

01-361-00  
CINDY E. WEBER et ux -vs- BASHIR YOUSSEFZAI, MD et al

10

5/2/03

Order of this Court that Plaintiff's  
Petition for Delay Damages —

4-13-04 Order, and now, this 13th day  
of April: re: motion to withdraw as  
Council filed by Jeffrey S. Dubois, granted



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

CIVIL DIVISION

Plaintiffs,

Civil Action No. \_\_\_\_\_

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**NOTICE TO DEFEND**

TO DEFENDANTS:

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

**YOU SHOULD TAKE THIS PAPER TO YOUR LAYER 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.**

Office of the Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

CIVIL DIVISION

Civil Action No. \_\_\_\_\_

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**COMPLAINT IN CIVIL ACTION**

AND NOW comes Plaintiffs, Cindy Weber and Ricky Weber, by and through their attorneys, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and files the following Complaint:

1. Plaintiffs, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D. 1, Box 38-1A, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Dr. Bashir Yousufzai (hereinafter Yousufzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania, and at all times relevant hereto was the treating physician of wife plaintiff.

3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws

of the Commonwealth of Pennsylvania with an office and place of business at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Yousufzai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of the corporate defendant.

5. Wife plaintiff visited the office of Defendants for an examination due to pain in her arms and hands. During the course of the treatment, Yousufzai made unwanted, forceful, sexual contact with wife plaintiff, including but not limited to, ejaculating on the wife plaintiff. Yousufzai also prescribed inappropriate medications and dosages to wife plaintiff.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nausea;
- (c) nervousness and depression;
- (d) tension;
- (e) fear and embarrassment; and
- (f) anxiety.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health and vitality have been reduced; and
- (c) she has suffered emotional and psychological trauma.

*Count I*

*Cindy Weber v. Bashir Yousufzai, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Assault and Battery*

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Defendant constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact.

10. As a result of Defendant's conduct, Plaintiff suffered both physical pain and great emotional suffering.

11. The actions of Defendant constitute an intentional tort and is such willful, reckless and outrageous conduct as to shock the conscience, and entitle Plaintiff to an award of punitive damages.

12. As a result of the defendants' conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

*Count II*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Professional Negligence*

13. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with defendants, Yousufzai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the defendants were negligent and fall below the standard of care required of professionals in the medical vocation.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) rubbing his body against wife plaintiff's body;
- (b) unzipping his pants and rubbing his penis on wife plaintiff's bare buttocks;
- (c) twice ejaculating on wife plaintiff during the course of an examination;
- (d) prescribing incorrect and unwarranted amounts of medications;
- (e) unneeded and unwanted modalities; and
- (f) ineffective and non-standard methods of treating headaches and arm numbness.

17. As a result of the negligence and/or recklessness of the defendants in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Count III*

*Cindy Weber v. Dr. Bashir Yousufzai and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Lack of Informed Consent*

18. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

19. The defendant physician had a legal obligation to inform the patient of the risks associated with his professional services.

20. Defendants knew or should have known that the treatment given to wife plaintiff would likely result in severe emotional trauma to her due to the negligent, outrageous and/or malicious conduct of the defendants.

21. Despite this knowledge, the defendant failed to apprise the patient of the risks associated with his activities and treatment.

22. As a result of the lack of informed consent, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count IV*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

23. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

24. Defendants acted with the intention of causing wife plaintiff to suffer mental anguish and severe emotional distress.

25. As a result of the defendants' outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count V*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

26. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

27. Defendants, as medical providers, owed a professional duty to wife plaintiff by the nature of their relationship as doctor to patient.

28. Defendants breached the duty owed to wife plaintiff when she was inappropriately touched and ejaculated upon her.

29. Defendants also breached their duty to wife plaintiff by employing defendant Yousufzai and further by allowing the conduct to take place on their premises and under the auspices of their corporation.

30. The defendants' breach of duty to plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) extreme emotional distress; and
- (b) extreme physical stress.

31. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and
- (b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Ricky L. Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

32. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

33. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with attorneys' fees, court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted this 8<sup>th</sup> day of March, 2001.

By: \_\_\_\_\_

  
Robert B. Woomer, Esquire  
PA I.D. 59030

WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 563-7980

VERIFICATION

We, <sup>Cindy</sup> ~~Wendy~~ E. Weber and Rick Weber, wife and husband, being duly sworn according to law, depose and say that the facts contained in the foregoing Complaint in Civil Action are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Cindy E. Weber  
Signature

Rick L Weber  
Signature

*Handwritten:* H 200  
FILED  
MAR 12 2001  
City of Worcester pd \$80.00  
1719 2012 cc Shewitt  
William A. Shaw  
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10783

WEBER, CINDY & RICKY L.

01-361-cd

VS.

YOUSUFZAI, BASHIR M.D. & LIBERTY PHYSICAL MEDICINE

COMPLAINT

SHERIFF RETURNS

NOW MARCH 13, 2001 AT 8:50 AM EST SERVED THE WITHIN COMPLAINT ON BASHIR YOUSUFZAI, M.D., DEFENDANT AT THE CLEARFIELD COUNTY JAIL, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING BASHIR YOUSUFZAI, M.D. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF. SERVED BY: DAVIS/MORGILLO

NOW MARCH 13, 2001 AT 12:20 PM EST SERVED THE WITHIN COMPLAINT ON LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES P.C., DEFENDANT AT EMPLOYMENT, 145 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CONNIE PENDOLINO, OFFICE MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: SNYDER/SHULTZ

Return Costs

Cost	Description
34.88	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED

MAR 14 2001  
11:57 pm  
William A. Shaw  
Prothonotary

Sworn to Before Me This

14th Day of March 2001  
*William A. Shaw*  
WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

So Answers,

*Chester A. Hawkins*  
by *Marilyn Harris*  
Chester A. Hawkins  
Sheriff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

NO. 01361-00

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Praeceptum for Entry of Appearance on Behalf of Bashir Yousufzai, M.D., in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21<sup>st</sup> day of March, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
1701 McFarland Road  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 23809624

**FILED**

MAR 22 2001

m/l:io/ny  
William A. Shaw  
Prothonotary

no c/c of  
KRS

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**FILED**

MAR 23 2001

William A. Shaw  
Prothonotary

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of WALTER FREDRICK WALL, ESQUIRE, of MEYER,  
DARRAGH, BUCKLER, BEBENEK & ECK, PLLC as Counsel of record on behalf of the  
Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By   
WALTER FREDRICK WALL, ESQUIRE  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

DATED: 3/22/01

**FILED**

MAR 23 2001

*Wm*  
William A. Shaw  
Prothonotary

③  
CAY

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**FILED**

MAR 23 2001

William A. Shaw  
Prothonotary

**PRELIMINARY OBJECTIONS**

NOW comes the Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C. by and through their Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files these Preliminary Objections to Plaintiffs' Complaint of which the following is a statement:

**I. DEMURRER**

*for summary judgment*  
*at 11:15 please provide*

1. Plaintiffs bring this Complaint against Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. allegedly as the master principal employer of Defendant, Bashir Yousufzai, M.D. alleging "unwanted, forceful, sexual contact" by the co-Defendant with the Plaintiff-wife.

2. Plaintiff then alleges against this Defendant in Count I claims for Assault and Battery, Count IV claims for Intentional Infliction of Emotional Distress, all of which are intentional in nature and based upon the allegations in the Complaint, criminal in nature.

3. The law of this Commonwealth does not recognize recovery under a theory of

vicarious liability for intentional criminal acts.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Counts I and IV be dismissed.

**II. DEMURRER**

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

*Count 1*  
5. Plaintiff claims against this Defendant on the basis of being the master, principal employer of the co-Defendant punitive damages in Count I and Count IV.

6. The law of this Commonwealth does not recognize imposition of exemplary damages against an employer for the intentional wrongful conduct of an employee.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that the claims for punitive damages in Count I and Count IV be dismissed.

**III. DEMURRER**

*Count 16  
abc*  
7. Plaintiff alleges liability against this Defendant as the master, principal employer of the co-Defendant in Count II under Professional Negligence alleging boiler plate allegations as to the allegations set forth in paragraph 16, all of which are clearly intentional and/or criminal by their nature and all of which Plaintiffs allege in other Counts to have been intentional and/or criminal wrongdoings.

*16  
p. 8*  
8. The Court must take judicial notice of previously concluded criminal charges against the co-Defendant resulting in a conviction beyond a reasonable doubt for such criminal conduct.

9. Merely alleging intentional criminal conduct as negligence in nature is not

sufficient to support such cause of action under the circumstances of this case.

10. Plaintiff fails to set forth a recognized cause of action under a theory of professional negligence.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count II of Plaintiffs' Complaint be dismissed.

*PK*

#### IV. DEMURRER

11. Plaintiff alleges under Count III liability upon this Defendant on the basis of master, principal employer status a claim of Lack of Informed Consent.

12. The allegations in support of same are those that are otherwise plead and recognized clearly as intentional/criminal acts alleged by the co-Defendant.

13. The pleading of a theory of Lack of Informed Consent under the circumstances set forth in Plaintiffs' Complaint is ludicrous.

14. The law of this Commonwealth does not provide a cause of action under Lack of Informed Consent under the circumstances of this case.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count III of Plaintiffs' Complaint be dismissed.

#### V. DEMURRER

*rebutted*

15. Plaintiff claims damages against this Defendant under a theory of Intentional Infliction of Emotional Distress.

16. The cause of action of Intentional Infliction of Emotional Distress is not recognized under the law of this Commonwealth.

17. Plaintiff's Count IV fails to set forth necessary elements of emotional distress.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count IV of Plaintiffs' Complaint be dismissed.

**VI. DEMURRER**

*rebut* 18. In Count V Plaintiff attempts to set forth a claim of Negligent Infliction of Emotional Distress.

19. The allegations of Plaintiffs' Complaint fail to set forth necessary elements to establish a right to such claim.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count V of Plaintiffs' Complaint be dismissed.

**VII. MOTION TO STRIKE**

*no* 20. Plaintiffs in all of the ad damnum clauses through the VI Counts sets forth in the Complaint seek damages including, "any and all other relief permitted by this Court".

21. This action is an action at law setting forth various theories of liability for which there is no other relief granted other than those plead.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that the above language be stricken from all Counts of Plaintiffs' Complaint.

**VIII. MOTION TO STRIKE**

*out* 22. In Count VI of Plaintiffs' Complaint alleging a loss of consortium claim on behalf of the Plaintiff, Ricky L. Weber, the ad damnum clause seeks attorneys' fees.

23. The law of this Commonwealth does not provide for recovery of attorneys' fees under any of the Counts alleged in Plaintiffs' Complaint.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates,

P.C. prays that the claim for attorneys' fees be stricken from Count VI.

*Of if amended*

**IX. MOTION TO STRIKE**

24. In Counts II and III of Plaintiffs' Complaint, Plaintiff seeks imposition of punitive damages against this Defendant under a theory of master, principal employer.

25. Plaintiffs' Complaint is devoid of any allegations supporting the pleading of punitive damages against this Defendant.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that the claims for punitive damages be stricken from Counts II and III.

**X. MOTION FOR A MORE SPECIFIC PLEADING**

26. Plaintiffs fail to set forth in any of the allegations in Plaintiffs' Complaint the alleged dates or time frame of the conduct of the co-Defendant for which Plaintiffs would attempt to hold this Defendant liable.

27. The failure of Plaintiffs to plead specifically in accordance with the Pennsylvania Rules of Civil Procedure prejudices this Defendant in being unable to determine applicable defenses to such claims.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs be compelled to file an Amended Complaint setting forth with specificity the dates and/or time frame of the alleged conduct.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By *Walter Fredrick Wall*  
WALTER FREDRICK WALL, ESQUIRE  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 22<sup>nd</sup> day of March, 2001, a true and correct copy of the within Preliminary Objections was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By  \_\_\_\_\_  
WALTER FREDRICK WALL, ESQUIRE  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

FILED

MAR 23 2001

William A. Shaw  
Prothonotary

*WAS*  
M 12/10/2000

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CA

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

FILED  
MAR 23 2001  
William A. Shaw  
Prothonotary

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2. Plaintiff then alleges against this Defendant in Count I claims for Assault and Battery, Count IV claims for Intentional Infliction of Emotional Distress, all of which are intentional in nature and based upon the allegations in the Complaint, criminal in nature.

3. The law of this Commonwealth does not recognize recovery under a theory of

vicarious liability for intentional criminal acts.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Counts I and IV be dismissed.

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

5. Plaintiff claims against this Defendant on the basis of being the master, principal employer of the co-Defendant punitive damages in Count I and Count IV.

6. The law of this Commonwealth does not recognize imposition of exemplary damages against an employer for the intentional wrongful conduct of an employee.

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## **III. DEMURRER**

7. Plaintiff alleges liability against this Defendant as the master, principal employer of the co-Defendant in Count II under Professional Negligence alleging boiler plate allegations as to the allegations set forth in paragraph 16, all of which are clearly intentional and/or criminal by their nature and all of which Plaintiffs allege in other Counts to have been intentional and/or criminal wrongdoings.

8. The Court must take judicial notice of previously concluded criminal charges against the co-Defendant resulting in a conviction beyond a reasonable doubt for such criminal conduct.

9. Merely alleging intentional criminal conduct as negligence in nature is not

sufficient to support such cause of action under the circumstances of this case.

10. Plaintiff fails to set forth a recognized cause of action under a theory of professional negligence.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count II of Plaintiffs' Complaint be dismissed.

*no*

**IV. DEMURRER**

11. Plaintiff alleges under Count III liability upon this Defendant on the basis of master, principal employer status a claim of Lack of Informed Consent.

12. The allegations in support of same are those that are otherwise plead and recognized clearly as intentional/criminal acts alleged by the co-Defendant.

13. The pleading of a theory of Lack of Informed Consent under the circumstances set forth in Plaintiffs' Complaint is ludicrous.

14. The law of this Commonwealth does not provide a cause of action under Lack of Informed Consent under the circumstances of this case.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count III of Plaintiffs' Complaint be dismissed.

*no*

**V. DEMURRER**

15. Plaintiff claims damages against this Defendant under a theory of Intentional Infliction of Emotional Distress.

16. The cause of action of Intentional Infliction of Emotional Distress is not recognized under the law of this Commonwealth.

17. Plaintiff's Count IV fails to set forth necessary elements of emotional distress.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count IV of Plaintiffs' Complaint be dismissed.

**VI. DEMURRER**

18. In Count V Plaintiff attempts to set forth a claim of Negligent Infliction of Emotional Distress.

19. The allegations of Plaintiffs' Complaint fail to set forth necessary elements to establish a right to such claim.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Count V of Plaintiffs' Complaint be dismissed.

**VII. MOTION TO STRIKE**

20. Plaintiffs in all of the ad damnum clauses through the VI Counts sets forth in the Complaint seek damages including, "any and all other relief permitted by this Court".

21. This action is an action at law setting forth various theories of liability for which there is no other relief granted other than those plead.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that the above language be stricken from all Counts of Plaintiffs' Complaint.

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22. In Count VI of Plaintiffs' Complaint alleging a loss of consortium claim on behalf of the Plaintiff, Ricky L. Weber, the ad damnum clause seeks attorneys' fees.

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P.C. prays that the claim for attorneys' fees be stricken from Count VI.

**IX. MOTION TO STRIKE**

24. In Counts II and III of Plaintiffs' Complaint, Plaintiff seeks imposition of punitive damages against this Defendant under a theory of master, principal employer.

25. Plaintiffs' Complaint is devoid of any allegations supporting the pleading of punitive damages against this Defendant.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that the claims for punitive damages be stricken from Counts II and III.

**X. MOTION FOR A MORE SPECIFIC PLEADING**

26. Plaintiffs fail to set forth in any of the allegations in Plaintiffs' Complaint the alleged dates or time frame of the conduct of the co-Defendant for which Plaintiffs would attempt to hold this Defendant liable.

27. The failure of Plaintiffs to plead specifically in accordance with the Pennsylvania Rules of Civil Procedure prejudices this Defendant in being unable to determine applicable defenses to such claims.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs be compelled to file an Amended Complaint setting forth with specificity the dates and/or time frame of the alleged conduct.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By  \_\_\_\_\_  
WALTER FREDRICK WALL, ESQUIRE  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 22<sup>nd</sup> day of March, 2001, a true and correct copy of the within Preliminary Objections was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By



WALTER FREDRICK WALL, ESQUIRE  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

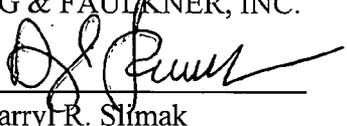
01-361-CD  
NO. ~~01361-00~~

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that Defendant Yousufzai's Expert Interrogatories for Answer by Plaintiffs were mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 28<sup>th</sup> day of March, 2001, to Robert E. Woomer, Esquire, Woomer & Friday, L. L. P., 1701 McFarland Road, Pittsburgh, PA 15216 and Walter F. Wall, Esquire, Meyer, Darrah, Buckler, Bebenek & Eck, 120 Lakemont Park Boulevard, Altoona, PA 16602.

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

By: 

Darryl R. Slimak  
Attorneys for Defendant  
Bashir Yousufzai, M. D.

**FILED**

MAR 29 2001

William A. Shaw  
Prothonotary

**FILED**

MAR 29 2001

*M. J. S. K. D. C.*  
William A. Shaw  
Prothonotary

*W. A. Shaw*

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 30<sup>th</sup> day of March, 2001, a true and correct copy of the Request for Production of Documents Directed to Plaintiffs on behalf of Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: *Walter F. Wall*  
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
I.D. #23657

**FILED**

APR 02 2001

*m/12-556me*  
William A. Shaw  
Prothonotary

*no c/c*

*WED*

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 30<sup>th</sup> day of March, 2001, a true and correct copy of the Interrogatories Directed to Plaintiffs on behalf of Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: *Walter F. Wall*  
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
I.D. #23657

**FILED**

APR 02 2001  
12:55 PM  
William A. Shaw  
Prothonotary

no c/c *WFB*

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

CINDY E. WEBER, and	)	Civil Division
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**PRAECIPE FOR ARGUMENT**

TO THE PROTHONOTARY:

KINDLY SUBMIT THIS MATTER TO THE  
COURT FOR ARGUMENT ONLY

1. The matter to be submitted for argument is Preliminary Objections of Defendant, Bashir Yousufzai, M.D.
2. Oral argument is requested.
3. This is not a discovery matter.
4. I certify that notice has been given to all counsel of record and to all unrepresented parties of record of the filing of this Praecipe.

**FILED**

APR 03 2001

William A. Shaw  
Prothonotary

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

By: 

Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 234-5620

Date: 4/2/01

10/16/14

FILED

APR 03 2001  
01149120CC  
William A. Shaw  
Prothonotary

11

9 CA

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

CINDY E. WEBER, and )  
RICKY L. WEBER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants. )

Civil Action No. 01-361-00

16 3 2001

FILED

APR 03 2001

William A. Shaw  
Prothonotary

**PRELIMINARY OBJECTIONS OF DEFENDANT, BASHIR YOUSUFZAI, M.D.**

AND NOW comes the Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Preliminary Objections to Plaintiffs' Complaint, as follows:

1. This apparent medical malpractice / personal liability action was commenced on March 8, 2001 by Plaintiffs, Cindy E. Weber and Ricky L. Weber, in the Court of Common Pleas of Clearfield County. (See copy of Plaintiff's Complaint, attached hereto as Exhibit "A").
2. Briefly stated, Plaintiffs generally allege that Defendant Dr. Yousufzai acted inappropriately and/or prescribed improper medications and dosages to Plaintiff-wife during an unspecified date and time at the Defendant's office. (See Exhibit "A," at ¶5).
3. Based upon such allegations, Plaintiffs' Complaint contains six Counts: Count I (Assault and Battery); Count II (Professional Negligence); Count III (Lack of Informed Consent); Count IV (Intentional Infliction of Emotional Distress); Count V (Negligent Infliction of Emotional Distress); and Count VI (Loss of Consortium). (See Exhibit "A").

4. Defendant Dr. Yousufzai raises Preliminary Objections on the following basis:
  - i) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claim for Lack of Informed Consent (Count III) Where Plaintiff has Failed to Plead Sufficient Facts to Support Such a Claim as a Matter of Law;
  - ii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Where Plaintiff has Failed to Plead Sufficient Facts to Support Such Claims as a Matter of Law;
  - iii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Where the Emotional Damages Sought Thereby are Unnecessarily Duplicative of That Recoverable Within Plaintiff-wife's Previously Asserted Claims;
  - iv) Preliminary Objection in the Nature of a Motion to Strike / Motion to Dismiss to Plaintiff-husband's Request for Attorneys' Fees Contained within the Demand Clause of Count VI of the Complaint Where There is No Statutory and/or Common Law Basis for the Recovery of Such Damages in this Action; and,
  - v) Preliminary Objection in the Nature of a Motion for More Specific Pleading for Failing to Specify Dates and Times with Particular Specificity in Violation of Pa.R.C.P. 1019(f).

**I. Demurrer: Plaintiff's Count III Claim for Lack of Informed Consent Must be Dismissed Where Plaintiff Has Failed to State a Claim upon Which Relief May Be Granted As to This Cause of Action**

5. Paragraphs 1 through 4 are incorporated by reference as though set forth at length herein.

6. Within Count III of the Complaint, Plaintiff, Cindy Weber, asserts a claim for "lack of informed consent" against Objecting Defendant, Bashir Yousufzai, M.D, as well as Liberty Physical Medicine & Rehabilitation Associates, P.C.

7. Defendant Dr. Yousufzai respectfully submits that Plaintiff has failed to state a claim upon which relief can be granted for lack of informed consent.

8. Plaintiff's allegations of lack of informed consent are contained within Paragraphs 19 through 22 of the Complaint, which provide as follows:

- “19. The defendant physician had a legal obligation to inform the patient of the risks associated with his professional services.
20. Defendants knew or should have known that the treatment given to wife plaintiff would likely result in severe emotional trauma to her due to the negligent, outrageous and/or malicious conduct of the defendants.
21. Despite this knowledge, the defendant failed to apprise the patient of the risks associated with his activities and treatment.
22. As a result of the lack of informed consent, wife plaintiff has suffered the damages explained above.”

(See Exhibit “A,” at Count III, Paragraphs 19 through 22).

9. It is the law of this Commonwealth that the duty to obtain the informed consent of a patient applies only to a physician who performs a surgical procedure or other procedure specified in 40 P.S. §1301.811-A(a).<sup>1</sup>

10. Plaintiff has not alleged that Dr. Yousufzai performed a surgical and/or operative procedure, nor has Plaintiff alleged that Dr. Yousufzai performed any of the procedures enumerated within 40 P.S. §1301.811-A(a).

---

<sup>1</sup> The procedures enumerated in 40 P.S. §1301.811-A(a) for which a physician is required to obtain the patient's informed consent are as follows:

- (1) Performing surgery, including the related administration of anesthesia.
- (2) Administering radiation or chemotherapy.
- (3) Administering a blood transfusion.
- (4) Inserting a surgical device or appliance.
- (5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.”

See 40 P.S. §1301.811-A(a).

11. As a result, Plaintiff has failed to state a claim upon which relief can be granted for lack of informed consent against Dr. Yousufzai.

12. Based upon the foregoing, Plaintiff's claim of lack of informed consent against Dr. Yousufzai, as pleaded within Count III, Paragraphs 19 through 22, should be dismissed from Plaintiffs' Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff's claim for lack of informed consent against Dr. Yousufzai, as pleaded within Count III, Paragraphs 19 through 22, of the Complaint, with prejudice.

**II. Demurrer: Plaintiff's Claims of Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Must be Dismissed Where Plaintiff Has Failed to State Claims upon Which Relief May Be Granted**

13. Paragraphs 1 through 12 are incorporated by reference as though set forth at length herein.

14. Within Counts IV and V of the Complaint, Plaintiff, Cindy Weber, on her own behalf, asserts claims for both Intentional and Negligent Infliction of Emotional Distress against Defendant Dr. Yousufzai and Liberty Physical Medicine & Rehabilitation Associates, P.C.

15. With regard to Plaintiff-wife's Count IV claim of Intentional Infliction of Emotional Distress, the Pennsylvania Supreme Court has not adopted this purported claim as a cause of action in this Commonwealth.

16. Indeed, even assuming that the tort of Intentional Infliction of Emotional Distress had been formally adopted as a cause of action, Plaintiff has failed to set forth sufficient facts to state a prima facie case for this purported claim, as a matter of law.

17. Specifically, Plaintiff has failed to plead sufficient factual allegations to suggest that the actions of Dr. Yousufzai were "intended" and/or "calculated" to bring about Plaintiff-

wife's alleged emotional distress.

18. Moreover, Plaintiffs' Complaint, while admittedly setting forth facts of a sensitive nature, fails to establish the same sort of "extreme and outrageous" conduct that has been found to meet the level of "towering proof" that is required to sustain a claim of Intentional Infliction of Emotional Distress, if, indeed, this claim is assumed to exist.

19. With regard to Plaintiff-wife's Count V claim of Negligent Infliction of Emotional Distress, Plaintiff has also failed to state a claim upon which relief may be granted.

20. Specifically, Plaintiff has failed to plead sufficient facts to state a claim under either the "bystander" and/or "impact" theories of recovery under the Negligent Infliction of Emotional Distress doctrine.

21. To the contrary, Plaintiff's Count V claim of emotional distress, which is brought on Plaintiff-wife's own behalf, attempts to assert a direct and independent claim of Negligent Infliction of Emotional Distress, which has not been recognized by recent Appellate Court case law.

22. Based upon the foregoing, Plaintiff has failed to state a claim upon which relief can be granted for the claims of Intentional and Negligent Infliction of Emotional Distress that are asserted against Dr. Yousufzai at Counts IV and V of Plaintiffs' Complaint.

23. Accordingly, Plaintiff's claims of Intentional and Negligent Infliction of Emotional Distress against Dr. Yousufzai, as pleaded within Counts IV and V, should be dismissed from Plaintiffs' Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff's claims of Intentional and Negligent Infliction of Emotional Distress, as pleaded within Counts IV and V of the Complaint, with prejudice.

**III. Demurrer: Plaintiff's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Must be Dismissed Where the Claims and Damages Sought Thereby are Unnecessarily Duplicative of Those Within Plaintiff's Previously Asserted Claims**

24. Paragraphs 1 through 23 are incorporated by reference as though set forth at length herein.

25. In the event that Plaintiff's claims for Intentional and Negligent Infliction of Emotional Distress are not dismissed for the foregoing reasons, it is submitted that additional grounds exist for dismissing such claims, as a matter of law.

26. Specifically, Plaintiff's Intentional and Negligent Infliction of Emotional Distress claims seek to recover damages that are identical to that pled within Plaintiff's previously asserted claims of Assault and Battery (Count I) and Professional Negligence (Count II).

27. Because Pennsylvania law prohibits litigants from obtaining unfair duplicative recoveries, and Plaintiffs' claims asserting Intentional and/or Negligent Infliction of Emotional Distress are simply duplicative of Plaintiffs' pleaded claims of Assault and Battery and/or Professional Negligence, it is requested that the within demurrer be granted and that Plaintiff's claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) be dismissed, with prejudice.

28. Within Counts IV and V, the injuries alleged and damages sought to be recovered include: "extreme emotional distress and physical stress, mental anguish, nervous shock, embarrassment, shame, humiliation, and medical expenses." (See Exhibit "A," at Count IV, Paragraph 25; and Count V, Paragraphs 30 and 31).

29. The foregoing damages are identical to and, indeed, overlap, those damages sought to be recovered by Plaintiff's previously asserted claims of Assault and Battery (Count I)

and Professional Negligence (Count II).

30. Within Counts I and II, which are also brought on Plaintiff-wife's own behalf, Plaintiff seeks to recover for "physical pain and great emotional suffering" and "temporary and permanent physical and emotional injuries." (See Exhibit "A," at Count I, Paragraph 10; and, Count II, Paragraph 25).

31. Because the claims raised at Counts I, II, IV and V of the Complaint are all brought on behalf of Plaintiff-wife, in her own right, and because there is no discernable difference between the theories of relief and/or injuries alleged and/or damages sought with respect to these claims, it would be unfairly prejudicial and legally improper to permit such claims to proceed, and same are unnecessarily duplicative.

32. Accordingly, Plaintiff's claims of Intentional Infliction of Emotional Distress (Count IV) and Negligent Infliction of Emotional Distress (Count V) should be stricken and dismissed from Plaintiffs' Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff's claims of Intentional and Negligent Infliction of Emotional Distress against Dr. Yousufzai, as pleaded within Counts IV and V of the Complaint, with prejudice.

*DW*  
**IV. Motion to Strike / Motion to Dismiss : Plaintiff-husband's Request for Attorneys' Fees Contained Within the Demand Clause of Count VI of the Complaint Should be Dismissed Where There is No Statutory and/or Common Law Basis for the Award of Such Damages in this Action**

33. Paragraphs 1 through 32 are incorporated by reference as though set forth at length herein.

34. Within the demand clause of Count VI of Plaintiffs' Complaint, Plaintiff-husband seeks to recover, inter alia, "attorneys' fees, court costs, interest and any and all other relief

permitted by this Court.” (See Exhibit “A,” at Demand Clause of Count VI)(emphasis added).

35. Defendant Dr. Yousufzai respectfully submits that nothing within the Complaint would entitle Plaintiff-husband to recover attorneys’ fees in the present cause of action.

36. Moreover, there is no statutory and/or common law basis for awarding attorneys’ fees based upon the facts set forth within Plaintiffs’ Complaint.

37. Accordingly, Plaintiff’s claim for “attorneys’ fees” should be stricken and dismissed from the Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court strike and dismiss Plaintiff-husband’s claims for “attorneys’ fees,” as pleaded within the demand clause of Count VI of the Complaint, with prejudice.

**V. Motion for a More Specific Pleading - Plaintiffs Should be Required to File a More Specific Pleading Where Dates and Times Have Not Been Plead with Particular Specificity in Violation of Pa.R.C.P. 1019(f)**

*date 8/26/18  
med*

38. Paragraphs 1 through 37 are incorporated by reference as though set forth at length herein.

39. Within Paragraph 5 of the Complaint, it is averred as follows:

“5. Wife plaintiff visited the office of Defendants for an examination due to pain in her arms and hands, . . . Yousufzai made unwanted, forceful, sexual contact with wife plaintiff, . . . (and) also prescribed inappropriate medications and dosages to wife plaintiff.”

(See Exhibit “A,” at Paragraph 5).

40. Pennsylvania Rule of Civil Procedure 1019(f) provides that, with respect to the “contents of pleadings, **averments of time**, place and items of special damages shall be specifically stated.” See Pa.R.C.P. 1019(f).

41. Plaintiffs’ Complaint, and specifically Paragraph 5, fails to specify the date(s) and

time(s) associated with the alleged actions, which places said averments in direct violation of Pa.R.C.P. 1019(f).

42. Accordingly, Plaintiffs should be required to file an Amended Complaint which specifically sets forth all date(s) and time(s) upon which Dr. Yousufzai is alleged to have committed the acts and/or omissions complained of within Plaintiffs' Complaint.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court require Plaintiffs to file an Amended Complaint which specifically sets forth all date(s) and time(s) upon which Dr. Yousufzai is alleged to have committed the acts and/or omissions complained of within Plaintiffs' Complaint.

Respectfully submitted,

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

BY 

Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 4/2/01

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

CINDY E. WEBER, and )  
RICKY L. WEBER )  
 ) Civil Action No. 01-361-00  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants. )

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Preliminary Objections of Defendant, Bashir Yousufzai, M.D. in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 2<sup>nd</sup> day of April, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P  
1701 McFarland Road  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By:  \_\_\_\_\_

Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624



814-941-4605  
Attn: Roxanne  
Re: 33695402  
Liberty Med. Ass.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

Plaintiff,

v.

BASIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Civil Action No. 01361-CO

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert B. Woomer, Esquire  
PA I.D.# 59030

*(P)*

WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 563-7980

I hereby certify this to be a true  
and correct copy of the original  
statement filed in this case.

MAR 12 2001

Attest

*[Signature]*  
Secretary

JURY TRIAL DEMANDED

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

**CINDY E. WEBER, and  
RICKY L. WEBER,**

**CIVIL DIVISION**

**Plaintiff,**

**Civil Action No. \_\_\_\_\_**

**v.**

**BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,**

**Defendants.**

**NOTICE TO DEFEND**

**TO DEFENDANTS:**

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

**YOU SHOULD TAKE THIS PAPER TO YOUR LAYER 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.**

**Office of the Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641**

**Complaint in Civil Action  
Page 2**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and  
RICKY L. WEBER

Plaintiffs,

CIVIL DIVISION

Civil Action No. \_\_\_\_\_

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

COMPLAINT IN CIVIL ACTION

AND NOW comes Plaintiff, Cindy Weber and Ricky Weber, by and through their attorneys, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and files the following Complaint:

1. Plaintiff, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D. 1, Box 38-1A, Penfield, Clearfield County, Pennsylvania.
2. Defendant, Dr. Bashir Yousofzai (hereinafter Yousofzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania, and at all times relevant hereto was the treating physician of wife plaintiff.
3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws

of the Commonwealth of Pennsylvania with an office and place of business at 149 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Younsfai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of the corporate defendant.

5. Wife plaintiff visited the office of Defendants for an examination due to pain in her arms and hands. During the course of the treatment, Younsfai made unwanted, forcible, sexual contact with wife plaintiff, including but not limited to, ejaculating on the wife plaintiff. Younsfai also prescribed inappropriate medications and dosages to wife plaintiff.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nauses;
- (c) nervousness and depression;
- (d) tension;
- (e) fear and embarrassment; and
- (f) Anxiety.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health and vitality have been reduced; and
- (c) she has suffered emotional and psychological trauma.

*Court 1*

***Cindy Weber v. Basir Yusufzai, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.***

**Assault and Battery**

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Defendant constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact.

10. As a result of Defendant's conduct, Plaintiff suffered both physical pain and great emotional suffering.

11. The actions of Defendant constitute an intentional tort and is such willful, reckless and outrageous conduct as to shock the conscience, and entitle Plaintiff to an award of punitive damages.

12. As a result of the defendants' conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

**Count II**

**Cindy Weber v. Bashir Yousofzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.**

**Professional Negligence**

13. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with defendants, Yousofzai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the defendants were negligent and fall below the standard of care required of professionals in the medical vocation.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) rubbing his body against wife plaintiff's body;
- (b) unzipping his pants and rubbing his penis on wife plaintiff's bare buttocks;
- (c) twice ejaculating on wife plaintiff during the course of an examination;
- (d) prescribing incorrect and unwarranted amounts of medications;
- (e) unneeded and unwanted modalities; and
- (f) ineffective and non-standard methods of treating headaches and arm numbness.

17. As a result of the negligence and/or recklessness of the defendants in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Court III*

*Cindy Weber v. Dr. Bashir Youssufi and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Lack of Informed Consent*

18. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

19. The defendant physician had a legal obligation to inform the patient of the risks associated with his professional services.

20. Defendants knew or should have known that the treatment given to wife plaintiff would likely result in severe emotional trauma to her due to the negligent, outrageous and/or malicious conduct of the defendants.

21. Despite this knowledge, the defendant failed to apprise the patient of the risks associated with his activities and treatment.

22. As a result of the lack of informed consent, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Court IV*

*Cindy Weber v. Bashir Youngdal, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

23. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

24. Defendants acted with the intention of causing wife plaintiff to suffer mental anguish and severe emotional distress.

25. As a result of the defendants' outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Court V*

*Cindy Weber v. Bashir Youngdal, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

26. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

27. Defendants, as medical providers, owed a professional duty to wife plaintiff by the nature of their relationship as doctor to patient.

28. Defendants breached the duty owed to wife plaintiff when she was inappropriately touched and ejaculated upon her.

29. Defendants also breached their duty to wife plaintiff by employing defendant Yousufzai and further by allowing the conduct to take place on their premises and under the auspices of their corporation.

30. The defendants' breach of duty to plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) extreme emotional distress; and
- (b) extreme physical stress.

31. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and
- (b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Ricky L. Weber v. Basht Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

32. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

33. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with attorneys' fees, court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted this 8<sup>th</sup> day of March, 2001.

By: 

Robert B. Woomer, Esquire  
PA ID. 59030

WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 563-7980

VERIFICATION

*Cindy*  
 We, Wendy E. Weber and Rick Weber, wife and husband, being duly sworn according to law, depose and say that the facts contained in the foregoing Complaint in Civil Action are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

*Cindy E. Weber*  
 Signature

*Rick Weber*  
 Signature

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

CINDY E. WEBER, and ) Civil Division  
RICKY L. WEBER )  
 ) Civil Action No. 01-361-00  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants. )

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**  
**OF DEFENDANT, BASHIR YOUSUFZAI, M.D.**

AND NOW comes the Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Brief in Support of Preliminary Objections to Plaintiffs' Complaint, as follows:

**I. Factual and Procedural History**

This apparent medical malpractice / personal liability action was commenced on March 8, 2001 by Plaintiffs, Cindy E. Weber and Ricky L. Weber, in the Court of Common Pleas of Clearfield County. (See copy of Plaintiffs' Complaint, attached to Defendant's Preliminary Objections as Exhibit "A"). Briefly stated, Plaintiffs generally allege that Dr. Yousufzai acted inappropriately and/or prescribed improper medications and dosages to Plaintiff-wife during an unspecified date and time at the Defendant's office. (See Exhibit "A," at ¶5). Based upon such allegations, Plaintiffs' Complaint contains six Counts: Count I (Assault and Battery); Count II (Professional Negligence); Count III (Lack of Informed Consent); Count IV (Intentional Infliction of Emotional Distress); Count V (Negligent Infliction of Emotional Distress); and, Count VI (Loss of Consortium). (See Exhibit "A").

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OFFICE**

Concurrently herewith, Defendant Dr. Yousufzai has filed Preliminary Objections to the Plaintiffs' Complaint on the following basis:

- i) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claim for Lack of Informed Consent (Count III) Where Plaintiff has Failed to Plead Sufficient Facts to Support Such a Claim as a Matter of Law;
- ii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Where Plaintiff has Failed to Plead Sufficient Facts to Support Such Claims as a Matter of Law;
- iii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Where the Emotional Damages Sought Thereby are Unnecessarily Duplicative of That Recoverable Within Plaintiff-wife's Previously Asserted Claims;
- iv) Preliminary Objection in the Nature of a Motion to Strike / Motion to Dismiss to Plaintiff-husband's Request for Attorneys' Fees Contained within the Demand Clause of Count VI of the Complaint Where There is No Statutory and/or Common Law Basis for the Recovery of Such Damages in this Action; and,
- v) Preliminary Objection in the Nature of a Motion for More Specific Pleading for Failing to Specify Dates and Times with Particular Specificity in Violation of Pa.R.C.P. 1019(f).

(See Defendant's Preliminary Objections, which are incorporated herein by reference).

The instant Brief is filed in support of Defendant's Preliminary Objections and sets forth the legal authority for the relief requested therein.

## **II. Issues Presented**

- A. Whether Plaintiff-Wife's Claim for Lack of Informed Consent at Count III, Paragraphs 19 through 22, of the Complaint Should Be Dismissed, with Prejudice, upon the Basis That Plaintiff Has Failed to Plead Sufficient Facts to Support Such a Claim as a Matter of Law.

(Suggested Answer in the Affirmative.)

- B. Whether Plaintiff-Wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Should be Dismissed, with Prejudice, upon the Basis That Plaintiff Has Failed to State a Claim upon Which Relief may be Granted as to Such Claims as a Matter of Law.

(Suggested Answer in the Affirmative.)

- C. Whether Plaintiff-Wife's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Should Be Dismissed, with Prejudice, upon the Basis That the Emotional Damages Sought Thereby Are Unnecessarily Duplicative of That Recoverable Within Plaintiff's Previously Asserted Claims.

(Suggested Answer in the Affirmative.)

- D. Whether Plaintiff-Husband's Request for Attorneys' Fees Contained Within the Demand Clause of Count VI of the Complaint Should Be Dismissed, with Prejudice, upon the Basis That There Is No Statutory and/or Common Law Basis for the Recovery of Such Damages in this Action.

(Suggested Answer in the Affirmative.)

- E. Whether Plaintiffs Should be Required to File a More Specific Complaint upon the Basis That Plaintiffs Have Failed to Plead Dates and Times Particular Specificity in Violation of Pa.R.C.P. 1019(f).

(Suggested Answer in the Affirmative.)

### **III. Discussion**

#### **A. Plaintiff-Wife's Claim for Lack of Informed Consent at Count III, Paragraphs 19 through 22 of the Complaint, Should Be Dismissed, with Prejudice, Where Plaintiff Has Failed to Plead Sufficient Facts to Support Such a Claim as a Matter of Law**

Pursuant to Pa.R.C.P. 1028(4), preliminary objections may be filed to any pleading upon the ground that the pleading is legally insufficient. A preliminary objection upon this basis is construed as a demurrer. In that regard, Plaintiffs' Complaint is challenged as failing to set forth a cause of action upon which relief can be granted as to Plaintiff-wife's claim of lack of informed consent asserted against Dr. Yousufzai at Count III, Paragraphs 19 through 22.

A preliminary objection on the ground of legal insufficiency of the pleading, in the nature

of a demurrer, admits all well-pleaded material facts as well as all reasonable inferences deducible therefrom. Cafazzo v. Central Medical Health Services, Inc., 430 Pa.Super. 480, 635 A.2d 151, 152 (1993), aff'd 542 Pa. 526, 668 A.2d 521 (1995). However, “[t]he pleader’s conclusions or averments of law are not considered to be admitted as true by a demurrer.” Willet v. Pennsylvania Medical Catastrophe Loss Fund, 549 Pa. 613, 702 A.2d 850, 853 (1997).

“Preliminary objections will be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover.” Cafazzo, 635 A.2d at 152.

Within Count III of the Complaint, Plaintiff, Cindy Weber, asserts a claim for lack of informed consent against Objecting Defendant, Bashir Yousufzai, M.D, as well as Liberty Physical Medicine & Rehabilitation Associates, P.C. (See Exhibit “A,” attached to Defendant’s Preliminary Objections). Specifically, Plaintiff’s allegations of lack of informed consent are contained within Paragraphs 19 through 22 of the Complaint, which provide as follows:

- “19. The defendant physician had a legal obligation to inform the patient of the risks associated with his professional services.
20. Defendants knew or should have known that the treatment given to wife plaintiff would likely result in severe emotional trauma to her due to the negligent, outrageous and/or malicious conduct of the defendants.
21. Despite this knowledge, the defendant failed to apprise the patient of the risks associated with his activities and treatment.
22. As a result of the lack of informed consent, wife plaintiff has suffered the damages explained above.”

(See Exhibit “A,” at Count III, Paragraphs 19 through 20).

Based upon the vague and conclusory nature of the above cited Paragraphs, one must assume that Plaintiff is attempting to anchor her informed consent claim to Paragraph 5 of the Complaint. In this regard, Paragraph 5 generally avers that Plaintiff-wife “visited the office of

Hoy, supra, in acknowledging the questionable vitality of the Intentional Infliction of Emotional Distress doctrine. See Paves v. Corson, 765 A.2d 1128, 1133-34 (Pa.Super. 2001)(vacating jury award against defendant on emotional distress claim and questioning existence of tort of intentional infliction of emotional distress). The foregoing decisions are in complete harmony with a host of previous Appellate Court decisions that have acknowledged the Supreme Court's failure to formally adopt this tort as a permissible claim under Pennsylvania law. See i.e. Taylor v. Albert Einstein Medical Center, 754 A.2d 650, 652 (Pa. 2000) (recognizing that Supreme Court has never expressly recognized a cause of action for intentional infliction of emotional distress and has never formally adopted this purported claim); Fewell v. Besner, 444 Pa.Super. 559, 664 A.2d 577, 581 (1995) (recognizing that intentional infliction doctrine has not been adopted by Supreme Court and refusing to make any pronouncement on the doctrine where plaintiff failed to state a cause for same); and, Ford v. Isdaner, 374 Pa.Super. 40, 542 A.2d 137, 139 (1988)(holding that complaint failed to state a claim for intentional infliction of emotional distress where this tort is not recognized in Pennsylvania).

As borne out by the foregoing case law, the Appellate Courts have largely been forced to address the parameters of the Intentional Infliction of Emotional Distress doctrine, not because they have endorsed the general acceptance of this claim, but instead, because litigants have consistently refused to "raise, brief and/or argue" the issue as to whether the claim "should be the law of Pennsylvania." See Hoy, supra, 720 A.2d at 756, n.10. In order to preserve Defendant Dr. Yousufzai's rights under the foregoing admonition, it is submitted that, based upon the Pennsylvania Supreme Court's refusal to adopt the tort of intentional infliction of emotional distress as an actionable claim in this Commonwealth, it is entirely appropriate for this Court to grant the within demurrer and dismiss Count IV from Plaintiffs' Complaint, with prejudice.

Defendants for an examination due to pain in her arms and hands.” (See Exhibit “A,” attached to Defendant’s Preliminary Objections). Thereafter, it is alleged that, “during the course of treatment,” the Defendant made “unwanted, forceful, sexual contact with wife plaintiff” and also “prescribed inappropriate medications and dosages to wife plaintiff.” (Id.). In light of the legal authority discussed below, it is submitted that the foregoing averments fail to establish a prima facie claim for lack of informed consent in this Commonwealth, as a matter of law.

It has long been the law in Pennsylvania that a physician must obtain informed consent from a patient before performing a **surgical or operative procedure**. See i.e. Sinclair v. Block, 534 Pa. 563, 633 A.2d 1137 (1993); Gray v. Grunnagle, 423 Pa. 144, 223 A.2d 663 (1966). Informed consent, however, has **not** been required in cases involving **non-surgical procedures**. See i.e. Sinclair, supra, (holding that informed consent doctrine does not apply to obstetrician's use of forceps during natural childbirth); Wu v. Spence, 413 Pa.Super. 352, 605 A.2d 395 (1992) (administration of drug, even intravenously, did not constitute "touching" or technical battery for informed consent purposes); Boyer v. Smith, 345 Pa.Super. 66, 497 A.2d 646 (1985)(doctrine not applicable to oral administration of prescription drugs); and, Morgan v. MacPhail, 550 Pa. 202, 704 A.2d 617 (Pa. 1997)(refusing to broaden the scope of the informed consent doctrine to include non-surgical administration of medication).

Recently, the legislature codified the law with respect to the informed consent doctrine and continued to limit this doctrine to physicians who perform a surgical or operative procedure, or one of the procedures listed within 40 P.S. §1301.811-A(a), which provides as follows:

“(a) Except in emergencies, a physician owes a duty to a patient to obtain the informed consent of the patient or the patient’s authorized representative prior to conducting the following procedures:

(1) Performing surgery, including the related administration of anesthesia.

- (2) Administering radiation or chemotherapy.
- (3) Administering a blood transfusion.
- (4) Inserting a surgical device or appliance.
- (5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.”

See 40 P.S. §1301.811-A(a)(1)-(5).

There is no question that the factual averments of Plaintiffs’ Complaint, even when read in a light most favorable to Plaintiffs, fail to allege that Defendant Dr. Yousufzai performed a surgical and/or operative procedure on Plaintiff-wife. See i.e. Sinclair, Gray, supra. Moreover, there is no suggestion that Dr. Yousufzai performed any of the five (5) procedures referenced at 40 P.S. §1301.811-A(a)(1)-(5). The only averment within Plaintiffs’ Complaint relating to allegations of medical negligence as to Dr. Yousufzai is a vague reference to “prescribing inappropriate medications and dosages to wife plaintiff” during an unspecified date and time at the Defendant’s office. (See Exhibit “A,” attached to Defendant’s Preliminary Objections, at ¶5). This averment is not sufficient to establish the basis for a lack of informed consent case to proceed, and in this regard, has been rejected as such by the Pennsylvania Appellate courts that have examined the issue. See i.e Boyer, Wu, Morgan, supra. Based upon the foregoing, it is respectfully requested that the within demurrer be granted and that Plaintiff-wife’s Count III claim of lack of informed consent against Dr. Yousufzai be dismissed, with prejudice.

**B. Plaintiff-Wife’s Claims for Intentional and Negligent Infliction of Emotional Distress at Counts IV and V of the Complaint Should be Dismissed, with Prejudice, Where Plaintiff Has Failed to State a Claim upon Which Relief may be Granted as to Such Claims as a Matter of Law**

In addition to failing to set forth a claim for lack of informed consent, Plaintiffs have also

failed to state a claim upon which relief may be granted as to the claims for Intentional and Negligent Infliction of Emotional Distress that are asserted on behalf of Plaintiff-wife at Counts IV and V of the Complaint. With regard to the Count IV claim of Intentional Infliction of Emotional Distress, it is submitted that the Pennsylvania Supreme Court has not adopted this tort as an actionable claim in this Commonwealth, and even assuming that it had, Plaintiff-wife has failed to set forth sufficient facts to state a prima facie case for this purported claim as a matter of law. With respect to the Count V claim of Negligent Infliction of Emotional Distress, it is submitted that such claim must fail where Plaintiff has failed to plead sufficient facts to state a claim under either the “bystander” and/or “impact” theories of recovery under the Negligent Infliction of Emotional Distress Doctrine. Because Plaintiff-wife has failed to state a claim upon which relief may be granted as to her claims of Intentional and Negligent Infliction of Emotional Distress, it is requested that this Honorable Court grant the within demurrer and dismiss Counts IV and V from Plaintiffs’ Complaint, with prejudice.

