Manual Muscle Test _____
13. Moist Air Cabinet _____	g. Brace Fitting _____
14. Ice Massage/Packs _____	h. Burn Care _____
15. EMG/NCV Test _____	i. Sports Medicine _____
16. TNS (Transcutaneous Nerve Stimulator) _____	j. Stroke Program _____

Additional Comments:

*Rehab
& conservative
back exercises*

Number of Treatments:

2

Daily

Times per week for

6-8

for week(s)

Send patient back to me in

week(s)

week(s)

Referring Doctor:



M.D.

RHODE ISLAND MEDICAL SERVICES, P.C.

*m/jl
3/3/98*
**David Johe, M.D. - David Steele, M.D. - Ted Eshbach, M.D.
761 Johnsonburg Road Suite 210
St. Marys, PA 15857
814-781-8655**

March 2, 1998

David J. Hopkins
Attorney at Law
902 Beaver Drive
Dubois, PA 15801

RE: Mary Jo Duttry

Dear Mr. Hopkins:

Your client, Mary Jo Duttry, was first examined on August 13, 1997. At that time she was complaining of pain in her lower back referred into the right buttock and going down her right leg to the foot. She stated that the pain is worse while riding in a car and some ways when she sits, but it is always present. She has worn a brace but it did not help and is worse the longer she is on her feet. She gave a history of having been injured in an automobile accident on May 28, 1995 at which time she suffered a herniated nucleus pulposus at lumbar 4-5. With the failure of conservative treatment, she had surgery for removal of that disc in February of 1996 and gradually recovered from the surgery. On September 18, 1996 having been to her doctor who said that she was doing well and could go back to work, she was involved in a second accident re-injuring her lower back with subsequent development of the previously mentioned symptoms. Over the next eleven months her symptoms persisted and gradually became worse in spite of conservative therapy.

Physical examination demonstrated marked limitation of motion in the lumbar spine in all directions with paravertebral muscle spasm being present. A midline surgical scan was seen. Straight leg raising was positive on the left at 30° and on the right at 50°. No reflex nor neurological findings were present.

A review of the radiological studies that have been done since her second accident revealed a recurrent herniated nucleus pulposus and a spondylolysis.

26

DUTTRY, MARY JO
3/2/98

page 2

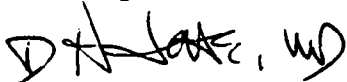
It was felt, based on the physical examination, her history, and the radiological findings, that she had a recurrent herniated lumbar 4-5 disc and aggravation of a spondylolysis as a direct result of her accident of September 18, 1996.

Treatment advised was excision of the herniated disc and spinal fusion from L4 to the sacrum. This was performed at St. Marys Regional Medical Center on September 3, 1997. Post operatively Mrs. Duttry's course was hindered by a dural leak which responded to conservative bed rest. She was discharged from the hospital, walking well, on September 12, 1997.

Since her discharge from the hospital she has been making gradual steady progress and was last seen on December 2, 1997 at which time she was advised to continue wearing her corset and to start being more active physically. She was advised to return in several months for followup examination and x-rays.

Her prognosis is excellent for recovery and return to her usual employment as a real estate broker.

Sincerely,



David H. Johe, M.D.

DHJ/sh

BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

X YYZ182442383

DUTTRY, MARY JO

03 12 56

X DUTTRY MARY JO

PO BOX 736

X

PO BOX 736

DUBOIS

PA

X

DUBOIS

PA

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814 375-9407

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09/03/97

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ST. MARYS REGIONAL MEDICAL
763 JOHNSONBURG RD
ST. MARYS, PA 15857
814-781-7500

RHODE ISLAND MEDICAL SERV
761 JOHNSONBURG RD ST 210
ST. MARYS, PA 15857
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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

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761 JOHNSONBURG RD ST 210
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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

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RHODE ISLAND MEDICAL SERV
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ST. MARYS, PA 15857
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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

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RHODE ISLAND MEDICAL SERV
761 JOHNSONBURG RD ST 210
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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
CAMPHILL, PA 17011

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RHODE ISLAND MEDICAL SERV
761 JOHNSONBURG RD ST 210
ST. MARYS, PA 15857
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BLUE SHIELD OF WESTERN PENNSYLVANIA
P.O. BOX 890062
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SIGNATURE ON FILE

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724.3

724.2

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1

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25-1643447

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05/29/98

NONE

RHODE ISLAND MEDICAL SERV
761 JOHNSONBURG RD ST 210
ST. MARYS, PA 15857

RI647741

Harry S.
Cohen
&
Associates
LAW OFFICES

May 1, 2000

David Q. Steele, M.D.
761 Johnsonburg Road
Suite 210
St. Mary, PA 15857

RE: Mary Jo Duttry
D/O/B: 6-10-36
SS#: 197-28-9933

Dear Dr. Steele:

Our firm has been retained to represent Jack Duttry, husband of Mary Jo Duttry, deceased.

We understand that Mrs. Duttry was your patient and treated with you on several occasions. facility on several occasions. At this time **WE ARE REQUESTING MRS. DUTTRY'S ENTIRE MEDICAL CHART.**

Enclosed is an executed authorization from Jack Duttry, husband, which permits you to release these medical records to us.

We will be happy to reimburse you for copying expenses incurred. If there is a pre-paid charge for this request, please call me so that we may expedite this information to our office.

Yours very truly

HARRY S. COHEN & ASSOCIATES


DENISE JOHNSON, PARALEGAL

/dej
ENCLOSURE

**ELK COUNTY REGIONAL MEDICAL
CENTER**

ADMISSION 6/26/97 TO 7/1/97

Duttry v. Fugate
50.27062



ADMISSION RECORD

Elk County Regional Medical Center

XXXXXX		ADM. NO.	FIN. CLASS	PT. TYPE	MED. RECORD NO.	ROOM NO./BED
		53469	03	PSYCH	69588	403-3
PATIENT NAME (LAST, FIRST, AND INITIAL)		ADMISSION DATE		TIME	DISCHARGE DATE	TIME
DUTTRY, MARYJO		06/29/96		10.57	7-1-96	0955
STREET ADDRESS		CITY	COUNTY	STATE	ZIP	CIVIL STATUS
PO BOX 736 RD 2		DUBOIS	CLEARFIE	PA	15801	MARRIED
AGE	DATE OF BIRTH	SOC. SEC. NO.	HOME PHONE	RELIGION	LIVING WILL	RACE
40	03/12/1956	182442383	3759407	LUTHERAN	Y / N	WHITE
OCCUPATION - PATIENT		EMPLOYER	EMPLOYER ADDRESS			
REALTOR BROKER		SELF				
OCCUPATION - SPOUSE / PATIENT		EMPLOYER	EMPLOYER ADDRESS			
EMERGENCY NOTIFICATION NAME		RELATIONSHIP	ADDRESS			TELEPHONE
EMERGENCY NOTIFICATION NAME		RELATIONSHIP	ADDRESS			TELEPHONE
GUARANTOR NO.	GUARANTOR NAME		ADDRESS			
69589	DUTTRY, MARYJO		PO BOX 736 RD 2 DUBOIS PA 15801			
INSURANCE PRIMARY AND ADDRESS			CONTRACT / GROUP NO.			
SELECT BLUE			YYZ182442383 / YYZ363			
SUBSCRIBERS NAME AND ADDRESS			CONTRACT / GROUP NO.			
DUTTRY, MARYJO PO BOX 736 RD 2 DUBOIS PA 15801			PA 15801			
OTHER INSURANCE AND ADDRESS			CONTRACT / GROUP NO.			
SUBSCRIBERS NAME AND ADDRESS						
ADMIT / ATTENDING PHYSICIAN		ADMIT TYPE	ADMIT SOURCE	PREVIOUS ADM DATE	CLERK	
ORDWAY, M. VERNON		3	4		RD/PATI OCONNER	
ACCIDENT INFORMATION	TYPE	DATE	TIME	PLACE		
ADMITTING DIAGNOSIS		PRE/CERT. REQUIRED:	DATE	VALID #(S)	CONTACT	
ANXIETY						

PRINCIPAL DIAGNOSIS

Bipolar disorder, mixed phase.
Moderate back pain secondary to, most probably, spasm of the muscles secondary to surgery.

296 63
7245
7248

COMPLICATIONS

None.

PROCEDURES

None.

CONSULTATION WITH

06-29-96: Dr. Reddy

RECOVERED ☐ UNIMPROVED ☐ DIED ☐
IMPROVED ☒ NOT TREATED ☐ RELEASED AGAINST ADVICE ☐

DATE

July 96

SIGNATURE OF ATTENDING PHYSICIAN

MEDICAL RECORDS

ELK COUNTY REG MED CENTER
RIDGWAY, PA 15853

DISCHARGE SUMMARY

NAME: DUTTRY, MARYJO

HOSP#: 69588

ADM#: 53469

DISCHARGED: 07/01/96

ADMITTED: 06/29/96
DOCTOR: ORDIWAY

This 40-year-old white female was admitted on a #302 filled out by her husband alleging that she had taken a knife to him. The patient always maintained this was not true. Supposedly the husband had told some people he lied about this, the husband face-to-face told me had been advised by counsel to not testify concerning his wife. At that same time, the patient told me had been contact with Dr. Fugate and had an appointment set up for Dr. Fugate that I could momentarily be expecting a fax from Dr. Fugate confirming this. I am now convinced that, that was untrue. The patient refused to take all medication other than the pain medication for her back. The husband had told me that she was misusing pain medication. The patient told me the husband was misusing medication. This was a stressful admission. The mental status of the patient never saw this as anything but an unfair taking away of her freedom. The sister that was here with her described a great deal of abuse and was extremely supportive of the patient's lack of judgment, screaming, etc., saying that this is what anyone did when they got mad. The patient at one time, very early in the admission, had said that come Monday she would be seeing a lawyer about protection from abuse, etc. But, this was all said in the context of she would leave with her sister at that time and the #302 would not be carried out.

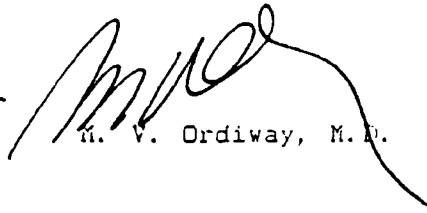
LABORATORY FINDINGS: Laboratory findings were not clinically significant. Anion gap at 19, with 18 being normal. The creatinase at 33 with 37 high/normal. SGOT 46, SGPT at 76, GGT gamma at 110 all reflect that the patient probably has been taking some of the medication she's been rumored to be taking but not excessively. The cholesterol at 390, triglycerides at 304 were high but nothing specifically was done for this.

DISCHARGE DIAGNOSIS: Bipolar disorder. The patient refused medication all the while she was here. There is no followup specifically made, but I have communicated with Dr. Fugate who says that he has seen this woman since she was 15 and will continue to see her. I think the prognosis for resolution of this situation must be guarded. The woman has done well financially in starting a business. Whether or not this threatens the husband as she and the sister at the time of admission said it would and that he could not tolerate her becoming independent enough to leave, I am not certain. I feel that whatever danger the patient faces at the hands of her husband has been of concern to a number of people in the past.

Discharge Summary

Duttry, Maryjo
53469
Dr. Ordiway
Page 2

During this admission, every opportunity was given her to think about this under safe circumstances. She predicted she would do nothing while she was here but be angry and that prediction she carried through.



M. V. Ordiway, M.D.

d: 07-01-96
t: 07-04-96/clm

ELK COUNTY REG MED CENTER
RIDGWAY, PA 15853

HISTORY AND PHYSICAL EXAM

NAME: DUTTRY, MARYJO
ADMITTED: 06/29/96
DOCTOR: ORDIWAY
BED: 403-3

MR#: 69588
ADM#: 53469

This white female, about 40 years of age, is admitted on a #302, her husband having filled out the form, maintaining that she had scratched him and had attacked him with a knife. The patient says that her husband is a pathological liar. She points out that it is her life, she can do what she wishes. She is very angry about the fact that this has been done, feeling this is a manipulation on her husband's part as part of an ongoing struggle about leaving him. She maintains her husband came from an abused family where power was utilized in the form of physical force, that she has been abused for a long period of time. She saw Dr. Fugate a year ago, he maintained that she was depressed, tried some antidepressants but none of them worked. At that time she said she wished to leave her husband, something she has said she wished to do a number of times. Since that time she has started a business which has put her in a position of financial independence, but seemed just recently to have had some sort of stress involving people making mistakes for which she would be ultimately responsible as head of the business. Her husband's report is that people left the business because of her violent mood swings and anger.

MENTAL STATUS: Shows a screaming, out of control person whose most violent act is to cut off the telephone when I am talking to her husband. She felt that she had been promised that her husband would not know where she was, whatever had been said other places when it was cleared up with the staff here as to what they had told her, which was that she had a right to have contact with those that she wished, is she didn't want contact with her husband she could keep from having contact and she therefore felt that I was wrong when I maintained that I had a right and an obligation to check with the person who had filled out the #302. It had first been said that the husband was readily willing to admit that he had lied to get her here and I wanted to make sure that he would not say to me that, indeed he had lied because he felt she needed help and someone had said it would take a night to get help and therefore he had said this. This had happened in the past, it did not in this case. The husband who filled out the form vehemently maintained that he had told the truth, there was extreme dangerousness and that he would so testify. The patient did not attack me, though there were times when I thought she might. There was material said in anger which I interpreted as psychotic. For instance, she said I am just like her husband, I am her husband. Her sister is very

HISTORY AND PHYSICAL EXAMINATION
PAGE 2

DUTTRY, MARYJO
53469
DR. ORDIWAY

clear that when the patient becomes angry she says things that everyone knows are unreasonable, untrue and would not expect to pay attention to. I pointed out to the sister and the patient that we take statements very seriously at the hospital here.

PREVIOUS MEDICAL HISTORY: Shows the patient has back pain, her husband insists that she is misusing medications such as Valium for her back pain. There has not been a prior hospitalization. Her husband maintains the patient had a suicide attempt in the remote past. She denies this.

ALLERGIES: There are no known allergies.

PHYSICAL EXAMINATION: Not performed, a medical consultation has been ordered about the back pain. The patient has been cleared through the emergency room at DuBois.

DIAGNOSIS:

Axis I: Bipolar disorder, mixed phase.

Axis II: Deferred.

Axis III: Back pain.

Axis IV: Very severe. According to the patient she had finally made up her mind to leave her husband, had indeed left him, and after she was safely with her sister the police had come and gotten her. She maintains that there were weapons in the house, her husband being a policeman, and it had no more entered her mind to touch one of those in anger than it had entered her mind to get hold of a knife, which she maintains she did not do.

Axis V: 35. The patient needs to be in a safe environment in the hospital at this time.



M. Vernon Ordiway, M. D.

d. 6-29-96
t. 7-1-96/nb
9:45 a.m.

69588 53469

DUTTRY, MARY JO
DUBOIS
DR. ORDWAY

408
AGE 40

ELK COUNTY REGIONAL MEDICAL CENTER
RIDGWAY, PENNSYLVANIA

DOB 03/12/56 LUTHERAN
ADM 01/29/86 ADM SELECT

addressograph

REPORT OF CONSULTATION

CONSULTANT:

Dr Reddy

REASON FOR CONSULT:

Pt says she has bad back

ATTENDING PHYSICIAN:

M. Vernon MD

REPORT

DATE

*pain and has not been
misusing as husband says.
M Vernon*

10/94

Signature of Consultant

ELK COUNTY REG MED CENTER
RIDGWAY, PA 15853

REPORT OF CONSULTATION

NAME: DUTTRY, MARYJO DATE: 6-29-96
MR#: 69588 ADM#: 53469
ATTENDING DR: ORDIWAY CONSULTANT: DR. REDDY
BED: 403-3

This is a 40-year old female with history of psych problem in the past. She is on Haldol. She is to be followed by Dr. Fugate in DuBois.

CURRENT PSYCH PROBLEM: Presented to the Elk County Regional Medical Center voluntarily this morning because of complaints that her husband was abusive and there was an argument last night. Apparently it seems that her husband falsely called the police saying that the patient was about to attack her husband with a knife. According to the patient she is very nervous right now and anxious saying that her husband is very abusive and tries to control her all the time and tries to be abusive all the time. This is the reason she presented to the Psychiatric Unit of the Elk County Regional Medical Center. A consult was requested by Dr. Ordiway for the management of her back pain.

She has had this back pain for the past few months. According to the patient she had a car accident in February, 1996 after which she sustained some back injury and also some prolapsed intervertebral discs in L4 and L5 for which she had undergone back injury in February, 1996. Ever since her surgery she has been having some back problems with spasm. Also, the back pain is radiating to the right side of the thigh and gluteal region. According to the patient presently the pain is a little bit more worse. There is some spasm of the back. She has been having some severe back pain presently.

CURRENT PROBLEMS: Moderate back pain secondary to back surgery she had in February, 1996. History of psych disorder. She is on Haldol. History of some back surgery a few months back secondary to a back injury in an automobile accident.

PERSONAL HISTORY: She has been for the past 14 years. She lives with him, but apparently she says there is an abusive relationship between her and her husband for the past few months now. She is a chronic smoker smoking more than a pack per day for the past 20 years. She drinks on and off. She does not have any children.

ALLERGIES: According to the patient she is not allergies to any medication.

FAMILY HISTORY: Non-significant at this time.

DUTTRY, MARY JO.
#53469
CONSULT -CONT'D, PAGE 2:

LABS: CBC: Chem-23, urinalysis, thyroid function tests all are pending. They have been ordered just now.

PHYSICAL EXAMINATION INCLUDING SYSTEMIC REVIEW: On examination this is a 40-year old female presently very emotional, very anxious with mild to moderately irritability presently crying while interviewing the patient and taking the history.

Vital Signs: recorded blood pressure is 150/90, pulse 82 per minute, respiratory rate is 14, temperature 98.8 degrees.

HEAD: Atraumatic. Pupils 3 mm. bilaterally equally reactive to light.

NECK: Supple. There is no JVD. There is no thyromegaly. There is no cervical or axillary lymphadenopathy noted.

HEART: S1, S2. There is no murmur.

LUNGS: Clinically clear.

BREAST EXAM: There is no mass. No nipple discharge present.

ABDOMEN: Mildly obese. There is no organomegaly. Bowel sounds are present. There is no rigidity or guarding of the abdominal muscles.

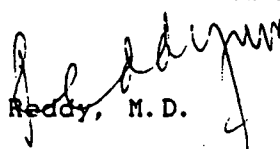
CNS: There is no focal deficit. Cranial nerves 2-12 intact.

BACK: There is an operative scar in the lower back in the lumbar spine. The patient has tenderness on touch especially between L3, L4 and L5 spines. SLR is positive on the left side of the leg. SLR is also mildly positive on the right side. There is some limitation of movement especially flexion of the hip, and mild extension limitations are also present on the right side.

IMPRESSION AND PLAN: 1. Moderate back pain secondary to most probable spasm of the muscles secondary to the surgery. PLAN: Put the patient on muscle relaxant, namely, Flexeril 10 mg. po tid. Will also put her on some narcotic analgesic prn (Darvocet 100 mg. q-8h) for two days. Will also get an x-ray of the lumbar spine to rule out any prolapsed disc or any other changes in the back. 2. History of psych disorder. PLAN: Manage as per the recommendations of Dr. Ordway.

Duttry, Mary Jo
#53469
CONSULT _ CONT'D, PAGE 3:

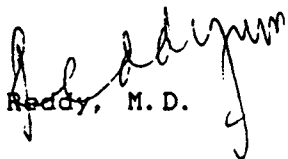
Thank you for this interesting consultation. Will followup with Dr.
Hardaway.


M. Reddy, M.D.

D:6-29-96, T:7-1-96, 9:20a.m./dwb

Duttry, Mary Jo
#53469
CONSULT _ CONT'D, PAGE 3:

Thank you for this interesting consultation. Will followup with Dr.
Hardaway.


M. Reddy, M.D.

D:6-29-96, T:7-1-96, 9:20a.m./dwb



Ridgeview Emotional Recovery

Physician Discharge & Home Care Instructions

Form E. CRM-C.

06/96

1. Prescriptions given and explained:

For: _____ To: pt

None

Rx medications to be continued:

none 7/1/96 RS
(None) Prozac 60 mg daily

2. Follow-up care, instructions given and explained:

Where: To make her own follow up To: pt

Hotline Telephone 371 1105

Hospital Number 814-776-5676

3. Release of information signed:

For: Mr. Torgate By: pt

4. Diet, written instructions given and explained:

Type: Regular To: pt

5. Other: _____

* Mary J. Dotti
PATIENT SIGNATURE

7/1/96
DATE

R. D. Dotti MD
NURSING STAFF

7-1-96
DATE

Addressograph

69588 53469

ATTN: MARY JO
PUBOIS
R. ORDWAY

403-3
AGE 40

DOB 03/12/56 LUTHERAN
ADM 06/29/96 ADM SELECT BLUE

[Signature] July 1 1996
PHYSICIAN SIGNATURE DATE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing AFFIDAVIT IN SUPPORT OF PETITION TO TRANSFER upon all counsel of record by United States, First-class mail, postage prepaid, this 4th day of October, 2000.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219
Counsel for Plaintiff

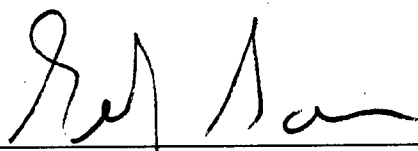
Howard A. Chajson, Esquire
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
Counsel for Karls/Redbank/UPMC

Michael A. Sosnowski, Esquire
P. O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical Center, et al.

Robert J. Grimm, Esquire
501 Grant Building
Pittsburgh, PA 15219
Counsel for Gateway Institute

Marshall J. Tindall, Esquire
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Counsel for Bowser/Shankel/Thomas & Cynthia Bowser

Alan Neely, Esquire
811 University Drive
State College, PA 16801



Giles J. Gaca

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

I CERTIFY THAT A TRUE AND CORRECT COPY
OF THE WITHIN HAS BEEN SERVED ON ALL
COUNSEL OF RECORD THIS 14th DAY OF
OCTOBER, 2000.

Michael A. Sosnowski
Attorneys for Named Defendant

CIVIL DIVISION

No. GD 00 – 12637

Code: 010

Type of Pleading:
**PETITION FOR CHANGE OF
VENUE PURSUANT TO
Pa.R.C.P. 1006(d)(1)**

Filed on behalf of Defendant:
**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:
**MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
PFAFF, MCINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581
FAX (814) 696-9399**

OCT 14 2000
FILED
CLERK OF COURT

[Handwritten signature]

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PA
CIVIL DIVISION

No. GD 00 – 12637

JURY TRIAL DEMANDED

PETITION FOR CHANGE OF VENUE PURSUANT TO
Pa.R.C.P. 1006(d)(1)

Defendant, DUBOIS REGIONAL MEDICAL CENTER t/a BEHAVIOR HEALTH
CENTER ("DRMC"), through its counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, files
the following Petition for Change of Venue Pursuant to Pa.R.C.P. 1006(d)(1) and avers in support
thereof as follows:

1. The defendant, DRMC, t/a Behavioral Health Center, files this Petition
pursuant to Pa.R.C.P. 1006(d)(1) to transfer this civil action to the Court of Common Pleas of
Clearfield County for the convenience of the parties and the witnesses for the reasons set forth
below.

2. Plaintiff initiated this medical malpractice action by filing a complaint in the
Court of Common Pleas of Allegheny County on or about July 24, 2000.

3. DRMC is a hospital facility located in DuBois, Clearfield County, Pennsylvania. Its involvement in this case stems from occasions when decedent would be treated by physicians and/or other health care providers at various times.

4. At no time did DRMC ever provide services to the decedent outside of Clearfield County, Pennsylvania.

5. Pursuant to Pa.R.C.P. 2179, this action could have been filed in Clearfield County, because:

- (1) The vast majority of the events relevant to this case took place there;
- (2) Any events relevant to this case which did not take place in Clearfield County took place in Clarion County, a neighboring county to Clearfield County;
- (3) All of the defendants conduct business in Clearfield County; and
- (4) Plaintiff and decedent resided in Clearfield County at all times relevant to this action.

6. While venue may be technically correct in Allegheny County because one defendant, UPMC, apparently maintains corporate head quarters in the county, this action should be transferred to Clearfield County for the convenience of the parties and in the interest of judicial economy and efficiency.

7. All of the information necessary to support this Petition is set forth within plaintiff's Complaint. This includes the following:

- (a) Plaintiff, John Duttry, "at all times material" resided in DuBois, Clearfield County; (Complaint at Paragraph 1)
- (b) Decedent, Mary Jo Duttry, "at all times material" resided in DuBois, Clearfield County; (Complaint at Paragraph 2)
- (c) Decedent, Mary Jo Duttry, died in Clearfield County and letters of administration were granted by the Register of Wills of Clearfield County; (Complaint at Paragraph 3)

- (d) Defendant, Dr. Fugate, maintains offices in DuBois, Clearfield County; (Complaint at Paragraph 4)
- (e) Defendant, DuBois Regional Medical Center, Inc., has its principle place of business in DuBois, Clearfield County; (Complaint at Paragraph 5)
- (f) Defendant, Gateway Institute and Clinic, has its principle place of business in DuBois, Clearfield County; (Complaint at Paragraph 6)
- (g) Defendant, Dr. Karls, practices medicine and does business at Redbank Family Practice – UPMC, located in New Bethlehem, Clarion County; (Complaint at Paragraph 7)
- (h) Defendant, UPMC Presbyterian t/a Redbank Family Practice – UPMC, maintains its principle place of business in Allegheny County, and a “regular place of business” in New Bethlehem, Clarion County; (Complaint at Paragraph 7)
- (i) Defendants, Jeffrey W. Rice, DMD, Jeffrey Rice DMD, PC and Jeffrey W. Rice, DMD and Jay L. Arlick, DMD, PC, maintain principle places of business in DuBois and Clearfield, Clearfield County; (Complaint at Paragraphs 9 through 11)
- (j) Defendant, Bowser Corporation, has its principle place of business in DuBois, Clearfield County; (Complaint at Paragraph 12)
- (k) Defendants, Thomas E. Bowser, R.PH and Cynthia Bowser R.PH, had “usual places of business at Shankel’s Pharmacy”, located in DuBois, Clearfield County; (Complaint at Paragraph 13)

8. Plaintiff’s Complaint also clearly states that all relevant events and medical care provided by the numerous defendants was rendered in Clearfield or Clarion County.

9. The only connection which may be found between this lawsuit and Allegheny County is the corporate headquarters for UPMC and the office of plaintiff’s counsel.

10. The majority of the key witnesses in this case, including the plaintiff, are located in Clearfield County. A few witnesses are located in Clarion County, which is the county immediately adjacent on the west side of Clearfield County.

11. In addition to the parties in this case, the testimony of employees and staff members of the various defendants, the majority of whom are located in Clearfield County, may play a role in this case.

12. Other medical professionals who treated the decedent who are not named in this case and all of who are located in or around Clearfield County may possess relevant information and may be required to testify at trial.

13. Mrs. Duttry's death was investigated by the coroner of Clearfield County. The autopsy was performed by Harold Cottle, M.D. a forensic pathologist. Dr. Cottle practices in Blair County, which is contiguous to Clearfield County.

14. The County seat of Clearfield County is the town of Clearfield. Clearfield is approximately 120 miles from Pittsburgh. The city of DuBois, where plaintiff and the majority of defendants reside is located approximately 100 miles from Pittsburgh. All medical records relevant to this case and necessary to both claims and defenses therein are located in Clearfield or Clarion Counties.

15. The time and expense of bringing these witnesses to Court for trial or other proceedings in this action and the inconvenience to the witnesses will be substantial should this action remain in Allegheny County.

16. Attached hereto as Exhibit "A" is an affidavit executed on behalf of defendant, DRMC, by Gregory Volpe, the director of risk management. Therein, Mr. Volpe sets forth various averments relative to DRMC's contacts to Clearfield County, the demands of the Hospital personnel involved, and DRMC's lack of contact with Allegheny County. (See affidavit in Support of Defendant, DuBois Regional Medical Center's, Petition for Change of Venue, attached hereto as Exhibit "A", and previously filed pursuant to Order of Court).

17. Conducting trial outside of Clearfield County would create extreme hardship and oppression by requiring the Hospital to potentially provide personnel for extended periods of

time outside of the county and also requiring additional coverage for those personnel, all of which would involve hardship to DRMC.

18. Conducting trial in Clearfield County, on the other hand, would provide for the least interruption possible to virtually everyone involved in this lawsuit.

19. The plaintiff will not be prejudiced in any fashion by a transfer of this action to Clearfield County, especially in light of the fact that he resides in Clearfield County.

WHEREFORE, the defendant, DuBOIS REGIONAL MEDICAL CENTER t/a BEHAVIORAL HEALTH CENTER, respectfully requests that this Honorable Court transfer this action to the Court of Common Pleas of Clearfield County.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT



Attorneys for Named Defendant
DUBOIS REGIONAL MEDICAL CENTER
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of :
MARY JO DUTTRY, Deceased; and JOHN D. :
DUTTRY, in his own right, :

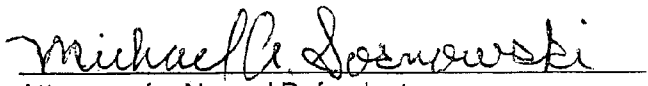
Plaintiff, :

vs. :

JAMES K. FUGATE, MD; DUBOIS REGIONAL :
MEDICAL CENTER, INC., a Pennsylvania :
Corporation t/a BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, INC., a :
Pennsylvania Corporation; JEFFREY P. KARLS, :
D.O.; individually and t/a REDBANK FAMILY :
PRACTICE – UPMC; UPMC PRESBYTERIAN, a :
Pennsylvania Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. RICE, DMD; :
JEFFREY RICE, DMD, PC, a Pennsylvania :
Professional Corporation; JEFFREY RICE, DMD :
and JAY L. ARLICK, DMD, PC, a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania Corporation t/a :
SHANKEL'S PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. BOSWER, R.PH; :
and CYNTHIA D. BOWSER, R.PH, :

Defendants. :

I CERTIFY THAT A TRUE AND CORRECT COPY :
OF THE WITHIN HAS BEEN SERVED ON ALL :
COUNSEL OF RECORD THIS 28th DAY OF :
SEPTEMBER, 2000. :


Attorneys for Named Defendant :

CIVIL DIVISION

No. GD 00 – 12637

Code: 010

Type of Pleading:

**AFFIDAVIT IN SUPPORT OF
DEFENDANT, DUBOIS REGIONAL
MEDICAL CENTER'S, PETITION FOR
CHANGE OF VENUE**

Filed on behalf of Defendant:

**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:

**MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207**

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

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IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PA
CIVIL DIVISION

No. GD 00 – 12637

JAMES K. FUGATE, MD; DUBOIS REGIONAL :
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Corporation t/a BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, INC., a :
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SHANKEL'S PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. BOSWER, R.PH; :
and CYNTHIA D. BOWSER, R.PH, :

Defendants. :

JURY TRIAL DEMANDED

AFFIDAVIT IN SUPPORT OF DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER'S
PETITION FOR CHANGE OF VENUE

Gregory J. Volpe, ACSW, LSW, Manager of Social Work, Pastoral Care, Utilization Review,
Risk Management and Regulatory Compliance of DuBois Regional Medical Center, does hereby
depone and state:

1. DuBois Regional Medical Center is a Pennsylvania corporation with its principal place of business and principal facilities located in DuBois, Clearfield County, Pennsylvania.
2. DuBois Regional Medical Center (DRMC) does not have any facilities, nor does it do any business in Allegheny County.
3. Any medical services rendered to decedent Mary Jo Duttry at DuBois Regional Medical Center, including approximately eighteen (18) emergency room presentations and twelve (12) inpatient admissions, all occurred in DuBois, Clearfield County, Pennsylvania.

4. Any employee of DRMC who assisted in the evaluation or treatment of decedent Duttry during any of her hospitalizations or emergency room presentations is a resident of Clearfield County or an adjacent county.

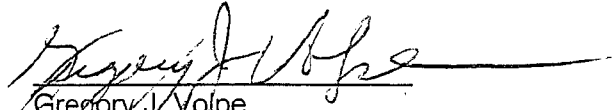
5. To the best of my knowledge, the vast majority of medical records, charts, laboratory studies, prescription records and other documentation pertaining to Mary Jo Duttry's medical treatment are located in Clearfield County or an adjacent county.

6. For the DuBois Regional Medical Center employees who may be witnesses to treatment rendered to decedent Duttry, as well as the medical witnesses who are affiliated with DRMC, travel to Allegheny County will require significantly greater time for them and will require the Hospital to give them time off and/or provide additional coverage than if the litigation were in Clearfield County.

7. Clearfield is approximately twenty-one (21) miles from DuBois. Pittsburgh is approximately ninety-five (95) miles from DuBois.

8. DuBois Regional Medical Center has no contact, either generally, or specifically through this case, with Allegheny County.

9. The logistical and financial burdens of conducting litigation and/or a trial in Allegheny County for DuBois Regional Medical Center is extensive for the reasons I have set forth above. However, litigating this case in Clearfield would require far less travel on the part of potential witnesses, would allow the Hospital greater access not only to its own records, but to those of other defendants in this case, and would impose a substantially lower burden than would litigating in Allegheny County.


Gregory J. Volpe

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CLEARFIELD)

ss:

Personally subscribed and acknowledged before me this 26th day of September, ~~1999~~ 2000, to be the true and correct signature of the above-named party.


Notary Public

Notarial Seal
Lisa M. Batson, Notary Public
DuBois, Clearfield County
My Commission Expires Oct. 15, 2001
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I, MICHAEL A. SOSNOWSKI, ESQUIRE, hereby certify that a true and correct copy of the within **Affidavit in Support of Defendant DuBois Regional Medical Center's Petition for Change of Venue**, filed on behalf of Defendant DuBois Regional Medical Center, was served this 28th day of September, 2000 upon the following parties/counsel of record:

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Harry S. Cohen Associates
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Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
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Julie Nord, Esquire
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Pittsburgh, PA 15222

Howard A. Chajson, Esquire
Dickie McCamey & Chilcote
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Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntill, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801

PFAFF, McINTYRE, DUGAS & HARTYE

By Michael A. Sosnowski

Attorneys for Defendant

DUBOIS REGIONAL MEDICAL CENTER

MICHAEL S. SOSNOWSKI, ESQUIRE

PA ID# 67207

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of :
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DUTTRY, in his own right, :

Plaintiff, :

vs. :

JAMES K. FUGATE, MD; DUBOIS REGIONAL :
MEDICAL CENTER, INC., a Pennsylvania :
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GATEWAY INSTITUTE AND CLINIC, INC., a :
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SHANKEL'S PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. BOSWER, R.PH; :
and CYNTHIA D. BOWSER, R.PH, :

Defendants. :

I CERTIFY THAT A TRUE AND CORRECT COPY :
OF THE WITHIN HAS BEEN SERVED ON ALL :
COUNSEL OF RECORD THIS 19th DAY OF :
OCTOBER, 2000. :

Michael A. Sosnowski :
Attorneys for Named Defendant :

CIVIL DIVISION

No. GD 00 – 12637

Code: 010

Type of Pleading:
**BRIEF IN SUPPORT OF
PETITION FOR CHANGE
OF VENUE PURSUANT TO
Pa.R.C.P. 1006(d)(1)**

Filed on behalf of Defendant:
**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
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Plaintiff,

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JAMES K. FUGATE, MD; DUBOIS REGIONAL
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Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
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CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSER, R.PH,

Defendants.

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PA
CIVIL DIVISION

No. GD 00 – 12637

JURY TRIAL DEMANDED

BRIEF IN SUPPORT OF PETITION FOR CHANGE OF VENUE
PURSUANT TO Pa.R.C.P. 1006(d)(1)

Defendant, DUBOIS REGIONAL MEDICAL CENTER, INC. t/a BEHAVIOR HEALTH
CENTER ("DRMC"), through it's counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, files
the following Brief in Support of Petition for Change of Venue Pursuant to Pa.R.C.P. 1006(d)(1).

I – Factual/Procedural Background

Plaintiff initiated this medical malpractice action by filing a Complaint in the Court of
Common Pleas of Allegheny County on or about July 24, 2000. DRMC is a hospital facility located
in DuBois, Clearfield County, Pennsylvania. Its involvement in this case stems from the treatment
provided to the decedent on numerous occasions in DuBois, Clearfield County. DRMC is seeking a
change of venue in this action. While venue may be technically proper in Allegheny County because
one defendant, UPMC, apparently maintains corporate headquarters in the county, DRMC is

petitioning for this change in venue for the convenience of the parties and witnesses and in the interest of judicial economy and efficiency.

All of the relevant information necessary to resolve this dispute is set forth in plaintiff's Complaint. Therein, plaintiff accurately avers that at all times relevant to this case, the following resided and/or maintained principal places of business in Clearfield county: plaintiff, plaintiff's decedent, defendant Dr. Fugate, defendant Gateway Institute, defendant Dr. Rice, defendant Bowser Corporation and defendants Thomas E. Boswer R.P.H. and Cynthia Bowser, R.P.H. Defendant Karls maintains offices in Clarion County. Defendant UPMC Presbyterian t/a Redbank Family Practice maintains it's principle places of business in Allegheny County, and a "regular place of business" in New Bethlehem, Clarion County. (Complaint at Paragraphs 1 – 13).

With respect to the plaintiff, it is also noted in the Complaint that letters of administration were granted by the register of wills in Clearfield County. (Complaint at Paragraph 3). The Complaint goes on to state that all relevant events and medical care provided by the numerous defendants was rendered, mostly in Clearfield and possibly in some part in Clarion County.

Attached to the Petition of DRMC as Exhibit "A" is an affidavit executed by Gregory Volpe on behalf of DRMC. Therein, Mr. Volpe sets forth various factual averments relative to the Hospital's contacts in Clearfield County, along with the demands on the professional and support staff at the Hospital, and the Hospital's lack of any contacts with Allegheny County. Essentially, DRMC's principle place of business and facilities are located in DuBois, Clearfield County, Pennsylvania; it does not do any business in Allegheny County; all medical services rendered to decedent in this case, including approximately eighteen (18) emergency room presentations and twelve (12) inpatient admissions, all occurred in DuBois, Clearfield County, Pennsylvania. Beyond that, any employee of DRMC who would have in any way participated in the evaluation or treatment of the decedent during any of her hospitalizations or emergency room presentations is a resident of Clearfield County or an adjacent county. Furthermore, the vast majority of medical records, charts,

laboratory studies, prescription records and other documents pertaining to decedent's medical treatment are located in Clearfield County or an adjacent county.

The affidavit goes on to state that, for any DRMC employee who may be a witness relative to treatment rendered to decedent to travel to Allegheny county would require significantly greater time for them to be away and would require the Hospital to give them time off and/or provide additional coverage than if the litigation in this matter were in Clearfield County. In general, the logistical and financial burden of conducting litigation and/or a trial in Allegheny County for DRMC is extensive, and litigating in Clearfield would certainly require far less travel and other conflict than would litigating this matter in Allegheny County.

II – Issue

WHETHER THIS MATTER SHOULD BE TRANSFERRED FROM ALLEGHENY COUNTY TO CLEARFIELD COUNTY BASED UPON THE DOCTRINE OF FORUM NON CONVENIENCE?

Suggested Answer: Affirmative

III - Argument

This action could have originally have been brought in Clearfield county, because:

- (1) virtually all of the events relevant to this case took place there;
- (2) All of the Defendants conduct business in Clearfield County; and
- (3) Plaintiff and decedent resided in Clearfield County at the relevant periods of time.

Pa.R.C.P. 2179. However, as set forth above, the ties to Allegheny County are limited solely to the fact that UPMC, which is based in Pittsburgh, maintains a facility in New Bethlehem, Clarion County.

Transfer to Clearfield County is appropriate in this instance, and it is permitted by Rule. Indeed, the applicable rules of civil procedure allow, “[f]or the convenience of parties and witnesses the Court upon petition of any party may transfer an action to the appropriate court of any other county where the action could have originally have been brought”. Pa.R.C.P. 1006(d)(1).

The Supreme Court of Pennsylvania set for the appropriate standard that a trial court should utilize when considering a defendant's petition to transfer venue pursuant to Rule 1006. The court indicated that, "a petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chose forum is oppressive or vexatious to the defendant." Cheeseman v. Lethal Exterminator, Inc., 701 A.2d 156, 162 (Pa. 1997). The Court went on to emphasize the trial court should not consider their own "private and public interest factors," including court congestion, in determining whether venue should be transferred. Cheeseman, 701 A.2d at 162-163 (holding that because "convenience to the court" is not mentioned in Rule 1006(d)(1), it should not be considered in a transfer of venue analysis).

Although the Supreme Court in Cheeseman held that the change of venue was improperly granted, this was because the trial court had considered the lesser-congested dockets in outlying counties other than the heavily congested dockets in Philadelphia as the primary basis for the decision. The essential holding in Cheeseman essentially allows the defendant to successfully support a requested change of venue by showing either (1) that the plaintiff's chosen forum is "vexatious" to the defendant i.e. "designed to harass the defendant, even at some inconvenience to the plaintiff himself"; or (2) that the plaintiff's chose forum is "oppressive" to the defendant, which would include a showing of "more than mere inconvenience to the defendant" i.e. "easier access to witnesses or other sources of proof," or "an easier ability to conduct a view of the premises involved in the dispute". Cheeseman 701 A.2d at 162.

Unlike in Cheeseman, there need be no issues concerning docket congestion or other improper considerations in the instant case. There is more than information contained in plaintiff's own Complaint to satisfy the appropriate standards and permit the transfer of this case to Clearfield County.

In 1998, the Superior Court of Pennsylvania issued a decision which clearly applied the "oppressive and vexatious" standard to uphold a trial court's decision to transfer venue on the basis of forum non conveniens. That case involved the transfer of a case from Philadelphia County

to Allegheny County, with the finding of the trial court that the Philadelphia County venue was "oppressive". Dulaney v. Consolidated Rail Corp., 715 A.2d 1217 (Pa. Super 1998). In that case, the Superior Court recognized that where an underlying accident occurred in Ohio, the plaintiff resided in West Virginia and worked out of a railroad's Allegheny County office, and that all of the witnesses to the accident involved and the plaintiff's medical providers resided in Ohio, West Virginia or Western Pennsylvania, that venue was more appropriate in Allegheny County than Philadelphia.

In this case, Clearfield County is the one county which contains the most witnesses, most parties, and most evidence, as is set forth in plaintiff's own Complaint. Clearfield County's geographical advantage to these witnesses and evidence is indisputable and a matter which the court can readily take note of from a simple viewing of a map of Pennsylvania. Beyond geography is the extreme hardship to which the various defendants would be subjected to by conducting a trial in this case in Allegheny County. This hardship is detailed in the various affidavits supplied by the defendants.

The affidavit submitted on behalf of DRMC sets forth why litigation in Allegheny County is burdensome and oppressive. This specifically deals with availability of witnesses and other evidence at trial, which, given the number of parties, could be lengthy. Providing evidence, including individual witnesses, in Allegheny County for a trial would require an excessive amount of time away from Clearfield County, providing a hardship for those individuals and also placing a burden on the Hospital to provide coverage for those individuals not available. Transportation to and from Allegheny County would have to be provided to those individuals who were witnesses, all at the expense of the Hospital.

On the other hand, litigating this case in Clearfield County would allow relatively easy access to all witnesses and evidence relative to the merits. Witnesses could be called as needed for a relatively short drive to the courthouse in Clearfield. Original charts and other records from Clearfield and Clarion Counties could be taken back and forth with relative ease. The only

inconvenience would be to the majority of counsel, all of whom reside away from Clearfield County. However, the convenience of counsel is not a consideration in the evaluation of propriety of venue.

In light of the foregoing, and because this Petition is not based upon issues of court congestion, venue may appropriately be transferred from Allegheny to Clearfield County. No prejudice will inure to anyone involved in this case as a result of such a move. However, as set forth in the record developed by affidavits of the defendants, substantial prejudice will result if this matter continues in Allegheny County. As such, DRMC respectfully requests that this court grant the various petitions of the defendants and transfers venue of this case to Clearfield County.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

A handwritten signature in cursive script, reading "Michael A. Sosnowski". The signature is written in dark ink and is positioned above a horizontal line.

Attorneys for Named Defendant
DUBOIS REGIONAL MEDICAL CENTER
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
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Plaintiff,

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JAMES K. FUGATE, M.D.; DUBOIS
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HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
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UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
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SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**BRIEF IN SUPPORT OF PETITION
FOR CHANGE OF VENUE**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
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Plaintiff,
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CIVIL DIVISION

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A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
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JEFFREY RICE, D.M.D., P.C., a
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JEFFREY RICE, D.M.D. and JAY L.
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SHANKEL'S PHARMACY and t/a
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THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.
Defendants.

BRIEF IN SUPPORT OF PETITION FOR CHANGE OF VENUE

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Brief in Support of Petition for Change of Venue Pursuant to PA. R.C.P. Rule 1006 (d)(1) and in support thereof aver as follows:

I. FACTS

On or about July 24, 2000, Plaintiffs filed a complaint in the Court of Common Pleas of Allegheny County, Pennsylvania. Plaintiffs claim in paragraph 18 of their complaint that venue is proper in Allegheny County due to the fact that Defendant Redbank-UPMC has a principal place of business in Allegheny County. However, Defendants also aver that Defendant Redbank-UPMC has a regular place of business in New Bethlehem, Clarion County. Furthermore, with the exception of Dr. Karls who maintains a principal place of business in Clarion County, the remaining parties, including Plaintiffs, all reside and/or maintain a principal place of business in Clearfield County. Defendants, Shankel's Pharmacy and the Bowers presented a Petition for Change of Venue on September 7, 2000 and Affidavits in Support of the Petition on or about October 6, 2000. A true and correct copy of the Petition is attached as Exhibit "A".

II. ISSUE

Should the above captioned matter be transferred from Allegheny County to Clearfield County under doctrine of *forum non conveniens*?

Suggested Answer: YES

III. ARGUMENT

Plaintiffs own complaint alleges that all events that form the basis of this lawsuit occurred in either Clearfield and/or Clarion County with the majority of the events occurring in Clearfield County. The only basis Plaintiff has cited for bringing this suit in Allegheny County

is that one of the Defendants, UPMC-Redbank has a principal place of business in Allegheny County. However, Plaintiffs do not allege that any care or treatment occurred at the Allegheny County location. Therefore, while venue in Allegheny County may be technically correct, it is certainly within this court's discretion to transfer the case to Clearfield County under the doctrine of *forum non conveniens*.

Under the principle of *forum non conveniens*, the trial court has discretion to transfer the case to a forum where the action could originally have been brought. Pa.R.Civ.P., Rule 1006 (d)(1); *Dulaney v. Consolidated Rail Corporation*, ___ Pa.Super. ___, ___, 715 A.2d 1217, 1218 (1998). "An abuse of discretion occurs when the judge misapplies the law or exercises his judgment in a manner that is manifestly unreasonable or the result of bias, prejudice or ill will." *Id.*, citing, *Johnson v. Henkels & McCoy, Inc.*, ___ Pa.Super. ___, 707 A.2d 237 (1997).

In *Dulaney v. Consolidated Rail Corporation*, the Superior Court was presented with the question of whether the trial court abused its discretion in granting the defendant's petition for change of venue from Philadelphia County to Allegheny County based on *forum non conveniens*. ___ Pa.Super. at ___, 715 A.2d at 218. In that case, plaintiff's cause of action stemmed from an accident that occurred in Ohio. Plaintiff resided in West Virginia and worked out of the defendant's office in Allegheny County at the time of the accident. Moreover, all of the witnesses to the accident and plaintiff's medical providers resided in Ohio, West Virginia and Western Pennsylvania. The only connection to Philadelphia County was that the defendant conducted business in Philadelphia County. *Id.* at ___, 715 A.2d at 218, 219.

In assessing the issue of whether the trial court abused its discretion in transferring the action from Philadelphia County to Allegheny County, the Superior Court embraced the following principles espoused by the Supreme Court in *Cheeseman v. Lethal Exterminator, Inc.*, 549 Pa. 200, 701 A.2d 156 (1997):

A petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant.

[T]he defendant may meet its burden of showing that the plaintiff's choice of forum is vexatious to him by establishing with facts on the record that the plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff himself. **Alternatively, the defendant may meet its burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute. But, we must stress that the defendant must show more than that the chosen forum is merely inconvenient to him.**

Dulaney, ___ Pa.Super. at ___, 715 A.2d at 1219, *quoting*, *Cheeseman*, 549 Pa. at 213, 701 A.2d at 162. (emphasis added).

Applying the aforementioned law to the facts in *Dulaney*, the Superior Court found that defendant "has demonstrated that a trial in [plaintiff's] chosen forum would have been oppressive and that trial in Allegheny County would be more convenient because of easier access to all of the witnesses and other sources of proof." *Dulaney*, Pa.Super. at ___, 715 A.2d at 1219. Consequently, the Superior Court determined that the lower court did not abuse its discretion when it granted defendant's petition to transfer venue based on *forum non conveniens*. *Id.*

Based on Plaintiff's complaint in the instant case, all of the alleged events occurred in either Clearfield and/or Clarion County with the majority of the events occurring in Clearfield County. Moreover, Plaintiffs, as well as Shankel's Pharmacy and the Bowsers, are located in Clearfield County. Further, similar to the facts presented in *Dulaney*, Plaintiffs' chosen forum has only one known connection to the action. In *Dulaney* the only nexus Philadelphia County had to the case was that one of the Defendants conducted business in that county. Here, the *only* known connection Allegheny County has to this matter is that Defendant Redbank-UPMC maintains a principal place of business in Allegheny County. The mere fact that Defendant Redbank-UPMC maintains a principal place of business in Allegheny County, but that all of the

alleged actions occurred in the Clarion County, makes Plaintiffs' choice of forum even more tenuous in the instant case than it was in *Dulaney*.

Defendants, Shankel's Pharmacy and the Bowers are cognizant of the law that requires them to show that the chosen forum is oppressive and not merely inconvenient to them. See Affidavits of Bowser Corporation and Thomas Bowser and Cynthia Bowser attached as Exhibit "B". To buttress their position that the forum in Allegheny County is oppressive to their defense, Defendants submit that they reside and do business in Clearfield, Clearfield County Pennsylvania and that Clearfield is at least a two and 1/2 hour drive from the Court of Common Pleas of Allegheny. See Exhibit "B". As such, any discovery and/or trial requiring the presence of these Defendants would essentially cause Defendants to shut down their place of business for the day(s) in which their presence is required. See Exhibit "B". Moreover, the location of the events which form the basis of the Plaintiff's complaint occurred in either Clearfield County and/or Clarion County with the majority of the events occurring in Clearfield County. Furthermore, all records maintained by Shankel's Pharmacy and the Bowers are located in Clearfield County. See Exhibit "B". It is also suspected that any other medical records and fact witnesses will also derive from Clearfield County with the possible exception of some deriving from Clarion County.

Clearly, the Allegheny County forum does not provide any access to sources of proof. It does not provide availability of compulsory process for attendance of unwilling witnesses. The Allegheny County forum poses undue costs upon obtaining attendance of willing witness. Moreover, as Plaintiffs reside in Clearfield County, Plaintiffs would certainly not be prejudiced by the transfer of this action to Clearfield County.

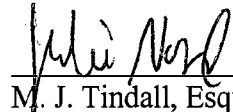
For the aforementioned reasons, this Honorable Court is warranted in transferring this action to the Court of Common Pleas of Clearfield County. See McCrory v Abraham, 441

Pa.Super. 258, 657 A.2d 499 (1995) (In weighing the private interests of the parties and witnesses, the Superior Court found that the trial court did not abuse its discretion in transferring the action from Philadelphia County to Monroe County on the basis of *forum non conveniens*.)

IV. CONCLUSION

Based on the forgoing, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., Petition for Change of Venue, pursuant to Pa. R.C.P. 1006(d)(1) must be granted and this action must be transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

PA I.D. #38575

Julie L. Nord, Esquire

PA I.D. #76126

Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

-Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**PETITION FOR CHANGE OF VENUE
PURSUANT TO PA. R.C.P. 1006(d)(1)**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

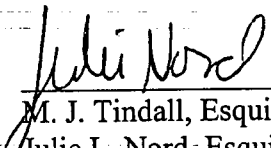
Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,
Defendants.

NOTICE OF PRESENTATION

PLEASE TAKE NOTICE that the within Petition for Change of Venue will be presented before the Honorable Judge Strassburger, on the 6th day of September, 2000 at 9:00 a.m., or as soon thereafter as meets the convenience of the court.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire
Julie L. Nord, Esquire

Attorneys for Defendants, Bowser, et al.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation,
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. And Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Petition for Change of Venue Pursuant to PA. R.C.P. Rule 1006 (d)(1) and in support thereof aver as follows:

1. Plaintiff commenced the instant action by filing a complaint in The Court of Common Pleas of Allegheny County, Pennsylvania on or about July 24, 2000.

2. Although venue may be lawful in Allegheny County as Defendant Redbank-UPMC has its principal place of business in Allegheny County, this action should be transferred to Clearfield County for the following reasons.

3. While Defendant Redbank-UPMC has a principal place of business in Allegheny County, it appears from the complaint that all medical care, treatment and evaluations which form the basis of Plaintiffs' complaint occurred either in Redbank-UPMC located in New Bethlehem, Clarion County, Pennsylvania and/or in Clearfield County.

4. Despite the fact that Redbank-UPMC is located in both Allegheny County and Clarion County, the remaining parties all reside or have a principal place of business in Clearfield County, with the exception of Defendant Karls whose practice is in Clarion County.

5. Therefore it is believed and averred that all medical records and relevant information regarding Plaintiff's cause of action are located in Clearfield County with the exception of records and/or information from Defendant Karls and/or Defendant Redbank-UPMC.

6. It is believed and averred that all locations where medical care, treatment and evaluation which are the basis of Plaintiff's complaint are located in Clearfield County with the exception of care, treatment or evaluations rendered by either Defendant Karls and/or Redbank-UPMC, both of which are located in Clarion County.

7. It is suspected that all witness work and/or reside in Clearfield County with the exception of Defendant Karls and/or any personnel of Redbank-UPMC both of which are located in Clarion County.

8. Defendants, Shankel's Pharmacy and the Bowsers, also maintain that Plaintiff's chosen forum of Allegheny County is oppressive to them.

9. The Clearfield County Courthouse located in Clearfield, Clearfield County, Pennsylvania is approximately three hours from The Court of Common Pleas of Allegheny County.

10. The Allegheny County forum does not provide any access to the sources of proof.

11. The Allegheny County forum does not provide availability of compulsory process for attendance of unwilling witnesses.

12. The Allegheny County forum poses undue costs upon obtaining attendance of willing witnesses.

13. The Allegheny County forum does not provide any practical view of premises if such would be appropriate to the action.

14. The Allegheny County forum presents undue expenses and hardships to all the parties and witnesses with the possible exception of Defendant Karls and/or personnel from Redbank-UPMC.

15. As Plaintiffs live in Clearfield County, Plaintiffs will not be prejudiced by the transfer of this action to Clearfield County.

WHEREFORE, Defendants, Bowser Corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. And Cynthia D. Bowser, R. PH., request that this Honorable Court transfer this action to The Court of Common Pleas of Clearfield County.

DAVIES, McFARLAND & CARROLL, P.C.

Julie Nord

M. J. Marshall, Esquire

PA. I.D. #38575

Julie L. Nord, Esquire

PA I.D. #76126

Attorneys for Bowser Corporation, t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,

CIVIL DIVISION

Case No.: GD00-12637

Plaintiff,

Vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC, JEFFREY W. RICE, D.M.D.,
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BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

ORDER

AND NOW, this _____ day of _____, 2000, upon consideration
of Defendant's Petition for Change of Venue Pursuant to Pa. R. Civ. P. Rule 1006(d)(1), and
upon determination that the convenience of the parties and the witnesses would be served
substantially thereby, it is hereby ORDERED that the action is transferred to the Court of

Common Pleas of Clearfield County, Pennsylvania. It is further ORDERED that the Prothonotary shall forward the record to the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania as in accordance to Pa. R. Civ. P. Rule 1006(d)(1), upon payment by the Petitioner to be taxable as costs in the case.

BY THE COURT:

_____.J.

CERTIFICATE OF SERVICE

I do hereby certify that all counsel of record have been served with a copy of the within Petition for Change of Venue and Brief in Support thereof via United States First Class Mail, postage prepaid on this 27 day of August, 2000.

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David J. Lozier, Esquire
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Pittsburgh, PA 15219

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(Counsel for Defendant, James K. Fugate, M.D.)

Wilbur McCoy Otto, Esquire
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(Counsel for Defendants Jeffrey P. Karls, D.O. t/a
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UPMC - Presbyterian t/a Redbank Family
Practice-UPMC)

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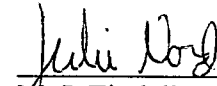
(Counsel for Defendant, Gateway Institute and
Clinic, Inc.)

Jeffrey W. Rice, D.M.D.
90 Beaver Drive
Dubois, PA 15801

Jeffrey Rice, D.M.D., P.C.
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Jeffrey W. Rice, D.M.D. and
Jay L. Arlick, D.M.D., P.C.
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Dubois, PA 15801

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

Julie L. Nord, Esquire

Attorneys for Defendants, Bowser, et al.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
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HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
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BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**AFFIDAVITS IN SUPPORT OF
PETITION FOR CHANGE OF VENUE
PURSUANT TO PA. R.C.P. 1006(d)(1)**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
three of the Defendants

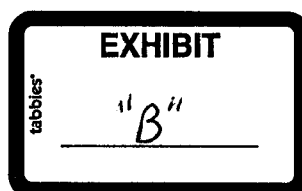
Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER,
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Corporation, t/a BEHAVIORAL
HEALTH CENTER, GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation,
JEFFREY P. KARLS, D.O.
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ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IS SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF CYNTHIA D. BOWSER, R.PH

I, Cynthia D. Bowser, R.PH, being duly sworn, depose and state as follows:

1. I reside in Clearfield County.

2. I am an officer of Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy.

3. Both Shankel's Pharmacy and Treasure Lake Pharmacy are located in Clearfield County.

4. My residence as well as each of the Pharmacies are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

5. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

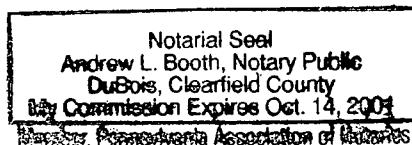
6. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

7. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to myself as a Defendant.

Cynthia D. Bowser, R.Ph.
Cynthia D. Bowser, R.P.H.,

Sworn to and subscribed before me this
4th day of Oct., 2000.

Andrew L. Booth
Notary Public



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
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DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

Vs.

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BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
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THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IS SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF THOMAS E. BOWSER, R.PH

I, Thomas E. Bowser, R.PH, being duly sworn, depose and state as follows:

1. I reside in Clearfield County.

2. I am an officer of Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy.

3. Both Shankel's Pharmacy and Treasure Lake Pharmacy are located in Clearfield County.

4. My residence as well as each of the Pharmacies are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

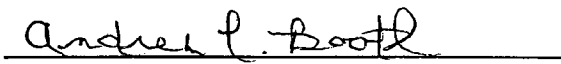
5. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

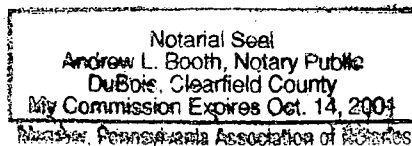
6. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

7. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to myself as a Defendant.


Thomas E. Bowser, R.P.H.,

Sworn to and subscribed before me this
4th day of Oct., 2000.


Notary Public



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
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DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D., DUBOIS
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A Pennsylvania Corporation,
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JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
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BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

AFFIDAVIT IN SUPPORT OF
PETITION FOR CHANGE OF VENUE PURSUANT TO PA. R.C.P. 1006 (d)(1)

AFFIDAVIT OF CYNTHIA D. BOWSER, R.PH, PRESIDENT OF BOWSER CORPORATION
t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY

I, Cynthia D. Bowser, R.PH, President of Bowser Corporation t/a Shankel's Pharmacy

and t/a Treasure Lake Pharmacy, being duly sworn, depose and state as follows:

{D0066855:2}

1. Bowser Corporation t/a/ Shankel's Pharmacy and t/a Treasure Lake Pharmacy is a Pennsylvania Corporation with its principal facilities, namely Shankel's Pharmacy and Treasure Lake Pharmacy, located in Clearfield County.

2. Bowser Corporation does not have any facilities, nor does it carry on business in Allegheny County.

3. Shankel's Pharmacy and Treasure Lake Pharmacy are approximately a 2 and ½ hour drive to the Court of Common Pleas of Allegheny County.

4. All records pertaining to services rendered to the decedent by Shankel's Pharmacy and/or Treasure Lake Pharmacy are maintained on the premises of Shankel's Pharmacy.

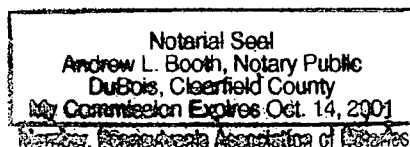
5. All employees of both Shankel's Pharmacy and Treasure Lake Pharmacy reside in Clearfield County.

6. Certain employees may be potential witnesses in this matter and travel to Allegheny County would be oppressive and burdensome to both the non-party employees and to Defendant, Bowser Corporation.

Cynthia D. Bowser, R.P.H.
Cynthia D. Bowser, R.P.H., President of Bowser
Corporation t/a Shankel's Pharmacy and t/a
Treasure Lake Pharmacy

Sworn to and subscribed before me this
4th day of Oct., 2000.

Andrew L. Booth
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all known counsel of record by United States First Class Mail, postage prepaid, this 5 day of October, 2000, addressed as follows:

Harry S. Cohen, Esquire
HARRY S. COHEN & ASSOCIATES
985 Two Chatham Center
Pittsburgh, PA 15219

(Counsel for Plaintiffs)

Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
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(Counsel for Defendant, James K. Fugate, M.D.)

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Two PPG Place, Suite 400
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(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC;
UPMC - Presbyterian t/a Redbank Family Practice-UPMC)

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(Counsel for Dubois Regional Medical Center, Inc.
t/a Behavioral Health Center)

Robert J. Grimm, Esquire
Israel Wood & Puntl, P.C.
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Pittsburgh, PA 15219

(Counsel for Defendant, Gateway Institute and Clinic, Inc.)

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801

(Counsel for three Defenants, Jeffrey W. Rice, D.M.D., Jeffrey Rice, D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay L. Arlick, D.M.D., P.C.)

BY: Julie Nord

M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.

CERTIFICATE OF SERVICE

I do hereby certify that all counsel of record have been served with a copy of the within Brief in Support of Petition for Change of Venue thereof via United States First Class Mail, postage prepaid on this 20 day of October, 2000.

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HARRY S. COHEN & ASSOCIATES
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Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
Pittsburgh, PA 15222
(Counsel for Defendant, James K. Fugate, M.D.)

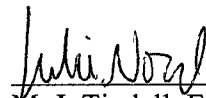
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(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC;
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Suite 501, Grant Building
Pittsburgh, PA 15219
(Counsel for Defendant, Gateway Institute and Clinic, Inc.)

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801
(Counsel for Jeffrey W. Rice, D.M.D., Jeffrey Rice D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay L. Arlick, D.M.D., P.C., three of the Defendants)

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Defendants, Bowser, et al.

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ORIGINAL

PROTHONOTARY
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. GD 00-12637

Type of Pleading:
**PLAINTIFF'S BRIEF IN
OPPOSITION TO
PETITIONS FOR
CHANGE OF VENUE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
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Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

**PLAINTIFF'S BRIEF IN OPPOSITION TO
PETITIONS FOR CHANGE OF VENUE**

AND NOW, comes the Plaintiff, JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, DECEASED, and in his own right, by and through his attorneys HARRY S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE, and sets forth the following BRIEF IN OPPOSITION TO PETITIONS FOR CHANGE OF VENUE:

I. Factual and Procedural History

Plaintiff initiated this wrongful death and survival action for professional malpractice by filing a Complaint before the Court of Common Pleas of Allegheny County on July 24, 2000. Plaintiff's Complaint alleges, inter alia, that the Physician Defendants over prescribed medications causing the death of Mary Jo Duttry. Plaintiff's Complaint at paragraphs 21-30 alleges, inter alia, that the Pharmacy Defendants filled the prescriptions when they knew or should have known that the drugs acting in concert could be addictive and/or fatal.

Plaintiff's Complaint, at paragraphs 4-13, alleges that all of the Physician and Pharmacy Defendants have their professional practices in Clearfield and/or Clarion Counties.

Material to Defendants' multiple Petitions for Change of Venue, Plaintiff's Complaint alleges at paragraph 15 that "Defendant Karls DO was an agent, ostensible agent or employee of Defendant Redbank-UPMC acting within the course and scope of his employment or agency."

At paragraph 8, Plaintiff alleges that "Defendant Redbank-UPMC has its principal places of business at 200 Lothrop Street, Pittsburgh, PA 15213 in Allegheny County, and a regular place of business at RD 3 Box 219, New Bethlehem, Pennsylvania 16242, in Clarion County."

At paragraph 18, Plaintiff alleges that "[t]he Court of Common Pleas of Allegheny County has jurisdiction over these causes of action, and venue is proper before [the Court of Common Pleas of Allegheny County] in that the causes of action arose in Allegheny County, Clarion County and Clearfield County, Pennsylvania, and Defendant Redbank-UPMC has its principal place of business in Allegheny County.

The Defendants Dr. Fugate, Dr. Rice et al, DRMC and Bowser Pharm.D. et al, severally filed Petitions for Change of Venue seeking transfer of this civil action to Clearfield County under Pa. R.C.P. Rule 1006 (d)(1), known as "*forum non conveniendes*."

On September 7, 2000, a conference was held before this Court at which counsel agreed that the legal question of *forum non conveniendes* could be resolved upon the record and affidavits, and that depositions and further hearing would not be required.

On September 28, 2000, Plaintiff filed his Reply to the first Petition, that of Bowser et al, and an Affidavit, admitting that the medical treatment at issue was provided in Clearfield and Clarion Counties, that each Defendant does business in Clearfield or Clarion Counties, that the prescriptions were filled in Clearfield Counties, and that the autopsy was performed in Clearfield County. However, Plaintiff's verified Reply clearly states that the location of the original autopsy and medical records is irrelevant to the trial of this matter as true and correct copies of the Petitioning Defendants' medical records and autopsy report have already been produced and provided to all parties.

Moreover, Plaintiff John Duttry's Affidavit asserts that venue is proper in Allegheny County because it is convenient for Plaintiff and his Counsel, will result in lower costs of suit, and because Defendant UPMC has its principal place of business in Allegheny County.

In principal part, Plaintiff John Duttry's Affidavit states as follows:

4. In the final months before her death, Mary Jo Duttry treated with Dr. Karls through his offices at Redbank Family Practice --- UPMC in New Bethlehem, Clarion County. Dr. Karl's and his clinic identify themselves to their patients as employees and a subsidiary of UPMC by signs outside the clinic, the UPMC logo on their prescription sheets, See Exhibit "A", and by their description in the materials provided to me and my wife through our medical insurer, Blue Cross. See Exhibit "B". After reasonable investigation, to the best of my knowledge UPMC has its main offices in Pittsburgh, Allegheny County.
5. In the final months before her death, Mary Jo Duttry treated with Dr. Rice at his offices in DuBois, Clearfield County.
6. I understand that legally I may legally choose to file this civil suit in any county where any of the Defendants live or work or have business offices, these include Clearfield County, Clarion County and Allegheny County.
7. I consider all three of these counties to be convenient for my purposes. All three counties are within an easy drive of my home in western Clearfield County, are convenient for my attorneys, will reduce my costs of suit, and it is convenient for Defendants Karls and Redbank---UPMC."

See true and correct copy of Plaintiff John Duttry's Affidavit attached hereto as Exhibit 1.

On or about October 13, 2000, Defendants Dr. Karls t/a Redbank Family Practice-UPMC, and UPMC t/a Redbank Family Practice-UPMC, each served Answers to

Interrogatories on the issue of Venue. See true and correct copies of Defendants UPMC's and Dr. Karls' Answers to Interrogatories attached hereto as Exhibits 2-3, respectively.

In UPMC's Answers to Interrogatories, Exhibit 2 hereto, Defendant UPMC admits that its "principal business address" is 200 Lothrop Street, Pittsburgh in Allegheny County.

In Dr. Karl's Answers to Interrogatories, Exhibit 3 hereto, Defendant Dr. Karls admits that at the relevant time, June-July 1998, Dr. Karls was an employee of Redbank Family Practice, which was owned by University Services Organizations, which in turn was a wholly owned subsidiary of UPMC.

While this venue may be inconvenient to some of the defendants as witnesses, it is convenient to Plaintiff and most of the Defendants for other reasons. Plaintiff's Counsel and four (4) of Defense Counsel have their primary practices in Allegheny County. One (1) Defense Counsel has his primary practice in Blair County and one (1) has his primary practice in Centre County. None of the attorneys has his primary practice in Clearfield County or Clarion County. Several of Decedent's medical providers (non-party physicians including but not limited to Dr. Kang of UPMC) are from Pittsburgh and it will aid Plaintiff to try the case close to these physicians. Further, as is the case with all medical malpractice cases in Western Pennsylvania, all of Plaintiff's expert medical and actuarial witnesses will either originate from Allegheny County or will fly into Pittsburgh's airport and require transport to the trial. The witnesses and corporate records for Defendant UPMC will be from Allegheny County. Therefore, consistent with Plaintiff's Affidavit, Plaintiff's attorney and expert travel expenses will be much lower if the trial is held in Allegheny County. Some witnesses are inconvenienced by the Allegheny County venue, and one party-Defendant resides in Allegheny County. The Court may also take judicial notice that, based upon local practice, all of the Defense medical experts will originate from Allegheny County or will fly into Pittsburgh's airport and require transport to the trial. Thus, all parties will have reduced costs of suit, including travel, lodging and hourly fees for counsel and experts, if the case is tried in Allegheny County.