**a. Plaintiff’s Claim for Intentional Infliction of Emotional Distress (Count IV) Should Be Dismissed, with Prejudice, Where the Pennsylvania Supreme Court has Not Adopted this Cause of Action, and Even Assuming that it had, Plaintiff has Failed to Set Forth Sufficient Facts to State a Prima Facie Case for this Purported Claim as a Matter of Law**

Initially, Defendant Dr. Yousufzai objects to Plaintiff-wife’s Count IV claim of Intentional Infliction of Emotional Distress on the basis of recent Pennsylvania Supreme Court precedent which has, once again, failed to adopt this purported claim as a cause of action in this Commonwealth. See Hoy v. Angelone, 554 Pa. 134, 720 A.2d 745, 753 n. 10 (1998)(“the tort of intentional infliction of emotional distress as described in the Restatement has never been expressly adopted by our Supreme Court”). Indeed, the Pennsylvania Superior Court, in a February 14, 2001 decision, has very recently cited to the Supreme Court’s pronouncement in

In the event that Plaintiff-wife's Count IV emotional distress claim is not dismissed for the foregoing reasons, it is alternatively submitted that Count IV should be dismissed where Plaintiffs' Complaint fails to set forth a sufficient factual basis to support an Intentional Infliction of Emotional Distress claim, as a matter of law. In this regard, the Pennsylvania Supreme Court, although refusing to adopt the doctrine itself, has held that the gravamen of the tort of intentional infliction of emotional distress is "outrageous conduct" on the part of the tortfeasor. See Kazatsky v. King David Memorial Park, 515 Pa. 183, 527 A.2d 988, 991 (1987). In Kazatsky, the Pennsylvania Supreme Court, after noting the availability of recovery to be "highly circumscribed," quoted the Restatement (Second) of Torts §46, Comment (d), in order to describe the type of conduct which meets the requisites for liability:

**"It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"**

See Kazatsky, 527 A.2d at 991 (emphasis and underlining supplied).<sup>1</sup>

As indicated, the Pennsylvania Supreme Court recently re-visited the uncertain law surrounding the tort of intentional infliction of emotional distress, and in doing so, recognized,

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<sup>1</sup> The Restatement (Second) of Torts §46(1) defines the elements of the intentional infliction of emotional distress doctrine as follows:

"One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm."

with approval, the fact that “courts have been chary to allow recovery” for such a claim, absent a showing that the “conduct complained of is extreme or clearly outrageous” to permit recovery. Hoy, supra, 720 A.2d at 753-54. Indeed, the High Court noted that “[c]ases which have found a sufficient basis for a cause of action of intentional infliction of emotional distress have presented only the most egregious conduct.” Hoy, 720 A.2d at 754 (citing Papieves v. Lawrence, 437 Pa. 373, 263 A.2d 118 (1970)(defendant, after striking and killing plaintiff’s son with automobile, and after failing to notify authorities or seek medical assistance, buried body in a field where discovered two months later and returned to parents (recognizing but not adopting section 46)); Banyas v. Lower Bucks Hospital, 293 Pa.Super. 122, 437 A.2d 1236 (1981)(defendants intentionally fabricated records to suggest that plaintiff had killed a third party which led to plaintiff being indicted for homicide); Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265 (3d. Cir.1979)(defendant’s team physician released to public press information that plaintiff was suffering from fatal disease, when physician knew such information was false).<sup>2</sup>

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<sup>2</sup> Courts of Common Pleas throughout Pennsylvania have repeatedly recognized the highly circumscribed nature of recovery for the tort of intentional infliction of emotional distress, and in doing so, has not hesitated to sustain demurrers challenging the legal sufficiency of same. See e.g. Dewalt v. Halter, 7 D&C 4<sup>th</sup> 645, 646-47 (Dauphin Cty., 1990, Dowling, J.)(holding that the actions and/or inactions of restaurant employees in permitting a drunk male patron to enter a female restroom, where he raped an immobilized female, did not rise to the level of “extreme and outrageous conduct” so as to permit claim for intentional infliction of emotional distress); Shay v. Parabia, 9 D&C 4<sup>th</sup> 196, 198-99 (Lackawanna Cty., 1991, O’Malley, J.)(granting defendants’ demurrer to claim of intentional infliction of emotional distress and holding that a physician’s berating and verbally abusing a patient who is lying on a stretcher prior to entering the operating room for surgery does not constitute “major outrage” which is required to sustain a cause of action for intentional infliction of emotional distress); McKay v. Geadah, 50 D&C3d 435 (Cumberland Cty., 1988, Bayley, J.)(holding that plaintiffs failed to state a claim for emotional distress where physician discussed and showed pre- and post-operative pictures of plaintiff in plaintiff’s son’s classroom as part of career orientation program without plaintiff’s permission) Abadie v. Riddle Memorial Hosp., 7 D&C 4<sup>th</sup> 214 (Delaware Cty., 1990, Keeler, J.), affirmed, 404 Pa.Super. 8, 589 A.2d 1143 (1991) (sustaining demurrer to plaintiff’s claim of intentional infliction of emotional distress in medical malpractice action and holding that allegations of abandonment on x-ray room table where plaintiff was forced to listen to “loud and raucous”

(continued...)

In the instant case, Plaintiffs' Complaint fails to set forth the requisite factual averments to establish a claim for intentional infliction of emotional distress, as a matter of law. See Small v. Juniata College, 452 Pa.Super. 410, 682 A.2d 350, 355 (1996)(trial court must make the initial determination of whether a defendant's conduct was so extreme and outrageous that recovery may be justified). Even if the factual averments of the Complaint are taken as true, Plaintiffs have failed to plead sufficient factual allegations to suggest that the actions of Dr. Yousufzai were "intended" and/or "calculated" to bring about Plaintiff-wife's alleged emotional distress. See i.e. Banyas and Chuy, supra. Moreover, Plaintiffs' Complaint, while admittedly setting forth facts of a sensitive nature, fails to establish the same sort of "extreme and outrageous" conduct that has been found to meet the level of "towering proof" that is required to sustain a claim of intentional infliction of emotional distress, if, indeed, this claim is assumed to legally exist. See i.e. Dewalt, supra, (restaurant employees inactions in permitting drunk patron to enter female restroom and rape immobilized patron did **not** rise to level of "extreme and outrageous" conduct); Shay, supra, (physician's berating and verbally abuse of a patient who was lying on a stretcher prior to entering operating room did **not** constitute "major outrage"); and, Abadie, supra, (abandonment of patient on x-ray room table where patient was forced to listen to "loud and raucous" birthday celebration in adjoining room **failed** to establish claim of emotional distress). The foregoing cases have followed the Appellate Court's repeated admonitions to

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<sup>2</sup>(...continued)

birthday celebration in adjoining room was insufficient to sustain claim for IIED where such allegations were not so "egregious or extreme to legitimate such a cause of action," and where the plaintiff had failed to establish that the conduct of hospital personnel was "intended" and/or "calculated" to bring about the plaintiff's emotional distress); and, Sears v. Hershey Medical Center, 10 D&C 4<sup>th</sup> 182, 188 (Dauphin Cty., 1991, Dowling, J.)(sustaining a demurrer to plaintiff's claim of intentional infliction of emotional distress in medical malpractice action where the alleged acts of negligence failed to approach the level of "towering proof" that is required to sustain such a claim).

utilize caution when allowing Intentional Infliction Emotional Distress claims to proceed, and for this reason, it is requested that this Honorable Court, likewise, refuse to permit Plaintiff-wife's Count IV claim to proceed, as a matter of law.

**b. Plaintiff's Claim for Negligent Infliction of Emotional Distress (Count V) Should be Dismissed, with Prejudice, Where Plaintiff has Failed to Plead Sufficient Facts to State a Claim Under Either the "Bystander" and/or "Impact" Theories of Recovery**

With respect to the Count V claim of Negligent Infliction of Emotional Distress, it is submitted such claim must fail where Plaintiff has failed to plead sufficient facts to state a claim under either the "bystander" and/or "impact" theories of recovery under this doctrine. To the contrary, Plaintiff's Count V claim of emotional distress, which is brought on Plaintiff-wife's own behalf, attempts to assert a direct and independent claim of Negligent Infliction of Emotional Distress, which has not been recognized by recent Appellate Court case law. Because Plaintiff-wife has failed to state a claim upon which relief may be granted as to her Count V claim of emotional distress, it is requested that this Honorable Court grant the within demurrer and dismiss Count V from Plaintiffs' Complaint, with prejudice.

Although the developing tort of Negligent Infliction of Emotional Distress has seen a great deal of confusion in Pennsylvania case law, the most recent pronouncement from the Pennsylvania Superior Court has limited recovery under this doctrine to only two circumstances, neither of which are applicable herein. First, and most commonly, in cases in which there is liability to a "bystander." See Paves v. Corson, *supra*, 765 A.2d at 1137-38 (citing Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979); and Brown v. Philadelphia College of Osteopathic Medicine, 449 Pa. Super. 667, 674 A.2d 1130 (1996)). Second, under the "impact theory" of recovery. See Paves v. Corson, *supra*, 765 A.2d at 1137-38 (citing Long v. Yingling, 700 A.2d 508 (Pa. Super. 1997); and, Armstrong v. Paoli Memorial Hosp., 430 Pa. Super. 36, 633 A.2d 605 (1993)).

Under the “bystander” theory of recovery, a claim for emotional distress may be brought only where the following factors are met:

“(1) Whether [the] plaintiff was located near the scene of the accident; as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.”

See Long v. Yingling, *supra*, 700 A.2d at 516 (quoting Brown v. Philadelphia College of Osteopathic Medicine, *supra*, 674 A.2d at 1133). Inasmuch as Count V of Plaintiffs’ Complaint sets forth a Negligent Infliction of Emotional Distress claim directly on behalf of Plaintiff-wife, as opposed to any “derivative claims” on behalf of any named bystanders, the “bystander rule” is inapplicable, and therefore, cannot form the basis for Plaintiff’s claim of emotional distress.

Under the “impact theory” of the Negligent Infliction of Emotional Distress doctrine, the rule relating to recovery has been stated as follows:

[W]here ... a plaintiff sustains **bodily injuries**, even though trivial or minor in character, **which are accompanied by fright or mental suffering directly traceable to the peril in which the defendant’s negligence placed the plaintiff**, then mental suffering is a legitimate element of damages.”

See Long v. Yingling, *supra*, 700 A.2d at 516 (quoting Brown v. Philadelphia College of Osteopathic Medicine, *supra*, 674 A.2d at 1135-36 (1996)(emphasis added)). It is submitted that Plaintiff-wife’s Count V claim of Negligent Infliction of Emotional Distress is also deficient under the “impact theory” of recovery where Plaintiff has failed to plead the requisite degree of

“direct physical impact” and/or “bodily injury” that is contemplated by the questioned theory of recovery.<sup>3</sup>

In Brown, supra, a plaintiff’s Negligent Infliction of Emotional Distress claim was permitted to proceed where a defendant’s negligence resulted in a “physical impact,” which consisted of “physical harm” during the plaintiff’s miscarriage as a result of the defendant’s “failure to attend to her in recovery.” Id. at 1136-37. Furthermore, the plaintiff was “physically impacted when she was given [her] fetus to hold.” See Brown, 674 A.2d at 1136-36. In Long, supra, the plaintiff was also held to have stated a claim for Negligent Infliction of Emotional Distress (under both the “bystander” and “impact” theories of recovery) where she was located in the front seat of an automobile directly next to the decedent when a fatal collision occurred. Id. at 1137. The plaintiff, who suffered “physical injuries” in the accident, was shown to have “observed the decedent stomp on the brakes and put his arm in front of plaintiff to brace for impact.” Id. at 1137-38. Also, it was shown that the decedent’s body was actually “thrown on top of the plaintiff from the force of the impact.” Id.

As demonstrated by the foregoing cases, Plaintiff-wife’s Count V claim of emotional distress is based upon a factual scenario that is simply not of the sort envisioned by the Negligent Infliction of Emotional Distress doctrine. Inasmuch as the claim is brought directly on behalf of Plaintiff-wife, in her own behalf, it clearly does not involve the most common application of this doctrine, i.e. the “bystander” theory of recovery, and, likewise, falls far below the sort of the

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<sup>3</sup> In this regard, it must be noted that certain Appellate Court cases suggest that the “bystander rule” is the **only basis** upon which a cause of action for negligent infliction of emotional distress may be based. See i.e. Salerno v. Philadelphia Newspapers, Inc., 377 Pa.Super. 83, 546 A.2d 1168 (1988)(holding that the parameters for pleading a cause of action for negligent infliction of emotional distress are set forth under the bystander rule). In the event that this Honorable Court agrees with the foregoing proposition, Count V of the Complaint must be dismissed where Plaintiff-wife’s claim is legally insufficient to set forth a claim under the “bystander” theory of recovery.

requirement of “physical impact” and/or “bodily injury” discussed in Brown and Long, *supra*.

To the contrary of the approved parameters of the emotional distress doctrine, Plaintiff-wife’s Count V claim actually attempts to assert a direct and independent claim of Negligent Infliction of Emotional Distress, which has recently been rejected by the Superior Court in Armstrong, *supra*, 633 A.2d 605 (1993). In Armstrong, the plaintiff, not unlike that herein, attempted to set forth a “direct claim” for emotional distress, on her own behalf, as opposed to an emotional distress claim premised upon “bystander liability.” In refusing to expand the tort of emotional distress beyond the “bystander context,” the Armstrong Court held as follows:

“In the case at hand, Dawn Armstrong fails to meet the bystander test of Sinn v. Burd because she was not related to the accident victim and she did not have a contemporaneous perception of the accident. **She posits her theory of recovery on a separate and independent tort, that which was allegedly committed when she was mistakenly summoned to the hospital.**

**Only two appellate cases in Pennsylvania have held that the question of negligent infliction of emotional distress in a context other than bystander recovery should go to the jury.** In Stoddard v. Davidson, 355 Pa.Super. 262, 513 A.2d 419 (1986), the question was whether there was sufficient “impact” to allow recovery when the plaintiff was emotionally distressed after he ran over the body of a woman whom the defendant killed and left lying in the road. The plaintiff alleged that his distress arose when he had to hold a cover over the corpse for three hours during the police investigation of the victim’s death. The panel, with one concurrence and one dissent, found sufficient impact alleged to allow a jury to decide if there was negligent infliction of emotional distress. *Id.* at 267, 513 A.2d at 422.

In the second case, Crivellaro, *supra*, the question was whether an employee who was coerced by her employer into entering an controversial drug and alcohol rehabilitation program has alleged sufficient physical manifestation of her injury to recover. A panel of this court found that she had.

**This case asks us to expand the tort of negligent infliction of emotional distress beyond the fact situations of liability to close family members who actually witness an accident, something which, with the exception of Stoddard, *supra*, and Crivellaro, *supra*, Pennsylvania has consistently refused to do.”**

See Armstrong, 633 A.2d at 611 (emphasis supplied). Following a review of the evolution of the

Negligent Infliction of Emotional Distress doctrine, and a resistance to expanding this doctrine as a matter of law, the Superior Court held that plaintiff had failed to state a cause of action for emotional distress and entered judgment in favor of the defendant. Id. at 614.<sup>4</sup>

Based upon the foregoing, it is submitted that Plaintiff-wife's attempt to set forth an independent and direct claim of Negligent Infliction of Emotional Distress must be refused in line with the Superior Court's precedent in Armstrong, supra. In order to recover under the Negligent Infliction of Emotional Distress doctrine, the most recent Superior Court precedent confirms that Plaintiff-wife must demonstrate that she was a "bystander" who meets the criteria of Sinn, supra, or that she experienced the requisite degree of "physical impact" and/or "bodily injury" that was approved by the decisions in Brown and Long, supra. Inasmuch as the inapplicability of the "bystander theory" of recovery has already been demonstrated, and insofar as Plaintiff have failed to establish sufficient "physical impact" and/or "bodily injury" to proceed under the "impact theory" of recovery, Plaintiff-wife has failed to state a claim upon which relief can be granted for Negligent Infliction of Emotional Distress. Because of this, it is requested that the within demurrer be granted and that Plaintiff-wife's Count V claim for Negligent Infliction of Emotional Distress be dismissed, with prejudice.

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<sup>4</sup> It should be noted that in dicta the Armstrong decision intimated that there might be yet another theory of recovery under the Negligent Infliction of Emotional Distress doctrine, i.e. recovery in situations where there is a breach of a "contractual or fiduciary duty." However, a review of subsequent case law confirms that this suggestion was criticized as "troubling" by the Superior Court in its later decision in Brown, supra, and was not even mentioned in the Superior Court's most recent pronouncement on this issue in Paves, supra. It is respectfully submitted that this dicta does not reflect Pennsylvania law at this point, and is an illogical extension of the doctrine when properly analyzed.

**C. Plaintiff's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) Should Be Dismissed, with Prejudice, Where the Claims are Unnecessarily Duplicative of Plaintiff's Previously Asserted Claims for Assault and Battery, and Professional Negligence**

In the event that Plaintiff-wife's claims for emotional distress are not dismissed for the reasons discussed directly above, it is submitted that **additional grounds** exist for dismissing such claims, as a matter of law. Specifically, Plaintiff's emotional distress claims are duplicative to that pled within Plaintiff's previously asserted claims of Assault and Battery (Count I) and Professional Negligence (Count II). Because Pennsylvania law expressly prohibits litigants from obtaining unfair duplicative recoveries, it is requested that the within demurrer be granted and that Plaintiff's claims for Intentional and Negligent Infliction of Emotional Distress (Counts IV and V) be dismissed, with prejudice.

Significantly, the Adams County Court of Common Pleas recently delivered a decision wherein demurrers were sustained to a plaintiff's independent claims of emotional distress where such claims were "unnecessarily duplicative" of the plaintiff's direct claims for negligence. See Guise v. TNT Enterprises, Inc., 29 D&C4th 153, 158 (Adams Cty. 1995). In Guise, the plaintiffs had filed a multi-count complaint, which included claims for both intentional and negligent infliction of emotional distress, as well as the imposition of punitive damages. Id. at 154. The complaint alleged that plaintiffs had become ill due to a contaminated water system that had been improperly tested and maintained by their landlord and the inspection company that had performed testing on the well water at issue. Id.

Following a review of the law surrounding the emotional distress doctrines, the trial court noted and held as follows:

**"It would seem that recovery in negligent infliction of emotional distress is restricted to traumatic events involving persons closely related to plaintiff. Bloom v. Dubois Regional Medical Center, 409 Pa.Super. 83, 597 A.2d 671 (1991). It also seems that recovery for negligent infliction of emotional**

**distress is limited to traumatic events involving people other than plaintiff.**

In describing the development of the law in this area, the Superior Court observed that “the tort of negligent infliction of emotional distress **has evolved almost exclusively in the context of those who observe injury to close family members and are as a consequence of the shock emotionally distressed.**”

Armstrong v. Paoli Memorial Hospital, 430 Pa.Super. 36, 44, 633 A.2d 605, 609 (1993).

**If plaintiff is injured as a result of defendant’s negligence, he or she may recover for injuries proximately caused by that negligence. Thus, an independent action for emotional distress is unnecessary and duplicative.**

Furthermore, the law, as determined by collected cases, is that shock must result from contemporaneous observance of a traumatic event by plaintiff closely related to the victim, with resulting direct emotional impact. *Id.* at 46, 633 A.2d at 610.

**This court concludes that plaintiffs cannot maintain a separate action for intentional infliction, under Restatement § 46 and that emotional distress related to injuries (illness) suffered by plaintiffs must be viewed as a demand for damages resulting from defendants’ negligence.”**

Guise, 29 D&C4th at 158 (emphasis and underlining supplied).<sup>5</sup> As a result of the foregoing, the defendants’ demurrers to plaintiffs’ claims of intentional and negligent infliction of emotional distress were sustained, with said claims being dismissed as a matter of law. *Id.* at 160-61; see also Fasula v. Hijazi, 44 D&C4th 553 (Lackawanna Cty. 1999)(recognizing rule against duplication of damages and granting demurrer to loss of consortium claim where damages sought to recovered thereby could be provided by plaintiff’s separate wrongful death claim).

The holding in Guise, supra, is not all surprising when one considers the general rule of this Commonwealth which provides that “[a] plaintiff cannot recover on all alternate theories, as this would constitute a duplicative recovery.” See Trackers Raceway, Inc. v. Comstock Agency, Inc., 400 Pa.Super. 432, 583 A.2d 1193, 1196 (1990)(citing Garofolo v. Shah, 400 Pa.Super.

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<sup>5</sup> As indicated, the holding in Guise is equally applicable to Defendant Dr. Yousufzai’s demurrer within the preceding section of this Brief, i.e. Section B. The Guise decision highlights Plaintiffs attempted misapplication of the Negligent Infliction of Emotional Distress doctrine and inappropriate attempt to expand this doctrine beyond the approved “bystander” context. See Paves, Long, Armstrong and Brown supra,

456, 583 A.2d 1205 (1990); see also Rossi v. State Farm Auto. Ins. Co., 318 Pa.Super. 386, 465 A.2d 8, 10 (1983)(collecting cases for the proposition that “[a]n injured party cannot recover twice for the same injury”). In this regard, “alternate theories of recovery” have often been described as “different means for obtaining the same relief for the same harm caused by the same party.” Id. The rule against the “double recovery” of damages is based on the theory that “duplicate recovery unfairly and prejudicially results in the unjust enrichment of the party pursuing recovery.” See Rossi, supra, 465 A.2d at 10 (citing Muise v. Abbott, 160 F.2d 590 (1st Cir.1947), affirming, 60 F.Supp. 561 at 562 (D.Mass.1945)).

In the present case, Plaintiff-wife sets forth claims of both Intentional and Negligent Infliction of Emotional Distress, on her behalf, at Counts IV and V of the Complaint. Within Counts IV and V, the injuries alleged and damages sought to be recovered include: “extreme emotional distress and physical stress, mental anguish, nervous shock, embarrassment, shame, humiliation, and medical expenses.” (See Exhibit “A,” at Count IV, Paragraph 25; and Count V, Paragraphs 30 and 31). Importantly, the foregoing damages are identical to and, indeed, overlap, those damages sought to be recovered by Plaintiff’s previously asserted claims of Assault and Battery (Count I) and Professional Negligence (Count II). Within Counts I and II, which are also brought on Plaintiff-wife’s own behalf, Plaintiff seeks to recover for “physical pain and great emotional suffering” and “temporary and permanent physical and emotional injuries.” (See Exhibit “A,” at Count I, Paragraph 10; and, Count II, Paragraph 25).

As discussed by the Superior Court decisions cited above, there is no question that Plaintiff-wife’s claims for emotional distress, i.e. Counts IV and V, are simply different means for obtaining the same relief that is requested within Plaintiff’s previously asserted claims for Assault and Battery and Professional Negligence, i.e. Counts I and II. Indeed, the gist of the Plaintiffs’ factual allegations more readily meet the model of an assault and battery claim and/or

professional negligence than the intended scope and application of Intentional or Negligent Infliction of Emotional Distress claims. Because Counts I, II, IV and V are all brought against Defendant, by Plaintiff-wife **on her own behalf**, these Counts simply present alternate theories of recovery for the same harm that was allegedly inflicted by Dr. Yousufzai, based on the same underlying conduct. This, of course, improperly sets the stage for Plaintiff to obtain a “duplicative recovery” and/or “recover twice for the same injury alleged,” which has been held improper by the Appellate Court case law cited herein. See i.e. Trackers, Garofolo, and Rossi, supra. In the event that Plaintiff-wife successfully proves an entitlement to damages for emotional distress in this case, such damages may be properly recovered under Plaintiff’s Count I and/or Count II claims, thus rendering independent actions for emotional distress unnecessary and duplicative as discussed in Guise, supra. Based upon the foregoing, it is requested that the within demurrer be granted and that Plaintiff-wife’s claims for emotional distress, contained within Counts IV and V of the Complaint, be dismissed, with prejudice.

**D. Plaintiffs’ Request for Attorneys’ Fees Contained Within the Demand Clause of Count VI of the Complaint Should Be Dismissed Where There is No Statutory and/or Common Law Basis for the Recovery of Such Damages in this Action**

Within the demand clause of Count VI of Plaintiffs’ Complaint, Plaintiff-husband seeks to recover, inter alia, “attorneys’ fees, court costs, interest and any and all other relief permitted by this Court.” (See Exhibit “A,” attached to Defendant’s Preliminary Objections at Demand Clause of Count VI). However, a review of statutory and common law reveals that there is no legal basis for the imposition of attorneys’ fees in the present case. Therefore, it is requested that the within Motion to Strike be granted and that Plaintiff’s request for attorneys’ fees contained within the demand clause of Count VI of Plaintiffs’ Complaint be dismissed, with prejudice.

It is well-settled law in Pennsylvania that attorneys fees and expenses will be awarded only in very limited circumstances. “The general rule is that the parties to litigation are

responsible for their own counsel fees and costs unless otherwise provided by statutory authority, agreement of parties, or some other recognized exception.” Rumbaugh v. Beck, 411 Pa. Super. 220, 601 A.2d 319, 328 (1991)(quoting Chatham Communications, Inc. v. General Press Corp., 463 Pa. 292, 344 A.2d 837, 842 (1975)). The party claiming such fees has the burden of proving entitlement to them. Norris v. Commonwealth, 159 Pa.Cmwlth. 23, 634 A.2d 673, 675 (1993).

The statute authorizing the awarding of counsel fees, i.e. 42 Pa. C.S. §2503, provides as follows:

**“§2503. Right of participants to receive counsel fees.**

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

- (1) The holder of bonds of a private corporation who successfully recovers due and unpaid interest, the liability for the payment of which was denied by the corporation.
- (2) A garnishee who enters an appearance in a matter which is discontinued prior to answer filed.
- (3) A garnishee who is found to have in his possession or control no indebtedness due to or other property of the debtor except such, if any, as has been admitted by answer filed.
- (4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.
- (5) The prevailing party in an interpleader proceeding in connection with execution upon a judgment.
- (6) Any participant who is awarded counsel fees as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter.
- (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.
- (8) Any participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.
- (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

(10) Any other participant in such circumstances as may be specified by statute heretofore or hereafter enacted.”

See 42 Pa. C.S. §2503.

Based upon the alleged factual averments of Plaintiffs’ Complaint, as well as the express wording of the foregoing statutory provision, it is respectfully submitted that Plaintiffs’ claim(s) for attorneys’ fees has no legal basis and should, therefore, be dismissed as a matter of law. As suggested by the foregoing authority, there is no agreement between the parties that Defendant will assume responsibility for Plaintiffs’ attorneys’ fees, nor is there any other recognized exception which would entitle Plaintiffs to the recovery of such an award in this case. Because of this, it is requested that the within Motion to Strike be granted and that Plaintiffs’ request for attorneys’ fees, as contained within the demand clause of Count VI of the Complaint, be dismissed from the Complaint, with prejudice.

**E. Plaintiffs Should Be Required to File an Amended Complaint Where They Have Failed to Plead Dates and Times With Particular Specificity in Violation of Pa.R.C.P. 1019(f)**

In addition to the foregoing, Plaintiffs’ Complaint stands in direct violation of the pleading rules of this Commonwealth, in that, Plaintiffs have failed to plead averments of dates and/or times with specificity as mandated by Pa.R.C.P. 1019(f). In this regard, Rule 1019(f) provides that, with respect to the “contents of pleadings, averments of time, place and items of special damages shall be specifically stated.” The Pennsylvania Superior Court has recognized the importance of this rule, by stating:

“allegations of time are **crucial** in determining when a cause of action arose, and therefore such facts **must** be specific enough so that a **defendant is capable of pleading the bar of the statute of limitations.**”

See Baker v. Rangos, 229 Pa.Super.333, 324 A.2d 498, 509-10 (1974)(emphasis added); see also

General State Authority v. Sutter Corp., 44 Pa.Cmwlth. 205, 403 A.2d 1022, 1028 (1979);

General State Authority v. Lawrie and Green, 24 Pa.Cmwlth. 407, 356 A.2d 851, 855, 56 (1976).

It also makes logical sense for the Plaintiffs to be specific as to which day or days she was allegedly sexually assaulted, prescribed inappropriate medication, etc., so as to provide the defense with appropriate notice of same.

Within Paragraph 5 of Plaintiffs' Complaint, which comprises the only true factual averment of this pleading, it is averred as follows:

“5. Wife plaintiff visited the office of Defendants for an examination due to pain in her arms and hands. During the course of the treatment, Yousufzai made unwanted, forceful, sexual contact with wife plaintiff, including, but not limited to, ejaculating on the wife plaintiff. Yousufzai also prescribed inappropriate medications and dosages to wife plaintiff.”

(See Exhibit “A,” at Paragraph 5). Although the foregoing Paragraph alleges that Plaintiff-wife “visited the office of Defendants for an examination due to pain in her arms and hands,” Plaintiffs have given no indication as to when and/or at what time such visits allegedly took place, which places Plaintiffs' Complaint in direct violation of Pa.R.C.P. 1019(f). Nor is it indicated at which of several office visits Plaintiff-was sexually attacked, nor when she was allegedly inappropriately medicated, etc. As Baker, supra, instructs, it is “crucial” that Plaintiffs be made to plead allegations of dates and/or time specifically. To permit otherwise would substantially prejudice Defendant Dr. Yousufzai by preventing him from formulating a precise, and proper, response to Plaintiffs' generalized allegations of negligence. Moreover, Dr. Yousufzai has no way of knowing if Plaintiffs are alleging allegations of negligence and/or inappropriate behavior on one, or, several occasions, and, likewise, can have no way of knowing if the applicable Statute of Limitations may be an appropriate defense to some, or all, of Plaintiffs' allegations.

Based upon the foregoing, it is requested that this Honorable Court grant the within Motion for a More Specific Pleading, and in doing so, require Plaintiffs to file an Amended

Complaint which specifically sets forth all date(s) and time(s) upon which Dr. Yousufzai is alleged to have committed the acts and/or omissions complained of within Plaintiffs' Complaint.

**IV. Conclusion**

Defendant, Bashir Yousufzai, M.D., respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections to Plaintiffs' Complaint, and grant the relief requested within Defendant's Preliminary Objections.

Respectfully submitted,

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

BY  \_\_\_\_\_

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(814) 238-4926  
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Dated: 4/2/01

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

CINDY E. WEBER, and )  
RICKY L. WEBER )

Plaintiff, )

v. )

BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )

Defendants. )

Civil Action No. 01-361-00

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Brief in Support of Preliminary Objections of Defendant, Bashir Yousufzai, M.D. in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 2<sup>nd</sup> day of April, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
1701 McFarland Road  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By: 

Richard K. Laws  
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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D., and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-00

**NOTICE OF CHANGE OF  
ADDRESS OF LAW FIRM OF  
WOOMER & FRIDAY, LLP**

*[Clerk's Action Required]*

Filed on behalf of Plaintiff(s):  
Cindy Weber and Ricky Weber

Counsel for Record for this Party:

Robert B. Woomer, Esquire  
PA I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

APR 23 2001

William A. Shaw  
Prothonotary

**ORIGINAL**

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

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL ACTION

Case No. 01-361-00

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D., and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.

Defendant(s).

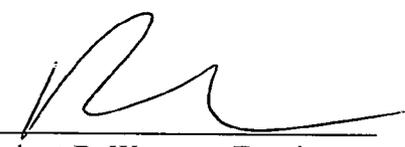
**NOTICE OF CHANGE OF ADDRESS OF THE  
LAW FIRM OF WOOMER & FRIDAY, LLP**

**NOTICE IS HEREBY GIVEN** that the Law Firm of Woomer & Friday, LLP,  
have relocated their offices. The new address information for said Law Firm is as  
follows:

Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216  
Phone # (412) 563-7980  
Fax # (412) 563-0120

Respectfully Submitted April 20, 2001

Woomer & Friday, LL

By: 

Robert B. Woomer, Esquire  
Pa. I.D. #59030  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2001, a true and correct copy of the foregoing *Notice of Change of Address* was served by First Class U.S. Mail, postage prepaid, upon the following:

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Richard K. Laws, Esquire  
McQuaid & Blasko  
811 University Drive  
State College, PA 16801

WOOMER & FRIDAY LLP

By: 

Robert B. Woomer, Esquire  
Attorney for Plaintiff(s)

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

No. 01 - 361 - CD

**FILED**

MAY 21 2001

ORDER

William A. Shaw  
Prothonotary

NOW, this 18<sup>th</sup> day of May, 2001, this matter coming before the court on Preliminary Objections filed on behalf of Defendant Bashir Yousufzai, M.D., following argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that Count 3 of Plaintiffs' Complaint alleging lack of informed consent shall be and is hereby dismissed; Plaintiff's husband's request for attorney's fees in Count 6 of said Complaint shall be and is hereby dismissed.

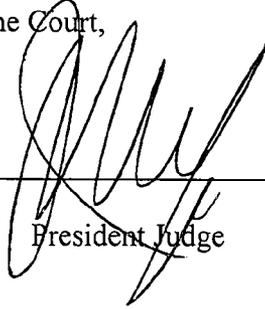
It is the further ORDER of this Court that Plaintiffs shall more specifically plead the date or dates upon which the alleged intentional and/or negligent conduct occurred and the specific factual bases for the allegation of improper prescriptions of medication in paragraph 16(3)(d,e,f).

It is the further ORDER of this Court that Defendants' demurrers to Counts 4 and 5 of said Complaint shall be continued to provide Plaintiffs an opportunity to file their Amended Complaint and supplemental brief thereon.

Said Amended Complaint to be filed within 20 days from date hereof and Plaintiffs' supplemental brief within 20 days of filing said Amended Complaint. Defendant shall have 10 days to respond to Plaintiffs' supplemental brief.

In all other respects, Defendant's Preliminary Objections shall be and are hereby denied.

By the Court,



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over a solid horizontal line.

President Judge

**FILED**

MAY 21 2001

01:25/12  
William A. Shaw  
Prothonotary

cc attorney

cc attorney Sumak

cc attorney Wall

cc attorney Lewis



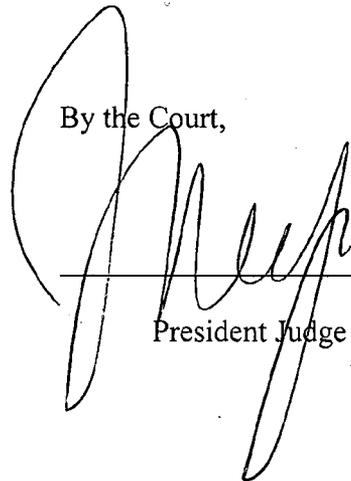
shall be and is hereby continued to provide Plaintiffs an opportunity to more specifically plead a factual basis for said claims within 20 days from date hereof and to provide the Court with a supplemental brief on said issues within 20 days of date of filing said Amended Complaint.

It is the further ORDER of this Court that all damages sought which specify any and all other relief "permitted by this Court" shall be dismissed and any demand for attorney's fees in Count 6 of said Complaint shall be and is hereby dismissed. Ruling on Plaintiffs' claim for punitive damages against this Defendant shall be and are hereby continued to provide Plaintiff an opportunity to amend her Complaint to specifically provide a basis therefor in accordance with the above ruling.

And finally, it is the ORDER of this Court that Plaintiffs shall amend their Complaint to specifically allege the date or dates upon which Defendants' conduct occurred giving rise to this action.

In all other respects, said Preliminary Objections shall be and are hereby dismissed.

By the Court,



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President Judge

**FILED**

MAY 21 2001

William A. Shaw  
Prothonotary

01:25/1 ← atty Worman

~~21~~ ← atty Stumak

← atty Wall

← atty Lees



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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

AMENDED ORDER

AND NOW this 29<sup>th</sup> day of May, 2001, the Court hereby amends the Order

issued following argument and briefs on Preliminary Objections filed on behalf of

Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. as follows:

The second paragraph on the first page of the Order of May 18, 2001, is hereby amended to read as follows:

It is the further ORDER of this Court that Defendant's demurrer to Paragraph 16 (a,b,c) of said Complaint are sustained and the aforesaid subparagraphs of Paragraph 16 of Plaintiffs' Complaint are stricken. Furthermore, Plaintiffs are directed to more specifically plead Paragraph 17 (d,e,f) to provide a factual basis for said allegations.

The remainder of the ORDER dated the 18<sup>th</sup> day of May, 2001, remains in effect.

John K. Reilly, Jr., P.J.

**FILED**

MAY 29 2001

William A. Shaw  
Prothonotary

14

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and )  
RICKY L. WEBER, )

Plaintiff, )

v. )

BASHIR YOUSUFZAI, M.D. and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )

Defendants. )

CIVIL DIVISION

Civil Action No. 01-361-00

**AMENDED COMPLAINT**

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert B. Woomer, Esquire  
PA I.D.# 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

**FILED**

JUN 07 2001

William A. Shaw  
Prothonotary

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

CIVIL DIVISION

Plaintiffs,

Civil Action No. 01-361-00

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**NOTICE**

**TO DEFENDANTS:**

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

**YOU SHOULD TAKE THIS PAPER TO YOUR LAYER 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.**

Office of the Court Administrator  
Clearfield County Courthouse  
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Clearfield, Pennsylvania 16830  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
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CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

CIVIL DIVISION

Civil Action No. 01-361-00

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**AMENDED COMPLAINT**

AND NOW comes Plaintiffs, Cindy Weber and Ricky Weber, by and through their attorney, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and files the following Complaint:

1. Plaintiffs, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D.#1 Box 38-1A, Penfield, Clearfield County, Pennsylvania.
2. Defendant, Dr. Bashir Yousufzai (hereinafter Yousufzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.
3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws of the Commonwealth of Pennsylvania with an office and place of business at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Yousufzai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of Liberty.

5. Wife-plaintiff visited the office of Liberty on four occasions, including August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999 for treatment due to pain in her arms and hands. During the course of the office visit, Yousufzai performed physical examinations and performed treatment including but not limited to touching and manipulating the wife-plaintiff's shoulder and neck. During the course of the office visits on August 16, 1999 and September 3, 1999, Yousufzai also ejaculated on wife-plaintiff. Yousufzai also prescribed medications in dosages too high for wife plaintiff, which left the wife plaintiff in a medicated state.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nausea;
- (c) nervousness;
- (d) tension;
- (e) fear;
- (f) anxiety;
- (g) depression; and
- (h) drowsiness.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health, vitality and well being have been reduced; and
- (c) she may in the future suffer wage loss.

*Count I*

*Cindy Weber v. Bashir Yousufzai, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Assault and Battery*

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Yousufzai in touching and ejaculating on wife-plaintiff constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact in the form of unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks and twice ejaculating on wife-plaintiff.

10. As a result of Yousufzai's conduct, wife-plaintiff suffered both physical pain and great emotional suffering.

11. The intentional reckless and outrageous conduct of ejaculating on wife-plaintiff constitute actions which would shock the conscience and entitle wife-plaintiff to an award of punitive damages.

12. As a result of the Yousufzai's conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

*Count II*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Professional Negligence*

13. Wife plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with Yousufzai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the Yousufzai were negligent and fall below the standard of care required of professionals in the medical vocation in that he performed a physical examination in a manner which was inconsistent with the accepted standard. Yousufzai touched wife-plaintiff with his hands for examination purposes in a manner with intent to cause sexual excitement in himself. These acts happened on August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) prescribing incorrect, unwarranted and excessive amounts of paxil, depokote, and clonazepam, which has resulted confusion, dizziness and anxiety;
- (b) unneeded and unwanted modalities including the massaging of wife-plaintiff's back and shoulders under the guise of physical medical treatment; and

- (c) ineffective and non-standard methods of treating headaches and arm numbness by rubbing on the back of wife-plaintiff.

17. As a result of the negligence of Yousufzai in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Count III*

*Cindy E. Weber v. Bashir A. Yousufzai, M.D*

*Negligence*

18. All preceding paragraphs of Plaintiff's Complaint are incorporated herein by reference as though set forth at length.

19. Yousufzai owed a duty to wife-plaintiff to act reasonably for the circumstances.

20. The injuries and damages to plaintiff were caused by the negligent breach of that duty by Defendant Yousufzai in some or all of the following particulars:

- (a) by unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks;
- (b) rubbing his hands against wife-plaintiff's body;
- (c) twice ejaculating on wife-plaintiff during the course of an examination; and
- (d) In performing examinations outside the presence of a third party.

21. As a result of Yousufzai's negligence, the wife-plaintiff suffered damages and injuries as plead above.

WHEREFORE, wife-plaintiff demands judgment against defendant for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court..

*Count IV*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligence*

22. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

23. Liberty owed a legal obligation to wife-plaintiff by virtue of their relationship with her as health care provider. This obligation included the a duty to reasonably monitor the conduct of their employees. Liberty knew or should have known that Yousufzai frequently performed examinations in contravention of an industry standard to have someone else present in the examination room.

24. Liberty breached that duty when they allowed Yousafzai to consistently examine patients without the presence of a third party.

25. Liberty's failure to monitor Yousufzai's treatment and examination policies, has resulted in Yousufzai sexually assaulting patients.

26. The injuries and damages to wife-plaintiff were caused by the negligence of Defendant Liberty's agents, employees or servants in some or all of the following particulars:

- (a) In failing to enforce the aforementioned office policy or in the alternative, for failing to employ such a policy;
- (b) For failing to warn wife-plaintiff of Defendant Yousufzai's continued violation of that office policy;
- (c) In failing to use that care required of an entity in Defendant's position by failing to supervise its employees;
- (d) In failing to properly schedule the presence of a nurse or other third party while male physician was examining female patients; and
- (e) In failing to monitor the actions and conduct of its employees including but not limited to the conduct of Yousufzai and any nurse that was or should have been scheduled to be present at the examinations at issue.

27. As a result of the aforementioned acts, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count V*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Intentional Infliction of Emotional Distress*

28. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

29. Yousufzai knew or should have known that his actions would cause wife plaintiff to suffer mental anguish and severe emotional distress.

30. As a result of Yousufzai's outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against Yousufzai for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

31. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

32. Yousufzai assaulted five (5) separate patients during a six (6) week period in late Summer and Fall of 1999. Yousufzai planned the assaults, as all office visits were scheduled in the late afternoon when all staff had already left. The patients were all similarly aged women. In some situations, the doctor told staff members to go home as he would close up. Liberty, because of the time of the assaults, the sex of the patients and the nature of the treatment required and at the doctor's insistence on treating the patients alone, after hours or with the empty office, the staff knew or should have known of the likelihood of the assaults taking place.

33. Despite notice of a dangerous situation with Yousufzai, Liberty did nothing to warn or protect the patients that were seen by the doctor. Liberty failed to assign a nurse to stay with the patients during the examinations and failed to monitor the actions of the doctor, despite notice of such actions.

34. Liberty knew that, as a result of these assaults on wife-plaintiff, she would suffer from mental anguish, nervous shock, embarrassment, shame and humiliation and would be required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

35. Despite Liberty's knowledge or constructive knowledge of the situation, they failed to warn or protect individuals similarly situated to the wife-plaintiff.

36. Such lack of action, despite notice, was behavior so extreme as to go beyond all bounds of decency and, as a result, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife-plaintiff seeks judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all relief permitted by this Court.

*Count VII*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Negligent Infliction of Emotional Distress*

37. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

38. Yousufzai, owed a fiduciary duty to wife plaintiff by the nature of their relationship as doctor to patient.

39. Defendants Yousufzai breached the duty owed to wife plaintiff when he inappropriately touched and ejaculated upon her.

40. Yousufzai's negligence in handling his fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

41. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and

(b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VIII*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

42. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

43. Liberty owed a fiduciary duty to wife-plaintiff by the nature of their relationship as health care provider to patient.

44. Liberty breached that duty owed to plaintiff in some or all of the particulars:

- (a) In failing to monitor the actions of their employees;
- (b) In failing to investigate Yousufzai prior to hiring him;
- (c) In failing to enforce or implement an office policy requiring the presence of a third party during examinations; and
- (d) In failing to follow up on suspicious activity of Yousufzai as far as scheduling late appointments wherein all staff members had already left for the day.

45. Liberty's negligence in handling their fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

46. WHEREFORE, wife-plaintiff demands judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count IX*

*Ricky L. Weber v. Basht Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

47. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

48. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount

for compulsory arbitration. together with court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted,

By: 

Robert B. Woomer, Esquire  
PA I.D. 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

**VERIFICATION**

I, CINDY WEBER and RICKY WEBER, being duly sworn according to law, depose and say that the facts contained in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Cindy E. Weber  
Signature

Ricky X Weber  
Signature

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and )  
RICKY L. WEBER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D. and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants.

CIVIL DIVISION

Civil Action No. 01-361-~~00~~<sup>CD</sup>

**AMENDED COMPLAINT**

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert B. Woomer, Esquire  
PA I.D.# 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

JURY TRIAL DEMANDED

**FILED**

JUN 11 2001

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

CIVIL DIVISION

Plaintiffs,

Civil Action No. 01-361-00

v.

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LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

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PENNSYLVANIA

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Civil Action No. 01-361-00

**AMENDED COMPLAINT**

AND NOW comes Plaintiffs, Cindy Weber and Ricky Weber, by and through their attorney, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and files the following Complaint:

1. Plaintiffs, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D.#1 Box 38-1A, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Dr. Bashir Yousufzai (hereinafter Yousufzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.

3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws of the Commonwealth of Pennsylvania with an office and place of business at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Yousufzai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of Liberty.

5. Wife-plaintiff visited the office of Liberty on four occasions, including August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999 for treatment due to pain in her arms and hands. During the course of the office visit, Yousufzai performed physical examinations and performed treatment including but not limited to touching and manipulating the wife-plaintiff's shoulder and neck. During the course of the office visits on August 16, 1999 and September 3, 1999, Yousufzai also ejaculated on wife-plaintiff. Yousufzai also prescribed medications in dosages too high for wife plaintiff, which left the wife plaintiff in a medicated state.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nausea;
- (c) nervousness;
- (d) tension;
- (e) fear;
- (f) anxiety;
- (g) depression; and
- (h) drowsiness.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health, vitality and well being have been reduced; and
- (c) she may in the future suffer wage loss.

*Count I*

*Cindy Weber v. Bashir Yousufzai, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Assault and Battery*

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Yousufzai in touching and ejaculating on wife-plaintiff constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact in the form of unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks and twice ejaculating on wife-plaintiff.

10. As a result of Yousufzai's conduct, wife-plaintiff suffered both physical pain and great emotional suffering.

11. The intentional reckless and outrageous conduct of ejaculating on wife-plaintiff constitute actions which would shock the conscience and entitle wife-plaintiff to an award of punitive damages.

12. As a result of the Yousufzai's conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

*Count II*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Professional Negligence*

13. Wife plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with Yousufzai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the Yousufzai were negligent and fall below the standard of care required of professionals in the medical vocation in that he performed a physical examination in a manner which was inconsistent with the accepted standard. Yousufzai touched wife-plaintiff with his hands for examination purposes in a manner with intent to cause sexual excitement in himself. These acts happened on August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) prescribing incorrect, unwarranted and excessive amounts of paxil, depokote, and clonazepam, which has resulted confusion, dizziness and anxiety;
- (b) unneeded and unwanted modalities including the messaging of wife-plaintiff's back and shoulders under the guise of physical medical treatment; and

- (c) ineffective and non-standard methods of treating headaches and arm numbness by rubbing on the back of wife-plaintiff.

17. As a result of the negligence of Yousufzai in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Count III*

*Cindy E. Weber v. Bashir A. Yousufzai, M.D*

*Negligence*

18. All preceding paragraphs of Plaintiff's Complaint are incorporated herein by reference as though set forth at length.

19. Yousufzai owed a duty to wife-plaintiff to act reasonably for the circumstances.

20. The injuries and damages to plaintiff were caused by the negligent breach of that duty by Defendant Yousufzai in some or all of the following particulars:

- (a) by unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks;
- (b) rubbing his hands against wife-plaintiff's body;
- (c) twice ejaculating on wife-plaintiff during the course of an examination; and
- (d) In performing examinations outside the presence of a third party.

21. As a result of Yousufzai's negligence, the wife-plaintiff suffered damages and injuries as plead above.

WHEREFORE, wife-plaintiff demands judgment against defendant for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court..

*Count IV*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligence*

22. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

23. Liberty owed a legal obligation to wife-plaintiff by virtue of their relationship with her as health care provider. This obligation included the a duty to reasonably monitor the conduct of their employees. Liberty knew or should have known that Yousufzai frequently performed examinations in contravention of an industry standard to have someone else present in the examination room.

24. Liberty breached that duty when they allowed Yousafzai to consistently examine patients without the presence of a third party.

25. Liberty's failure to monitor Yousufzai's treatment and examination policies, has resulted in Yousufzai sexually assaulting patients.

26. The injuries and damages to wife-plaintiff were caused by the negligence of Defendant Liberty's agents, employees or servants in some or all of the following particulars:

- (a) In failing to enforce the aforementioned office policy or in the alternative, for failing to employ such a policy;
- (b) For failing to warn wife-plaintiff of Defendant Yousufzai's continued violation of that office policy;
- (c) In failing to use that care required of an entity in Defendant's position by failing to supervise its employees;
- (d) In failing to properly schedule the presence of a nurse or other third party while male physician was examining female patients; and
- (e) In failing to monitor the actions and conduct of its employees including but not limited to the conduct of Yousufzai and any nurse that was or should have been scheduled to be present at the examinations at issue.

27. As a result of the aforementioned acts, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count V*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Intentional Infliction of Emotional Distress*

28. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

29. Yousufzai knew or should have known that his actions would cause wife plaintiff to suffer mental anguish and severe emotional distress.

30. As a result of Yousufzai's outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against Yousufzai for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

31. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

32. Yousufzai assaulted five (5) separate patients during a six (6) week period in late Summer and Fall of 1999. Yousufzai planned the assaults, as all office visits were scheduled in the late afternoon when all staff had already left. The patients were all similarly aged women. In some situations, the doctor told staff members to go home as he would close up. Liberty, because of the time of the assaults, the sex of the patients and the nature of the treatment required and at the doctor's insistence on treating the patients alone, after hours or with the empty office, the staff knew or should have known of the likelihood of the assaults taking place.

33. Despite notice of a dangerous situation with Yousufzai, Liberty did nothing to warn or protect the patients that were seen by the doctor. Liberty failed to assign a nurse to stay with the patients during the examinations and failed to monitor the actions of the doctor, despite notice of such actions.

34. Liberty knew that, as a result of these assaults on wife-plaintiff, she would suffer from mental anguish, nervous shock, embarrassment, shame and humiliation and would be required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

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36. Such lack of action, despite notice, was behavior so extreme as to go beyond all bounds of decency and, as a result, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife-plaintiff seeks judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all relief permitted by this Court.

*Count VII*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Negligent Infliction of Emotional Distress*

37. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

38. Yousufzai, owed a fiduciary duty to wife plaintiff by the nature of their relationship as doctor to patient.

39. Defendants Yousufzai breached the duty owed to wife plaintiff when he inappropriately touched and ejaculated upon her.