Finally, while Plaintiff has no obligation to do so, out of common courtesy, Plaintiff has stipulated on the record that discovery depositions of parties may be taken in

Clarion and Clearfield Counties in order to reduce any inconvenience to those witnesses.
See Plaintiff's Answer to Bowser's Petition at paragraph 14.

II. Applicable Law

Pa. R.C.P. Rule 1006 states in pertinent part:

(a) Except as otherwise provided by Subdivisions (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

(b) . . .

(c) . . .

(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

(2) Where, upon petition and hearing thereon, the court finds that a fair and impartial trial cannot be held in the county for reasons stated of record, the court may order that the action be transferred. The order changing venue shall be certified forthwith to the Supreme Court, which shall designate the county to which the case is to be transferred.

As recently as October 13, 2000, the Superior Court in Cooper v. Nationwide Mutual Insurance Company, __ A2d __, 2000 Pa. Super. 298 (2000) affirmed that Defendants must satisfy a heavy burden to force a transfer under Rule 1006(d)(1):

In Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, 701 A.2d 156 (1997), [the] [S]upreme [C]ourt clarified the appropriate standard that a defendant must meet to successfully transfer venue of a case. In sum, 'a petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant.' Thus: 'The defendant may meet its burden of showing that the plaintiff's choice of forum is vexatious to him by establishing with facts on the record that the plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff himself. Alternatively, the defendant may meet his burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or the ability to conduct a view of premises involved in the dispute. But, we stress that the defendant must show more than that the chosen forum is merely inconvenient to him.' Hoose v. Jefferson Home Health Care, Inc., 754 A.2d 1, 3 (Pa. Super. 2000)

Cooper v. Nationwide Mutual Ins. Co., __ A2d __, 2000 Pa. Super. 298 (October 13, 2000).

III. Issue

Whether, Plaintiff's chosen forum of Allegheny County is so oppressive or vexatious as to deliberately harass and inconvenience Defendants, such that this inconvenience may be remedied only by changing the venue to Clearfield County?

Suggested Answer: No.

IV. Argument

There is no dispute but that this action may properly lie in Allegheny County. Defendants' Petitions are based solely on *forum non conveniens*. Unlike the term *non-conveniens* implies, the mere inconvenience of some Defendants is insufficient to override Plaintiffs' properly chosen forum.

The Pennsylvania Supreme Court has set a very high bar for transfer under "*forum non conveniens*." In Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, 701 A.2d 156 (1997), the Court very clearly stated that Defendants must establish on the record that Plaintiff's chosen forum is "vexatious" (Black's Dictionary: done maliciously, to deliberately harass, and without probable cause) or "oppressive" (Black's Dictionary: an act of cruelty inflicting unjust hardship). Mere availability of witnesses or proximity to the scene of the injury is irrelevant. Rather, the petitioning party must establish that there is no reasonable connection to the forum and that no party is inconvenienced by Plaintiff's selected court. Id.

The Superior Court has strictly and consistently enforced this standard refusing every attempt to transfer a case just because there is a closer courthouse or a courthouse with a stronger connection to the litigation. In Cooper v. Nationwide Mutual Ins. Co., __ A2d __, 2000 Pa. Superior 298 (2000), the Superior Court rejected as irrelevant Nationwide's allegations that "no activities, events, or transactions occurred in Philadelphia County," and that none of the "parties, witnesses, activities, events or transactions occurred/reside in Philadelphia County". Instead, the Court recognized that some medical witnesses would be inconvenienced by a Philadelphia County venue, that Plaintiff's counsel was located in Philadelphia County and that the underlying accident occurred in New Jersey—closer to Philadelphia County than Pike County. Id. Like the

Supreme Court in Cheeseman, the Superior Court in Cooper v. Nationwide agreed that while the chosen forum would indeed be inconvenient to the Defendants, mere inconvenience was insufficient. Rather, there must be some record evidence that the forum was chosen for vexatious or oppressive motive and there can be no reasonable basis for the selected venue.

Here, there is no showing of bad motive on the part of Plaintiff in selecting the venue. To the contrary, Plaintiff has established not only a rational basis for this forum, but practical reasons as well: One defendant resides in the chosen county; Allegheny County is convenient to Plaintiff's counsel and home to four (4) of six (6) defense Counsel; some non-party medical witnesses reside in Allegheny County; and Plaintiff has a reasonable economic basis for filing the case in Allegheny County including lower expert, legal, lodging and travel costs. Further, these cost savings would be shared by at least four (4) of six (6) defendants if the case were tried in Allegheny County.

Furthermore, the appellate courts do not consider docket congestion as a factor to be considered when evaluating transfers under *forum non conveniens*.

The appellate courts have repeatedly admonished lower courts for granting motions for change of venue "*forum non conveniens*" just to shorten their dockets. See Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, 701 A.2d 156 (1997) and Scola v. AC&S, 657 A.2d 1234 (Pa. 1995).

Allegheny may be blessed with the economic advantages of hosting several medical mega-holding companies intent upon buying out every hospital and physician's practice west of Harrisburg, but there are costs to being home to such enterprises. While they may employ hundreds of tax paying clerical workers, business executives and attorneys in Allegheny County on a daily basis, empires naturally increase the burden on the courts as those same entities sue and are sued in return. UPMC and West Penn-Allegheny Health Systems cannot build their offices in convenient Pittsburgh only to latter pretend that they really reside and operate in Clearfield or Clarion Counties. They reside here by law, may be sued here by law, and Allegheny County must accept their trials as well as their tax revenue. An increasing docket due to UPMC et. al.'s acquisition appetite

cannot be this Court's justification for transferring every case involving a UPMC subsidiary out of county.

V. Conclusion

There has been no showing of oppressive or vexatious motive on the part of Plaintiff in selecting this venue. Instead, there are rational jurisdiction and economic reasons for this case being filed and tried in Allegheny County. While Defendants have alleged inconvenience, they have not met the high standard set by the Supreme Court in Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, 701 A.2d 156 (1997). Plaintiff is entitled to chose any forum he deems to be convenient to himself and his counsel that is appropriate under the rules of venue and jurisdiction, for Plaintiff that selection included Allegheny County. Defendants' multiple Petitions to Transfer under Rule 1006(d)(1) should be denied.

Respectfully Submitted,
HARRY S. COHEN & ASSOCIATES

By:

DAVID J. LOZIER

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PROCLAMATORY
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC., a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH.;

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

No. GD 00-12637

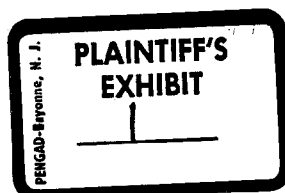
Type of Pleading:
**PLAINTIFF'S AFFIDAVIT IN
REPLY TO PETITION
FOR CHANGE OF VENUE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

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985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000



COPY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

Plaintiff,

v.

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CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

CIVIL DIVISION

No. GD 00-12637

**PLAINTIFF'S AFFIDAVIT IN REPLY TO PETITION
FOR CHANGE OF VENUE**

STATE OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

Before me, the undersigned notary public, did personally appear JOHN D.
DUTTRY, and deposes and says the following:

“1. I, John D. Duttry, am the surviving spouse and Executor of the Estate of Mary Jo Duttry, deceased. Mary Jo Duttry died on July 25, 1998. In the final months before her death, Mary Jo Duttry treated with and was prescribed medications by, Dr. James Fugate, Dr. Jeffrey Karls, and Dr. Jeffrey Rice.

2. After reasonable investigation, to the best of my knowledge, the Bowser Defendants filled all of these prescriptions at Treasure Lake Pharmacy and Shankel's Pharmacy, DuBois, Clearfield County.

3. In the final months before her death, Mary Jo Duttry treated with Dr. Fugate through his offices at both the DuBois Regional Medical Center's Behavioral Health Center, in DuBois, Clearfield County, and Gateway Institute, in DuBois, Clearfield County.

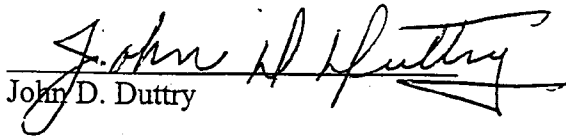
4. In the final months before her death, Mary Jo Duttry treated with Dr. Karls through his offices at Redbank Family Practice --- UPMC in New Bethlehem, Clarion County. Dr. Karl and his clinic identify themselves to their patients as employees and a subsidiary of UPMC by signs outside the clinic, the UPMC logo on their prescription sheets, See Exhibit "A", and by their description in the materials provided to me and my wife through our medical insurer, Blue Cross, See Exhibit "B". After reasonable investigation, to the best of my knowledge UPMC has its main offices in Pittsburgh, Allegheny County.

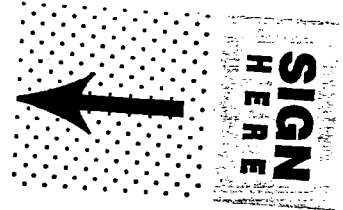
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6. I understand that legally I may legally choose to file this civil suit in any county where any of the Defendants live or work or have business offices; these include Clearfield County, Clarion County and Allegheny County.

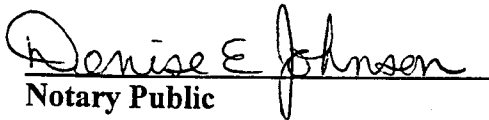
7. I consider all three of these counties to be convenient for my purposes. All three counties are within an easy drive of my home in western Clearfield County, are

convenient for my attorneys, will reduce my costs of suit, and it is convenient for
Defendants Karls and Redbank—UPMC.”

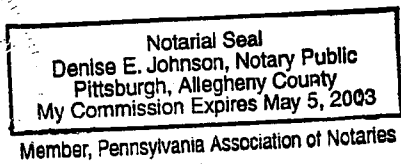

John D. Duttry



SWORN TO this 26 day of September
2000.


Notary Public

MY COMMISSION EXPIRES:



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

**RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO
DEFENDANTS DR. KARLS AND UPMC**

AND NOW come the Defendant, UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-UPMC and files the following Responses to
Plaintiffs' First Set of Interrogatories:



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
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JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
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CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

**RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO
DEFENDANTS DR. KARLS AND UPMC**

AND NOW come the Defendant, UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-UPMC and files the following Responses to
Plaintiffs' First Set of Interrogatories:

1. Please describe the entity known as UPMC Presbyterian including the following:

- a. The legal form of the business in June-July 1998;
- b. The names of the officers in June-July 1998;
- c. The address for the principal business location in June-July 1998;
- d. Whether the entity is still in existence;
- e. If the entity has changed address or form since June-July 1998, please state the current address for the principal business and current legal form of the entity and the effective dates of the changes.

ANSWER:

- a. **501(c)(3) not-for-profit corporation**
- b. **Objection. This interrogatory is overly broad, unduly burdensome, harassing and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, the corporate officers for UPMC Presbyterian are not the same individuals who were corporate officers for Redbank Family Practice.**
- c. **200 Lothrop Street
Pittsburgh, Allegheny County, Pennsylvania 15213**
- d. **Yes.**
- e. **Not Applicable.**

2. Please describe the entity known as Redbank Family Practice-UPMC including the following:

- a. The legal form of the business in June-July 1998;
- b. The names of the officers in June-July 1998;
- c. The address for the principal business location in June-July 1998;
- d. Whether the entity is still in existence;
- e. If the entity has changed address or form since June-July 1998, please state the current address for the principal business and current legal form of the entity and the effective dates of the changes.

ANSWER: This interrogatory is not directed to this Defendant, thus no response is required.

3. Please identify any and all business entities, corporations, associations or partnerships through which or for which Defendant Dr. Karls provided any medical or surgical care, contracted for medical or surgical care, or obtained reimbursement for medical or surgical care from medical insurance carriers or HMO's in June-July 1998.

ANSWER: This interrogatory is not directed to this Defendant, thus no response is required.

4. Please identify any and all documents or correspondence as between Dr. Karls, UPMC and/or Redbank Family Practice - UPMC describing the employment or contractual relationship between Dr. Karls and UPMC and/or Redbank Family Practice - UPMC or by which

UPMC authorized Dr. Karls and/or Redbank Family Practice - UPMC to conduct business or medicine under the name Redbank Family Practice - UPMC.

ANSWER: This interrogatory is not directed to this Defendant, thus no response is required.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: Howard A. Chajson

Howard A. Chajson, Esquire

Timothy B. Finnerty, Esquire

JURY TRIAL DEMANDED

DICKIE, McCAMEY & CHILCOTE, P.C.

By Timothy B. Finnerty
Timothy B. Finnerty, Esquire

Attorneys for Defendant, UPMC
PRESBYTERIAN

OCT-12-00 16:42 From: DICKIE MCAMEY

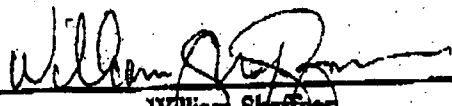
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T-011 P.18/18 Job-295

VERIFICATION

I, William Shaffner, a duly authorized representative of UPMC Presbyterian, have read the foregoing Responses to Plaintiffs' First Set of Interrogatories to Defendants Dr. Karis and UPMC. The statements therein are 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 unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



William Shaffner

DATED: October 13, 2000

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

G.D. No. 00-12637

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
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JEFFREY RICE DMD, AND JAY L.
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t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

**RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO
DEFENDANTS DR. KARLS AND UPMC**

AND NOW come the Defendant, JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC and files the following Responses to Plaintiffs' First Set
of Interrogatories:



1. Please describe the entity known as UPMC Presbyterian including the following:

- a. The legal form of the business in June-July 1998;
- b. The names of the officers in June-July 1998;
- c. The address for the principal business location in June-July 1998;
- d. Whether the entity is still in existence;
- e. If the entity has changed address or form since June-July 1998, please state

the current address for the principal business and current legal form of the entity and the effective dates of the changes.

ANSWER: This interrogatory is not directed to this Defendant, thus no response is required.

2. Please describe the entity known as Redbank Family Practice-UPMC including the following:

- a. The legal form of the business in June-July 1998;
- b. The names of the officers in June-July 1998;
- c. The address for the principal business location in June-July 1998;
- d. Whether the entity is still in existence;

e. If the entity has changed address or form since June-July 1998, please state the current address for the principal business and current legal form of the entity and the effective dates of the changes.

ANSWER:

- a. **501(c)(3) not-for-profit corporation**
- b. **Objection. This interrogatory is overly broad, unduly burdensome, harassing and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, the corporate officers for UPMC Presbyterian are not the same individuals who were corporate officers for Redbank Family Practice-UPMC.**
- c. **RD 3, Box 219
New Bethlehem, Clarion County, Pennsylvania 16242**
- d. **Unknown. By way of further response University Services Organization sold Redbank Family Practice to Dr. Hon-Yuen Wong on December 31, 1999.**
- e. **Unknown. By way of further response University Services Organization sold Redbank Family Practice to Dr. Hon-Yuen Wong on December 31, 1999.**

3. Please identify any and all business entities, corporations, associations or partnerships through which or for which Defendant Dr. Karls provided any medical or surgical care, contracted for medical or surgical care, or obtained reimbursement for medical or surgical care from medical insurance carriers or HMO's in June-July 1998.

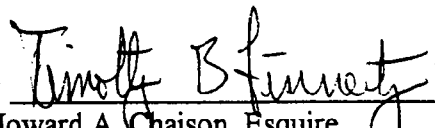
ANSWER: This interrogatory is objected to as being vague and ambiguous. Without waiving these objections, in June-July 1998, Dr. Karls practiced medicine at

Redbank Family Practice-UPMC, which was a family practice group owned by University Services Organization, which is a wholly owned subsidiary of UPMC Health System.

4. Please identify any and all documents or correspondence as between Dr. Karls, UPMC and/or Redbank Family Practice - UPMC describing the employment or contractual relationship between Dr. Karls and UPMC and/or Redbank Family Practice - UPMC or by which UPMC authorized Dr. Karls and/or Redbank Family Practice - UPMC to conduct business or medicine under the name Redbank Family Practice - UPMC.

ANSWER: At the time of answering this interrogatory the answering defendants do not possess documents responsive to this request. By way of further response, at the relevant time Dr. Karls was an employee of University Services Organization which owned Redbank Family Practice-UPMC.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 
Howard A. Chajson, Esquire
Timothy B. Finnerty, Esquire

JURY TRIAL DEMANDED

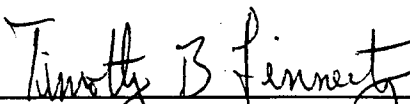
DICKIE, McCAMEY & CHILCOTE, P.C.

By Timothy B. Finnerty
Timothy B. Finnerty, Esquire

Attorneys for Defendants, JEFFREY P. KARLS,
D.O., individually and t/a REDBANK FAMILY
PRACTICE-UPMC

VERIFICATION

I, Timothy B. Finnerty, Esquire, of the law firm of Dickie, McCamey & Chilcote, P.C., attorneys for Jeffrey P. Karls, D.O., individually and t/a Redbank Family Practice-UPMC, have read the foregoing Responses to Plaintiffs' First Set of Interrogatories to Defendants Dr. Karls and UPMC. The statements herein are 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 unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Timothy B. Finnerty, Esquire

Dated: October 12, 2000

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of Plaintiff's Brief in Opposition to Petitions for Change of Venue, has been served to the following by first class mail, postage prepaid on the 6th day of November, 2000:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

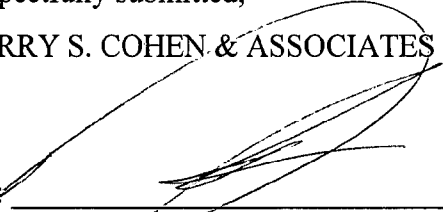
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., P.C., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**MOTION FOR LEAVE TO FILE
REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION OF PETITIONS
FOR CHANGE OF VENUE**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED
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PROthonotary
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

CIVIL DIVISION

Case No.: GD00-12637

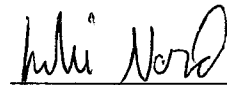
Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,
Defendants.

NOTICE OF PRESENTATION

PLEASE TAKE NOTICE that the within Motion For Leave to File Reply to Plaintiff's Brief in Opposition of Petitions for Change of Venue will be presented before the Honorable Judge Strassburger, on the 15th day of November, 2000 at 9:00 a.m., or as soon thereafter as meets the convenience of the court.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

Julie L. Nord, Esquire

Attorneys for Defendants, Bowser, et al.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

Vs.

CIVIL DIVISION

Case No.: GD00-12637

BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH. et. al.

Defendants.

**MOTION FOR LEAVE TO FILE REPLY TO PLAINTIFF'S BRIEF
IN OPPOSITION OF PETITIONS FOR CHANGE OF VENUE**

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., (hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their attorneys, Davies, McFarland and Carroll, P.C. file the within Motion for Leave to File Reply to Plaintiff's Brief in Opposition to Petitions for Change of Venue and in support thereof aver as follows:

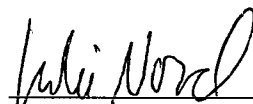
1. On September 7, 2000 a conference was held before this court at which counsel agreed that the legal question of *forum non conveniens* could be resolved upon the record and affidavits and that depositions and further hearing would not be required.
2. As a result of that Conference, this court issued a briefing and affidavit schedule to the parties. A true and correct copy of this Order is attached as Exhibit "1".
3. There is no provision in this Order for these or any other Defendants to file a Reply Brief.

4. Defendants Shankel's Pharmacy and The Bowsers seek to file a Reply Brief as it is their belief that Plaintiffs have either mischaracterized issues and/or raised issues not previously addressed by the Defendants in their initial Petitions, Affidavits and Briefs. A true and correct copy of the Reply Defendants seek to file is attached as Exhibit "2".

5. Plaintiffs do not oppose this Motion.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. respectfully request that this Honorable Court order that they may file their Reply Brief as attached as Exhibit "2".

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

Julie L. Nord, Esquire

Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

CIVIL DIVISION

JOHN D. DUTTRY, et al.,

Plaintiff

v.

JAMES K. FUGATE, M.D., et al.,

Defendant

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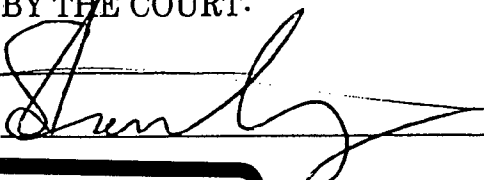
No. GD00-12637

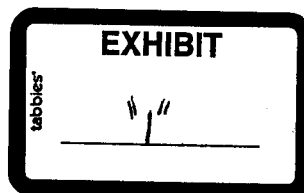
ORDER OF COURT

AND NOW, this 7th day of September, 2000, after conference on
Petition for Change of Venue filed by Defendant Bowser Corporation, et al., it
is hereby ORDERED:

- 1) Affidavits shall be filed on or before October 7, 2000.
- 2) Defendants briefs shall be filed, with a copy served on the Court
and opposing counsel, on or before October 23, 2000.
- 3) Plaintiff's brief shall be filed, with a copy served on the Court
and opposing counsel, on or before November 7, 2000.
- 4) Briefs shall not exceed ten (10) pages.

BY THE COURT:

 J.



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

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of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

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REGIONAL MEDICAL CENTER,
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HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
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Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
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JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION OF PETITIONS
FOR CHANGE OF VENUE**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
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five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
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DUTTRY, in his own right,
Plaintiff,
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CIVIL DIVISION

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A Pennsylvania Corporation;
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Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
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Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., P.C., a Pennsylvania
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BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
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Defendants.

**REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION OF PETITIONS FOR CHANGE OF VENUE**

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Reply to Plaintiff's Brief in Opposition to Petitions for Change of Venue and in support thereof aver as follows:

I. FACTS

Defendants, Shankel's Pharmacy and The Bowsers, incorporate the Facts section as set forth in their Brief in Support of Petition for Change of Venue as if the same were more fully set forth herein by reference.

II. ARGUMENT

Defendants Shankel's Pharmacy and The Bowsers have made no argument regarding docket congestion nor have they suggested that this be the reason for the change of venue. Rather, these defendants are relying on the true doctrine of *forum non conveniens* as it applies to them. **Shankel's Pharmacy is a family owned business wholly located in Clearfield County. These defendants are not "mega-holding companies intent on buying out every hospital and physician's practice west of Harrisburg" as Plaintiff so characterizes one of the other defendants. However, these Defendants are now being forced to litigate in Allegheny County because they filled certain prescriptions written by one of the defendant doctors that may or may not have been an agent of yet another defendant that maintains a principle place of business in Allegheny County. Allegheny County is truly a *forum non conveniens* to these defendants and their individual arguments must be taken into consideration.**

Further, Plaintiff has misstated and/or presumed certain facts regarding expert witnesses in his Brief in Opposition to Defendants Motion for Change of Venue which must be addressed. Specifically, Plaintiff tells this Honorable Court that it may take judicial notice that all defense medical experts will originate in Allegheny County or will fly into Pittsburgh's Airport and require transport to the trial. Defendants Shankel's Pharmacy and The Bowsers object to the

court taking judicial notice as these Defendants have not yet made a determination as to who their experts will be, where the experts will originate from or what form or mode of transportation these experts will require. Therefore, Defendant Shankel's Pharmacy and The Bowsers object to this Honorable Court taking judicial notice of any fact regarding Defendants' expert witnesses.

Plaintiff also misstates the applicable law regarding *forum non conveniens*. While Plaintiff accurately states that a Defendant seeking to change venue under the doctrine of *forum non conveniens* must show that Plaintiff's chosen forum is oppressive or vexatious, Cheeseman v. Lethal Exterminator Inc., 701 A.2d 156 (Pa. 1997), Plaintiff inaccurately states that there "must be some record evidence that the forum was chosen for vexatious or oppressive motive and there can be no reasonable basis for the selected venue." See Argument section of Plaintiff's Brief in Opposition. Plaintiff provides no authority for this proposition nor is this proposition supported by either Cheeseman or Cooper v. Nationwide, 2000 Pa. Super. 298 (October 13, 2000). Rather, Cheeseman states that a "defendant may meet its burden by establishing on the record that trial in the chosen form is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or the ability to conduct a view of premises involved in the dispute." Cheeseman at 162. Defendants Shankel's Pharmacy and The Bowsers previously filed a Petition, Affidavit and Brief in Support of their position that Plaintiff's chosen forum is oppressive to them and do not intend to do so again here.

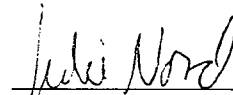
Last but not least, Plaintiff has also provided several reasons why his choice of forum is not only convenient to him, but also supposedly to other defendants. Particularly, Plaintiff's first reason is that four of the defense counsel have their primary practice in Allegheny county and no defense counsel has their primary practice in either Clearfield or Clarion County. While the location of Plaintiff's defense counsel may be relevant to Plaintiff, Cooper, it is inappropriate to

consider what is convenient for defense counsel. Rather, it is whether the witnesses themselves, the actual parties to the case, and any employees and/or agents will be oppressed by Plaintiff's choice of forum. Cooper. Again, Defendants Shankel's Pharmacy and The Bowsers have already provided affidavits setting forth the burden that would be placed on them if venue were not changed to Clearfield County.

III. CONCLUSION

Based on the forgoing, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., Petition for Change of Venue, pursuant to Pa. R.C.P. 1006(d)(1) must be granted and this action must be transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

DAVIES, McFARLAND & CARROLL, P.C.



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PA I.D. #38575

Julie L. Nord, Esquire

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Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all counsel of record by Facsimile and United States First Class Mail, postage prepaid on this _____ day of _____, 2000.

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DAVIES, McFARLAND & CARROLL, P.C.

M. J. Tindall, Esquire
Julie L. Nord, Esquire

— Attorneys for Defendants, Bowser, et al.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all known counsel of record by United States First Class Mail, postage prepaid, this 14 day of November, 2000, addressed as follows:

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BY: Julie Nord

M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

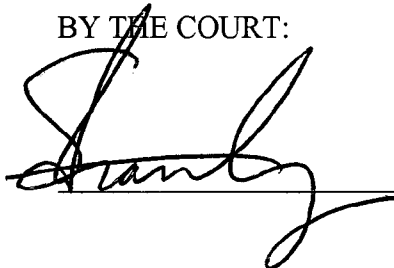
Case No.: GD00-12637

BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH. et. al.
Defendants.

ORDER

AND NOW, to-wit, this 15th day of Nov, 2000, upon
consideration of the Defendants Bowser Corporation, a Pennsylvania Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser,
R. PH., Motion for Leave to File a Reply Brief, it is hereby ORDERED, ADJUDGED and
DECREED that Defendants are granted leave to file the Reply Brief attached as Exhibit "2".

BY THE COURT:


_____ J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,

Defendants.

CIVIL DIVISION

Case No.: GD00-12637

Code No.:

Issue No:

**REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION OF PETITIONS
FOR CHANGE OF VENUE**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

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(412) 281-0737

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,
Vs.

CIVIL DIVISION

Case No.: GD00-12637

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
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Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.
Defendants.

**REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION OF PETITIONS FOR CHANGE OF VENUE**

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.,
(hereinafter referred to as "Shankel's Pharmacy and The Bowsers") by and through their

attorneys, Davies, McFarland and Carroll, P.C. file the within Reply to Plaintiff's Brief in Opposition to Petitions for Change of Venue and in support thereof aver as follows:

I. FACTS

Defendants, Shankel's Pharmacy and The Bowsers, incorporate the Facts section as set forth in their Brief in Support of Petition for Change of Venue as if the same were more fully set forth herein by reference.

II. ARGUMENT

Defendants Shankel's Pharmacy and The Bowsers have made no argument regarding docket congestion nor have they suggested that this be the reason for the change of venue. Rather, these defendants are relying on the true doctrine of *forum non conveniens* as it applies to them. **Shankel's Pharmacy is a family owned business wholly located in Clearfield County. These defendants are not "mega-holding companies intent on buying out every hospital and physician's practice west of Harrisburg" as Plaintiff so characterizes one of the other defendants. However, these Defendants are now being forced to litigate in Allegheny County because they filled certain prescriptions written by one of the defendant doctors that may or may not have been an agent of yet another defendant that maintains a principle place of business in Allegheny County. Allegheny County is truly a *forum non conveniens* to these defendants and their individual arguments must be taken into consideration.**

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court taking judicial notice as these Defendants have not yet made a determination as to who their experts will be, where the experts will originate from or what form or mode of transportation these experts will require. Therefore, Defendant Shankel's Pharmacy and The Bowers object to this Honorable Court taking judicial notice of any fact regarding Defendants' expert witnesses.

Plaintiff also misstates the applicable law regarding *forum non conveniens*. While Plaintiff accurately states that a Defendant seeking to change venue under the doctrine of *forum non conveniens* must show that Plaintiff's chosen forum is oppressive or vexatious, Cheeseman v. Lethal Exterminator Inc., 701 A.2d 156 (Pa. 1997), Plaintiff inaccurately states that there "must be some record evidence that the forum was chosen for vexatious or oppressive motive and there can be no reasonable basis for the selected venue." See Argument section of Plaintiff's Brief in Opposition. Plaintiff provides no authority for this proposition nor is this proposition supported by either Cheeseman or Cooper v. Nationwide, 2000 Pa. Super. 298 (October 13, 2000). Rather, Cheeseman states that a "defendant may meet its burden by establishing on the record that trial in the chosen form is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or the ability to conduct a view of premises involved in the dispute." Cheeseman at 162. Defendants Shankel's Pharmacy and The Bowers previously filed a Petition, Affidavit and Brief in Support of their position that Plaintiff's chosen forum is oppressive to them and do not intend to do so again here.

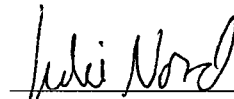
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consider what is convenient for defense counsel. Rather, it is whether the witnesses themselves, the actual parties to the case, and any employees and/or agents will be oppressed by Plaintiff's choice of forum. Cooper. Again, Defendants Shankel's Pharmacy and The Bowsers have already provided affidavits setting forth the burden that would be placed on them if venue were not changed to Clearfield County.

III. CONCLUSION

Based on the forgoing, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., Petition for Change of Venue, pursuant to Pa. R.C.P. 1006(d)(1) must be granted and this action must be transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire

PA I.D. #38575

Julie L. Nord, Esquire

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Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all
counsel of record by United States First Class Mail, postage prepaid on this 15 day of
November, 2000.

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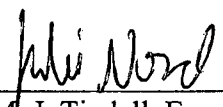
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D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay
L. Arlick, D.M.D., P.C., three of the Defendants)

DAVIES, McFARLAND & CARROLL, P.C.



M. J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Defendants, Bowser, et al.

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate of
MARY JO DUTTRY, Deceased
and JOHN D. DUTTRY in
his own right,

Plaintiff

v.

JAMES F. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., Individually
and t/a REDBANK FAMILY PRACTICE-
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE—UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania Professional
Corporation; JEFFREY RICE, D.M.D. and
JAY L. ARLICK, D.M.D., P.C., a
Pennsylvania Professional Corporation;
BOWSER CORPORATION, a Pennsylvania
Corporation, t/a SHANKEL'S PHARMACY
and t/a TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH. and
CYNTHIA D. BOWSER, R.PH.,

Defendants

CIVIL DIVISION

No. GD00-12637

Code:

OPINION

JUDGE
GENE STRASSBURGER

Copy sent to:

Counsel of Record
(See Page 2)

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COURT OF COMMON PLEAS
ALLEGHENY COUNTY

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CLERK OF COURT
ALLEGHENY COUNTY

[Handwritten signature]

DUTTRY v. FUGATE, et al.

No. GD00-12637

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

CIVIL DIVISION

JOHN D. DUTTRY, et al.,	)	
	)	
Plaintiff	)	
	)	
v.	)	No. GD00-12637
	)	
JAMES K. FUGATE, M.D., et al.,	)	
	)	
Defendants	)	

OPINION

STRASSBURGER, J.

On August 14, 2000, Plaintiff, John D. Duttry, filed a complaint in Allegheny County alleging that Defendants were negligent in prescribing, dispensing and monitoring the use of various medications taken by Plaintiff's wife, Mary Jo Duttry, for treatment of chronic pain, depression and anxiety. Plaintiff avers that Defendants' negligence was a proximate cause of the worsening of his wife's depression, anxiety, overdose and her eventual death on July 25, 1998.

Defendants to the present action are James K. Fugate, M.D., a physician with offices in Clearfield County; Dubois Regional Medical Center, a Pennsylvania corporation with its principal place of business in Clearfield County; Gateway Institute and Clinic, a Pennsylvania corporation with its

principal place of business in Clearfield County; Jeffrey P. Karls, D.O., a physician with offices in Clarion County also doing business as Redbank Family Practice – UPMC in Clarion County; UPMC Presbyterian, a Pennsylvania corporation with its principal place of business in Allegheny County and regularly conducting business in Clarion County as Redbank Family Practice – UPMC; Jeffrey W. Rice, D.M.D., an individual and Jeffrey Rice, D.M.D., PC, a Pennsylvania Corporation with offices located in Clearfield County; Jeffrey W. Rice, D.M.D. and Jay Arlick, D.M.D., PC, a Pennsylvania corporation conducting business in Clearfield County; Bowser Corporation, a Pennsylvania corporation doing business in Clearfield County as Shenkal's Pharmacy and Treasure Lake Pharmacy; and Thomas E. Bowser, R.Ph., and Cynthia D. Bowser, R.Ph., both individuals conducting business in Clearfield County at Shenkal's Pharmacy and Treasure Lake Pharmacy.

Presently before this court are Defendants' multiple petitions for change of venue. Defendants aver that Plaintiff's choice of venue, Allegheny County, is oppressive and vexatious and have therefore petitioned this court for change of venue based upon the doctrine of *forum non conveniens* pursuant to Pa.R.C.P. 1006(d)(1). Defendants assert that venue of this action, although technically proper in Allegheny County, should be transferred to the Court of Common Pleas of Clearfield County. Conversely,

Plaintiff insists that his original choice of venue, Allegheny County, should be sustained.

Rule 1006(d)(1) of the Pennsylvania Rules of Civil Procedure provides:

For the convenience of parties and witnesses
the court upon petition of any party may transfer
an action to the appropriate court of any other
county where the action could originally have been
brought.

Pa.R.C.P. 1006(d)(1).

In *Cheeseman v. Lethal Exterminator, Inc.*, 549 Pa. 200, 701 A.2d 156 (1997), the Pennsylvania Supreme Court clarified the standard to which this court must adhere in deciding a petition to transfer venue under Rule 1006(d)(1). The Court in *Cheeseman* restated the test it articulated in *Scola v. A.C. & S. Inc.*, 540 Pa. 353, 657 A.2d 1234 (1995) holding that “a petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff’s chosen forum is oppressive or vexatious to the defendant.” *Cheeseman*, 549 Pa. at 214, 701 A.2d at 162. The Court further acknowledged the following:

[T]he defendant may meet its burden of
showing that plaintiff’s choice of forum is vexatious
to him by establishing with facts on the record that

plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to himself...Alternatively, the defendant may meet his burden of showing that plaintiff's choice of forum is oppressive to him; for instance, that the trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of the premises involved in the dispute. But we stress that the defendant must show more than that the chosen forum is merely inconvenient to him.

Id.

In *Dulaney v. Consolidated Rail Corporation*, 715 A.2d 1217 (Pa. Super. 1998), the Superior Court, guided by *Cheeseman*, upheld the trial court's transfer of venue under facts substantially similar to this case. In *Dulaney*, plaintiff brought a cause of action in Philadelphia County based solely upon the defendant conducting business therein. The accident giving rise to plaintiff's cause of action occurred in Ohio and all of the witnesses lived in Ohio, West Virginia or Western Pennsylvania. Furthermore, all of plaintiff's medical providers were located in Ohio, West Virginia or Western Pennsylvania. *Id.* 715 A.2d at 1219. Under these facts, the court in *Dulaney* found that the defendant had shown that appellant's chosen forum would have been oppressive to the defendant and upheld transfer as Allegheny County would be more convenient because of easier access to all of the witnesses and other sources of proof. *Id.*

In the instant case, Defendants' multiple petitions for change of venue have set forth substantial facts on record which support a finding that the plaintiff's choice of venue, Allegheny County, is oppressive to Defendants and witnesses alike. Plaintiff's choice of forum here, Allegheny County, is a two and a half to three hour drive for most witnesses, parties and other sources of relevant evidence. If trial proceeds in Allegheny County, the five to six hour daily round trip that witnesses and parties, including the plaintiff, a resident of Clearfield County, would have to endure appears to be the same type of oppression found to be determinative in *Dulaney*. Additionally, to try this case in Allegheny County would result in undue hardship for many medical witnesses and parties residing in Clearfield and Clarion Counties¹. Defendants have also shown that trial in Allegheny County would seriously disrupt the lives of witnesses and cause an unreasonable burden on the careers of such persons in addition to the disruption of the operation of medical facilities that are reliant upon such individuals².

The only connection of this case to Allegheny County is that one of the defendants, UPMC-Presbyterian t/a Redbank Family Practice, maintains its principal place of business in Pittsburgh, Allegheny County. However, all records and witnesses relating to treatment of Plaintiff's decedent by Dr.

¹ Affidavit of Jeffery Rice, DMD at ¶ 5, 10, 13-17

² Affidavit of Gregory J. Volpe for Dubois Regional Medical Center at ¶15

Karls at Redbank Family Practice are located in or reside in Clarion County³. Trial in Clearfield County would certainly provide easier access to witnesses and other sources of proof⁴. Furthermore, Plaintiff's decedent received all treatment giving rise to this cause of action in Clearfield, Clarion or Elk County.

Finally, Plaintiff, a resident of Clearfield County, apparently concedes that trial in Clearfield County would be a convenient forum in which to pursue his claims⁵.

Defendants have met their burden of demonstrating that trial in Allegheny County would be overly oppressive and burdensome to nearly all parties and witnesses involved. I am therefore granting Defendants' petitions and transferring this case to Clearfield County for the convenience of all parties and witnesses. Pa.R.C.P. 1006(d)(1).

STRASSBURGER, J.

January 18, 2001

³ Affidavit of Christopher B. Cook at ¶4

⁴ Plaintiff's complaint alone avers that Plaintiff, John Duttry, and his deceased wife, Mary Jo Duttry, "at all times material" both resided in Clearfield County. (¶1,2) Mary Jo Duttry died in Clearfield County and letters of administration were granted by the Registrar of Wills of Clearfield County. (¶3) Furthermore, all defendants except for UPMC Presbyterian reside in or are located in Clearfield County or nearby Clarion County. See Complaint at ¶4-13)

⁵ See Affidavit of Plaintiff, John Duttry, at ¶7 ("I consider all three of these counties [Clearfield, Clarion and Allegheny County] to be convenient for my purposes.")

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PROTHONOTARY
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**NOTICE OF DEPOSITION FOR
THOMAS E. BOWSER, R.PH
CYNTHIA D. BOWSER, R.PH**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

APR 16 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

**NOTICE OF DEPOSITION OF THOMAS E. BOWSER, R.PH AND CYNTHIA D.
BOWSER, R.PH.**

TO: Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

PLEASE TAKE NOTICE that the Depositions of Thomas E. Bowser R.PH and Cynthia D. Bowser, R.PH, will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the Dubois

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **NOTICE OF DEPOSITION FOR THE DEFENDANT BOWSERS** was been served to the following by first class mail, postage prepaid on the 11th day of April, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

APR 16 2001

17:00/mcc

William A. Shaw

Prothonotary

WAS

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

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased, and JOHN D. DUTTRY, in
his own right,

Plaintiff,

Vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania Corporation, t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania
Corporation; JEFFREY P. KARLS,
D.O., individually and t/a REDBANK
FAMILY PRACTICE – UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation, t/a REBBANK FAMILY
PRACTICE – UPMC; JEFFREY W.
RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D., P.C. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation, t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E.
BOWSER, R. PH and CYNTHIA D.
BOWSER, R. PH,

Defendants.

CIVIL DIVISION

Case No.: 2001-00301-CD

NOTICE OF DEPOSITION OF
PLAINTIFF, JOHN D. DUTTRY,
ADMINISTRATOR OF THE ESTATE
OF MARY JO DUTTRY

Filed on Behalf of : Defendant

Counsel of Record:

Marshall J. Tindall, Esquire
PA. I.D.# 38575

Davies, McFarland & Carroll, P. C.
Firm #281
One Gateway Center, 10th Fl.
Pittsburgh, PA 15222

412-281-0737

FILED

APR 16 2001

William A. Shaw
Prothonotary

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

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased and JOHN D. DUTTRY, in
his own right,

CIVIL DIVISION

No.: 2001-00301-CD

Plaintiff,

vs.

JAMES K. FUGATE, M.D., et al.,

Defendants.

**NOTICE OF DEPOSITION OF PLAINTIFF, JOHN D. DUTTRY,
ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY**

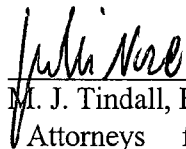
TO: Plaintiff

PLEASE TAKE NOTICE that the deposition of **John Duttry, Administrator of the Estate of Mary Jo Duttry** will be taken upon oral examination pursuant to Pennsylvania Rule of Civil Procedure 4007 for purposes of discovery, before a Notary Public duly authorized by law to administer oaths, on **June 25, 2001 at 11:00 a.m.** at **DuBois Regional Medical Center, 100 Hospital Avenue, DuBois, PA 15801**, and, thereafter, from time to time, as the taking of said deposition may be adjourned.

Deponent is to bring with him any and all documents and records to which Deponent may find necessary to refer in order to respond to the stated inquiry regarding the claim of Plaintiff and any defenses raised.

Davies, McFarland & Carroll, P.C.

By:

A handwritten signature in dark ink, appearing to read "M. J. Tindall", is written over a horizontal line.

M. J. Tindall, Esquire

Attorneys for Bowser Corporation, a
Pennsylvania Corporation, t/a Shankel's
Pharmacy and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R.PH and Cynthia D.
Bowser, R.PH

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all known counsel of record by United States First Class Mail, postage prepaid, this 12 day of April, 2001, addressed as follows:

Harry S. Cohen, Esquire
David J. Lozier, Esquire
HARRY S. COHEN & ASSOCIATES
985 Two Chatham Center
Pittsburgh, PA 15219

(Counsel for Plaintiffs)

Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
Pittsburgh, PA 15222

(Counsel for Defendant, James K. Fugate, M.D.)

Howard Chajson, Esquire
DICKY, McCAMEY & CHILCOTE, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222

(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC;
UPMC - Presbyterian t/a Redbank Family Practice-UPMC)

Michael A. Sosnowski, Esquire
PFAFF, McINTRE, DUGAS,
HARTYE & SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533

(Counsel for Dubois Regional Medical Center, Inc.
t/a Behavioral Health Center)

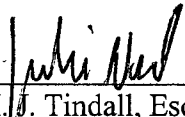
Robert J. Grimm, Esquire
Israel Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

(Counsel for Defendant, Gateway Institute and Clinic, Inc.)

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801

(Counsel for three Defenants, Jeffrey W. Rice, D.M.D., Jeffrey Rice, D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay L. Arlick, D.M.D., P.C.)

BY: _____


M.J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.

FILED

APR 16 2001
M. J. S. McC
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Deceased, and JOHN D.
DUTTRY, in his own right,
Plaintiffs,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania
Corporation, t/a BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC.
A Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.
Individually and t/a REDBANK
FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a
Pennsylvania Corporation, t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., PC., a Pennsylvania
Professional Corporation;
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH.,
Defendants.

CIVIL DIVISION

01-301-CD
Case No.: ~~GD00-12637~~

Code No:

**ANSWER AND NEW MATTER
TO PLAINTIFF'S COMPLAINT**

Filed on Behalf of Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's Pharmacy
and t/a Treasure Lake Pharmacy,
Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.,
five of the Defendants

Counsel of Record:

Marshall J. Tindall, Esquire
PA I.D. #38575

Julie L. Nord, Esquire
PA I.D. #76126

Davies, McFarland & Carroll, P.C.
Firm #281
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

NOTICE TO PLEAD:

TO: Plaintiffs:

You are hereby notified that you
are required to plead to the Answer
and New Matter to Plaintiffs' Complaint
contained herein within twenty (20) days
from the date of service hereof, or a default
judgment may be entered against you.

By: Julie L. Nord
Julie L. Nord, Esquire

{D0086599:1}

FILED

MAY 10 2001

m 12:13 pm
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY,
Administrator of the Estate
of MARY JO DUTTRY,
Decreased, and JOHN D.
DUTTRY, in his own right,
Plaintiff,

Vs.

CIVIL DIVISION

Case No.: GD00-12637

BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R. PH. and
CYNTHIA D. BOWSER, R. PH. et. al.

Defendants.

ANSWER

Defendants, Bowser Corporation, a Pennsylvania Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH., (hereinafter collectively referred to as "Bowser") by and through their attorneys, Davies, McFarland and Carroll, P.C. file the within Answer and New Matter and in support thereof aver as follows:

1-11. After reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments of the averments in paragraphs 1 through 11 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted.

14-16. After reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments of the

averments in paragraphs 14 through 16 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

17. Paragraph 17 is admitted.

18. Paragraph 18 is denied and strict proof thereof is demanded at the time of trial.

By way of further response, a Motion to Transfer Venue has previously been granted and it has been determined that the proper venue is Clearfield County, Pennsylvania.

19. After reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraph 19 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

20-25. Paragraphs 20 through 25 are directed care and treatment rendered by Defendants other than Defendant Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 20 through 25 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

26. After reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraph 26 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

27-34. Paragraphs 27 through 34 are directed care and treatment rendered by Defendants other than Defendant Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 27

through 34 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

35-40. Paragraphs 35 through 40 are denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial. By way of further response, it is specifically denied that Defendants Bowser were careless and/or negligent in any manner or that any act or conduct by or on behalf of Defendants Bowser was the direct or proximate cause of any injuries or damages allegedly sustained by the decedent. By way of further response, Defendants Bowser provided proper, appropriate and reasonable warnings to the decedent regarding each of the medications filled and/or dispensed by Defendants Bowser. Further, from time to time, Defendants Bowser would verify prescriptions with the various Defendants prior to filling and/or dispensing the prescriptions and/or medications.

41-44. Paragraphs 41 through 44 are directed care and treatment rendered by Defendants other than Defendant Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendant Bowser is without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 41 through 44 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

45-46. To the extent the averments in paragraphs 45 and 46 are directed to Defendants other than Defendant Bowser, no response is required. To the extent a response is required, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 45 through 46 and therefore said averments are denied and strict proof thereof is demanded at the time of trial. To the extent the averments in paragraphs 45 and 46 are directed to Defendants Bowser, said averments are denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial. By way of

further response, it is specifically denied that Defendants Bowser were careless and/or negligent in any manner or that any act or conduct by or on behalf of Defendants Bowser was the direct or proximate cause of any injuries or damages allegedly sustained by the decedent. By way of further response, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the nature and extent of the injuries or damages allegedly sustained by the decedent and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT I

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation, Defendants,***

SURVIVAL ACTION

47. Defendants Bowser incorporate paragraphs 1 through 46 by reference as though the same were more fully set forth at length herein.

48-54. Paragraphs 48 through 54 and all subparagraphs contained therein are directed to care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 48 through 54 and all subparagraphs

contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT II

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation, Defendants,***

WRONGFUL DEATH ACTION

55. Defendants Bowser incorporate paragraphs 1 through 54 by reference as though the same were more fully set forth at length herein.

56-60. Paragraphs 56 through 60 and all subparagraphs contained therein are directed care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 56 through 60 and all subparagraphs contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT III

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JEFFREY P. KARLS, D.O.; individually and t/a REDBANK FAMILY
PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation
t/a REDBANK FAMILY PRACTICE UPMC, Defendants,***

SURVIVAL ACTION

61. Defendants Bowser incorporate paragraphs 1 through 60 by reference as though the same were more fully set forth at length herein.

62-67. Paragraphs 62 through 67 and all subparagraphs contained therein are directed care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 62 through 67 and all subparagraphs contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT IV

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JEFFREY P. KARLS, D.O.; individually and t/a REDBANK FAMILY
PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation
t/a REDBANK FAMILY PRACTICE UPMC, Defendants,***

WRONGFUL DEATH ACTION

68. Defendants Bowser incorporate paragraphs 1 through 67 by reference as though the same were more fully set forth at length herein.

69-73. Paragraphs 69 through 73 and all subparagraphs contained therein are directed care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 69 through 73 and all subparagraphs contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT V

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C.,
a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C., a Pennsylvania Professional Corporation***

SURVIVAL ACTION

74. Defendants Bowser incorporate paragraphs 1 through 73 by reference as though the same were more fully set forth at length herein.

75-78. Paragraphs 75 through 78 and all subparagraphs contained therein are directed care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 75 through 78 and all subparagraphs contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT VI

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C.,
a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C., a Pennsylvania Professional Corporation***

WRONGFUL DEATH ACTION

79. Defendants Bowser incorporate paragraphs 1 through 78 by reference as though the same were more fully set forth at length herein.

80-83. Paragraphs 80 through 83 and all subparagraphs contained therein are directed care and treatment rendered by Defendants other than Defendants Bowser and therefore no response is required. To the extent a response is required, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraphs 80 through 83 and all subparagraphs contained therein and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT VII

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff***

Vs.

***BOWSER CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY;
THOMAS E. BOWSER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants***

SURVIVAL ACTION

84. Defendants Bowser incorporate paragraphs 1 through 83 by reference as though the same were more fully set forth at length herein.

85. After reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraph 85 and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

86-88. Paragraphs 86 through 88 and all subparagraphs contained therein are denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial. By way of further response, it is specifically denied that Defendants Bowser were negligent in any manner or that any act or conduct by or on behalf of Defendants Bowser was the direct or proximate cause of any injuries or damages allegedly sustained by the decedent. By way of further response, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the nature or extent of the injuries or damages allegedly sustained by the decedent and therefore said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, Defendants Bowser incorporate paragraphs 35 through 40 herein by reference.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT VIII

***JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY, in his own right, Plaintiff
Vs.
BOWSER CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY;
THOMAS E. BOWSER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants***

WRONGFUL DEATH ACTION

89. Defendants Bowser incorporate paragraphs 1 through 88 by reference as though the same were more fully set forth at length herein.

90-92. Paragraphs 90 through 92 and all subparagraphs contained therein are denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial. By way of further response, it is specifically denied that Defendants Bowser were careless and/or negligent in any manner or that any act or conduct by or on behalf of Defendants Bowser was the direct or proximate cause of any injuries or damages allegedly sustained by the decedent. By way of further response, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the nature or extent of the injuries or damages allegedly sustained by the decedent and therefore said averments are denied and strict proof thereof is demanded at the time of trial. By way of further response, Defendants Bowser incorporate paragraphs 35 through 40 herein by reference.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

COUNT IX

JOHN D. DUTTRY, in his own right, Plaintiff

Vs.

DEFENDANTS

WRONGFUL DEATH ACTION

94. Defendants Bowser incorporate paragraphs 1 through 93 by reference as though the same were more fully set forth at length herein.

95. To the extent the averments in paragraph 95 are directed to Defendants other than Defendant Bowser, no response is required. To the extent a response is required, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the averments in paragraph 95 and therefore said averments are denied and strict proof thereof is demanded at the time of trial. To the extent the averments in paragraph 95 are directed to Defendants Bowser, said averments are denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial. By way of further response, it is specifically denied that Defendants Bowser were negligent in any manner or that any act or conduct by or on behalf of Defendants Bowser was the direct or proximate cause of any injuries or damages allegedly sustained by the decedent and/or Plaintiff-Husband. By way of further response, after reasonable investigation, Defendants Bowser are without knowledge or information sufficient to form a reasonable belief as to the nature and extent of the injuries or damages allegedly sustained by the decedent and/or Plaintiff-Husband and therefore said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

NEW MATTER

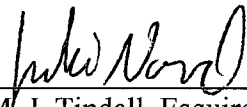
96. Defendants Bowser incorporate paragraphs 1 through 95 by reference as though the same were more fully set forth at length herein.

97. Plaintiffs' claims are barred by the applicable statute of limitations.

WHEREFORE, Defendants, Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, Thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH. demand judgment in their favor together with costs.

DAVIES, McFARLAND & CARROLL, P.C.

By: _____


M. J. Tindall, Esquire

Julie L. Nord, Esquire

***(Attorneys for Bowser Corporation t/a
Shankel's Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser, R. PH. and
Cynthia D. Bowser, R. PH.)***

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Answer and New Matter to Plaintiffs' Complaint upon all known counsel of record by United States First Class Mail, postage prepaid, this 8th day of May, 2001, addressed as follows:

Harry S. Cohen, Esquire
David J. Lozier, Esquire
HARRY S. COHEN & ASSOCIATES
985 Two Chatham Center
Pittsburgh, PA 15219

(Counsel for Plaintiffs)

Giles J. Gaca, Esquire
GACA MATIS BAUM & RIZZA
300 Four PPG Place
Pittsburgh, PA 15222

(Counsel for Defendant, James K. Fugate, M.D.)

Howard Chajson, Esquire
DICKEY, McCAMEY & CHILCOTE, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222

(Counsel for Defendants Jeffrey P. Karls, D.O. t/a Redbank Family Practice-UPMC;
UPMC - Presbyterian t/a Redbank Family Practice-UPMC)

Michael A. Sosnowski, Esquire
PFAFF, McINTRE, DUGAS,
HARTYE & SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533

(Counsel for Dubois Regional Medical Center, Inc.
t/a Behavioral Health Center)

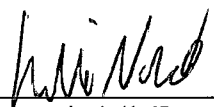
Robert J. Grimm, Esquire
Israel Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

(Counsel for Defendant, Gateway Institute and Clinic, Inc.)

Allen P. Neely, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801

(Counsel for three Defenants, Jeffrey W. Rice, D.M.D., Jeffrey Rice, D.M.D., P.C. and Jeffrey W. Rice, D.M.D. and Jay L. Arlick, D.M.D., P.C.)

BY: _____


M/J. Tindall, Esquire
Julie L. Nord, Esquire
Attorneys for Bowser corporation, t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, thomas E. Bowser, R. PH. and Cynthia D. Bowser, R. PH.

VERIFICATION

I, Cynthia D. Bowser, R. PH., have read the foregoing *Answer and New Matter to Plaintiffs' Complaint*. The statements therein are correct to the best of my personal knowledge or information and belief.

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

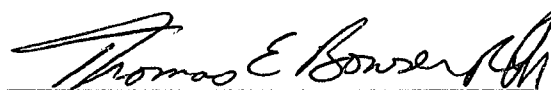
Cynthia D. Bowser, R. Ph.
Cynthia D. Bowser, R. PH.

Date: 5/1/01

VERIFICATION

I, Thomas E. Bowser, R. PH., have read the foregoing *Answer and New Matter to Plaintiffs' Complaint*. The statements therein are correct to the best of my personal knowledge or information and belief.

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


Thomas E. Bowser, R. PH.

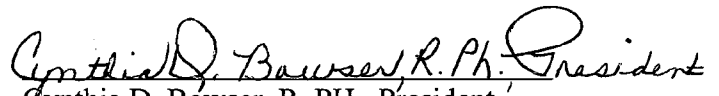
Date: 5/1/01

VERIFICATION

I, Cynthia D. Bowser, R. PH., have read the foregoing *Answer and New Matter to Plaintiffs' Complaint*. The statements therein are correct to the best of my personal knowledge or information and belief.

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

I am authorized to make this verification on behalf of Bowser Corporation t/a Shankel's Pharmacy and t/a Treasure Lake Pharmacy, because of my position of President.


Cynthia D. Bowser, R. PH., President
Bowser Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake Pharmacy

Date: 5/1/01

FILED

MAY 10 2001

M 12-13-2000

M. A. Shaw

Notary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**NOTICE OF DEPOSITION FOR
JAMES K. FUGATE, M.D.**

FILED

AUG 09 2001

Filed on Behalf of:
PLAINTIFF

**William A. Shaw
Prothonotary**

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITION OF JAMES K. FUGATE, M.D.

TO: Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

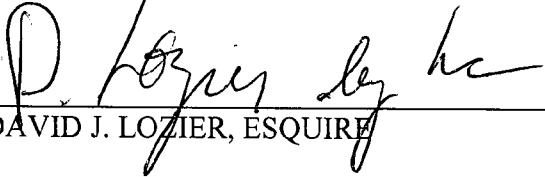
PLEASE TAKE NOTICE that the Depositions of James K. Fugate, M.D. will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the law office of Harry S. Cohen &

Associates, 985 Two Chatham Center, Pittsburgh, PA 15219 beginning at 12:00 noon, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By: 

DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **NOTICE OF DEPOSITION FOR JAMES K. FUGATE, M.D.** was been served to the following by first class mail, postage prepaid on the 7th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

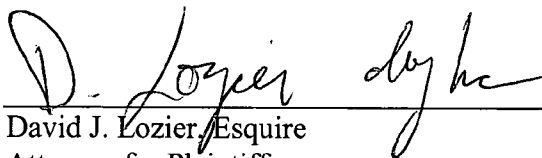
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 
David J. Lozier, Esquire
Attorney for Plaintiffs

William A. Shaw
Prothonotary

AUG 09 2001

FILED

NO
CC

[Handwritten signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH.;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**NOTICE OF DEPOSITION FOR
JEFFREY P. KARLS, D.O.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 09 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITION OF JEFFREY P. KARLS, D.O.

TO: Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

PLEASE TAKE NOTICE that the Depositions of Jeffrey P. Karls, D.O., will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the law office of Harry S. Cohen &

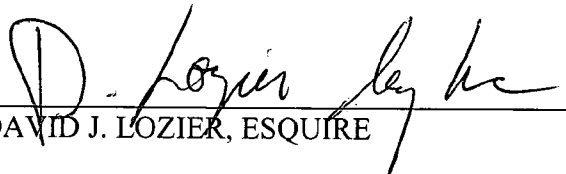
Associates, 985 Two Chatham Center, Pittsburgh, PA 15219 at 10:00 a.m., at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By:



DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **NOTICE OF DEPOSITION FOR JEFFREY P. KARLS, D.O.** was been served to the following by first class mail, postage prepaid on the 7th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

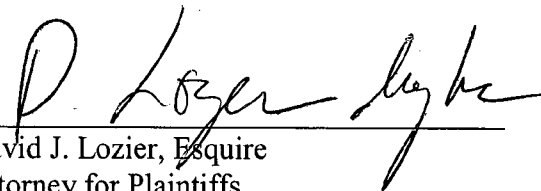
Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

William A. Shaw
Prothonotary

AUG 09 2001

FILED
MAY 15 2001

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**AMENDED NOTICE OF
DEPOSITION FOR JEFFREY P.
KARLS, D.O.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 10 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITION OF JEFFREY P. KARLS, D.O.

TO: Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

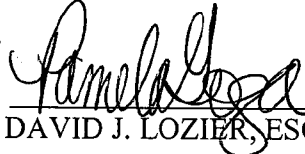
PLEASE TAKE NOTICE that the Depositions of Jeffrey P. Karls, D.O., will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at **Seargents Court Reporters, 106 N. 2nd**

Street, 1st Suite, first floor, Clearfield, PA 16830 at 10:00 a.m. on August 24, 2001, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By: 
DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **AMENDED NOTICE OF DEPOSITION FOR JEFFREY P. KARLS, D.O.** was been served to the following by first class mail, postage prepaid on the 8th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 
David J. Lozier, Esquire
Attorney for Plaintiffs

FILE
AUG 10 2001
William A. Stacy
Prothonotary
cc
B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**AMENDED NOTICE OF
DEPOSITION FOR JAMES K.
FUGATE, M.D.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 10 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITION OF JAMES K. FUGATE, M.D.

TO: Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

PLEASE TAKE NOTICE that the Depositions of James K. Fugate, M.D. will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at **Sergeants Court Reporters, 106 N. 2nd**

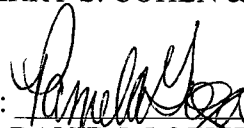
Street, 1st Suite, first floor, Clearfield, PA 16830 at 12:00 noon, on August 24, 2001, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By:



DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **AMENDED NOTICE OF DEPOSITION FOR JAMES K. FUGATE, M.D.** was been served to the following by first class mail, postage prepaid on the 8th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

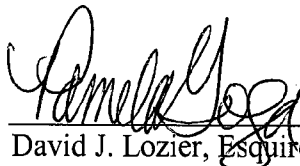
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 
David J. Lozier, Esquire
Attorney for Plaintiffs

FILED
M11:22:54
AUG 11 2001
NO
cc
81
400

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**AMENDED NOTICE OF
DEPOSITION FOR JAMES K.
FUGATE, M.D.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 20 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

AMENDED NOTICE OF DEPOSITION OF JAMES K. FUGATE, M.D.

TO: Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

PLEASE TAKE NOTICE that the Depositions of James K. Fugate, M.D. will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the medical office of James K. Fugate,

M.D., 100 Cardwell Drive, Dubois, PA 15801 beginning at 10:00 A.M. on, on August 24, 2001,
at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon
which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By: 

DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **AMENDED NOTICE OF DEPOSITION FOR JAMES K. FUGATE, M.D.** was been served to the following by first class mail, postage prepaid on the 15th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

AUG 20 2001
M 15 81/20
William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:

**SECOND NOTICE OF
DEPOSITION FOR
JEFFREY P. KARLS, D.O.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 20 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

SECOND NOTICE OF DEPOSITION OF JEFFREY P. KARLS, D.O.

TO: Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

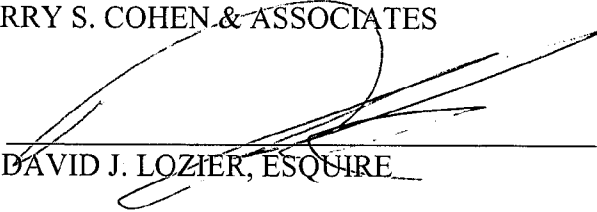
PLEASE TAKE NOTICE that the Depositions of Jeffrey P. Karls, D.O., will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the medical office of Dr. Rice, 90 Beaver

Drive, Dubois, PA 15801 at 11:00 a.m. on October 24, 2001, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By: 

DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **SECOND NOTICE OF DEPOSITION FOR JEFFREY P. KARLS, D.O.** was been served to the following by first class mail, postage prepaid on the 16th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

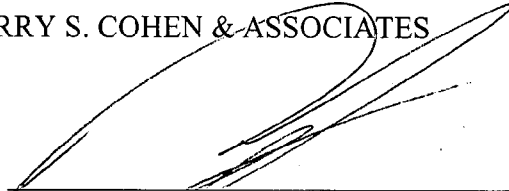
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

AUG 20 2001

m/j/s/noc

William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH.;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**NOTICE OF DEPOSITION
FOR JEFFREY RICE, DMD**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

AUG 20 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITION OF JEFFREY RICE, DMD

TO: Allen P. Neely, Esquire
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

PLEASE TAKE NOTICE that the Depositions of Jeffrey Rice DMD, will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the medical office of Dr. Rice, 90 Beaver

Drive, Dubois, PA 15801 at 11:00 a.m. on October 24, 2001, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By: 

DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **NOTICE OF DEPOSITION FOR JEFFREY RICE, DMD** was been served to the following by first class mail, postage prepaid on the 16th day of August, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

AUG 29 2001

m.l.s. / nocl

William A. Shaw

Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORIAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSWER, R.PH,

Defendants.

CIVIL DIVISION

No. 2001 – 00301 - CD

Code: 010

Type of Pleading:

**ANSWER AND NEW MATTER TO
PLAINTIFF'S COMPLAINT**

Filed on behalf of Defendant:

**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:

**MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207**

McINTYRE, DUGAS, HARTYE
& SCHMITT

P.O. Box 533

Hollidaysburg, PA 16648-0533

(814) 696-3581

FAX (814) 696-9399

I CERTIFY THAT A TRUE AND CORRECT COPY
OF THE WITHIN HAS BEEN SERVED ON ALL
COUNSEL OF RECORD THIS 5th DAY OF
OCTOBER, 2001.

Michael A. Sosnowski
Attorneys for Named Defendant

FILED

OCT 09 2001

John A. Shaw
Prothonotary

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSWER, R.PH,

Defendants.

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

No. 2001 – 00301 - CD

JURY TRIAL DEMANDED

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

Defendant, DUBOIS REGIONAL MEDICAL CENTER. INC., t/a BEHAVIORAL HEALTH
CENTER ("DRMC"), through its counsel, McINTYRE, DUGAS, HARTYE & SCHMITT, files the
following Answer and New Matter to Plaintiff's Complaint.

1. - 3. After reasonable investigation, DRMC is without sufficient knowledge or information to
admit or deny the averments in Paragraphs 1 through 3. Accordingly, they are deemed denied and
strict proof thereof is demanded at the time of trial.

4. The averments of Paragraph 4 are directed to another party. Accordingly, no
response is required of DRMC.

5. The averments of Paragraph 5 are admitted.

6. - 13. The averments in Paragraphs 6 through 13 are directed to other parties.

Accordingly, no response is required from DRMC.

14. The averments of Paragraph 14 are admitted with respect to averments concerning Dr. Fugate's agency status with DRMC. With respect to Dr. Fugate's relationship with Gateway, DRMC is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

15. – 17. After reasonable investigation, DRMC is without sufficient knowledge or information to admit or deny the averments contained in Paragraphs 15 through 17. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

18. The averments of Paragraph 18 consist of conclusions of law to which no response is required. To the extent a response is required, venue has been changed in this case and has been determined to be proper in Clearfield County, Pennsylvania.

19. – 26. After reasonable investigation, DRMC is without sufficient knowledge or information to admit or deny the averments contained in Paragraphs 19 through 26. Accordingly, these averments are deemed denied and strict proof thereof is demanded at the time of trial.

27. – 40. The averments contained in Paragraphs 27 through 40 are directed to other parties. Accordingly, no response is required from DRMC. To the extent a response is deemed necessary, DRMC is without sufficient knowledge or information to admit or deny the averments contained in Paragraphs 27 through 40. Accordingly, they are denied and strict proof thereof is demanded at the time of trial.

41. – 42. The averments in Paragraphs 41 and 42 are generally denied to the extent they allege DRMC was negligent in any respect in this matter.

43. – 44. The averments contained in Paragraphs 43 and 44 are directed to other parties. Accordingly, no response is required from DRMC. To the extent a response is deemed necessary, DRMC is without sufficient knowledge or information to admit or deny the averments contained in these Paragraphs. Accordingly, they are denied and strict proof thereof is demanded at the time of trial.

45. – 46. The averments of Paragraphs 45 and 46 are generally denied. By way of further response, DRMC denies that it was in any way careless or negligent relative to the decedent, or that it was in anyway responsible for or increase the likelihood of her death.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT I

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., a Pennsylvania Corporation, Defendants.

SURVIVAL ACTION

47. Paragraphs 1 through 46 in this Answer are incorporated herein as if the same were set forth at length.

48. The averments contained in Paragraph 48 consist of conclusions of law to which no response is required.

49. With the respect to the averments contained in Paragraph 49, including all subparagraphs contained therein, DRMC is without sufficient knowledge or information to admit or deny any averments of damages. Accordingly, these averments are deemed denied and strict proof thereof is demanded at the time of trial. DRMC does deny that it was negligent, and that it in any way was responsible for or increased the likelihood of injury or damage to the Plaintiff.

50. The averments contained in Paragraph 50, including all subparagraphs contained therein, are directed to another party. Accordingly, no response is required from DRMC.

51. The averments contained in Paragraph 51, including all subparagraphs contained therein, are generally denied.

52. The averments contained in Paragraph 52 are directed to another party. Accordingly, no response is required from DRMC. To the extent a response is deemed necessary, it is submitted that these averments consist of conclusions of law to which no response is required.

53. The averments of Paragraph 53 are generally denied. It is specifically denied that DRMC was in any way a substantial factor in causing injuries or damages to Plaintiff.

54. The averments contained in Paragraph 54 consist of conclusions of law to which no response is required. To the extent a response is deemed necessary, it is denied that DRMC is in any way vicariously liable for the actions of Dr. Fugate. By way of additional response, Dr. Fugate at all times relevant herein was an independent contractor physician exercising independent judgment in the treatment of patients.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT II

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania Corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., a Pennsylvania Corporation, Defendants.

WRONGFUL DEATH ACTION

55. Paragraphs 1 through 54 in this Answer are incorporated herein as if the same were set forth at length.

56. The averments contained in Paragraph 56 are conclusions of law to which no response is required.

57. With respect to the averments of Paragraph 57, including all subparagraphs contained therein, DRMC generally denies that it was negligent or that it caused or increased the likelihood of any damage to the Plaintiff. In all other contexts, DRMC is without sufficient knowledge

and information to admit or deny specific damage claims by Plaintiff. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

58. The averments contained in Paragraph 58 are directed to another party. Accordingly, no response is required from DRMC. To the extent a responses deemed necessary, DRMC is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

59. The averments in Paragraph 59 are generally denied. By way of further response, DRMC specifically denies that it in any way was a substantial factor in bringing about injuries or damages to the Plaintiff, or the death of Plaintiff's decedent.

60. The averments contained in Paragraph 60 consists of conclusions of law to which no response is required. By way of further response, Dr. Fugate was at all times relevant a physician exercising independent judgment in the treatment of a patient.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT III

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY P. KARLS, D.O., individually and t/a/ REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE-UPMC, Defendants.