40. Yousufzai's negligence in handling his fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

41. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and

(b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VIII*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

42. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

43. Liberty owed a fiduciary duty to wife-plaintiff by the nature of their relationship as health care provider to patient.

44. Liberty breached that duty owed to plaintiff in some or all of the particulars:

- (a) In failing to monitor the actions of their employees;
- (b) In failing to investigate Yousufzai prior to hiring him;
- (c) In failing to enforce or implement an office policy requiring the presence of a third party during examinations; and
- (d) In failing to follow up on suspicious activity of Yousufzai as far as scheduling late appointments wherein all staff members had already left for the day.

45. Liberty's negligence in handling their fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

46. WHEREFORE, wife-plaintiff demands judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count IX*

*Ricky L. Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

47. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

48. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount

for compulsory arbitration. together with court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted,

By:   
Robert B. Woome, Esquire  
PA I.D. 59030

WOOME & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00-  
JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Bashir Yousufzai's  
Interrogatories and Request for Production of Documents Directed to Plaintiffs (Set One) in the  
above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State  
College, Pennsylvania, on this 17<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woome, Esquire  
Woome & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

**FILED**

JUN 19 2001  
ml 1:35pm no cc  
William A. Shaw  
Prothonotary

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

By:  \_\_\_\_\_

Darryl R. Slimak

Attorneys for Defendant

BASHIR YOUSUFZAI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant Dr. Bashir Yousufzai Request for Production of Documents Directed to Plaintiff (Set Two) in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 17<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, pa 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

**FILED**

JUN 19 2001  
m/135/20CC  
William A. Shaw  
Prothonotary

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

By:  \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CO  
NO. 01361-00

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant Dr. Bashir Yousufzai's  
Expert Interrogatories and Request for Production of Documents Directed to Plaintiffs in the  
above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State  
College, Pennsylvania, on this 17<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Bückler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

**FILED**

JUN 19 2001  
m 11:35 AM  
William A. Shaw  
Prothonotary

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

By:  \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

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

CINDY E. WEBER, and	)	Civil Division
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**PRAECIPE FOR ARGUMENT**

TO THE PROTHONOTARY:

KINDLY SUBMIT THIS MATTER TO THE  
COURT FOR ARGUMENT ONLY

1. The matter to be submitted for argument is Preliminary Objections of Defendant, Bashir Yousufzai, M.D.
2. Oral argument is requested.
3. This is not a discovery matter.
4. I certify that notice has been given to all counsel of record and to all unrepresented parties of record of the filing of this Praecipe.

McQUAIDE BLASKO

**FILED**

JUN 19 2001  
m 11:36/10.00  
William A. Shaw  
Prothonotary *WAS*

Dated: 6-18-2001

By: 

Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 234-5620

20 CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

NO. 01361-00

JURY TRIAL DEMANDED

**NOTICE TO PLEAD**

TO: CINDY and RICKY WEBER  
c/o Robert E. Woomer, Esquire

YOU ARE HEREBY notified to file a written response to the enclosed  
Preliminary Objections within twenty (20) days from the date of service hereof or a judgment  
may be entered against you.

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

**FILED**

JUN 19 2001  
M11:36/NDCC  
William A. Shaw  
Prothonotary *WAS*

By:

*Darryl R. Slimak*

Darryl R. Slimak  
Richard K. Laws  
Attorney for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated:

*June 18, 2001*

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

CINDY E. WEBER, and )  
RICKY L. WEBER, )  
 ) Civil Action No. 01-361-00  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants. )

**PRELIMINARY OBJECTIONS OF DEFENDANT, BASHIR YOUSUFZAI, M.D.**

AND NOW comes the Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Preliminary Objections to Plaintiffs' Amended Complaint, as follows:

**I. Factual and Procedural History**

1. This purported medical malpractice / personal liability action was commenced on March 8, 2001 by Plaintiffs, Cindy E. Weber and Ricky L. Weber, in the Court of Common Pleas of Clearfield County. (See copy of Plaintiff's Complaint, attached as Exhibit "A").

2. In response to Plaintiffs' Complaint, separate Preliminary Objections were filed on behalf of Defendants Dr. Yousufzai and Liberty Physical Medicine & Rehabilitation Associates, P.C. (See Defendants' Preliminary Objections, which are incorporated by reference).

3. Following argument and briefing, by Order of May 18, 2001, the Honorable John K. Reilly, Jr., P.J., largely granted Defendant Dr. Yousufzai's Preliminary Objections, specifically dismissing Plaintiffs' claim alleging a lack of informed consent and request for attorneys' fees. Moreover, the Court directed a more factual specific pleading as to the factual

basis for the allegations of improper prescriptions of medication in Paragraph 16 (d)-(f) and withheld final decision on Defendant Dr. Yousufzai's Demurrers to Count IV and V (pertaining to Plaintiffs' claims of intentional and negligent infliction of emotional distress), so as to allow Plaintiffs an opportunity file an Amended Complaint and Supplemental Brief with regard to the issues presented thereby. (See copy of Judge Reilly's May 21, 2001 Order, attached as Exhibit "B").

4. On June 7, 2001, Plaintiffs filed an Amended Complaint. (See copy of Plaintiff's Amended Complaint, attached as Exhibit "C").<sup>1</sup>

5. The operative factual averments of the Amended Complaint are that, while at Dr. Yousufzai's office ostensibly for the purposes of medical evaluation and treatment, Dr. Yousufzai "ejaculated on wife-Plaintiff" on two different office visits while she was in a medicated state (paragraph 5); engaged in "touching and ejaculating on wife-Plaintiff (which) constitutes both an assault and a battery by . . . unconsented physical contact in the form of unzipping his pants and rubbing his penis on wife-Plaintiff's bare buttocks and twice ejaculating on wife-Plaintiff" (paragraph 9); touched wife-Plaintiff "with his hands for examination purposes" which was "in a manner with **intent** to cause sexual excitement in himself," on all four office visits at issue (paragraph 15); acted in a "negligent" manner by "unzipping his pants and rubbing his penis on wife-Plaintiff's bare buttocks, rubbing his hands against wife-Plaintiff's body, twice ejaculating on wife-Plaintiff during the course of examination, and performing

---

<sup>1</sup>The Plaintiffs' Amended Complaint was **not** accompanied by a supplemental Brief as directed by Judge Reilly's May 21, 2001 Order, **nor** have Plaintiffs filed said Brief as of the date of the within Preliminary Objections. It is submitted that the foregoing only further demonstrates the propriety of dismissing Plaintiffs' intentional and negligent infliction of emotional distress claims as a matter of law.

examinations outside the presence of a third party” (paragraph 20); and, allegedly acted in the foregoing manner so as to cause “intentional infliction of emotional distress” when he “knew or should have know his actions would cause wife-Plaintiff to suffer from mental anguish and severe emotional distress,” and acted in a manner that constituted “outrageous and malicious conduct” (See Plaintiffs’ Amended Complaint generally and at Paragraphs 5, 9, 15, 20 and 29-30).

6. Although Plaintiffs’ Amended Complaint contains additional factual averments and legal conclusions beyond those originally pled, the Amended Complaint, nevertheless, fails to state claims upon which relief can be granted, as a matter of law, as to Count II (“Professional Negligence as to both Defendants); Count III (“General Negligence” as to both Defendants); Count V (“Intentional Infliction of Emotional Distress” as to Defendant Dr. Yousufzai); and Count VII (“Negligent Infliction of Emotional Distress” as to Defendant Dr. Yousufzai).

6. Based on the foregoing, Defendant Dr. Yousufzai raises Preliminary Objections to Plaintiffs’ Amended Complaint on the following basis:

- i) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife’s Count II and Count III Claims for “Professional” and “General Negligence” Where Plaintiff has Failed to Plead Sufficient Facts to Support Such Claims as a Matter of Law;
- ii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife’s Claims for Intentional and Negligent Infliction of Emotional Distress (Counts V and VII) Where Plaintiff has Failed to Plead Sufficient Facts to Support Such Claims as a Matter of Law;
- iii) Preliminary Objection in the Nature of a Demurrer to Plaintiff-wife’s Claims for Intentional and Negligent Infliction of Emotional Distress (Counts V and VII) Where the Emotional Damages Sought Thereby are Unnecessarily Duplicative of That Recoverable Within Plaintiff-wife’s Previously Asserted Claims.

**I. Demurrer: Plaintiff's Claims of Professional and General Negligence (Counts II and III) Must be Dismissed Where Plaintiff Has Failed to State Claims Upon Which Relief May be Granted**

7. Paragraphs 1 through 6 are incorporated by reference as though set forth at length herein.

8. Per this Court's "Amended Order" of May 29, 2001, this Court previously **granted** Preliminary Objections filed by Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., which asserted demurrers to Paragraphs 16(a)-(c) of the original Complaint which alleged that Dr. Yousufzai was allegedly "negligent," on the basis that he had engaged in:

- "(a) rubbing his body against wife-Plaintiff's body;
- (b) unzipping his pants and rubbing his penis on wife-Plaintiff's bare buttocks;
- (c) twice ejaculating on wife-Plaintiff during the course of an examination; . . . "

(See copy of Plaintiff's Complaint, attached as Exhibit "A," at Paragraph 16(a)-(c); see also, May 29, 2001 Amended Order, attached hereto as Exhibit "D").

9. The reasoning of the Court in striking original Complaint paragraph 16(a)-(c), as expressed at the time of oral argument, was that **such allegations do not constitute allegations of professional negligence** despite the attempted characterization of same as such in Count II of Plaintiffs' original Complaint, as a matter of law, because they are wholly inconsistent with the practice of medicine and constitute obviously intentional acts of such a nature which could not be deemed legally "negligent."

10. The allegations of the Amended Complaint, discussed hereinbefore, demonstrate **even more clearly than the original Complaint**, that the alleged actions Dr. Yousufzai do not constitute acts of negligence and professional negligence, such that Counts II and III of the

Amended Complaint must be dismissed as a matter of law.

11. It is also inconsistent and inappropriate to attempt to reconstitute intentional and allegedly outrageous conduct as “negligent” conduct such that Counts II and III fail to state claims upon which relief can be granted, as a matter of law, on this additional basis.

12. Plaintiffs cannot attempt to transform allegations of “assault and battery” and “intentional and outrageous misconduct” into “negligence” or “professional negligence,” merely by adding allegations that, at the time of the allegedly “intentional and outrageous misconduct,” the Defendant was a physician and the acts occurred at the physician’s office and while Plaintiff was on medications and was purportedly being given a physical examination or a massage.

13. Moreover, the “negligence” and “professional negligence” Counts (II and III) fail to state claims upon which relief can be granted in that they are wholly inconsistent with Plaintiffs’ assertion that the very same conduct constitutes “assault and battery” and/or “intentional infliction of emotional distress” as set forth in Counts I and V of the Amended Complaint.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff’s claims for “professional” and “general negligence” against Dr. Yousufzai, as pleaded within Counts II and III of the Amended Complaint, with prejudice.

**II. Demurrer: Plaintiff’s Claims of Intentional and Negligent Infliction of Emotional Distress (Counts V and VII) Must be Dismissed Where Plaintiff Has Failed to State Claims upon Which Relief May Be Granted**

14. Paragraphs 1 through 13 are incorporated by reference as though set forth at length herein.

15. Within Counts V and VII of the Amended Complaint, Plaintiff-wife continues to assert claims for both intentional and negligent infliction of emotional distress against Defendant

Dr. Yousufzai. (See Plaintiff's Amended Complaint at Counts V and VII).

16. Significantly, nothing within Plaintiffs' Amended Complaint alters the fact that Plaintiff-wife continues to fail to state a claim upon which relief can be granted as to either the foregoing emotional distress claims, as a matter of law.

17. With regard to Plaintiff-wife's Count V claim of intentional infliction of emotional distress, the Pennsylvania Supreme Court has not adopted this purported claim as a cause of action in this Commonwealth.

18. Indeed, even assuming that the tort of intentional infliction of emotional distress had been formally adopted as a cause of action, Plaintiff has failed to set forth sufficient facts to state a prima facie case for this purported claim, as a matter of law.

19. Specifically, Plaintiff has failed to plead sufficient factual allegations to support a claim of "outrageous conduct" when the Amended Complaint specifically avers that the Plaintiff-wife repeatedly returned to Dr. Yousufzai who then engaged her in sexual activities.

20. Such allegations simply fail to establish the sort of "extreme and outrageous" conduct that has been found to meet the level of "towering proof" that is required to sustain a claim of intentional infliction of emotional distress, if, indeed, this claim is assumed to exist.

21. With regard to Plaintiff-wife's Count VII claim of negligent infliction of emotional distress, Plaintiff has also failed to state a claim upon which relief may be granted.

22. As is self apparent, the claim of negligent infliction of emotional distress assumes that a plaintiff has pled, as a preliminary matter, a cause of action founded upon the **negligence** of a third party.

23. Inasmuch as Plaintiffs' Complaint does not aver allegations of negligent conduct, but, instead, sets forth claims sounding solely in **intentional** conduct, Plaintiffs must be found, as

a matter of law, to have failed to state a claim upon which relief can be granted as to Plaintiffs' Count VII claim of negligent infliction of emotional distress.

24. Moreover, and even assuming that the Amended Complaint did contain adequate factual allegations of negligent conduct upon which to base a claim of negligent infliction of emotional distress, Plaintiff's Count VII claim must nevertheless fail where Plaintiff has failed to state a claim upon which relief can be granted as to either the "bystander" and/or "direct impact" theories of recovery under the negligent infliction of emotional distress doctrine.

25. To the contrary, Plaintiff's Count VII claim of emotional distress, which is brought on Plaintiff-wife's own behalf, attempts to assert a direct and independent claim of negligent infliction of emotional distress, which has not been recognized by recent Appellate Court case law.

26. Based upon the foregoing, Plaintiff has failed to state a claim upon which relief can be granted for the claims of intentional and negligent infliction of emotional distress that are asserted against Dr. Yousufzai at Counts V and VII of Plaintiffs' Amended Complaint.

27. Accordingly, Plaintiff-wife's claims of intentional and negligent infliction of emotional distress against Dr. Yousufzai, as pleaded within Counts V and VII, should be dismissed from Plaintiffs' Amended Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff-wife's claims of intentional and negligent infliction of emotional distress, as pleaded within Counts V and VII of the Amended Complaint, with prejudice.

**III. Demurrer: Plaintiff's Claims for Intentional and Negligent Infliction of Emotional Distress (Counts V and VII) Must be Dismissed Where the Claims and Damages Sought Thereby are Unnecessarily Duplicative of Those Within Plaintiff's Previously Asserted Claims**

28. Paragraphs 1 through 27 are incorporated by reference as though set forth at length herein.

29. In the event that Plaintiff's claims for intentional and negligent infliction of emotional distress are not dismissed for the foregoing reasons, it is submitted that additional grounds exist for dismissing such claims, as a matter of law.

30. Specifically, Plaintiff's intentional and negligent infliction of emotional distress claims seek to recover damages that are identical to that pled within Plaintiff's previously asserted claims of Assault and Battery (Count I) and/or Negligence (Counts II and III), if, indeed, the latter of these two claims is not dismissed for the reasons previously asserted herein.

31. Because Pennsylvania law prohibits litigants from obtaining unfair duplicative recoveries, and Plaintiffs' claims asserting intentional and/or negligent infliction of emotional distress are simply duplicative of Plaintiffs' claims of Assault and Battery and/or Negligence, it is requested that the within demurrer be granted and that Plaintiff's claims for intentional and negligent infliction of emotional distress (Counts V and VII) be dismissed, with prejudice.

32. Within Counts V and VII, the injuries alleged and damages sought to be recovered include: "extreme emotional distress and physical stress, mental anguish, depression, nervous shock, embarrassment, shame, humiliation, anxiety and medical expenses." (See Exhibit "C," at Count V, Paragraph 30; and Count VII, Paragraph 40).

33. The foregoing damages are identical to and, indeed, overlap, those damages sought to be recovered by Plaintiff's previously asserted claims of Assault and Battery (Count I)

and/or Professional or General Negligence (Counts II and III).

34. Within Counts I, II and III, which are also brought on Plaintiff-wife's own behalf, Plaintiff seeks to recover for "physical and emotional injuries of both a temporary and permanent nature." (See Exhibit "C," at Count I, ¶ 10; Count II, ¶ 17, incorporated into Count III via ¶ 18).

35. Because the claims raised at Counts I - III, V and VII of the Amended Complaint are all brought on behalf of Plaintiff-wife, in her own right, and because there is no discernable difference between the theories of relief and/or injuries alleged and/or damages sought with respect to these claims, it would be unfairly prejudicial and legally improper to permit such claims to proceed, and same are unnecessarily duplicative.

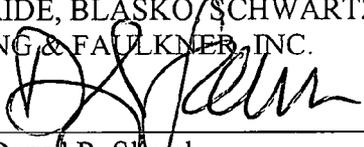
36. Accordingly, Plaintiff's claims of intentional infliction of emotional distress (Count V) and negligent infliction of emotional distress (Count VII) should be stricken and dismissed from Plaintiffs' Amended Complaint, with prejudice.

WHEREFORE, Objecting Defendant respectfully requests that this Honorable Court dismiss Plaintiff's claims of intentional and negligent infliction of emotional distress against Dr. Yousufzai, as pleaded within Counts V and VII of the Amended Complaint, with prejudice.

Respectfully submitted,

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

BY

  
Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: June 18, 2001

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

CINDY E. WEBER, and )  
RICKY L. WEBER )  
 ) Civil Action No. 01-361-00  
Plaintiff, )  
 )  
v. )  
 )  
BASHIR YOUSUFZAI, M.D, and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )  
 )  
Defendants. )

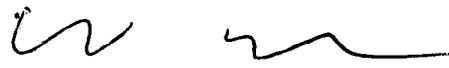
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Preliminary Objections of Defendant, Bashir Yousufzai, M.D. in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 18<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P  
1701 McFarland Road  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By:   
\_\_\_\_\_

Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624



814-941-4605  
Attn: Roxanne  
Re: 33695402  
Liberty Med. Ass.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

Plaintiff,

v.

BASEIR YOUSUKZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Civil Action No. 01361-CO

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert E. Woomer, Esquire  
P.A.I.D.# 59030

WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 561-7980

I hereby certify this to be a true  
and correct copy of the original  
statement filed in this case.

MAR 12 2001

AKM

JURY TRIAL DEMANDED

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

**CINDY E. WEBER, and  
RICKY L. WEBER,**

**CIVIL DIVISION**

**Plaintiffs,**

**Civil Action No. \_\_\_\_\_**

**v.**

**BASHIR YOUSURZAL, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,**

**Defendants.**

**NOTICE TO DEFEND**

**TO DEFENDANTS:**

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

**YOU SHOULD TAKE THIS PAPER TO YOUR LAYER 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.**

**Office of the Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641**

**Complaint in Civil Action  
Page 2**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and  
RICKY L. WEBER

Plaintiffs,

CIVIL DIVISION

Civil Action No. \_\_\_\_\_

v.

BASHIR YOUSUFZAI M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

COMPLAINT IN CIVIL ACTION

AND NOW comes Plaintiff, Cindy Weber and Ricky Weber, by and through their attorneys, Robert B. Woome, Esquire, and Woome & Friday, LLP, and files the following Complaint:

1. Plaintiff, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D. 1, Box 38-1A, Penfield, Clearfield County, Pennsylvania.
2. Defendant, Dr. Bashir Yousufzai (hereinafter Yousufzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania, and at all times relevant hereto was the treating physician of wife plaintiff.
3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws

of the Commonwealth of Pennsylvania with an office and place of business at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Youstzai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of the corporate defendant.

5. Wife plaintiff visited the office of Defendants for an examination due to pain in her arms and hands. During the course of the treatment, Youstzai made unwanted, forceful, sexual contact with wife plaintiff, including but not limited to, ejaculating on the wife plaintiff. Youstzai also prescribed inappropriate medications and dosages to wife plaintiff.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nauses;
- (c) nervousness and depression;
- (d) tension;
- (e) fear and embarrassment; and
- (f) Anxiety.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health and vitality have been reduced; and
- (c) she has suffered emotional and psychological trauma.

*Court I*

*Cindy Weber v. Bashir Younsfi, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Assault and Battery*

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Defendant constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact.

10. As a result of Defendant's conduct, Plaintiff suffered both physical pain and great emotional suffering.

11. The actions of Defendant constitute an intentional tort and is such willful, reckless and outrageous conduct as to shock the conscience, and entitle Plaintiff to an award of punitive damages.

12. As a result of the defendants' conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

**Count II**

**Cindy Weber v. Bashir Yousefai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.**

**Professional Negligence**

13. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with defendants, Yousefai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the defendants were negligent and fall below the standard of care required of professionals in the medical vocation.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) rubbing his body against wife plaintiff's body;
- (b) unzipping his pants and rubbing his penis on wife plaintiff's bare buttocks;
- (c) twice ejaculating on wife plaintiff during the course of an examination;
- (d) prescribing incorrect and unwarranted amounts of medications;
- (e) unnecessary and unwanted modalities; and
- (f) ineffective and non-standard methods of treating headaches and arm numbness.

17. As a result of the negligence and/or recklessness of the defendants in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Court III*

*Cindy Weber v. Dr. Eskir Youssaf and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Lack of Informed Consent*

18. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

19. The defendant physician had a legal obligation to inform the patient of the risks associated with his professional services.

20. Defendants knew or should have known that the treatment given to wife plaintiff would likely result in severe emotional trauma to her due to the negligent, outrageous and/or malicious conduct of the defendants.

21. Despite this knowledge, the defendant failed to apprise the patient of the risks associated with his activities and treatment.

22. As a result of the lack of informed consent, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count IV*

*Cindy Weber v. Bashir Youngdal, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

23. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

24. Defendants acted with the intention of causing wife plaintiff to suffer mental anguish and severe emotional distress.

25. As a result of the defendants' outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count V*

*Cindy Weber v. Bashir Youngdal, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

26. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

27. Defendants, as medical providers, owed a professional duty to wife plaintiff by the nature of their relationship as doctor to patient.

28. Defendants breached the duty owed to wife plaintiff when she was inappropriately touched and ejaculated upon her.

29. Defendants also breached their duty to wife plaintiff by employing defendant Yousufzai and further by allowing the conduct to take place on their premises and under the auspices of their corporation.

30. The defendants' breach of duty to plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) extreme emotional distress; and
- (b) extreme physical stress.

31. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and
- (b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Ricky L. Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

32. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

33. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with attorneys' fees, court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted this 6<sup>th</sup> day of March, 2001.

By.   
Robert B. Woomer, Esquire  
PA ID. 59090

WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 563-7980

*Raise  
Anti-heart balm  
Statute*

VERIFICATION

*Cindy*  
We, *Wendy E. Weber* and *Rick Weber*, wife and husband, being duly sworn according to law, depose and say that the facts contained in the foregoing *Complaint* *In Civil Action* are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

*Cindy E. Weber*  
Signature

*Rick Weber*  
Signature



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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 18<sup>th</sup> day of May, 2001, this matter coming before the court on Preliminary Objections filed on behalf of Defendant Bashir Yousufzai, M.D., following argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that Count 3 of Plaintiffs' Complaint alleging lack of informed consent shall be and is hereby dismissed; Plaintiff's husband's request for attorney's fees in Count 6 of said Complaint shall be and is hereby dismissed.

It is the further ORDER of this Court that Plaintiffs shall more specifically plead the date or dates upon which the alleged intentional and/or negligent conduct occurred and the specific factual bases for the allegation of improper prescriptions of medication in paragraph 16(3)(d,e,f).

It is the further ORDER of this Court that Defendants' demurrers to Counts 4 and 5 of said Complaint shall be continued to provide Plaintiffs an opportunity to file their Amended Complaint and supplemental brief thereon.

Said Amended Complaint to be filed within 20 days from date hereof and Plaintiffs' supplemental brief within 20 days of filing said Amended Complaint. Defendant shall have 10 days to respond to Plaintiffs' supplemental brief.

In all other respects, Defendant's Preliminary Objections shall be and are hereby denied.

By the Court,

/s/JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 21 2001

Attest.

*William J. ...*  
Prothonotary





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and  
RICKY L. WEBER,

CIVIL DIVISION

Plaintiffs,

Civil Action No. 01-361-00

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**NOTICE**

TO DEFENDANTS:

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAYER 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.

Office of the Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

- CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

CIVIL DIVISION

Civil Action No. 01-361-00

v.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

**AMENDED COMPLAINT**

AND NOW comes Plaintiffs, Cindy Weber and Ricky Weber, by and through their attorney, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and files the following Complaint:

1. Plaintiffs, Cindy Weber (hereinafter wife plaintiff) and Ricky Weber (hereinafter husband plaintiff), were wife and husband, and are adult individuals residing at R.D.#1 Box 38-1A, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Dr. Bashir Yousufzai (hereinafter Yousufzai), is an adult individual who resides at 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.

3. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) is a professional corporation organized and existing under the laws of the Commonwealth of Pennsylvania with an office and place of business at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all relevant times, Yousufzai was the agent, servant and/or employee of Liberty, acting in the course and scope of his employment and under the direction, supervision and control of Liberty.

5. Wife-plaintiff visited the office of Liberty on four occasions, including August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999 for treatment due to pain in her arms and hands. During the course of the office visit, Yousufzai performed physical examinations and performed treatment including but not limited to touching and manipulating the wife-plaintiff's shoulder and neck. During the course of the office visits on August 16, 1999 and September 3, 1999, Yousufzai also ejaculated on wife-plaintiff. Yousufzai also prescribed medications in dosages too high for wife plaintiff, which left the wife plaintiff in a medicated state.

6. As a direct and proximate result of defendants' conduct, wife plaintiff has suffered the following injuries, some or all of which may be permanent in nature:

- (a) headaches;
- (b) nausea;
- (c) nervousness;
- (d) tension;
- (e) fear;
- (f) anxiety;
- (g) depression; and
- (h) drowsiness.

7. As a direct, proximate and intended result of the defendants' negligent and outrageous conduct, wife plaintiff has suffered the following damages:

- (a) she has been and will in the future be required to expend large sums of money on medical treatment;
- (b) wife plaintiff's general health, vitality and well being have been reduced; and
- (c) she may in the future suffer wage loss.

*Count I*

*Cindy Weber v. Bařhir Yousufzai, M.D and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Assault and Battery*

8. Wife plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this Complaint, as though set forth at length.

9. The conduct of Yousufzai in touching and ejaculating on wife-plaintiff constitutes both an assault and a battery by placing wife plaintiff in fear or apprehension of imminent danger and involved direct, unconsented physical contact in the form of unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks and twice ejaculating on wife-plaintiff.

10. As a result of Yousufzai's conduct, wife-plaintiff suffered both physical pain and great emotional suffering.

11. The intentional reckless and outrageous conduct of ejaculating on wife-plaintiff constitute actions which would shock the conscience and entitle wife-plaintiff to an award of punitive damages.

12. As a result of the Yousufzai's conduct, the wife plaintiff has suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages in excess of the amount for compulsory arbitration together with court costs, interest and any and all other relief permitted by this Court.

*Count II*

*Cindy Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Professional Negligence*

13. Wife plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

14. During wife plaintiff's appointment with Yousufzai was the attending physician in charge of wife plaintiff's treatment and care.

15. The actions of the Yousufzai were negligent and fall below the standard of care required of professionals in the medical vocation in that he performed a physical examination in a manner which was inconsistent with the accepted standard. Yousufzai touched wife-plaintiff with his hands for examination purposes in a manner with intent to cause sexual excitement in himself. These acts happened on August 16, 1999, August 20, 1999, August 24, 1999 and September 3, 1999.

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) prescribing incorrect, unwarranted and excessive amounts of paxil, depokote, and clonazepam, which has resulted confusion, dizziness and anxiety;
- (b) unneeded and unwanted modalities including the messaging of wife-plaintiff's back and shoulders under the guise of physical medical treatment; and

- (c) ineffective and non-standard methods of treating headaches and arm numbness by rubbing on the back of wife-plaintiff.

17. As a result of the negligence of Yousufzai in treating wife plaintiff her being was temporarily and permanently injured, both physically and emotionally.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court.

*Count III*

*Cindy E. Weber v. Bashir A. Yousufzai, M.D*

*Negligence*

18. All preceding paragraphs of Plaintiff's Complaint are incorporated herein by reference as though set forth at length.

19. Yousufzai owed a duty to wife-plaintiff to act reasonably for the circumstances.

20. The injuries and damages to plaintiff were caused by the negligent breach of that duty by Defendant Yousufzai in some or all of the following particulars:

- (a) by unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks;
- (b) rubbing his hands against wife-plaintiff's body;
- (c) twice ejaculating on wife-plaintiff during the course of an examination; and
- (d) In performing examinations outside the presence of a third party.

21. As a result of Yousufzai's negligence, the wife-plaintiff suffered damages and injuries as plead above.

WHEREFORE, wife-plaintiff demands judgment against defendant for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest, and any and all other relief permitted by this Court..

*Count IV*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligence*

22. Wife plaintiff incorporates by reference, all preceding paragraphs of this Complaint as though set forth at length.

23. Liberty owed a legal obligation to wife-plaintiff by virtue of their relationship with her as health care provider. This obligation included the a duty to reasonably monitor the conduct of their employees. Liberty knew or should have known that Yousufzai frequently performed examinations in contravention of an industry standard to have someone else present in the examination room.

24. Liberty breached that duty when they allowed Yousafzai to consistently examine patients without the presence of a third party.

25. Liberty's failure to monitor Yousufzai's treatment and examination policies, has resulted in Yousufzai sexually assaulting patients.

26. The injuries and damages to wife-plaintiff were caused by the negligence of Defendant Liberty's agents, employees or servants in some or all of the following

- particulars:

- (a) In failing to enforce the aforementioned office policy or in the alternative, for failing to employ such a policy;
- (b) For failing to warn wife-plaintiff of Defendant Yousufzai's continued violation of that office policy;
- (c) In failing to use that care required of an entity in Defendant's position by failing to supervise its employees;
- (d) In failing to properly schedule the presence of a nurse or other third party while male physician was examining female patients; and
- (e) In failing to monitor the actions and conduct of its employees including but not limited to the conduct of Yousufzai and any nurse that was or should have been scheduled to be present at the examinations at issue.

27. As a result of the aforementioned acts, wife plaintiff has suffered the damages explained above.

WHEREFORE, wife plaintiff demands compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count V*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Intentional Infliction of Emotional Distress*

28. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

29. Yousufzai knew or should have known that his actions would cause wife plaintiff to suffer mental anguish and severe emotional distress.

30. As a result of Yousufzai's outrageous and malicious conduct, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife plaintiff demands judgment against Yousufzai for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VI*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Intentional Infliction of Emotional Distress*

31. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

32. Yousufzai assaulted five (5) separate patients during a six (6) week period in late Summer and Fall of 1999. Yousufzai planned the assaults, as all office visits were scheduled in the late afternoon when all staff had already left. The patients were all similarly aged women. In some situations, the doctor told staff members to go home as he would close up. Liberty, because of the time of the assaults, the sex of the patients and the nature of the treatment required and at the doctor's insistence on treating the patients alone, after hours or with the empty office, the staff knew or should have known of the likelihood of the assaults taking place.

33. Despite notice of a dangerous situation with Yousufzai, Liberty did nothing to warn or protect the patients that were seen by the doctor. Liberty failed to assign a nurse to stay with the patients during the examinations and failed to monitor the actions of the doctor, despite notice of such actions.

34. Liberty knew that, as a result of these assaults on wife-plaintiff, she would suffer from mental anguish, nervous shock, embarrassment, shame and humiliation and would be required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

35. Despite Liberty's knowledge or constructive knowledge of the situation, they failed to warn or protect individuals similarly situated to the wife-plaintiff.

36. Such lack of action, despite notice, was behavior so extreme as to go beyond all bounds of decency and, as a result, wife plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and has been required to undergo medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, wife-plaintiff seeks judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all relief permitted by this Court.

*Count VII*

*Cindy Weber v. Bashir Yousufzai, M.D.*

*Negligent Infliction of Emotional Distress*

37. Wife plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

38. Yousufzai, owed a fiduciary duty to wife plaintiff by the nature of their relationship as doctor to patient.

39. Defendants Yousufzai breached the duty owed to wife plaintiff when he inappropriately touched and ejaculated upon her.

40. Yousufzai's negligence in handling his fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

41. As a result of defendants' negligent and outrageous conduct, plaintiff has sustained the following damages:

- (a) wife plaintiff has been and in the future will be required to expend large sums of money for psychiatric and medical treatment; and

(b) wife plaintiff's general health and vitality has been reduced.

WHEREFORE, wife plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count VIII*

*Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Negligent Infliction of Emotional Distress*

42. Wife-plaintiff incorporates by reference all preceding paragraphs of this Complaint as though set forth at length.

43. Liberty owed a fiduciary duty to wife-plaintiff by the nature of their relationship as health care provider to patient.

44. Liberty breached that duty owed to plaintiff in some or all of the particulars:

- (a) In failing to monitor the actions of their employees;
- (b) In failing to investigate Yousufzai prior to hiring him;
- (c) In failing to enforce or implement an office policy requiring the presence of a third party during examinations; and
- (d) In failing to follow up on suspicious activity of Yousufzai as far as scheduling late appointments wherein all staff members had already left for the day.

45. Liberty's negligence in handling their fiduciary duty to wife-plaintiff was the direct and proximate cause of the following emotional and physical injuries suffered by wife plaintiff:

- (a) headaches;
- (b) extreme emotional distress;
- (c) extreme physical stress;
- (d) depression;
- (e) anxiety; and
- (f) side effects from medication including muscle weakness, psychosis, drowsiness and confusion.

46. WHEREFORE, wife-plaintiff demands judgment against Liberty for compensatory and punitive damages in an amount in excess of the jurisdictional amount for compulsory arbitration, together with court costs, interest and any and all other relief permitted by this Court.

*Count IX*

*Ricky L. Weber v. Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C.*

*Loss of Consortium*

47. Husband plaintiff incorporates, by reference, all preceding paragraphs of this Complaint as though set forth at length.

48. As a result of the aforesaid conduct and injuries, the husband plaintiff, was deprived of the society, companionship, services and consortium of his wife and may in the future be so deprived to his great detriment and loss.

WHEREFORE, husband plaintiff demands judgment against defendants for compensatory and punitive damages in an amount in excess of the jurisdictional amount

for compulsory arbitration. together with court costs, interest and any and all other relief permitted by this Court.

Respectfully Submitted,

By: 

Robert B. Woome, Esquire  
PA I.D. 59030

WOOME & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

**VERIFICATION**

I, CINDY WEBER and RICKY WEBER, being duly sworn according to law, depose and say that the facts contained in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



RECEIVED  
MAY 30 2001

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

AMENDED ORDER

AND NOW this 29<sup>th</sup> day of May, 2001, the Court hereby amends the Order issued following argument and briefs on Preliminary Objections filed on behalf of Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. as follows:

The second paragraph on the first page of the Order of May 18, 2001, is hereby amended to read as follows:

It is the further ORDER of this Court that Defendant's demurrer to Paragraph 16 (a,b,c) of said Complaint are sustained and the aforesaid subparagraphs of Paragraph 16 of Plaintiffs' Complaint are stricken. Furthermore, Plaintiffs are directed to more specifically plead Paragraph 17 (d,e,f) to provide a factual basis for said allegations.

The remainder of the ORDER dated the 18<sup>th</sup> day of May, 2001, remains in effect.

I hereby certify this to be a true and attested copy of the original statement filed in this case.

*John K. Reilly, Jr.*  
/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr., P.J.

MAY 30 2001

Attest

*William L. Shaw*  
Prothonotary

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

CINDY E. WEBER, and	)	
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion to Compel Answers to Expert Interrogatories Filed On Behalf of Defendant, Bashir Yousufzai, M.D. and Defendant's Brief in Support of Motion to Compel Answers to Expert Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 20<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
1701 McFarland Road  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By:   
Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.

**FILED**

JUN 21 2001

William A. Shaw  
Prothonotary

**FILED**

JUN 21 2001  
M12081nc  
William A. Shaw  
Prothonotary

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CP

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

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.,

Defendants.

) No.: 01-361-00

) Type of Case: Civil Action

) JURY TRIAL DEMANDED

) Type of Pleading:

) Motion to Compel Answers to Expert  
) Interrogatories Filed On Behalf of  
) Defendant, Bashir Yousufzai, M.D.

) Filed on Behalf of Defendant  
) BASHIR YOUSUFZAI, M.D.

) Counsel of Record for this  
) Party: DARRYL R. SLIMAK  
) Court I.D. No.: 41695

) RICHARD K. LAWS  
) Court I.D. No. 82369

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

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

) Counsel of Record for  
) Adverse Party:  
) ROBERT E. WOOMER

Dated: 6/20/01

**FILED**

JUN 21 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER, and	)	Civil Division
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**MOTION TO COMPEL ANSWERS TO EXPERT INTERROGATORIES**  
**FILED ON BEHALF OF DEFENDANT, BASHIR YOUSUFZAI, M.D.**

AND NOW comes the Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Motion to Compel Answers to Expert Interrogatories as follows:

1. Plaintiffs initiated this action by filing a Complaint in Civil Action on March 12, 2001, in the Court of Common Pleas of Clearfield County.
2. Following the filing of Preliminary Objections, Plaintiffs came forward with an Amended Complaint on June 7, 2001, to which Moving Defendant has, again, filed Preliminary Objections. Defendant's Preliminary Objections presently rest with the Court for resolution.
3. Briefly stated, Plaintiffs generally allege that Defendant Dr. Yousufzai acted inappropriately by engaging in unwanted physical contact with Plaintiff-wife during two office visits in August and September of 1999. (See Amended Complaint, at ¶5).
4. On March 28, 2001, Counsel for Dr. Yousufzai served Expert Interrogatories upon Plaintiffs' counsel. (See Exhibit "A".)

5. The Defendant's Interrogatories seek, inter alia, inquiries about the identities and backgrounds of the Plaintiffs' medical and non-medical expert witnesses; the subject matter on which each of Plaintiffs' expert witnesses (both medical and non-medical) are expected to testify; the substance of each and every opinion which Plaintiffs' expert witnesses (both medical and non-medical) are expected to render at the trial of this matter, together with a summary of the grounds for each such opinion; and, inquiries concerning the treatises and/or literature that Plaintiffs' experts have relied upon in formulating their opinions concerning the care and treatment involved in this case. (See Exhibit "A").

6. As of the date of this Motion, Plaintiffs' have neither provided Defense counsel with Answers and/or Responses to Defendant's March 28, 2001 Expert Interrogatories, nor have Plaintiffs given the Defense any idea as to when such Answers and/or Responses may be forthcoming.

7. Plaintiffs' refusal to provide Answers and/or Responses to Defendant's outstanding Discovery Requests places Plaintiffs in direct violation of Pennsylvania Rule of Civil Procedure 4006(a)(2), which required Plaintiffs to provide Answers and/or Responses to Defendant's outstanding discovery requests within thirty (30) days of service thereof.

8. Defendant is unduly prejudiced in the preparation of his defense to the Plaintiffs' claims, in that he has not yet been provided with the requested information which would assist Defendant in accurately assessing the case, conducting the necessary investigations and inquiries, and, preparing a defense to this action.

9. Pursuant to Pennsylvania Rule of Civil Procedure 4019(a)(1), the Court may make an appropriate order if : "(i) a party fails to serve answers, sufficient answers or objections to

written interrogatories under Rule 4005", or "(vii) a party fails to respond to a request for production made under Rule 4009."

10. When acting under Pa.R.C.P. 4019(a), the court may make "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing in evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition." See Pa.R.C.P. 4019(c)(2) (emphasis added).

11. Accordingly, Defendant respectfully requests that this Honorable Court issue an Order requiring Plaintiffs to provide complete Answers and/or Responses to Defendant's March 28, 2001 Expert Interrogatories, and in doing so, produce any and all expert reports that Plaintiffs intend to utilize at the trial of this matter within forty-five (45) days, or be precluded from producing, utilizing and/or mentioning any expert reports (or other information) against Dr. Yousufzai at the trial of this matter.

WHEREFORE, Defendant, Bashir Yousufzai, M.D., respectfully requests this Honorable Court to grant his Motion to Compel, and in doing so, direct Plaintiffs to provide full and complete Answers and/or Responses to Defendant's Expert Interrogatories within forty-five (45) days, or be precluded from introducing into evidence at trial any witness, information or

document sought by these Expert Interrogatories, and be subject to any other such sanctions which this Court deems appropriate, including dismissal of the action.

Respectfully Submitted,

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

BY:  \_\_\_\_\_

DARRYL R. SLIMAK  
RICHARD K. LAWS  
Attorney for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 6/20/01



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

NO. 01361-00

JURY TRIAL DEMANDED

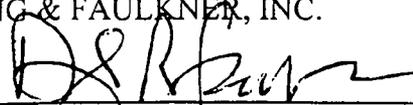
**DEFENDANT YOUSUFZAI'S EXPERT INTERROGATORIES**  
**FOR ANSWER BY PLAINTIFFS**

TO: CINDY E. WEBER and  
RICKY L. WEBER  
c/o Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
1701 McFarland Road  
Pittsburgh, PA 15216

Please take notice that you are hereby required pursuant to the Pennsylvania Rules of Civil Procedure, to serve upon the undersigned, within thirty (30) days from service hereof, your answers to the Interrogatories provided by Defendant Yousufzai in writing and under oath.

These shall be deemed to be continuing interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your answers, you shall promptly furnish said information to the undersigned by supplemental answers.

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

By: 

Darryl R. Slimak, Esquire  
Attorneys for Defendant Yousufzai

Definitions:

A. "Document" shall mean any writing (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonograph record, or electronic or mechanical matter (including microfilm of any kind or nature, tape or recording), or other data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and shall include, without limiting the generality of the foregoing, all records, correspondence, telegrams, teletypes, agreements, studies, reports, drafts, memoranda, and computer print outs.

B. "Health care provider" means a person, corporation, facility, institution or other entity who provided health care or professional services as a physician, including a medical doctor and a doctor of osteopathy and a doctor of podiatry; psychiatrist or psychologist; chiropractor; therapist; hospital; nursing home; health maintenance organization; or an officer, employee or agent of any of them acting in the course and scope of his employment

C. "Incident" or "alleged incident" means actions or omissions upon which this action is purportedly based.

D. As used herein "identify", when used in reference to an individual, means his full name and present or last known residence and business address, his present or last known position or title and business affiliation, and his position at the time in question.

E. "Injury" means any bodily or mental harm or damage, including that as a result of a disease process.

F. "Person" means a natural person, firm, partnership, association, corporation, legal representative, and/or trustee.

G. "You" and/or "your" means Plaintiffs, their agents and employees and others acting on her behalf with regard to asserting the cause of action set forth in Plaintiffs' Complaint in the above-captioned case.

H. When the Interrogatories request that documents be identified, an identification of it should include at least the following: author, addressee, type of document, date, subject matter, and the name and address of the person or party presently having custody of the document and any known copies of it.

Instructions for Answering Interrogatories

A. In accordance with Pa.R.C.P. Rule 4005, the original of these written Interrogatories have been served upon you to be answered by the party served of, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. In accordance with Pa.R.C.P. Rule 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is sufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

C. In accordance with Pa.R.C.P. Rule 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.

D. Please file and serve answers to these Interrogatories in accordance with Pa.R.C.P. Rule 4006(a)(2).

INTERROGATORIES

1. Please provide the name, business address and home address for each **medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

2.

For each **medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

- (a) Colleges and medical or technical schools attended, dates of attendance, dates of graduation and degrees attained;
- (b) The medical schools or hospitals where the witness pursued any internship or residency and the dates of such study;
- (c) The specialties in which the witness has received certification by any board of medical specialty or professional organization, the date of such certification, and the identity of the board issuing such certification;
- (d) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
- (e) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
- (f) All hospitals where such witness has ever been granted staff privileges and the dates of such staff appointments, and for each such hospital, whether such hospital ever revoked or suspended such staff privileges;
- (g) If the witness is not self-employed, state each address where the witness is employed; and
- (h) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication.

ANSWER:

3. Please provide the name, business address and home address for each **non-medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

4. For each **non-medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

- (a) Colleges and/or technical schools attended, dates of attendance, dates of graduation and degrees attained;
- (b) The specialties in which the witness has received certification by any board or professional organization, the date of such certification, and the identity of the board issuing such certification;
- (c) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
- (d) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
- (e) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication; and
- (f) If the witness is not self-employed, state each address where the witness is employed.

ANSWER:

5. For each expert witness identified above (medical and non-medical), state the subject matter on which the expert is expected to testify.

ANSWER:

6. For each expert witness identified above (medical and non-medical), state the substance of each and every opinion which the expert is expected to render, and provide a summary of the grounds for each such opinion.

ANSWER:

7.

List by title, author, and official citation, all treatises, articles, textbooks or any literature whatsoever, which the expert(s) identified above relied upon in formulating his or her opinions relative to this case or which the expert(s) intends to present, utilize or refer to during his or her trial testimony.

ANSWER:

8.

For each expert witness identified above, state the number of times the expert has previously been retained for the purpose of either reviewing cases or for testifying in cases for Plaintiff's counsel or by members of the law firm to which Plaintiff's counsel belongs.

ANSWER:

9. For each expert witness identified above, state whether any such expert witness has had any past or present business or personal relationship with the Plaintiffs, Plaintiffs' counsel, or by of the law firm to which Plaintiffs' counsel belongs. If so, specify the persons involved and the nature of any such relationship.

ANSWER:

Respectfully submitted;

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

By: \_\_\_\_\_



Darryl R. Slimak, Esquire  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Attorneys for Defendant Yousufzai

March 28, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

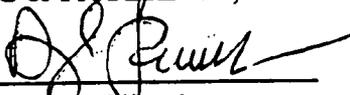
NO. 01361-00

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that Defendant Yousufzai's Expert Interrogatories for Answer by Plaintiffs were mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 28<sup>th</sup> day of March, 2001, to Robert E. Woomer, Esquire, Woomer & Friday, L. L. P., 1701 McFarland Road, Pittsburgh, PA 15216 and Walter F. Wall, Esquire, Meyer, Darrah, Buckler, Bebenek & Eck, 120 Lakemont Park Boulevard, Altoona, PA 16602.

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

By: 

Darryl R. Slimak  
Attorneys for Defendant  
Bashir Yousufzai, M. D.



**McQUAIDE BLASKO**

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699  
600 Centerview Drive • M.C. A560 • Suite 5103, Hershey, Pennsylvania 17033-2903

814-238-4926 FAX 814-234-5620  
717-531-1199 FAX 717-531-1193  
www.mcquaideblasko.com

June 20, 2001

William Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

*Marcy:  
Brief.  
\_\_\_\_\_ thanks.*

In Re: Cindy E. and Ricky L. Weber v. Bashir Yousufzai, M.D., et al.  
Docket No.: 02 - 361 - 00

Dear Mr. Shaw:

Enclosed for filing in the above-referenced matter is Motion to Compel Answers to Expert Interrogatories Filed On Behalf of Defendant, Bashir Yousufzai, M.D. and Defendant's ~~Brief in Support of Motion to Compel Answers to Expert Interrogatories~~, along with the appropriate Certificates of Service thereto. Also enclosed please find a Rule to Show Cause along with a self-addressed and stamped envelope for return of the same.

Very truly yours,

McQUAIDE BLASKO

By:   
Richard K. Laws

RKL:bap  
Enclosures

cc: Robert E. Woomer, Esq.  
Walter F. Wall, Esq.  
(All with enclosures)

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

John W. Blasko Thomas E. Schwartz Grant H. Fleming R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Home Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright  
Paul J. Tomczak Janine C. Gismondi Maureen A. Gallagher John A. Snyder April C. Simpson Allen P. Neely Charles Eppolito, III Katherine V. Oliver Katherine M. Allen  
Wayne L. Mowery, Jr. Pamela A. Ruest Michelle S. Katz Ashley Himes Kranich Chena L. Glenn-Hart Richard K. Laws John H. Taylor Michael J. Mohr Livinia N. Jones

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

3  
CP

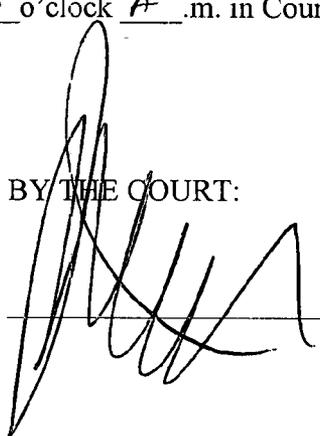
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA - CIVIL DIVISION

CINDY E. WEBER, and	)	Civil Division
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**RULE TO SHOW CAUSE**

AND NOW, this 22<sup>nd</sup> day of June, 2001, a Rule is hereby issued upon Robert E. Woomer, Esquire, Attorney for Plaintiffs, , to show cause why the Motion to Compel Answers to Expert Interrogatories Filed on Behalf of Defendant, Bashir Yousufzai, M.D. in the above-captioned matter should not be GRANTED. The Rule is returnable at a hearing scheduled for the 16<sup>th</sup> day of July, 2001 at 10:00 o'clock A.m. in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

  
\_\_\_\_\_ J.

**FILED**

JUN 25 2001

William A. Shaw  
Prothonotary



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

CINDY E. WEBER, and  
RICKY L. WEBER

Plaintiff,

v.

BASHIR YOUSUFZAI, M.D, and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendants.

) Civil Division

) Civil Action No. 01-361-00

**RULE TO SHOW CAUSE**

AND NOW, this 2nd day of June, 2001, a Rule is hereby issued upon Robert E. Woomer, Esquire, Attorney for Plaintiffs, , to show cause why the Motion to Compel Answers to Expert Interrogatories Filed on Behalf of Defendant, Bashir Yousufzai, M.D. in the above-captioned matter should not be GRANTED. The Rule is returnable at a hearing scheduled for the 16th day of July, 2001 at 10:00 o'clock a.m. in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

/s/JOHN K. REILLY, JR.

J.

**FILED**

JUN 27 2001  
m/p:24/nw:ccc  
William A. Shaw  
Prothonotary

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUN 25 2001

Attest.