SURVIVAL ACTION

61. Paragraphs 1 through 60 in this Answer are incorporated herein as if the same were set forth at length.

62. The averments contained in Paragraph 62 consist of conclusions of law to which no response is required.

63. – 67. The averments of Paragraphs 63 through 67, including all subparagraphs contained therein, are directed to parties other than DRMC. Accordingly, no response is required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT IV

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY P. KARLS, D.O., individually and t/a/ REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania Corporation t/a REDBANK FAMILY PRACTICE-UPMC, Defendants.

WRONGFUL DEATH ACTION

68. Paragraphs 1 through 67 in this Answer are incorporated herein as if the same were set forth at length.

69. The averments contained in Paragraph 69 consist of conclusions of law to which no response is required.

70. – 73. The averments contained in Paragraphs 70 through 73 are directed to parties other than DRMC. Accordingly no responses are required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT V

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, PC., a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, AND JAY L. ARLICK, DMD, PC, a Pennsylvania Professional Corporation, Defendants.

SURVIVAL ACTION

74. Paragraphs 1 through 73 in this Answer are incorporated herein as if the same were set forth at length.

75. The averments contained in Paragraph 75 consist of conclusions of law to which no response is required.

76. – 78. The averments contained in Paragraphs 76 through 78 are directed to another party. Accordingly, no response is required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT VI

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, PC., a Pennsylvania Professional Corporation; JEFFREY RICE, DMD, AND JAY L. ARLICK, DMD, PC, a Pennsylvania Professional Corporation, Defendants.

WRONGFUL DEATH ACTION

79. Paragraphs 1 through 78 in this Answer are incorporated herein as if the same were set forth at length.

80. The averments in Paragraph 80 consist of conclusions of law to which no response is required.

81. – 83. The averments contained in Paragraphs 81 through 83, including all subparagraphs contained therein, are directed to other parties. Accordingly, no response is required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT VII

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,
vs.
BOWSER CORPORATION, a Pennsylvania Corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants.

SURVIVAL ACTION

84. Paragraphs 1 through 83 in this Answer are incorporated herein as if the same were set forth at length.

85. The averments in Paragraph 85 consist of conclusions of law to which no response is required.

86. – 88. The averments contained in Paragraph 86 through 88, including all subparagraphs contained therein, are directed to other parties. Accordingly, no response is required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT VIII

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY in his own right, Plaintiff,
vs.
BOWSER CORPORATION, a Pennsylvania Corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWER, R.PH.; and CYNTHIA D. BOWSER, R.PH, Defendants.

WRONGFUL DEATH ACTION

89. Paragraphs 1 through 88 in this Answer are incorporated herein as if the same were set forth at length.

90. The averments in Paragraph 90 consist of conclusions of law to which no response is required.

91. – 92. The averments contained in Paragraphs 91 through 92, including all subparagraphs contained therein, are directed to other parties. Accordingly, no response is required from DRMC.

WHEREFORE, Dubois Regional Medical Center denies that it is liable to any party and demands that judgment be entered in its favor and that this case be dismissed with prejudice.

COUNT IX

**JOHN D. DUTTRY in his own right, Plaintiff,
vs.
DEFENDANTS**

94. Paragraphs 1 through 93 in this Answer are incorporated herein as if the same were set forth at length.

95. With respect to the averments contained in Paragraph 95, it is denied that DRMC was in anyway negligent or causally related to the death of Plaintiff's decedent or any injuries and damages alleged by the Plaintiff. Accordingly, these averments are generally denied and strict proof thereof is demanded at the time of trial.

NEW MATTER

1. The averments of Plaintiff's Complaint alleging Plaintiff's decedent's date of death as being July 25, 1998, are incorporated herein by reference as if the same were set forth at length.

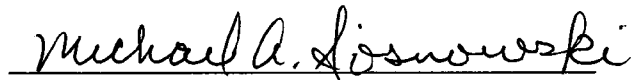
2. This action was initiated via the filing of a Complaint on or about July 24, 2000.

3. The averments of Plaintiff's Complaint relative to DRMC are incorporated herein by reference as if the same were set forth in length. Said averments continue to be denied.

4. To the extent the allegations against DRMC arise from actions or in actions taking place prior to July 24, 1998, Plaintiff's claim against DRMC is barred by the applicable statute of limitations.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT



Attorney for Defendant
Dubois Regional Medical Center. Inc., t/a
Behavioral Health Center

Michael A. Sosnowski, Esquire

PA ID #67207

P.O. Box 533

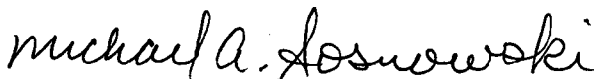
Hollidaysburg, PA 16648-0533

814/696-3581

814/696-9399 Fax

TO: JOHN D. DUTTRY

You are hereby notified to file a written
Response to the enclosed New Matter to
Plaintiff's Complaint within twenty (20)
Days from service hereof or a judgment may
be entered against you.



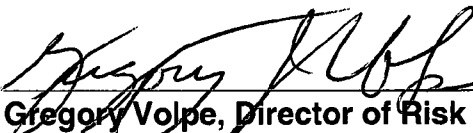
Attorney for Defendant
Dubois Regional Medical Center. Inc.,
t/a Behavioral Health Center

VERIFICATION

I, Gregory Volpe, am the Director Risk Management at Dubois Regional Medical Center, one of the Defendants in this matter. In that capacity I am represented and advised by counsel for Dubois Regional Medical Center. I have furnished to counsel factual information upon which the foregoing Answer is based. To the extent that it is based on the factual information provided to counsel, I verify that those facts are true and correct to the best of my knowledge, information and belief. However, the language is that of counsel and, to the extent that it goes beyond the factual information which I have provided to counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsifications to authorities.

DUBOIS REGIONAL MEDICAL CENTER


Gregory Volpe, Director of Risk Management

Date: 8-22-01

FILED

OCT 08 2001
m) a.11/no cc
A. Shaw
notary
a.11

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY, in his own right,

Plaintiff,

vs.

to

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC
INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE-
UPMC, UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a/ REDBANK
FAMILY PRACTICE-UPMC, JEFFREY
W. RICE, DMD, JEFFREY RICE, DMD,
P.C. a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD, and
JAY L. ARLICK, DMD, P.C. a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation, t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH., and
CYNTHIA D. BOWERS, R.PH.,

Defendants

Dated: 10/16/01

No.: 2001-00301-CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading:

ANSWER TO PLAINTIFF'S COMPLAINT
WITH NEW MATTER

Filed on Behalf of Defendants

Jeffrey W. Rice, DMD, Jeffrey Rice, DMD,
P.C. Jeffrey Rice, DMD and Jay L. Arlick,
DMD, P.C.

Counsel of Record for this

Party: JOHN W. BLASKO

Court I. D. No. 06787

ALLEN P. NEELY

Court I.D. No. 65302

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

811 University Drive

State College, PA 16801

(814) 238-4926

Counsel of Record for

Adverse Party:

HARRY S. COHEN and

DAVID J. LOZIER

FILED

OCT 17 2001

m11201nocc
William A. Shaw
Prothonotary

221

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. 2001-00301-CD

JURY TRIAL DEMANDED

NOTICE TO PLEAD

TO: Plaintiffs
c/o David J. Lozier, Esquire

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20)
days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

ALLEN P. NEELY
Attorney for Defendants
Rice and Arlick
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 10/16/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

CIVIL DIVISION

NO. 2001-00301-CD

JURY TRIAL DEMANDED

**ANSWER TO PLAINTIFF'S COMPLAINT, WITH NEW MATTER
OF THE DEFENDANTS, JEFFREY W. RICE, D.M.D., JEFFREY RICE D.M.D., P.C.,
JEFFREY RICE, D.M.D. and JAY L. ARLICK, D.M.D., P.C.**

AND NOW comes the Defendants, Jeffrey W. Rice, D.M.D. and Jeffrey W. Rice,
D.M.D., P.D., and Jeffrey D. Rice, DMD and Jay L. Arlick, DMD, P.C., by and through their
attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and file the
within Answer with New Matter, as follows:

1. Denied. After reasonable investigation, Answering Defendants lack sufficient
knowledge or information upon which to form a belief as to the truth of the averments set forth at
Paragraph 1. Said averments are therefore denied.

2. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information upon which to form a belief as to the truth of the averments set forth at Paragraph 2. Said averments are therefore denied.

3. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information upon which to form a belief as to the truth of the averments set forth at Paragraph 3. Said averments are therefore denied.

4. The averments of Paragraph 4 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

5. The averments of Paragraph 5 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

6. The averments of Paragraph 6 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

7. The averments of Paragraph 7 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

8. The averments of Paragraph 8 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

9. Admitted.

10. Admitted.

11. Admitted.

12. The averments of Paragraph 12 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

13. The averments of Paragraph 13 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

14. The averments of Paragraph 14 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

15. The averments of Paragraph 15 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

16. No response is required to the averments of Paragraph 16 for the reason that same constitute conclusions of law. Furthermore, this Paragraph is overly broad. Insofar as a response would be deemed necessary, it is averred that Dr. Rice was acting within the scope of his employment with respect to his treatment of Mary Jo Duttry.

17. The averments of Paragraph 17 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

18. Denied. This matter has been ruled upon by the Court of Common Pleas of Allegheny County.

19. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information upon which to form a belief as to the truth of the averments set forth at Paragraph 19. Said averments are therefore denied.

20. The averments of Paragraph 20 are directed to and/or concern treatment rendered by another Defendant in this action and therefore, no response is required of Answering Defendants. Said averments are also denied to the extent that same constitute conclusions of law. Insofar as a response to said Paragraph would be deemed necessary, the relevant medical records are hereby incorporated by reference. The averments are admitted to the extent that same

are consistent with the relevant medical records, and to the extent said records are true and accurate. All averments in this Paragraph which differ from the relevant medical records are denied.

21. The averments of Paragraph 21 are directed to and/or concern treatment rendered by another Defendant in this action and therefore, no response is required of Answering Defendants. Said averments are also denied to the extent that same constitute conclusions of law. Insofar as a response to said Paragraph would be deemed necessary, the relevant medical records are hereby incorporated by reference. The averments are admitted to the extent that same are consistent with the relevant medical records, and to the extent said records are true and accurate. All averments in this Paragraph which differ from the relevant medical records are denied.

22. The averments of Paragraph 22 are directed to and/or concern treatment rendered by another Defendant in this action and therefore, no response is required of Answering Defendants. Said averments are also denied to the extent that same constitute conclusions of law. Insofar as a response to said Paragraph would be deemed necessary, the relevant medical records are hereby incorporated by reference. The averments are admitted to the extent that same are consistent with the relevant medical records, and to the extent said records are true and accurate. All averments in this Paragraph which differ from the relevant medical records are denied.

23. The averments of Paragraph 23 are directed to and/or concern treatment rendered by another Defendant in this action and therefore, no response is required of Answering Defendants. Said averments are also denied to the extent that same constitute conclusions of

law. Insofar as a response to said Paragraph would be deemed necessary, the relevant medical records are hereby incorporated by reference. The averments are admitted to the extent that same are consistent with the relevant medical records, and to the extent said records are true and accurate. All averments in this Paragraph which differ from the relevant medical records are denied.

24. The averments of Paragraph 24 are responded to as follows. Mrs. Duttry was treated by Dr. Rice on March 8, 1998 and July 16, 1998. By way of a further response, Dr. Rice's records are hereby incorporated by reference.

25. It is admitted that on July 16, 1998, Dr. Rice prescribed ten (10) 7.5 / 500 mg Lortab tablets.

26. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information upon which to form a belief as to the truth of the averments set forth at Paragraph 26. Said averments are therefore denied. By way of a further response, it is averred that if the patient took the Lortab in the dosage and manner prescribed by Dr. Rice, she would have used up the entire supply prior to the date of her death.

27 - 38. To the extent that Paragraphs 27 - 38 are directed toward Dr. Rice, said averments constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. With regard to Plaintiff's allegations against other Defendants, no response is required

of the Answering Defendants. By way of a further response, it is averred that if the patient took the Lortab in the dosage and manner prescribed by Dr. Rice, she would have used up the entire supply prior to the date of her death. It is further specifically averred that no action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

39 - 44. The averments of Paragraphs 39 - 44 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

45. Denied. The averments of Paragraph 45 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. It is further specifically averred that no action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

46. Denied. The averments of Paragraph 46 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. It is further specifically averred that no action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT I

47 - 54. The averments of Paragraphs 47 - 54 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT II

55 - 60. The averments of Paragraphs 55 - 60 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT III

61 - 67. The averments of Paragraphs 61 - 67 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT IV

68 - 73. The averments of Paragraphs 68 - 73 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT V

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD, JEFFREY RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation, Defendants

SURVIVAL ACTION

74. Admitted or denied as hereinbefore set forth.

75. Paragraph 75 is a statement of Plaintiff's legal position, to which no response is required.

76 (a) - (c). Denied. The averments of Paragraph 76, and the subparagraphs thereunder, constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care.

77. Denied. The averments of Paragraph 77 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. It is further specifically averred that no

action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

78. Denied. The averments of Paragraph 78 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT VI

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right, Plaintiff,

vs.

JEFFREY W. RICE, DMD, JEFFREY RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation, Defendants

WRONGFUL DEATH ACTION

79. Admitted or denied as hereinbefore set forth.

80. Paragraph 80 is a statement of Plaintiff's legal position, to which no response is required.

81 (a) - (c). Denied. The averments of Paragraph 81, and the subparagraphs thereunder, constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar

as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care.

82. Denied. The averments of Paragraph 82 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. It is further specifically averred that no action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

83. Denied. The averments of Paragraph 83 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT VII

84 - 88. The averments of Paragraphs 84 - 88 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT VIII

89 - 92. The averments of Paragraphs 89 - 92 are directed to another person, entity and/or party and therefore, no response is required of these Defendants.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

COUNT IX

JOHN D. DUTTRY, in his own right, Plaintiff,

vs.

DEFENDANTS

94. Admitted or denied as hereinbefore set forth.

95. Denied. The averments of Paragraph 95 constitute conclusions of law and/or Plaintiff's legal theory, to which no response is required. Said averments are therefore denied and/or are denied per Pa.C.R.P. 1029(e). Insofar as a more specific response would be deemed necessary, it is specifically denied that the Answering Defendants were in any manner negligent. To the contrary, it is averred that all care and treatment rendered by Dr. Rice was reasonable, appropriate, and within the relevant standard of care. It is further specifically averred that no action or inaction of Dr. Rice was the direct or proximate cause of Mrs. Duttry's death.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint be dismissed, with prejudice.

NEW MATTER

96. Defendants raise all affirmative defenses of the Healthcare Services Malpractice Act, 40 P.S. §1301 et. seq. Insofar as the Answering Defendants are considered to be healthcare providers, they are neither a guarantor nor warrantor of care.

97. The Plaintiff fails to state a cause of action upon which relief can be granted.

98. There was no negligence or other actionable conduct committed by or on behalf of the Answering Defendants and therefore, this action should be dismissed.

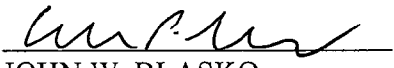
99. Any alleged actions or omissions of the Answering Defendants which are alleged to constitute negligence were not a substantial cause or factor of any harm resulting to or sustained by the Plaintiff.

100. The investigation into this case is ongoing and discovery is continuing; therefore, in order to avoid waiver of any potentially applicable affirmative defenses, the Defendant hereby pleads the defenses of estoppel, release, res judicata, and statute of limitations, and comparative/contributory negligence, insofar as same may be applicable.

WHEREFORE, Answering Defendant demands that Plaintiff's Amended Complaint be dismissed, with prejudice.

Respectfully Submitted,

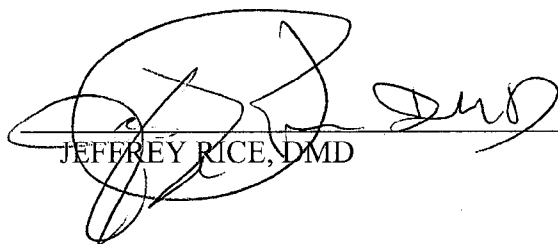
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
ALLEN P. NEELY
Attorneys for Defendant,
JEFFREY W. RICE, D.M.D., JEFFREY
RICE D.M.D., P.C., JEFFREY RICE,
D.M.D. and JAY L. ARLICK, D.M.D., P.C.
811 University Drive

Duttry v. Rice

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action; and that the statements made in the foregoing ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT, are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.



JEFFREY RICE, DMD

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY, Deceased;
and JOHN D. DUTTRY in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D., DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation,
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC,
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY PRACTICE-
UPMC, JEFFREY W. RICE, DMD, JEFFREY
RICE, DMD, P.C., a Pennsylvania Professional
Corporation, JEFFREY RICE, DMD and
JAY L. ARLICK, DMD, P.C, a Pennsylvania
Professional Corporation BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY, THOMAS E. BOWSER,
R.PH., and CYNTHIA D. BOWERS, R.PH.,

Defendants.

NO. 2001-00301-CD

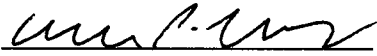
JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that the Answer to Plaintiff's Complaint with New Matter of the
Defendants, Jeffrey W. Rice., D.M.D., Jeffrey Rice, D.M.D., P.C., Jeffrey Rice, D.M.D. and Jay
L. Arlick, D.M.D., P.C. was mailed by first class, postage prepaid, at the Post Office, State
College, Pennsylvania, this 16th day of October, 2001, to the attorneys of record, David J.
Lozier, Esquire, HARRY S. COHEN & ASSOCIATES, Two Chatham Center, Suite 985,
Pittsburgh, PA 15219; Marshall J. Tindall, One Gateway Center, 10th Floor, Pittsburgh, PA,

15222; Michael Sosonowski, Esquire, P. O. Box 533, Hollidaysburg, PA 16648; Giles J. Gaca, Esquire, 300 Four PPG Place, Pittsburgh, PA 15222; Howard Chajson, Esquire, 400 Two PPG Place, Pittsburgh, PA 15222; and Robert Grimm, Esquire, Suite 501, Grant Building, Pittsburgh, PA 15219.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO

ALLEN P. NEELY

Attorneys for Defendants

Jeffrey W. Rice, DMD.

Jeffrey Rice, DMD, P. C.,

Jeffrey Rice, DMD, and

Jay L. Arlick, DMD, P. C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**PLAINTIFF'S REPLY TO NEW
MATTER FILED BY DUBOIS
REGIONAL MEDICAL
CENTER, INC.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

NOV 01 2001
m/11/15/noce
A. Shaw
Notary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

REPLY TO NEW MATTER FILED BY DUBOIS REGIONAL MEDICAL CENTER, INC.

AND NOW, comes the Plaintiff, JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, DECEASED, and in his own right, by and through his attorneys HARRY S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE, and sets forth the following REPLY TO NEW MATTER:

1. To the extent that Defendant's paragraph 1 of New Matter is an incorporation clause it does not require a response as it is not New Matter. Plaintiff admits that his decedent died on July 25, 1998.

2. Plaintiff admits that the action was initiated by a Complaint filed on July 24, 2000.

3. Defendant's paragraph 3 is an incorporation clause and therefore is not New Matter and does not require a response. To the extent that a response is required said averments are denied.

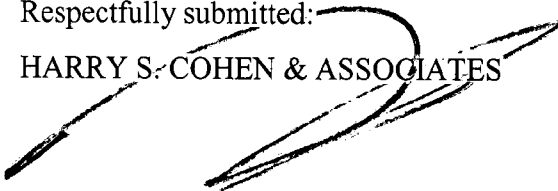
4. Defendant's paragraph 4 is a conclusion of law to which no response is required. Should a response be required, Plaintiff denies the allegations and to the contrary allege that the discovery rule applies to the negligent actions of the Defendants and the agents of the Defendant which occurred on or before July 24, 1998.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Dubois Regional Medical Center, jointly, severally, jointly and severally in an amount in excess of the jurisdictional limits of arbitration.

JURY TRIAL DEMANDED

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES



David J. Lozier, Esquire
Attorneys for Plaintiff

VERIFICATION

The undersigned, having read the attached Reply to New Matter of Defendant Dubois Regional Medical Center, verifies that the Responses are based on information furnished to counsel, as well as information gathered by counsel in the course of this lawsuit. The language of the Reply to New Matter of Defendant Dubois Regional Medical Center are that of counsel and not of the signers. Signers verify that they have read the within Reply to New Matter of Defendant Dubois Regional Medical Center, and that they are true and correct to the best of the signers' knowledge, information and belief. To the extent that the contents of the Reply to New Matter of Defendant Dubois Regional Medical Center, are that of counsel, I have relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsifications to authorities.

Date: 10-28-01

John D. Duttry
John D. Duttry

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **PLAINTIFF'S
REPLY TO NEW MATTER OF DUBOIS REGIONAL MEDICAL CENTER** was served to
the following by first class mail, postage prepaid on the 30th day of October 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

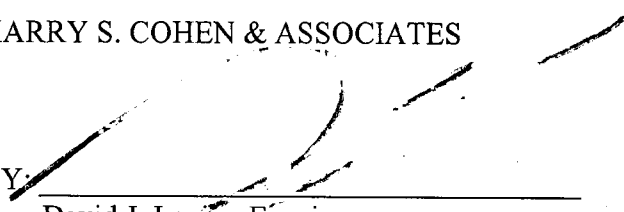
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 2001-00301-CD

Code:

Issue No:

MOTION TO COMPEL

Filed on behalf of James K. Fugate,
M.D., Defendant

Counsel of Record for This Party:

Giles J. Gaca, Esquire
PA I.D. # 00581

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

(412) 338-4750

JURY TRIAL DEMAND

FILED

NOV 15 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 2001-00301-CD

MOTION TO COMPEL PRODUCTION OF AUTHORIZATIONS

JAMES K. FUGATE, M.D., Defendant, by his attorneys, Gaca Matis Baum & Rizza, files
the following motion:

1. Mrs. Duttry died on 7/25/98. The final case summary of the Clearfield County Coroner, attached as Exhibit "A" states:

"This 42 year-old with a history of drug treatment for multiple medical, psychiatric and behavioral problems was found dead at her home with chemical determination of combined multiple toxic drug levels (street and Rx) as the cause of death."

2. The cause of death on the Coroner's report, attached as Exhibit "B" is:

"Combined (illegal and prescription) multiple acute drug overdose."

3. The initial death certificate issued by the Coroner on 9/28/98, attached as Exhibit "C", lists the cause of death as:

"Combined (illegal and prescription) multiple, acute drug overdose."

4. A second death certificate issued by the Coroner on 12/21/99, attached as Exhibit "D", lists the cause of death as:

"Multiple acute drug overdose."

5. In this medical malpractice action, plaintiff alleges that defendants caused Mrs. Duttry's death by their actions in prescribing and providing "pain medications, narcotics and psychiatric medication" to Mrs. Duttry.

6. Depositions have been recorded of Mr. Duttry, Dr. Fugate, Mrs. Bowser, pharmacist, and Mr. Bowser, pharmacist.

7. When Mrs. Bowser appeared for deposition, she brought with her pharmacy records for Mrs. and Mr. Duttry. Mrs. Bowser testified that narcotic prescriptions were filled for Mr. Duttry. Pages 12-16 of Mrs. Bowser's deposition are attached as Exhibit "E".

8. Plaintiff's attorney refused to allow defense counsel to view the pharmacy records of Mr. Duttry.

9. Mrs. Duttry was the owner of a real estate business before her death. Claim is being made that Mrs. Duttry was forced to sell her real estate business as a result of the conduct of defendants.

10. In deposition Mr. Duttry testified as follows:

"Q. During your wife's lifetime, did she ever apply for any type of disability?

A. Not that I know of."

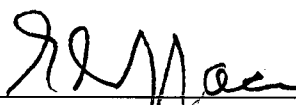
11. Attached as Exhibit "F" is a report of Dr. Karls to Ford Life Insurance Company indicating a disability claim of Mrs. Duttry.

12. Following Mrs. Duttry's death, a claim was made by Mr. Duttry for life insurance benefits and an investigation was conducted by the insurance company. Attached as Exhibit "G" is Dr. Karls' letter of 4/6/99 to J. C. Penney Life Insurance Company. Attached as Exhibit "H" is Dr. Fugate's letter of 4/14/99 to J. C. Penney Life Insurance Company.

13. The pharmacy records of Mr. Duttry, the disability claim records of Ford Life Insurance Company and the life insurance records of J. C. Penney Life Insurance Company are relevant for discovery purposes and essential to the preparation of the defense of this action.

WHEREFORE, Defendant requests that the court enter an order compelling Plaintiff to provide authorizations for said records on the forms attached to this Motion.

GACA MATIS BAUM & RIZZA

By: 
Giles J. Gaca, Esquire
PA ID # 00581
Attorneys for James K. Fugate, M.D.,
Defendant

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

FILED

NOV 15 2001

10/11/01 SHWCC

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN P. DUTTRY, Administrator of
the Estate of Mary Jo Duttry, Deceased
and John D. Duttry in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD, DuBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania corporation t/a
BEHAVIORAL HEALTH CENTER,
GATEWAY INSTITUTE and CLINIC,
INC., Pennsylvania Corporation,
JEFFREY P. KARIS, DO, individually
and t/a REDBANK FAMILY
PRACTICE-UPMC, UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE-UPMC, JEFFREY W.
RICE, DMD, JEFFREY W. RICE,
DMD, PC, a Pennsylvania Professional
Corporation, Jeffrey Rice, DMD and
JAY L. ARLICK, DMD, PC, a
Pennsylvania Professional Corporation,
BOWSER CORPORATION, a
Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY,
THOMAS E. BOWSER, R.PH and
CYNTHIA D. BOWSER, R.PH,

Defendants.

CIVIL DIVISION

No. GD 2001-00301-CD

FILED

NOV 16 2001

William A. Shaw
Prothonotary

ORDER OF COURT

AND NOW, this 16th day of November, 2001, it is hereby

ORDERED that plaintiff is to provide to defendant Fugate's attorney authorizations for plaintiff's

records with Treasure Lake Pharmacy and Mrs. Duttry's records with Ford Life Insurance Company and J.C. Penney Life Insurance Company within 30 days of the date of this Order.

BY THE COURT:



_____ J.

GENERAL INSURANCE AUTHORIZATION

TO: Ford Insurance Company
P.O. Box 105128
Atlanta GA 30348

This will be your authorization to permit the law firm of Gaca Matis Baum & Rizza, or their designated representative, 300 Four PPG Place, Pittsburgh, PA 15222-5404, to examine and make copies of any and all of your disability records pertaining to claimant , Mary Jo Duttry, Deceased.

A photocopy of this executed Authorization shall hold the same force and effect as an Original.

John P. Duttry, Administrator of the Estate of
Mary Jo Duttry, Deceased

Claim Number: L95303253

Witness:

Date: _____

GENERAL INSURANCE AUTHORIZATION

TO: J. C. Penney Life Insurance
2700 West Plano Parkway
Plano TX 75075-8200

This will be your authorization to permit the law firm of Gaca Matis Baum & Rizza, or their designated representative, 300 Four PPG Place, Pittsburgh, PA 15222-5404, to examine and make copies of any and all of your insurance records pertaining to Mary Jo Duttry, Deceased.

A photocopy of this executed Authorization shall hold the same force and effect as an Original.

John P. Duttry, Administrator of the Estate of
Mary Jo Duttry

Claim Number: A-765292-02
Date of Birth: 3/12/56

Witness:

Date: _____

AUTHORIZATION TO PHARMACY

TO: Treasure Lake Pharmacy
1431 T.L.
DuBois PA 15801

This will be your authorization to permit the law firm of Gaca Matis Baum & Rizza, or their designated representatives, 300 Four PPG Place, Pittsburgh, PA 15222-5404, to examine and make copies of your records in connection with prescriptions dispensed to John P. Duttry.

A photocopy of this executed Authorization shall hold the same force and effect as an Original.

John P. Duttry
SS#:

Witness:

Date: _____

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Motion to Compel upon all counsel of record by United States, First-class mail, postage prepaid, this 13th day of November, 2001.

Harry S. Cohen, Esquire
Cohen & Associates
Two Chatham Center, Suite 585
Pittsburgh, PA 15219
Counsel for Plaintiff

Howard A. Chajson, Esquire
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
Counsel for Karls/Redbank/UPMC

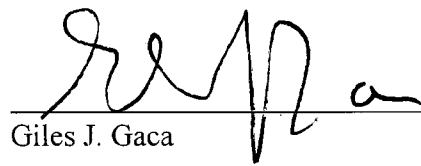
Michael A. Sosnowski, Esquire
P. O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical Center, et al.

Robert J. Grimm, Esquire
501 Grant Building
Pittsburgh, PA 15219
Counsel for Gateway Institute

Marshall J. Tindall, Esquire
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Counsel for Bowser/Shankel/Thomas & Cynthia Bowser

Alan Neely, Esquire
811 University Drive
State College, PA 16801

GACA MATIS BAUM & RIZZA



A handwritten signature in black ink, appearing to read 'Giles J. Gaca', is written over a horizontal line. The signature is stylized with a large 'G' and 'J'.

Giles J. Gaca

FILED

NOV 16 2001

0104312cc atty
William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**SECOND DEPOSITION NOTICE
FOR JEFFREY RICE, DMD**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

ORIGINAL FILED

NOV-27 2001

W/12:55/14
William A. Shaw
Prothonotary

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EOL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. GD 00-12637
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

SECOND NOTICE OF DEPOSITION OF JEFFREY RICE, DMD

TO: Allen P. Neely, Esquire
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

PLEASE TAKE NOTICE that the Depositions of Jeffrey Rice DMD, will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the medical office of Dr. Rice, 90 Beaver

Drive, Dubois, PA 15801 at 11:00 a.m. on October 24, 2001, at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

By:

DAVID J. LOZIER, ESQUIRE

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **NOTICE OF DEPOSITION FOR JEFFREY RICE, DMD** was been served to the following by first class mail, postage prepaid on the 19 th day of November, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

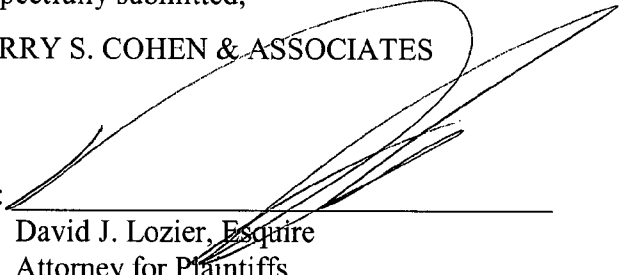
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
**SECOND NOTICE OF
DEPOSITION FOR
JEFFREY P. KARLS, D.O.**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

NOV 21 2001

12:55/US
William A. Shaw
Prothonotary

ORIGINAL

CHART TO ATT
EAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate) CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,) No. GD 00-12637
)
Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)
Defendants.)

SECOND NOTICE OF DEPOSITION OF JEFFREY P. KARLS, D.O.

TO: Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

PLEASE TAKE NOTICE that the Deposition of Jeffrey P. Karls, D.O., will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oaths at the medical office of Dr. Rice, 90 Beaver

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **SECOND NOTICE OF DEPOSITION FOR JEFFREY P. KARLS, D.O.** was been served to the following by first class mail, postage prepaid on the 19 th day of November, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

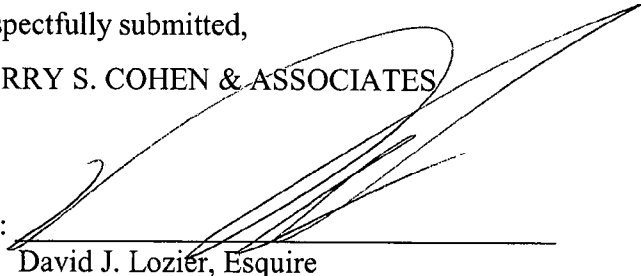
Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

Plaintiff,

v.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

CIVIL DIVISION

No. 2001-301 CD

ORIGINAL

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Please schedule this Motion for argument before the Honorable Judge Reilly.

FILED

NOV 28 2001

m j l o n o c c
William A. Shaw
Prothonotary

Respectfully Submitted,
HARRY S. COHEN & ASSOCIATES

DAVID J. LOZIER
Counsel for Plaintiff

CP

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

JOHN D. DUTTRY, Administrator of :
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, :
in his own right :
vs. : No. 01-301-CD
JAMES K. FUGATE, M.D., al :

ORDER

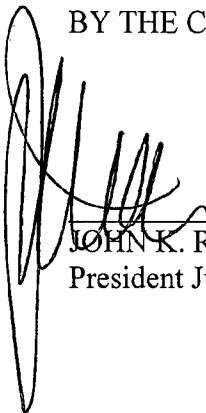
AND NOW, this 2nd day of December, 2001, upon
consideration of Plaintiff's Motion for Protective Order and Motion to Reconsider, a
Rule is hereby issued on Defendant to appear and show cause why the Motion should
not be granted. Rule Returnable the 18th day of December, 2001, at
10:30 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

FILED

DEC 03 2001

William A. Shaw
Prothonotary

BY THE COURT:



JOHN K. REILLY, JR.
President Judge

FILED

200

DEC 03 2001

Agg Lozier

William A. Shaw
Prothonotary

[Signature]

WILLIAM A. SHAW
PROTHONOTARY

GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

CIVIL DIVISION

No. 2001-301 CD

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.P.H.; and CYNTHIA D.)
BOWSER, R.P.H;)

Type of Pleading:

**PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER AND
MOTION TO RECONSIDER
WITH BRIEF**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

Defendants.)

JURY TRIAL DEMANDED

FILED

NOV 28 2001

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	
JOHN D. DUTTRY in his own right,	)	No. 2001-301 CD
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

**PLAINTIFF'S MOTION FOR PROTECTIVE ORDER
AND
MOTION TO RECONSIDER, WITH BRIEF**

AND NOW, comes the Plaintiff, JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, DECEASED, and in his own right, by and through his attorneys HARRY S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE, and sets forth the following:

1. This Medical Malpractice action arises from the death of Mary Jo Duttry on July 25, 1998 from an overdose of prescription medications. Defendants include physicians prescribing medications to Mrs. Duttry and the pharmacy filling those prescriptions during the last months of Mary Jo Duttry's life.

2. This action was initiated by Complaint filed in Allegheny County on July 24, 2000.

3. By Order dated January 18, 2001, the Honorable Judge Eugene Strassburger granted a joint Motion to Change Venue and transferred this case to Clearfield County.

4. The pleadings are closed and the parties have completed the depositions of Plaintiff John "Jack" Duttry, Defendants Bowser and Defendant Dr. Fugate. The deposition of Defendant Dr. Karls and Dr. Rice are scheduled for February 2002.

5. On or about November 12, 2001 Defendant Dr. Fugate filed a Motion to Compel Discovery seeking Life Insurance Records from Ford and JC Penney, and Husband-Plaintiff Jack Duttry's pharmacy records for an unspecified period of time.