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

NO. 01361-00

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Rule to Show Cause as Defendant Yousufzai's Motion to Compel Plaintiffs' Answers to Expert Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 26<sup>th</sup> day of June, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

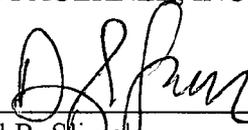
**FILED**

JUN 27 2001  
M/1:21 PM  
William A. Shaw  
Prothonotary

*WAS*

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

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

CA

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**

Preliminary Objections to Plaintiffs'  
Amended Complaint

**FILED ON BEHALF OF:**

Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**

WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

JUN 27 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

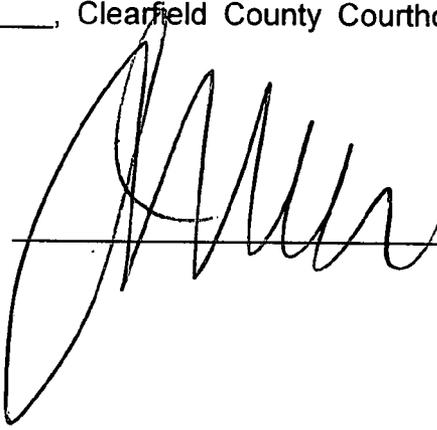
JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**RULE**

NOW THIS 2<sup>nd</sup> day of July, 2001, a Rule is hereby issued upon Plaintiffs, Cindy E. Weber and Ricky L. Weber, to show cause, if any there should be, why the Preliminary Objections to Plaintiffs' Amended Complaint filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should not be granted.

Said Rule Returnable the 16<sup>th</sup> day of July, 2001, at 10:00 o'clock, A.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

  
\_\_\_\_\_ J.

**FILED**

JUL 03 2001  
0111.071 acc atty Wall  
William A. Shaw  
Prothonotary  
EKS

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT**

NOW COMES the Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., by and through its counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files these Preliminary Objections to the Plaintiffs' Amended Complaint of which the following is a statement:

1. The Plaintiffs commenced this purported medical malpractice/personal injury action by filing a Complaint on or about March 12, 2001.

2. In response to the Plaintiffs' Complaint, the Defendants filed Preliminary Objections which were briefed and thereafter argued before Judge John K. Reilly, Jr. on May 18, 2001.

3. By Order dated May 18, 2001, and an Amended Order dated May 29, 2001, Judge Reilly largely granted the Preliminary Objections filed by this Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. Specifically, Judge Reilly dismissed

the Plaintiffs' claim for lack of informed consent, their claims for "any and all other relief permitted by this Court," and their request for attorney fees. The Court further directed the Plaintiffs to file a more specific pleading to provide a factual basis for the allegations at Paragraphs 16 (d, e, & f) of the Complaint regarding Dr. Yousufzai's improper prescriptions of medications and ineffective methods of treatment. Judge Reilly withheld decision on this Defendant's demurrers to the Plaintiffs' claims for assault and battery, professional negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and punitive damages so as to allow the Plaintiffs an opportunity to file an Amended Complaint to specifically plead a factual basis for those claims, including facts to support that this Defendant knew or should have known of Dr. Yousufzai's alleged conduct.

4. The Plaintiffs filed an Amended Complaint on or about June 8, 2001.

5. Although the Plaintiffs' Amended Complaint contains factual averments and legal conclusions beyond those plead in the original Complaint, the Amended Complaint still fails to state valid claims against this Defendant and is deficient in other respects.

#### **I. DEMURRER**

6. In paragraph 5 of the Amended Complaint, the Plaintiffs allege that the wife-Plaintiff visited this Defendant's office on four (4) occasions, at which times she was treated by Defendant Dr. Yousufzai for pain in her arms and hands. The wife-Plaintiff alleges that Dr. Yousufzai ejaculated on her during two office visits and that he prescribed the medications in dosages too high which left her in a medicated state.

7. The wife-Plaintiff thereafter alleges in Count I a claim for assault and battery against Dr. Yousufzai and this Defendant.

8. The wife-Plaintiff alleges liability for assault and battery against this Defendant as the principal, master and/or employer of Defendant, Dr. Yousufzai.

9. The factual allegations upon which the wife-Plaintiff bases her claim for assault and battery are that Dr. Yousufzai committed "unconsented physical contact in the form of unzipping his pants and rubbing his penis on wife-plaintiff's bare buttocks and twice ejaculating on wife-plaintiff." (See Amended Complaint, paragraph 9).

10. The law of this Commonwealth does not permit recovery against a principal/master/employer under a theory of vicarious liability in the circumstances alleged by the wife-Plaintiff because Dr. Yousufzai's alleged misconduct cannot be considered as having occurred within the scope of his employment as a matter of law.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Count I of Plaintiffs' Amended Complaint be dismissed.

## **II. DEMURRER**

11. In Count II of the Amended Complaint, the wife-Plaintiff attempts to set forth a cause of action for professional negligence against this Defendant on the basis of liability for alleged actions of Dr. Yousufzai that are, in actuality, intentional in nature.

12. By the Court's Order of May 18, 2001 and Amended Order of May 29, 2001 with respect to this Defendant's Preliminary Objections to the original Complaint, the Court dismissed paragraphs 16 (a) - (c) of the original Complaint and directed the Plaintiffs to

more specifically plead Paragraphs 16 (d) - (f) to provide specific factual bases for those allegations.

13. The Plaintiffs revised paragraph 16 in their Amended Complaint as follows:

16. The negligence and/or recklessness of the defendant acting as aforesaid, consisted, *inter alia*, of the following:

- (a) prescribing incorrect, unwarranted and excessive amounts of paxil, depokote, and clonazepam, which has resulted confusion, dizziness and anxiety;
- (b) unneeded and unwanted modalities including the messaging of wife-plaintiff's back and shoulders under the guise of physical medical treatment; and
- (c) ineffective and non-standard methods of treating headaches and arm numbness by rubbing on the back of wife-plaintiff.

14. The allegations in Paragraphs 16 (a) - (c) of the Plaintiffs' Amended Complaint do not comply with the Courts Orders in that they are unspecific and do not provide sufficient information to apprise the Defendants as to the nature of the Defendants' alleged negligence.

15. Furthermore, the Plaintiffs have not made any allegations to show any relationship between the acts of negligence alleged in Count II and any harm or injury to the Plaintiffs.

16. As such, the Plaintiffs have not set forth a valid cause of action for professional negligence in Count II of the Amended Complaint and Count II should be dismissed.

17. Counts II and IV of the Plaintiffs' Amended Complaint fail to state valid causes of action for negligence.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Counts II and IV of Plaintiffs' Amended Complaint be dismissed.

### **III. DEMURRER**

18. In Count IV of the Amended Complaint, the wife-Plaintiff attempts to set forth a cause of action for negligence against this Defendant.

19. The factual allegations upon which the wife-Plaintiff bases her claim for negligence is that "Liberty knew or should have known that Yousufzai frequently performed examinations in contravention of an industry standard to have someone else present in the examination room." (See Plaintiffs' Amended Complaint, paragraph 23).

20. The wife-Plaintiff alleges that Liberty breached a duty it owed to the wife-Plaintiff by allowing Dr. Yousufzai to examine patients without the presence of a third party. (See Plaintiffs' Amended Complaint, paragraph 24).

21. Industry standard is not applicable to medical malpractice cases. There is not an industry standard in the medical profession for a physician to have someone else present in the room while examining a patient.

22. Alleging a failure to have someone else present in the examination room while Dr. Yousufzai treated his patients is not sufficient to support a cause of action for negligence under the law of this Commonwealth.

23. The law of this Commonwealth does not recognize the cause of action for negligence under the circumstances alleged in Count IV of the Plaintiffs' Amended Complaint.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Count IV of the Plaintiffs' Amended Complaint be dismissed.

#### IV. DEMURRER

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

25. In Counts I and II, the Plaintiff claims punitive damages against this Defendant on the basis of being the principal, master and/or employer of Defendant, Dr. Yousufzai.

26. In Counts IV, VI and VIII, the Plaintiffs claim punitive damages against this Defendant on the basis that it knew or should have known of Defendant Dr. Yousufzai's alleged misconduct, but did not prevent it from occurring.

27. The Plaintiffs' Complaint does not contain sufficient allegations to support an award of punitive damages against this Defendant based on either vicarious or direct liability.

28. The law of this Commonwealth does not recognize imposition of punitive damages against a health care provider under a theory of vicarious liability for the actions of its agent/servant/employee unless it can be shown by a preponderance of the evidence that the health care provider had actual knowledge of the wrongful conduct of this agent/servant/employee and allowed it to occur.

29. The wife-Plaintiff does not make any such allegations in support of the claim for punitive damages under Counts I and II of the Amended Complaint.

30. The law of this commonwealth also does not permit an award of punitive damages against an employer under the circumstances of this case, even when there is an allegation that the employer knew or should have known of the employee's alleged misconduct.

31. The law of this Commonwealth does not recognize imposition of punitive damages under the facts and circumstances alleged by the Plaintiffs in their Amended Complaint.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that the Plaintiffs claims for punitive damages be dismissed from all Counts of the Plaintiffs' Amended Complaint.

#### **V. DEMURRER**

32. In Count VI of the Amended Complaint, the wife-Plaintiff attempts to set forth a claim for intentional infliction of emotional distress.

33. The claim of intentional infliction of emotional distress has not been recognized as a valid cause of action in this Commonwealth.

34. Furthermore, even assuming that intentional infliction of emotional distress is a valid cause of action in this Commonwealth, the Plaintiffs' Amended Complaint fails to set forth sufficient facts to support such cause of action.

35. The Plaintiffs' Amended Complaint does not plead sufficient factual allegations to support extreme and outrageous conduct as is required to sustain a claim of intentional infliction of emotional distress. If, in fact, such claim is assumed to exist under the law.

36. The Plaintiffs' Amended Complaint fails to set forth a recognized cause of action under a theory of intentional infliction of emotional distress.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Count VI of Plaintiffs' Amended Complaint be dismissed.

#### **VI. DEMURRER**

37. In Count VIII of the Amended Complaint, the wife-Plaintiff attempts to set forth a claim for negligent infliction of emotional distress.

38. The allegations of the Plaintiffs' Amended Complaint fail to set forth the necessary elements to establish a valid cause of action/claim for negligent infliction of emotional distress.

39. The Plaintiffs' Amended Complaint does not contain adequate factual allegations of negligent conduct upon which to base a claim of negligent infliction of emotional distress.

40. The Plaintiffs' Amended Complaint does not contain allegations that the wife-Plaintiff manifested a physical injury at the time of Dr. Yousufzai's alleged conduct.

41. The Plaintiffs' Amended Complaint fails to set forth the necessary elements to sustain a valid cause of action for negligent infliction of emotional distress.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Count VIII of Plaintiffs' Amended Complaint be dismissed.

**VII. DEMURRER**

42. The allegations set forth in paragraphs 32 through 41 above are incorporated herein by reference thereto as if same were set forth at length.

43. If the Court does not dismiss the wife-Plaintiff's claims for intentional and negligent infliction of emotional distress for the reasons set forth in Counts VI and VIII above, then it is submitted that the Court should dismiss those claims because they seek to recover damages that are identical to those pled in the wife-Plaintiff's previously asserted claims of Assault and Battery (Count I), Professional Negligence (Count II) and Negligence (Count VIII), if, in fact, the later three claims are not dismissed for the reasons indicated above.

44. Pennsylvania law prohibits the recovery of duplicative damages.

45. There is no discernable difference between the theories of relief, injuries alleged and/or damages sought on behalf of the wife-Plaintiff and to allow her to recover under all such theories would constitute an unfair duplicative recovery in contravention of the case law of this Commonwealth.

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that Counts VI and VIII of Plaintiffs' Amended Complaint be dismissed.

**VIII. MOTION TO STRIKE**

46. By the Court Order of May 18, 2001, the Court indicated that the Plaintiffs' claims for "any and all other relief permitted by this Court" should be stricken from the Plaintiffs' Complaint.

47. Nevertheless, the ad damnum clauses in the Plaintiffs' Amended Complaint include requests for "any and all other relief permitted by this Court."

WHEREFORE, Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that the above language be stricken from all Counts of the Plaintiffs' Amended Complaint.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_



**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

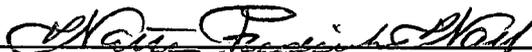
**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 26<sup>th</sup> day of June, 2001, a true and correct copy of the within Preliminary Objections to Amended Complaint was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**  
0/3:00  
JUN 27 2001  
no 1  
cc  
William A. Shaw  
Prothonotary  
*WAS*

210 CA

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**

Motion to Compel

**FILED ON BEHALF OF:**

Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**

WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

JUN 28 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

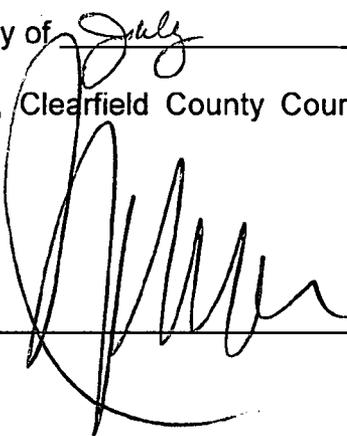
JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**RULE**

NOW THIS 2<sup>nd</sup> day of July, 2001, a Rule is hereby issued upon Plaintiffs, Cindy E. Weber and Ricky L. Weber, to show cause, if any there should be, why the Motion to Compel Answers to Interrogatories and Response to Request for Production of Documents Directed to Plaintiffs filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should not be granted.

Said Rule Returnable the 16<sup>th</sup> day of July, 2001, at 10:00 o'clock, A.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

  
\_\_\_\_\_ J.

**FILED**

JUL 03 2001

William A. Shaw  
Prothonotary

**FILED**

JUL 03 2001

077107/3cc atty. Cronin

William A. Shaw  
Prothonotary



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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**ORDER OF COURT**

NOW THIS \_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of the Motion to Compel filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., the Court does hereby ORDER, DIRECT and DECREE that the Plaintiffs, Cindy E. Weber and Ricky L. Weber, must provide full and complete responses without objections to the Interrogatories and Request for Production of Documents Directed to the Plaintiffs within twenty (20) days of this date or be barred from producing at trial any and all evidence requested in such discovery.

BY THE COURT:

---

J.

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**MOTION TO COMPEL**

NOW COMES the Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., by and through its counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files this Motion to Compel Answers to Interrogatories and Responses to Request for Production of Documents Directed to Plaintiffs of which the following is a statement:

1. The Plaintiffs commenced this purported medical malpractice/personal injury action by filing a Complaint on or about March 12, 2001.
2. As a result of the Court's decision on the Defendant's Preliminary Objections to the Plaintiffs' Complaint, the Plaintiffs filed an Amended Complaint on or about June 7, 2001.

3. The Defendants have filed Preliminary Objections to the Plaintiffs' Amended Complaint which are currently pending before the Court.

4. On or about March 30, 2001, this Defendant, by and through its counsel, served Interrogatories and a Request for Production of Documents upon the Plaintiffs by mailing same by First Class, United States Mail, postage prepaid and addressed as follows:

Cindy E. Weber and Ricky L. Weber  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

5. The Interrogatories and Request for Production of Documents seek basic information regarding the wife-Plaintiff's personal and medical background, the treatment complained of, the nature of the Plaintiffs' damages and the Plaintiffs' witnesses, including experts.

6. The Plaintiffs have failed to serve answers to the aforementioned Interrogatories and a Response to the aforementioned Request for Production of Documents within thirty (30) days after service as is required by Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.

7. The Plaintiffs' failure and/or refusal to answer the outstanding discovery is prejudicial to this Defendant in that it needs the information requested in the discovery to analyze the Plaintiffs' claim and begin to prepare its defense.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., prays that this Honorable Court enter an Order compelling the Plaintiffs, Cindy E. Weber and Ricky L. Weber, to provide full and complete responses without objections to the outstanding Interrogatories and Request for Production of Documents Directed to the Plaintiffs within twenty (20) days of the date of such order or be barred from producing at trial any and all evidence requested in such discovery.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

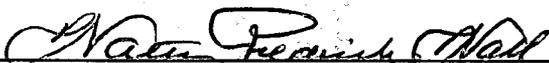
**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 27<sup>th</sup> day of June, 2001, a true and correct copy of the within Motion to Compel Answers to Interrogatories and Response to Request for Production of Documents Directed to Plaintiffs was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 5th day of July, 2001, a true and correct copy of the within Rule scheduling argument on the Preliminary Objections to Amended Complaint was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By: \_\_\_\_\_

**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

JUL 06 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

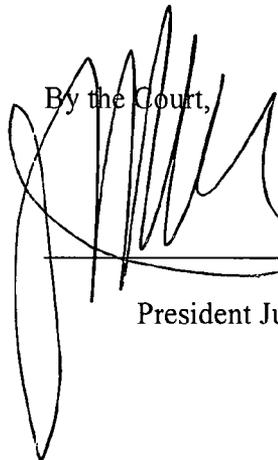
No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, following argument and briefs into Defendants' Motions to Compel Answers to Interrogatories, it is the ORDER of this Court that said Motions be and are hereby granted and Plaintiffs' directed to respond to said Interrogatories within 90 days.

By the Court,



\_\_\_\_\_  
President Judge

**FILED**

JUL 16 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

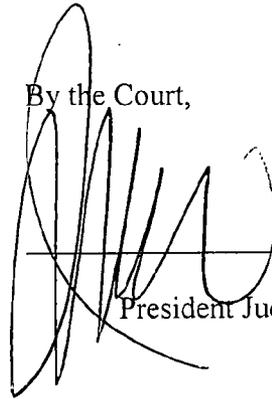
No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, upon consideration of Preliminary  
Objections filed on behalf of Defendants above-named, it is the ORDER of this Court that  
said Objections be and are hereby sustained to the extent that all allegations of Plaintiffs'  
Complaint for intentional infliction of emotional distress and/or negligence allegations with  
the exception of those related to negligent prescription of drugs shall be and are hereby  
dismissed. It is the further ORDER of this Court that said Objections shall be stayed pending  
receipt of Plaintiffs' expert reports.

By the Court,



\_\_\_\_\_  
President Judge

**FILED**

JUL 16 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER

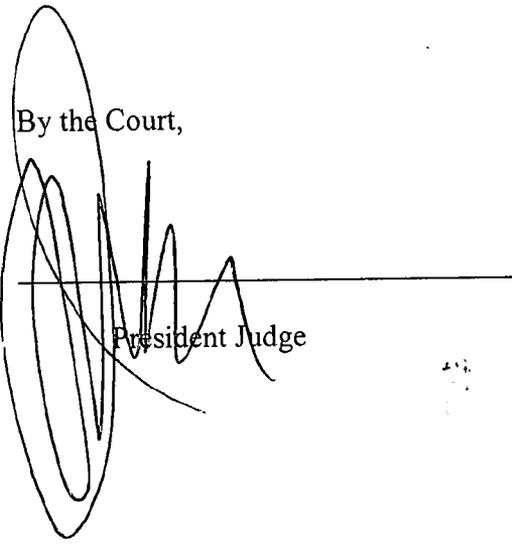
-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 20<sup>th</sup> day of July, 2001, following argument and briefs into Preliminary Objections filed on behalf of Liberty Physical Medicine & Rehabilitation Associates, P.C. seeking to strike Plaintiffs' claim for punitive damages against said Defendant, it is the ORDER of this Court that said Objections be and are hereby granted and Plaintiffs' claim for punitive damages against Liberty Physical Medicine & Rehabilitation Associates, P.C. stricken.

By the Court,  
  
\_\_\_\_\_  
President Judge

**FILED**

JUL 20 2001

William A. Shaw  
Prothonotary

FILED

JUL 20 2001

2 cc Atty Weber  
1 cc Atty Slinak

William A. Shaw  
Prothonotary

1 cc Atty Wald  
~~1 cc~~

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

CINDY E. WEBER and	:	No. 01-361-CD
RICKY L. WEBER	:	
Plaintiffs	:	
	:	JURY TRIAL DEMANDED
vs.	:	
	:	
BASHIR YOUSUFZAI, M.D. and	:	
LIBERTY PHYSICAL MEDICINE &	:	
REHABILITATION ASSOCIATES, P.C.	:	
Defendants	:	

TO: CINDY E. WEBER  
 c/o Robert B. Woomer, Esquire  
 Woomer & Friday, LLP  
 1701 McFarland Road  
 Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, CINDY E. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Monday, September 24, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY *Walter Fredrick Wall*  
 Walter Fredrick Wall, Esquire, ID #23657  
 Counsel for Defendant, Liberty Physical Medicine &  
 Rehabilitation Associates, P.C.  
 120 Lakemont Park Boulevard  
 Altoona, PA 16602  
 (814) 941-4600

**FILED**

Dated: 7/25/01

cc: Darryl Slimak, Esquire  
 Sargent's Court Reporting Services

JUL 26 2001  
 m/l/rook  
 William A. Shaw  
 Prothonotary 

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

TO: RICKY L. WEBER  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, RICKY L. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Monday, September 24, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY *Walter Fredrick Wall*  
Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

**FILED**

Dated: 7/25/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

JUL 26 2001  
11:10 AM  
William A. Shaw  
Prothonotary *WAS*

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

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

**PROOF OF SERVICE OF NOTICE  
OF DEPOSITION OF BASHIR  
YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

JUL 27 2001

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

CIVIL ACTION

Case No. 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendant(s).

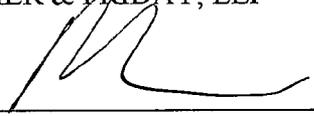
***PROOF OF SERVICE***

I hereby certify on July 25, 2001, that a true and correct copy of the foregoing *Notice of Deposition of Bashir Yousufzai, M.D.* was served upon the following, by First Class U.S. mail, postage prepaid:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Respectfully Submitted,  
WOOMER & FRIDAY, LLP

By:   
Robert B. Woomer, Esquire  
PA I.D. # 59030  
Counsel for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00

JURY TRIAL DEMANDED

**NOTICE TO PLEAD**

TO: CINDY and RICKY WEBER  
c/o Robert E. Woomeer, Esquire

LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
c/o Walter F. Wall, Esquire

YOU ARE HEREBY notified to file a written response to the enclosed Answer  
and New Matter within twenty (20) days from the date of service hereof or a judgment may be  
entered against you.

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

By:   
Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 8/7/01

**FILED**  
AUG 08 2001  
William A. Shaw  
Prothonotary

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

CINDY E. WEBER, and	)	Civil Division
RICKY L. WEBER	)	
	)	Civil Action No. 01-361-00
Plaintiff,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D, and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

**ANSWER WITH NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT  
FILED ON BEHALF OF DEFENDANT, BASHIR YOUSUFZAI, M.D.**

AND NOW comes the Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Answer with New Matter to Plaintiffs' Amended Complaint, as follows:

1. Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 1, and, therefore, they are denied.

Furthermore, and after reasonable investigation, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments concerning the status of the Plaintiffs' marital relationship, and therefore, said averments are likewise denied.

2. Denied as stated, in that Dr. Yousufzai no longer resides at said address.

3. The averments of Paragraph 3 pertain to a Defendant other than that Answering herein, and, therefore, no response is necessary.

4. It is admitted only that, at all times relevant to Plaintiffs' Amended Complaint, Defendant Dr. Yousufzai was an employee of Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C. The balance of the averments are statements of legal opinion

and/or legal conclusions to which no response is required under the Rules of Civil Procedure and/or deemed denied per Pa. R.C.P. No. 1029(e).

5. As regards the averments of paragraph 5, it is admitted only that, on August 16, 1999; August 20, 1999; August 24, 1999; and, September 3, 1999, Plaintiff-wife's relevant medical records reflect visits to Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., wherein medical examinations were conducted by Defendant Dr. Yousufzai. With respect to the medical treatment rendered to Plaintiff-wife during the foregoing visits and/or examinations, Defendant hereby incorporates Plaintiff-wife's relevant medical records, which fully and completely set forth the extent and details of all examinations rendered, complaints voiced, and treatment provided throughout this time period. To the extent that the averments of Paragraph 5 differ from that set forth herein and/or that set forth in Plaintiff-wife's relevant medical records, said averments are denied as stated and/or denied per Pa. R.C.P. 1029(e). It is specifically denied that Dr. Yousufzai prescribed any medications in too high a dose, or that any resulting medicated state was anything other than therapeutic. Ms. Weber did precipitate Dr. Yousufzai to ejaculate during one of the visits. The averments are otherwise specifically denied.

6-7. The averments of Paragraphs 6 and 7, inclusive, contain statements as to Plaintiffs' legal position and/or conclusions of law, and, thus, no affirmative response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 6 and 7 are denied per Pa. R.C.P. 1029(e).

**Count I**  
**Cindy Weber v. Bashir A. Yousufzai, M.D. and**  
**Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Assault & Battery**

8. Answering Defendant hereby incorporates Paragraphs 1 through 7 of this Answer and New Matter as if the same were set forth at length herein.

9-12. The averments of Paragraph 9 through 12, inclusive, contain statements as to Plaintiffs' legal position and/or conclusions of law, and, thus, no affirmative response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 9 through 12 are denied per Pa. R.C.P. 1029(e) and/or as indicated in the preceding paragraphs hereof.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count II**  
**Cindy Weber v. Bashir A. Yousufzai, M.D. and**  
**Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Professional Negligence**

13. Answering Defendant hereby incorporates Paragraphs 1 through 12 of this Answer and New Matter as if the same were set forth at length herein.

14. It is admitted only that, at the time period relevant to Plaintiffs' Amended Complaint, Defendant Yousufzai provided care and treatment to Plaintiff-wife as reflected within the relevant medical records, which are incorporated herein by this reference.

15-17. The averments of Paragraphs 15 through 17, inclusive, contain statements as to Plaintiffs' legal position and/or conclusions of law, and, thus, no affirmative response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 15

and 17 are denied per Pa. R.C.P. 1029(e) and/or as indicated in the preceding paragraphs hereof.<sup>1</sup>

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count III**  
**Cindy Weber v. Bashir A. Yousufzai, M.D.**  
**Negligence**

18. Answering Defendant hereby incorporates Paragraphs 1 through 17 of this Answer and New Matter as if the same were set forth at length herein.

19-21. Stricken per Order of Court dated July 16, 2001.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count IV**  
**Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Negligence**

22. Answering Defendant hereby incorporates Paragraphs 1 through 21 of this Answer and New Matter as if the same were set forth at length herein.

23-27. Stricken per Order of Court dated July 16, 2001.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court

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<sup>1</sup> On July 16, 2001, the Honorable John K. Reilly, Jr., issued an Order wherein all negligence allegations were stricken from Plaintiff's Amended Complaint with the exception of those related to negligent prescription of drugs, i.e. Paragraph 16(a). Likewise, Judge Riley also dismissed Plaintiffs' claims for Intentional Infliction of Emotional Distress, i.e. Counts V and VI. This Answer with New Matter hereby incorporates said Order and is framed accordingly.

enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count V**

**Cindy Weber v. Bashir A. Yousufzai, M.D.**  
**Intentional Infliction of Emotional Distress**

28. Answering Defendant hereby incorporates Paragraphs 1 through 27 of this Answer and New Matter as if the same were set forth at length herein.

29-30. Stricken per Order of Court dated July 16, 2001.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count VI**

**Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Intentional Infliction of Emotional Distress**

31. Answering Defendant hereby incorporates Paragraphs 1 through 30 of this Answer and New Matter as if the same were set forth at length herein.

32-36. Stricken per Order of Court dated July 16, 2001.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count VII**

**Cindy Weber v. Bashir A. Yousufzai, M.D.**  
**Negligent Infliction of Emotional Distress**

37. Answering Defendant hereby incorporates Paragraphs 1 through 36 of this Answer and New Matter as if the same were set forth at length herein.

38. The averments of Paragraph 38 contain statements as to Plaintiffs' legal position

and/or conclusions of law, and, thus, no affirmative response is necessary. To the extent that a response is deemed necessary, it is admitted only that Answering Defendant provided Plaintiff-wife with that care and treatment reflected within relevant medical records, which are incorporated herein by reference. Moreover, this Count was stricken by Order of Court. See footnote 1, supra.

39-41. The averments of Paragraphs 39 through 41, inclusive, contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 39 through 41 are denied per Pa. R.C.P. 1029(e). Moreover, this Count was stricken by Order of Court. See footnote 1, supra.

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**Count VIII**  
**Cindy Weber v. Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Negligent Infliction of Emotional Distress**

42. Answering Defendant hereby incorporates Paragraphs 1 through 41 of this Answer and New Matter as if the same were set forth at length herein.

43-46. The averments of Paragraphs 43 through 46, inclusive, pertain to a Defendant other than that Answering herein and contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 43 through 46 are denied per Pa. R.C.P. 1029(e).

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be

dismissed, with prejudice.

**Count IX**  
**Ricky L. Weber v. Bashir A. Yousufzai, M.D. and**  
**Liberty Physical Medicine & Rehabilitation Associates, P.C.**  
**Loss of Consortium**

47. Answering Defendant hereby incorporates Paragraphs 1 through 46 of this Answer and New Matter as if the same were set forth at length herein.

48. The averments of Paragraph 48 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 48 are denied per Pa. R.C.P. 1029(e).

WHEREFORE, Answering Defendant respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

**NEW MATTER**

49. Answering Defendant hereby incorporates Paragraphs 1 through 48, inclusive, of this Answer and New Matter as if the same were set forth at length herein.

50. Answering Defendant raises all affirmative defenses of the Health Care Services Malpractice Act, 40 PS §1301.101 et. seq. As stated by Section 606 of the Health Care Services Malpractice Act, "[i]n the absence of a special contract in writing, a health care provider is neither a warrantor nor a guarantor of a cure."

51. Plaintiffs have failed to state a claim upon which relief may be granted.

52. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are barred pursuant to the Plaintiff-wife's precipitation of the events which occurred and/or consent, assumption of the risk of harm, and/or comparative/contributory

negligence.

53. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are time-barred due to the expiration of the applicable statute of limitations.

54. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are barred pursuant to the affirmative defense of release.

WHEREFORE, Answering Defendant respectfully request that this Honorable Court enter judgment in his favor and against Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

Respectfully submitted,

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

By: 

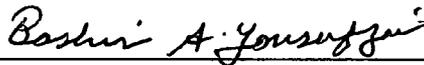
Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendants  
Bashir Yousufzai, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 8/7/01

Weber v. Yousufzai, et al

**VERIFICATION**

The undersigned verifies that he is authorized to make this verification on his own behalf; and that the statements made in the foregoing **ANSWER WITH NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT FILED ON BEHALF OF BASHIR YOUSUFZAI, M.D.** 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.

  
\_\_\_\_\_  
Bashir Yousufzai, M.D.



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

By:  \_\_\_\_\_

Darryl R. Slimak  
Richard K. Laws  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

1 2 3 4

~~FILED~~ FILED  
AUG 11 2007  
cc

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and )  
RICKY L. WEBER, )

Plaintiff, )

v. )

BASHIR YOUSUFZAI, M.D. and )  
LIBERTY PHYSICAL MEDICINE & )  
REHABILITATION ASSOCIATES, P.C., )

Defendants.

CIVIL DIVISION

Civil Action No. 01-361-00

**REPLY TO NEW MATTER**

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert B. Woomer, Esquire  
PA I.D.# 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

AUG 20 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER, and	)	
RICKY L. WEBER,	)	CIVIL DIVISION
	)	
Plaintiff,	)	
	)	Civil Action No. 01-361-00
v.	)	
	)	
BASHIR YOUSUFZAI, M.D. and	)	
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

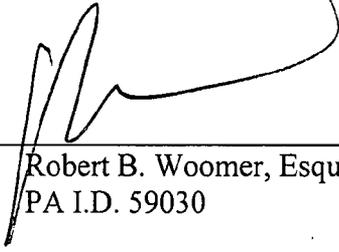
**REPLY TO NEW MATTER**

1. Paragraph 49 is an incorporation paragraph and requires no response.
2. The averments contained in paragraph 50 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, the averments contained in paragraph 50 are denied.
3. The averments contained in paragraph 51 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, the averments contained in paragraph 51 are denied.
4. The averments contained in paragraph 52 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, the averments contained in paragraph 52 are denied. It is specifically denied that plaintiff wife's conduct precipitated the events, which occurred that she assumed the risk, or was contributorily or comparatively negligent.

5. The averments contained in paragraph 53 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, it is specifically denied that Plaintiffs' claim is time barred due to the expiration of the applicable statute of limitations.

6. The averments contained in paragraph 54 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, it is specifically denied that Plaintiffs' claim is barred pursuant to the affirmative defense of release.

Respectfully Submitted,

By: 

Robert B. Woome, Esquire  
PA I.D. 59030

WOOME & FRIDAY, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

(412) 563-7980

**CERTIFICATE OF SERVICE**

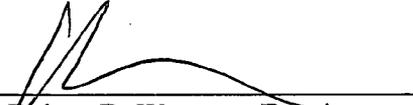
I hereby certify that on this 15<sup>th</sup> day of August, 2001, a true and correct copy of the foregoing **REPLY TO NEW MATTER** was served by First Class U.S. Mail, postage prepaid, upon the following:

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Richard K. Laws, Esquire  
McQuaid & Blasko  
811 University Drive  
State College, PA 16801

WOOMER & FRIDAY LLP

By: \_\_\_\_\_

  
Robert B. Woomer, Esquire  
Attorney for Plaintiffs

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

NOTICE TO PLEAD

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

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: *Walter Fredrick Wall*  
Walter Fredrick Wall, Esquire  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
I.D. #23657

**FILED**

AUG 22 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and	:	No. 01-361-CD
RICKY L. WEBER	:	
Plaintiffs	:	
	:	JURY TRIAL DEMANDED
vs.	:	
	:	
BASHIR YOUSUFZAI, M.D. and	:	
LIBERTY PHYSICAL MEDICINE &	:	
REHABILITATION ASSOCIATES, P.C.	:	
Defendants	:	

**ANSWER AND NEW MATTER TO AMENDED COMPLAINT**

NOW comes the Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C. by and through their Counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files this Answer and New Matter of which the following is a statement:

1. The identity of the Plaintiffs is admitted. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.
2. Neither admitted nor denied in that said allegations are addressed to a party other than this answering Defendant.
3. Admitted.
4. Denied as stated. On the contrary, it is averred that Defendant, Dr. Yousufzai

was an independent professional employee at the relevant times alleged in Plaintiffs' Complaint. It is admitted that he was under the control of this Defendant, however, as an independent medical professional Defendant Yousufzai was not under direction or supervision by this Defendant of the acts alleged in Plaintiffs' Complaint.

5. It is admitted that the Plaintiff-wife was seen at the offices of Liberty on four occasions as stated. By way of further response it is averred that on August 16, 1999, Plaintiff-wife was seen at the offices at 2:00 p.m.; on August 20, 1999 she was seen at the offices at 2:00 p.m.; on August 24, 1999, she was scheduled to undergo an EMG at 4:00 p.m. and on September 3, 1999, she was scheduled to be seen at 2:00 p.m. It is denied that she provided complaints of pain in the arms and hands and on the contrary, the records reflect that this patient was referred by Dr. Kozloski with a past medical history of bi-polar disorder, hypertension and Lyme's Disease, for complaints of bilateral hand and forearm numbness, tingling, pain and mild weakness allegedly starting in 1995. It is admitted that Defendant Yousufzai performed a proper examination which included touching of the wife's shoulder and neck. It is specifically denied that Defendant Dr. Yousufzai prescribed medications in dosages too high for the wife-Plaintiff, which left the wife-Plaintiff in a medicated state and on the contrary it is averred that the medications prescribed according to the chart were proper and that the dosages were well within the appropriate range. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

6. Denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

7. All allegations of negligence and outrageous conduct are denied as conclusions of law and for reasons set forth hereinafter, all of which are incorporated herein by reference thereto as if same were set forth at length. All allegations of damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

**COUNT I.**

**CINDY WEBER v. BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES, P.C.**

**Assault and Battery**

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

9. - 12. To the extent any of these allegations are directed to this Defendant, same are denied as conclusions of law and/or after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of same. Strict proof of same is demanded at time of trial.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates; P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order

of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT II.**

**CINDY WEBER vs. BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL  
MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**Professional Negligence**

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

14. Denied as stated. It is admitted that on the dates alleged above wife-Plaintiff was seen by Dr. Yousufzai who provided treatment and care.

15. The allegations of paragraph 15 of Plaintiffs' Amended Complaint have been dismissed pursuant to the Order of Court dated July 16, 2001. To the extent further answer is deemed necessary, said allegations are denied.

16. To the extent these allegations are directed to this Defendant, all allegations of negligence and/or recklessness are denied as conclusions of law and for reasons set forth above and hereinafter, all of which are incorporated herein by reference thereto as if same were set forth at length.

- (a) To the extent said allegations are not supported by the medical records, they are denied. To the extent they are consistent with the medical records, they are admitted. It is specifically denied, however, that the medications prescribed were incorrect, unwarranted and

excessive and on the contrary it is averred that said medications were all properly prescribed in accordance with the standard of care under the facts and circumstances then and there existing.

- (b) The allegations of paragraph 16(b) are dismissed pursuant to the Order of Court dated July 16, 2001. To the extent further answer is deemed necessary, said allegations are denied.
- (c) The allegations of paragraph 16(b) are dismissed pursuant to the Order of Court dated July 16, 2001. To the extent further answer is deemed necessary, said allegations are denied.

17. To the extent said allegations are directed to this Defendant, same are denied for reasons set forth above.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT III.**

**CINDY E. WEBER vs. BASHIR A. YOUSUFZAI, M.D.**

**Negligence**

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

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

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT IV.**

**CINDY WEBER vs. LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**Negligence**

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

23.- 27. The allegations of this Count have been dismissed pursuant to the Order of Court dated July 16, 2001.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT V.**

**CINDY WEBER vs. BASHIR YOUSUFZAI, M.D.**

**Intentional Infliction of Emotional Distress**

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

29.- 30. The allegations of this Count have been dismissed pursuant to the Order of Court dated July 16, 2001.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT VI.**

**CINDY WEBER vs. LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**Intentional Infliction of Emotional Distress**

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

32. - 36. The allegations of this Count have been dismissed pursuant to the Order of Court dated July 16, 2001.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates,

P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT VII.**

**CINDY WEBER vs. BASHIR YOUSUFZAI, M.D.**

**Negligent Infliction of Emotional Distress**

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

38. - 41. The allegations of this Count have been dismissed pursuant to the Order of Court dated July 16, 2001.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT VIII.**

**CINDY WEBER vs. LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**Negligent Infliction of Emotional Distress**

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

43.-46. The allegations of this Count have been dismissed pursuant to the Order of Court dated July 16, 2001.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Complaint be dismissed, further noting that all allegations directed at this Defendant for punitive damages have been dismissed pursuant to this Court's Order of July 20, 2001. Furthermore, the allegation in Plaintiffs' WHEREFORE clause to the extent of, "and any and all other relied (sic) permitted by this Court" is in direct violation to this Court's Order of May, 2001 and is, therefore, null and void.

**COUNT IX.**

**RICKY L. WEBER vs. BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL  
MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**Loss of Consortium**

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

48. Denied as conclusions of law. Strict proof of same is demanded at time of trial.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Amended Complaint be dismissed.

**NEW MATTER**

49. In that Plaintiffs' Amended Complaint was filed subsequent to this Court's

Order of May, 2001, on Defendant's Preliminary Objections and nevertheless continues in direct violation of that Order to assert allegations seeking relief beyond that recognized under the Law of this Commonwealth, all claims for relief of any and all "other relief permitted by this Court" are null and void.

50. Pursuant to this Court's Orders of July 16, 2001, and July 20, 2001, all claims for punitive damages as to this Defendant are dismissed.

51. Pursuant to this Court's Order of July 16, 2001, all claims for intentional infliction of emotional distress and all claims of negligence other than 16 (a) have been dismissed.

52. As to this Defendant, Plaintiffs' Count I in Assault and Battery fails to set forth a recognizable cause of action and this Defendant hereby incorporates herein its Preliminary Objections to same to the original Complaint, its Preliminary Objections to same to the Amended Complaint and Briefs submitted upon same noting that this issue remains pending before this Court for Order hereafter.

53. To the extent Plaintiffs prove a cause of action against the co-Defendant for intentional wrongful acts, such cannot impose liability upon this Defendant under a theory of vicarious liability or otherwise.

54. To the extent Plaintiff alleges in paragraph 5 of the Amended Complaint that she suffered any injuries as a result of intentional and/or negligent acts, any claims thereafter for the visits of August 20, 1999, August 24, 1999, and September 3, 1999, are barred in that Plaintiff further subjected herself to such injuries and damages and failed, therefore, to mitigate same.

55. Plaintiffs' Complaint fails to set forth any allegations in support of any cause of action as a result of the office visits of August 20, 1999, and August 24, 1999.

56. Any and all injuries and/or damages alleged in Plaintiffs' Complaint to the wife-Plaintiff are the direct, sole and proximate result of pre-existing conditions and not the result of any alleged conduct by the Defendants herein.

57. Plaintiffs' claims are barred in that any injuries and/or damages suffered by the Plaintiffs are the direct, sole and proximate result of the negligence of the Plaintiff-wife in that:

- (a) According to the allegations in Plaintiffs' Complaint, all of which are denied, Plaintiff-wife alleges improper and/or negligent conduct occurring during her first office visit on August 16, 1999, but nevertheless, Plaintiff-wife thereafter is alleged to have returned to the offices on August 20, 1999, August 24, 1999, and September 3, 1999. As such, Plaintiffs' claims are barred in that:
  - (i) Plaintiff-wife failed to exercise reasonable care on her own behalf by further subjecting herself to any alleged conduct;
  - (ii) Plaintiffs are barred from seeking damages for any alleged actions in which Plaintiff-wife voluntarily subjected herself to;
  - (iii) As a result of Plaintiff-wife's voluntary subjection of herself to the alleged conduct, all of which is denied, Plaintiffs are not entitled to compensation for same.

58. Plaintiffs' cause of action is barred in that under the allegations of Plaintiffs' Amended Complaint Plaintiff-wife assumed the risk of any alleged negligent conduct by the Defendants.

59. Based upon the allegations of Plaintiffs' Complaint, as a matter of law in that no reasonable minds could differ, Plaintiffs' action should be dismissed as to this Defendant.

60. Plaintiffs only remaining claim against this Defendant under paragraph 16 (a), fails to set forth a valid cause of action in that nowhere in Plaintiffs' Amended Complaint are there any allegations of injuries and/or damages as a result of that claim.

61. Plaintiffs' Amended Complaint is null and void in that contrary to the Pennsylvania Rules of Civil procedure that served upon this Defendant, lacks any verification for the factual averments set forth therein by the Plaintiffs.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Plaintiffs' Amended Complaint be dismissed.

**NEW MATTER PURSUANT TO PA. R.C.P. 2252 (1), (2), (3), (4)**

62. To the extent Plaintiffs prove a right to recover, this Defendant joins as an Additional Defendant, Bashir Yousufzai, M.D. as an Additional Defendant as to the allegations set forth in Plaintiffs' Complaint in that:

- (a.) Any injuries and/or damages to which Plaintiffs prove a right to recover are the direct, sole and proximate result of unauthorized actions by the Additional Defendant.
- (b) To protect this Defendant's rights to contribution and/or

indemnification;

- (c) Pursuant to contractual indemnification and obligation to hold this Defendant harmless from any and all loss, damage, liability, costs, or expense, including reasonable Attorneys fees as more fully set forth in the Employment Agreement, a copy of which is in the possession of the Additional Defendant.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays that Judgment be entered against Additional Defendant, Bashir Yousufzai, M.D.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_

  
WALTER FREDRICK WALL, ESQUIRE

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

VERIFICATION

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

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

X  \_\_\_\_\_  
Martin Schaeffer, M.D.

DATE: 8/17/11

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 21st day of August, 2001, a true and correct copy of the within Answer and New Matter to Amended Complaint was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

**AUG 27 2001**

Shaw  
Secretary

**FILED**

AUG 22 2001

*WAS*  
m 11:41 AM  
Prof William A. Shaw  
Prothonotary

*[Faint, illegible handwritten text]*

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

01-361-CD

No. ~~1361-00~~

Type of Case: Civil

Type of Pleading:  
DEFENDANT DR. BASHIR  
YOUSUFZAI'S RESPONSE TO LIBERTY  
PHYSICAL MEDICINE & REHABILITA-  
TION ASSOCIATES' NEW MATTER

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

AUG 27 2001

William A. Shaw  
Prothonotary



Respectfully submitted,

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

By: 

Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 8/23/01

Weber v. Yousufzai, et al

**VERIFICATION**

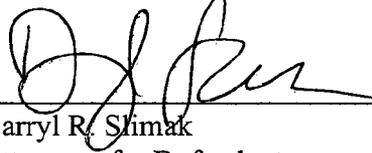
Darryl R. Slimak, hereby verifies that he is the Attorney of Record for Defendant, BASHIR YOUSUFZAI, M.D., in the foregoing action, and as such, he is authorized to make this Affidavit on his behalf, and that the facts set forth in the foregoing **DEFENDANT DR. BASHIR YOUSUFZAI'S RESPONSE TO LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES' NEW MATTER** are true and correct to the best of his information, knowledge and belief. This verification is made by the attorney of record instead of the Defendant in that the pleading is based on a pleading previously verified by the client, and the additional and/or changed averments are statements of legal defenses and/or facts within the undersigned's personal knowledge and belief. This Verification is hereby made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Darryl R. Slimak



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

By: \_\_\_\_\_



Darryl R. Slimak

Attorneys for Defendant

BASHIR YOUSUFZAI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Docket No. : 01-361-CD

Code No.:

**REPLY TO NEW MATTER OF DEFENDANT LIBERTY PHYSICAL MEDICINE**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L. WEBER

Counsel for Record for this Party:  
Brian D. Cox, Esquire  
Pa I.D. # 69238

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

SEP 17 2001

M/1:10/01  
William A. Shaw  
Prothonotary

No. 1/2 E  
AEL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL DIVISION

Plaintiff(s),

No. 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendant(s).

**REPLY TO NEW MATTER OF DEFENDANT LIBERTY PHYSICAL MEDICINE**

COMES NOW, the Plaintiff(s), CINDY E. WEBER and RICKY L. WEBER, by and through their attorneys Woomer & Friday, LLP, and files the following Reply to New Matter of Defendant Liberty Physical Medicine in accordance with Pennsylvania Rules of Civil Procedure:

1. The allegations set forth in paragraph 49 consist of a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 49 are denied.
2. Admitted paragraph 50.
3. Admitted paragraph 51.

4. The allegations contained in paragraph 52 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 52 are denied.

5. The allegations contained in paragraph 53 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 53 are denied.

6. The allegations contained in paragraph 54 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 54 are denied.

7. The allegations contained in paragraph 55 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 55 are denied.

8. Paragraph 56 is denied. It is specifically denied that plaintiff's injuries are the result of pre-existing conditions.

9. All the allegations contained in paragraph 57 including all sub paragraphs constitute conclusions of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 57 and its sub paragraphs are denied.

10. The allegations contained in paragraph 58 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 58 are denied.

11. The allegations contained in paragraph 59 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 59 are denied.

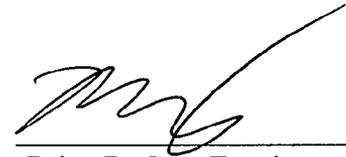
12. The allegations contained in paragraph 60 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 60 are denied.

13. The allegations contained in paragraph 61 is denied as a conclusion of law. By way of further answer, plaintiff's amended Complaint contain no new averments of fact to which a verification was necessary. To the extent that such a verification is necessary, plaintiff will provide one.

14. The allegations contained in paragraph 62 consist of conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary the allegations contained in paragraph 62 are denied.

WHEREFORE, Plaintiff(s) pray for judgment in their favor against the Defendant(s) in excess of the jurisdictional limits for arbitration.

Respectfully submitted,

By: 

\_\_\_\_\_  
Brian D. Cox, Esquire  
Attorney for Plaintiff(s)  
PA I.D. # 69238

**CERTIFICATE OF SERVICE**

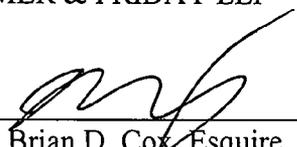
I hereby certify that on this 14<sup>th</sup> day of September, 2001, a true and correct copy of the foregoing Reply to New Matter of Defendant Liberty Medicine was served by First Class U.S. Mail, postage prepaid, upon the following:

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Daryl R. Slimak, Esquire  
McQuaid, Blasko, Schwartz, Flemming & Faulkner  
811 University Drive  
State College, PA 16801

WOOMER & FRIDAY LLP

By: \_\_\_\_\_

  
Brian D. Cox, Esquire  
Attorney for Plaintiffs  
Pa. I.D. 69238

41

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

CINDY E. WEBER and : No. 01-361-CD  
RICKY L. WEBER :  
Plaintiffs :  
vs. : JURY TRIAL DEMANDED  
BASHIR YOUSUFZAI, M.D. and :  
LIBERTY PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C. :  
Defendants :

TO: CINDY E. WEBER  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, CINDY E. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Wednesay, October 10, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY *Walter Fredrick Wall*  
Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

Dated: 9/24/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

**FILED**  
SEP 27 2001  
m1235/rocc  
William A. Shaw  
Notary Public

12

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

CINDY E. WEBER and	:	No. 01-361-CD
RICKY L. WEBER	:	
Plaintiffs	:	
	:	JURY TRIAL DEMANDED
vs.	:	
	:	
BASHIR YOUSUFZAI, M.D. and	:	
LIBERTY PHYSICAL MEDICINE &	:	
REHABILITATION ASSOCIATES, P.C.	:	
Defendants	:	

TO: RICKY L. WEBER  
 c/o Robert B. Woomer, Esquire  
 Woomer & Friday, LLP  
 1701 McFarland Road  
 Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, RICKY L. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Wednesday, October, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY *Walter Fredrick Wall*  
 Walter Fredrick Wall, Esquire, ID #23657  
 Counsel for Defendant, Liberty Physical Medicine &  
 Rehabilitation Associates, P.C.  
 120 Lakemont Park Boulevard  
 Altoona, PA 16602  
 (814) 941-4600

Dated: 9/24/01

cc: Darryl Slimak, Esquire  
 Sargent's Court Reporting Services

**FILED**

SEP 27 2001  
 M/2351 no cc  
 A. Shaw  
 Notary  
*[Signature]*

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

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

**NOTICE OF SERVICE OF NOTICE  
OF DEPOSITION OF BASHIR  
YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

SEP 28 2001  
mhallnoc  
William A. Shaw  
Prothonotary  
ER  
WAS

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

CIVIL ACTION

Case No. 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendant(s).

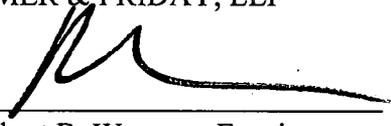
**NOTICE OF SERVICE**

I hereby certify on September 26, 2001, that a true and correct copy of the foregoing  
*Notice of Deposition of Bashir Yousufzai, M.D.* was served upon the following, by First Class  
U.S. mail, postage prepaid:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Respectfully Submitted,  
WOOMER & FRIDAY, LLP

By: 

Robert B. Woomer, Esquire  
PA I.D. # 59030  
Counsel for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

**NOTICE OF SERVICE OF  
AMENDED NOTICE OF  
DEPOSITION OF BASHIR  
YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

FILED  
OCT 04 2001  
Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL ACTION

Case No. 01-361-CD

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.,

Defendant(s).

**NOTICE OF SERVICE**

I hereby certify on October 2, 2001, that a true and correct copy of the *Notice of Amended Notice of Deposition of Bashir Yousufzai, M.D.* was served upon the following, by

First Class U.S. mail, postage prepaid:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Respectfully Submitted,  
Woomer & Friday, LLP

By: \_\_\_\_\_



Robert B. Woomer, Esquire  
PA I.D. # 59030  
Counsel for Plaintiff(s)

45

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Docket No. : 01-361-CD

**NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS TO DISCOVERY OF DEFENDANT BASHIR YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L. WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. #59030  
Brian D. Cox, Esquire  
Pa I.D. # 69238

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

OCT 17 2001  
mll:05/norc  
William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.

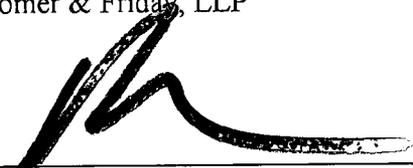
Defendants.

NOTICE OF SERVICE

I hereby certify that on October 15, 2001 a true and correct copy of *Plaintiff's Answers to Interrogatories and Request for Production of Documents* was served by first class U.S. mail, postage prepaid, upon Defendant's counsel, to-wit:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Woomer & Friday, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

410 CT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**MOTION TO COMPEL DEFENDANT  
BASHIR YOUSUFZAI, M.D., TO  
TESTIFY VIA DEPOSITION**

Defendants.

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L. WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

OCT 25 2001

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendants.

**MOTION TO COMPEL DEFENDANT BASHIR YOUSUFZAI, M.D.  
TO TESTIFY VIA DEPOSITION**

AND NOW, comes Plaintiff(s), Cindy E. Weber and Ricky L. Weber, by and through their attorneys, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and files this Motion to Compel Defendant Bashir Yousufzai to Testify via Deposition as follows:

1. On or about October 10, 2001 the deposition of Defendant Bashir Yousufzai was scheduled to occur and Attorney Woomer was attending said deposition by telephone.
2. On or about October 10, 2001 Counsel for Defendant Yousufzai refused to allow the deposition of his client to occur.

WHEREFORE, Plaintiffs request that the Honorable Court compel Defendant Bashir Yousufzai to testify via deposition within sixty (60) days from the date of this hearing.

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

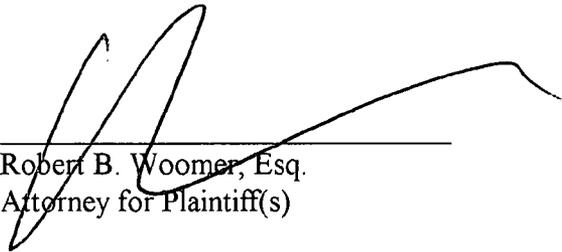
**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2001, a true and correct copy of the foregoing *Motion to Compel Defendant Bashir Yousufzai to Testify via Deposition* was served by First Class U.S. Mail, postage prepaid, upon the following:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801  
*Attorney for Bashir Yousufzai, M.D.*

Walter Frederick Wall, Esquire  
Meyer Darragh Buckler Beebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
*Attorney for Liberty Physical Medicine*

WOOMER & FRIDAY LLP

By: 

Robert B. Woome, Esq.  
Attorney for Plaintiff(s)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**MOTION TO EXTEND DEADLINE  
FOR ANSWERING EXPERT  
DISCOVERY**

Defendants.

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L. WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

OCT 25 2001

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendants.

**MOTION TO EXTEND TIME TO ANSWER  
EXPERT DISCOVERY**

AND NOW, comes Plaintiff(s), Cindy E. Weber and Ricky L. Weber, by and through their attorneys, Robert B. Woomer, Esquire, and Woomer & Friday LLP, and files this Motion to Extend Time to Answer Experts Interrogatories and Request for Production of Documents Propounded by Defendant Bashir Yousufzai as follows:

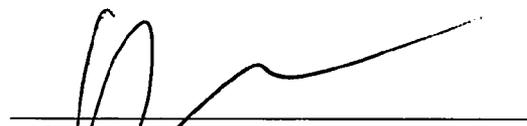
1. On or about March 30, 2001, Defendant Bashir Yousufzai served Expert Interrogatories and Request for Production of Documents Directed on the Plaintiff.
2. On or about June 27, 2001, Defendant Bashir Yousufzai filed a Motion to Compel answers to said discovery requests.
3. On or about July 26, 2001, the Court issued an Order, wherein answers to said discovery requests were due within 90 days from the date of said Order.
4. On or about October 10, 2001 the deposition of Defendant Bashir Yousufzai was scheduled to occur and Attorney Woomer was to attend by telephone.

5. Counsel for Dr. Yousufzai objected to the taking of the deposition and failed to present his client to testify.

6. Until such time as the testimony of Defendant Bashir Yousufzai can be taken, Plaintiffs will not be in a position to gather the necessary information to appropriately prepare an expert report and answer the Interrogatories.

WHEREFORE, Plaintiffs request that the Honorable Court extend the time for answering the expert discovery until at least sixty (60) days past the time that the deposition of Defendant Bashir Yousufzai has been taken.

Woomer & Friday, LLP



Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Woomer & Friday, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412)563-7980

**CERTIFICATE OF SERVICE**

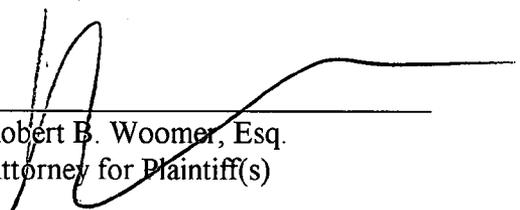
I hereby certify that on October 23, 2001, a true and correct copy of the foregoing *Motion to Extend Time to Answer Expert Discovery Requests* was served by First Class U.S. Mail, postage prepaid, upon the following:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801  
Attorney for Bashir Yousufzai, M.D.

Walter Frederick Wall, Esquire  
Meyer Darragh Buckler Beebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Attorney for Liberty Physical Medicine

WOOMER & FRIDAY LLP

By:

  
\_\_\_\_\_  
Robert B. Woomer, Esq.  
Attorney for Plaintiff(s)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendants.

**RULE TO SHOW CAUSE**

AND NOW, this 26<sup>th</sup> day of October, 2001, a Rule is hereby issued upon Darryl R. Slimak, Esquire, Attorney for Defendant Bashir Yousufzai, M.D., to show cause, if any there should be, why the Motion to Extend Time to Answer Expert Discovery filed on behalf of the Plaintiffs, Cindy E. Weber and Ricky L. Weber, in the above-captioned matter should not be GRANTED.

Said Rule is Returnable the 5<sup>th</sup> day of December, 2001 at 10:00 o'clock a.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

J. 

**FILE**

OCT 26 2001

**William A. Shaw**  
Prothonotary

**ORIGINAL**

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

OCT 26 2001

Attest

*William A. Shaw*  
Prothonotary

**FILED**

OCT 26 2001

*W.A.S.*

*01/2:41 p.m.*  
**William A. Shaw**  
Prothonotary

*2cc atty Woome*

PHOTOGRAPH

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendants.

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2001 upon consideration of  
the Motion to Extend Time, it is hereby . . .

ORDERED, ADJUDGED AND DECREED that the time for Plaintiffs to answer the  
expert discovery requests propounded by Defendant Bashir Yousufzai, M.D. be and the same is  
hereby extended; it is further

ORDERED, ADJUDGED AND DECREED that Plaintiffs' answers to said expert  
discovery requests shall be and are hereby due within sixty (60) days of the deposition of  
Defendant Bashir Yousufzai, M.D., having been completed; and it is further

ORDERED, ADJUDGED AND DECREED that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
J.

**ORIGINAL**

49 CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

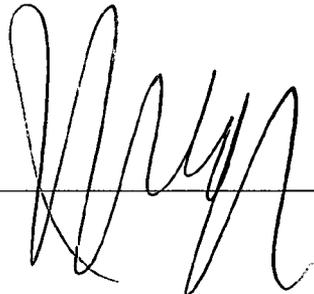
BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendants.

**RULE TO SHOW CAUSE**

AND NOW, this 26<sup>th</sup> day of October, 2001, a Rule is hereby issued upon Darryl R. Slimak, Esquire, Attorney for Defendant Bashir Yousufzai, M.D., to show cause, if any there should be, why the Motion to Compel Defendant Bashir Yousufzai, M.D., to testify via deposition filed on behalf of the Plaintiffs, Cindy E. Weber and Ricky L. Weber, in the above-captioned matter should not be GRANTED.

Said Rule is Returnable the 5<sup>th</sup> day of December, 2001 at 10:00 o'clock a.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

J. 

**FILED**

OCT 26 2001

**William A. Shaw**  
Prothonotary

**ORIGINAL**

**FILED**

OCT 26 2001

01/2:59 p.m.

William A. Shaw

Prothonotary

DCC atty

*WAS*

*(initials)*

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Defendants.

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Code No.:

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2001 upon consideration of  
the Motion to Compel Defendant Bashir Yousufzai to Testify via Deposition, it is hereby . . .

ORDERED, ADJUDGED AND DECREED that Defendant Bashir Yousufzai, M.D. be  
and he is hereby compelled to testify via deposition; it is further

ORDERED, ADJUDGED AND DECREED that the deposition of Defendant Bashir  
Yousufzai shall be completed within sixty (60) days of the date of this order; and it is further

ORDERED, ADJUDGED AND DECREED that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
J.

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.

Defendants.

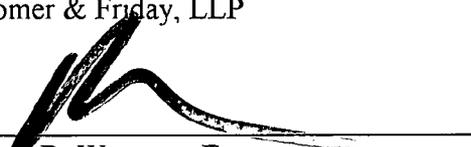
NOTICE OF SERVICE

NOTICE IS HEREBY GIVEN that the undersigned did cause to be served on October 29, 2001 a true and correct copy of the Rules to Show Cause Re Motion to Extend and Motion to Compel by first class U.S. mail, postage prepaid, upon Defendant's counsel, to-wit:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter Frederick Wall, Esquire  
Meyer Darragh Buckler Beebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Woomer & Friday, LLP

  
Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Woomer & Friday, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412)563-7980

**FILED**

OCT 31 2001  
M.L. Shaw  
William A. Shaw  
Prothonotary

51

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**

Answer to Plaintiffs' Motion to Extend  
Deadline for Answering Expert Discovery

**FILED ON BEHALF OF:**

Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**

WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

NOV 09 2001

William A. Shaw  
Notary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**ANSWER TO PLAINTIFFS' MOTION TO EXTEND TIME TO  
ANSWER EXPERT DISCOVERY**

NOW comes the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. (hereinafter Liberty) and files this Answer to Plaintiffs' Motion seeking an extension of time to this Court's Order of July 16, 2001, of which the following is an Answer:

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

3. Denied and on the contrary this Court entered an Order on July 16, 2001, ordering answers to all outstanding discovery including the outstanding discovery of this Defendant pursuant to this Defendant's Motion to Compel and specifically including expert reports, all of which were due ninety (90) days thereafter, on or before October 14, 2001.

4. Denied as stated and on the contrary it is averred that Plaintiffs, notwithstanding this Court's Order delayed in scheduling the deposition of Defendant, Dr. Yousufzai - to the extent such is relevant to the production of expert reports - on

September 24, 2001, twenty (20) days prior to the expiration of this Court's deadline and seventy (70) days after the entry of this Court's Order. Notwithstanding same, Plaintiffs unilaterally on September 21, 2001, canceled the deposition Plaintiffs had scheduled of Dr. Yousufzai and also the Plaintiffs' depositions scheduled by this Defendant. Thereafter, Plaintiffs rescheduled the deposition of Dr. Yousufzai for October 10, 2001, four (4) days prior to the expiration of this Court's deadline for expert reports and answers to discovery. Neither through the various notices of deposition, nor through any other means of communication did Plaintiffs' Counsel ever advise the defense Counsel that it was Plaintiffs' Counsel's intention to conduct these depositions by telephone conference and on the contrary, every indication was that the depositions would be held in accordance with the Pennsylvania Rules of Civil Procedure at Sargent's Court Reporting Service in Clearfield, Pennsylvania. This Defendant submits that it is absolutely ludicrous that Plaintiffs' Counsel would propose to take the depositions of Defendant, Dr. Yousufzai and attend the depositions of his own clients by telephone.

5. Denied as stated and on the contrary it is averred that upon arrival for the scheduled depositions, both defense Counsel found neither Plaintiffs nor Plaintiffs' Counsel in attendance. Fifteen to twenty minutes after the scheduled start for Dr. Yousufzai's deposition, a telephone call was received from an Associate of Plaintiffs' Counsel who indicated that Plaintiffs' Counsel was enroute back to Pittsburgh from a scheduled Court appearance that morning in Indiana County - a location closer to Clearfield, Pennsylvania than Pittsburgh - and that, therefore, the Associate was going to commence the deposition of the Doctor by telephone and at some point thereafter Attorney Woomeer would arrive in

the Pittsburgh office to further pursue the deposition of the Defendant Doctor by telephone. Furthermore, this Associate had no knowledge of the scheduling of the Plaintiffs' depositions for the same day, nor any knowledge of Woomer's intention on how to handle same. Under these circumstances, defense Counsel were presented with unacceptable circumstances wherein attempting to proceed in allowing the Doctor's deposition to be undertaken by phone and assuming without assurance given from Plaintiffs' that the Plaintiffs would appear for their deposition and their Counsel would remain in Pittsburgh, that there would be enumerable challenges to the transcripts given the subject matter to be reviewed during these depositions. As a result, recognizing the totally unreasonable approach by Plaintiffs' Counsel to these depositions, both defense Counsel objected to proceeding in this manner.

6. Denied as absurd. On the contrary, it is averred that the intentional allegations against Defendant, Dr. Yousufzai set forth in the civil action are all established by the testimony of Dr. Yousufzai in the criminal case and his criminal conviction. The only attempt at a negligence claim is predicated upon vague allegations that the Doctor's prescriptions for medication were beyond the standard of care. To support an opinion of such limited allegations of negligence is in no way dependent upon the testimony of the Defendant Doctor, but on the contrary is solely predicated upon expert opinion.

WHEREFORE, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. prays this Court deny Plaintiffs' request for an extension of this Court's Order of July 16, 2001, as to the filing of answers to discovery and expert reports.

**NEW MATTER**

7. This Defendant simultaneously files herewith and incorporates herein this Defendant's allegations in support of a Motion for Sanctions against Plaintiffs for dilatory actions throughout this litigation.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 8<sup>th</sup> day of November, 2001, a true and correct copy of the within Answer to Plaintiffs' Motion to Extend Deadline for Answering Expert Discovery was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire.  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_



**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

52  
51

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**  
Motion for Sanctions

**FILED ON BEHALF OF:**  
Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**  
WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

NOV 09 2001

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**PRAECIPE TO REQUEST ARGUMENT/HEARING**

Please place the above-captioned Motion to Compel filed on behalf of the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. on the next argument list.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:



**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

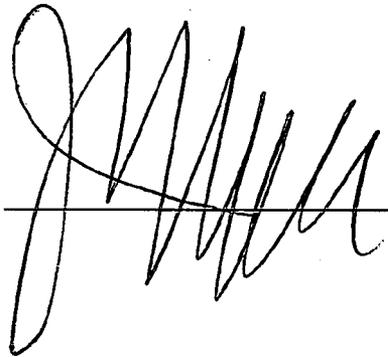
JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

RULE

NOW THIS 13<sup>th</sup> day of November, 2001, a Rule is hereby issued upon Plaintiffs, Cindy E. Weber and Ricky L. Weber, to show cause, if any there should be, why the Motion for Sanctions, filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should not be granted.

Said Rule Returnable the 5<sup>th</sup> day of December, 2001, at 10:00 o'clock, A.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

  
\_\_\_\_\_  
P. J.

FILED 30c  
02:36 PM  
NOV 13 2001  
Atty Wall  
WAS  
William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**ORDER OF COURT**

NOW this \_\_\_\_ day of \_\_\_\_\_, 2001, upon Motion by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. and after hearing upon same, the Court does hereby ORDER, DIRECT AND DECREE:

1. Plaintiffs are directed to pay costs and Counsel fees to the Defendant, Liberty in the amount set forth in the Affidavit submitted by Defendant, Liberty; and
2. Plaintiffs are hereby barred from producing hereafter expert evidence in support of any allegations of negligence against the Defendants in this action.

BY THE COURT:

---

P. J.

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**MOTION FOR SANCTIONS**

NOW COMES the Defendant, LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., (hereinafter "Liberty") by and through its counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files this Motion for Sanctions of which the following is a statement:

1. Plaintiffs commenced this litigation by filing a Complaint on or about March 12, 2001.
2. This Defendant filed Preliminary Objections and the Plaintiffs were ordered to file an Amended Complaint on or about June 7, 2001.
3. As a result of additional problems with Plaintiffs' Amended Complaint, this Defendant filed Preliminary Objections which were granted in part by Order of Court dated July 20, 2001.
4. On or about March 30, 2001 this Defendant, by and through it's counsel, served Interrogatories and a Request for Production of Documents upon the Plaintiffs by mailing the same First Class, United States Mail, postage pre-paid and addressed to:

Cindy E. Weber and Ricky L. Weber  
c/o Robert B. Woome, Esquire  
Woome & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

5. The Plaintiffs failed to serve the aforementioned Interrogatories and Request for Production of Documents within the thirty (30) days after service as required pursuant to the Pennsylvania Rules of Civil Procedure.

6. As a result of the Plaintiffs failure to serve the aforementioned discovery, this Defendant was required to file a Motion to Compel the same.

7. At the time of hearing the Court specifically inquired of Plaintiffs' Counsel, Robert B. Woome, Esquire, as to how long Plaintiffs would require in order to file expert reports, specifically in regard to one remaining vague allegation sounding in negligence concerning negligent prescription medication by Defendant, Yousufzai, and as a result, this Court specifically entered an Order directing Plaintiffs within ninety (90) days - no later than October 14, 2001 - to answer all outstanding discovery of both Defendants. A copy of this Court's Order dated July 16, 2001, is attached hereto as Exhibit "1" and incorporated herein. <sup>1</sup>

8. Plaintiffs filed Answers to these Defendants Interrogatories on or about October 2, 2001, copies of which are attached hereto as Exhibit "2".

9. Plaintiffs in violation of the Pennsylvania Rules of Civil Procedure and the direct Order of this Court of July 16, 2001, improperly and untimely raise objections lacking any

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<sup>1</sup>Notwithstanding Plaintiffs' allegations in his Motion seeking an extension of time that this Court's Order was dated July 26, 2001, thereby extending the deadline ordered by this Court until October 24<sup>th</sup>, the record speaks for itself and a hearing and the Order are dated July 16, 2001.

merit to specific Interrogatories, including

- a. Interrogatory 41 - information regarding Plaintiff-wife's medical treatment, medical providers and the relevant dates of same;
- b. Interrogatory 58 - seeking information regarding any employment sought by the Plaintiff-wife during a five (5) year period and any medical examinations required thereby;
- c. Interrogatories 61 and 87 - regarding any Public Assistance liens imposed on the proceeds of this litigation;
- d. Interrogatories 62 and 63 - regarding Tax Returns for relevant periods of time.

10. Interrogatories 71. and 72. seek information on experts for which Plaintiffs responded "Expert not yet chosen."

11. Defendant has the right to investigate Plaintiff-wife's past medical history (Interrogatory 41.); whether Plaintiffs sought employment (Interrogatory 58.); whether Plaintiffs had any public assistance for which there may be a possible lien (Interrogatories 61. and 87.); and information from Plaintiffs tax returns in order to establish and validate the information previously provided by the Plaintiffs (Interrogatories 62. and 63.).

12. Plaintiffs have further failed to respond to this Defendant's Request for Production of Documents seeking:

- a. Investigative documents;
- b. Photographs and/or videotapes;
- c. Correspondence or documents evidencing any communication dealing with the subject matter;
- d. Exhibits intended to be utilized at the time of trial;

- e. Prior and subsequent medical/Mental Health records;
- f. Expenses incurred as a result of damages alleged in this case;
- g. Diaries, logs and memorandum relevant to the issues in this case;
- h. Releases and/or agreements in regard to the subject incident;
- i. Documentation concerning any liens upon the proceeds herein;
- j. Documents in support of any special damages.

13. At the time of argument on this Defendant's Preliminary Objections and Motion to Compel Answers Interrogatories, this Court specifically inquired of Plaintiffs' Counsel, Robert Woomer, Esquire, as to how long it would take for him to produce an expert report in regard to the only allegation in negligence in this action, i.e. negligent prescription of medications and as a result thereof, this Court specifically Ordered the Plaintiffs to produce expert reports and Answers to outstanding discovery within ninety (90) days requiring Plaintiffs' production and Answers on or before October 14, 2001. (See Order of Court dated July 16, 2001, attached as Exhibit "1" herein)

14. As of the date of this Motion, Plaintiffs have failed to produce any expert reports and on the contrary, have filed a meritless Motion to Extend the Time for Expert Reports far beyond this Court's Order of July 16, 2001.

15. Plaintiffs noticed the deposition of Defendant Yousufzai for September 24, 2001. A copy of Plaintiffs Notices are attached hereto as Exhibit "3" and incorporated herein by reference thereto as if same were set forth at length.

16. At the time that Defendant Yousufzai's deposition was scheduled, this Defendant scheduled the depositions of the Plaintiffs. A copy of this Defendant's Depositions Notices are attached as Exhibit "4" and incorporated herein by reference thereto as if same were set forth at length.

17. On Friday, September 21, 2001 this Defendant received a telephone message from Plaintiffs' counsel indicating "Monday bad day for depositions." and he was unable to attend those depositions. A copy of a phone message documenting Plaintiffs' Counsel's telephone calls is attached hereto as Exhibit "5" and incorporated herein by reference thereto as if same were set forth at length.

18. Plaintiffs thereafter served on or about September 26, 2001 a Notice to depose Defendant Yousufzai for October 10, 2001 at 2:00 p.m. A copy of said Notice is attached hereto as Exhibit "6" and incorporated herein by reference thereto as if same were set forth at length.

19. On or about September 24, 2001 this Defendant served notices of depositions for the Plaintiffs to be held on Wednesday, October 10, 2001 at 1:00 p.m. A copy of this Defendant's Notice is attached hereto as Exhibit "7" and incorporated herein by reference thereto as if same were set forth at length.

20. On or about October 2, 2001 Plaintiffs filed an "Amended Notice of Deposition of Bashir Yousufzai, M.D." which indicated that the deposition would be held on Wednesday, October 10, 2001 at 10:30 a.m. rather than the 2:00 p.m. time previously set forth in Exhibit "6". A copy of Plaintiffs' Amended Notice of Deposition is attached hereto as Exhibit "8" and incorporated herein by reference thereto as if same were set forth at length.

21. On October 10, 2001 counsel for this Defendant arrived at the place and time for the depositions of Defendant Yousufzai and the Plaintiffs which were to commence at 10:30 a.m.

22. At 10:45 a.m. on that date, an Attorney Thomas Hall who identified himself as an associate in the offices of Plaintiffs' counsel indicated that he intended to

proceed with the deposition of Defendant Yousufzai by telephone.

23. At no time prior to this delayed communication from Attorney Hall in either the Notices issued or in any other communication did Plaintiffs' Counsel at any time suggest that he intended to take the deposition of Defendant, Dr. Yousufzai by telephone and/or that Plaintiffs' Counsel intended to appear for his own clients' depositions by telephone, all of which this Defendant submits is absolutely ludicrous given the serious nature of the subject matter of the allegations in this case and the anticipated lengthy depositions that would be pursued. Furthermore, Attorney Hall advised that Plaintiffs' Counsel, Woomer, was enroute back to Pittsburgh after attending a hearing in Indiana County Court that morning and that it was Hall's intention to belatedly begin the deposition of Defendant, Yousufzai by telephone anticipating Attorney Woomer would thereafter arrive in Pittsburgh and conclude the deposition. Finally, Attorney Hall advised that he had no knowledge whatsoever that the Plaintiffs depositions were to be held on that same date.

24. Given these circumstances, both defense Counsel instructed Hall to contact Woomer and have Attorney Woomer contact these Defendants at the location for the scheduled depositions.

25. Approximately ten minutes later, Attorney Woomer contacted these Defendants by phone confirming the information from Attorney Hall and further indicating that he, Woomer, never intended to be present for the depositions of these parties. Furthermore, he could only advise that he assumed his clients would be appearing later for their depositions and failed to explain how he proposed to proceed with those depositions wherein his clients were present with the defense Counsel in Clearfield and he would be available only by telephone.

26. Noting that Defendant Yousufzai had traveled from the Commonwealth of Virginia the night prior to this deposition, fully anticipating a normal deposition with all

Counsel present. Both defense Counsel indicated their total disagreement with the procedure attempted by Plaintiffs' Counsel questioning, given the serious nature of the subject matter in these depositions, how one could reasonably expect to subject the Plaintiffs, particularly the Plaintiff-wife with depositions concerning her allegations of mental injury and sexual abuse without Plaintiffs' Counsel in attendance.

27. Defendant submits that indeed noting Attorney Woomer had earlier that morning appeared in Indiana County that the travel time from Indiana County to Clearfield County where these depositions were scheduled by Plaintiffs' counsel is less than the travel time Attorney Woomer undertook to travel from Indiana County Courthouse to his offices in Pittsburgh. See Exhibit "9" attached hereto and incorporated herein as if fully set forth at length.

28. As a result of the Plaintiffs' counsel's failure to be present in person, there was great concern regarding a challenge to the transcript of the Plaintiffs since their counsel was not present and the possibility existed that there could be "accidental" or "intentional" phone communication difficulties during the depositions.

29. Additionally, problems could occur as a result of questioning of Plaintiffs on various documentation and records with their attorney not being present, nor having attempted to notify the defense Counsel in order that such records could be previously agreed to.

30. The Plaintiffs scheduled the deposition of Defendant Yousufzai on October 10, 2001, notwithstanding the fact that pursuant to this Court's Order of July 16, 2001, to the extent Plaintiffs claim a need to depose Dr. Yousufzai in order to produce an expert report - all of which is denied as totally ludicrous by this Defendant - Plaintiffs would have had to obtain a transcript of the deposition, forward same to an expert, and thereafter obtain an expert report in order to submit same within four (4) days. Defendant submits

this clearly indicates the lack of any merit to Plaintiffs' assertions of the need of the Doctor's deposition to produce an expert report on the limited issue of alleged negligent prescription of medications and further clearly indicates the dilatory tactics pursued by Plaintiffs' Counsel in order to attempt to avoid this Court's Order of July 16, 2001.

31. This last minute maneuver seems inconceivable, since Plaintiffs had responded eight days earlier to this Defendant's discovery indicating they had not chosen any expert.

32. Plaintiffs' actions were in violation of Pa. R.C.P. Rule 4011.

33. The subject matter for which the Plaintiffs have filed this civil litigation is a result of criminal matters that occurred in the Court of Common Pleas of Clearfield County including but not limited to jury verdicts that were rendered on October 18, 2000 as well as included testimony by various witnesses and named parties in this litigation.

34. Plaintiffs have had Plaintiff-wife's medical records or at least access to the records since the beginning of this civil litigation.

35. Most, if not all, of the civil discovery as pertaining to Plaintiffs' establishing their burden as to liability is a rehashing of the criminal information, all of which is fully supportable by the criminal record and the conviction obtained against Defendant, Yousufzai, none of which is relevant to an expert opinion in regard to the vague allegations of negligent prescription of medication, all of which is fully documented in the medical records.

36. As the record reflects from the commencement of this litigation up to the present, Plaintiffs have shown very little, if any, interest in following the Pennsylvania Rules of Civil Procedure or complying with this Court's Orders fully and complying with the statutory provisions regarding the same.

37. The Plaintiffs' failure and/or refusal to answer the outstanding discovery and

improper objection to this Defendant's discovery is prejudicial to this Defendant in that it needs this information to assess and evaluate the Plaintiffs' claim and begin to prepare its defense.

38. As a result of the clear pattern of Plaintiffs' actions and/or inactions in this litigation, the record clearly established the overwhelming prejudice and financial burden that has been placed upon this Defendant.

39. The delay by the Plaintiffs in producing their expert reports is prejudicial to this Defendant in order to allow it to evaluate and proceed with a defense.

40. Further, Plaintiffs' failure to produce an expert report is prejudicial to this Defendant in that if the expert reports do not constitute a claim against this Defendant, it will be filing a Motion for Summary Judgment.

WHEREFORE, Defendant, Liberty submits:

1. Plaintiffs have shown themselves throughout the course of this litigation to pursue unmeritorious, dilatory tactics contrary to the Pennsylvania Rules of Civil Procedure in that:
  - a. Two Sets of Preliminary Objections were necessitated on the part of the Plaintiffs, both of which were sustained by this Court;
  - b. Plaintiffs failed to timely respond to discovery necessitating these Defendants in pursuing a Motion to Compel;
  - c. Plaintiffs have violated this Court's Order of July 16, 2001;
  - d. Plaintiffs pretend that the deposition of Defendant, Yousufzai is required in order to comply with this Court's Order of July 16, 2001; lacks any merit.

And as a result of same, Defendant, Liberty, prays this Court to enter an Order sanctioning

Plaintiffs as follows:

1. Directing Plaintiffs to pay to this Defendant costs and Counsel fees incurred in traveling to and returning from the depositions scheduled by Plaintiffs on October 10, 2001, in accordance with an Affidavit to be submitted hereafter to the Court at the time of hearing;
2. Barring Plaintiffs from presenting expert evidence at the time of trial in regard to any allegations of negligence against the Defendants herein.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:



**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

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

CINDY E. WEBER and  
RICKY L. WEBER

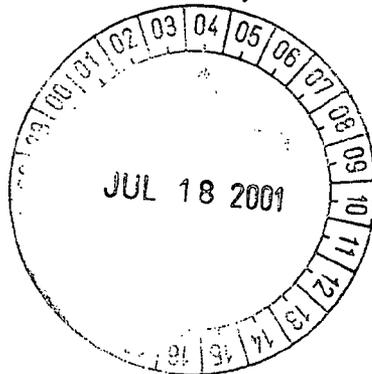
-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, following argument and briefs into Defendants' Motions to Compel Answers to Interrogatories, it is the ORDER of this Court that said Motions be and are hereby granted and Plaintiffs' directed to respond to said Interrogatories within 90 days.



By the Court,

/s/JOHN K. REILLY, JR.

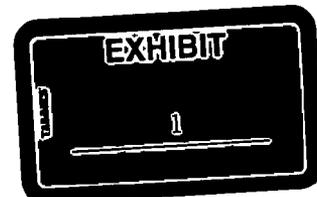
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 16 2001

Attest:

*William L. ...*  
Prothonotary

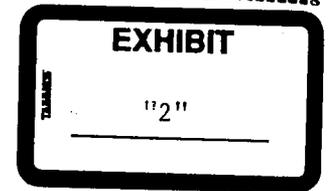


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RECEIVED  
COURT CLERK

CINDY E. WEBER and RICKY L  
WEBER

CIVIL DIVISION



Plaintiff(s),

vs.

CASE NO. 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, PC  
Defendant(s)

**PLAINTIFF(S) ANSWERS  
TO DEFENDANT(S)  
INTERROGATORIES**

FILED ON BEHALF OF:  
Cindy E. Weber & Ricky L.  
Weber, plaintiff(s)

COUNSEL OF RECORD FOR  
THIS PARTY:

Robert B. Woomer, Esquire  
PA I.D. 59030

Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216  
(412) 563-7980

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

CINDY E. WEBER and RICKY L.  
Weber

CIVIL DIVISION

Plaintiff,

vs.

Case No. 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, PC

Defendants.

**PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES**

**AND NOW** comes Plaintiff(s), Cindy E. Weber and Ricky L. Weber, by and through their attorneys, Woomer & Friday, LLP, and file the following Plaintiff's Answers to Defendant's Interrogatories:

1. As to each Plaintiff, please set forth in detail the following information:
  - (a) Your full name at the present time;
  - (b) Any and all names by which you have previously been known;
  - (c) The date and place of your birth;
  - (d) Your current address;
  - (e) Names, ages and relationship of every member of your household.
  - (f) Your social security number.

(g) Indicate whether you have ever been arrested, indicted or convicted of a felony or crime, an offense or a misdemeanor.

**ANSWER:**

1(a) Cindy Elizabeth Weber

Ricky Lee Weber

(b) Cindy Elizabeth Keller

Ricky Lee Weber

Rick Weber

(c) Cindy: Maple Ave Hospital

7-15-1962 Dubois, PA 15801

Rick: Tonawonda, NY

7-01-1960

(d) RD #1 Box 38-1A, Penfield, PA 15849

(e) Ricky L. 40, Husband

Cindy E. 38, Wife

Ricky J. 19, Son

Michael J. 17, Son

Shari A. 10, Daughter

Rebecca A. Rockwell 19, Future daughter-in-law

Joseph D. Weber 3 ½ months, grandson

(f) Cindy – 165-48-8176

Rick – 182-50-5161

(g) Ricky Yes 21 years ago Act. 64

2. As to each Plaintiff, please set forth your present marital status, and, if married, indicate the date and place of marriage and name of spouse.

**ANSWER:**

2. We were married on Oct. 4, 1980

RD # 1, Penfield, PA 15849

Box 38

Cindy E. Keller married to Ricky L. Weber

3. As to each Plaintiff, have you ever been previously married? If so, for each such prior marriage, state:

(a) The date and place of the marriage ceremony;

(b) The full name and present address of your spouse;

(c) The date and manner of the dissolution of the marriage.

**ANSWER:**

3. No previous marriages for either plaintiff.

4. As to Plaintiffs' marriage to each other, please state whether at any time from the date of your marriage, you have been separated or filed for divorce.

**ANSWER:**

4. No

5. As to each Plaintiff, set forth in detail your educational background, including any and all schools which you have attended, the inclusive dates of attendance of each such school, the substance of your studies at each school, whether, and if so, what degree or certificate of completion you received

**ANSWER:**

5. Cindy: Dubois Area Schools, quit 1-09-1978

General Education received GED 1996

Ricky: grade 10, quit to join Army

6. As to each Plaintiff, were you employed at any time during the ten year period preceding the treatment complained of?

**ANSWER:**

6. Cindy No

Ricky Yes in 1994

7. If the answer to Interrogatory No. 5 is in the affirmative, for each such employment, state:

(a) Whether you were self-employed, and if so, the address and nature of the business or activity;

(b) Whether you were employed by another, and if so, the name and address of each such employer, and the name and address of your immediate supervisor;

(c) The inclusive dates of each such employment and if terminated, the reason for termination, your job title and a description of your duties.

**ANSWER:**

7(a) Cindy, No

8. As to wife-Plaintiff, at any time preceding the treatment which is the subject of your complaint, were you afflicted with or did you suffer from any mental illness, disability, or other mental condition?

**ANSWER:**

8. Yes

9. As to wife-Plaintiff, if your answer to the preceding Interrogatory is in the affirmative, please state:

a. A full and detailed description of each such mental illness, disability, and/or condition;

- b. Where and when you were first diagnosed with such mental illness, disability and/or condition;
- c. The inclusive date you suffered from each such mental illness, disability and /or condition;
- d. The name(s) and address (es) of each physician, psychologist and/or any other mental health professionals visited by you or by whom you were treated for each such mental illness, disability and/or condition, specifying the dates of all such visits; and,
- e. The name(s) and address(es) of each psychiatric, mental health clinic and /or any other mental health facility in which you have been confined for the purpose of care and/or treatment of each such mental illness, disability and/or condition, specifying the dates of each such period of confinement.

**ANSWER:**

9(a). Major depression – miscarriage (1992): Bi-Polar Disorder (1997): Sexually assaulted (1999):

(b). Agape Community Health Center,

(c). See answer 9(a) above.

(d). Doughty, Paul DO 5 North 3<sup>rd</sup> Street Reynoldsville, PA 15851

(e). DRMC Behavior Health      June 20, 1997 – July 1, 1997.  
90 Beaver Drive  
Du Bois, PA 15801

10. For the five year period preceding the treatment which is the subject of your complaint, were you afflicted with or did you suffer from any injury, illness or disability or other medical/health condition?

**ANSWER:**

10. Yes

11. If your answer to the preceding Interrogatory is in the affirmative, please state:

- (a) A full and detailed description of each such injury, illness or disability;
- (b) Where and when you sustained each such injury, illness or disability;

- (c) The inclusive date you suffered from each such injury, illness or disability;
- (d) The name and address of each doctor, medical practitioner, hospital, clinic or other institution visited by you or in which you were confined for the purpose of care or treatment specifying the dates of such visits or the periods of time of such confinement.

**ANSWER:**

11(a) Lyme disease (1995), high blood pressure and Neurofibromatosis (1999):

(b) Diagnosed in 1995 with Lyme disease

DRMC (East) Emergency room

(c) See medical records

(d) Joseph T. Joseph, M.D., 1466 N. Hermitage Road Hermitage, PA 16148 diagnosed Lyme disease

12. If you have recovered from the effects of all prior existing mental illnesses, disabilities and/or conditions, please give the date on which you were fully recovered.

**ANSWER:**

12. Not Applicable

13. If you have not recovered from the effects of all prior existing mental illnesses, disabilities and/or conditions, please describe in complete detail all your present mental illnesses, disabilities, and/or conditions.

**ANSWER:**

13. Depressed and paranoid.

14. As to wife-Plaintiff, please state whether at the time of the treatment complained of in your Complaint, you were taking any prescription medications and, if so, please state as follows:

(a) The name and dosage of each and every such prescription medication;

(b) The name(s) and address(es) of each entity prescribing each and every such medication;

(c) The period of time you had been taking each and every such prescribed medication;

- (d) The name(s) and address(es) of each and every pharmacy filling each and every such prescription; and
- (e) The illness, disability and/or condition necessitating each and every such prescription.

**ANSWER:**

14. Yes

(a) Depakote - 250 mg - 3 times a day

Paxil -once daily - 30 mg

Clonazepam - twice daily -5 mg

Neurontin - one to three times a day for seven days - 100 mg

Neurontin - three times a day -300 mg

Zestril, 20 mg - July 1997

Norvasc - dosage unknown - once daily

Antibiotics - type and dosage unknown

Pain medication for headaches - type and dosage unknown

(b) Dr. Kara Kozloski 1200 Wood Street Brockway, PA 15851

(c) They were prescribed in 1997

(d) Wal-Mart Pharmacy Rt. 255 Dubois, PA 15801

(e) Zestril - high blood pressure

Paxil - anti-depressant

Pepakote - depression

Clonazepam - depression

Neurontin -

Norvasc - blood pressure

15. As to wife-Plaintiff, subsequent to the treatment which is the subject of your complaint, were you afflicted with or did you suffer from any injury, illness or disability of other medical/health condition?

**ANSWER:**

15. Yes

16. If your answer to the preceding Interrogatory is in the affirmative, please state:

- (a) A full and detailed description of each such injury, illness or disability;
- (b) Where and when you sustained each injury, illness or disability;
- (c) The inclusive date you suffered from each such injury, illness or disability;
- (d) The name and address of each doctor, medical practitioner, hospital, clinic or other institution visited by you or in which you were confined for the purpose of care or treatment specifying the dates of such visits or the periods of time of such confinement.

**ANSWER:**

16(a) Severed left wrist including ulnar nerve, tendon, and blood vessels.

(b) April 2000

(c) April 2000

(d) Dr. Heckler, Allegheny General Hospital 320 East North Avenue  
Pittsburgh, PA — cosmetic nerve, 4-2000

17. As to wife-Plaintiff, please state whether subsequent to the time of the treatment complained of in your Complaint, you were taking any prescription medications and, if so, please state as follows:

- (a) The name and dosage of each such prescribed medication;
- (b) The name(s) and address(es) of each entity prescribing each and every such medication;
- (c) The period of time you had been taking each and every such prescribed medication;
- (d) The name(s) and address(es) of each and every pharmacy filling each and every such prescription; and
- (e) The illness, disability and/or condition necessitating each and every such prescription

**ANSWER:**

17. See answer to 14.

18. With respect to wife-Plaintiff, please identify each and every person, other than Defendant, Bashir Yousufzai, M.D., with whom you had contact at Liberty Physical Medicine & Rehabilitation Associates, setting forth when each such contact occurred and the basis for each such contact.

**ANSWER:**

18. Receptionist; Nurse that showed me to examining room; Anna Mathews, MD: talked to Martin Shaffer.

19. As to wife-Plaintiff, please advise whether you have ever alleged that any other person at any time has physically contacted you in an improper manner? If so, please identify each such person, when such incident occurred and the nature of each such incident.

**ANSWER:**

19. Yes. Sexually assaulted by my uncle.

20. As to wife-Plaintiff, have you ever filed criminal charges against anyone other than Defendant, Bashir Yousufzai, M.D.?

**ANSWER:**

20. No

21. If your answer to the preceding Interrogatory was in the affirmative, please advise:

- (a) The name(s) and address(es) of each individual against whom such criminal charges were filed;
- (b) The nature of the charge(s) against each such individual;
- (c) When and where each such charge(s) was/were filed; and,
- (d) The disposition of each such charge.

**ANSWER:**

21. Not Applicable

22. As to wife-Plaintiff, please identify by name and address the first person you advised of the allegations that Defendant, Bashir Yousufzai, M.D., had made improper contact with you.

**ANSWER:**

22. Dr. Kara Kozloski

DRMC Primary Health Care

1200 Wood St.

Brockway, PA 15851

23. With respect to your answer to the immediately preceding Interrogatory, please state the relationship of such person to you and the date and time when you advised this person of the alleged improper contact by Defendant, Beshir Yousufzai, M.D.

**ANSWER:**

23. She was my physician at the time and the person who originally referred me to Dr.

Yousufazai. I told Dr. Kozloski sometime in early September of Dr. Yousufazais' actions. I just wanted to get her advice as to what I should do and to let her know so that she would not send anyone else to him.

24. Prior to reporting to the police the incidents described in Plaintiff's Complaint against Defendant, Bashir Yousufzai, M.D., please list by name(s) and address(es) to whom you reported such incidents.

**ANSWER:**

24. My husband, Ricky Weber and

Dr. Kozloski. 1200 Wood Street Brockway, PA 15851

25. Please identify by name and address to whom your claims were officially reported setting forth the date and time of each such report and the identity of the officer taking each report.

**ANSWER:**

25. Filed charges on September 24, 1999 at

Dubois City Police Dept., 16 West Scribner Avenue Dubois, PA15081

Reporting Officer: Chief Darrell Clark (now retired).

26. Did you, at any time, make a complaint to any member of Liberty Physical Medicine & Rehabilitation Associates with respect to the alleged improper contact by Defendant, Bashir Yousufzai, M.D.? If so, please identify each such individual, and the date(s) and nature of such complaint(s).

**ANSWER:**

26. No

27. Did you at any time ever complain directly to Defendant, Bashir Yousufzai, M.D., of any improper conduct prior to reporting these incidents to the police? If so, please advise when and who, if anyone, was present at that time.

**ANSWER:**

27. Yes, during the September 3, 1999 appointment. No one was present at that time.

28. Please advise who, if anyone, accompanied you to the offices of Liberty Physical Medicine & Rehabilitation Associates on any of the visits you had with Defendant, Bashir Yousufzai, M.D., specifically indicating their address(es) and phone number(s).

**ANSWER:**

28. Nobody

29. Have you had any contact at any time with the Defendant, Bashir Yousufzai, M.D., outside of those office appointments and your presence in the courtroom pursuant to the criminal proceedings?

**ANSWER:**

29. No

30. If your answer to the immediately preceding Interrogatory is in the affirmative, please state, for each such occasion

**ANSWER:**

30. Not Applicable

31. Do you have any writings of any kind authored by the Defendant, Bashir Yousufzai, M.D.? If so, please state the date, nature and content of same.

**ANSWER:**

31. No

32. If your answer to the immediate preceding Interrogatory is in the affirmative, please attach full, complete and legible photostatic copies or like reproductions of each and every such writing to your Answer to these Interrogatories.

**ANSWER:**

32. Not Applicable

33. Do you have copies of any written notes, memoranda, letters or any other writings, which you or anyone on your behalf wrote to the Defendant, Bashir Yousufzai, M.D.? If so, please state the date, nature and content of same.

**ANSWER:**

33. No

34. If your answer to the immediately preceding Interrogatory is in the affirmative, please provide full, complete and legible photostatic copies or like reproductions of each and every such writing by attaching copies to your Answers to these Interrogatories.

**ANSWER:**

34. Not Applicable

35. Do you have knowledge of any other patient(s) of Defendant, Bashir Yousufzai, M.D., who has/have made allegations of improper physical contact by Defendant, Bashir Yousufzai, M.D./ If so, please state:

- (a) Name(s) and address(es) of each individual;
- (b) Your relationship with each such individual;
- (c) When you first learned of each such allegation;
- (d) The means by which you learned of each such allegation;
- (e) The nature of each such individual's complaint against Defendant, bashir Yousufzai, M.D.?

**ANSWER:**

35. Yes

- (a) Rose Snodgrass  
Abigail Corbett  
Suzanne Potash of Brockway  
Diana Gilbert of Dubois
- (b) Met all the ladies except for Diana Gilbert at the criminal court proceedings. I've known Diana on and off for years.
- (c) Believed to have occurred on 9-21-99
- (d). When charges were filed and they were printed in the Courier Express Newspaper.  
Police report
- (e) Sexual assault and harassment

36. As to each Plaintiff, have you ever filed a claim to recover damages in connection with any prior injury, illness or disability? If so, please state:

- (a) The court in which the Complaint was filed;

- (b) The date, docket number and caption of the complaint;
- (c) The disposition of the Complaint

**ANSWER:**

36. Yes.

2 auto accidents, bodily injury

Attorney Richard Milgrub, Clearfield, PA. handled both of these cases.

SSI and Social Security Disability - both applied

Robin Jean Foor, Esquire

Keystone Legal Services, Inc.

211 ½ East Locust Street

Clearfield, PA 16830

(a) Dubois, PA 15801

Magistrate Patrick Ford

(b) Docket unknown

(c) Denied – Plaintiff has recently reapplied for disability benefits but no hearing has been held, nor a determination been made.

37. As to each Plaintiff, other than as against the Defendant herein, Bashir Yousufzai, M.D., have you ever filed a criminal Complaint against any other individual and/or entity? If so, please state:

- (a) The Court in which the Complaint was filed;
- (b) The date, docket number and caption of each such Complaint;
- (c) The allegations set forth in each such Complaint; and,
- (d) The disposition of each such case.

**ANSWER:**

37. Neither Plaintiff has previously filed a criminal Complaint.

38. As to the wife-Plaintiff, what initially caused you to seek medical treatment from the Defendants?

**ANSWER:**

38. Dr. Kara Kozloski referred me to him for treatment of Neurofibromatosis, and for numbing and tingling sensations in my arms, hands, and fingers. Dr. Yousufzai was the only neurologist in the area that accepted my medical insurance.

39. Describe in complete chronological detail the aspect of your treatment which is the basis of the instant suit?

**ANSWER:**

August 16, 1999, 10:45 a.m. – This was to be the initial consultation. Dr. Yousufzai asked routine medical questions as to my age, why I was referred to him, and the number of children I had and their ages. He then said that I looked too young to have kids that old. At this point he reached over and rubbed my right cheek. He then asked me to sit on the examining table. He performed several reflex tests and some neurological tests, including strength test on my legs. Next, he asked me to place my feet on his legs. I was unsure as to where he meant to place them so he placed my left foot on his leg, along side his pelvic region. He then did the same with my right foot. He began squeezing my lower leg. Upon completion of this he stood up and stated that he needed to look at my eyes. When he was performing the eye test he kept moving closer to me, making me extremely uncomfortable. I felt he was going to try to kiss me. Next he had me wrap my arms around him and squeeze as hard as I could. He then instructed me that I could get dressed. He remained in the examining room throughout my getting dressed. After reviewing my medical records he asked if I could get the Neurofibromatosis biopsy report from the hospital where they were performed. I stated that I could.

August 20, 1999, 2:00 p.m. – this was an unscheduled visit. I was having an MRI done across the street from his office. I decided to drop off the biopsy report he had requested. I asked the receptionist if the doctor could take a look at them and also to tell Dr. Yousufzai that the medication he prescribed was not working. The doctor said that he wanted to speak to me. I entered the examining room and he questioned whether I was experiencing back or neck pain. I was not. He then reviewed the medical reports and again questioned whether I was experiencing

any neck or back pain. He then attempted to hug me. He also tried to kiss me on the lips. I turned my head at this point and he kissed my cheek. I was stunned. I then left his office.