6. Plaintiff has not been provided with a copy of the Court Order, but upon inquiry the Court Administrator advised Plaintiff's Counsel by telephone that the Court granted the Motion to Compel on or about November 16 before it could be contested, briefed or argued.

7. Plaintiff has no objection to providing insurance records on policies on the deceased's life and will provide said records when received from the respective carriers.

8. **HOWEVER, Plaintiff adamantly objects to his own confidential pharmacy records becoming the subject of this lawsuit and seeks an Order protecting such records from disclosure, or at the very least a modified order limiting the scope of the inquiry.**

9. Defense Counsel's Motion and Brief in Support is a disgusting, slanderous affair incorporating accusations that Jack Duttry gave his wife narcotic medications causing her death.

10. The issue in this case, as drawn by Counsel's Motion to Compel, was whether Jack Duttry had a prescription for narcotics in the last weeks or months of his wife's death and whether he gave them to his wife or gave her to access to them.

11. Counsel never asked Jack Duttry this question, or any question like it, during his six-(6) hour deposition. Counsel never asked what medications Jack Duttry was taking or

prescribed in the final weeks or months of his wife's life; and if there were any, where they were kept, whether his wife had access to them, or whether she took any of his pills.

12. Defense Counsel did ask what medications Jack took following car accidents in 1995 and 1996. Jack Duttry said he could not remember what medications were prescribed (Jack Duttry Deposition, p. 18-19), but this inquiry was in regard to events or medications at least two years before Mrs. Duttry's fatal overdose of prescription medications.

13. Defense Counsel did inquire into the content of a letter by Dr. Parlavecchia that implied that both Mrs. Duttry and Jack Duttry asked Dr. Parlavecchia to write prescriptions for Mrs. Duttry. Mr. Duttry denied that he ever asked Dr. Parlavecchia to write a prescription for his wife. (Jack Duttry depo. p. 121-124) This letter was written on 19 months before Mrs. Duttry's fatal overdose of prescription medications, and the letter does not state or imply that Mr. Duttry asked for medications for himself or asked for a prescription in his name for his wife.

14. Without having asked Plaintiff for the information in the least invasive manner--- at his deposition, Defense Counsel should not now be permitted to ask the question in the most invasive manner possible, an unlimited inquiry into Plaintiff's own health care that is not at issue.

15. There is no basis whatsoever for seeking or producing Husband-Plaintiffs prescription records and there is no basis for believing that they could provide relevant information.

16. Defendant's Motion to Compel Jack Duttry's confidential prescription records should be denied.

17. If the Court does grant the Motion, the order should restrict the discovery to a narrow period of time.

18. Plaintiff's Complaint paras. 21-25 specifically pleads that Defendants over prescribed medications from February-July 1998, Decedents last six (6) months of life.

19. Plaintiff's Complaint para. 26 pleaded that Defendants over prescribed named medications which were found in Mary Jo Duttry's system and in her possession at the time of her death, specifically as follows:

26. On July 25, 1998, Mary Jo Duttry died of a massive overdose of prescription medications, and/or the toxic and

synergistic effect of a combination of prescription medications, including at least Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazepam, Remeron, Ambien, and Wellbutrin SR

WHEREFORE, Plaintiff respectfully requests that the Defendant's Motion to Compel Plaintiff's prescription records be denied; however, should Court Grant the Motion, the Court should restrict the Defendant to a less invasive inquiry; such as:

- a) Inquiry by Interrogatory or Request for Admission into whether or not Jack Duttry was prescribed or took Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazepam, Remeron, Ambien, or Wellbutrin SR, or their pharmaceutical equivalents, at any time from February-July 1998, how those medications were stored and whether Mary Jo Duttry had access to those medications; or
- b) Compel production of Jack Duttry's prescription records from February-July 1998 with all medication s except Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazepam, Remeron, Ambien, or Wellbutrin SR, or their pharmaceutical equivalents, to be redacted; or
- c) Compel production of Jack Duttry's prescription records from February-July 1998 for *in camara* review.

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NOV 28 2001

BRIEF IN SUPPORT

COURT ADMINISTRATOR'S
OFFICE

Plaintiff initiated this wrongful death and survival action for professional malpractice by filing a Complaint before the Court of Common Pleas of Allegheny County on July 24, 2000. Plaintiff's Complaint alleges, inter alia, that the Physician Defendants over prescribed medications causing the death of Mary Jo Duttry. Plaintiff's Complaint at paragraphs 21-30 alleges, inter alia, that the Pharmacy Defendants filled the prescriptions when they knew or should have known that the drugs acting in concert could be addictive and/or fatal.

Defendant's demand for Husband-Plaintiff's pharmacy records is clearly a violation of the normal scope of discovery. His health and medical care is not at issue. His prescription records are confidential and cannot possibly lead to relevant or admissible evidence. Defendant's wildly speculate that he may have obtained prescriptions in his own name and provided them to his wife. Husband-Plaintiff's PCP is a defendant and he did not plead such prescriptions as a defense. Plaintiff was never asked about these issues in his deposition so he was denied the chance to rebut the speculation. Finally, all of the drugs found in Decedent's blood and possession were among the many drugs prescribed by Defendants. There simply is no basis upon which to justify this request.

Pennsylvania case law and statutory law affirm the confidentiality of a person's medical records under the theory that such confidentiality is paramount to encouraging complete and accurate doctor-patient communication. See 49 Pa. Code 27.19 (i) (confidentiality of pharmacy information and records); June 1979 Allegheny County Investigating Grand Jury, 415 A. 2d 73, 77-78 and n.9 (Pa Supreme Ct. 1980) (Holding that the right to privacy, including the privacy of medical records, is protected in the U.S. Constitution, the Pennsylvania Constitution, and state law governing the confidentiality of medical records and communications).

Courts may only order the release of medical records, in the absence of consent, under controlled and limited circumstances, such as *in camara* review or production of group records without identifying information. An invasion of privacy, when necessary, should be as narrow as possible and designed to protect the patient's privacy from any undue abuse.

Here, Defendant seeks a release of all pharmacy records for an unlimited period of time.

Mr. Duttry has not consented to the release and did not place his medical records at issue when he sued over his wife's death. Mr. Duttry's records should no more be material than those of Dr. Fugate. Does Plaintiff have the right to Dr. Fugate's personal medical records in case the good doctor obtained prescriptions for Mrs. Duttry? Does Plaintiff have the right to the personal medical records of Dr. Rice or Dr. Karl's? How about the neighbors? What opens the door to Jack Duttry's records, that allows this absurd invasion of his privacy, and not the defendants or anyone who knew or had access to Mrs. Duttry? It is all groundless speculation.

This court should deny the Motion, or if granted, the records produced should be limited in time (the six months pleaded in the Complaint), the records produced should be limited to the drugs at issue and found in Mrs. Duttry's system, or the Plaintiff should be required to produce them to the Court for review *in camara* for release only if material drugs were prescribed.

WHEREFORE, Plaintiff respectfully requests that the Defendant's Motion to Compel Plaintiff's prescription records be denied; however, should Court Grant the Motion, the Court should restrict the Defendant to a less invasive inquiry; such as:

- a) Inquiry by Interrogatory or Request for Admission into whether or not Jack Duttry was prescribed or took Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazapam, Remeron, Ambien, or Wellbutrin SR, or their pharmaceutical equivalents, at any time from February-July 1998, how those medications were stored and whether Mary Jo Duttry had access to those medications;
- b) Compel production of Jack Duttry's prescription records from February-July 1998 with all medication except Lortab, Methocarbimol, MS Contin, Valium, Trazadone Dividose, Percodan, Flurazapam, Remeron, Ambien, or Wellbutrin SR, or their pharmaceutical equivalents, to be redacted; or
- c) Compel production of Jack Duttry's prescription records from February-July 1998 for *in camara* review.

Respectfully Submitted,
HARRY S. COHEN & ASSOCIATES

DAVID J. LOZIER
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **PRAECIPE TO SCHEDULE ARGUMENT, AND PLAINTIFF'S MOTION FOR PROTECTIVE ORDER AND MOTION TO RECONSIDER, WITH BRIEF MOTION** was served to the following by first class mail, postage prepaid on the 21ST day of November, 2001:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Robert J. Grimm, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

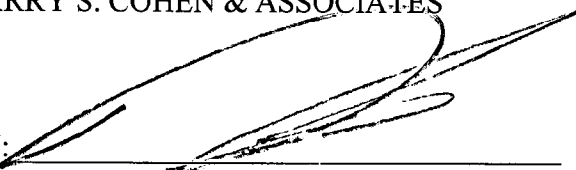
Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

Plaintiff,

v.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE - UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE - UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH.;

Defendants.

CIVIL DIVISION

No. 2001-301 CD

COPY

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Please schedule this Motion for argument before the Honorable Judge Reilly.

FILED

NOV 28 2001

m 11:10 AM
William A. Shaw
Prothonotary

Respectfully Submitted,
HARRY S. COHEN & ASSOCIATES

DAVID J. LOZIER
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

JOHN D. DUTTRY, Administrator of :
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, :
in his own right :

-VS- :

No. 01 - 301 - CD

JAMES K. FUGATE, M.D., DuBOIS :
REGIONAL MEDICAL CENTER, INC., :
a Pennsylvania corporation t/a :
BEHAVIORAL HEALTH CENTER, :
GATEWAY INSTITUTE and CLINIC, :
INC., Pennsylvania Corporation, :
JEFFREY P. KARIS, D.O., individually :
and t/a REDBANK FAMILY PRACTICE- :
UPMC, UPMC PRESBYTERIAN, a :
Pennsylvania Corporation t/a REDBANK :
FAMILY PRACTICE-UPMC, JEFFREY :
W. RICE, DMD, JEFFREY W. RICE, :
DMD, PC, a Pennsylvania Professional :
Corporation, JEFFREY RICE, DMD and :
JAY L. ARLICK, DMD, PC, a :
Pennsylvania Professional Corporation, :
BOWSER CORPORATION, a :
Pennsylvania Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE LAKE :
PHARMACY, THOMAS E. BOWSER, :
R.PH and CYNTHIA BOWSER, R.PH :

FILED

DEC 18 2001

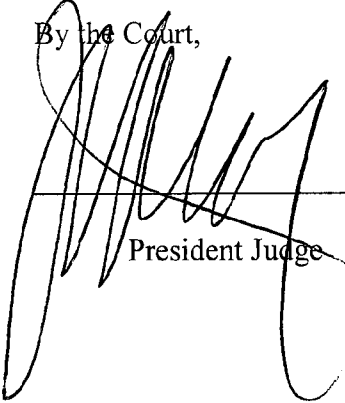
William A. Shaw
Prothonotary

ORDER

NOW, this 18th day of December, 2001, following argument and briefs into Plaintiff's Motion for Protective Order and Motion for Reconsideration, it is the ORDER of this Court that said Motion be and is hereby granted to the extent that the Order of this Court dated November 16, 2001, shall be and is hereby amended to require Plaintiff to provide to Defendant within 45 days from date hereof all medication similar to those plead in paragraph

26 of Plaintiff's Complaint for Plaintiff John D. Duttry for a period of six months prior to the death of Mary Jo Duttry.

By the Court,



President Judge

FILED

DEC 18 2001

0132211cc atty Cohen
William A. Shaw
Prothonotary

cc atty Gaca


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:

PLAINTIFF'S COUNSEL'S
PETITION FOR LEAVE
TO WITHDRAW AS COUNSEL
AND
RULE TO SHOW CAUSE

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

MAR 13 2002

mll:39/ndcc
William A. Shaw
Prothonotary



ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate) CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,) No. GD 00-12637

Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

**PLAINTIFF'S COUNSEL'S PETITION FOR LEAVE TO WITHDRAW AS COUNSEL
AND
RULE TO SHOW CAUSE**

AND NOW, come PLAINTIFF'S COUNSEL, HARRY S. COHEN & ASSOCIATES, by
HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE and files the following
PETITION:

1. This Medical Malpractice action arises from the death of Mary Jo Duttry from an

overdose of prescription medications.

2. This action was initiated by Complaint filed in Allegheny County on July 24, 2000.

3. By Order dated January 18, 2001, the Honorable Judge Eugene Strassburger granted a joint Motion to Change Venue and transferred this case to Clearfield County.

4. The pleadings are closed and the parties have completed the depositions of Plaintiff John "Jack" Duttry, Defendants Bowser and Defendant Dr. Fugate.

5. This case has not been certified as being ready for trial and is not on any published trial list.

6. After extensive review of the pleadings, depositions and medical records in this case, Plaintiff's Counsel must respectfully request this Honorable Court's Leave to Withdraw as Counsel in this matter as Counsel believes that it would be in the best interest of the client.

7. Plaintiff's Counsel has discussed this matter in detail with Plaintiff, Jack Duttry, and has explained the reasons for this request to withdraw.

8. Plaintiff Jack Duttry has **not** specifically consented to counsel's withdraw and has refused all further attempts by Counsel to communicate with him.

9. Plaintiff has **not** advised Counsel whether he intends to dismiss the action or engage a new attorney.

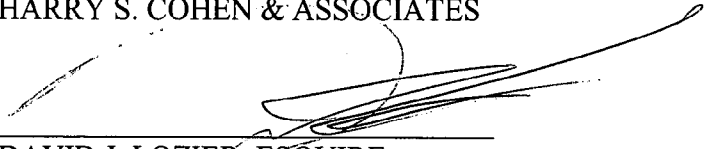
10. Plaintiff has **not** advised Counsel whether he wishes to be heard on this Petition.

11. Plaintiff's Counsel therefore believes that Plaintiff can be best served by new counsel in the event Plaintiff wishes to proceed with the case..

WHEREFORE, Plaintiff's Counsel respectfully requests Leave to Withdraw their appearance and respectfully pray this Honorable enter a stay of sixty (90) days to enable Plaintiff an opportunity to obtain new counsel, after which time if no new Counsel has entered their appearance for Plaintiff the case may be dismissed by Praeceptum of any Defendant.

Respectfully submitted:
HARRY S. COHEN & ASSOCIATES

BY:


DAVID J. LOZIER, ESQUIRE

TREASURE LAKE PHARMACY
1431 T.L.
DUBOIS, PA 15801

CUSTOMER HISTORY
01/01/98 THRU 07/25/98

PAGE 1

DUTTRY, JOHN
PO BOX 736
DUBOIS, PA 15801

CUST # BIRTHDAY SEX S.S. NUMBER PLAN
19135-02 06/10/36 M 197-28-9933 BC-PREMIER 197289933

RPH	RX #	REFILL	DATE FILLED	PLAN	NDC #	DRUG NAME AND STRENGTH	DOCTOR NAME	QTY	DAYS	RX AMT	CUSTOMER PAID AMT
OK	669812	3	1/05/98	BC-PR	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	90	30	90.23	57.62
OK	670459		1/07/98	BC-PR	99990-9999-10	AQUAPHOR/TRIAMCIN .1%CR 1:1	JOHNSON, RICHARD E.	480	30	25.79	5.16
OK	670530		1/14/98	BC-PR	00168-0081-30	NYSTATIN-TRIAMCIN CREAM	BUFFONE, D. A.	30	4	5.46	1.09
OK	670575		1/16/98	BC-PR	00785-6350-01	LORCET 10/650	BUFFONE, D. A.	60	20	48.89	24.45
FB	670605		1/20/98	PRIVA	00006-0693-61	INDOCIN SR 75mg	JOHE, DAVID H.	20	10	44.20	44.20
FB	670382	1	1/29/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	55.48	11.10
FB	670459	1	1/29/98	BC-PR	99990-9999-10	AQUAPHOR/TRIAMCIN .1%CR 1:1	JOHNSON, RICHARD E.	480	25	25.79	5.16
FB	670700		1/29/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	30.63	6.13
OK	670575	1	2/02/98	BC-PR	00785-6350-01	LORCET 10/650	BUFFONE, D. A.	60	20	48.89	24.45
OK	669812	4	2/09/98	BC-PR	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	90	30	92.43	46.22
OK	670364	1	2/28/98	BC-PR	51875-0346-01	HYDROXYZINE HCL 25mg TAB	KARLS, JEFFREY	90	30	4.87	.97
OK	670382	2	2/28/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	55.48	11.10
JB	670530	1	3/03/98	BC-PR	00168-0081-30	NYSTATIN-TRIAMCIN CREAM	BUFFONE, D. A.	30	4	5.46	1.09
JB	669812	5	3/05/98	BC-PR	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	90	30	92.43	46.22
OK	670700	1	3/16/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	30.63	6.13
OK	671139		3/20/98	BC-PR	00785-6350-01	LORCET 10/650	STEELE, DAVID Q	60	20	48.89	24.45
OK	670382	3	3/23/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	61.87	12.37
JB	671139	1	4/04/98	PRIVA	00785-6350-01	LORCET 10/650	STEELE, DAVID Q	60	20	73.14	73.14
FB	671351	1	4/09/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	60	30	79.25	79.25
OK	670382	4	4/20/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	58.41	11.68
OK	670700	2	4/20/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	28.59	5.72
FB	670364	2	4/21/98	BC-PR	51875-0346-01	HYDROXYZINE HCL 25mg TAB	KARLS, JEFFREY	90	30	4.87	4.87
JB	670530	2	4/25/98	BC-PR	00168-0081-30	NYSTATIN-TRIAMCIN CREAM	BUFFONE, D. A.	30	4	5.46	5.46
OK	671351	2	4/25/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	60	20	79.25	79.25
OK	671593		5/01/98	PRIVA	00785-6350-01	LORCET 10/650	KARLS, JEFFREY	56	14	68.27	68.27
OK	671351	3	5/15/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	60	20	79.25	79.25
OK	671593	1	5/15/98	PRIVA	00785-6350-01	LORCET 10/650	KARLS, JEFFREY	56	14	68.27	68.27
OK	670382	5	5/20/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	58.41	11.68
OK	670700	3	5/20/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	28.59	5.72
JB	671593	2	5/28/98	PRIVA	52544-0503-01	HYDROCODONE/APAP 10/650mg	KARLS, JEFFREY	56	14	29.34	29.34
OK	671906		5/29/98	BC-PR	00045-1525-50	LEVAQUIN TAB 500mg	KARLS, JEFFREY	7	7	44.73	8.95
JB	671351	4	6/04/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	60	20	79.25	79.25
B	672080		6/16/98	BC-PR	00406-0359-01	xHYDROCODONE/APAP 7.5/650mg	KARLS, JEFFREY	56	14	11.95	2.39
OK	670382	6	6/19/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	58.41	11.68
OK	670700	4	6/19/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	28.59	5.72
OK	672124		6/19/98	BC-PR	00078-0179-15	LAMISIL TAB 250mg	KARLS, JEFFREY	14	14	79.40	15.88
JB	671351	5	6/23/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D. A.	60	20	79.25	79.25
JB	672080	1	6/27/98	BC-PR	00406-0359-01	xHYDROCODONE/APAP 7.5/650mg	KARLS, JEFFREY	56	14	11.95	2.39
OK	672124	1	7/06/98	BC-PR	00078-0179-15	LAMISIL TAB 250mg	KARLS, JEFFREY	14	14	79.40	15.88
JB	670382	7	7/16/98	BC-PR	00009-3449-01	GLYNASE PRESTAB 6mg	KARLS, JEFFREY	60	30	58.41	20.37
JB	670700	5	7/16/98	BC-PR	00087-6060-05	GLUCOPHAGE TAB 500mg	KARLS, JEFFREY	60	30	29.94	5.99

MEASURE LAKE PHARMACY
131 T.L.
JBOIS, PA 15801

CUSTOMER HISTORY
01/01/98 THRU 07/25/98

PAGE 2

JTTRY, JOHN
1 BOX 736
JBOIS, PA 15801

CUST # BIRTHDAY SEX S.S. NUMBER PLAN
19135-02 06/10/36 M 197-28-9933 BC-PREMIER 197289933

PH	RX #	REFILL	DATE FILLED	PLAN	NDC #	DRUG NAME AND STRENGTH	DOCTOR NAME	QTY	DAYS	RX AMT	CUSTOMER PAID AMT
(	671351	6	7/17/98	PRIVA	00140-0006-01	VALIUM 10mg	BUFFONE, D.A.	60	20	79.25	79.25
(	672383		7/20/98	BC-PR	52544-0503-01	HYDROCODONE/APAP 10/650mg	KARLS, JEFFREY	50	12	17.58	3.52
TOTAL										2086.63	1180.33

I hereby certify these prescriptions
were dispensed to the above customer
by order of their physician(s).

Pharmacist's signature



Harry S.
Cohen
&
Associates

LAW OFFICES

January 10, 2002

SECOND REQUEST

*Second
Answer
We did not
fill any
prescriptions
for this patient.
per law
Can do him*

Shop & Save
ATTN: Pharmacy
1000 South Brady
Dubois, PA 15801

RE: Your former customer: Mary Jo Duttry, Deceased
My client: Jack Duttry and the Estate of Mary Jo Duttry
Treasure Lake Pharmacy customer No: 19135-01
Date of Birth: 3/12/56
Social Security No.: 182-44-2383

Dear Sir or Madam:

Per our conversation this morning, our firm has been retained to represent Jack Duttry, husband of Mary Jo Duttry, deceased. We understand that Mrs. Duttry had some prescriptions filled at your pharmacy. .

At this time we would like photocopies of your prescription records for all prescriptions filled for Mary Jo Duttry from January 1, 1996 through July 22, 1998. You told me that there were not records for Mrs. Duttry in your system. Please confirm that in writing and return your letter to our office in the enclosed self addressed envelope. *where is it?*

Enclosed you will find a copy of my original letter with an authorization signed by Jack Duttry, husband and executor of the estate of Mary Jo Duttry.

Yours very truly

HARRY S. COHEN & ASSOCIATES

Denise Johnson
DENISE JOHNSON, PARALEGAL

/dej
enclosure



January 17, 2002

David J. Lozier, Esq.
Harry S. Cohen & Associates
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

RE: Mary Jo Duttry, Deceased
Jack Duttry and the Estate of Mary Jo Duttry
Treasure Lake Pharmacy Customer No. 19135-01
Date of Birth: 3/12/56
Social Security No. 182-44-2383

Dear Mr. Lozier:

Enclosed, pursuant to your December 13, 2001 letter, is a copy of the pharmacy medical expenses of Mary Jo Duttry for the period January, 1996 through April, 1997.

Very truly yours,

Linda S. Weller
Legal Assistant

/iw
Encl.

PO BOX 736

DUBOIS, PA 15801

TOGETHER

ID:BB3628471

MEDICAL EXPENSES

01/01/1996 TO 07/22/1998

Birthdate
BI LO PHARMACY #231

RT 255 SANDY PLAZA

DUBOIS

RPH-JAMES HOFFER

NABP#: 39-66439

Last Fill	Rx #	Drug Name	Qty	Physician Name	T/P	Price	Rph
01/10/96	2000485	PERCOCET 5-325MG	40	DR. SAVOIA		33.36	ASM
01/21/96	6014024	PREMARIN 0.9MG	30	DR. PARLAVECCHIO	PAI	3.07	VLS
02/08/96	4002137	DIAZEPAM 5MG	30	DR. SAVOIA		7.06	ASM
02/12/96	2000510	PERCOCET 5-325MG	60	DR. SAVOIA		47.42	VLS
02/21/96	6015945	PREDNISONE 10MG	44	DR. SELDEN		7.20	ASM
02/22/96	6014024	PREMARIN 0.9MG	30	DR. PARLAVECCHIO	PAI	15.37	ASM
03/01/96	2000518	PERCOCET 5-325MG	30	DR. SAVOIA		26.42	VLS
03/01/96	4002209	DIAZEPAM 5MG	30	DR. SAVOIA		7.06	VLS
03/04/96	4002217	APAP/CODEINE 300-30	40	DR. CARNEVAL		7.81	VLS
03/17/96	4002261	DIAZEPAM 10MG	8	DR. SHILALA		5.00	VLS
03/18/96	6014024	PREMARIN 0.9MG	30	DR. PARLAVECCHIO	PAI	3.07	KRN
03/19/96	4002271	DIAZEPAM 10MG	60	DR. SAVOIA		17.04	VLS
03/29/96	6016771	PREDNISONE 10MG	40	DR. PARLAVECCHIO	PAI	0.80	VLS
04/11/96	2000541	PERCOCET 5-325MG	30	DR. SAVOIA		26.42	ASM
04/18/96	6014024	PREMARIN 0.9MG	30	DR. SAVOIA		3.07	ASM
04/29/96	6017390	CEFTIN 250MG	30	DR. PARLAVECCHIO	PAI	11.78	KRN
04/29/96	6017391	DELHISTINE D10-12.5	180	DR. PARLAVECCHIO	PAI	2.14	KRN
05/15/96	6017697	PREMARIN 0.9MG	30	DR. PARLAVECCHIO	PAI	3.07	JAK
06/10/96	6017697	PREMARIN 0.9MG	60	DR. PARLAVECCHIO	PAI	5.70	VLS
07/02/96	4002545	AMBIEN 10MG	7	DR. FUGATE	PAI	2.53	VLS
07/02/96	4002546	VALRELEASE 15MG	40	DR. FUGATE		81.74	VLS
07/02/96	6018614	SOMA CPD	60	DR. FUGATE		125.38	VLS
07/06/96	6018703	ULTRAM 50MG	60	DR. SAVOIA		41.71	VLS
07/09/96	4002545	AMBIEN 10MG	7	DR. FUGATE	PAI	2.53	VLS
07/12/96	6018703	ULTRAM 50MG	60	DR. SAVOIA		41.71	PTY
07/12/96	6018614	SOMA CPD	40	DR. FUGATE		86.06	PTY
07/16/96	4002590	VALRELEASE 15MG	60	DR. FUGATE		121.25	VLS
07/16/96	4002591	AMBIEN 10MG	15	DR. FUGATE	PAI	4.90	VLS
07/16/96	6018894	TRAZODONE 150MG	10	DR. FUGATE	PAI	1.61	VLS
07/16/96	6018614	SOMA CPD	20	DR. FUGATE		44.32	VLS
07/20/96	6018614	SOMA CPD	60	DR. FUGATE		126.64	WMM
07/20/96	6018703	ULTRAM 50MG	60	DR. SAVOIA		41.71	WMM
07/26/96	4002612	TEMAZEPAM 30MG	15	DR. FUGATE	PAI	0.71	WMM
08/04/96	6018614	SOMA CPD	60	DR. FUGATE		126.64	WMM
08/04/96	4002612	TEMAZEPAM 30MG	15	DR. FUGATE	PAI	0.71	WMM
08/14/96	4002612	TEMAZEPAM 30MG	15	DR. FUGATE	PAI	0.71	VLS
08/14/96	6018614	SOMA CPD	60	DR. FUGATE		126.64	VLS
08/14/96	4002590	VALRELEASE 15MG	13	DR. FUGATE		27.75	VLS
08/19/96	2000607	PERCOCET 5-325MG	60	DR. SAVOIA		48.34	VLS
08/20/96	4002683	VALIUM 10MG	60	DR. FUGATE		71.51	VLS
08/21/96	4002612	TEMAZEPAM 30MG	15	DR. FUGATE	PAI	0.71	WMM

Patient: DUTTRY, MARY JO
R Party:

PO BOX 736

DUBOIS, PA 15801

DUBOIS PA 15801

RPPh-JAMES HOFFER

ID:BB3628471

Last Fill	Rx #	Drug Name	Qty	Physician Name	T/P	Price	Rph
09/25/96	4002784	DARVOCET-N 100	14	DR. KIGHTLINGER		14.22	WMM
09/25/96	4002683	VALIUM 10MG	60	DR. FUGATE		71.51	WMM
09/27/96	6020271	SOMA CPD	120	DR. FUGATE		263.28	VLS
09/27/96	2000630	PERCOCET 5-325MG	80	DR. FUGATE		62.18	VLS
10/09/96	6020542	PROPRANOLOL 10MG	28	DR. FUGATE	PAI	0.63	WMM
10/18/96	6020542	PROPRANOLOL 10MG	28	DR. FUGATE	PAI	0.63	WMM
10/18/96	2000643	PERCOCET 5-325MG	30	DR. FUGATE		26.88	WMM
10/25/96	2000648	PERCOCET 5-325MG	60	DR. FUGATE		48.34	VLS
10/26/96	6020542	PROPRANOLOL 10MG	28	DR. FUGATE	PAI	0.63	VLS
11/03/96	4002889	VALIUM 10MG	30	DR. FUGATE		38.68	WMM
11/03/96	6020542	PROPRANOLOL 10MG	28	DR. FUGATE	PAI	0.63	WMM
11/03/96	4002890	FLURAZEPAM 30MG	7	DR. FUGATE	PAI	0.64	WMM
11/15/96	4002889	VALIUM 10MG	30	DR. FUGATE		38.68	WMM
11/15/96	2000659	PERCOCET 5-325MG	60	DR. FUGATE		48.34	WMM
11/16/96	4002890	FLURAZEPAM 30MG	7	DR. FUGATE	PAI	0.64	WMM
11/16/96	6020542	PROPRANOLOL 10MG	28	DR. FUGATE	PAI	0.63	WMM
11/18/96	6020239	PREMARIN 0.9MG	60	DR. PARLAVECCHIO	PAI	5.93	VLS
11/24/96	4002889	VALIUM 10MG	30	DR. FUGATE	PAI	38.68	WMM
11/30/96	4002971	VALIUM 10MG	20	DR. BRADLEY		27.63	VLS
11/30/96	2000670	PERCOCET 5-325MG	40	DR. BRADLEY		33.99	VLS
12/03/96	4002889	VALIUM 10MG	30	DR. FUGATE		38.68	VLS
12/03/96	4002989	DALMANE 30MG	15	DR. BRADLEY	PAI	2.04	VLS
12/10/96	6021809	TRAZODONE 150MG	20	DR. FUGATE	PAI	2.66	VLS
12/11/96	2000676	PERCOCET 5-325MG	60	DR. FUGATE		48.34	WMM
12/13/96	4002889	VALIUM 10MG	30	DR. FUGATE		38.68	WMM
12/13/96	4003017	DALMANE 30MG	20	DR. FUGATE		17.25	WMM
04/28/97	4003461	DALMANE 30MG	30	DR. FUGATE	PAI	3.63	VLS

Report Date: 01/10/2002

\$2,516.16

Attested To By: _____
Registered Pharmacist

CA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants:)

CIVIL DIVISION

No. ~~GD 00-1263~~7

01.301.00

FILED

MAR 15 2002

William A. Shaw
Prothonotary

RULE TO SHOW CAUSE

NOW, this 14 day of March, 2002, upon consideration of the attached Petition of Plaintiff's Counsel for Leave to Withdraw Their Appearance, a Rule is hereby issued upon Plaintiff JOHN D. "JACK" DUTTRY, and Defendants JAMES K. FUGATE, MD; DUBOIS REGIONAL MEDICAL CENTER, INC. t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC.; JEFFREY P. KARLS, D.O. t/a REDBANK FAMILY

PRACTICE – UPMC; UPMC PRESBYTERIAN t/a REDBANK FAMILY PRACTICE – UPMC; JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, PC; JEFFREY RICE, DMD, AND JAY L. ARLICK, DMD, PC, BOWSER t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.PH.; and CYNTHIA D. BOWSER, R.PH; to Show Cause why the Petition should not be granted. Rule Returnable the 3rd day of April, 2002, for filing written response.

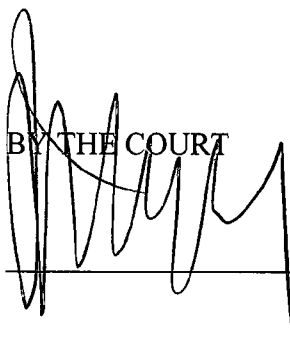
NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OF BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NO HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield county Courthouse
Second & Market Streets
Clearfield, PA 15830
(814) 765-2641, Ext. 50-51

BY THE COURT


_____ J.

FILED

MAR 15 2002

0192011c-atty Dugan
William A. Shaw
Prothonotary

40

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

01-301-CD

No. ~~CD-00-12637~~

Type of Pleading:
PLAINTIFF'S AFFIDAVIT

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

MAR 26 2002

11:30pm
William A. Shaw
Prothonotary

REC


IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

CIVIL DIVISION

No. GD 00-12637

Plaintiff,

v.

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.

AFFIDAVIT

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

Before me, the undersigned notary public, did personally appear DAVID J. LOZIER, ESQUIRE and deposes and says the following:

1. I, David J. Lozier, do attest that I have mailed true and correct copies of the March 14, 2002 Rule to Show Cause to all counsel of record as well as Plaintiff, John "Jack" Duttry at their last know legal address and last address as stated in the pleadings and the docket of this case, by first class mail, postage prepaid on this 21st day of March 2002.

SWORN TO this 21 day of March,
2002.

David J. Lozier, Esquire

Denise Johnson
Notary Public
Notarial Seal
Denise E. Johnson, Notary Public
Pittsburgh, Allegheny County
My Commission Expires May 5, 2003
Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. 2001-00301-CD

Code:

Issue:

Type of Pleading:

PRAECIPE FOR ARGUMENT

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

Robert J. Grimm, Esquire
PA ID No. 55381

Steven J. Forry, Esquire
PA ID No. 73961

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED

FILED

APR 01 2002
m/10:28/1cc atty & Grimm
William A. Shaw
Prothonotary *WAS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the : CIVIL DIVISION
Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in his : NO. 2001-00301-CD
own right, :
Plaintiff, :

vs. :

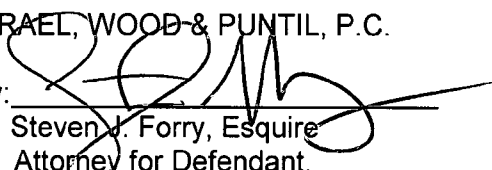
JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, INC., a :
Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., individually :
and t/a REDBANK FAMILY PRACTICE – :
UPMC; UPMC PRESBYTERIAN, a :
Pennsylvania Corporation t/a REDBANK :
FAMILY PRACTICE – UPMC; JEFFREY :
W. RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE LAKE :
PHARMACY; THOMAS E. BOWSER, :
R.P.H.; and CYNTHIA D. BOWSER, :
R.P.H.; :
Defendants. :

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Kindly place this matter on the next available argument list. It is hereby certified that all counsel of record have been served with notification of the presentation of the within Motion as well as request for argument on the same.

ISRAEL, WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania corporation

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR ARGUMENT** has been sent via first class mail, postage prepaid to the following this 29th day of march, 2002:

David J. Lozier, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff

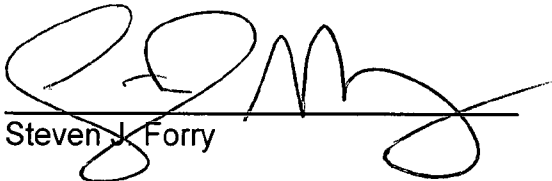
Giles Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
Attorney for Defendant, James K. Fugate

Wilbur McCoy Otto, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Attorney for Defendant, Jeffrey P. Karls, D.O. and UPMC Presbyterian

Michael Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Attorney for Defendant, DuBois Regional Medical Center, Inc.