August 24, 1999, 4:00 p.m. –I arrived a half-hour late for my appointment. I was scheduled to see Dr. Ann Matthews but Dr. Yousufzai said he would be performing the test. At the midpoint of this testing I asked if I could use the restroom. As I was returning I noticed that the reception area was empty and the lights were out. He finished the testing and instructed me to get dressed. As I was walking across the room he told me to walk heel to toe towards the window, turn, and walk back the same way. When I turned I realized he had come up behind me. He attempted to hug me and he touched my breast. As I backed away from him, he asked me if I knew that he was married. I told him that I did and asked, “ what would your wife think of this”. He said that it was ok. He asked if I would meet him outside. He also asked if he could call me. I told him absolutely not. He again asked me to meet outside and to “just give him a couple of minutes”. I told him No again and headed for my clothes. He then came up behind me, grabbed me by my breast and bent me over the examining table. My arms were pinned underneath me. I heard his zipper open and then the left side of my gown was being pulled up. I felt his bare skin up against me. I grabbed my underwear in the front. He then ejaculated on my buttocks and underwear. I was afraid because no one else was in the building and I closed my legs as hard as I could. After he ejaculated he wiped himself off and handed me a napkin. He then walked out and I got my clothes on and left. I was able to save my underwear from this incident.

September 3, 1999, 2:00 p.m. – I called the office to get a prescription for migraine headaches. I thought they would call it in to my pharmacy. They informed me I would need to come in to the office. I was pretty emotional when I got there. I was suffering from a migraine headache. All I wanted was a prescription. I told him I felt pretty close to a nervous breakdown with my problems. I was afraid to tell him the biggest problem was with him. He then moved towards me. As I attempted to move away from him, I stumbled. He reached out to grab me: When he did, he reached around me, and unsnapped my shorts, and pulled them down. He bent me over the examining table and repeated his previous actions. I held onto the front part of my underwear. He tried to move it to the side but I tightened my legs up. He ejaculated on me again. I started crying at this point. He went over and wiped himself. I informed him that I did not like what he was doing. He stated, “what do you mean” and put his hands on his hips in a threatening manner. This made me feel scared. At this point he left. I saved my underwear again. I have not been back to see him since.

40. Describe in detail all aspect of your medical relationship with the Defendant, indicating the date of commencement, the nature and extent of your medical relationship, if any, prior to the treatment which is the basis of you Complaint, and the date and circumstances of the termination of your medical relationship.

**ANSWER:**

40. I went there on 8/16/ 1999 hoping to get answers for my neurological problems. Had additional appointments on 8/20/1999, 8/24/1999 and 9/03/1999. Terminated the medical relationship on 9/03/1999.

41. As to wife-Plaintiff, state the date of each and every examination, treatment or care which you received from any doctor, physician, medical practitioner, hospital, clinic or other institution for any injury or disability which you claim to have suffered or sustained as a result of the alleged treatment setting forth in detail as to each such date of examination, treatment or care:

- (a) The name and address of each such doctor, physician, practitioner, hospital, clinic or institution;
- (b) The nature and extent of the examination, treatment or care received in each such hospital, clinic, institution or from each such doctor, physician or practitioner;
- (c) The inclusive dates of any period of confinement in any hospital, clinic, institution or other place, each and every diagnosis or prognosis identifying the doctor naming each by name and address; and,
- (d) Please execute the attached authorizations before a notary public and return together with your answers to these Interrogatories.

**ANSWER:**

41. Objection. The information requested is neither relevant nor likely to lead to the discovery of relevant evidence. By use of further objection, the question is over-burdensome.

42. Set forth the names and addresses of all witnesses to the treatment which forms the basis of the instant suit as known to you, your attorneys, and your attorneys' representatives.

**ANSWER:**

42. None

43. Set forth the names and addresses of all witnesses of any event leading up to the treatment as known to you, your attorneys, and your attorneys' representatives.

**ANSWER:**

43. None

44. Set forth the names and addresses of all witnesses after the fact of such treatment, as known to you, your attorneys, and your attorneys' representatives.

**ANSWER:**

44. My husband Rick Weber and Dr. Kara Kozloski. 1200 Wood Street Brockway, PA 15851

45. As to each person named in Answer to Interrogatory Nos. 20, 21, and 22, state whether Plaintiff has a statement signed, unsigned, adopted or approved by such person.

**ANSWER:**

45. No

46. As to each statement referred to in Answer to above, please state:

- (a) Whether the statement is in question-and-answer or narrative form;
- (b) Whether the person giving it received a copy of the statement;
- (c) Whether the statement was signed;
- (d) If the statement was not signed, the method by which it was adopted or approved;
- (e) The name and present address of the person by whom the statement was taken;
- (f) When the statement was taken

(g) Where the statement was taken;

(h) Will you attach a copy without a Request for Production?

**ANSWER:**

46. Not Applicable

47. As to each person named in Answer to Interrogatory Nos. 20, 21, and 22, please state whether the Plaintiff has stenograph, mechanical, electrical or other recording or transcript of an oral statement of such person.

**ANSWER:**

47. No

48. As to each statement referred to in Answer to Interrogatory No. 25, please state:

(a) Whether the statement is in question-and-answer or in narrative form;

(b) Whether the person giving it received a copy of the statement;

(c) The method by which the statement was preserved;

(d) The name and present address of the person by whom the statement was taken;

(e) Will you attach a transcript thereof without a Request for Production?

**ANSWER:**

48(a) Unknown

(b) Unknown

(c) Unknown

(d) Mr. Lew Wickes (private investigator)

Mr. Benjamin A. Cero

(f) Not Applicable

49. Please give an account, itemized as fully and as carefully as you are able to do so, of all expenses for any hospitals, clinics, or other institutions which you claim were incurred by you or on your behalf as a result of the alleged treatment, stating as to each:

- (a) The full name and address of each hospital, clinic or other institution;
- (b) The inclusive dates of any care, examination or treatment;
- (c) The itemized charges or expenses; and,
- (d) The name and address of any entity making payments on such charges or expenses and the dates and amounts of same.

**ANSWER:**

49.

- (a) Dr. Nelia M. San Jose, therapist  
DRMC Behavioral Health Center  
90 Beaver drive  
Dubois, PA 15801
- (b) To be supplied.
- (c) To be supplied.
- (d) Health providers' paid by the Pa. Dept. of Public Welfare.

50. Please give an account, itemized as fully and as carefully as you are able to do so, of all expenses for any doctors, physicians, or other medical practitioners which you claim were incurred by you or on your behalf as a result of the alleged treatment stating as to each:

- (a) The full name and address of the doctor, physician or medical practitioner;
- (b) The dates of examination or treatment;
- (c) The itemized charges or expenses.
- (d) The name and address of any entity making payments on such charges or expenses and the dates and amounts of same.

**ANSWER:**

50. None

51. Please give an account, itemized as fully and as carefully as you are able to do so, of all expenses for any nursing or other medical attention which you claim were incurred by you or on your behalf as a result of the alleged treatment, stating:

- (a) The full name and address of each such person;
- (b) The dates of any care or attention;
- (c) The itemized charges or expenses;
- (d) The name and address of any entity making payments on such charges or expenses and amounts of same.

**ANSWER:**

51. None

52. No question asked.

53. Please give an account, itemized as fully and carefully as you are able to do so, of all expenses for any health care and treatment which you claim were incurred by you or on your behalf as a result of the alleged treatment, stating:

- (a) The full name and address of each such person;
- (b) The dates of any care or attention;
- (c) The itemized charges or expenses;
- (d) The name and address of any entity making payments on such charges or expenses and amounts of same.

**ANSWER:**

53(a) None

54. Were you gainfully employed at the time of the treatment, which is the subject of the instant suit? If so, state the name and address of your employer?

**ANSWER:**

54. No

55. Were you as a direct result of the treatment complained of prevented from attending to your employment with the aforementioned employer?

**ANSWER:**

55. No

56. If the answer to the preceding Interrogatory is in the affirmative, state:

- (a) The exact dates in which you were absent from such employment;
- (b) The number of hours during each such day which you were absent from employment;
- (c) Your rate of pay during the period of time when you were absent from your employment;
- (d) Whether all or any part of your salary was paid during the time of your absence, and if so, how much was paid and by whom

**ANSWER:**

56. Not Applicable

57. If you are claiming any damages for loss of earning or impairment of earning capacity as a result of the treatment which is the subject of the instant suit, state in detail the source and amount of your earnings for the five year period preceding the treatment complained of.

**ANSWER:**

57. Not Applicable

58. Did you at any time during the five year period preceding the treatment complained of seek employment with any individual or firm? If so, state:

- (a) The name and address of each individual or firm involved;
- (b) Whether you submitted a written application;
- (c) The date of the application, written or otherwise;
- (d) If the application was rejected, the reason for rejection;
- (e) Whether you had to undergo a physical examination in connection with the application;
- (f) The date, place and individual who conducted the examination;
- (g) The results of the examination

**ANSWER:**

58. Objection. The question is neither relevant nor likely to lead to the admission of relevant evidence.

59. State the names and addresses of each person or firm by whom you have been employed subsequent to the treatment, which is the subject of the instant suit.

**ANSWER:**

59. None

60. With respect to each such employer identified in the previous Interrogatories, state:

- (a) The inclusive dates of each such employment;
- (b) The nature of the duties you performed in connection with such employment;
- (c) The rate of compensation applicable to each such employment;
- (d) The name and address of your immediate supervisor or supervisor for each such employment;

**ANSWER:**

60. Not Applicable

61. Indicate whether you have received any relief or public assistance payments of any sort. If so, indicate the periods of time during which such payments were received, the exact nature

of the public assistance under which such payments were received, the exact reason for eligibility to receive such payments

**ANSWER:**

61. Objection. The question is neither relevant nor likely to lead to the discovery of relevant evidence.

62. Have you filed a Federal Income Tax Return for:

- (a) The five years preceding the date of the treatment complained of;
- (b) The year of the treatment complained of;
- (c) Any year subsequent to the treatment complained of up to the present date;
- (d) Please provide copies of all income tax filings as referenced above.

**ANSWER:**

62. Objection. The answer to the question is neither relevant nor likely to lead to discoverable evidence.

63. If the answer to the previous Interrogatory is in the affirmative, indicate:

- (a) The name or names under which the return was filed;
- (b) The type of tax return filed;
- (c) The date and place of the filing.
- (d) Attach copies of the aforementioned filings.

**ANSWER:**

63. Not Applicable

64. Have you ever been a member of any regular or reserve unit of the armed forces of the United States, or of any National Guard unit? If so, state:

- (a) Your armed forces serial number;
- (b) The unit and branch of service involved;

- (c) The inclusive dates of such service;
- (d) The inclusive dates of any such period of active duty within such service;
- (e) The exact type of discharge received;
- (f) If the discharge was for medical/mental reasons, indicate the exact reasons for said discharge.

**ANSWER:**

64(a) Cindy, No

Ricky, Yes US Army

182-50-5161

(b) Army 429 Trans Co

(c) 1977 to 1979

(d) 1977 to 1979

(e) General under Honorable Conditions

(g) Not Applicable

65. Have you ever been rejected for service with the armed forces of the United States or with the National Guard because of a physical disability? If so, kindly state when and where you were so rejected and give the nature of the physical disability which formed the basis of rejection.

**ANSWER:**

65. No

66. Have you incurred any expense whatsoever as a result of the treatment complained of other than those listed in the forgoing Interrogatories? If so, give an itemized account, including the description and amount of each expense.

**ANSWER:**

66. No

67. State the name, home and business address of all persons you expect to call as expert witnesses at the time of the trial of the above captioned matter.

**ANSWER:**

67. Plaintiff and Defendant

68. For all persons named in Answer to Interrogatory No, 45, state the following:

- (a) Their occupation;
- (b) Whether or not they specialize in any particular field, and if they specialize, set forth their areas of specialization.

**ANSWER:**

68. Not Applicable

69. For all persons named in Answer to Interrogatory No. 45, set forth their qualifications, including, but not limited to the following:

- (a) The schools or training programs that each has attended, including the years in attendance, and degrees or certificates, etc. received;
- (b) Experience in particular fields of endeavor, whether related or unrelated to their area of specialty, including names and addresses of employees with years of employment;
- (c) A list of all publications by said persons, including the title of the work, the name of the periodical or book in which it was printed, and the date of its publication, (note): If the person or persons listed in Answer to Interrogatory No. 45 has or had printed or mimeographed resumes or curriculum vitae or summaries of qualifications which provide all information requested herein, you may attach a copy of same in lieu of answering this question.

**ANSWER:**

69. Not Applicable

70. As to each person named in Answer to Interrogatory No. 45, please state:

- (a) The substance of each fact to which he or she is expected to testify;
- (b) The substance of each opinion to which he or she is expected to testify;
- (c) The grounds for each opinion;
- (d) Their background, training, experience and other qualifications.

**ANSWER:**

70. Not Applicable

71. Set forth in detail the factual information supplied to each such expert, including, but not limited to, the following:

- (a) All objects and material examined by the expert;
- (b) The type of said objects or materials examined by the expert;
- (c) The source of all objects or materials examined by the expert;
- (d) The date and place of examination of said objects or materials by the expert;
- (e) A description of all photographs, plans, drawings, specifications, or other documents reviewed by such experts;
- (f) Any location, sites or facilities visited by the expert.

**ANSWER:**

71. Expert not yet chosen

72. Set forth a summary of the grounds (other than the facts requested in the Interrogatories above) for each opinion of the expert, including, but not limited to, the following:

- (a) Any textual material upon which the expert witness will rely. For any such texts, please identify the name of the text, the author, the editor, the year of publication, and the page or pages of said text.

**ANSWER:**

72. Not Applicable

73. Except for those persons identified in Answer to Interrogatory No. 45, please state the name and present address of any person who has been retained, employed or consulted by Plaintiff as an expert in connection with the claim in this case.

**ANSWER:**

73. Not Applicable

74. Please state the name and address of each person who has acted or will act as agent for Plaintiff's attorneys in preparing material in anticipation of litigation.

**ANSWER:**

74. None

75. As to each person named in Answer to Interrogatory No. 54 above, please state whether Plaintiff or Plaintiff's attorney has any reports, memoranda, notes or summaries from such individual.

**ANSWER:**

75. No

76. Will counsel for Plaintiff produce such reports, memoranda, notes or summaries referred to in Interrogatory No. 55 at a time mutually convenient to the parties?

**ANSWER:**

76. Not Applicable

77. Please state the nature of the Plaintiff's claim in the present case.

**ANSWER:**

77. Extreme emotional problems resulting from sexual assault of her physician.

78. Have you utilized any type of consultant service to evaluate your alleged claim? If so, please state the name of this service and the following: date of referral; date of report, author or report, substance of report. If a copy of said report is available, please attach.

**ANSWER:**

78. No

79. Please state the names and addresses of any witnesses Plaintiff expects to call at trial, other than those stated in answer to the preceding Interrogatories.

**ANSWER:**

79. Witness not yet chosen

80. With respect to wife-Plaintiff, please set forth the specific injuries allegedly sustained by the wife-Plaintiff as a result of the incidents complained of in the instant suit, if any. (The answer to this question should be as specific as possible and should not be answered merely by making reference to the wording contained in the Complaint filed by the Plaintiff).

**ANSWER:**

80. Depression and other psychological conditions best described by physicians.

81. Indicate what, if any, employment benefits, other than salary, you are claiming to have lost as a result of the incident or incidents complained of in the Complaint. Indicate the amount involved, the period or periods for which such loss of employment benefits is being claimed, a specific description of the employment benefits whose loss is being claimed, and the exact method by which such loss is being computed.

**ANSWER:**

81. Not Applicable

82. Did you, at the time of the incident or incidents involved in this case, have a family doctor? If so, list his name and office address, and indicate how long he has been your family doctor.

**ANSWER:**

82. Yes

Dr. Kara Kozloski DRMC Primary Healthcare, 1200 Wood Street Brockway, PA 15851

4 or 5 months

83. If you allege that some physicians have given you information or opinions critical of the treatment, and care rendered to you, please list the full names and present addresses of all physicians or other health care providers who have given you such information, please indicate, as close to the actual words as you are able to recall, what you were told, by whom, and when you were given information or opinions.

**ANSWER:**

83. None

84. Have you been told by any physicians, or other health care providers, that your present alleged injuries are the result of any treatment which you received?

**ANSWER:**

84. No

85. If your answer to the preceding Interrogatory is yes, please list the names and present addresses of any physicians, or other health care providers, who have given you such information, indicate the information you have been given by each, and when you were given this information.

**ANSWER:**

85. Not Applicable

86. Were any of your medical bills paid by the Pa. Dept. of Public Welfare or Medicaid? If so, please name each of the providers who were paid and the amounts paid.

**ANSWER:**

86. Health providers' paid by the Pa. Dept. of Public Welfare. Amounts unknown at this time.

87. Did you or anyone to whom you owe a duty of support receive cash assistance of any benefit from the Pa. Dept. of Public Welfare since the date of this incident? If so, please state who received the benefits, the dates during which the benefits were received and the total amounts received.

**ANSWER:**

87. Objection. The question is neither relevant nor likely to lead to the discovery of relevant evidence.

88. Please state the name(s) and position(s), if applicable, of the person(s) assisting in any manner in providing information for these Answers to Interrogatories.

**ANSWER:**

88. Robert Woomer, attorney for Plaintiffs

89. Please affix the signature and position, if applicable, of the individual(s) completing these Interrogatories.

**ANSWER:**

89. Cindy E. Weber, plaintiff

Ricky L. Weber, plaintiff

Robert Woomer, attorney

90. Do you state, under oath that you have answered the above Interrogatories without reservation and as accurately and as fully as possible?

**ANSWER:**

90. Yes

Respectfully Submitted:

Woomer and Friday, LLP.

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'R. Woomer', written over a horizontal line.

Robert B. Woomer, Esq.

Attorney for Plaintiff(s)

Cindy E. Weber and Ricky L. Weber

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L  
WEBER

CIVIL DIVISION

Plaintiff(s),

vs.

CASE NO. 01-361-CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, PC

Defendant(s)

**CERTIFICATE OF SERVICE**

I, Robert B. Woomer, Esquire, hereby certify that on this 2nd day of Oct, 2001, a true and correct copy of the foregoing Plaintiff's Answers To Interrogatories was served upon the below listed via US First class mail, postage pre-paid, and addressed as follows:

Darryl R. Slimak, Esquire  
McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc.  
811 University drive  
State College, PA 16801  
(Attorney for the Defendant)

Respectfully Submitted,

  
Robert B. Woomer, Esquire  
PA.I.D. # 59030

Woomer & Friday, LLP.  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, Pa 15216  
(412) 563-7980

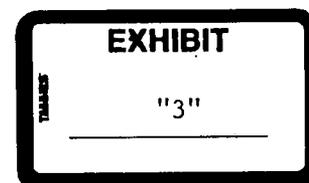
VERIFICATION

*Cindy*  
We, ~~Wendy~~ E. Weber and Rick Weber, wife and husband, being duly sworn according to law, depose and say that the facts contained in the foregoing \_\_\_\_\_  
Answers to Interrogatories \_\_\_\_\_ are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

*Cindy E. Weber*  
\_\_\_\_\_  
Signature

*Rick L. Weber*  
\_\_\_\_\_  
Signature

RECEIVED  
JUL 27 2001



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

**NOTICE OF DEPOSITION OF  
BASHIR YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL ACTION

Plaintiff(s),

Case No. 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendant(s).

NOTICE OF DEPOSITION  
OF BASHIR YOUSUFZAI, M.D.

Please take notice that on *Monday, September 24, 2001, at 10:30 a.m.* the deposition of *Bashir Yousufzai, M.D.* will be taken pursuant to the terms and provisions of the Pennsylvania Rules of Civil Procedure. The deposition will occur before a notary public or some other officer authorized by law to record the deposition at the office of *Sargents Court Reporting, 106 North Second Street, Clearfield, PA 16830; (814) 765-8711.*

Respectfully Submitted July 25, 2001

Woomer & Friday, LLP

By: 

Robert B. Woomer, Esquire  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2001, a true and correct copy of the foregoing *Notice of Deposition of Bashir Yousufzai, M.D.* was served by First Class U.S. Mail, postage prepaid, upon the following:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

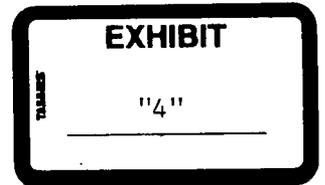
Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

WOOMER & FRIDAY LLP

By: \_\_\_\_\_

  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

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



CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

TO: RICKY L. WEBER  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, RICKY L. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Monday, September 24, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

A handwritten signature in black ink, appearing to read "Walter F. Wall".

Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

Dated: 7/25/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

TO: CINDY E. WEBER  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, CINDY E. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Monday, September 24, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY



Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

Dated:7/25/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

EXHIBIT

"5"

PHONE CALL

FOR wjw DATE 9/2/10 TIME 10:30 A.M. P.M.

M. Atty. Robt Woerner

OF \_\_\_\_\_

PHONE 412-563-7980

MESSAGE MS-102-956 War

In trial all wk of Monday had

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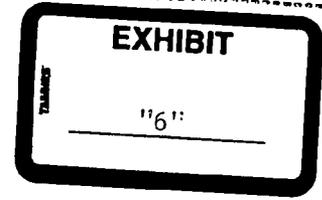
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<input type="checkbox"/>	RETURNED YOUR CALL
<input checked="" type="checkbox"/>	PLEASE CALL
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FILED  
NOV 11 2009  
CLEARFIELD COUNTY PA



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

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

**NOTICE OF DEPOSITION OF  
BASHIR YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL ACTION

Plaintiff(s),

Case No. 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

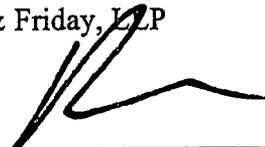
Defendant(s).

NOTICE OF DEPOSITION  
OF BASHIR YOUSUFZAI, M.D.

Please take notice that on *Wednesday, October 10, 2001, at 2:00 p.m.* the deposition of *Bashir Yousufzai, M.D.* will be taken pursuant to the terms and provisions of the Pennsylvania Rules of Civil Procedure. The deposition will occur before a notary public or some other officer authorized by law to record the deposition at the office of *Sargents Court Reporting, 106 North Second Street, Clearfield, PA 16830; (814) 765-8711.*

Respectfully Submitted September 26, 2001

Woomer & Friday, LLP

By: 

Robert B. Woomer, Esquire  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2001, a true and correct copy of the foregoing *Notice of Deposition of Bashir Yousufzai, M.D.* was served by First Class U.S. Mail, postage prepaid, upon the following:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

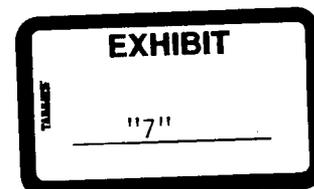
Sargent's Court Reporting  
210 Main Street  
Johnstown, PA 15901

WOOMER & FRIDAY LLP

By: \_\_\_\_\_

  
Robert B. Woome, Esquire  
Pa I.D. # 59030

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



CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

TO: CINDY E. WEBER  
c/o Robert B. Woome, Esquire  
Woome & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, CINDY E. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Wednesday, October 10, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY   
Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

Dated: 9/24/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

TO: RICKY L. WEBER  
c/o Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

PLEASE TAKE NOTICE that the deposition of, RICKY L. WEBER, will be taken for the purpose of discovery and for use at trial, pursuant to Rule 4007.1 et seq, of the PA Rules of Civil Procedure, as amended, before an Official Court Reporter in the offices of Sargent's Court Reporting Services, 106 N. Second Street, Clearfield, Pennsylvania, on **Wednesday, October, 2001, at 1:00 p.m.** at which time and place you are invited to appear and take such part as shall be fitting and proper.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY



Walter Fredrick Wall, Esquire, ID #23657  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600

Dated:9/24/01

cc: Darryl Slimak, Esquire  
Sargent's Court Reporting Services

RECEIVED  
COURT OF COMMON PLEAS  
CLEARFIELD COUNTY  
PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendant(s).

CIVIL ACTION

Case No. 01-361-CD

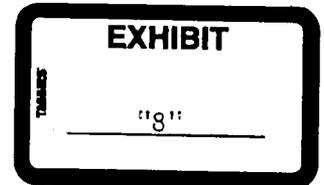
**AMENDED NOTICE OF  
DEPOSITION OF BASHIR  
YOUSUFZAI, M.D.**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L.  
WEBER

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL ACTION

Case No. 01-361-CD

Plaintiff(s),

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

Defendant(s).

**AMENDED**  
**NOTICE OF DEPOSITION**  
**OF BASHIR YOUSUFZAI, M.D.**

Please take notice that on *Wednesday, October 10, 2001 at 10:30 a.m.* the deposition of *Bashir Yousufzai, M.D.* will be taken pursuant to the terms and provisions of the Pennsylvania Rules of Civil Procedure. The deposition will occur before a notary public or some other officer authorized by law to record the deposition at the office of **Sargents Court Reporting, 106 North Second Street, Clearfield, PA 16830 (814) 765-8711.**

Respectfully Submitted,

Woomer & Friday, LLP

By: 

Robert B. Woomer, Esquire  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2001, a true and correct copy of the foregoing *Amended Notice of Deposition of Bashir Yousufzai, M.D.* was served by First Class U.S. Mail, postage prepaid, upon the following:

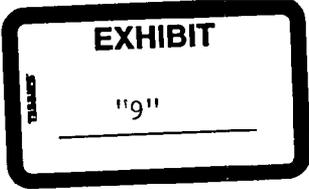
Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801

Walter F. Wall, Esquire  
Meyer Darragh Buckler Bebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Woomer & Friday, LLP

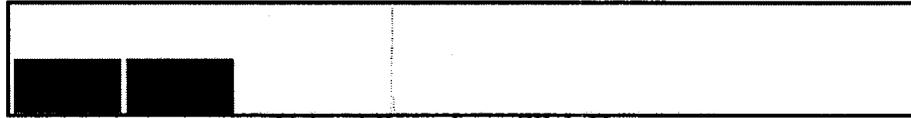
By: \_\_\_\_\_

  
Robert B. Woomer, Esquire  
Pa I.D. # 59030



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Powered by Mapquest.com (t

Yahoo! Bill Pay  
It's Free!



[Yahoo! Domains - Click Here](#)

Welcome, Guest User

[Create My Locations - Sign](#)

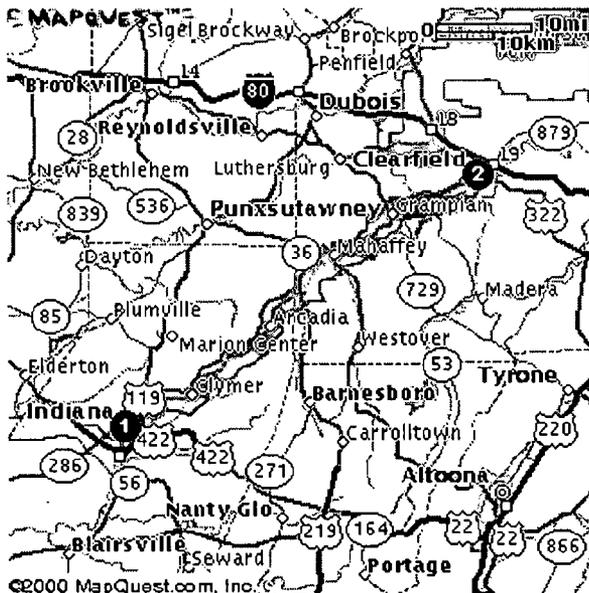
### Yahoo! Maps - Driving Directions

Starting from: 825 Philadelphia street, Indiana, PA 15701-3907

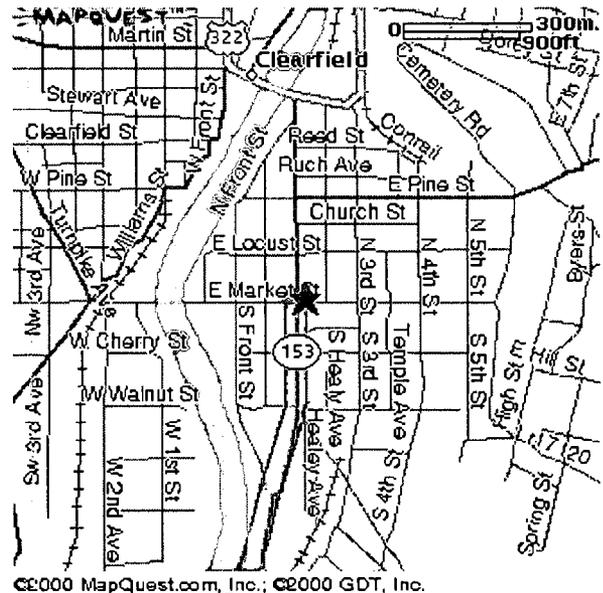
Arriving at: ★ 1 north second street, Clearfield, PA 16830-2438

Distance: 57.1 miles Approximate Travel Time: 1 hour 42 mins

- [Email Directions](#)
- [Get Reverse Directions](#)
- [Text Only Driving Direction](#)



Full Route



Destination

Directions	Miles
1. Start out going East on PA-286 towards N 4TH ST by turning right.	0.8
2. Take the PA-286 EAST ramp towards CLYMER.	0.6
3. Merge onto PA-286.	7.8
4. PA-286 becomes PA-286/PA-403.	0.4
5. Stay straight to go onto PA-286.	18.8
6. PA-286 becomes US-219.	17.1
7. Stay straight to go onto PA-879.	9.9
8. Stay straight to go onto PA-1001.	0.7
9. PA-1001 becomes S 2ND ST/OLD TOWN RD.	0.5

10. S 2ND ST/OLD TOWN RD becomes PA-153.

0.5

When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

Driving Directions

New Location

**1** Enter a starting address  
or select from My Locations

**2** Enter a destination address  
or select from My Locations

My Locations  [Sign In](#)  
( Address, Intersection or Airport Code )  
**Address**   
**City, State or Zip**   
**Country**

My Locations  [Sign In](#)  
( Address, Intersection or Airport Code )  
**Address**   
**City, State or Zip**   
**Country**

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from your mobile  
phone!



[Yahoo! Website Services- Click Here!](#)

Welcome, Guest User

[Create My Locations - Sign](#)

## Yahoo! Maps - Driving Directions

Starting from: 825 Philadelphia street, Indiana, PA 15701-3951

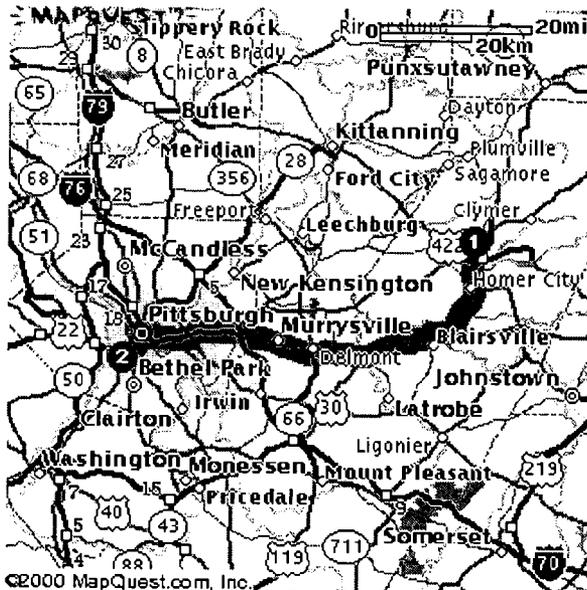
Arriving at: ★ 3220 west liberty avenue, Pittsburgh, PA 15216-2320

Distance: 61.5 miles **Approximate Travel Time:** 1 hour 51 mins

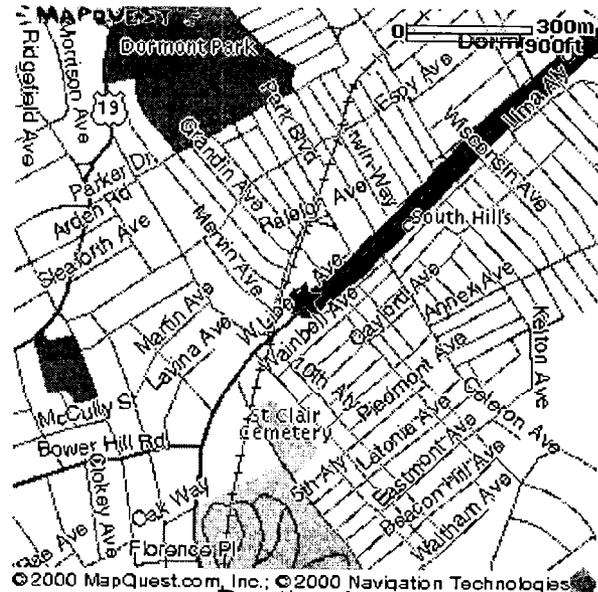
[Email Directions](#)

[Get Reverse Directions](#)

[Text Only Driving Direction](#)



Full Route



Destination

### Directions

- | Directions                                                                | Miles |
|---------------------------------------------------------------------------|-------|
| 1. Start out going East on PA-286/PA-954 towards 7TH ST by turning right. | 0.1   |
| 2. Turn RIGHT onto 7TH ST.                                                | 0.4   |
| 3. 7TH ST becomes WAYNE AVE.                                              | 0.4   |
| 4. WAYNE AVE becomes PA-4005.                                             | 1.4   |
| 5. PA-4005 becomes WAYNE AVE/US-422 BR.                                   | 1.0   |
| 6. Take the US-119 SOUTH ramp towards BLAIRSVILLE.                        | 0.3   |
| 7. Merge onto US-119 S.                                                   | 10.1  |
| 8. Take the US-119 SOUTH/US-22 WEST ramp.                                 | 0.1   |
| 9. Merge onto US-119 S/US-22.                                             | 12.2  |

- 10. Stay straight to go onto **US-22**. 17.5
- 11. Take the **I-376 WEST/US-22 WEST** ramp towards **PITTSBURGH**. 0.2
- 12. Merge onto **US-22 W/I-376 W**. 6.6
- 13. **US-22 W/I-376 W** becomes **US-22 W/US-30 W/I-376 W**. 5.5
- 14. Take the **BLVD OF ALLIES** exit, exit number **6**, towards **LIBERTY BRIDGE(I-579)**. 0.3
- 15. Merge onto **BOULEVARD OF THE ALLIES/PA-885**. 1.0
- 16. Take the **I-579 NORTH** ramp. 0.1
- 17. Keep **LEFT** at the fork in the ramp. 0.2
- 18. Merge onto **CROSTOWN BLVD**. 0.1
- 19. Stay straight to go onto **LIBERTY BRIDGE**. 0.4
- 20. **LIBERTY BRIDGE** becomes **LIBERTY TUNNELS**. 1.2
- 21. Stay straight to go onto **W LIBERTY AVE/US-19 TRUCK**. 2.4

When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

**Driving Directions**

**New Location**

**1** Enter a starting address  
or select from My Locations

**2** Enter a destination address  
or select from My Locations

My Locations  [Sign In](#)  
(Address, Intersection or Airport Code)  
**Address**   
**City, State or Zip**   
**Country**

My Locations  [Sign In](#)  
(Address, Intersection or Airport Code)  
**Address**   
**City, State or Zip**   
**Country**

Date		Judge
09/20/1999	CR-304-99 COMPLAINT FILED 10/20/99 BAIL BOND 10,000 UNSECURED	
10/19/2000	<p>Members of the Jury Filed. Twelve Good and Lawful Citizens, after hearing the Allegations and Proofs, find the Defendant: GUILTY on all charges /s/ Kathryn Patkalitsky</p> <ol style="list-style-type: none"> <li>1. Arthur Woodring</li> <li>2. David A. Beegle</li> <li>3. Carol Adam</li> <li>4. William T. Myers</li> <li>5. Noreen Hubler</li> <li>6. Brenda Miller</li> <li>7. Kathryn Patkalitsky</li> <li>8. David L. Parrott</li> <li>9. Terry L. Korb</li> <li>10. Janice Kephart-excused</li> <li>11. Kimberly Smolko</li> <li>12. Patricia Billotte</li> </ol> <p>ALT #1 Susan K. Kelly-moved to #10 ALT #2 Michael Knepp Jury Verdict Filed</p>	Fredric J. Ammerman
10/23/2000	Order filed. NOW, this 18th day of October, 2000, jury having convicted Defendant of six counts of Indecent Assault, ORDER of this Court that Probation prepare presentence investigation and Court Administrator cause Defendant to appear for sentencing within no more than sixty days from this date. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
10/24/2000	Order filed. NOW, this 18th day of October, 2000, jury having entered verdict, Finding of this Court that Defendant is Guilty of all remaining subsections of Summary Offense of Harassment. Sentencing shall be delayed until such time as Court imposes sentence on misdemeanor offenses. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
12/01/2000	Post Sentence Motions, filed by J. DuBois, taken to CA	Fredric J. Ammerman
12/12/2000	Order filed. 2 JAIL, J.DUBOIS Now 12-11-00 is is Ordered that def. be released from CC Jail on 12-19-00 for licensing hearing at Harrisburg. It is Ordered that Def. must comply to all Jail regulations. BY THE COURT./S/FJA	Fredric J. Ammerman
12/13/2000	Order filed. 2CC/J.DUBOIS And Now, 12-11-00 on Post Sent. Motion, hearing on 12-19-00 at 2:00 PM. BY THE COURT./S/FJA	Fredric J. Ammerman
12/18/2000	Sentence Order Dated: NOW, this November 21, 2000, after conviction following jury trial, it is SENTENCE of Court that on Indecent Assault he pay \$1,000 plus costs, CCJ 3 months to 2 yrs. less 1 day; complete Project Point of Light Program, have no contact with victim or any member of her immediate family. On summary of Harassment, fine of \$50 plus costs. BY THE COURT: /s/FJA (see file for Orig.) Copies to CA, DA, PO, Atty. DuBois, Jail, Def., Vict./Witn. Prog., DuBois City	Fredric J. Ammerman
01/03/2001	Order filed. CC/CA,DA,PO, ATT. DUBOIS Now 12-19-00, on Post Sent. Motions, Counsel for Def. has 30 days to supply Court with appropriate Brief Memo., with DA having no more than 30 days to respond. BY THE COURT./S/FJA.	Fredric J. Ammerman
02/28/2001	ORDER, filed CC/CA,DA,PO, DUBOIS Now 03-02-01 it is Order of Court that post-sentence motion filed on behalf of Def. re hereby dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman

Date: 03/19/2001

Clearfield County Court of Common Pleas

User: LLINGLE

Time: 09:52 AM

ROA Report

Page 2 of 2

Case: 1999-0000744-CR Current judge: Fredric J. Ammerman

Defendant: Yousufzai, Bashir A MD

Date		Judge
03/05/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-02-01 Order incorrectly referenced 03-26-01, amended as follows: Order, Now this 3-02-01, it is Order of Court that post-sentence motions filed of Def. are hereby dismissed. BY THE COURT./S/FJA nOW03-02-01 or	Fredric J. Ammerman
03/15/2001	Transcript of Proceedings, filed Testimony of Rose snodgrass	Fredric J. Ammerman

Date		Judge
09/13/1999	CR-305-99 COMPLAINT FILED 10/20/99 BAIL BOND 10,000 UNSECURED	
10/19/2000	<p>Members of the Jury Filed. Twelve Good and Lawful Citizens, after hearing the Allegations and Proofs, find the Defendant: GUILTY on all charges /s/ Kathryn Patkalitsky</p> <ol style="list-style-type: none"> <li>1. Arthur Woodring</li> <li>2. David A. Beegle</li> <li>3. Carol Adam</li> <li>4. William T. Myers</li> <li>5. Noreen Hubler</li> <li>6. Brenda Miller</li> <li>7. Kathryn Patkalitsky</li> <li>8. David L. Parrott</li> <li>9. Terry L. Korb</li> <li>10. Janice Kephart-excused</li> <li>11. Kimberly Smolko</li> <li>12. Patricia Billotte</li> </ol> <p>ALT #1 Susan K. Kelly-moved to #10 ALT #2 Michael Knepp Jury Verdict Filed</p>	Fredric J. Ammerman
10/23/2000	Order filed. NOW, this 18th day of October, 2000, jury having convicted Defendant of six counts of Indecent Assault, ORDER of this Court that Probation prepare presentence investigation and Court Administrator cause Defendant to appear for sentencing within no more than sixty days from this date. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
10/24/2000	Order filed. NOW, this 18th day of October, 2000, jury having entered verdict, Finding of this Court that Defendant is Guilty of all remaining subsections of Summary Offense of Harassment. Sentencing shall be delayed until such time as Court imposes sentence on misdemeanor offenses. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
12/01/2000	Post Sentence Motions, filed by J. DuBois, taken to CA	Fredric J. Ammerman
12/12/2000	Order filed. 2JAIL, JDUBOIS Now 12-11-00, it is Ordered that Def. be released from CC Jail on 12-19-00 to Harrisburg on licensing hearing, It is further Ordered that def. comply by all Jail rules. BY THE COURT./S/FJA	Fredric J. Ammerman
12/13/2000	Order filed. 2CC/J.DUBOIS And Now 12-11-00 on Post Sent. Motion, hearing held 12-19-00 at 2:00 PM. BY THE COURT./S/FJA	Fredric J. Ammerman
12/18/2000	Sentence Order Dated: NOW, this November 21, 2000, it is SENTENCE of Court that following trial by jury that on Indecent Assault he pay \$1,000 plus costs, CCJ 3 mo. to 2 yrs. less 1 day consec. to 99-744-CRA, no contact with Abigail Corbett or any member of immediate family. On summary of Harassment, fine of \$50 plus costs. BY THE COURT: /s/Fredric Ammerman, Judge (see file for Orig.) Copies to CA, DA, PO, Atty. DuBois, Jail, Deft., DuBois City, Vict./Witn. Prog.	Fredric J. Ammerman
01/03/2001	Order filed. CC/CA,DA,PO,ATT. DUBOIS Now 12-19-00, on Post Sent. Motions, counsel for Def. has no more than 30 days to file appropriate brief of memo. with DA having no more than 30 days to respond. BY THE COURT./S/FJA	Fredric J. Ammerman
02/28/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-02-01 it is Order of Court that post-sentence motions filed on behalf of Def. be dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman

Date: 03/20/2001

Clearfield County Court of Common Pleas

User: ABENNETT

Time: 08:59 AM

ROA Report

Page 2 of 2

Case: 1999-0000745-CR Current judge: Fredric J. Ammerman

Defendant: Yousufzai, Bashir A MD

Date		Judge
03/05/2001	ORDER, filed CC/CA,DA,PO,DUBOIS now this 03-02-01 the Order incorrectly referenced as 03-26-01 is amended as follows; Now 03-02-01 Order on post-sent. motion filed on behalf of Def. is dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman
03/15/2001	Transcript of Proceedings, filed testimony of Rose Sondgrass	Fredric J. Ammerman

Date		Judge
09/03/1999	CR-307-99 COMPLAINT FILED 10/20/99 BAIL BOND 10,000 JOE GILLILAND	
10/19/2000	Members of the Jury Filed. Twelve Good and Lawful Citizens, after hearing the Allegations and Proofs, find the Defendant: GUILTY on all charges /s/ Kathryn Patkalitsky 1. Arthur Woodring 2. David A. Beegle 3. Carol Adam 4. William T. Myers 5. Noreen Hubler 6. Brenda Miller 7. Kathryn Patkalitsky 8. David L. Parrott 9. Terry L. Korb 10. Janice Kephart-excused 11. Kimberly Smolko 12. Patricia Billotte ALT #1 Susan K. Kelly-moved to #10 ALT #2 Michael Knepp Jury Verdict Filed	Fredric J. Ammerman
10/23/2000	Order filed. NOW, this 18th day of October, 2000, jury having convicted Defendant of six counts of Indecent Assault, ORDER of this Court that Probation prepare presentence investigation and Court Administrator cause Defendant to appear for sentencing within no more than sixty days from this date. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
10/24/2000	Order filed. NOW, this 18th day of October, 2000, jury having entered verdict, Finding of this Court that Defendant is Guilty of all remaining subsections of Summary Offense of Harassment. Sentencing shall be delayed until such time as Court imposes sentence on misdemeanor offenses. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
12/01/2000	Post Sentence Motions, filed by J. DuBois, taken to CA	Fredric J. Ammerman
12/13/2000	Order filed. 2CC/J. DUBOIS And Now, 1211-00, on Post Sent. Motion, hearing held on 12-19-00 at 2:00 PM. BY THE COURT/S/FJA	Fredric J. Ammerman
12/18/2000	Sentence Order Dated: NOW, this November 21, 2000, it is SENTENCE of Court following trial by jury that on Indecent Assault he pay \$500 plus costs, serve 2 yrs. Probation conc. to 99-744-CRA, no contact with victim Diane Gilbert or members of her immediate family. On summary of Harassment, fine of \$50 plus costs. BY THE COURT: /s/Fredric Ammerman, Judge (see file for Orig.) Copies to CA, DA, PO, Atty. DuBois, Vict./Witn. Prog., Deft., DuBois City	Fredric J. Ammerman
01/03/2001	Order filed. CC/CA, DA, PO, ATT. DUBOIS Now 12-19-00 on the Post Sent. Motion, counsel for Def. must supply Court with appropriate brief of memo. no more than 30 days, with DA having no more than 30 days to respond. BY THE COURT. S/FJA	Fredric J. Ammerman
02/28/2001	ORDER, filed CC/CA, DA, PO, DUBOIS now 03-26-01 it is Order of court that Post-sent. motions on behalf of Def. be dismissed. BY THE COURT. /S/FJA	Fredric J. Ammerman
03/05/2001	ORDER, filed CC/CA, DA, PO, DUBOIS Now 03-02-01 on Order incorrectly referenced as 03-26-01 is amended as follows: Now 03-02-01, it is Order of court that post-sent. motions filed on behalf of Def. are dismissed. BY THE COURT. /S/FJA	Fredric J. Ammerman

Date: 03/23/2001

Clearfield County Court of Common Pleas

User: ABENNETT

Time: 09:01 AM

ROA Report

Page 2 of 2

Case: 1999-0000746-CR Current judge: Fredric J. Ammerman

Defendant: Yousufzai, Bashir A MD

Date		Judge
03/15/2001	Transcript of Proceedings, filed Testimony of Rose Snodgrass	Fredric J. Ammerman

Date		Judge
08/17/1999	CR-308-99 COMPLAINT FILED 10/20/99 BAIL BOND 10,000 JOE GILLILAND	
10/19/2000	Members of the Jury Filed. Twelve Good and Lawful Citizens, after hearing the Allegations and Proofs, find the Defendant: GUILTY on all charges /s/ Kathryn Patkalitsky 1. Arthur Woodring 2. David A. Beegle 3. Carol Adam 4. William T. Myers 5. Noreen Hubler 6. Brenda Miller 7. Kathryn Patkalitsky 8. David L. Parrott 9. Terry L. Korb 10. Janice Kephart-excused 11. Kimberly Smolko 12. Patricia Billotte ALT #1 Susan K. Kelly-moved to #10 ALT #2 Michael Knepp Jury Verdict Filed	Fredric J. Ammerman
10/23/2000	Order filed. NOW, this 18th day of October, 2000, jury having convicted Defendant of six counts of Indecent Assault, ORDER of this Court that Probation prepare presentence investigation and Court Administrator cause Defendant to appear for sentencing within no more than sixty days from this date. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
10/24/2000	Order filed. NOW, this 18th day of October, 2000, jury having entered verdict, Finding of this Court that Defendant is Guilty of all remaining subsections of Summary Offense of Harassment. Sentencing shall be delayed until such time as Court imposes sentence on misdemeanor offenses. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
12/01/2000	Post Sentence Motions, filed by J. DuBois, taken to CA	Fredric J. Ammerman
12/13/2000	Order filed. 2CC to J. DuBois And Now 12-11-00, on Post Sent. Motion, hearing held 12-19-00 at 2:00 PM BY THE COURT./S/FJA	Fredric J. Ammerman
12/18/2000	Sentence Order Dated: NOW, this November 21, 2000, it is SENTENCE of Court that following trial by jury, on Indecent Assault he pay \$500 plus costs, serve 2 yrs. Probation conc. to 99-744-CRA, have no contact with victim, Suzanne Potash. On summary of Harassment, fine of \$50 plus costs. BY THE COURT: /s/Fredric Ammerman, Judge (see file for Orig.) Copies to CA, DA, PO, Atty. DuBois, Vict./Witn., Def., DuBois City	Fredric J. Ammerman
01/03/2001	Order filed. CC/CA,DA,PO, ATT.DUBOIS Now 12-19-00, on Post Sent. Motion, counsel for Def. must file a Brief of Memo. no more than 30 days, with DA having no more than 30 days to respond. BY THE COURT./S/FJA	Fredric J. Ammerman
02/28/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-26-01 it is Order of Court that post-sent. motions filed on behalf of Def. is dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman
03/05/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-02-01 on Order incorrectly referenced 03-26-01, is amended: Now 03-02-01 it is Order of Court that post-sen. motions filed on behalf of Def. are dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman
03/15/2001	Transcript of Proceedings, filed Testimony of Rose Snodgrass	Fredric J. Ammerman

Date		Judge
08/16/1999	CR-310-99 COMPLAINT FILED 10/20/99 BAIL BOND 10,000 JOE GILLILAND	
10/19/2000	Members of the Jury Filed. Twelve Good and Lawful Citizens, after hearing the Allegations and Proofs, find the Defendant: GUILTY on all charges /s/ Kathryn Patkalitsky 1. Arthur Woodring 2. David A. Beegle 3. Carol Adam 4. William T. Myers 5. Noreen Hubler 6. Brenda Miller 7. Kathryn Patkalitsky 8. David L. Parrott 9. Terry L. Korb 10. Janice Kephart-excused 11. Kimberly Smolko 12. Patricia Billotte ALT #1 Susan K. Kelly-moved to #10 ALT #2 Michael Knepp Jury Verdict Filed	Fredric J. Ammerman
10/23/2000	Order filed. NOW, this 18th day of October, 2000, jury having convicted Defendant of six counts of Indecent Assault, ORDER of this Court that Probation prepare presentence investigation and Court Administrator cause Defendant to appear for sentencing within no more than sixty days from this date. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
10/24/2000	Order filed. NOW, this 18th day of October, 2000, jury having entered verdict, Finding of this Court that Defendant is Guilty of all remaining subsections of Summary Offense of Harassment. Sentencing shall be delayed until such time as Court imposes sentence on misdemeanor offenses. Copies sent to CA DA PO TALADAY	Fredric J. Ammerman
12/06/2000	Post Sentence Motion, filed by J. DuBois, taken to CA	Fredric J. Ammerman
12/13/2000	Order filed. 2CC to DuBois And Now, 12-11-00, Post-Sent. Motion on 12-19-00 at 2:00PM. BY THE COURT./S/FJA	Fredric J. Ammerman
12/18/2000	Sentence Order Dated: NOW, this Nov. 21, 2000, Deft. having been convicted after jury trial of two counts of Indecent Assault and four counts of Harassment. It is SENTENCE that on each count of Ind. Assault he pay \$100 plus costs, two yrs. Probation to be conc. to each other and to 99-744-CRA; have no contact with victim or any member of her immediate family. On each count of Harassment, fine of \$50 plus costs. BY THE COURT: /s/FJA (see file for Orig.) Copies to CA, DA, PO, Atty. DuBois, Deft., Vict./Witn. Prog., DuBois City	Fredric J. Ammerman
01/03/2001	Order filed. CC/CA,DA,PO,ATT.DUBOIS Now 12-19-00, on Post Sent. motion, counsel for Def. must file no more than 30 days a brief or memo. no more than 30 days, with DA filing no more than 30 days to respond. BY THE COURT./S/FJA	Fredric J. Ammerman
02/28/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-26-01 it is order of Court that Post-sent. motion filed on behalf of def. are dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman
03/05/2001	ORDER, filed CC/CA,DA,PO,DUBOIS Now 03-02-01 on Order incorrectly referenced as 03-26-01 is amended. Now 03-02-01, it is Order of Court that post-sent motion filed on behalf of Def. are dismissed. BY THE COURT./S/FJA	Fredric J. Ammerman

Date: 03/20/2001

Clearfield County Court of Common Pleas

User: ABENNETT

Time: 09:03 AM

ROA Report

Page 2 of 2

Case: 1999-0000748-CR Current judge: Fredric J. Ammerman

Defendant: Yousufzai, Bashir A MD

Date		Judge
03/15/2001	Transcript of Proceedings, filed testimony of Rose Snodgrass	Fredric J. Ammerman

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 8<sup>th</sup> day of **November 2001**, a true and correct copy of the within Motion for Sanctions was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_



**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

**FILED**

NOV 09 2001

*W. M. I. 28100ce*  
William A. Straw  
Prothonotary

53

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

CINDY E. WEBER and  
RICKY L. WEBER.  
Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

No. ~~1361-00~~ 01-361-CD

Type of Case: Civil

Type of Pleading:  
Defendant Dr. Bashir Yousufzai's Motion  
for Sanctions Against Plaintiffs

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

NOV 09 2001  
William A. Shaw  
Prothonotary



bad faith conduct during the course of litigation.