Allen Neely, Esquire
McQuaide, Blasko
811 University Drive
State College, PA 16801-6699
Attorney for Defendant, Jeffrey Rice, D.M.D.

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll,
P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Attorney for Defendants, Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser,
R. PH. And Cynthia D. Bowser,
R. PH.



Steven J. Forry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:
PLAINTIFF'S AFFIDAVIT

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

APR 01 2002

m/11:20/12
William A. Shaw
Prothonotary

1 cent to Attor

EKD

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)
Plaintiff,)
v.)
JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)
Defendants.)

CIVIL DIVISION
No. 2001-00301-CD

AFFIDAVIT

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

Before me, the undersigned notary public, did personally appear DAVID J. LOZIER, ESQUIRE and deposes and says the following:

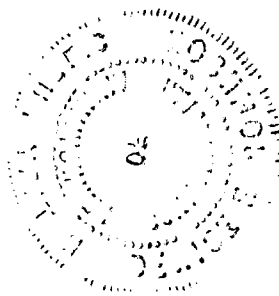
1. I, David J. Lozier, do attest that I have mailed true and correct copies of the March 14, 2002 Rule to Show Cause to all counsel of record as well as Plaintiff, John "Jack" Duttry at their last know legal address and last address as stated in the pleadings and the docket of this case, by first class mail, postage prepaid on this 21st day of March 2002.

SWORN TO this 21 day of March
2002.

Denise E Johnson
Notary Public

Notarial Seal
Denise E. Johnson, Notary Public
Pittsburgh, Allegheny County
My Commission Expires May 5, 2003
Member, Pennsylvania Association of Notaries

David J. Lozier, Esquire



FILED

APR 01 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

Plaintiff,

v.

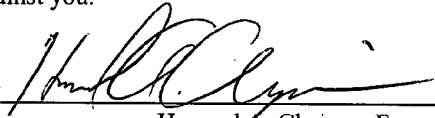
JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendants.

Notice to Plead

TO: Plaintiff

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

By 
Howard A. Chajson, Esq.

CIVIL DIVISION

No. 2001-00301-CD

Issue No.

**ANSWER AND NEW MATTER ON
BEHALF OF UPMC PRESBYTERIAN**

Code:

Filed on behalf of UPMC PRESBYTERIAN,
incorrectly designated as UPMC Presbyterian,
a Pennsylvania corporation t/a Redbank
Family Practice - UPMC

Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED

FILED

APR 01 2002
01/26/NOCC
William A. Shaw
Prothonotary 

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

No. 2001-00301-CD

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendants.

ANSWER AND NEW MATTER ON BEHALF OF UPMC PRESBYTERIAN

AND NOW, comes one of the Defendants, UPMC PRESBYTERIAN, incorrectly
designated as UPMC Presbyterian, a Pennsylvania corporation t/a Redbank Family Practice - UPMC,

by and through its attorneys Dickie, McCamey & Chilcote, P.C. and sets forth the following Answer and New Matter and avers as follows:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

2. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

3. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 3 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

4-7. The allegations contained in paragraphs 4 through 7 of Plaintiff's Complaint do not pertain to this Defendant. Thus, no response is required.

8. Denied as stated. To the contrary, UPMC Presbyterian is a Pennsylvania corporation with a place of business at 200 Lothrop Street, Pittsburgh, Allegheny County, Pennsylvania. At the relevant time, UPMC Presbyterian did not own or operate Redbank Family Practice - UPMC, nor did UPMC Presbyterian trade as Redbank Family Practice - UPMC. To the contrary, Redbank Family Practice - UPMC was a family practice group owned by University Services Organization, which is a wholly owned subsidiary of UPMC Health System.

9-14. The allegations contained in paragraphs 9 through 14 of Plaintiff's Complaint do not pertain to this Defendant, and require no response.

15. To the extent paragraph 15 of Plaintiff's Complaint contains legal conclusions or is not directed to this Defendant, no response is required. To the extent a response is deemed necessary, it is denied that Defendant Karls was an agent, ostensible agent, or employee of this Defendant, acting within the course and scope of his employment or agency. To the contrary, Defendant Dr. Karls was an employed physician with his physician practice group, Redbank Family Practice - UPMC. By way of further response, paragraph 8 of this Answer is incorporated herein.

16-17. The allegations contained in paragraphs 16 through 17 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

18. Denied. By Order of Court dated January 18, 2001, this matter was transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

19. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

20. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

21. Paragraph 21 is not directed to this Defendant and requires no response. To the extent a response is deemed necessary, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in

paragraph 21 of Plaintiff's Complaint. Further, to the extent that paragraph 21 of the Complaint contains an incomplete or incorrect recitation of the medical history, said allegations are denied.

22. Paragraph 22 of Plaintiff's Complaint is not directed to this Defendant and requires no response. To the extent a response is deemed necessary, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 22 of Plaintiff's Complaint. It is believed that Defendant Karls treated Mary Jo Duttry and prescribed medications, as set forth in the medical records. It is believed that Mary Jo Duttry treated with a number of other health care providers. To the extent that paragraph 22 of the Complaint contains an incomplete or inaccurate recitation of the medical history, which is more accurately and completely set forth in the medical records, said allegations are denied.

23. Paragraph 23 is not directed to this Defendant and requires no response. To the extent a response is deemed necessary, paragraph 23 of the Plaintiff's Complaint is denied to the extent it contains an incomplete and/or imprecise recitation of the medical history. To the contrary, the medical records more specifically and more accurately set forth the precise medications prescribed and the precise dates.

24-25. Paragraphs 24-25 are not directed to this Defendant and require no response. To the extent a response is deemed necessary, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 21 of Plaintiff's Complaint. Further, to the extent that paragraph 21 of the Complaint contains an incomplete or imprecise recitation of the medical history, said allegations are denied.

26. The allegations contained in paragraph 26 of Plaintiff's Complaint contain medical conclusions to which no response is required. By way of further response, after reasonable

investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

27-38. To the extent paragraphs 27-38 are not directed to this Defendant or contain legal conclusions, no response is required. To the extent a response is deemed necessary, it is denied that this Defendant breached any duty, denied that this Defendant was negligent, and denied that this Defendant was in any way responsible for causing any injury or damage to anyone. To the contrary, this Defendant acted reasonably, properly, satisfied any applicable duties and standards of care, and was in no way responsible for causing any injury or damage.

39-42. Paragraphs 39-42 of Plaintiff's Complaint are not directed to this Defendant and require no response.

43-44. Denied. By way of further response, paragraph 8 of this Answer is incorporated herein.

45-46. To the extent paragraphs 45-46 contain legal conclusions or are not directed to this Defendant, no response is required. To the extent a response is deemed necessary, these paragraphs are denied.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against the Plaintiff and that it be dismissed from this action.

COUNT I

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JAMES K. FUGATE, M.D.; DUBOIS REGIONAL MEDICAL CENTER, INC., A PENNSYLVANIA CORPORATION T/A BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., A PENNSYLVANIA CORPORATION, DEFENDANTS

SURVIVAL ACTION

47. This Defendant incorporates by reference paragraphs 1 through 46 of this Answer as if the same were set forth fully at length herein.

48-54. The allegations contained in paragraphs 48 through 54 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT II

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JAMES K. FUGATE, M.D.; DUBOIS REGIONAL MEDICAL CENTER, INC., A PENNSYLVANIA CORPORATION T/A BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., A PENNSYLVANIA CORPORATION, DEFENDANTS

WRONGFUL DEATH ACTION

55. This Defendant incorporates by reference paragraphs 1 through 54 of this Answer as if the same were set forth fully at length herein.

56-60. The allegations contained in paragraphs 56 through 60 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT III

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JEFFREY P. KARLS, D.O., INDIVIDUALLY AND T/A REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, A PENNSYLVANIA CORPORATION T/A REDBANK FAMILY PRACTICE-UPMC, DEFENDANTS

SURVIVAL ACTION

61. This Defendant incorporates by reference paragraphs 1 through 60 of this Answer as if the same were set forth fully at length herein.

62. Paragraph 62 of Plaintiff's Complaint contains legal conclusions to which no response is required. To the extent a response is deemed necessary, it is denied that Plaintiff is entitled to any recovery for a survival action.

63-67. To the extent paragraphs 63-67 (subparagraphs inclusive) of Plaintiff's Complaint are not directed to this Defendant or contain legal conclusions, no response is required. To the extent a response is deemed necessary, it is denied that this Defendant was negligent and denied that this Defendant in any way caused injury or damage. All allegations directed to this Defendant are denied. By way of further response, paragraph 8 of this Answer is incorporated herein.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT IV

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JEFFREY P. KARLS, D.O., INDIVIDUALLY AND T/A REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, A PENNSYLVANIA CORPORATION T/A REDBANK FAMILY PRACTICE-UPMC, DEFENDANTS

WRONGFUL DEATH ACTION

68. This Defendant incorporates by reference paragraphs 1 through 67 of this Answer as if the same were set forth fully at length herein.

69. Paragraph 69 of Plaintiff's Complaint contains legal conclusions and requires no response. To the extent a response is deemed necessary, it is denied that Plaintiff is entitled to any recovery for a wrongful death action.

70-73. To the extent paragraphs 70-73 (subparagraphs inclusive) of Plaintiff's Complaint are not directed to this Defendant or contain legal conclusions, no response is required. To the extent a response is deemed necessary, it is denied that this Defendant was negligent and denied that this Defendant in any way caused injury or damage. All allegations directed to this Defendant are denied. By way of further response, paragraph 8 of this Answer is incorporated herein.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT V

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C., a Pennsylvania professional corporation; JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C., a Pennsylvania professional corporation, DEFENDANTS

SURVIVAL ACTION

74. This Defendant incorporates by reference paragraphs 1 through 73 of this Answer as if the same were set forth fully at length herein.

75-78. The allegations contained in paragraphs 75 through 78 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT VI

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C., a Pennsylvania professional corporation; JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C., a Pennsylvania professional corporation, DEFENDANTS

WRONGFUL DEATH ACTION

79. This Defendant incorporates by reference paragraphs 1 through 78 of this Answer as if the same were set forth at length herein.

80-83. The allegations contained in paragraphs 80 through 83 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT VII

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. BOWSER CORPORATION, a Pennsylvania corporation t/a SHANKEL'S PHARMACY AND t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.Ph., and CYNTHIA D. BOWSER, R.Ph., DEFENDANTS

SURVIVAL ACTION

84. This Defendant incorporates by reference paragraphs 1 through 84 of this Answer as if the same were set forth at length herein.

85-88. The allegations contained in paragraphs 85 through 88 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT VIII

JOHN D. DUTTRY, ADMINISTRATOR OF THE ESTATE OF MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, IN HIS OWN RIGHT, PLAINTIFF V. BOWSER CORPORATION, a Pennsylvania corporation t/a SHANKEL'S PHARMACY AND t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.Ph., and CYNTHIA D. BOWSER, R.Ph., DEFENDANTS

WRONGFUL DEATH ACTION

89. This Defendant incorporates by reference paragraphs 1 through 88 of this Answer as if the same were set forth at length herein.

90-92. The allegations contained in paragraphs 90 through 92 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

COUNT IX

JOHN D. DUTTRY, in his own right, Plaintiff v. Defendants

94. This Defendant incorporates by reference paragraphs 1 through 93 of this Answer as if the same were set forth at length herein.

95. To the extent paragraph 95 of Plaintiff's Complaint contains legal conclusions or is not directed to this Defendant, no response is required. To the extent a response is deemed necessary, paragraph 95 is denied. It is denied that this Defendant was in any way negligent and denied that this Defendant was in any way responsible for causing any of the alleged injuries or damages to anyone. By way of further response, paragraph 8 of this Answer is incorporated herein.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

NEW MATTER

96. This Defendant raises the acts and omissions of third parties over whom Defendant had neither the right nor the duty to control, as a complete and/or partial bar to Plaintiff's claims.

97. The Plaintiff's claims are barred or limited under the Health Care Services Malpractice Act

98. This Defendant pleads the applicable statute of limitations as a defense to Plaintiff's claims.

99. To the extent the evidence reveals that the Plaintiff's decedent failed to follow medical instructions, failed to take proper care of herself, failed to exercise due care or otherwise failed to mitigate, this Defendant pleads failure to mitigate as a restriction or bar to recovery.

100. This Defendant pleads “payment” as an affirmative defense to the extent that payment was accepted for an amount less than the amount billed for medical services rendered.

WHEREFORE, Defendant, UPMC Presbyterian, respectfully requests that judgment be entered in its favor and against Plaintiff and that it be dismissed from this action.

JURY TRIAL DEMANDED.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY:  _____

Howard A. Chajson, Esquire

Timothy B. Finnerty, Esquire

Attorneys for UPMC Presbyterian, incorrectly
designated as UPMC Presbyterian, a Pennsylvania
corporation t/a Redbank Family Practice - UPMC

VERIFICATION

I, William Shaffner, of UPMC Presbyterian, authorized to execute this verification, have read the foregoing Answer and New Matter on behalf of UPMC Presbyterian, incorrectly designated as UPMC Presbyterian, a Pennsylvania corporation t/a Redbank Family Practice - UPMC, within the case caption. The statements therein are 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 unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



William Shaffner

DATED: March 26, 2002

CERTIFICATE OF SERVICE

I, Howard A. Chajson, Esquire, hereby certify that true and correct copies of the foregoing **ANSWER AND NEW MATTER ON BEHALF OF UPMC PRESBYTERIAN** have been served this 28th day of March, 2002, by U.S. first-class mail, postage prepaid, to:

David J. Lozier, Esquire
Harry S. Cohen & Associates
985 Two Chatham Center
Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

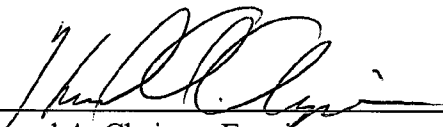
Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648

Steven J. Forry, Esquire
Israel, Wood & Puntl
501 Grant Building
Pittsburgh, PA 15219

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Alan Neely, Esquire
McQuaid & Blasko
811 University Drive
State College, PA 16801

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Howard A. Chajson, Esquire
Attorneys for UPMC Presbyterian, incorrectly
designated as UPMC Presbyterian, a
Pennsylvania corporation t/a Redbank Family
Practice - UPMC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the Estate
of MARY JO DUTTRY, deceased, and JOHN D.
DUTTRY, in his own right,

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY PRACTICE-
UPMC; JEFFREY W. RICE, DMD; JEFFREY
RICE, DMD, PC, a Pennsylvania Professional
Corporation; JEFFREY RICE DMD, AND JAY
L. ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOWSER,
R.PH; and CYNTHIA D. BOWSER, R.PH,

Defendant.

Notice to Plead

TO: Plaintiff

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

By 
Howard A. Chajson, Esquire

CIVIL DIVISION

No. 2001-00301-CD

Issue No.

**ANSWER AND NEW MATTER ON
BEHALF OF JEFFREY P. KARLS, D.O.**

Code:

Filed on behalf of JEFFREY P. KARLS, D.O.

Counsel of record for this party:

Howard A. Chajson, Esq.
Pa. I.D. #49491

Timothy B. Finnerty, Esq.
Pa. I.D. #83733

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

JURY TRIAL DEMANDED

FILED

APR 01 2002
m/11261n0rc
William A. Shaw
Prethenotary 

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administratrix of the
Estate of MARY JO DUTTRY, deceased, and
JOHN D. DUTTRY, in his own right,

CIVIL DIVISION

No. 2001-00301-CD

Plaintiff,

v.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL, MEDICAL CENTER, INC., a
Pennsylvania corporation t/a/ BEHAVIORAL
HEALTH CENTER; GATEWAY
INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P.
KARLS, D.O., individually and t/a
REDBANK FAMILY PRACTICE-UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
corporation t/a REDBANK FAMILY
PRACTICE-UPMC; JEFFREY W. RICE,
DMD; JEFFREY RICE, DMD, PC, a
Pennsylvania Professional Corporation;
JEFFREY RICE DMD, AND JAY L.
ALRICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS
E. BOWSER, R.PH; and CYNTHIA D.
BOWSER, R.PH,

Defendant.

ANSWER AND NEW MATTER ON BEHALF OF JEFFREY P. KARLS, D.O.

AND NOW comes one of the Defendants, JEFFREY P. KARLS, D.O., by and
through his attorneys, Dickie, McCamey & Chilcote, P.C., and sets forth the following Answer and
New Matter and avers as follows:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

2. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

3. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 3 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

4-6. The allegations contained in paragraphs 4 through 6 of Plaintiff's Complaint do not pertain to this Defendant, thus, no response is required.

7. Admitted in part, denied in part. It is admitted that Dr. Karls is an adult individual who is a duly licensed and practicing physician in the Commonwealth of Pennsylvania. It is further admitted that at all times material Dr. Karls was a practicing physician at Redbank Family Practice - UPMC, which was located at RD 3, Box 219, New Bethlehem, Pennsylvania 16242 in Clarion County. Redbank Family Practice - UPMC was a family practice group owned by University Services Organization, which is wholly owned subsidiary of UPMC Health System. The remainder of the allegations in paragraph 7 are denied as stated.

8-14. The allegations contained in paragraphs 8 through 14 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

15. Denied as stated. To the contrary, at all times relevant, Dr. Karls was an employed physician with his physician practice group, Redbank Family Practice-UPMC.

16-17. The allegations contained in paragraphs 16 through 17 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

18. Denied. By Order of Court dated January 18, 2001, this matter was transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

19. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

20. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

21. Paragraph 21 is not directed to this Defendant and requires no response. To the extent a response is deemed necessary, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 21 of Plaintiff's Complaint. Further, to the extent that paragraph 21 of the Complaint contains an incomplete or incorrect recitation of the medical history, said allegations are denied.

22. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 22 of Plaintiff's Complaint, as stated. Defendant Karls treated Mary Jo Duttry and prescribed

medications, as set forth in the medical records. It is believed that Mary Jo Duttry treated with a number of other health care providers. To the extent that paragraph 22 of the Complaint contains an incomplete or inaccurate recitation of the medical history, which is more accurately and completely set forth in the medical records, said allegations are denied.

23. Paragraph 23 of the Plaintiff's Complaint is denied to the extent it contains an incomplete and/or imprecise recitation of the medical history. To the contrary, the medical records more specifically and more accurately set forth the precise medications prescribed and the precise dates.

24-25. Paragraphs 24-25 are not directed to this Defendant and require no response. To the extent a response is deemed necessary, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraph 21 of Plaintiff's Complaint. Further, to the extent that paragraph 21 of the Complaint contains an incomplete or imprecise recitation of the medical history, said allegations are denied.

26. The allegations contained in paragraph 26 of Plaintiff's Complaint contain medical conclusions to which no response is required. By way of further response, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of Plaintiff's Complaint. Therefore, those allegations are denied and strict proof thereof is demanded at the time of trial.

27-38. To the extent paragraphs 27-38 are not directed to this Defendant or contain legal conclusions, no response is required. To the extent a response is deemed necessary, those averments directed to this Defendant are denied as stated. It is denied that this Defendant breached any duty, denied that this Defendant was negligent, and denied that this Defendant was in any way

responsible for causing any injury or damage to anyone. To the contrary, this Defendant acted reasonably, properly, satisfied any applicable duties and standards of care, and was in no way responsible for causing any injury or damage.

39-44. Paragraphs 39-44 of Plaintiff's Complaint are not directed to this Defendant and require no response.

45-46. To the extent paragraphs 45-46 contain legal conclusions or are not directed to this Defendant, no response is required. To the extent a response is deemed necessary, it is denied that this Defendant was careless or negligent, and denied that this Defendant was in any way responsible for causing any alleged injuries or damages. To the contrary, this Defendant acted reasonably and properly and in no way caused any injury or damage.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against the Plaintiff and that he be dismissed from this action.

COUNT I

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. JAMES K. FUGATE, M.D.; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., a Pennsylvania corporation, Defendants

SURVIVAL ACTION

47. This Defendant incorporates by reference paragraphs 1 through 46 of this Answer as if the same were set forth fully at length herein.

48-54. The allegations contained in paragraphs 48 through 54 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT II

JOHN D. DUTTRY, Administrator of the Estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. JAMES K. FUGATE, M.D.; DUBOIS REGIONAL MEDICAL CENTER, INC., a Pennsylvania corporation t/a BEHAVIORAL HEALTH CENTER; GATEWAY INSTITUTE AND CLINIC, INC., A Pennsylvania corporation, Defendants

WRONGFUL DEATH ACTION

55. This Defendant incorporates by reference paragraphs 1 through 54 of this Answer as if the same were set forth fully at length herein.

56-60. The allegations contained in paragraphs 56 through 60 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT III

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, Deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. JEFFREY P. KARLS, D.O., individually and t/a REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania corporation t/a REDBANK FAMILY PRACTICE-UPMC, Defendants

SURVIVAL ACTION

61. This Defendant incorporates by reference paragraphs 1 through 60 of this Answer as if the same were set forth fully at length herein.

62. Paragraph 62 of Plaintiff's Complaint contains legal conclusions to which no response is required. To the extent a response is deemed necessary, it is denied that Plaintiff is entitled to any recovery for a survival action.

63-67. To the extent paragraphs 63-67 (subparagraphs inclusive) of Plaintiff's Complaint are not directed to this Defendant or contain legal conclusions, no response is required. To the extent a response is deemed necessary, it is denied that this Defendant was negligent and denied that this Defendant in any way caused injury or damage. All allegations directed to this Defendant are denied.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT IV

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, deceased; and JOHN D. DUTTRY, In his own right, Plaintiff v. JEFFREY P. KARLS, D.O., individually and t/a REDBANK FAMILY PRACTICE-UPMC; UPMC PRESBYTERIAN, a Pennsylvania corporation t/a REDBANK FAMILY PRACTICE-UPMC, Defendants

WRONGFUL DEATH ACTION

68. This Defendant incorporates by reference paragraphs 1 through 67 of this Answer as if the same were set forth fully at length herein.

69. Paragraph 69 of Plaintiff's Complaint contains legal conclusions and requires no response. To the extent a response is deemed necessary, it is denied that Plaintiff is entitled to any recovery for a wrongful death action.

70-73. To the extent paragraphs 70-73 (subparagraphs inclusive) of Plaintiff's Complaint are not directed to this Defendant or contain legal conclusions, no response is required.

To the extent a response is deemed necessary, it is denied that this Defendant was negligent and denied that this Defendant in any way caused injury or damage. All allegations directed to this Defendant are denied.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT V

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, DECEASED; and JOHN D. DUTTRY, in his own right, Plaintiff v. JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C., a Pennsylvania professional corporation; JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C., a Pennsylvania professional corporation, Defendants

SURVIVAL ACTION

74. This Defendant incorporates by reference paragraphs 1 through 73 of this Answer as if the same were set forth fully at length herein.

75-78. The allegations contained in paragraphs 75 through 78 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT VI

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. JEFFREY W. RICE, DMD; JEFFREY RICE, DMD, P.C., a Pennsylvania professional corporation; JEFFREY RICE, DMD and JAY L. ARLICK, DMD, P.C., a Pennsylvania professional corporation, Defendants

WRONGFUL DEATH ACTION

79. This Defendant incorporates by reference paragraphs 1 through 78 of this Answer as if the same were set forth at length herein.

80-83. The allegations contained in paragraphs 80 through 83 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT VII

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. BOWSER CORPORATION, a Pennsylvania corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.Ph., and CYNTHIA D. BOWSER, R.Ph., Defendants

SURVIVAL ACTION

84. This Defendant incorporates by reference paragraphs 1 through 84 of this Answer as if the same were set forth at length herein.

85-88. The allegations contained in paragraphs 85 through 88 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT VIII

JOHN D. DUTTRY, Administrator of the estate of MARY JO DUTTRY, deceased; and JOHN D. DUTTRY, in his own right, Plaintiff v. BOWSER CORPORATION, a Pennsylvania corporation t/a SHANKEL'S PHARMACY and t/a TREASURE LAKE PHARMACY; THOMAS E. BOWSER, R.Ph., and CYNTHIA D. BOWSER, R.Ph., Defendants

WRONGFUL DEATH ACTION

89. This Defendant incorporates by reference paragraphs 1 through 88 of this Answer as if the same were set forth at length herein.

90-92. The allegations contained in paragraphs 90 through 92 of Plaintiff's Complaint do not pertain to this Defendant, and no response is required.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

COUNT IX

JOHN D. DUTTRY, in his own right, Plaintiff v. Defendants

94. This Defendant incorporates by reference paragraphs 1 through 93 of this Answer as if the same were set forth at length herein.

95. To the extent paragraph 95 of Plaintiff's Complaint contains legal conclusions or is not directed to this Defendant, no response is required. To the extent a response is deemed necessary, paragraph 95 is denied. It is denied that this Defendant was in any way negligent and denied that this Defendant was in any way responsible for causing any of the alleged injuries or damages to anyone.

NEW MATTER

96. This Defendant raises the acts and omissions of third parties over whom Defendant had neither the right nor the duty to control, as a complete and/or partial bar to Plaintiff's claims.

97. The Plaintiff's claims are barred or limited under the Health Care Services Malpractice Act

98. This Defendant pleads the applicable statute of limitations as a defense to Plaintiff's claims.

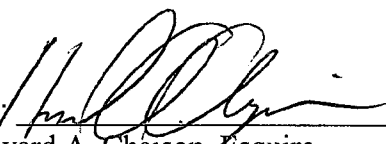
99. To the extent the evidence reveals that the Plaintiff's decedent failed to follow medical instructions, failed to take proper care of herself, failed to exercise due care or otherwise failed to mitigate, this Defendant pleads failure to mitigate as a restriction or bar to recovery.

100. This Defendant pleads "payment" as an affirmative defense to the extent that payment was accepted for an amount less than the amount billed for medical services rendered.

WHEREFORE, Defendant, Jeffrey P. Karls, D.O., respectfully requests that judgment be entered in his favor and against Plaintiff and that he be dismissed from this action.

JURY TRIAL DEMANDED.

DICKIE, McCAMEY & CHILCOTE, P.C.

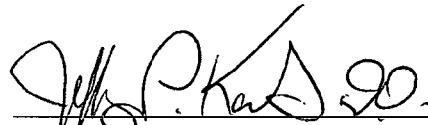
BY: 
Howard A. Chajson, Esquire
Timothy B. Finnerty, Esquire

Attorneys for Defendant, Jeffrey P. Karls, D.O.

VERIFICATION

I, Jeffrey P. Karls, D.O., have read the foregoing Answer and New Matter. The statements therein are 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 unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Jeffrey P. Karls, D.O.

DATED: 3/26/02

CERTIFICATE OF SERVICE

I, Howard A. Chajson, Esquire, hereby certify that true and correct copies of the foregoing **ANSWER AND NEW MATTER ON BEHALF OF JEFFREY P. KARLS, D.O.** have been served this 28th day of March, 2002, by U.S. first-class mail, postage prepaid, to:

David J. Lozier, Esquire
Harry S. Cohen & Associates
985 Two Chatham Center
Pittsburgh, PA 15219

Giles J. Gaca, Esquire
Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

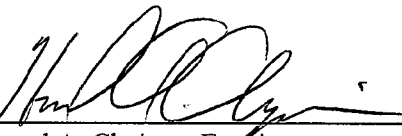
Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648

Steven J. Forry, Esquire
Israel, Wood & Puntl
501 Grant Building
Pittsburgh, PA 15219

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Alan Neely, Esquire
McQuaid & Blasko
811 University Drive
State College, PA 16801

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Howard A. Chajson, Esquire
Attorneys for Defendants, Jeffrey P. Karls, D.O.

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

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D.;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. 2001-00301-CD

Code:

Issue:

Type of Pleading:

**OBJECTION TO THE PLAINTIFF'S
MOTION TO WITHDRAW AS COUNSEL**

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

Robert J. Grimm, Esquire
PA ID No. 55381

Steven J. Forry, Esquire
PA ID No. 73961

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED

FILED

APR 01 2002

10/10:33/10ccatt, Grimm
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the : CIVIL DIVISION
Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in his : NO. 2001-00301-CD
own right, :
Plaintiff, :

vs. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, INC., a :
Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., individually :
and t/a REDBANK FAMILY PRACTICE – :
UPMC; UPMC PRESBYTERIAN, a :
Pennsylvania Corporation t/a REDBANK :
FAMILY PRACTICE – UPMC; JEFFREY :
W. RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE LAKE :
PHARMACY; THOMAS E. BOWSER, :
R.P.H.; and CYNTHIA D. BOWSER, :
R.P.H.; :

Defendants. :

OBJECTION TO THE PLAINTIFF'S MOTION TO WITHDRAW AS COUNSEL

AND NOW comes the Defendant, Gateway Institute and Clinic, Inc., by and through its attorneys, Israel, Wood & Puntil, P.C. and Steven J. Forry, Esquire and filed the within Objection to the Plaintiff's Motion to withdraw as counsel asserting and setting forth as follows:

1. On October 24, 2001 counsel for the Plaintiff, David J. Lozier, Esquire executed a Stipulation dismissing the instant matter against the Defendant, Gateway Institute and Clinic, Inc. Attached hereto and marked as Exhibit "A" collectively is a copy of said correspondence and Stipulation.

2. Subsequent to the execution of the aforementioned Stipulation counsel for this Defendant proceeded to obtain executed Stipulations by all remaining Defendants to dismiss the instant matter against the Defendant Gateway Institute and Clinic, Inc.

3. On March 19, 2002 counsel for this Defendant received the last Stipulation to dismiss the Defendant, Gateway Institute and Clinic, Inc. executed by counsel for Jeffrey P. Karls, D.O. and UPMC Presbyterian. Counsel for the Plaintiff now seeks a rule to show cause why his law firm should not be permitted to withdraw as counsel for the Plaintiff in the within matter.

4. Counsel for the Plaintiff seeks to withdraw his appearance on behalf of the Plaintiff subsequent to the execution of a Stipulation voluntarily discontinuing the within matter against Gateway Institute and Clinic, Inc.

5. The Defendant, Gateway Institute and Clinic, Inc. respectfully requests this Honorable Court to rule on this Defendant's Motion to discontinue as to less than all Defendants prior to permitting counsel for Plaintiff to withdraw from the instant matter. Attached hereto and marked as Exhibit "B" is a copy of said Motion.

WHEREFORE, the Defendant, Gateway Institute and Clinic, Inc. respectfully requests this Honorable Court to withhold ruling on the Plaintiff's Petition to withdraw as counsel until such time as the court can rule on this Defendant's Motion to discontinue as to less than all Defendants.

Respectfully submitted,

ISRAEL, WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant, Gateway
Institute and Clinic, Inc., a Pennsylvania
corporation

Harry S.
Cohen
&
Associates
LAW OFFICES

01726277

0446370 G1

October 24, 2001

Steven J. Forry, Esquire
Israel, Wood & Puntl, P.C.
Suite 501, Grant Building
Pittsburgh, PA 15219

RE: Duttry v. Gateway Institute and Clinic, Inc., et al

Dear Mr. Forry:

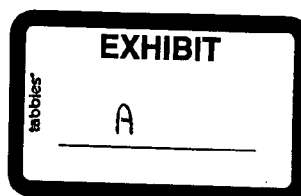
Enclosed is the executed Stipulation dismissing the case as to your client only, Gateway Institute and Clinic, Inc. Please send me a copy of the pleading once it is filed with the Prothonotary.

Very truly yours,

HARRY S. COHEN & ASSOCIATES

David J. Lozier

DJL/dej
Enclosure



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

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :
Plaintiff, :

vs. :

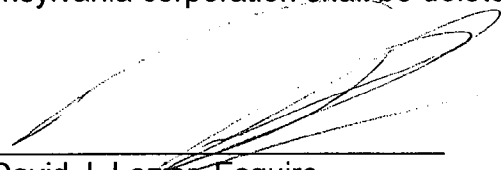
JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :
Defendants. :

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

It is hereby agreed and consented by the parties that the Plaintiff's
Complaint, and any and all crossclaims, are hereby withdraw pursuant to Rule

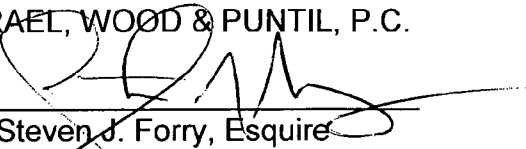
229 of the Pennsylvania Rules of Civil Procedure with prejudice AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.

It is further agreed that the name of Gateway Institute and Clinic, Inc., a
Pennsylvania corporation shall be deleted from the above caption.

By: 

David J. Lozier, Esquire
Attorney for Plaintiff

ISRAEL, WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

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

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
REDBANK FAMILY PRACTICE –
UPMC; JEFFREY W. RICE, D.M.D;
JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L.
ARLICK, D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. 2001-00301-CD

Code:

Issue:

Type of Pleading:

**MOTION TO DISCONTINUE AS TO
LESS THAN ALL DEFENDANTS AND
AMEND CAPTION**

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

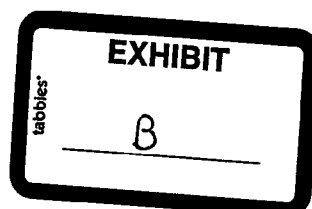
Robert J. Grimm, Esquire
PA ID No. 55381

Steven J. Forry, Esquire
PA ID No. 73961

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED



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

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :

Defendants.

**MOTION TO DISCONTINUE AS TO LESS
THAN ALL DEFENDANTS AND AMEND CAPTION**

AND NOW comes the Defendant, Gateway Institute and Clinic, Inc., by
and through its attorneys, Israel, Wood & Puntill, P.C. and Steven J. Forry,

Esquire and files the following Motion to Discontinue as to less than all Defendants and amend the caption asserting and setting forth the following:

1. The Plaintiff's Estate has filed the within medical negligence action against all Defendants alleging negligent medical treatment which allegedly resulted in the death of the Plaintiff's decedent.

2. The Plaintiffs have stipulated to a voluntary discontinuance as to the Defendant, Gateway Institute and Clinic, Inc. Attached hereto and marked as Exhibit "A" is the original Stipulation executed by counsel for the Plaintiff.

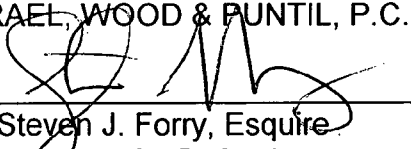
3. The Co-Defendants have also stipulated as to the discontinuance for the Defendant, Gateway Institute and Clinic, Inc. Attached hereto and marked collectively as Exhibit "B" are the original Stipulations executed by counsel for the respective Co-Defendants.

4. The Defendant, Gateway Institute and Clinic, Inc. respectively request this Honorable Court to enter an Order granting its dismissal from the within action with prejudice and removing its name from the caption of the within matter.

WHEREFORE, the Defendant, Gateway Institute and Clinic, Inc. respectfully request this Honorable Court to enter discontinuing with prejudice all claims against the Defendant, Gateway Institute and Clinic, Inc. and removing its name from the caption of the within matter.