WHEREFORE, Defendant Dr. Bashir Yousufzai respectfully requests this Honorable

Court to:

(a) Award him reasonable counsel fees and costs related to his appearance for the depositions that had to be canceled and for preparation of this Motion, responding to Plaintiffs' discovery motions and argument of same, as will be itemized and submitted to the Court following oral argument and hearing of this matter;

(b) Impose appropriate restrictions and conditions on the conduct of any depositions in this matter, including mandating the physical presence of counsel for the respective parties at the depositions and scheduling same in the courthouse as arranged by Defense counsel;

(c) Such other and further relief as requested by co-Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C. in their Motion for Sanctions.

Respectfully submitted,

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

By: \_\_\_\_\_

  
Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: November 8, 2001 \_\_\_\_\_



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

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624



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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

No. ~~01-361-00~~ 01-361-CD

Type of Case: Civil

Type of Pleading:  
Defendant Dr. Bashir Yousufzai's Response  
to Plaintiffs' Motion to Extend Time to  
Answer Expert Discovery Requests

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

NOV 09 2001  
William A. Shaw  
Prothonotary



**did his clients** at the time that same were scheduled to commence. Rather, as Defense counsel, Dr. Yousufzai, the court reporter, and Attorney Wall were attempting to contact Attorney Woomer and find out where he was and why no one showed up for the depositions, a call came in from a purported attorney that Defense counsel had never before dealt with, who represented that he was asked by counsel of record (Attorney Woomer), to fill in for Attorney Woomer to take the deposition of Dr. Yousufzai **by telephone**. He knew nothing about the Webers' depositions which were also scheduled for that date. Furthermore, he indicated that Mr. Woomer had advised him to call because Mr. Woomer was then en route from Indiana, Pennsylvania back to Pittsburgh, Pennsylvania, rather than coming over to Clearfield, Pennsylvania. The Court should understand that no party had ever arranged to have their counsel participate in the depositions by telephone conference call from some remote location. And, no adequate assurances were given that Plaintiffs were in fact intending to appear for their depositions. Moreover, Defense counsel were quite concerned with proceeding with a deposition, particularly if Plaintiffs' counsel was not even going to be physically present for the depositions due to the nature of the extremely sensitive subject matters to be inquired into in this case involving sexual issues; Plaintiff-wife's and her husband's psychiatric states; and concerns over the safety of Defense counsel and Dr. Yousufzai who is of Afghanisti descent. Additionally, proceeding with the deposition at that time was problematic because Plaintiffs had on the eve of the depositions apparently sent discovery responses to counsel for Defendant Liberty, but had not sent copies to counsel for Defendant Yousufzai, and had not yet responded at all to Defendant Yousufzai's discovery requests.

6. The averments of Motion paragraph 6 are denied. Plaintiffs have long had all of the medical records and, of course, Plaintiff Cindy Weber was present during the examinations

by Dr. Yousufzai. By Order of this Court dated July 16, 2001, the Court limited the medical malpractice claim to a single, focused issue: "negligent prescription of drugs." There is no need to even take Dr. Yousufzai's deposition to obtain an expert report on this focused issue. Moreover, Plaintiffs have had over three years since the care was rendered and seven months since the case was commenced, including ninety (90) days since the Court Order of July 16, 2001, to complete discovery and get their expert reports filed. This is more than sufficient time, opportunity and ability to obtain an expert report with or without Dr. Yousufzai's deposition, on the limited issue presented. Moreover, the cancellation of the deposition which they scheduled on the eve of the expert report deadline is due to Plaintiffs' and/or their counsel's own fault. There is thus no legitimate basis to extend discovery or delay production of an expert report for Plaintiffs, and certainly not as requested for "until at least sixty (60) days past the time that the deposition of Defendant Bashir Yousufzai has been taken." **Indeed, even if Dr. Yousufzai had submitted to the deposition under the totally unacceptable circumstances with which he was presented on October 10<sup>th</sup>, Plaintiffs would only have had four (4) days to obtain the deposition transcript and file a report.**

7. By separately filed Motion, Dr. Yousufzai and co-Defendant Liberty Physical Medicine & Rehabilitation Associates are requesting sanctions against Plaintiffs and/or summary judgment in their favor.

WHEREFORE, Defendant Dr. Bashir Yousufzai respectfully requests that Plaintiffs' Motion to Extend Discovery Period be denied.

Respectfully submitted,

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

By: 

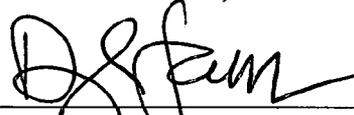
Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: November 8, 2001



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

By: \_\_\_\_\_



Darryl R. Slimak

Attorneys for Defendant

BASHIR YOUSUFZAI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

56

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

No. ~~1361-00~~ <sup>01-361-CJ</sup>

Type of Case: Civil

Type of Pleading:  
Defendant Dr. Bashir Yousufzai's Response  
to Plaintiffs' Motion to Compel His  
Deposition

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

NOV 09 2001

*WAS*  
*by* William A. Shaw  
Prothonotary



Respectfully submitted,

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

By:  \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 11-8-07



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

By: \_\_\_\_\_



Darryl R. Sijmak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

58 CR

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

CINDY E. WEBER, and :  
RICKY L. WEBER :  
 :  
 :  
 vs. : No. 01-361-CD  
 :  
 :  
 BASHIR YOUSUFZAI, M.D. and :  
 LIBERTY PHYSICAL MEDICINE & :  
 REHABILITATION ASSOCIATES, :  
 INC. :

**ORDER**

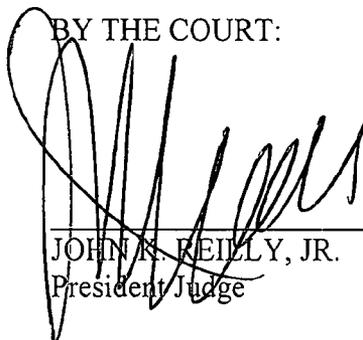
AND NOW, this 13<sup>th</sup> day of November, 2001, upon consideration of Defendant Yousufzai's Motion for Sanctions Against Plaintiffs, a Rule is hereby issued on Plaintiffs to appear and show cause why the Motion should not be granted. Rule Returnable the 5<sup>th</sup> day of December, 2001, at 10:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

**FILED**

NOV 13 2001

William A. Shaw  
Prothonotary

BY THE COURT:



JOHN K. REILLY, JR.  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-00  
NO. 01361-00

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the November 13, 2001 Rule Returnable with respect to Defendant Dr. Bashir Yousufzai's Motion for Sanctions Against Plaintiffs in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 14<sup>th</sup> day of November, 2001, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

**FILED**

NOV 16 2001  
William A. Shaw  
Notary

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

CINDY E. WEBER, and  
RICKY L. WEBER

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
INC.

:  
:  
:  
: No. 01-361-CD  
:  
:

**ORDER**

AND NOW, this 13<sup>th</sup> day of November, 2001, upon consideration of Defendant Yousufzai's Motion for Sanctions Against Plaintiffs, a Rule is hereby issued on Plaintiffs to appear and show cause why the Motion should not be granted. Rule Returnable the 5<sup>th</sup> day of December, 2001, at 10:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

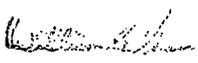
BY THE COURT:

/s/ JOHN K. REILLY, JR.

JOHN K. REILLY, JR.  
President Judge

I hereby certify this to be a true and correct copy of the original statements filed in this case.

NOV 13 2001

Notary:   
Prothonotary

60

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**  
Certificate of Service of Rule for  
Motion for Sanctions

**FILED ON BEHALF OF:**  
Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**  
WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

NOV 19 2001  
m 1:45/ by  
William A. Shaw  
Prothonotary

NO CERT COPIES

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the **16th day of November 2001**, a true and correct copy of the within Rule Returnable for hearing on the Motion for Sanctions was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woome, Esquire  
Woome & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_

  
**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

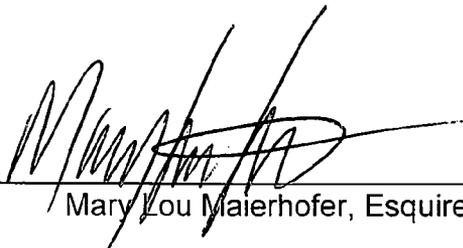
JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**AFFIDAVIT**

I affirm and attest that as a result of the Plaintiffs' Counsel's failure to be present on October 10, 2001, the following were incurred:

1. Preparation for the deposition of the Plaintiffs..... 1.2 hours
2. Travel to Clearfield for the depositions..... 1.3 hours
3. Confer with other defense Counsel; waited for Plaintiffs' Counsel to appear; and conference with Sheriff for security regarding depositions; ..... 1.4 hours
4. Travel back to office.....1.3 hours
5. Costs incurred:  
Mileage - \$38.64  
Meter Parking - \$1.00.....Subtotal.. \$39.64
6. Total----- \$651.64

  
\_\_\_\_\_  
Mary Lou Maierhofer, Esquire ID #62175

DATED: 12.5.01

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

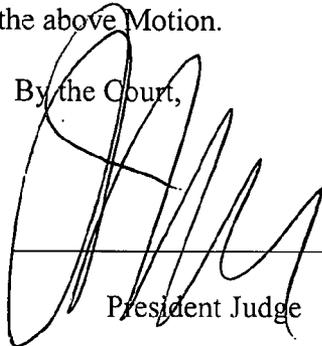
No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 5<sup>th</sup> day of December, 2001, following argument into Plaintiffs' Motion to Extend Deadline for Answering Expert Discovery, it is the ORDER of this Court that counsel for Plaintiffs shall be given 10 days from date hereto to submit authority for his efforts to participate in Yousufzai's deposition by telephone without consent or knowledge of opposing counsel. Ruling on said Motion and Defendants' Motions for Sanctions shall be and are hereby continued pending resolution of the above Motion.

By the Court,



President Judge

**FILED**

DEC 05 2001  
0/4:00/was  
William A. Shaw  
Prothonotary

CERT TO W.WALL  
D. SLIMAK  
R. WOOMEH



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

CINDY E. WEBER and :  
RICKY L. WEBER :  
 :  
-vs- : No. 01 - 361 - CD  
 :  
BASHIR YOUSUFZAI, M.D. and :  
LIBERTY PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C. :

**ORDER**

NOW, this 14<sup>th</sup> day of January, 2002, upon Motion of Defendant, Liberty Physical Medicine and Rehabilitation Associates, P.C., and after hearing upon same on December 5, 2001, and after providing Plaintiffs an additional ten (10) days to submit a Brief in Support of their position, the Court noting the record in this case wherein:

- A. This Court has previously after hearing entered Orders sustaining two sets of Preliminary Objections to Plaintiffs' Complaint, and
- B. Plaintiffs have failed to timely respond to discovery necessitating these Defendants in pursuing a Motion to Compel, and
- C. Plaintiffs having violated this Court's Order of July 16, 2001, and at time of hearing and thereafter in their Brief failing to provide this Court with support for their position,

it is hereby ORDERED, DIRECTED AND DECREED:

1. In accordance with the Affidavit submitted by Counsel for Liberty Physical Medicine and Rehabilitation Associates, P.C. the Plaintiffs are directed to pay within ten (10) days hereof to Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.'s Counsel the sum of \$651.64. Should

**FILED**

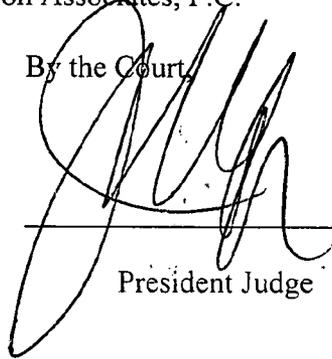
JAN 14 2002

William A. Shaw  
Prothonotary

Plaintiffs demand verification of the amount of said counsel fees, they shall so advise the Court within ten (10) days from date hereof and hearing thereon shall be scheduled. Failing which this amount shall be paid as set forth above, and

2. The Plaintiffs are hereby barred from presenting expert evidence at the time of trial in regard to any allegations against Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.

By the Court,



---

President Judge

**FILED**

JAN 14 2002

01:11:05 a.m.

William A. Shaw  
Prothonotary

*(Signature)*

*ESD*

1 cc to Atty Slimals  
1 cc to Atty Womner  
1 cc to Atty wall

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

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No. 01 – 361 – CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 25<sup>th</sup> day of January, 2002, upon consideration of the various outstanding Motions of Plaintiffs and Defendant Dr. Yousufzai; and after hearing held upon same on December 5, 2001; and after providing Plaintiffs an additional ten (10) days to submit a Brief in support of their position; and after receipt of an additional Brief by counsel for Defendant Dr. Yousufzai; and after the Court's having already issued an Order dated January 14, 2002, as regards to Motion for Sanctions by co-Defendant Liberty Physical Medicine and Rehabilitation Associates, the Court notes that the record in this case establishes that:

- A. This Court has previously entered an Order sustaining two sets of Preliminary Objections to Plaintiffs' Complaint; and
- B. Plaintiffs have failed to timely respond to discovery necessitating these Defendants to previously pursue Motions to Compel; and
- C. Plaintiffs have violated this Court's Order of July 16, 2001, in that discovery was not timely completed and at the time of hearing and thereafter in their Brief failed to provide this court with support for their position,

It is hereby ORDERED, DIRECTED and DECREED, as follows:

- 1. Defendant, Dr. Yousufazi's Motion for Sanctions against Plaintiffs is

GRANTED. In accordance with the Affidavit of Attorney Darryl R. Slimak,

**FILED**

submitted on behalf of Dr. Yousufazi, Plaintiffs are directed to pay within ten

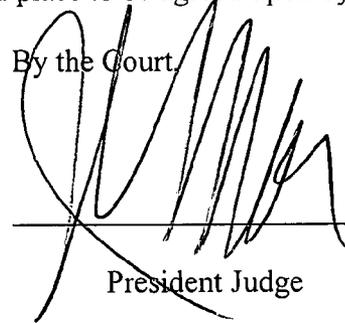
JAN 28 2002

William A. Shaw  
Prothonotary

(10) days hereof to Defendant Dr. Yousufazi, through his counsel, McQuaide Blasko Law Offices, the sum of One Thousand Seven Hundred Eighteen and 98/100 (\$1,718.98) Dollars, as sanction for costs and counsel fees as outlined in the Affidavit. Should Plaintiffs demand verification of said amount of counsel fees, they shall serve same on the Court within ten (10) days and hearing thereon shall be scheduled. Such amount should be paid as set forth above.

2. The Plaintiffs are hereby barred from presenting any expert evidence at the time of trial in regard to any allegations against Defendant Dr. Yousufazi.
3. Plaintiffs' Motion to Extend Date for Filing Expert Reports is DENIED.
4. Plaintiffs' Motion to Extend Time to Take the Deposition of Dr. Yousufzai is GRANTED; however, Dr. Yousufzai's and Plaintiffs' Depositions in this matter shall be taken in the physical presence of counsel for the respective parties at a mutually convenient time and place to be agreed upon by counsel.

By the Court

A handwritten signature in black ink, appearing to be 'J. M. ...', is written over a horizontal line. The signature is cursive and somewhat stylized.

President Judge

**FILED**

JAN 28 2002

5/1/14 /cc atty Woerner  
William A. Shaw  
Prothonotary /cc atty Skunk  
/cc atty Wall

04  
GA

NDC/msp/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**PRAECIPE TO REQUEST ARGUMENT/HEARING**

Please place the above-captioned Motion for Summary Judgment filed on behalf of the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., on the next available argument list.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

JAN 31 2002

William A. Shaw  
Prothonotary

**FILED** *once*

*1/31/02*  
JAN 31 2002

William A. Shaw  
Proprietary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

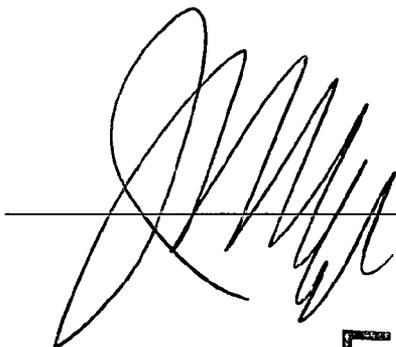
JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**RULE**

NOW THIS 20<sup>th</sup> day of February, 2002, a Rule is hereby issued upon Plaintiffs, Cindy E. Weber and Ricky L. Weber, to show cause, if any there should be, why the Motion for Summary Judgment, filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should not be granted.

Said Rule Returnable the 15<sup>th</sup> day of May, 2002, at 2:30 o'clock, 9 .m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

  
\_\_\_\_\_  
P.J.

**FILED**

FEB 26 2002

William A. Shaw  
Prothonotary

**FILED**

3cc

013: 55-81

Atty Simak

FEB 26 2002

*[Handwritten signature]*

William A. Shaw  
Prothonotary

64

NDC/msp/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**  
Motion for Summary Judgment

**FILED ON BEHALF OF:**  
Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**  
WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

JAN 31 2002

William A. Shaw  
Prothonotary



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

CINDY E. WEBER and	:	No. 01-361-CD
RICKY L. WEBER	:	
Plaintiffs	:	
	:	JURY TRIAL DEMANDED
vs.	:	
	:	
BASHIR YOUSUFZAI, M.D. and	:	
LIBERTY PHYSICAL MEDICINE &	:	
REHABILITATION ASSOCIATES, P.C.	:	
Defendants	:	

**MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., by and through its counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files this Motion for Summary Judgment of which the following is a statement:

1. Plaintiffs commenced this litigation by filing a Complaint on or about March 12, 2001.
2. This Defendant filed Preliminary Objections and the Plaintiffs were ordered to file an Amended Complaint on or about June 7, 2001.
3. As a result of additional problems with Plaintiff's Amended Complaint, this Defendant filed Preliminary Objections which were granted, in part, by Order of Court dated July 20, 2001.

4. On or about March 30, 2001, this Defendant, by and through its counsel, served Interrogatories and a Request for Production of Documents upon the Plaintiffs by mailing the same First Class, United States mail, postage prepaid and addressed to:

Cindy E. Weber and Ricky L. Weber  
c/o Robert B. Woomeer, Esquire  
Woomeer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

5. The Plaintiffs failed to serve the aforementioned Interrogatories and Request for Production of Documents within thirty (30) days after service as is required pursuant to the Pennsylvania Rules of Civil Procedure.

6. As a result of the Plaintiffs' failure to serve the aforementioned discovery, this Defendant was required to file a Motion to Compel the same.

7. At the time of the hearing, the Court specifically inquired of Plaintiffs' counsel, Robert B. Woomeer, Esquire of how long Plaintiffs require in order to file Expert Reports specifically in regard to the one remaining vague allegation sounding in negligence concerning negligent prescription medication by Defendant, Yousufzai, and as a result, this Court specifically entered an Order directing Plaintiffs within ninety (90) days - no later than October 14, 2001 - to answer all outstanding discovery of both Defendants. A copy of this Court's Order dated July 16, 2001, is attached hereto as Exhibit "1" and incorporated herein.

8. Plaintiffs have failed to timely file Expert Reports which resulted in the Order dated January 14, 2002 which, in part, bars the Plaintiffs from presenting any expert evidence at the time of trial in regard to the allegations against Defendant, Liberty Physical

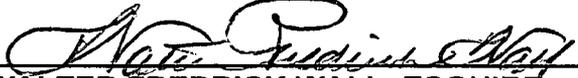
Medicine Rehabilitation Associates, P.C. (See Order dated January 14, 2002 attached hereto as Exhibit "2").

9. This is a medical malpractice action in which in order to sustain a cause of action against this Defendant, it is necessary for the Plaintiff to produce expert medical testimony to establish that the Defendant's conduct deviated from that which was considered acceptable medical practice and that such deviation resulted in harm to the Plaintiff.

10. Since the Plaintiffs are precluded from presenting expert testimony and since expert testimony is mandatory to establish a prima facie case of liability, the Plaintiffs will be unable to present an essential element of their cause of action. Thus, Summary Judgment is appropriate in favor of this Defendant.

WHEREFORE, Defendant, Liberty Physical Medicine and Rehabilitation Associates, P.C., prays that this Honorable Court grant their Motion for Summary Judgment and dismiss the Plaintiffs' cause of action against it with prejudice.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

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

CINDY E. WEBER and  
RICKY L. WEBER

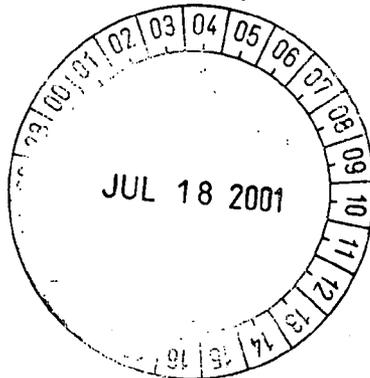
-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, following argument and briefs into Defendants' Motions to Compel Answers to Interrogatories, it is the ORDER of this Court that said Motions be and are hereby granted and Plaintiffs' directed to respond to said Interrogatories within 90 days.



By the Court,

/s/JOHN K. REILLY, JR.

President Judge-

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 16 2001

Attest:

*Willie D. ...*  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and  
RICKY L. WEBER

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JAN 15 2002

-vs-

No. 01 - 361 - CD .....

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

ORDER

NOW, this 14<sup>th</sup> day of January, 2002, upon Motion of Defendant, Liberty Physical Medicine and Rehabilitation Associates, P.C., and after hearing upon same on December 5, 2001, and after providing Plaintiffs an additional ten (10) days to submit a Brief in Support of their position, the Court noting the record in this case wherein:

- A. This Court has previously after hearing entered Orders sustaining two sets of Preliminary Objections to Plaintiffs' Complaint, and
- B. Plaintiffs have failed to timely respond to discovery necessitating these Defendants in pursuing a Motion to Compel, and
- C. Plaintiffs having violated this Court's Order of July 16, 2001, and at time of hearing and thereafter in their Brief failing to provide this Court with support for their position,

it is hereby ORDERED, DIRECTED AND DECREED:

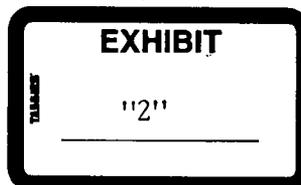
- 1. In accordance with the Affidavit submitted by Counsel for Liberty Physical Medicine and Rehabilitation Associates, P.C. the Plaintiffs are directed to pay within ten (10) days hereof to Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.'s Counsel the sum of \$651.64. Should

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 14 2002

Attest.

*William R. Shaw*  
Prothonotary



Plaintiffs demand verification of the amount of said counsel fees, they shall so advise the Court within ten (10) days from date hereof and hearing thereon shall be scheduled. Failing which this amount shall be paid as set forth above, and

2. The Plaintiffs are hereby barred from presenting expert evidence at the time of trial in regard to any allegations against Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.

By the Court,

/s/JOHN K. REILLY, JR.

---

President Judge

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 30<sup>th</sup> day of January, 2002, a true and correct copy of the within Motion for Summary Judgment was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: \_\_\_\_\_

  
**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED** <sup>NO CC</sup>  
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Feb

William A. Shaw  
Prothonotary

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NDC/msp/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

No. 01-361-CD

JURY TRIAL DEMANDED

**TYPE OF DOCUMENT:**

Petition for a Rule to Show Cause Why the  
Plaintiffs Should Not Be Held in Contempt  
For Failure to Comply With the Order of  
Court

**FILED ON BEHALF OF:**

Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.

**COUNSEL OF RECORD FOR THIS  
PARTY:**

WALTER FREDRICK WALL, ESQUIRE  
MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone: (814) 941-4600  
Fax: (814) 941-4605  
I.D. #23657

**FILED**

JAN 31 2002

William A. Shaw  
Prothonotary

W6

NDC/msp/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

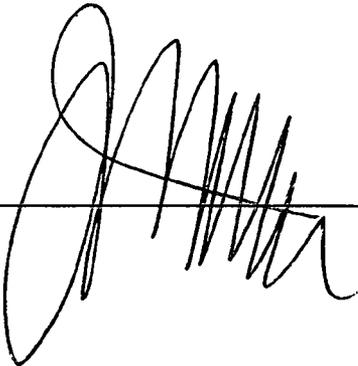
vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

NOW THIS 5<sup>th</sup> day of February, 2002, a Rule is hereby issued upon Plaintiffs, Cindy E. Weber and Ricky L. Weber, to show cause, if any there should be, why the Petition for a Rule to Show Cause Why the Plaintiffs Should Not Be Held in Contempt for Failure to Comply With the Order of Court filed by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should not be granted.

Said Rule Returnable the 2nd day of April, 2002, at 1:30 o'clock, 9 .m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

  
\_\_\_\_\_  
P.J.

**FILED**

FEB 05 2002

0192812 << atty Wall  
William A. Shaw  
Prothonetary



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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**PETITION FOR A RULE TO SHOW CAUSE WHY THE PLAINTIFFS  
SHOULD NOT BE HELD IN CONTEMPT FOR FAILURE TO COMPLY  
WITH ORDER OF COURT**

NOW COMES the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., (hereinafter "Liberty") by and through its counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, and files this Petition for a Rule to Show Cause Why the Plaintiffs Should Not Be Held in Contempt for Failure to Comply With the Order of Court of which the following is a statement:

1. Pursuant to Order of January 14, 2002, the Plaintiffs were directed to pay within ten (10) days to Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.'s, counsel, the sum of \$651.46

2. Said payment has still not been received by Defendant's counsel.

WHEREFORE, Defendant requests that the Court issue a Rule to Show Cause Why the Plaintiffs Should Not Be Held in Contempt for Failure to Follow the Order of Court directing payment of attorneys fees to defense counsel.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY:   
**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine  
& Rehabilitation Associates, P.C.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID #23657

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 30<sup>th</sup> day of January, 2002, a true and correct copy of the within Petition for a Rule to Show Cause Why the Plaintiffs Should Not Be Held in Contempt for Failure to Comply With the Order of Court was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By:

  
\_\_\_\_\_  
**WALTER FREDRICK WALL, ESQUIRE**

Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

JAN 31 2002

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NO  
CC

*[Handwritten signature]*

William A. Shaw  
Prothonotary

97

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendants.

CIVIL DIVISION

Docket No. : 01-361-CD

**MOTION FOR VERIFICATION OF  
SANCTION AMOUNT**

Filed on behalf of Plaintiff(s):  
Cindy E. Weber and Ricky L. Weber

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

FEB 07 2002

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL DIVISION

Plaintiffs,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendants.

**MOTION FOR VERIFICATION  
OF SANCTION AMOUNT**

AND NOW comes the Plaintiffs, Cindy E. Weber and Ricky L. Weber, by and through their attorneys, Robert B. Woomer, Esquire, and Woomer & Friday, LLP, and avers as follows:

1. The Court has issued an Order dated January 25, 2002 requiring the payment of \$1,718.98 in and for sanctions.

2. The Plaintiff avers that said amount is excessive, unrelated, duplicative and unreasonable in light of all the circumstances.

3. The Plaintiff requests an opportunity for a full verification of all the charges and bills and to cross-examine any witnesses with information regarding the charges.

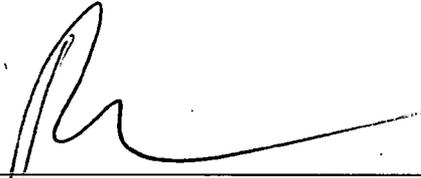
4. The Court Order further states "such amount should be paid as set forth above." The Plaintiff requests that Your Honorable Court provide further explanation of

said statement and further instruct Plaintiffs as to actions it must take.

WHEREFORE, the Plaintiffs request a hearing to "verify" the amount of sanctions.

Respectfully submitted February 4, 2002.

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Woomer & Friday, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412)563-7980

**CERTIFICATE OF SERVICE**

I, Robert B. Woomer, Esq., do hereby certify that on February 5, 2002 I have mailed a true and correct copy of the within Motion for Verification of Sanction Amount by First Class Mail, postage pre-paid to the following:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801  
Attorney for Bashir Yousufzai, M.D.

Walter Frederick Wall, Esquire  
Meyer Darragh Buckler Beebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Attorney for Liberty Physical Medicine

Woomer & Friday, LLP

  
\_\_\_\_\_  
Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

28

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

CINDY E. WEBER, and  
RICKY L. WEBER

vs.

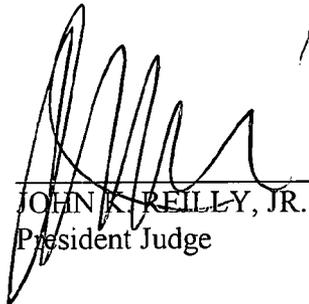
BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
INC.

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: No. 01-361-CD  
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**ORDER**

AND NOW, this 8<sup>th</sup> day of February, 2002, upon  
consideration of Plaintiffs' Motion for Verification of Sanction Amount, a Rule is  
hereby issued on the parties to appear and show cause why the Motion should not be  
granted. Rule Returnable the 2<sup>nd</sup> day of April, 2002, at  
1:30 P.M. in Courtroom No. 1, Clearfield County  
Courthouse, Clearfield, PA.

BY THE COURT:

  
\_\_\_\_\_  
JOHN K. REILLY, JR.  
President Judge

**FILED**

**FEB 11 2002**

**William A. Shaw  
Prothonotary**

**FILED**

FEB 11 2002

O/9152-13cc Cathy Woomer  
William A. Shaw  
Prothonotary

w/copy Camero



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. and LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.,

Defendants.

CIVIL DIVISION

Docket No. : 01-361-CD

**NOTICE OF SERVICE OF ORDER TO SHOW CAUSE**

Filed on behalf of Plaintiff(s):  
Cindy E. Weber and Ricky L. Weber

Counsel for Record for this Party:  
Brian D. Cox, Esquire  
Pa I.D. # 69238

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**  
FEB 14 2002  
William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER

CIVIL DIVISION

Docket No. : 01-361-CD

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.

Defendants.

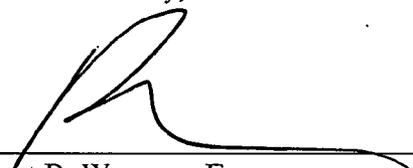
NOTICE OF SERVICE OF ORDER TO SHOW CAUSE

I hereby certify that on February 12, 2002 a certified copy of the Order to Show Cause on Motion for Verification of Sanction Amount was served by first class U.S. mail, postage prepaid, upon Defendant's counsel, to-wit:

Darryl R. Slimak, Esquire  
McQuaid Blasko Schwartz Fleming & Faulkner  
811 University Drive  
State College, PA 16801  
*Attorney for Bashir Yousufzai, M.D.*

Walter Frederick Wall, Esquire  
Meyer Darragh Buckler Beebeneck & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
*Attorney for Liberty Physical Medicine*

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

No. 01-361-00  
~~1361-00~~

Type of Case: Civil

Type of Pleading:  
Praecipe to List for Argument

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

**FILED**

FEB 14 2002

William A. Shaw  
Prothonotary



**FILED**

FEB 14 2002

M/1:35 p.m.  
William A. Shaw  
Prothonotary *(WAS)*

no cc

Copy to CA *E*  
*(WAS)*

18

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

01-361-CO

No. ~~1361-00~~

Type of Case: Civil

Type of Pleading:  
Defendant Dr. Bashir Yousufzai's Reply to  
Plaintiffs' Motion for Verification of  
Sanction Amount

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

FEB 19 2002

*m | z. O'Connell*  
William A. Shaw  
Prothonotary *KZ*



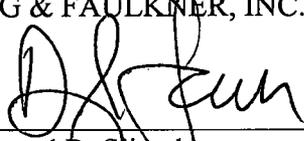
McQuaide Blasko Law Offices.

WHEREFORE, should this Honorable Court grant Plaintiffs their Motion to "Verify" the Amount of Sanctions, it is further requested that additional costs and attorneys' fees be assessed against Plaintiffs for vexatious and obdurate conduct during the course of litigation, pursuant to Title 42, Pa. C.S.A. § 2503.

Respectfully submitted,

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

By: \_\_\_\_\_

  
Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: February 18, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-366-CO  
~~NO. 01361-00~~  
JURY TRIAL DEMANDED

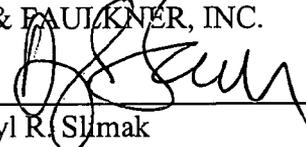
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant Dr. Bashir Yousufzai's  
Reply to Plaintiffs' Motion for Verification of Sanction Amount in the above-captioned matter  
was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on  
this 18<sup>th</sup> day of February, 2002, to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Walter F. Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602

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

By: 

Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00

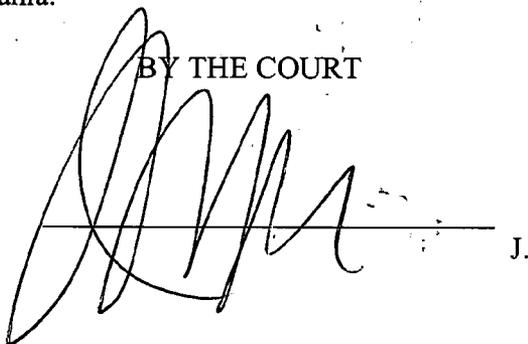
JURY TRIAL DEMANDED

**RULE TO SHOW CAUSE**

AND NOW, this 2<sup>th</sup> day of February, 2002, the Plaintiffs are directed to show cause, if any they have, why Defendant Dr. Bashir Yousufzai's Motion for Summary Judgment should not be granted.

This Rule is returnable for Answer within 20 days and argument is scheduled for the 1<sup>st</sup> day of May, 2002, at 2:30 p.m. in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT



**FILED**

FEB 26 2002

William A. Shaw  
Prothonotary

**FILED**

FEB 26 2002

William A. Shaw  
Prothonotary

*0/3:54*

*see*

*Att'y Simer*

*WAS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

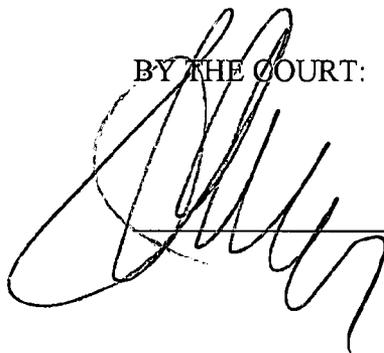
01-361-CD  
~~NO. 01361-00~~

JURY TRIAL DEMANDED

ORDER

AND NOW this 9 day of April, 2002, upon consideration of Defendant Dr. Bashir Yousufzai's Motion for Summary Judgment, and after hearing upon same, it is hereby ORDERED and DECREED that Defendant Dr. Bashir Yousufzai's Motion for Summary Judgment is hereby GRANTED. Any and all claims alleging negligence or medical malpractice are hereby dismissed, with prejudice.

BY THE COURT:

 \_\_\_\_\_, J.

**FILED**

APR 09 2002

William A. Shaw  
Prothonotary

**FILED**

013:43:pat  
APR 09 2002

3 CC  
Atty Simons  
EAT

William A. Shaw  
Prothonotary

10

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

01-361-CD

No. ~~4361-00~~

Type of Case: Civil

Type of Pleading:  
Defendant Dr. Bashir Yousufzai's Motion  
for Partial Summary Judgment

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

Chena L. Glenn-Hart, Esquire  
Supreme Court No. 82750

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

**FILED**

FEB 14 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00

JURY TRIAL DEMANDED

**DEFENDANT DR. BASHIR YOUSUFZAI'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

AND NOW comes Defendant, BASHIR YOUSUFZAI, M.D., by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Motion for Partial Summary Judgment based on the following:

1. Plaintiffs commenced the instant litigation by Complaint filed on or about March 12, 2001.
2. In response to Preliminary Objections filed, Plaintiffs were Ordered to file an Amended Complaint on or about June 7, 2001.
3. As a result of deficiencies and improprieties contained within Plaintiffs' Amended Complaint, this Defendant filed Preliminary Objections to same which were granted, in part, by Order of Court dated July 16, 2001. Specifically, said Order of Court dismissed any and all claims of professional negligence or malpractice asserted against Dr. Yousufzai, except for one single theory, to wit: those related to negligent prescription of drugs. (See Exhibit "A," attached hereto).

4. On or about March 28, 2001, Defendant Dr. Yousufzai's counsel served Interrogatories and Requests for Production of Documents upon Plaintiffs' counsel of record. Said discovery requests solicited, among other things, Plaintiffs' expert reports to be utilized in support of their theories in this matter.

5. Plaintiffs failed to serve any responses to the aforesaid discovery requests within 30 days as required by the Pennsylvania Rules of Civil Procedure.

6. As a result of Plaintiffs' failure to timely provide the aforementioned discovery within three months of service, Defendant Dr. Yousufzai was required to file a Motion to Compel on June 20, 2001. Co-Defendant Liberty Physical Medicine likewise had filed a Motion to Compel by reason of Plaintiffs' failure to respond to its discovery.

7. At the time of the hearing on the original Motion to Compel discovery from Plaintiffs, the Court specifically inquired of Plaintiffs' counsel, Robert B. Woomer, Esquire of how much time Plaintiffs required in order to file an expert report as regards the one remaining allegation sounding in negligence concerning an allegedly negligent prescription of medication by Dr. Yousufzai, and as a result, this Honorable Court specifically entered an Order directing Plaintiffs within 90 days - no later than October 14, 2001, to answer all outstanding discovery of both Defendants. (See Court Order dated July 16, 2001, attached hereto as Exhibit "B").

8. Plaintiffs failed to timely file expert reports as of October 14, 2001, and thereafter, upon a filing of a Motion for Sanctions by all Defendants against Plaintiffs, this Honorable Court entered its Orders of January 14, 2002 and January 25, 2002, which, in part, bar Plaintiffs from presenting any expert evidence at the time of the trial with regard to the allegations against either Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C. and/or Defendant Dr. Bashir Yousufzai. (See Orders attached hereto as Exhibits "C" and "D" respectively).

9. In the instant medical malpractice action it is mandatory for Plaintiffs to produce expert medical testimony to establish not only that the Defendant's conduct deviated from the applicable standards of medical care, but they must also present expert testimony demonstrating that any such deviation from the standards of care caused harm to the Plaintiffs.

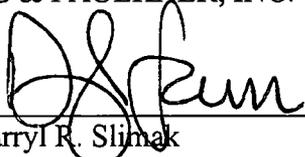
10. Since Plaintiffs are precluded from presenting any expert testimony in this matter, and in that expert testimony is mandatory to establish a prima facie case of liability under a theory of medical malpractice negligence, Plaintiffs are as a matter of law unable to establish a prima facie case of liability for such a cause of action against Defendant Dr. Yousufzai. Thus, partial summary judgment is appropriately entered in favor of Defendant Dr. Yousufzai in this regard.

WHEREFORE, Defendant Dr. Bashir Yousufzai respectfully requests this Honorable Court to enter partial summary judgment in his favor and Ordering that the Complaint allegations against Defendant Dr. Yousufzai sounding in negligence and professional malpractice be dismissed, with prejudice.

Respectfully submitted,

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

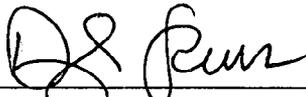
By: \_\_\_\_\_

  
Darryl R. Slimak  
Chena L. Glenn-Hart  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9614

Dated: February 13, 2002

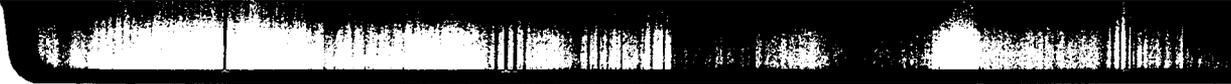


McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:  \_\_\_\_\_

Darryl R. Slimak  
Chena L. Glenn-Hart  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624





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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, upon consideration of Preliminary Objections filed on behalf of Defendants above-named, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that all allegations of Plaintiffs' Complaint for intentional infliction of emotional distress and/or negligence allegations with the exception of those related to negligent prescription of drugs shall be and are hereby dismissed. It is the further ORDER of this Court that said Objections shall be stayed pending receipt of Plaintiffs' expert reports.

By the Court,

/s/JOHN K. REILLY, JR.

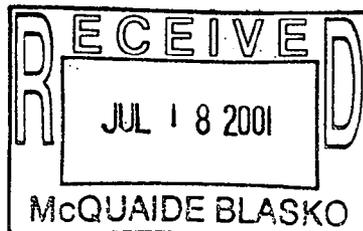
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 16 2001

Attest.

*William L. Blasko*  
Prothonotary





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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 16<sup>th</sup> day of July, 2001, following argument and briefs into Defendants' Motions to Compel Answers to Interrogatories, it is the ORDER of this Court that said Motions be and are hereby granted and Plaintiffs' directed to respond to said Interrogatories within 90 days.

By the Court,

/s/JOHN K. REILLY, JR.

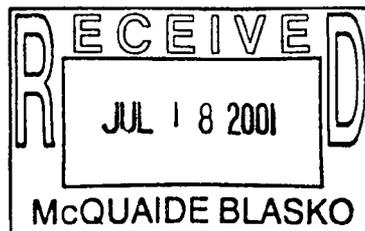
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 16 2001

Attest.

*William L. Blasco*  
Prothonotary





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 14<sup>th</sup> day of January, 2002, upon Motion of Defendant, Liberty Physical Medicine and Rehabilitation Associates, P.C., and after hearing upon same on December 5, 2001, and after providing Plaintiffs an additional ten (10) days to submit a Brief in Support of their position, the Court noting the record in this case wherein:

- A. This Court has previously after hearing entered Orders sustaining two sets of Preliminary Objections to Plaintiffs' Complaint, and
- B. Plaintiffs have failed to timely respond to discovery necessitating these Defendants in pursuing a Motion to Compel, and
- C. Plaintiffs having violated this Court's Order of July 16, 2001, and at time of hearing and thereafter in their Brief failing to provide this Court with support for their position,

it is hereby ORDERED, DIRECTED AND DECREED:

- 1. In accordance with the Affidavit submitted by Counsel for Liberty Physical Medicine and Rehabilitation Associates, P.C. the Plaintiffs are directed to pay within ten (10) days hereof to Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.'s Counsel the sum of \$651.64. Should

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 14 2002

Attest.

*[Signature]*  
Prothonotary

Plaintiffs demand verification of the amount of said counsel fees, they shall so advise the Court within ten (10) days from date hereof and hearing thereon shall be scheduled. Failing which this amount shall be paid as set forth above, and

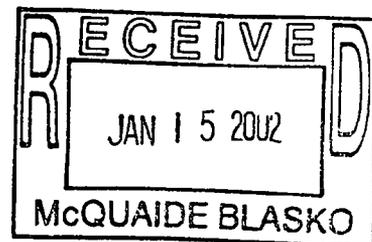
2. The Plaintiffs are hereby barred from presenting expert evidence at the time of trial in regard to any allegations against Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.

By the Court,

/s/JOHN K. REILLY, JR.

---

President Judge





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 25<sup>th</sup> day of January, 2002, upon consideration of the various outstanding Motions of Plaintiffs and Defendant Dr. Yousufzai; and after hearing held upon same on December 5, 2001; and after providing Plaintiffs an additional ten (10) days to submit a Brief in support of their position; and after receipt of an additional Brief by counsel for Defendant Dr. Yousufzai; and after the Court's having already issued an Order dated January 14, 2002, as regards to Motion for Sanctions by co-Defendant Liberty Physical Medicine and Rehabilitation Associates, the Court notes that the record in this case establishes that:

- A. This Court has previously entered an Order sustaining two sets of Preliminary Objections to Plaintiffs' Complaint; and
- B. Plaintiffs have failed to timely respond to discovery necessitating these Defendants to previously pursue Motions to Compel; and
- C. Plaintiffs have violated this Court's Order of July 16, 2001, in that discovery was not timely completed and at the time of hearing and thereafter in their Brief failed to provide this court with support for their position,

It is hereby ORDERED, DIRECTED and DECREED, as follows:

1. Defendant, Dr. Yousufazi's Motion for Sanctions against Plaintiffs is GRANTED. In accordance with the Affidavit of Attorney Darryl R. Slimak, submitted on behalf of Dr. Yousufazi, Plaintiffs are directed to pay within ten

(10) days hereof to Defendant Dr. Yousufazi, through his counsel, McQuaide Blasko Law Offices, the sum of One Thousand Seven Hundred Eighteen and 98/100 (\$1,718.98) Dollars, as sanction for costs and counsel fees as outlined in the Affidavit. Should Plaintiffs demand verification of said amount of counsel fees, they shall serve same on the Court within ten (10) days and hearing thereon shall be scheduled. Such amount should be paid as set forth above.

2. The Plaintiffs are hereby barred from presenting any expert evidence at the time of trial in regard to any allegations against Defendant Dr. Yousufazi.
3. Plaintiffs' Motion to Extend Date for Filing Expert Reports is DENIED.
4. Plaintiffs' Motion to Extend Time to Take the Deposition of Dr. Yousufzai is GRANTED; however, Dr. Yousufzai's and Plaintiffs' Depositions in this matter shall be taken in the physical presence of counsel for the respective parties at a mutually convenient time and place to be agreed upon by counsel.

By the Court.

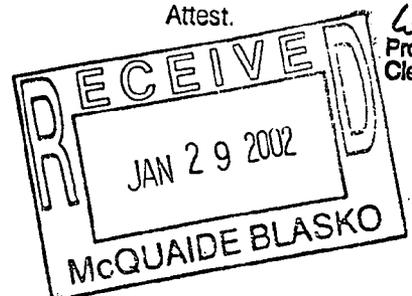
/s/ JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JAN 20 2002

Attest.



*William D. Blasko*  
Prothonotary/  
Clerk of Courts

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 26<sup>th</sup> of February, 2002, a true and correct copy of the within Order of Court and Stipulation to Dismiss Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. and the Praecipe to Withdraw the Petition for Rule to Show Cause and Motion for Summary Judgment was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

By: *Walter Fredrick Wall*

**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

FEB 27 2002  
m/2.27/rocc  
William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

PRAECIPE

TO THE PROTHONOTARY:

Please withdraw the Motion for Summary Judgment filed on behalf of Defendant,  
Liberty Physical Medicine & Rehabilitation Associates, P.C.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By *Walter Fredrick Wall*  
WALTER FREDRICK WALL, ESQUIRE  
Counsel for Liberty Physical Medicine & Rehabilitation  
Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

FEB 27 2002  
mla261no cc  
William A. Shaw  
Prothonotary Copy to CA  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

PRAECIPE

TO THE PROTHONOTARY:

Please withdraw Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C.'s Petition for Rule to Show Cause why the Plaintiffs should not be held in contempt for failure to comply with the Order of Court.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By



WALTER FREDRICK WALL, ESQUIRE

Counsel for Liberty Physical Medicine & Rehabilitation Associates, P.C.

120 Lakemont Park Blvd.

Altoona, PA 16602

(814) 941-4600

ID# 23657

**FILED**

FEB 27 2002

m/a:24/rocc

William A. Shaw

Prothonotary Copy to CA



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81 CR

WFW/cab/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

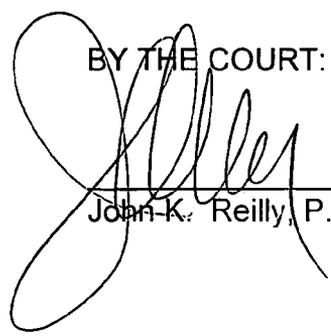
BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**ORDER OF COURT**

AND NOW this 1<sup>st</sup> day of March, 2002, upon Stipulation of the parties in  
accordance with Pa. R.C.P. 229, the Court does hereby ORDER, DIRECT AND DECREE:

1. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., its officers, directors, shareholders, agents, servants and employees, excepting only Defendant, Bashir Yousufzai, M.D., are hereby dismissed as parties hereto as to any claims of Plaintiffs', specifically including all claims to the above-captioned action and specifically further including any claims pursuant to a theory of vicarious liability or the alleged acts and/or omissions of Defendant, Bashir Yousufzai, M.D.
2. In accordance with Pa. R.C.P. 229, this case will proceed hereafter as to Defendant, Bashir Yousufzai, M.D. only.
3. The Prothonotary is directed to strike the name of Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. from the caption on the docket herein.

BY THE COURT:



John K. Reilly, P.J.

**FILED**

MAR 01 2002

William A. Shaw  
Prothonotary

**FILED** 2 cc Amy waal  
013:28  
MAR 01 2002

William A. Shaw  
Prothonotary

Note #3- ordered to  
strike or caption

78

WFW/cab/MSI-102956

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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

JURY TRIAL DEMANDED

vs.

**FILED**

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

FEB 27 2002

*mjaadnocc*  
William A. Shaw  
Prothonotary *WAS*

STIPULATION AS TO DISMISSAL OF LESS THAN ALL PARTIES PURSUANT TO  
PA. R.C.P. 229

NOW comes the undersigned as Counsel of record for all parties herein and stipulate as follows:

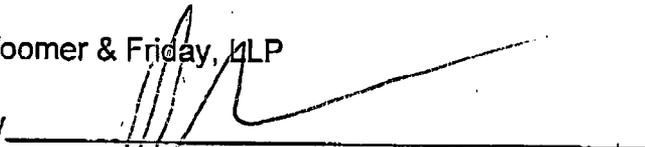
1. The undersigned as Counsel of record for all parties by their signature certify that they have discussed with their clients the results of execution of this Stipulation and are authorized to enter into this Stipulation.

2. Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., its officers, directors, shareholders, agents, servants and employees excepting Defendant, Bashir Yousufzai, M.D., are dismissed as Defendants in this action with prejudice.

3. The instant matter will proceed against the Defendant, Bashir Yousufzai, M.D.

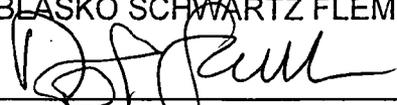
Woomer & Friday, LLP

By

  
Robert B. Woomer, Esquire  
Counsel for the Plaintiffs

McQUAID BLASKO SCHWARTZ FLEMING & FAULKNER

BY

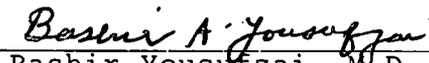
  
Darryl R. Slimak, Esquire  
Counsel for Defendant, Bashir Yousufzai, M.D.

MEYER DARRAGH BUCKLER BEBENEK & ECK, PLLC

BY

  
Walter F. Wall, Esquire  
Counsel for Defendant, Liberty Physical Medicine  
& Rehabilitation Associates, P.C.

BY

  
Bashir Yousufzai, M.D.

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

CINDY E. WEBER and  
RICKY L. WEBER.

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, INC.,

Defendants.

No. 01- 361 - C.D.

Type of Case: Civil

Type of Pleading:  
Certificate of Service as to Rule to Show  
Cause

Filed on Behalf of: DEFENDANT  
BASHIR YOUSUFZAI, M.D.

Counsel of record for this Party:  
Darryl R. Slimak, Esquire  
Supreme Court No. 41695

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

**FILED**

MAR 01 2002  
m/ma/noc  
William A. Shaw  
Prothonotary

GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE  
& REHABILITATION ASSOCIATES,  
P.C.

Defendants.

01-361-CD  
NO. 01361-00

JURY TRIAL DEMANDED

**RULE TO SHOW CAUSE**

AND NOW, this 2<sup>th</sup> day of February, 2002, the Plaintiffs are directed to show cause, if any they have, why Defendant Dr. Bashir Yousufzai's Motion for Summary Judgment should not be granted.

This Rule is returnable for Answer within 20 days and argument is scheduled for the 1<sup>st</sup> day of May, 2002, at 2:30 p.m. in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 26 2002

Attest

*[Signature]*  
Prothonotary



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

CINDY E. WEBER and  
RICKY L. WEBER  
Plaintiffs

No. 01-361-CD

vs.

JURY TRIAL DEMANDED

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.  
Defendants

**CERTIFICATE OF SERVICE**

I, Walter F. Wall, Esquire, Counsel for the Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. hereby certify that on the 26<sup>th</sup> of February, 2002, a true and correct copy of the within Order of Court and Stipulation to Dismiss Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. and the Praecipe to Withdraw the Petition for Rule to Show Cause and Motion for Summary Judgment was served upon Counsel of record by regular, U.S. mail as follows:

Robert B. Woomer, Esquire  
Woomer & Friday, LLP  
1701 McFarland Road  
Pittsburgh PA 15216

Darryl R. Slimak, Esquire  
McQuaide Blasko  
811 University Drive  
State College PA 16801

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

By:



**WALTER FREDRICK WALL, ESQUIRE**  
Counsel for Defendant, Liberty Physical Medicine &  
Rehabilitation Associates, P.C.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
ID# 23657

**FILED**

MAR 01 2002

William A. Shaw  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

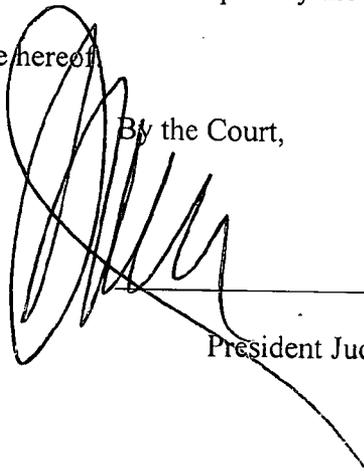
No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D., and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

**ORDER**

NOW, this 7<sup>th</sup> day of May, 2002, this being the day and date set for argument into Plaintiffs' Motion for Verification of Sanction Amount, upon agreement of the parties, it is the ORDER of this Court that Order dated January 25, 2002, shall be and is hereby amended to award to counsel for Defendants the sum of \$741.50 as complete resolution of said Defendant's request for costs and counsel fees, said amount to be paid by the law firm of Woomer & Friday, LLP no later than 30 days from date hereof

By the Court,



\_\_\_\_\_  
President Judge

**FILED**

MAY 08 2002

William A. Shaw  
Prothonotary

FILED

019:5284 ICE Atty Simak  
MAY 08 2002 ICE Atty Womers

William A. Shaw  
Prothonotary

*[Handwritten signature]*

SM GR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D.,

Defendant.

NO. 01361-00

JURY TRIAL DEMANDED

Type of Pleading  
*Petition to Withdraw as Counsel*

Filed on Behalf of Defendant  
*Bashir Yousufzai, M.D.*

Counsel of Record for This Party  
*Darryl R. Slimak, Esquire*  
*Pa. Supreme Court I.D. No. 41695*

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

**FILED**

JUN 10 2002

m | l | l e | n o c c  
William A. Shaw  
Prothonotary







4. While initially and tentatively appointing the undersigned counsel for Dr. Yousufzai in the medical malpractice action, Dr. Yousufzai's medical malpractice insurance carrier, the Pennsylvania Medical Society Liability Insurance Company (hereinafter "PMSLIC"), also issued a reservation of rights letter due to noncoverage for the nonmedical malpractice allegations of the Complaint (Exhibit "A," attached hereto), and eventually filed a Declaratory Judgment action and obtained an Order of Court in the Court of Common Pleas of Clearfield, Pennsylvania, at Docket No.01-1488-C.D:(copy attached hereto as Exhibit "B"), by virtue of which it has been determined that PMSLIC has no duty to provide indemnification or defense coverages to Dr. Yousufzai with regard to the Weber claims.

5. PMSLIC then notified the undersigned counsel that he should proceed to withdraw as defense counsel for Dr. Yousufzai, as there is no coverage under the PMSLIC policy and thus no duty by PMSLIC to pay counsel for Dr. Yousufzai's defense.

6. Furthermore, the undersigned counsel understands that Dr. Yousufzai is not in a position to advance the significant funds necessary to pay the undersigned counsel for the further defense of this case and costs likely to be incurred, and the undersigned counsel does not in any event feel comfortable being involved and does not wish to continue in the defense of Dr. Yousufzai under the circumstances without there being any medical malpractice claims involved, and in view of the lack of any liability defense due to criminal convictions against Dr. Yousufzai.

7. Forcing the undersigned to continue representing Dr. Bashir Yousufzai under such circumstances would impose a severe and unwarranted financial burden on counsel, and further, it is felt that without there being any legitimate issue of medical malpractice defense remaining in the case, the undersigned's professional reputation would be significantly damaged and undermined with present and future physician clients, if the undersigned would be forced to

represent a defendant in view of the criminal law violations that are established and undisputable, and in that the only issues remaining relate to assessment of compensatory and punitive damages.

8. Furthermore, the undersigned counsel and law firm, having originally been selected by and whose services were paid for by the medical malpractice insurer, feel that their loyalty and fidelity to represent Dr. Bashir Yousufzai could be questioned if they continued to represent Dr. Yousufzai, and that his interests would be best served by his seeking other counsel to represent him in the balance of these proceedings, which other counsel might include his privately retained attorneys who represent or represented him in the underlying criminal court proceedings and/or in the professional licensure revocation/disciplinary proceedings related to the underlying incidents which gave rise to the criminal convictions

9. Pursuant to Pa. R.C. P. No. 1012, in that this is a pending civil action, Leave of Court is to be obtained to withdraw as counsel, unless there is a simultaneous entry of appearance by other counsel.

10. In the comments to Rule 1.2 of the Rules of Professional Conduct, it is stated that: "When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage." Rule 1.16(b)(6) allows withdrawal from representation when good cause exists.

11. At all times, the undersigned Defense counsel has acted diligently on Dr. Yousufzai's behalf, to represent him in the best possible manner while the coverage determination was being made, such that Dr. Yousufzai has reaped the benefits of counsel's efforts to date at no expense to himself, and despite the fact that there is no insurance coverage for the allegations of the Weber claim that will proceed to trial.

12. At the present time, no trial is scheduled and there is in any event time for Dr.

Yousufzai to obtain other counsel, if desired.

13. The undersigned will facilitate transfer of his file to Dr. Yousufzai and/or any subsequent counsel Dr. Yousufzai may choose to involve in the trial of the case, in order to minimize the effect of this withdrawal of counsel.

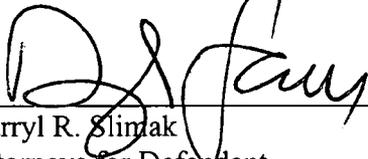
14. Under the circumstances, it is suggested that the litigation be stayed for 60 days to allow Dr. Yousufzai to investigate the potential for other counsel to be retained and involved on his behalf.

WHEREFORE, it is respectfully requested that this Honorable Court find that good cause has been established, and grant counsel's Petition to Withdraw, staying the proceedings for 60 days to allow Dr. Bashir Yousufzai additional time to retain and involve other private counsel on his behalf if desired.

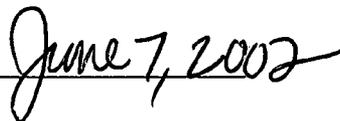
Respectfully submitted,

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

By: \_\_\_\_\_

  
Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: \_\_\_\_\_



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D.,

Defendant.

NO. 01361-00

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion to Withdraw as Counsel in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 7<sup>th</sup> day of June, 2002 to the attorney(s) of record:

Robert E. Woomer, Esquire  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue Suite 200  
Pittsburgh, PA 15216

Bashir Yousufzai, M.D.  
540B Arborhill Road  
Richmond, VA 23233

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

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Defendant  
BASHIR YOUSUFZAI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624





PMSLIC

PMSLIC  
777 East Park Drive  
P.O. Box 8375  
Harrisburg, PA 17105-8375

Tel: 717.558.7500  
Toll Free: 800.445.1212  
Fax: 717.558.9804  
<http://www.pmslic.com>

April 17, 2001

Bashir A. Yousufzai, MD  
c/o Clearfield County Prison  
410 Twenty First Street  
Clearfield, PA 16830

PERSONAL & CONFIDENTIAL

RE: PATIENT: Cindy Weber  
FILE NUMBER: 336954 01

Dear Dr. Yousufzai,

I was unable to reach you by phone to discuss your request for defense and coverage from PMSLIC for the claims asserted against you by Cindy and Ricky Weber in an action filed in the Court of Common Pleas of Clearfield County, docket number 01-361-CD. It is my understanding that your request for defense and coverage is being made under the PMSLIC insurance policy # PO7212112 that was issued to you for the policy period from 7/6/99 to 9/22/99.

PMSLIC has retained the law firm of McQuaide Blasko to provide you with a defense to all of the claims asserted against you in the above noted action under a full reservation of rights.

I call your attention to the Exclusions section of your professional liability insurance policy which states in pertinent part:

This policy does not apply:

- (a) to liability arising out of the performance by the insured of any intentional, deceitful or fraudulent act or willful tort.
- (b) to liability arising out of the performance by the insured of a criminal act, including, but not limited to, the practice of medicine without a license.
- (c) to liability arising out of the performance by the insured of an act of fornication, adultery, or any sexual act.
- (e) to liability of the insured for punitive, exemplary or treble damages, and any other damages assessed which are not compensatory in nature.
- (f) to liability of others assumed by the insured under any written or oral contract or agreement.

Therefore, PMSLIC will not indemnify or cover you for any award granted arising out of acts described in the above exclusion(s) or any other exclusion(s) that may apply as the case progresses.

Bashir Yousufzai, MD  
April 17, 2001  
Page 2

It is to be understood that no action taken by PMSLIC, or any attorney that it assigns to defend the Plaintiff's claim on your behalf, including but not limited to the investigation, defense, compromise or attempted compromise of the claim, shall be construed as a waiver of the right of PMSLIC to at any time hereafter deny coverage, assert any defense which it has or may have under the policy, withdraw any defense that it may assign to an attorney, and/or withdraw from the proceedings in this matter. PMSLIC also reserves the right to clarify the coverage issue.

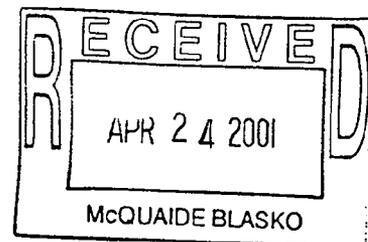
The purpose of this letter is to permit PMSLIC to conduct a full and impartial investigation, negotiation, possible compromise and/or defense of all matters relating to the above described claims and liability, if any, without PMSLIC incurring any admission of liability and to preserve, without estoppel, waiver or forfeiture, all of the rights of PMSLIC. Further, by providing a defense to you under reservation of rights, PMSLIC does not become responsible for the payment of any settlement amount, verdict, judgment, award or record costs arising out of the said action. Accordingly, you may wish to retain counsel, at your expense, to protect your interests in this matter. If you disagree with the position of PMSLIC, or if you have any questions or comments concerning this letter, please do not hesitate to contact me.

Sincerely,

Diana Opalisky  
Claims Representative

cc: Darryl Slimak, Esq.

Sent by Certified and Regular Mail





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

PENNSYLVANIA MEDICAL SOCIETY :  
LIABILITY INSURANCE COMPANY :

-vs-

No. 01 - 1488 - CD

BASHIR YOUSUFZAI, M.D., LIBERTY :  
PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C., :  
CINDY E. WEBER and RICKY L. WEBER:

**ORDER**

NOW, this 7<sup>th</sup> day of May, 2002, following argument and briefs into Motion for Summary Judgment filed on behalf of Plaintiff above-named, it is the ORDER of this Court that said Motion be and is hereby granted and Summary Judgment entered in favor of Plaintiff and against the Defendants, said Order being restricted solely to the facts and theories of recovery as set forth in the matter of Weber, et al. v. Yousufzai, et al. No. 01-361-CD

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

MAY 07 2002

Attest.

*W. A. Rhoads*  
Prothonotary/  
Clerk of Courts







IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

CINDY E. WEBER and  
RICKY L. WEBER,

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D.,

Defendant.

NO. 01361-00

JURY TRIAL DEMANDED

**ORDER**

AND NOW, this 11 day of June, 2002, the Petition of Darryl R. Slimak, Esquire, of the McQuaide Blasko Law Offices, to withdraw as counsel is hereby GRANTED. Dr. Yousufzai has 60 days to obtain other counsel, after which time litigation may proceed with or without counsel being involved for Defendant Dr. Yousufzai.

BY THE COURT:

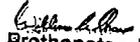
/s/ JOHN K. REILLY, JR.

\_\_\_\_\_  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUN 11 2002

Attest:

  
Prothonotary/  
Clerk of Courts

**FILED**  
NO cc  
M 1:37 PM  
JUN 17 2002  
*[Handwritten signature]*

William A. Shaw  
Prothonotary

11-11-11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES,  
P.C.,

Defendants.

CIVIL DIVISION

Docket No. : 01-361-CD

**PRAECIPE TO LIST CASE FOR  
TRIAL**

Filed on behalf of Plaintiff(s):  
Cindy E. Weber and Ricky L. Weber

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. #59030  
Brian D. Cox, Esquire  
Pa I.D. # 69238

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 300  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

AUG 19 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D.

Defendant.

**Praeipce To List Case For Trial**

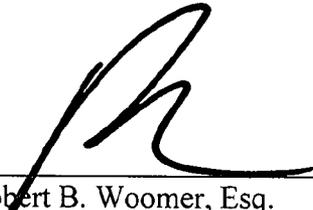
To: The Prothonotary

Kindly list the above-captioned case on the next available trial list.

**Certificate of Readiness  
Pursuant to Local Rule 212.2 of Clearfield County**

1. No motions are currently outstanding, discovery has been completed and the case is ready for trial.
2. Plaintiff hereby demands a jury trial.
3. Notice of the within Praeipce has been provided to all parties of interest herein via First Class Mail, either to pro se defendants directly or through the attorneys of record.

Woomer & Friday, LLP



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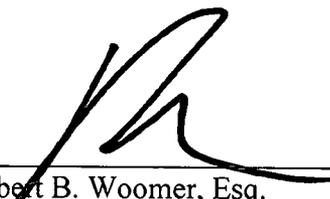
Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

**Certificate of Service**

I, the undersigned, hereby certify that on August 15, 2002 a true and correct copy of Praecepto to List Case for Trial was served by first class U.S. mail, postage prepaid, upon all parties of interest, to-wit:

Bashir Yousufzai, M.D.  
540B Arborhill Road  
Richmond, VA 23233

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Woomer & Friday, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412)563-7980

*[Handwritten mark]*

**FILED**

M 11:37  
AUG 19 2002

*[Handwritten initials]*

William A. Shaw Copy to Mary  
Prothonotary

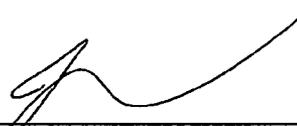




**CERTIFICATE OF SERVICE**

I do hereby certify that on the 2<sup>nd</sup> day of January, 2003,  
I served a copy of the within Entry of Appearance by first class  
mail, postage prepaid, to:

Robert E. Woomer, Esq.  
Woomer & Friday, L.L.P.  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

  
\_\_\_\_\_  
Jeffrey S. DuBois

FILED

302

019:22-881  
JAN 02 2003

Atty Dubois



William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and RICKY L. WEBER:

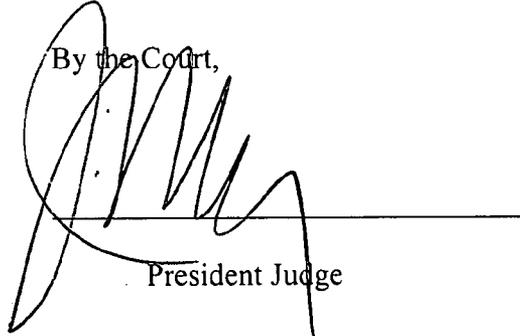
-vs- : No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. :

**PRE-TRIAL ORDER**

NOW, this 15<sup>th</sup> day of January, 2003, following pre-trial conference in the above-captioned matter, it is the ORDER of this Court that trial shall be scheduled for Monday, March 31, 2003, commencing at 9:00 a.m. with jury selection on January 23, 2003, at 9:00 a.m. It is the further ORDER of this Court that all parties, Plaintiffs and Defendant, shall be present at jury selection.

By the Court,



President Judge

**FILED**

JAN 15 2003

William A. Shaw  
Prothonotary

**FILED**

0 3.30 ~~11~~ ~~2cc~~ *ccy Dubois*  
JAN 15 2003 *1cc ccy Woomer*

William A. Shaw  
Prothonotary

WILLIAM A. SHAW  
PROTHONOTARY  
and CLERK of COURTS  
P.O. BOX 549  
CLEARFIELD, PENNSYLVANIA 16830

Above's attorney Friday's  
address. Re-mailed to  
3820 W. Liberty Ave.  
Ste. 300  
Pittsburgh, PA 15210  
1/11/03

William A. Shaw  
Prothonotary

JAN 21 2003  
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Robert E. Woome, Esq.

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

CINDY E. WEBER and RICKY L. WEBER:

-vs- : No. 01 - 361 - CD

BASHIR YOUSUFZAI, M.D. :

**PRE-TRIAL ORDER**

NOW, this 15<sup>th</sup> day of January, 2003, following pre-trial conference in the above-captioned matter, it is the ORDER of this Court that trial shall be scheduled for Monday, March 31, 2003, commencing at 9:00 a.m. with jury selection on January 23, 2003, at 9:00 a.m. It is the further ORDER of this Court that all parties, Plaintiffs and Defendant, shall be present at jury selection.

By the Court.

/s/ JOHN K. REILLY, JR.

\_\_\_\_\_  
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 15 2003

Attest.

*William S. Shaw*  
Prothonotary/  
Clerk of Courts

COURT OF COMMON PLEAS, CLEARFIELD COUNTY  
PENNSYLVANIA

91

CASE NO. 01-361-CD

Date of Jury Selection: January 23, 2003

Presiding Judge: John K. Reilly, Jr., President Judge

Cindy E. Weber and Ricky L. Weber

Court Reporter: Kathy Provoost

VS

Date of Trial: March 31, 2003

Bashir Yousufzai, M.D.

Date Trial Ended: March 31, 2003

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MEMBERS OF THE JURY

MAR 31 2003

- 1. ROBERT RICKARD
- 2. NANCY FYE
- 3. ROBERT WITHEY
- 4. CAROL STOUT- ALT. 1
- 5. JOY KREIGER
- 6. JOHN CARTER ALT #1

William A. Shaw  
Prothonotary  
3/31/03  
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- 7. WILLIAM BEIGHTOL
- 8. THOMAS DENNISON
- 9. MELVIN McCracken
- 10. MARGARET FOGG
- 11. SHERRY KNEPP
- 12. CLARE PENNEBAKER ALT #2 PENNY TUBBS

William A. Shaw  
Prothonotary/  
Clerk of Courts

PLAINTIFF'S WITNESSES:

DEFENDANT'S WITNESSES:

- 1. CINDY E. WEBER
- 2. RICKY L. WEBER
- 3. BASHIR YOUSUFZAI, M.D.
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

- 1. BASHIR YOUSUFZAI
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

PLAINTIFF'S ATTY: Robert B. Woomer, Esq.

DEFENDANT'S ATTY: Jeffrey S. DuBois, Esq.

ADDRESS TO JURY: 11:12 a.m.

ADDRESS TO JURY: 11:07 a.m.

JUDGE'S ADDRESS TO JURY: 11:17 a.m.

JURY OUT: 11:40 a.m. JURY IN: 1:20 p.m.

VERDICT: CINDY E. WEBER - COMPENSATOR \$750,000

RICKY L. WEBER - COMPENSATOR 650,000

PUNITIVE DAMAGES 7,500.00

FOREPERSON: CLARE PENNEBAKER

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PROHIBITION  
MILLER V. SHAW

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CINDY E. WEBER & RICKY L. WEBER

IN THE COURT OF COMMON PLEAS  
OF THE COUNTY OF CLEARFIELD, PA.

VERSUS

No. 01-361-CD

BASHIR YOUSUFZAI, M.D.

**VERDICT**

And now to wit: March 31, <sup>2003</sup>~~19~~, we, the Jurors

empanelled in the above entitled case, find A Verdict in Favor

Cindy E. Weber - compensatory - \$750,000

Ricky L. Weber - compensatory - \$650,000

punitive damage \$7,500,000

*Clayton L. ...* Foreman

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No. ....

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**VERSUS**

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**VERDICT**

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Filed ..... 19 .....

Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. ,

Defendant.

CIVIL DIVISION

Docket No. : 01-361-CD

Code No.: Put in Allegheny County Code

**MOTION TO MOLD VERDICT FOR  
INCLUSION OF RULE 238 DAMAGES**

Filed on behalf of Plaintiff(s):  
Cindy E. Weber and Ricky L. Weber

Counsel for Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY, LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

APR 08 2003

William A. Shaw  
Prothonotary

**ORIGINAL**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D.

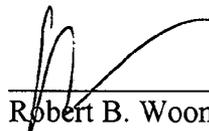
Defendants.

**PRAECIPE TO REQUEST ARGUMENT/HEARING**

Please place the above-captioned Motion to Mold Verdict for Inclusion of Rule 238

Damages filed on behalf of the Plaintiffs on the next argument list.

Woomer & Friday, LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

Mailed copies of ads  
I have to enter damage  
amount?

at

01-361-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

Code No.:

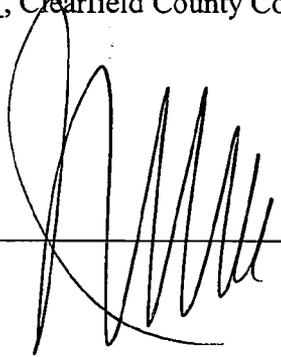
BASHIR YOUSUFZAI, M.D.

Defendants.

**RULE TO SHOW CAUSE**

NOW THIS 14<sup>th</sup> day of April, 2003, a Rule is hereby issued upon the Defendant, Bashir Yousufzai, M.D., to show cause, if any he has, why the Motion to Mold Verdict for Inclusion of Rule 238 Damages should not be granted.

Said Rule Returnable the 2 day of May, 21003 at 9:30 o'clock A.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

J. 

**FILED**

APR 14 2003

William A. Shaw  
Prothonotary

**FILED**

*P/Q: 4/6/03*  
APR 14 2003

William A. Shaw  
Proprietary

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*SKS*

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

CINDY E. WEBER and	)	CIVIL DIVISION
RICKY L. WEBER,	)	
	)	Docket No.: 01-361-CD
Plaintiffs,	)	
	)	
v.	)	
	)	
BASHIR YOUSUFZAI, M.D.,	)	
	)	
Defendant.	)	

**NOTICE**

You are hereby notified to file a written answer to the attached motion for delay damages within twenty days from the filing of the motion or the delay damages sought in the motion may be added to the verdict or decision against you.

**MOTION TO MOLD VERDICT FOR INCLUSION OF RULE 238 DAMAGES**

AND NOW, come the Plaintiffs, Cindy E. Weber and Ricky L. Weber, by and through their attorney, Robert B. Woomer, Esquire, and move this Honorable Court as follows:

1. The Complaint in the above-captioned matter was filed on March 12, 2001.
2. The date of the incident which formed the basis for the Complaint occurred on August 1, 1999, August 20, 1999, August 24, 1999 and September 3, 1999.
3. Through trial, defendant did not make a written or oral offer of settlement.
4. On March 31, 2003, the jury deliberating in the above-captioned matter rendered a verdict in favor of the Plaintiffs in the amount of \$1,400,000.00 for compensatory damages.
5. Pursuant to Pa.R.C.P. Rule 238(2)(i), the Plaintiffs are entitled to delay damages from March 12, 2001, which is one year after the later date referred to in the above-referenced sub-division of Rule 238.

6. Pursuant to Pa.R.C.P. Rule 238, damages for delay shall be calculated “at a rate equal to the prime rate as listed in the first edition of the *Wall Street Journal* published for each calendar year for which the damages are awarded, plus one percent.”

7. The prime interest rates for the appropriate years are as follows:

- a. Nine and one-half percent for the year 2001;
- b. Four and one-quarter for the year 2002;
- c. Four and one-quarter for the year 2003;

8. For the year 2001, appropriate delay damages are \$118,376.16, which represents interest on \$1,400,000.00 at ten and one-half (10½%) percent from the date of March 12, 2001, through the conclusion of the year, or for a total of 294 days.

9. The appropriate delay damages for the year 2002 are \$79,714.74, which represents interest on \$1,518,376.10 at five and one-quarter (5¼%) percent for the entire calendar year 2002.

10. The appropriate delay damages for the year 2003 are \$20,682.49, which represents interest on \$1,598,090.80 at five and one-quarter (5¼%) percent from January 1, 2003 through the date of the verdict, March 31, 2003, or a total of 90 days.

11. The total of delay damages, as calculated pursuant to Rule 238 in the above-captioned matter, is \$218,773.20.

12. When added to the verdict of \$1,400,000.00, the delay damages increase the total amount of the appropriate award to \$1,618,773.20.

13. Consequently, the total compensatory verdict which is properly assessed against Defendant is \$1,618,773.20.

WHEREFORE, the Plaintiffs request that this Honorable Court mold the verdict in the above-captioned matter to include \$218,773.20 in Rule 238 Delay Damages for a total liability of the Defendant of \$1,618,773.20 for compensatory damages and a total verdict of \$9,118,773.20.

Respectfully Submitted,



---

Robert B. Woomer, Esquire  
PA ID No.: 59030  
Attorney for Plaintiffs

WOOMER & FRIDAY, LLP  
3220 W. Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D.

Code No.:

Defendants.

**ORDER OF COURT**

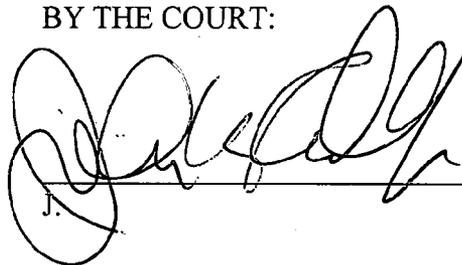
AND NOW, this 4 day of Sept, 2003 upon Motion of the Plaintiffs, Cindy E. Weber and Ricky L. Weber, and the Court having heard argument on the same; now, therefore, it is hereby . . .

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Mold Verdict for Inclusion of Rule 238 Damages be and the same is hereby approved; it is further

ORDERED, ADJUDGED AND DECREED that the delay damages hereby total \$218,773.20, which sum shall be added to the compensatory damages awarded by jury verdict in the amount of \$1,400,000.00 issued in the above-captioned matter; and it is further

ORDERED, ADJUDGED AND DECREED that, with inclusion of the above-mentioned delay damages, Plaintiffs' verdict against Defendant, Bashir Yousufzai, M.D., is hereby deemed to be in the total amount of \$9,118,773.20.

BY THE COURT:

  
\_\_\_\_\_

**FILED**

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William A. Shaw  
Prothonotary/Clerk of Courts *acc atty DuBois*

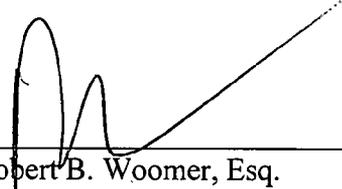
**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of April, 2003, a true and correct copy of the foregoing *Motion to Mold Verdict for Inclusion of Rule 238 Damages* was forwarded by First Class U.S. Mail, postage prepaid, upon the following:

Jeffrey S. DuBois, Esq.  
Hanak Guido & Taladay  
P.O. Box 487  
DuBois, PA 15801

WOOMER & FRIDAY LLP

By: \_\_\_\_\_

  
Robert B. Woomer, Esq.  
Attorney for Plaintiff(s)

**FILED**

APR 08 2003

M/D 5/1/03

*SA*

*NO CC*

William A. Shaw  
Prothonotary





set forth any damages he suffered as a result of Defendant's actions toward Plaintiff.

5. Moreover, the punitive award of \$7,500,000.00 had no relation to the evidence contained in the record, and was a grossly excessive amount awarded by the jury.

6. Consequently, Defendant respectfully requests this Honorable Court to reduce the amount awarded by the jury.

WHEREFORE, the Defendant respectfully requests this Honorable Court to reduce the amount awarded by the jury.

Respectfully submitted,



---

Jeffrey S. DuBois  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CINDY E. WEBER and  
RICKY L. WEBER,  
Plaintiffs

vs.

No. 2001-0361-ED

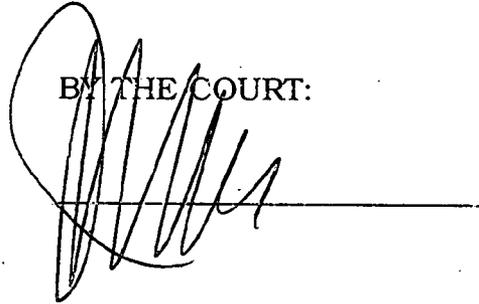
BASHIR A. YOUSUFZAI,  
Defendant

**ORDER OF COURT**

AND NOW, this 14<sup>th</sup> day of April, 2003, upon consideration of  
the within Motion for Post-Trial Relief Pursuant to Pa.R.C.P. 227.1,

IT IS HEREBY ORDERED AND DECREED that a hearing be held  
on the 2 day of May, 2003, at 9:30 clock A  
m., in Courtroom No. 1, of the Clearfield County Courthouse,  
Clearfield, Pennsylvania, 16830.

BY THE COURT:



**FILED**

APR 14 2003

William A. Shaw  
Prothonotary

FILED

09:46 BA 3cc to Acty Dubois

APR 14 2003

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 8<sup>th</sup> day of April, 2003, I served a copy of the within Motion for Post-Trial Relief Pursuant to Pa.R.C.P. 227.1 by first class mail, postage prepaid, to:

Robert E. Woomer, Esq.  
Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216



---

Jeffrey S. DuBois

**FILED**

*3cc*

*01/11/06*  
APR 08 2003

*Amy Dubois*

William A. Shaw  
Prothonotary

*WAS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

Plaintiff,

vs.

BASHIR YOUSUFZAI, M.D. ,

Defendant.

CIVIL DIVISION

Docket No. : 01-361-CD

**NOTICE OF SERVICE OF RULE  
TO SHOW CAUSE**

Filed on behalf of Plaintiff(s):  
Cindy E. Weber and Ricky L. Weber

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

WOOMER & FRIDAY LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412) 563-7980

**JURY TRIAL DEMANDED**

**FILED**

APR 17 2003

William A. Shaw  
Prothonetary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER

CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

BASHIR YOUSUFZAI, M.D.

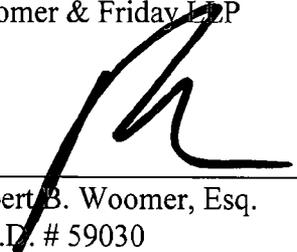
Defendant.

NOTICE OF SERVICE

NOTICE IS HEREBY GIVEN that the undersigned did cause to be served on April 15, 2003 a true and correct certified copy of Rule to Show Cause on Motion to Mold Verdict for Inclusion of Rule 238 Damages by first class U.S. mail, postage prepaid, upon Defendant's counsel, to-wit:

Jeffrey S. DuBois, Esq.  
Hanak Guido & Taladay  
P.O. Box 487  
DuBois, PA 15801

Woomer & Friday LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiff(s)

3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216  
(412)563-7980

**FILED**

APR 17 2003

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William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and RICKY

:

L. WEBER

:

-vs-

:

No. 01 - 361 - CD

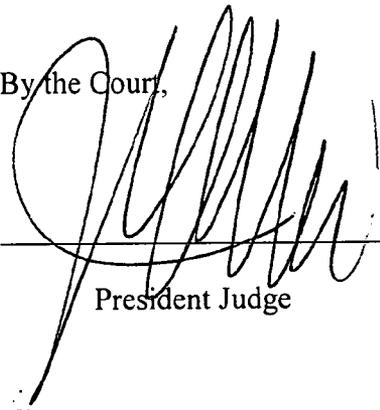
BASHIR YOUSUFZAI, M.D.

:

**ORDER**

NOW, this 2<sup>nd</sup> day of May, 2003, following argument into Defendant's Motion for Post Trial Relief, it is the ORDER of this Court that briefs shall be submitted on the issue of reduction of compensatory and punitive damages with Defendant's brief due within 40 days from date hereof and Plaintiffs' brief due within 30 days thereafter. It is the further ORDER of this Court that Plaintiffs' Petition for Delay Damages shall be and is hereby granted and the specific amount awarded being dependent upon the Court's ruling on Defendant's above Motion.

By the Court,



President Judge

**FILED**

MAY 02 2003

William A. Shaw  
Prothonotary

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**William A. Shaw  
Prothonotary**

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

CINDY E. WEBER and  
RICKY L. WEBER

-vs-

BASHIR YOUSUFZAI, M.D.

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No. 01 – 361 – CD

**OPINION AND ORDER**

The above-captioned action was based upon Doctor-Defendant's sexual assault upon Wife-Plaintiff and resulted in a verdict in favor of Wife-Plaintiff in the amount of \$750,000, in favor of Husband-Plaintiff in the amount of \$650,000 and punitive damages in the amount of \$7.5 million dollars. Defendant has filed Post-Trial Motions seeking to have this Court reduce the amounts of the awards alleging that they are excessive, not rationally related to the evidence presented at trial and that they shock the conscience.

The mere fact that a trial court disagrees with the amount of damages awarded is not a sufficient basis for reducing the same. Here the actions of the Doctor-Defendant toward his patient are clearly outrageous and the jury found said actions resulted in psychological and emotional stress to the Plaintiffs. There was more than ample basis to support a verdict in favor of Plaintiffs, both for compensatory and punitive damages and the only question therefore is whether the amount awarded was reasonable under the circumstances. Considering the nature of the acts of the Defendant and the resulting harm to the Plaintiffs, it is difficult to determine just what is a "reasonable" award and this Court is therefore reluctant to disturb the jury's verdict and enters the following:

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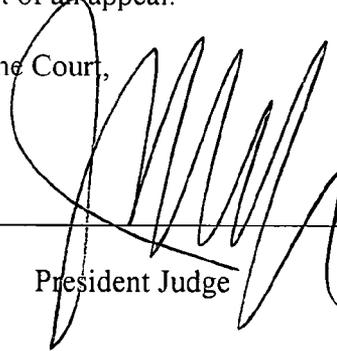
JUL 15 2003

William A. Shaw  
Prothonotary

**ORDER**

NOW, this 15<sup>th</sup> day of July, 2003, following argument and briefs into Defendant's Post-Trial Motions, it is the ORDER of this Court that said Motions be and are hereby dismissed. Opinion to be filed in the event of an appeal.

By the Court,

A handwritten signature in black ink, consisting of several loops and strokes, positioned above a horizontal line.

President Judge

**FILED**

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JUL 15 2003

*1 cc Betty Warner  
1 cc Betty Osborne  
1 cc Betty Mitchell*

*WAS*

William A. Shaw  
Prothonotary

CS

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

CINDY E. WEBER and  
RICKY L. WEBER,  
Plaintiff

Vs.

BASHIR YOUSUFZAI, M.D.,  
Defendant

No. 01-361-CD

Type of Pleading:

**MOTION TO WITHDRAW AS  
COUNSEL**

Filed on Behalf of:  
DEFENDANT

Counsel of Record for this Party:

Jeffrey S. DuBois, Esquire  
Supreme Court No. 62074  
190 West Park Avenue, Suite #5  
DuBois, PA 15801  
(814) 375-5598

**FILED**

**APR 12 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

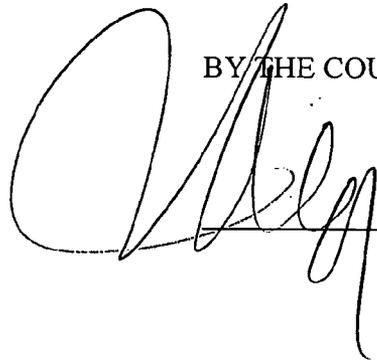
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL LAW

CINDY E. WEBER and : No. 01-361-CD  
RICKY L. WEBER, :  
Plaintiff :  
Vs. :  
BASHIR YOUSUFZAI, M.D., :  
Defendant :

**ORDER**

AND NOW, this 13 day of ~~March~~ <sup>April</sup>, 2004, it is the ORDER of the Court  
that upon consideration of the Motion to Withdraw as Counsel by Jeffrey S. DuBois, said  
Motion is hereby granted.

BY THE COURT:

  
\_\_\_\_\_  
Judge

**FILED**

APR 13 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

CINDY E. WEBER and	:	No. 01-361-CD
RICKY L. WEBER,	:	
Plaintiff	:	
	:	
Vs.	:	
	:	
	:	
BASHIR YOUSUFZAI, M.D.,	:	
Defendant	:	

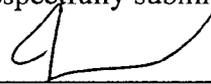
**MOTION TO WITHDRAW AS COUNSEL**

AND NOW, comes the undersigned, who files this Motion to Withdraw as Counsel and in support thereof avers the following:

1. The undersigned serves as counsel for Defendant in the above captioned matter.
2. There has already been a Trial in this matter, and this case is now completed.
3. Therefore, there are no more substantive matters for the undersigned to handle for the Defendant.
4. The Defendant has consented to the undersigned withdrawing as counsel. A copy of said Consent is attached hereto and made a part hereof as Exhibit "A".

WHEREFORE, the undersigned respectfully requests this Honorable Court that he be withdrawn and removed as Counsel of Record for Defendant, Bashir Yousufzai, M.D.

Respectfully submitted,



---

Jeffrey S. DuBois, Esquire  
Attorney for Defendant

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

CINDY E. WEBER and : No. 01-361-CD  
RICKY L. WEBER, :  
Plaintiff :  
Vs. :  
BASHIR YOUSUFZAI, M.D., :  
Defendant :

**CERTIFICATE OF SERVICE**

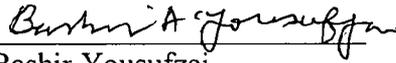
I do hereby certify that on the 8<sup>th</sup> day of April, 2004, I served a true and correct copy of the within Motion to Withdraw as Counsel by first class mail, postage prepaid, on the following:

Robert B. Woomer, Esquire  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

  
\_\_\_\_\_  
Jeffrey S. DuBois

**CONSENT TO WITHDRAW**

I, Bashir Yousufzai, hereby consent to have Jeffrey S. DuBois, Esquire, withdraw as my Counsel in this matter.

  
Bashir Yousufzai

FILED 300  
MAY 12 2004  
APR 12 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
W.A.S.  
W.A.S.





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER

Plaintiff,

CIVIL DIVISION

vs.

Docket No. : 01-361-CD

BASHIR YOUSUFZAI, M.D.

Code No.:

Defendants.

**ORDER OF COURT**

AND NOW, this 4 day of Sept, 2003 upon Motion of the  
Plaintiffs, Cindy E. Weber and Ricky L. Weber, and the Court having heard argument on the  
same; now, therefore, it is hereby . . .

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Mold Verdict for  
Inclusion of Rule 238 Damages be and the same is hereby approved; it is further

ORDERED, ADJUDGED AND DECREED that the delay damages hereby total  
\$218,773.20, which sum shall be added to the compensatory damages awarded by jury verdict in  
the amount of \$1,400,000.00 issued in the above-captioned matter; and it is further

ORDERED, ADJUDGED AND DECREED that, with inclusion of the above-mentioned  
delay damages, Plaintiffs' verdict against Defendant, Bashir Yousufzai, M.D., is hereby deemed  
to be in the total amount of \$9,118,773.20.

BY THE COURT:

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

/s/ JOHN K. REILLY, JR.

\_\_\_\_\_  
President Judge

SEP 05 2003

Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

**CERTIFICATE OF SERVICE**

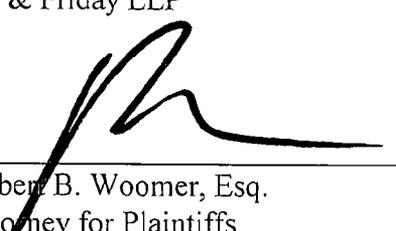
I, the undersigned, hereby certify that on the 16th day of September, 2003, a true and correct copy of the foregoing *Praecipe to Enter Judgment on Behalf of Plaintiffs* was served on the defendant at his last known address and upon defendant's counsel, via First Class Mail, postage pre-paid, to-wit.

Jeffrey S. DuBois  
Attorney at Law  
190 West Park Avenue, Suite 5  
DuBois, PA 15801

Bashir Yousufzai, M.D.  
54 Arbor Hill Road, Apt. B  
Richmond, VA 23233-3137

Woomer & Friday LLP

By: \_\_\_\_\_

  
Robert B. Woomer, Esq.  
Attorney for Plaintiffs

**FILED**

*M 2:09 PM PL 20:00  
Noted to Clerk  
SEP 18 2003*

**William A. Shaw  
Prothonotary**



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

CINDY E. WEBER and  
RICKY L. WEBER, husband  
and wife,

Plaintiffs,

v.

BASHIR YOUSUFZAI, M.D.

Defendant.

No.: 01-361-CD

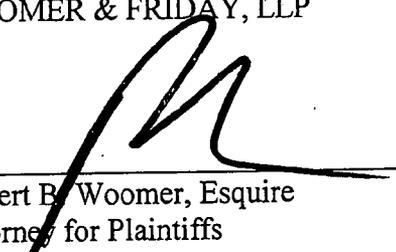
COPIES

**NOTICE OF ENTRY OF JUDGMENT ON BEHALF OF PLAINTIFF**

TO: DEFENDANT BASHIR YOUSUFZAI, M.D.

Please be advised that judgment has been entered on behalf of plaintiffs in the action No.  
01-361-CD.

WOOMER & FRIDAY, LLP

  
Robert B. Woomer, Esquire  
Attorney for Plaintiffs  
PA ID No.: 59030

WOOMER & FRIDAY, LLP  
3220 W. Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

COPY

Cindy E. Weber  
Ricky L. Weber  
Plaintiff(s)

No.: 2001-00361-CD

Real Debt: \$9,118,773.20

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Bashir A Yousufzai MD  
Defendant(s)

Entry: \$20.00

Instrument: Judgment

Date of Entry: September 18, 2003

Expires: September 18, 2008

Certified from the record this 18th day of September, 2003

\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney

2

77

Burnside Twp.	Audit and Financial Report	Mar. 5, 2001	11	331-C
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Burnside Twp.	Burnside Twp., Audit Report	Feb. 13, 1995	11	325
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Burnside Twp.	Audit and Financial Report	Feb. 20, 1998	11	332
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Burnside Twp.	Audit and Financial Report	Feb. 22, 2000	11	331-B
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Burnside Twp.	Audit and Financial Report	Feb. 19, 1999	11	331-A
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Burnside Twp.	Audit and Financial Report	Feb. 25, 2002	11	334
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Burnside Twp.	Orvis Delcamp, Burnside Twp., Tax Collector Bond	June 2, 1994	11	314
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Butler, Barbara	Order assigning DJ Ford authority to issue Order for Possession in the case Wilma Kephart vs. Barbara Butler	Oct. 20, 1998	11	179
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Butler-Aughenbaugh,	Power of Attorney and Appointment of Cynthia Butler-Aughenbaugh as Office Manager of Sheriff's office	June 21, 2002	11	250A
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Byers, Dianne E.	Oath, Dianne E. Byers, Auditor, Bell Twp., 12/30/97	Dec. 30, 1997	11	024
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L. WEBER, CIVIL DIVISION

Plaintiff,

Docket No. : 01-361-CD

vs.

Code No.:

BASHIR YOUSUFZAI, M.D.,

Defendant.

**PRAECIPE TO SATISFY JUDGMENT  
AND DISCONTINUE**

Filed on behalf of Plaintiff(s):  
CINDY E. WEBER and RICKY L. WEBER

Counsel of Record for this Party:  
Robert B. Woomer, Esquire  
Pa I.D. # 59030

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
Tele # (412)563-7980  
Fax # (412)563-0120

**JURY TRIAL DEMANDED**

**FILED** <sup>60</sup> *Noce*  
*m) 2:11/301 Atty Pd. 7.00*  
APR 14 2005 *Certificate of*  
William A. Shaw *Sat. & Cert. of*  
Prothonotary/Clerk of Courts *Disc to*  
*Atty*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CINDY E. WEBER and RICKY L.  
WEBER,

CIVIL DIVISION

Docket No. : 01-361-CD

Plaintiffs,

vs.

BASHIR YOUSUFZAI, M.D.,

Defendant.

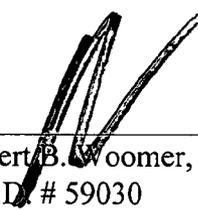
**PRAECIPE TO SATISFY JUDGMENT AND DISCONTINUE**

TO THE PROTHONOTARY:

Kindly mark the jury award and judgment in the above-captioned case as satisfied  
and, further, mark this matter discontinued.

Respectfully submitted March 24, 2005.

Woomer & Friday LLP



---

Robert B. Woomer, Esq.  
Pa I.D. # 59030  
Attorney for Plaintiffs

Woomer & Friday LLP  
3220 West Liberty Avenue, Ste. 200  
Pittsburgh, PA 15216-2320  
(412)563-7980

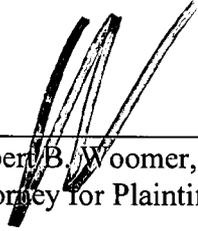
**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2005, a true and correct copy of the foregoing *Praeceptum to Satisfy Judgment and Discontinue* was served by First Class U.S. Mail, postage prepaid, upon the following:

Bashir Yousufzia, M.D.  
9125 Cloisters East  
Richmond, VA 23292

Woomer & Friday LLP

By: \_\_\_\_\_

  
Robert B. Woomer, Esq.  
Attorney for Plaintiffs

COPY

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

Cindy E. Weber  
Ricky L. Weber

No.: 2001-00361-CD

Vs.

Debt: \$9,118,773.20

Bashir A Yousufzai MD

Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Thursday, April 14, 2005 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 14th day of April, A.D. 2005.

\_\_\_\_\_  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Cindy E. Weber  
Ricky L. Weber

Vs.

No. 2001-00361-CD

Bashir A Yousufzai MD

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 April 14, 2005, marked:

Discontinued

Record costs in the sum of \$107.00 have been paid in full by Robert B. Woomeer, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of April A.D. 2005.

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William A. Shaw, Prothonotary