Respectfully submitted,

ISRAEL WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

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

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :

Plaintiff, :

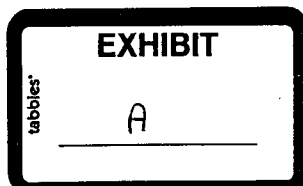
vs. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :

Defendants. :

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

It is hereby agreed and consented by the parties that the Plaintiff's
Complaint, and any and all crossclaims, are hereby withdraw pursuant to Rule



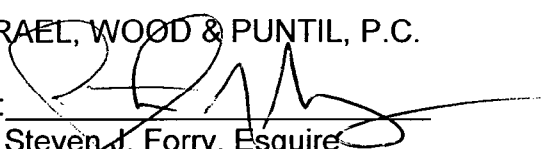
229 of the Pennsylvania Rules of Civil Procedure with prejudice AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.

It is further agreed that the name of Gateway Institute and Clinic, Inc., a
Pennsylvania corporation shall be deleted from the above caption.

By: 

David J. Lezier, Esquire
Attorney for Plaintiff

ISRAEL, WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc.**, only.

GACA, MATIS, BAUM & RIZZA

By: 

Giles Gaca, Esquire
Attorney for Defendant, James K.
Fugate, M.D.

EXHIBIT

tabbies
B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc.**, only.

McINTYRE, DUGAS, HARTYE &
SCHMITT

By: Michael A. Sosnowski

Michael Sosnowski, Esquire
Attorney for Defendant, DuBois Regional
Medical Center, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, deceased, and JOHN
D. DUTTRY, in his own right,

CIVIL DIVISION

No. 2001-00301-CD

Plaintiff

vs.

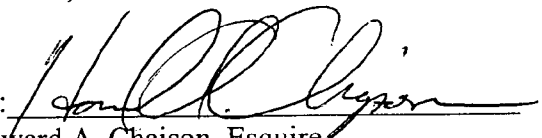
JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania
Corporation; JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK FAMILY
PRACTICE - UPMC; UPMC PRESBYTERIAN,
a Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE - UPMC; JEFFREY W.
RICE, D.M.D.; JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C., a Pennsylvania Professional
Corporation; BOWSER CORPORATION, a
Pennsylvania Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER, R.P.H.;
and CYNTHIA D. BOWSER, R.P.H.,

Defendants

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and agree to the
discontinuance with prejudice of this action as to **Gateway Institute and Clinic, Inc.**, only.

DICKIE, McCAMEY & CHILCOTE, P.C.

By: 
Howard A. Chajson, Esquire
Attorneys for Defendants Jeffrey P. Karls,
D.O. and UPMC Presbyterian

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

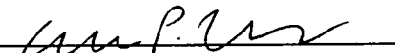
JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
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GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
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D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and agree to the discontinuance with prejudice of this action as to **Gateway Institute and Clinic, Inc.,** only.

McQUAIDE, BLASKO

By: 

Allen Neely, Esquire

Attorney for Defendant, Jeffrey Rice, D.M.D.

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,
Plaintiff,
vs.

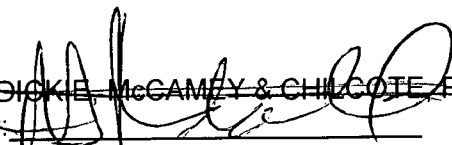
CIVIL DIVISION

NO. 2001-00301-CD

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;
Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and agree to the discontinuance with prejudice of this action as to **Gateway Institute and Clinic, Inc.,** only.

~~DICKIE, McGAMEY & CHILCOTE, P.C.~~
By: 
Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll, P.C.
Attorney for Defendants, Bowser
Corporation, a Pennsylvania Corporation
t/a Shankel's Pharmacy and t/a Treasure
Lake Pharmacy, Thomas E. Bowser, R. PH.
And Cynthia D. Bowser, R. PH.

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

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :
Plaintiff, :

vs. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
RICE, D.M.D. and JAY L. ARLICK, :
D.M.D., P.C. a Pennsylvania :
Professional Corporation; BOWSER :
CORPORATION, a Pennsylvania :
Corporation t/a SHANKEL'S :
PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :
Defendants. :

ORDER

AND NOW this _____ day of _____, 2002 upon consideration of the
Defendant, Gateway Institute and Clinic, Inc.'s Motion to Discontinue as to less
than all Defendants and Amend Caption, it is hereby **ORDERED** and **DECREED**

that the Plaintiff's Complaint and any and all crossclaims are dismissed with prejudice against the Defendant, Gateway Institute and Clinic, Inc. It is further **ORDERED** and **DECREED** that the Defendant's name, Gateway Institute and Clinic, Inc., shall be withdrawn and deleted from the caption of the within matter.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **MOTION TO DISCONTINUE AS TO LESS THAN ALL DEFENDANTS AND AMEND CAPTION** has been sent via first class mail, postage prepaid to the following this 3rd day of March, 2002:

David J. Lozier, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff

Giles Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
Attorney for Defendant, James K. Fugate

Wilbur McCoy Otto, Esquire
Dickie, McCarney & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Attorney for Defendant, Jeffrey P. Karls, D.O. and UPMC Presbyterian

Michael Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Attorney for Defendant, DuBois Regional Medical Center, Inc.

Allen Neely, Esquire
McQuaide, Blasko
811 University Drive
State College, PA 16801-6699
Attorney for Defendant, Jeffrey Rice, D.M.D.

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll,
P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Attorney for Defendants, Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser,
R. PH. And Cynthia D. Bowser,
R. PH.


Steven J. Forry

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

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,

Plaintiff,

vs.

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REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
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UPMC; JEFFREY W. RICE, D.M.D;
JEFFREY RICE, D.M.D., P.C., a
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LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. 2001-00301-CD

Code:

Issue:

Type of Pleading:

**BRIEF IN SUPPORT OF MOTION TO
DISCONTINUE AS TO LESS THAN
ALL DEFENDANTS AND AMEND
CAPTION**

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

Robert J. Grimm, Esquire
PA ID No. 55381

Steven J. Forry, Esquire
PA ID No. 73961

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED

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

JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
the Estate of MARY JO DUTTRY, :
Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :

Plaintiff, :

vs. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
INC., a Pennsylvania Corporation t/a :
BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
PRACTICE – UPMC; JEFFREY W. :
RICE, D.M.D; JEFFREY RICE, :
D.M.D., P.C., a Pennsylvania :
Professional Corporation; JEFFREY :
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D.M.D., P.C. a Pennsylvania :
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PHARMACY and t/a TREASURE :
LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :

Defendants. :

**BRIEF IN SUPPORT OF MOTION TO DISCONTINUE AS TO LESS
THAN ALL DEFENDANTS AND AMEND CAPTION**

AND NOW comes the Defendant, Gateway Institute and Clinic, Inc., by
and through its attorneys, Israel, Wood & Puntill, P.C. and Steven J. Forry,

Esquire and files the within Brief in Support of their Motion to Discontinue as to less than all Defendants and amend the caption asserting and setting forth as follows:

I. BRIEF FACTUAL BACKGROUND

The above-captioned action arises out of alleged medical malpractice of these Defendants with regards to the care and treatment provided to the Plaintiff's decedent, Mary Jo Duttry. Specifically, the Plaintiffs are asserting that the various Defendants administered and/or provided the Plaintiff's decedent Mary Jo Duttry with an excessive amount of medications which ultimately resulted in her death.

During the course of discovery it was determined that the Defendant, Gateway Institute and Clinic, Inc., a Pennsylvania corporation did not employ any of the named Defendants in the within lawsuit. In accordance with such discovery the Plaintiffs and all of the named Defendants, by and through their attorneys, executed Stipulations voluntarily discontinuing the within action against the Defendant Gateway Institute and Clinic, Inc. See Stipulations attached to the Defendant's Motion. This Defendant has brought the within Motion to Discontinue the within action against Gateway Institute and Clinic, Inc. pursuant to Pennsylvania Rule of Civil of Civil Procedure 229.

II. ARGUMENT

The Pennsylvania Rule of Civil 229 provides as follows:

- (a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the Plaintiff before commencement of the trial;
- (b) A discontinuance may not be entered as to less than all Defendants except upon the written consent of the parties of leave of court after notice to all parties. See Pa. R.C.P. 229.

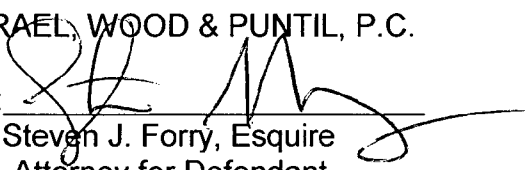
This Defendant has brought the within Motion pursuant to Rule 229(b) for purposes of obtaining court approval of the voluntary discontinuance with prejudice of the within action against the Defendant, Gateway Institute and Clinic, Inc. Pursuant to Pa. R.C.P. 229(b) this Defendant has obtained executed five Stipulations by the Plaintiff as well as all the Co-Defendants voluntarily discontinuing the within matter against Gateway Institute and Clinic, Inc. Pursuant to Rule 229 this Defendant now seeks court approval for discontinuing the Plaintiff's action Gateway Institute and Clinic, Inc. for purposes of finalizing its involvement in the within case. The Plaintiff as well as all the Co-Defendants are represented by counsel and have executed the Stipulations by and through each of their respective attorneys.

III. CONCLUSION

WHEREFORE, the Defendant, Gateway Institute and Clinic, Inc. respectfully requests this Honorable Court to grant the relief requested in the Defendant's Motion pursuant to Pa. R.C.P. 229.

Respectfully submitted,

ISRAEL WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **BRIEF IN SUPPORT OF MOTION TO DISCONTINUE AS TO LESS THAN ALL DEFENDANTS AND AMEND CAPTION** has been sent via first class mail, postage prepaid to the following this 29th day of March, 2002:

David J. Lozier, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff

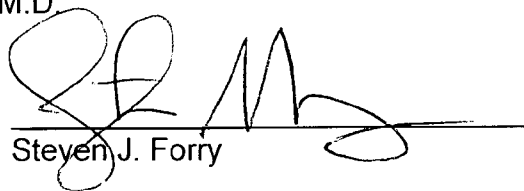
Giles Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
Attorney for Defendant, James K. Fugate

Wilbur McCoy Otto, Esquire
Dickie, McCarney & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Attorney for Defendant, Jeffrey P. Karls, D.O. and UPMC Presbyterian

Michael Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Attorney for Defendant, DuBois Regional Medical Center, Inc.

Allen Neely, Esquire
McQuaide, Blasko
811 University Drive
State College, PA 16801-6699
Attorney for Defendant, Jeffrey Rice, D.M.D.

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll,
P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Attorney for Defendants, Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser,
R. PH. And Cynthia D. Bowser,
R. PH.


Steven J. Forry

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **OBJECTION TO THE PLAINTIFF'S MOTION TO WITHDRAW AS COUNSEL** has been sent via first class mail, postage prepaid to the following this 29th day of march, 2002:

David J. Lozier, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff

Giles Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
Attorney for Defendant, James K. Fugate

Wilbur McCoy Otto, Esquire
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R. PH.


Steven J. Forry

CA

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Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC.,
a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE
– UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a
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UPMC; JEFFREY W. RICE, D.M.D.;
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PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;

Defendants.

CIVIL DIVISION

No. 2001-00301-CD

Code:

Issue:

Type of Pleading:

**MOTION TO DISCONTINUE AS TO
LESS THAN ALL DEFENDANTS AND
AMEND CAPTION**

Filed on behalf of:

**Gateway Institute and Clinic, Inc., a
Pennsylvania Corporation**

Defendant

Counsel of Record for this
Party:

Robert J. Grimm, Esquire
PA ID No. 55381

Steven J. Forry, Esquire
PA ID No. 73961

ISRAEL, WOOD & PUNTIL, P.C.
Firm #788

Suite 501, Grant Building
Pittsburgh, PA 15219
(412) 391-1114

JURY TRIAL DEMANDED

FILED

APR 01 2002
m110:271 kccathy W. Grimm
William A. Shaw
Prothonotary

KEB

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
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JOHN D. DUTTRY, Administrator of : CIVIL DIVISION
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Deceased; and JOHN D. DUTTRY, in : NO. 2001-00301-CD
his own right, :

Plaintiff, :

vs. :

JAMES K. FUGATE, M.D.; DUBOIS :
REGIONAL MEDICAL CENTER, :
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BEHAVIORAL HEALTH CENTER; :
GATEWAY INSTITUTE AND CLINIC, :
INC., a Pennsylvania Corporation; :
JEFFREY P. KARLS, D.O., :
individually and t/a REDBANK :
FAMILY PRACTICE – UPMC; UPMC :
PRESBYTERIAN, a Pennsylvania :
Corporation t/a REDBANK FAMILY :
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LAKE PHARMACY; THOMAS E. :
BOWSER, R.P.H.; and CYNTHIA D. :
BOWSER, R.P.H.; :

Defendants. :

**MOTION TO DISCONTINUE AS TO LESS
THAN ALL DEFENDANTS AND AMEND CAPTION**

AND NOW comes the Defendant, Gateway Institute and Clinic, Inc., by
and through its attorneys, Israel, Wood & Puntil, P.C. and Steven J. Forry,

Esquire and files the following Motion to Discontinue as to less than all Defendants and amend the caption asserting and setting forth the following:

1. The Plaintiff's Estate has filed the within medical negligence action against all Defendants alleging negligent medical treatment which allegedly resulted in the death of the Plaintiff's decedent.

2. The Plaintiffs have stipulated to a voluntary discontinuance as to the Defendant, Gateway Institute and Clinic, Inc. Attached hereto and marked as Exhibit "A" is the original Stipulation executed by counsel for the Plaintiff.

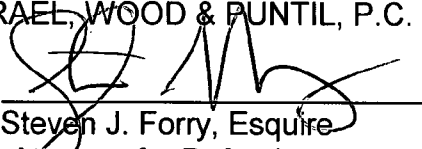
3. The Co-Defendants have also stipulated as to the discontinuance for the Defendant, Gateway Institute and Clinic, Inc. Attached hereto and marked collectively as Exhibit "B" are the original Stipulations executed by counsel for the respective Co-Defendants.

4. The Defendant, Gateway Institute and Clinic, Inc. respectively request this Honorable Court to enter an Order granting its dismissal from the within action with prejudice and removing its name from the caption of the within matter.

WHEREFORE, the Defendant, Gateway Institute and Clinic, Inc. respectfully request this Honorable Court to enter discontinuing with prejudice all claims against the Defendant, Gateway Institute and Clinic, Inc. and removing its name from the caption of the within matter.

Respectfully submitted,

ISRAEL WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
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vs.

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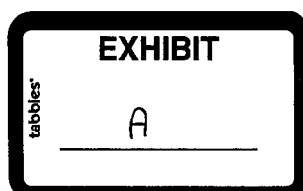
Defendants.

CIVIL DIVISION

NO. 2001-00301-CD

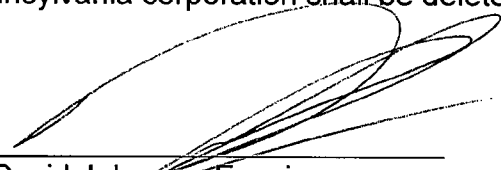
**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

It is hereby agreed and consented by the parties that the Plaintiff's
Complaint, and any and all crossclaims, are hereby withdraw pursuant to Rule



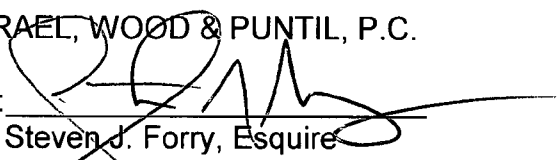
229 of the Pennsylvania Rules of Civil Procedure with prejudice AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.

It is further agreed that the name of Gateway Institute and Clinic, Inc., a
Pennsylvania corporation shall be deleted from the above caption.

By: 

David J. Lozier, Esquire
Attorney for Plaintiff

ISRAEL, WOOD & PUNTIL, P.C.

By: 

Steven J. Forry, Esquire
Attorney for Defendant,
Gateway Institute and Clinic,
Inc., a Pennsylvania
corporation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc.,** only.

GACA, MATIS, BAUM & RIZZA

By: *Giles Gaca*

Giles Gaca, Esquire
Attorney for Defendant, James K.
Fugate, M.D.

EXHIBIT

B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc.,** only.

McINTYRE, DUGAS, HARTYE &
SCHMITT

By: Michael A. Sosnowski
Michael Sosnowski, Esquire
Attorney for Defendant, DuBois Regional
Medical Center, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, deceased, and JOHN
D. DUTTRY, in his own right,

CIVIL DIVISION

No. 2001-00301-CD

Plaintiff

vs.

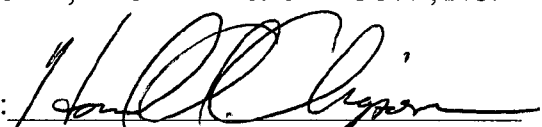
JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a BEHAVIORAL
HEALTH CENTER; GATEWAY INSTITUTE
AND CLINIC, INC., a Pennsylvania
Corporation; JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK FAMILY
PRACTICE - UPMC; UPMC PRESBYTERIAN,
a Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE - UPMC; JEFFREY W.
RICE, D.M.D.; JEFFREY RICE, D.M.D., P.C., a
Pennsylvania Professional Corporation;
JEFFREY RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C., a Pennsylvania Professional
Corporation; BOWSER CORPORATION, a
Pennsylvania Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER, R.P.H.;
and CYNTHIA D. BOWSER, R.P.H.,

Defendants

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and agree to the
discontinuance with prejudice of this action as to **Gateway Institute and Clinic, Inc.,** only.

DICKIE, McCAMEY & CHILCOTE, P.C.

By: 
Howard A. Chajson, Esquire
Attorneys for Defendants Jeffrey P. Karls,
D.O. and UPMC Presbyterian

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,

CIVIL DIVISION

NO. 2001-00301-CD

Plaintiff,

vs.

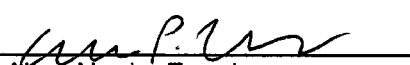
JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;

Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc., only.**

McQUAIDE, BLASKO

By: 

Allen Neely, Esquire

Attorney for Defendant, Jeffrey Rice, D.M.D.

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

JOHN D. DUTTRY, Administrator of the
Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in his
own right,
Plaintiff,
vs.

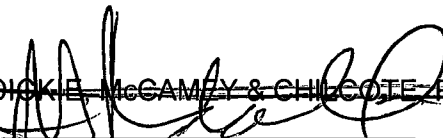
CIVIL DIVISION

NO. 2001-00301-CD

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER, INC., a
Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually
and t/a REDBANK FAMILY PRACTICE –
UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK
FAMILY PRACTICE – UPMC; JEFFREY
W. RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE LAKE
PHARMACY; THOMAS E. BOWSER,
R.P.H.; and CYNTHIA D. BOWSER,
R.P.H.;
Defendants.

**STIPULATION TO DISMISS AS TO ONLY
DEFENDANT GATEWAY INSTITUTE AND CLINIC, INC.**

AND NOW come the parties, by and through their counsel, and stipulate and
agree to the discontinuance with prejudice of this action as to **Gateway Institute and
Clinic, Inc., only.**

~~DICKIE, McGAMIZY & CHILCOTE, P.C.~~
By: 

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll, P.C.
Attorney for Defendants, Bowser
Corporation, a Pennsylvania Corporation
t/a Shankel's Pharmacy and t/a Treasure
Lake Pharmacy, Thomas E. Bowser, R. PH.
And Cynthia D. Bowser, R. PH.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN D. DUTTRY, Administrator of
the Estate of MARY JO DUTTRY,
Deceased; and JOHN D. DUTTRY, in
his own right,
Plaintiff,

CIVIL DIVISION

NO. 2001-00301-CD

vs.

JAMES K. FUGATE, M.D.; DUBOIS
REGIONAL MEDICAL CENTER,
INC., a Pennsylvania Corporation t/a
BEHAVIORAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC,
INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O.,
individually and t/a REDBANK
FAMILY PRACTICE – UPMC; UPMC
PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W.
RICE, D.M.D.; JEFFREY RICE,
D.M.D., P.C., a Pennsylvania
Professional Corporation; JEFFREY
RICE, D.M.D. and JAY L. ARLICK,
D.M.D., P.C. a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania
Corporation t/a SHANKEL'S
PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E.
BOWSER, R.P.H.; and CYNTHIA D.
BOWSER, R.P.H.;
Defendants.

FILED

APR 08 2002

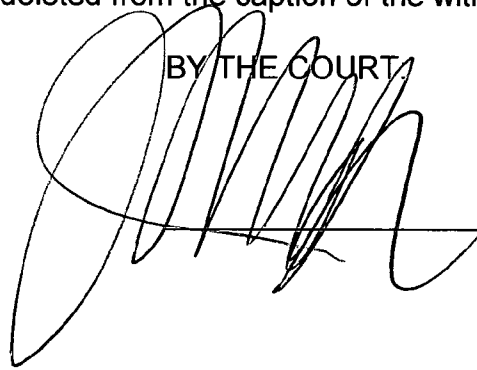
William A. Shaw
Prothonotary

ORDER

AND NOW this 8th day of April, 2002 upon consideration of the
Defendant, Gateway Institute and Clinic, Inc.'s Motion to Discontinue as to less
than all Defendants and Amend Caption, it is hereby **ORDERED** and **DECREED**

that the Plaintiff's Complaint and any and all crossclaims are dismissed with prejudice against the Defendant, Gateway Institute and Clinic, Inc. It is further **ORDERED** and **DECREED** that the Defendant's name, Gateway Institute and Clinic, Inc., shall be withdrawn and deleted from the caption of the within matter.

BY THE COURT.



, J.

FILED

APR 08 2002

01:12:13 p.m.
William A. Shaw
Prothonotary

1 cc to Atty Grimm


CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing **MOTION TO DISCONTINUE AS TO LESS THAN ALL DEFENDANTS AND AMEND CAPTION** has been sent via first class mail, postage prepaid to the following this 29th day of March, 2002:

David J. Lozier, Esquire
985 Two Chatham Center
Pittsburgh, PA 15219
Attorney for Plaintiff

Giles Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222
Attorney for Defendant, James K. Fugate

Wilbur McCoy Otto, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Attorney for Defendant, Jeffrey P. Karls, D.O. and UPMC Presbyterian

Michael Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Attorney for Defendant, DuBois Regional Medical Center, Inc.

Allen Neely, Esquire
McQuaide, Blasko
811 University Drive
State College, PA 16801-6699
Attorney for Defendant, Jeffrey Rice, D.M.D.

Marshall J. Tindall, Esquire
Julie L. Nord, Esquire
Davies, McFarland & Carroll,
P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222
Attorney for Defendants, Bowser
Corporation, a Pennsylvania
Corporation t/a Shankel's
Pharmacy and t/a Treasure Lake
Pharmacy, Thomas E. Bowser,
R. PH. And Cynthia D. Bowser,
R. PH.


Steven J. Forry

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

v.)

Plaintiff,)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH.;)

Defendants.)

CIVIL DIVISION

~~No. GD-00-12637~~

01-301-CD

Type of Pleading:
**MOTION TO MAKE RULE
ABSOLUTE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

JURY TRIAL DEMANDED

FILED

APR 29 2002

William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate	)	CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and	)	01-301-CD
JOHN D. DUTTRY in his own right,	)	No. ~~GD-00-12637~~
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES K. FUGATE, MD; DUBOIS REGIONAL	)	
MEDICAL CENTER, INC., a Pennsylvania	)	
Corporation t/a BEHAVIORAL HEALTH	)	
CENTER; GATEWAY INSTITUTE AND	)	
CLINIC, INC., a Pennsylvania Corporation;	)	
JEFFREY P. KARLS, D.O., individually and	)	
t/a REDBANK FAMILY PRACTICE – UPMC;	)	
UPMC PRESBYTERIAN, a Pennsylvania	)	
Corporation t/a REDBANK FAMILY	)	
PRACTICE – UPMC; JEFFREY W. RICE, DMD;	)	
JEFFREY RICE, DMD, PC., a Pennsylvania	)	
Professional Corporation;	)	
JEFFREY RICE, DMD, AND	)	
JAY L. ARLICK, DMD, PC, a Pennsylvania	)	
Professional Corporation; BOWSER	)	
CORPORATION, a Pennsylvania Corporation	)	
t/a SHANKEL'S PHARMACY and t/a	)	
TREASURE LAKE PHARMACY; THOMAS E.	)	
BOWSER, R.PH.; and CYNTHIA D.	)	
BOWSER, R.PH;	)	
	)	
Defendants.	)	

MOTION TO MAKE RULE ABSOLUTE

1. On or about March 11, 2002, counsel for Plaintiff filed a Petition for Leave to Withdraw as Counsel.
2. On or about March 14, 2002, this Honorable Court issued a Rule to show cause requiring written responses or objections to be filed no later than April 3, 2002.

3. On or about March 29, 2002, Defendant Gateway filed an objection to Plaintiff's Motion requesting that the Court grant their uncontested Motion to Discontinue the Matter as to Less than all Defendants before the Court issued an Order granting Plaintiff's Motion to Withdraw.

4. On or about April 8, 2002, this Court granted Defendant Gateway's Motion to Discontinue the Matter as to Less than all Defendant, therefore removing the objecting party and resolving their objection.

5. There are no remaining objections to Plaintiff's Petition for Leave to Withdraw.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court make it's Rule of March 14, 2002 absolute and grant Plaintiff's Counsel's Motion for Leave to Withdraw their appearance and simultaneously entering a stay of the case for a ninety (90) day period to enable Plaintiff an opportunity to obtain new counsel.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES,

BY:

DAVID J. LOZIER, ESQUIRE

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate)
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,)

Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

CIVIL DIVISION

01-301-CD
No. ~~GD-00-12637~~

FILED

MAY 02 2002

William A. Shaw
Prothonotary

ORDER OF COURT

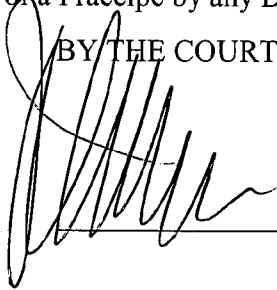
AND NOW, to wit this 2nd day of May, 2002, it is hereby ORDERED, ADJUDGED
and DECREED that the Petition of Plaintiff's Counsel for Leave to Withdraw Their Appearance
be and hereby shall be Granted, it being further Ordered that:

1. HARRY S. COHEN & ASSOCIATES, by HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE, are granted Leave to Withdraw their appearance and the Prothonotary is directed to so mark the docket of this case;

2. A stay of sixty (90) days from this date is entered to enable Plaintiff an opportunity to obtain new counsel.

3. If Plaintiff is unable to obtain new counsel within ninety (90) days hereof and no new attorney has entered their appearance on behalf of Plaintiff in that time the case shall be dismissed with prejudice upon the filing of a Praecipe by any Defendant.

BY THE COURT

A handwritten signature in black ink, appearing to be 'J. J.', is written over a horizontal line. The signature is stylized with multiple loops and a long horizontal stroke at the end.

J.

FILED

MAY 02 2002

m11,041acc aty Cohen

William A. Shaw
Prothonotary

[Signature]

CERTIFICATE OF SERVICE

I, David J. Lozier, Esquire, hereby certify that a true and correct copy of **MOTION TO MAKE RULE ABSOLUTE**, was served to the following by first class mail, postage prepaid on the 26th day of April, 2002:

Howard A. Chajson, Esquire
Dickie, McCamey & Chilcote
400 Two PPG Place
Pittsburgh, PA 15222

Giles J. Gaca, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222

Michael A. Sosnowski, Esquire
Pfaff, McIntyre, Dugas, Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533

John W. Blasko, M.D.
McQuaid & Blasko
811 University Drive
State College, PA 16801-6699

Marshall J. Tindall, Esquire
Davies, McFarland & Carroll, P.C.
One Gateway Center, 10th Floor
Pittsburgh, PA 15222

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES

BY: 

David J. Lozier, Esquire
Attorney for Plaintiffs

FILED

APR 20 2002

MB 58116 ath Cohen
William A. Shaw
Prothonotary QKD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate
of MARY JO DUTTRY, Deceased; and
JOHN D. DUTTRY in his own right,

v.

Plaintiff,

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORAL HEALTH
CENTER; GATEWAY INSTITUTE AND
CLINIC, INC., a Pennsylvania Corporation;
JEFFREY P. KARLS, D.O., individually and
t/a REDBANK FAMILY PRACTICE – UPMC;
UPMC PRESBYTERIAN, a Pennsylvania
Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC., a Pennsylvania
Professional Corporation;
JEFFREY RICE, DMD, AND
JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation
t/a SHANKEL'S PHARMACY and t/a
TREASURE LAKE PHARMACY; THOMAS E.
BOWSER, R.PH.; and CYNTHIA D.
BOWSER, R.PH;

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

No. 2001-00301-CD

Type of Pleading:

PLAINTIFF'S PLAINTIFF'S
PROOF OF SERVICE
OF COURT ORDER

Filed on Behalf of:
PLAINTIFF

Counsel of Record:
HARRY S. COHEN, ESQUIRE
PA ID# 30682

DAVID J. LOZIER, ESQUIRE
P.A. ID # 52759

HARRY S. COHEN & ASSOC.
985 Two Chatham Center
Pittsburgh, PA 15219
Firm I.D. #813
Phone: (412) 281-3000

FILED

MAY 08 2002

92/1:45/144
William A. Shaw
Prothonotary

1 Clerk to Ben

ORIGINAL

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate) CIVIL DIVISION
of MARY JO DUTTRY, Deceased; and)
JOHN D. DUTTRY in his own right,) No. GD 00-12637

Plaintiff,)

v.)

JAMES K. FUGATE, MD; DUBOIS REGIONAL)
MEDICAL CENTER, INC., a Pennsylvania)
Corporation t/a BEHAVIORAL HEALTH)
CENTER; GATEWAY INSTITUTE AND)
CLINIC, INC., a Pennsylvania Corporation;)
JEFFREY P. KARLS, D.O., individually and)
t/a REDBANK FAMILY PRACTICE – UPMC;)
UPMC PRESBYTERIAN, a Pennsylvania)
Corporation t/a REDBANK FAMILY)
PRACTICE – UPMC; JEFFREY W. RICE, DMD;)
JEFFREY RICE, DMD, PC., a Pennsylvania)
Professional Corporation;)
JEFFREY RICE, DMD, AND)
JAY L. ARLICK, DMD, PC, a Pennsylvania)
Professional Corporation; BOWSER)
CORPORATION, a Pennsylvania Corporation)
t/a SHANKEL'S PHARMACY and t/a)
TREASURE LAKE PHARMACY; THOMAS E.)
BOWSER, R.PH.; and CYNTHIA D.)
BOWSER, R.PH;)

Defendants.)

PLAINTIFF'S PROOF OF SERVICE OF COURT ORDER

AND NOW, come PLAINTIFF'S COUNSEL, HARRY S. COHEN & ASSOCIATES, by
HARRY S. COHEN, ESQUIRE and DAVID J. LOZIER, ESQUIRE and files the following
PROOF OF SERVICE OF COURT ORDER:

1. Pursuant to Local Rule of Court on this 6th day of May, 2002, Plaintiff did
place a true and correct copy the Order of Court dated May 2, 2002 in the Mail directed to all
counsel of record and all unrepresented parties.

Respectfully submitted:
HARRY S. COHEN & ASSOCIATES

BY:

DAVID J. LOZIER, ESQUIRE

FILED

MAY 08 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

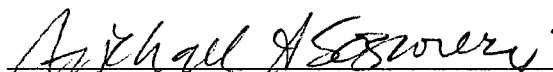
Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORIAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSWER, R.PH,

Defendants.

I CERTIFY THAT A TRUE AND CORRECT COPY
OF THE WITHIN HAS BEEN SERVED ON ALL
COUNSEL OF RECORD THIS 5TH DAY OF
AUGUST, 2002.


Attorneys for Named Defendant

CIVIL DIVISION

No. 2001 – 00301 - CD

Code: 010

Type of Pleading:

PRAECIPE TO DISCONTINUE

Filed on behalf of Defendant:

**DUBOIS REGIONAL MEDICAL
CENTER**

Counsel of Record for this Party:

**MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207**

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

P.O. Box 533

Hollidaysburg, PA 16648-0533

(814) 696-3581

FAX (814) 696-9399

FILED

AUG 06 2002

m/242/atty Sosnowski
William A. Shaw
Prothonotary



Copy CA
Cert. Div. to atty.

JOHN D. DUTTRY, Administrator of the Estate of
MARY JO DUTTRY, Deceased; and JOHN D.
DUTTRY, in his own right,

Plaintiff,

vs.

JAMES K. FUGATE, MD; DUBOIS REGIONAL
MEDICAL CENTER, INC., a Pennsylvania
Corporation t/a BEHAVIORIAL HEALTH CENTER;
GATEWAY INSTITUTE AND CLINIC, INC., a
Pennsylvania Corporation; JEFFREY P. KARLS,
D.O.; individually and t/a REDBANK FAMILY
PRACTICE – UPMC; UPMC PRESBYTERIAN, a
Pennsylvania Corporation t/a REDBANK FAMILY
PRACTICE – UPMC; JEFFREY W. RICE, DMD;
JEFFREY RICE, DMD, PC, a Pennsylvania
Professional Corporation; JEFFREY RICE, DMD
and JAY L. ARLICK, DMD, PC, a Pennsylvania
Professional Corporation; BOWSER
CORPORATION, a Pennsylvania Corporation t/a
SHANKEL'S PHARMACY and t/a TREASURE
LAKE PHARMACY; THOMAS E. BOSWER, R.PH;
and CYNTHIA D. BOWSWER, R.PH,

Defendants.

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

No. 2001 – 00301 - CD

JURY TRIAL DEMANDED

PRAECIPE TO DISCONTINUE

TO: PROTHONOTARY

Kindly mark the above captioned matter as discontinued and ended, with prejudice,
pursuant to Judge Reilly's Order of May 2, 2002.

McINTYRE, DUGAS, HARTYE & SCHMITT


Attorneys for DuBois Regional Medical Center
MICHAEL A. SOSNOWSKI, ESQUIRE
PA ID# 67207
P.O. Box 533
Hollidaysburg, PA 16648
PH: 814/696-3581
FAX: 814/696-9399

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

COPY

John Duttry
Mary Jo Duttry

Vs.

No. 2001-00301-CD

James K. Fugate MD
DuBois Regional Medical Center, Inc.
Behavioral Health Center
Jeffrey P. Karls DO
Redbank Family Practice-UPMC
UPMC Presbyterian
Jeffrey W. Rice DMD
Jeffrey Rice DMD PC
Jeffrey Rice DMD
Jay L. Arlick DMD PC
Bowser Corporation
Shankel's Pharmacy
Treasure Lake Pharmacy
Thomas E. Bowser RPH
Cynthia D. Bowser RPH

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 August 6, 2002 marked:

Discontinued and Ended with Prejudice.

Record costs in the sum of \$70.00 have been paid in full by Michael A. Sosnowski, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of August A.D. 2002.



William A. Shaw, Prothonotary